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TRADE UNION LAW

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PREFACE TO THE THIRD EDITION

THE considerable changes in Trade Union Law brought about by the Trade Disputes and Trade Unions Act, 1927, are incorporated in this edition. They may be grouped under four heads : (a) Sections One, Two and Seven, which render certain classes of sympathetic strike or lock-out illegal ; (b) Section Three, which extends the definition of unlawful intimidation (formerly confined to cases of violence or threats of violence) to " reasonable apprehension of injury in respect of source of income or actionable wrong " ; (c) restriction of the rights of Trade Unions to collect funds for political purposes from members other than those who express a desire to contribute ; and (d) certain restrictions on civil servants and local authorities with regard to Trade Unions.

As regards judicial decisions since the last edition of this book, by far the most important is that of the House of Lords in *Sorrell v. Smith*, [1925] A. C. 700, which case (following the Court of Appeal in *Ware and de Freville v. Motor Trade Association*, [1921] 3 K. B. 40) has finally decided that in actions of conspiracy for interfering with the freedom of trade or labour of another it is essential, if the plaintiff is to succeed, that he must prove an intention to injure. The effect of this decision is to tend to legalise the use of black lists and boycotts where it is sought to further or defend trade or labour interests.

Other cases of importance are *Forster v. National Amalgamated Union of Shop Assistants*, [1927] 1 Ch. 539— a case which distinguishes the powers of the Court and

Registrar in deciding the propriety of political levies under the Act of 1913; *Booth's Case*, [1926] 1 Ch. 904, on the validity of amalgamations; and *Hardie and Lane, Ltd. v. Chilton* (1927), 43 T. L. R. 709, in which the Court of Appeal appear to have decided that an unregistered Trade Union cannot be sued for damages in contract or in tort in a representative action.

H. H. S.

C. B.

October, 1927.

PREFACE TO FIRST EDITION

THE legal problems which the subject of Trade Unionism produces are considerable. In the first place, the Trade Union shares with other voluntary societies that ambiguous intermediate region between the individual and the corporation which the law has so tentatively defined; secondly, the common law doctrine of restraint of trade and conspiracy have given a fundamental taint of illegality to Trade Union activity which the statute law has not entirely succeeded in removing; thirdly, both the judicial decisions and the legislation (the latter often reversing the former) are so conflicting and difficult to reconcile, that in many cases they have but made confusion worse founded. Moreover, recent decisions on the legal position of commercial combinations as Trade Unions show that Trade Union Law is destined to have great developments in a region hardly contemplated by the framers of the Act of 1871—developments which it may be predicted are likely in the future to have very far-reaching effects.

This book is an attempt to provide the explorer with a thread by which he can hope to find his way

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through the legal labyrinth. It contains all the relevant cases and statutes up to the time of publication, together with historical summaries of the law in its various aspects.

Our thanks are due to Mr. G. Reckitt for assistance in the compilation of the Tables and Index.

H. H. S.

C. B.

October, 1921.

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TRADE UNION LAW

PART I.—STATUS AND CONTRACT

Historical.—The Law before 1871.

THE Trade Union Act of 1871, which remains the principal Act affecting trade unions in their civil capacity, was the outcome of a Royal Commission appointed in 1867 to inquire into "the organisation and rules of trade unions and other associations of workmen or employers." The Commission, more especially the minority, recommended that trade unions should be legalised under certain conditions (a). The Act of 1871 was modelled on the recommendations of the minority of the Commissioners rather than on those of the majority. "Prior to the passing of the Act of 1871 a trade union, as such, had no legal status" (b). The Act is thus an enabling Act, giving certain rights which did not formerly exist. By the 1871 Act the Legislature has created a thing which can own property, which can employ servants, and which can inflict injury (c); and the Act is, as it were, the Charter of Incorporation.

(a) *Vide* Final Report, 1869, pp. xxxii. *et seq.* There is annexed a memorandum on the law relating to trade unions by Sir William Erle (Final Report, p. lrv.); see also 1906 Commission, Cd. 2825, pp. 99 *et seq.*

(b) *Per* Farwell, L.J., in *Osborne v. Amalgamated Society of Railway Servants*, [1909] 1 Ch. 163, at p. 188. See also *Hornby v. Closs* (1867), L. R. 2 Q. B. 153. A temporary Act protecting the funds of trade unions was passed in 1869 (*infra*, p. 111). The term "trade union" is, however, to be found used in 1831 (*Times*, January 18th); by Arnold (letter to Bunson), 1834; and by Wordsworth (postscript poetical works), 1835. As to the earlier legal history, see "The Law relating to Trade Unions—Lectures—Historical," Slessor (Allen and Unwin), *infra*, p. 13.

(c) *Per* Lord Halsbury, L.C., in *Taff Vale Rail. Co. v. Amalgamated Society of Railway Servants*, [1901] A. C. 426, at p. 436.

poration, and it undoubtedly renders some things lawful which, but for the enactment, would be unlawful (*d*). Apart from the Act, a trade union having rules and objects substantially in restraint of trade would be an illegal association (*e*). Trade unions were unlawful associations before the passing of the Trade Union Act, 1871. The object of the Act is to give relief to trade unions in certain clearly defined directions, to enable them to sue certain actions and enforce certain rights which they could not sue and enforce before (*f*). It will be noticed that insufficient weight was then given to the consideration that trade unions may be lawful at common law even where their objects are mainly those of a friendly society type. Such a society, by having a rule that members shall be told of vacancies in employment, but not non-members, might have been, even in 1871, a type of trade union lawful at common law. The Act of 1871 was framed explicitly on the assumption that, as the law then stood, trade unions were very generally, though perhaps not universally, in restraint of trade. This was remedied by the amending Act of 1876 (*g*). Despite the earlier dicta, it "is important to observe that a trade union is not the creature of the Act of 1871" (*h*).

(*d*) *Per* Lord Halsbury, L.C., in *Amalgamated Society of Railway Servants v. Osborne*, [1910] A. C. 87, at p. 92. This is apparently said on the assumption that the society in question was illegal at common law as being in restraint of trade. The Court of Appeal subsequently decided that it was legal.

(*e*) *Vide* Jessel, M.R., in *Rigby v. Connol* (1880), 14 Ch. D. 482, at p. 491; *Hornby v. Close* (1867), L. R. 2 Q. B. 153; *Farrer v. Close* (1869), L. R. 4 Q. B. 602.

(*f*) *Per* Lord President Inglis, in *Shanks v. The United Operative Masons' Association* (1874), 1 R. (Ct. of Sess.) 823, at p. 825.

(*g*) *Per* Lord Robson, in *Russell v. Amalgamated Society of Carpenters and Joiners*, [1912] A. C. 421, at p. 440; *Swaine v. Wilson* (1889), 24 Q. B. D. 252, 259. A society which is substantially a friendly society may, through the presence of a restrictive "trade" rule, be rightly registered as a trade union: *per* Fletcher Moulton, L.J., *Gozney v. Bristol Trade and Provident Society*, [1909] 1 K. B. 901, at p. 919.

(*h*) *Per* Cozens-Hardy, M.R., in *Gozney's Case*, [1909] 1 K. B. 901, at p. 915.

In deciding whether a society is a trade union, its objects and rules must be read as a whole (*i*). A certificate of a society as a limited company is not conclusive that the society is not a trade union (*k*).

Mediæval.—The earliest examples of labour legislation, the attempt at the enforcement of which gave rise to trade unions, are to be found in the Statute of Labourers. They commenced with ordinances under Edward III. The Ordinance of Labourers, 1349 (*l*), is addressed to the Sheriff of Kent, and recites that "Because a great part of the people, and especially of the workmen and servants, has now died in this plague, some, seeing the necessity of laws and the scarcity of servants, will not serve unless they receive excessive wages, and others preferring to beg in idleness rather than to seek their livelihood by labour. We, by the unanimous counsel of our prelates and nobles, have thought fit to ordain that every man and woman of our Realm" [exceptions follow as in a later statute] "shall be bound to serve and receive wages as in the twentieth year of our reign or in the five or six years last preceding" [in certain trades twenty years preceding]. A similar ordinance was issued to the clergy, and in 1349 and 1350 found expression in Acts of Parliament (*ll*). In 1351 there were presentments before the justices under the statute of 1350 (*m*). In the Hundred of Chelmsford it is recited that the jurors present that Arnulph le Heirde, servant of John Dodebrook, withdrew from his service before the end of his term; another man takes double what he used to take before the statute, and other cases. The Exchequer Rolls estreats for 1351 recite fines for breaches

(*i*) *Chamberlain's Wharf v. Smith*, [1900] 2 Ch. 605, 611, 614.

(*k*) *British Association of Glass Bottle Manufacturers v. Nettlefold* (1911), 27 T. L. R. 527; see also *Performing Rights Society, Ltd. v. London Theatre of Varieties, Ltd.*, [1924] A. C. 1.

(*l*) (1349) Close Roll, 23 Edw. 3. Vide B. H. Putnam, "Statute of Labourers (Columbia University Studies in History)," vol. 32.

(*ll*) 23 Edw. 3, 25 Edw. 3, st. 2.

(*m*) Assize Roll 267, M. M. 1, 6.

of the statute. The Close Roll, Edward III., contains a writ to enforce the payment of the fines to the King's collectors. There is a case in 1376 (Year Book, 50 Edw. 3, fol. 13, l. 13) of presentment at Southampton.

Finchden, J., in the fortieth year of Edward III., Michaelmas Term, said: "The Statute was made to advantage the Lords that they should not lack servants." Dealing with the principal Act of 1350, he decided that the statute applied to hired servants only and not to tenants (n). Persons who came within the statute were compelled to work at a reasonable rate, which rate, by an Act of Richard II. (o), was to be fixed by the justices instead of by reference to the earlier wages paid. It was provided that every man or woman, bond or free, able in body, and within the age of threescore years, not having his own whereof he might live, nor land of his own about which he might occupy himself, and not serving any other, should be bound to serve the employer who should require him to do so. In the earlier statute no provision was originally made for the variation of wages, but servants were required to take the same wages that they were taking the year before the plague (1347), and any one who asked for more or refused to serve was to be imprisoned and pay double as a penalty. The general provisions of the Statutes of Labourers had been re-enacted, with maximum wages.

The Statutes of Labourers were several times re-enacted under the Lancastrian sovereigns and the powers of the justices to regulate wages often increased, notably in 1415 and 1424. The Court Letter-book of Coventry for 1529 contains a record of fixing of wages by the justices.

By the time of Edward VI. all combinations of workmen or labourers "not to make or do their work but at a certain price or rate" were forbidden; the earlier Acts

(n) (1366) 40 Edw. 3, Y. B. Mich., pl. 16. *Vide* (1363) 37 Edw. 3.

(o) (1389) 13 Ric. 2, c. 8, rep. 19 & 20 Vict. c. 64; see also (1388) 12 Ric. 2, c. 5, as to wage regulation.

had applied to certain trades only. A third conviction under this statute involved the pillory and the loss of an ear.

Elizabethan.—The origin of trade unions in their modern form is to be found in the combinations which arose in the eighteenth century to raise wages, either by parliamentary enactment or by the withholding of labour. These combinations were largely caused by the disappearance of the ancient system of the statutory fixing of wages by the justices of the peace under the Elizabethan Statute of Apprentices, 1562 (5 Eliz. c. 4), which had superseded the Statute of Labourers. That Act, itself caused by the decay of the earlier wage-fixing authority, the guild, had been passed "in great hope," says the preamble, "that being duly executed it shall banish idleness, advance husbandry, and yield unto the hired person, both in the time of scarcity and in the time of plenty, a convenient proportion of wages." The Act, among many other provisions (besides confirming the former ones regulating work and wages), fixed hours of labour, and required a testimonial from a master that a servant had completed his work for him before the servant sought fresh work in a new district. Hours of labour were also fixed—twelve in the summer; during daylight in the winter.

The typical ordinances of the guild were enacted in minute detail in a comprehensive statute, applying to the greater part of the industry of the period (*p*). The Elizabethan Act was limited to certain crafts; by 1 Jac. 1, c. 6, it was extended to all labourers as regards the fixing of wages, and continued by 16 Car. 1, c. 4, s. 2. Court-leet presentments at Southampton are to be found in 1576 and 1577 (*q*). The Acts gradually became obsolete; as late as 1738 the justices of Warwickshire, in the exercise of the power entrusted to them by the Elizabethan Act,

(*p*) "History of Trade Unionism," S. and B. Webb; see particularly pp. 12—19.

(*q*) Court-leet Records of Southampton, Part I., pp. 137 and 161.

fixed, at their quarter sessions, a scale of wages for the county, and notified that every employer who gave more or less than the authorised sum, and every working man who received more, would be liable to punishment. In Suffolk, Devonshire and other counties wages were similarly fixed during the seventeenth century (*r*). An assessment made in 1725 was published at the end of the century as a curiosity, and by 1766 the fixing of wages by justices of the peace had fallen entirely into disuse (*s*). "We may safely assert, that at the close of the eighteenth century State control had, in general, become superseded by individual bargaining, and the relationship of master and servant had become contractual" (*t*).

Eighteenth Century.—Workmen who had formerly resisted the State regulation of labour now began, generally in combination, to petition Parliament for the enforcement of the Statute of Apprentices, for it was recognised by them that the very State regulation of labour of which they had formerly complained would now be a protection to them in preventing the free competition of unapprenticed men, and of women and children. The failure of these petitions caused workmen to take the law into their own hands, and trade combinations, as such, started. In 1720 complaint was made to Parliament that journeymen tailors had combined to raise wages; as a consequence, an Act was passed in that year fixing wages in that trade (*u*). In 1744 and 1766 complaints were made that the 1720 Act was not being observed. In 1725 combinations of workmen in the woollen trade were prohibited (12 Geo. 1, c. 34). Next year the justices were ordered by statute again to fix wages in the trade. Other instances are (1729) 9 Geo. 1, c. 27 (shoemakers); (1749)

(*r*) "History of England," Chapter III., Macaulay.

(*s*) "Wealth of Nations," Adam Smith.

(*t*) "Law of Employer and Workman in England," Ruegg; "Lectures on Trade Union Law (Historical)," Slessor.

(*u*) (1720) 7 Geo. 1, c. 13.

22 Geo. 2, c. 47; (1777) 17 Geo. 3, c. 55 (hatters); (1795) 36 Geo. 3, c. 111.

In 1773 the Spitalfields silk weavers obtained the passing of an Act which ordered the justices to fix the rate of wages in their trade; confirmed in 1801 (41 Geo. 3, c. 38). On the other hand, the early Trade Society of Halifax Clothworkers, the "Institution," do not appear to have known of the Statute of Apprentices at all in 1796. In 1778 the Midland Association of Framework Knitters (a large trade union) petitioned Parliament to fix wages. About 1800 the trade societies, which had been formed in many trades to attain what the Statute of Apprentices had ceased to accomplish (namely, the limitation of apprentices and the fixing of a minimum wage), such as the curriers, hatters, wool staplers, brush makers, calico printers, etc., commenced to bring actions and petition Parliament to enforce the Elizabethan Act.

In certain cases they were advised to proceed against the justices by mandamus, and sometimes succeeded, but the Court held that the matter was within the discretion of the justices, though they granted a mandamus to hear and determine (*v*). This decision virtually repealed the Statute of Apprentices, for, unless the industry could be brought within the Elizabethan definition, the justices were obliged to refuse to fix the rate. Though the justices were re-empowered by the Spitalfields Acts of 1765 and 1773 to fix rates for silk weavers, this was an exceptional provision, and in 1813, as a consequence of the report of a House of Commons Committee, the sections of the Statute of Apprentices as to fixing wages were repealed (*w*).

Restraint of Trade.—Meanwhile the societies had been

(*v*) *R. v. Justices of Kent* (1812), 14 East, 395. *Vide R. v. Gregory* (1706), 2 Salk. 484.

(*w*) (1813) 53 Geo. 3, c. 40; (1814) 54 Geo. 3, c. 96. Statutory fixing of wages in the hat trade had been repealed in 1777 (17 Geo. 3, c. 55). It had been especially regulated by (1566) 8 Eliz., c. 11, and (1603) 1 Jac. 1, c. 17.

developing on more definitive industrial lines. Friendly societies and societies without specific benefits of a friendly society type began to concentrate upon the withholding of labour as a means of raising wages. In so far as such a withholding was or is illegal criminally, it is discussed under a later section of this book (see Part II., "Criminal and Tortious"); in so far as such withholding of labour is unlawful civilly, it must be observed that, at common law, all such actions are apt to be unlawful as being in restraint of trade. It was decided as early as the reign of Henry V. that a contract imposing a general, or even partial, restraint of trade was void (x). No general rule has been laid down as to what amounts to restraint of trade, but the old rule that all restraints are bad was gradually relaxed. Most of the rules of trade unions, however, remained unlawful, as still constituting an unreasonable restraint at common law (y). It is scarcely necessary here, therefore, to discuss restraint of trade in its more general aspect. "The question to be decided is whether the restraint exceeds what is reasonable" (z), but illegality is not to be presumed. There is no rule that restraint is *prima facie* bad (a).

But among those agreements which have been held to

(x) *Per* Hull, J., 2 Hen. 5, fol. 5, pl. 26: *Mitchell v. Reynolds* (1712), 1 Sm. L. Cases 406, 11th ed.; 1 P. Wms. 181. *Vide* *Claygate v. Batchelor* (1602), Cro. Eliz. 872; *Rogers v. Parrey* (1613), 2 Bulst. 136; *Ipswich Tailors' Case* (1614), 11 Co. Rep. 53 a; *Prugnell v. Gosse* (1648), Aleyn, 67; *Exeter Tailors' Co. v. Clarke* (1684), 2 Show. 345; Sir William Erie's memorandum on "The Right to Free Course for Trade in Labour," Royal Commission, 1867, p. lix.

(y) *Vide* *Hilton v. Eckersley* (1855), 6 E. & B. 47; *Mineral Water, etc., Protection Society v. Booth* (1887), 36 Ch. D. 465; *Swaine v. Wilson* (1889), 29 Q. B. D. 252; *Old v. Robson* (1890), 59 L. J. M. C. 41; *Mogul S.S. Co. v. McGregor*, [1892] A. C. 25; *Chamberlain's Wharf, Ltd. v. Smith*, [1900] 2 Ch. 805; *Cullen v. Etwin and Others* (1904), 90 L. T. 840; and compare *Tallis v. Tallis* (1853), 1 E. & B. 391, which disapproves *Mitchell v. Reynolds*, where it was said that a rule in restraint of trade is presumed to be bad.

(z) *Nordenfelt v. Maxim Nordenfelt Co.*, [1894] A. C. 535.

(a) *Mills v. Dunham*, [1891] 1 Ch. 576; *Moenich v. Fensterre* (1892), 67 L. T. 602, 604.

be unenforceable at common law, by reason of being in restraint of trade, are those of trade unions, for it has been laid down that agreements between masters not to give employment, or between workmen not to take it except upon fixed terms, being restraints upon trade, are, as a general rule, not enforceable between parties to such agreements (*b*). A rule to support members on strike is unlawful as being in restraint of trade (*c*). The Act of 1871 declared that the purposes of a trade union, by reason merely that they are in restraint of trade, are not deemed to be unlawful so as to render void or voidable any agreement or trust (*d*). One of the results of this illegality had been that before that enactment resort to the Courts for the purpose of preserving or recovering property or funds was made extremely difficult to trade unions. A person might steal the money or property belonging to a trade union with impunity. Their bankers or agents could refuse to deliver up the moneys entrusted to them by, or received on account of, the union, and there was no redress (*e*). Thus, the Friendly Societies Act of 1855 (*f*) declared, by section 24 (as applied by section 44), that a society established for any purpose not illegal, by depositing its rules with the Registrar of Friendly Societies, might have disputes among members summarily dealt with by justices of the peace. In *Hornby v. Close* (*g*), however, decided in 1867, it was held that a society, of which one of the objects was the relief of sick, disabled and aged members, but of which one of the main objects was that of a trade union and the support of members on strike, was not within the 1855 Act, as being in existence, *inter alia*, for an illegal purpose. *Farrer v. Close* (*h*),

(*b*) *Hilton v. Eckersley* (1856), 6 E. & B. 47, 66, 75.

(*c*) *Hornby v. Close* (1867), L. R. 2 Q. B. 153.

(*d*) Section 3 hereof, *infra*, pp. 14 *et seq.*

(*e*) "Law of Employer and Workman in England," Ruegg.

(*f*) 18 & 19 Vict. c. 63, s. 44.

(*g*) (1867) L. R. 2 Q. B. 153.

(*h*) (1869) L. R. 4 Q. B. 602.

originating, like *Hornby's Case*, in an accusation by the society that the member had embezzled the funds, was similarly decided. Such was the mischief which section 3 of the Trade Union Act, 1871, was passed to redress.

I.

TRADE UNION ACT, 1871

(34 & 35 VICT. c. 31).

AN ACT TO AMEND THE LAW RELATING TO TRADES
UNIONS. [June 29th, 1871.]

Preliminary.

SHORT TITLE.

1. This Act may be cited as "The Trade Union Act, 1871."

The 1871 Act is amended by the Trade Union Act Amendment Act, 1876 (39 & 40 Vict. c. 22), the Trade Union Act, 1913 (2 & 3 Geo. 5, c. 30), the Trade Union (Amalgamation) Act, 1917 (7 & 8 Geo. 5, c. 24), and the Trade Disputes and Trade Unions Act, 1927 (17 & 18 Geo. 5, c. 22), and those Acts, together with the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), and the Trades Disputes Act, 1906 (6 & 7 Edw. 7, c. 47), are to be construed as one (i).

TRADE UNION NOT CRIMINAL.

Criminal Provisions.

2. The purposes of any trade union shall not, by

(i) Trade Disputes and Trade Unions Act, 1927, s. 8 (1). As to Northern Ireland, see The Government of Ireland (Companies, Societies, etc.) Order, 1922 (S. R. & O., 184). The 1927 Act does not extend to Northern Ireland, s. 8 (3) (*infra*, p. 268).

reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.

This section is declaratory (*R. v. Stainer* (ii)).

"*The purposes.*"—A trade union in 1871 "was generally speaking an association of wage earners for the purpose of improving or maintaining the conditions of employment. It combined the objects of a friendly society with those of a trade guild. In the former capacity it gave relief to its members when out of work from sickness or accident, or on strike, that is 'dispute' and 'unemployed' benefits; and in the latter capacity it bargained with employers on behalf of all its members, and with the influence of a united body, for higher wages, shorter hours and the like. There was also the further question of encroachments of trade on trade" (j). Generally speaking, at that time trade unions had two main objects. They were combinations for trade purposes and for benevolent purposes as well (k). Until the passing of the Trade Union Act, 1913 (l), the purposes of a trade union were limited to powers not "making the society a thing different from that which is specified by the Trade Union Acts, 1871 and 1876" (m). But since 1913, so long as the principal objects of the society are the "trade union" objects defined in the Acts of 1871 and 1876 (subject to the provisions of the Trade Union Act, 1913, as to political objects), a trade union has now power to apply the funds of the union for any lawful objects or purposes for the

(ii) (1870) L. R. 1 C. C. R. 230.

(j) *Per* Farwell, L.J., in *Osborne v. Amalgamated Society of Railway Servants*, [1909] 1 Ch. 163, at p. 189.

(k) *Per* Lord Macnaghten in *Amalgamated Society of Railway Servants v. Osborne*, [1910] A. C. 87, at p. 95.

(l) 2 & 3 Geo. 5, c. 30, s. 1 (*infra*, p. 134).

(m) *Per* Lord Atkinson, *ibid.*, at p. 99.

time being authorised under its constitution (*n*). The "purpose" for which a thing is done is frequently not avowed; it may be necessary to go further and ascertain whether, as a matter of substance and fact, the act was done for the purposes (*o*).

"*Trade union*."—A trade union is any combination, whether temporary or permanent, the principal objects of which are the regulation of the relations (*a*) between workmen and masters, or (*b*) between workmen and workmen, or (*c*) between masters and masters, or (*d*) the imposing of restrictive conditions on the conduct of any trade or business, and also (*e*) the provision of benefits to members; whether such combination would or would not, but for the Trade Union Act, 1871, have been deemed to have been an unlawful combination by reason of one or more of its purposes having been in restraint of trade (*n*). (For further discussion of this statutory definition and notes, *vide infra*, pp. 107—111, 132, 133).

Trade unions, however, are not necessarily entirely the creatures of statute. The Act of 1871 dealt with existing combinations (*p*). The Legislature did not create the name for the purpose of the Trade Union Acts. It was at the time a well-known term, connoting combinations of a known type, formed for objects and purposes which were well recognised (*q*). Trade unions existed and still exist at common law, and at common law may be unlawful or lawful in respect of their being in restraint of

(*n*) Trade Union Act, 1913, s. 1 (2); Trade Union Act Amendment Act, 1876, s. 16. The fact that the principal objects of a combination do not include the provision of benefits to members does not in itself prevent the combination from being a trade union (*Performing Rights Society, Ltd. v. London Theatre of Varieties*, [1922] 2 K. B. 433, per Bankes, L.J.).

(*o*) *In Re South African Supply and Cold Storage Co.*, [1904] 2 Ch. 268.

(*p*) *Amalgamated Society of Railway Servants v. Osborne*, [1909] 1 Ch. 163; *sed vide* Farwell, L.J., *ibid.*, at p. 189.

(*q*) *Per* Fletcher Moulton, L.J., in *Amalgamated Society of Railway Servants v. Osborne*, *ibid.*, at p. 184.

trade (*r*). As has already been pointed out, in the early years of the nineteenth century, the Elizabethan law empowering justices to fix wages had become obsolete (*s*), and in consequence, one of the original functions of trade societies, namely, the purpose of enforcing the Statute of Apprentices, 1562 (5 Eliz. c. 4), and other Acts empowering the justices and other authorities to fix wages by application to the Courts (*t*), became useless. As a consequence, workmen, at the beginning of the nineteenth century, began to concentrate more on their present industrial activities and to act more deliberately in restraint of trade by the concerted withholding of labour. Although the term "trade union" was first used in the early nineteenth century (1834), it was then generally employed to denote an association of several or all trades; a single trade organisation was at this time more usually called a Trades Club (*u*). The word "trade" in this connection includes a workman's labour (*v*), and restraint of trade such a restraint of labour.

Thus, as early as 1720 tailors' and weavers' unions were confederating in order to incorporate themselves into a "trades club." The words "unionist" and "non-

(*r*) *Per* Cowens-Hardy, M.R., in *Gozney v. Bristol Trade and Provident Society*, [1909] 1 K. B. 901, at p. 915. See also *Russell v. Amalgamated Society of Carpenters and Joiners*, [1912] A. C. 421.

(*s*) 53 Geo. 3, c. 40; 54 Geo. 3, c. 96. *Vide R. v. The Justices of Kent* (1811), 14 East, 395, which decided that the justices must hear such cases as come within the statute, but have discretion in determining them.

(*t*) Such as (1603) 1 Jac. 1, c. 6, after the Statute of Apprentices, and (1349) 23 Edw. 3, st. 1; (1360) 25 Edw. 3, st. 2; (1360) 34 Edw. 3, cc. 9—11; (1368) 42 Edw. 3, c. 6; (1388) 12 Ric. 2, cc. 3—9; (1389) 13 Ric. 2, c. 8; (1405) 7 Hen. 4, c. 17; (1414) 2 Hen. 5, c. 4; (1427) 6 Hen. 6; (1514) 6 Hen. 8, c. 3; the Statute of Apprentices was not wholly repealed until 1875.

(*u*) *Supra*, p. 1; "History of Trade Unionism" (Longmans), Webb, p. 103, 8th ed.

(*v*) *Vide* definition of a "trade" dispute in the Trade Disputes Act, 1906; see also *Brimelow v. Casson*, [1924] 1 Ch. 302; *Fazakerley v. Wiltshire* (1721), 1 Stra. 462; *per* Cave, J., in *Allen v. Flood*, [1898] A. C. 1, at pp. 35, 36.

unionist" appear in the report of the House of Commons Select Committee on Combinations (1838), *supra*, p. 1.

"*Merely*."—*Cf.* "on the ground only," Trade Disputes Act, 1906, section 3 (*infra*, p. 261).

"*In restraint of trade*."—*Vide* section 3 hereof.

"*Be deemed to be unlawful*."—*Vide* the Trade Disputes and Trade Unions Act, 1927, s. 1, as to the criminal liability involved by the participation of persons in illegal strikes and lock-outs, *infra*, p. 269.

"*Criminal prosecution for conspiracy*."—*Vide* Part II., "Criminal and Tortious," *infra*, pp. 178 *et seq.*; *Luby v. Warwickshire Miners' Association*, [1912] 2 Ch. 371.

TRADE UNION NOT UNLAWFUL FOR CIVIL PURPOSES.

3. The purposes of any trade union shall not by reason merely that they are in restraint of trade be unlawful so as to render void or voidable any agreement or trust.

"*The purposes*."—See section 2 hereof, *supra*, p. 11.

"*By reason merely*."—If the rules and trusts of a trade union are illegal or unenforceable on some other ground than by reason merely that they are in restraint of trade, the Act of 1871 does not in any way legalise them (*w*). A trade union may be either a lawful combination or an unlawful combination by reason of some one or more of its purposes being in restraint of trade; it is a common mistake to suppose that every trade union is, apart from the Act of 1871, an unlawful combination (*x*); but as to this, see section 16 of Trade

(*w*) *Per* Lord Lindley, in *Yorkshire Miners' Association v. Houlden*, [1905] A. C. 256, at p. 279; but see *Luby v. Warwickshire Miners' Association*, [1912] 2 Ch. 371. See also Trade Disputes and Trade Union Act, 1927, s. 1.

(*x*) *Per* Cozens-Hardy, M.R., in *Gozney v. Bristol Trade and Provident Society*, [1909] 1 K. B. 901, at p. 215. *Per* Lord Macnaghten, in *Russell v. Amalgamated Society of Carpenters and Joiners*, [1912] A. C. 421, at p. 429; *per* Lord Shaw, *ibid.*, at p. 432; *per* Lord Robson, at p. 439.

Union Act Amendment Act, 1876. See also s. 1 of the Trade Disputes and Trade Unions Act, 1927, as to the effect of participation in illegal strikes and lock-outs, *infra*, p. 268.

“*In restraint of trade.*”—Though contracts in restraint of trade were at first much disliked by the Bench, so much so that when one was produced to Hull, J., he declared it contrary to the common law, and swore that, had the plaintiff been present, he would have sent him to prison (2 Hen. 5, fol. 5, pl. 26); yet now the rule is to construe the contracts and see if they are reasonable under all the circumstances of the particular case (*y*).

The doctrine of reasonableness applies to a contract of service (*z*). Where a restriction is reasonably required for the protection of the contractee, and is not injurious to the public, it may be reasonable (*a*). “Competition in labour is in all respects analogous to competition in trade . . . and the same principles must apply” (*b*), but covenants in restraint of trade will be construed more liberally in the case of a vendor and purchaser than in that of employer and employee (*c*).

It is the general principle of the common law that a man is entitled to exercise any lawful trade as and where he will (*d*). But the act of interference must amount to a civil wrong; an act in itself legal does not become actionable merely because it interferes with another in his trade (*e*). As regards freedom to employ labour, certain

(*y*) *Per* Chitty, J., in *Mills v. Dunham*, [1891] 1 Ch. 576.

(*z*) *Underwood v. Barker*, [1899] 1 Ch. 300.

(*a*) *Nordenfels v. Maxim Nordenfels Co.*, [1894] A. C. 535.

(*b*) *Per* Lord Shand, in *Allen v. Flood*, [1898] A. C. 1, at p. 164.

(*c*) *Norris, Ltd. v. Saxelby*, [1916] 1 A.C. 688.

(*d*) *Per* Lord Watson, in *Nordenfels v. Maxim Nordenfels Guns and Ammunition Co.*, [1894] A. C. 535, at p. 552; *Gloucester Grammar School Case* (1410), Y. B. 11 Hen. 4, 47, f. 31; *Garret v. Taylor* (1620), Cro. Jac. 567; *Keeble v. Hickeringill* (1707), 11 East, 573, n.; *Tarleton v. M'Gawley* (1793), Peake, N. P. 270.

(*e*) *Per* Lord Herschell, in *Allen v. Flood*, [1898] A. C. 1, at p. 138, *infra*, p. 249.

statutory restraints with regard to giving out tickets containing the agreements are imposed upon employers engaging workmen in the hosiery trade (*f*), and also in the case of silk weavers (*g*).

So far as concerns agreements with regard to employment, at common law an agreement whereby a number of signatories are prevented from paying and employing only such persons under such conditions as a majority may fix is unenforceable, and a counter agreement of workmen is similarly unenforceable. Before the passing of the Trade Union Act, 1871, the authorities seemed to differ as to how far such a combination was unlawful; in *Hilton v. Eckersley*, Lord Campbell thought it was lawful, but Crompton, J., disagreed (*h*); in *Wood v. Bouron* (*i*), Cockburn, C.J., favoured combination as lawful, and quoted Lord Campbell in *Hilton v. Eckersley* as having expressed a strong opinion in favour of the right of labour to combine as to wages, but in *Walsby v. Anley* (*j*), as in *Hilton's Case*, Crompton, J., took the opposite view.

The law previous to the Trade Union Act, 1871, was settled finally in *Hornby v. Close* (*k*) and *Farrer v. Close* (*l*) that a trade society, with a principal object of supporting men on strike, was unlawful as being in restraint of trade at common law. In *R. v. Stainer* (*ll*), where some rules of a trade union were held illegal as being in restraint of

(*f*) Hosiery Act, 1845 (8 & 9 Vict. c. 77), s. 11.

(*g*) Silk Weavers Act, 1845 (8 & 9 Vict. c. 128), s. 1.

(*h*) (1835) 6 E. & B. 47.

(*i*) (1867) L. R. 2 Q. B. 21; Mellor, J., at p. 28.

(*j*) (1861) 30 L. J. M. C. 121.

(*k*) (1867) L. R. 2 Q. B. 153.

(*l*) (1869) L. R. 4 Q. B. 802. In 1791 the French Parliament, under the Le Chapelier Law, forbade "any sort of combination of citizens of the same profession or trade." At the same time, agricultural labourers were forbidden to combine. Strikes were forbidden in France until 1864, and trade unionism as such not legalised until 1880. As to workmen's combinations in ancient Rome, *vide* Ferrero's "Greatness and Decline of Rome," Vol. II. As to the American Law, *vide* "Cases on Labor Law," Sayer, Oxford University Press.

(*ll*) (1870), L. R. 1 C. C. R. 230.

trade, it was held, nevertheless, that they were not criminal.

The effect of a trade union being illegal at common law is to make its agreements and trusts void, and, in consequence, such a trade union could not avail itself of the benefit of the Friendly Societies Acts to recover money from a defaulting official. Nor, indeed, collectively, apart from statute, could it invoke the aid of the law for any purpose whatever (*Hornby v. Close* (m)).

Thus, while before the Trade Union Act, 1871, neither courts of law nor equity would recognise or enforce the rules of trade unions on the trusts on which their funds were held, by the Trade Union Act, 1871, section 3, their rules and trusts can no longer be treated as invalid by reason of their being in restraint of trade (n). Important qualifications, however, are imposed on the general statutory legality of the agreements and trusts of trade unions, unlawful at common law, by section 4. It is doubtful how far sections 3 and 4 legalise the trade union, as such, apart from its trusts and contracts, so as to give it an actionable reputation and enable it to maintain an action for defamation.

"Voidable" means that a thing is valid until repudiated, not that it is invalid until confirmed (o).

"Agreement."—The rules constitute an agreement between the members (*Strick v. Swansea Tin Plate Co.* (p)).

TRADE UNION CONTRACTS, WHEN NOT ENFORCEABLE.

4. Nothing in this Act shall enable any Court to entertain any legal proceeding instituted with the

(m) (1867) L. R. 2 Q. B. 153.

(n) Per Lord Lindley, in *Yorkshire Miners' Association v. Howden*, [1906] A. C. 256, at p. 259.

(o) Per Kekewich, J., in *Duncan v. Dixon* (1890), 44 Ch. D. 211.

(p) (1837) 36 Ch. D. 558.

object of directly enforcing or recovering damages for the breach of any of the following agreements, namely :—

- (1) Any agreement between members of a trade union as such, concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ or be employed.
- (2) Any agreement for the payment by any person of any subscription or penalty to a trade union.
- (3) Any agreement for the application of the funds of a trade union :—
 - (a) To provide benefits to members ; or
 - (b) To furnish contributions to any employer or workman not a member of such trade union, in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union ; or
 - (c) To discharge any fine imposed upon any person by sentence of a court of justice ;
or
- (4) Any agreement made between one trade union and another ; or
- (5) Any bond to secure the performance of any of the above-mentioned agreements.

But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful.

“ Nothing in this Act shall enable.”—By section 2 of the Trade Disputes and Trade Unions Act, 1927, protec-

tion is afforded to persons refusing to take part in illegal strikes or lock-outs as defined by that Act, notwithstanding this section, in the following terms :

(1) No person refusing to take part or to continue to take part in any strike or lock-out which is by this Act declared to be illegal, shall be, by reason of such refusal or by reason of any action taken by him under this section, subject to expulsion from any trade union or society, or to any fine or penalty, or to deprivation of any right or benefit to which he or his legal personal representative would otherwise be entitled, or liable to be placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the union or society, anything to the contrary in the rules of a trade union or society notwithstanding.

(2) No provisions of the Trade Union Acts, 1871 to 1917, limiting the proceedings which may be entertained by any Court, and nothing in the rules of a trade union or society requiring the settlement of disputes in any manner shall apply to any proceeding for enforcing any right or exemption secured by this section, and in any such proceeding the Court may, in lieu of ordering a person who has been expelled from membership of a trade union or society to be restored to membership, order that he be paid out of the funds of the trade union or society such sum by way of compensation or damages as the Court thinks just.

(3) As respects any strike or lock-out before the passing of this Act but since the first day of May, 1926, which, according to the law as declared by this Act, was illegal, this section shall have effect as if it had been in operation when the strike or lock-out took place (*infra*, p. 268).

Common Law Illegality.—Apart from the 1927 Act the Court is only precluded from entertaining the above forms of action when, by reason of the illegality at common law of the association, it has to have recourse to section 3 of

the 1871 Act to legalise it. In every case, therefore, which comes under this section it is important to ascertain whether the trade unions whose agreements are sought to be enforced are illegal at common law as being in restraint of trade, for, if they are not, the Court can entertain the action notwithstanding this section. If the action is a good one at common law (*e.g.*, is not in restraint of trade), then there is no necessity for the 1871 statute and, in the words of the section itself, the statute does not require to be appealed to as "enabling" (*q*). In the case of an action against a trade union lawful at common law for matters covered by this section it should not be sued in its registered name, as this right arises through the Trade Union Act, which cannot here be relied upon (*r*).

The section does not prohibit any Court from exercising in any case jurisdiction which it could have exercised before the Act passed; the section simply prevents any Court from extending its jurisdiction and interfering in cases in which the Act would authorise interference if it were not for the direct prohibition contained in the section (*s*).

Notwithstanding section 3 of the 1871 Act, actions under section 4 cannot be maintained unless they can be maintained independently of that section (*t*).

Section 3 is perfectly general, and if it stood alone it

(*q*) *M'Laren v. Miller* (1880), 7 R. 867. *Sed vide Russell v. Amalgamated Society of Carpenters and Joiners*, [1912] A. C. 421, *per* Lord Loreburn, L.C., at p. 428; *per* Lord Atkinson, at p. 431. In the following cases the trade union was held to be legal at common law: *Knowles v. Booth (A.S.E.)* (1884), 32 W. R. 432; *Swaine v. Wilson* (1889), 24 Q. B. D. 252; *Gosney v. Bristol Trade and Provident Society*, [1909] 1 K. B. 901; *Osborne v. Amalgamated Society of Railway Servants*, [1911] 1 Ch. 540.

(*r*) *Per* Lord Atkinson in *Russell's Case*, *ibid.*, at p. 430.

(*s*) *Yorkshire Miners' Association v. Howden*, [1905] A. C. 256, at p. 281; *Rigby v. Connol* (1880), 14 Ch. D. 482.

(*t*) *Per* Lord Lindley, in *Swaine v. Wilson* (1889), 24 Q. B. D. 252, at p. 259; *Rigby v. Connol* (1880), 14 Ch. D. 482; but see *Russell v. Amalgamated Society of Carpenters and Joiners*, [1912] A. C. 421, *per* Lords Loreburn and Atkinson, at pp. 428 and 430.

would validate and make enforceable the whole agreement within the rules. But section 4 qualifies it to some extent. The language of section 4 is narrow, and it ought not to be construed so as to cover every agreement (*u*).

Where an action is maintainable the jurisdiction is founded on a right of property vested in the member getting relief (*v*). The right of voting is a property right (*w*). Members generally have a proprietary interest in a society to which they belong (*x*).

Assuming a society illegal at common law by reason of having purposes in restraint of trade, section 3 renders those purposes lawful in any question of validity of agreement or trust. By virtue of section 3 contractual relations which would have been void for illegality become lawful contractual relations and enforceable accordingly. But this is qualified by section 4. That is a section which lawfully defines certain agreements which may form part of the contractual terms, and enacts that nothing in the Act shall enable any Court to entertain any legal proceeding to enforce those defined agreements. Notwithstanding that section 3 has rendered contractual relations which include such terms lawful, the particular defined agreements are, nevertheless, to be unenforceable in any Court (*y*). Section 3 enacts that "the purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful, so as to render void or voidable any agreement or trust"—that is to say, that agreements made by and with such associations may,

(*u*) *Per* Cozens-Hardy, M.R., in *Osborne v. Amalgamated Society of Railway Servants*, [1911] 1 Ch. 540, at p. 554; *Read v. Friendly Society of Operative Stonemasons*, [1902] 2 K. B. 732.

(*v*) *Per* Jessel, M.R., in *Rigby v. Connol* (1880), 14 Ch. D. 482, at p. 487.

(*w*) *Per* Cozens-Hardy, M.R., in *Osborne's Case*, [1911] 1 Ch. 540, at p. 554; *Pender v. Lushington* (1877), 6 Ch. D. 70; *Finch v. Oaks*, [1896] 1 Ch. 409; *Re Printers and Transfers Amalgamated Trades Protection Society*, [1899] 2 Ch. 184.

(*x*) *Per* Fletcher Moulton, L.J., in *Osborne's Case*, *ibid.*, at p. 562.

(*y*) *Per* Buckley, L.J., in *Osborne's Case*, *ibid.*, at p. 566.

notwithstanding the unlawfulness of associations in other respects, be enforced in Courts of law or equity. The fourth section is really a rider upon this one, limiting the extent of its application. The agreements specified in this section are not to be held as absolutely unlawful, but no Court is to entertain any action to enforce them. This section comprises "any agreement for the application of the funds of a trade union," *inter alia*, "to provide benefits to members." Thus every case where it sought to prevent the Court exercising jurisdiction involves two propositions: (1) that the society is at common law an unlawful association; and (2) that this action is a legal proceeding which no Court can entertain, having regard to section 4 of the Act of 1871; and if either of these propositions was not well founded, the defendants must fail (z). Though such agreements may be unenforceable, they are otherwise legal (a). The Court may declare the meaning of a rule when it cannot grant relief; thus it has decided whether rules will authorise strike pay (b), or the right to inspect books (c), or the distribution of funds on dissolution (d).

The illegality of an association at common law by reason of its acting in restraint of trade is not to be presumed, but must be established by those who rely on it (e).

It is immaterial for this purpose whether such an

(z) *Per Cozens-Hardy, M.R., in Osborne's Case*, [1911] 1 Ch. 540, at pp. 551 and 554; *Shanks v. United Operative Masons' Association*, (1874) 1 R. 823, 825.

(a) *Per Fletcher Moulton, L.J., in Osborne v. Amalgamated Society of Railway Servants*, [1911] 1 Ch. 540, at p. 560; *Denaby and Cadeby Main Collieries Co., Ltd. v. Yorkshire Miners' Association*, [1906] A. C. 384; *Gozney v. Bristol Trade and Provident Society*, [1909] 1 K. B. 901; *M'Kernan v. United Operative Masons' Association* (1874), 1 R. 453.

(b) *Re Durham Miners' Association, Watson v. Cann* (1900), 17 T.L.R. 39.

(c) *Norrey v. Keep*, [1909] 1 Ch. 561; *Dodd's Case*, [1924] 1 Ch. 115.

(d) *Re Printers and Transferers Amalgamated Trades Society*, [1899] 2 Ch. 184. A judicial construction has been given on an originating summons, *Williams v. Cotter* (*Times Newspaper*, May 8th, 1925).

(e) *Per Lindley, L.J., in Swaine v. Wilson* (1889), 24 Q. B. D. 252, at p. 259; *Osborne v. Amalgamated Society of Railway Servants* [1911] 1 Ch. 540, *per Fletcher Moulton, L.J.*, at p. 556.

association is a trade union or not; the crucial question is whether it is legal or illegal at common law (*f*). The determination of its legality or illegality depends upon whether the object of the association, as indicated by the rules, involves an illegal restraint of trade; and the question whether the rules do involve an illegal restraint of trade depends upon their construction. The construction is for the determination, not of the jury, but of the Court. As a general rule the Court will not consider the actual practice of a society in considering its legality, but only its constitution, and evidence with regard to the mode in which the rules have been in practice applied cannot be relevant to the question of their construction (*g*).

In deciding whether any association comes within the definition of a trade union, its objects and its rules must be read as a whole (*h*).

A society is not to be found illegal by reason of difficulties in interpreting the rules, but by finding in sufficiently plain language that there are in the rules provisions so in restraint of trade as to render the society illegal at common law (*i*). The law as to restraint of trade is now well settled. Every contract in general restraint of trade without limit is bad, but a partial restraint, limited so as to afford reasonable protection only to either or both of the contracting parties, and so as not to be injurious to the public, is good (*j*).

(*f*) *Per* Wills, J., in *Old v. Robson* (1890), 62 L. T. 282, at p. 284.

(*g*) *Per* Farwell, L.J., in *Russell v. Amalgamated Society of Carpenters and Joiners*, [1910] 1 K. B. 506, at pp. 521, 522; but *vide* the Trade Union Act, 1913, as to the power of the Registrar to inquire into these matters.

(*h*) *Chamberlain's Wharf, Ltd. v. Smith*, [1900] 2 Ch. 805; see also *Chitty, J.*, in *Mineral Water Bottle Exchange and Trade Protection Society v. Booth* (1887), 36 Ch. D. 465.

(*i*) *Per* Buckley, L.J., in *Osborne v. Amalgamated Society of Railway Servants*, [1911] 1 Ch. 540, at p. 543.

(*j*) *Per* Farwell, L.J., in *Russell v. Amalgamated Society of Carpenters and Joiners*, [1910] 1 K. B. 506, at p. 520. *Vide* *Evans & Co., Ltd. v. Heathcote*, [1918] 1 K. B. 418.

It is the general principle of the common law that a man is entitled to exercise any lawful trade as and where he wills; and the law has always regarded jealously any interference with trade (*k*). "He that hinders another in his trade or livelihood is liable to an action for so hindering him" (*l*). For persons to agree to carry on or suspend work in conformity with the resolution of a majority is in restraint of trade, and the agreement is not enforceable (*m*), at any rate where there is a penalty for non-compliance (*n*). Apart from the Act of 1871 a society, one of whose main objects is to support members when "on strike," may be illegal as being in restraint of trade (*o*). A trade union which has rules forbidding members under penalty of fine to bind their sons apprentices, save in a particular way, and regulating the numbers of apprentices, may be illegal at common law (*p*). Where some rules only are illegal, but are inseparable from the rest, the society as a whole may be in restraint of trade (*q*). A general duty on members to submit all questions of wages to the union (*r*), restrictions on hours of work and overtime (*s*), or on work considered by the union unfair (*t*), all tend to make the society illegal at common law. Even where the

(*k*) *Vide Nordenfels v. Maxim Nordenfels Guns and Ammunition Co.*, [1894] A. C. 535, at pp. 541, 552, 556, 561, and the cases there cited.

(*l*) *Per Holt, C.J.*, in *Keeble v. Hickeringill* (1707), 11 East, 573, at p. 575; *Magna Charta*, ch. xxx. (1333) (9 Edw. 3, c. 1); (1350) (25 Edw. 3, c. 2).

(*m*) *Hilton v. Eckersley* (1856), 6 E. & B. 47.

(*n*) *Mogul Steamship Co. v. McGregor, Gow & Co.*, [1892] A. C. 25.

(*o*) *Hornby v. Close* (1867), L. R. 2 Q. B. 153; *Farrer v. Close* (1869), L. R. 4 Q. B. 602. This is the earlier view of the law; for its development, *vide supra*, p. 15.

(*p*) *Rigby v. Connol* (1880), 14 Ch. D. 482; *Read v. Friendly Society of Operative Stonemasons*, [1902] 2 K. B. 732.

(*q*) *Old v. Robson* (1890), 59 L. J. M. C. 41.

(*r*) *Sayer v. Amalgamated Society of Carpenters and Joiners* (1902), 19 T. L. R. 122; *Aepden v. Steam Engine Makers' Society* (1904), *Times Newspaper*, December 14th.

(*s*) *Cullen v. Elwin* (1904), 90 L. T. 840.

(*t*) *Russell v. Amalgamated Society of Carpenters and Joiners*, [1912] A. C. 421.

majority of the rules are innocent, but some are in restraint of trade, if the funds are mixed up so that a member by breaking the trade rules loses everything, the society is in restraint of trade, and so, at common law, illegal (u). The fact that a breach of the unlawful rules by a member involves the liability for loss of all the society benefits goes a very long way towards the conclusion that the main object of the society is at common law unlawful (v).

Every restraint of trade does not render the rules unlawful in the sense of being unenforceable; to have that effect a restraint of trade must be such as in some way to prejudice the interests of the community (w). The question whether such rules can be enforced by civil proceedings depends mainly upon their reasonableness with reference to the real and legitimate objects of the association. Rules made for the *bonâ fide* purpose of protecting the funds of an association from claims which can be avoided by reasonable care and management will not be regarded as invalid on the ground that they are in restraint of trade, provided that the rules are not unduly oppressive or obviously detrimental to the public. The restraint of trade, in order to render rules providing for such protection invalid, must clearly be shown to extend beyond what is necessary for that purpose (x).

Where some rules are objectionable as being in restraint of trade, the circumstance may be insufficient in itself to render the association illegal. If the objects of a society are in themselves legal, the introduction of some objection-

(u) *Swaine v. Wilson* (1889), 24 Q. B. D. 252; *Mudd v. General Union of Operative Carpenters and Joiners* (1910), 26 T. L. R. 518.

(v) *Per* Vaughan Williams, L.J., in *Russell v. Amalgamated Society of Carpenters and Joiners*, [1910] 1 K. B. 506, at p. 516.

(w) *Russell v. Amalgamated Society of Carpenters and Joiners*, [1910] 1 K. B. 506, *per* Vaughan Williams, L.J., at p. 516.

(x) *Per* Lindley, L.J., in *Swaine v. Wilson* (1889), 24 Q. B. D. 252, at p. 261; *McEllistrim v. Ballymacelligot Society*, [1919] A. C. 548. A rule not to penalise a member by expelling him, but to promote the interests and objects of an association, is not necessarily in restraint of trade (*Thompson v. British Medical Association*, [1924] A. C. 764).

able rules will at most only have the effect of rendering those particular rules invalid (*y*). And there may be cases in which there might be subsidiary rules providing for objects more or less in restraint of trade, which might not prevent the other rules, free from that objection, being enforced, providing that such subsidiary rules do not go to the main object of the association (*z*). Where one object in the rules is ancillary and subordinate to another, and is solely for the purpose of more effectively accomplishing it, the Court may then take the latter as being the real or main object, and consider with regard to the former whether it so alters the primary object of the association as to affect its legal status (*a*).

Where the main object of an association is such that a member can hardly avail himself of it without bringing into operation such of its purposes as are in restraint of trade, then such an association is unlawful and its rules are unenforceable (*b*). Where, however, the objects of an association as appearing from the rules are independent of each other, and therefore separable, then such objects are of co-ordinate importance in testing whether the main object of the association is illegal (*c*).

Rules providing for strikes are not necessarily illegal, nor is there anything illegal in rules providing for contributions in support of strikers (*d*); a strike may, of course, be illegal if it involves the wrongful acts (*e*). The main-

(*y*) *Swaine v. Wilson* (1889), 24 Q. B. D. 252, per Lord Esher, M.R., at p. 257.

(*z*) *Russell v. Amalgamated Society of Carpenters and Joiners*, [1910] 1 K. B. 506, per Vaughan Williams, L.J., at p. 516.

(*a*) *Vide Fletcher Moulton, L.J., in Gozney v. Bristol Trade and Provident Society*, [1909] 1 K. B. 901, at p. 921.

(*b*) *Per Kennedy, J., in Burke v. Amalgamated Society of Dyers*, [1906] 2 K. B. 583, at p. 590.

(*c*) *Per Fletcher Moulton, L.J., in Gozney v. Bristol Trade and Provident Society*, [1909] 1 K. B. 901, at p. 921.

(*d*) *Denaby and Cadeby Main Collieries, Ltd. v. Yorkshire Miners Association*, [1906] A. C. 384. *Vide William Bros. v. Naamloozs* (1915), L. J. K. B. 334, as to the meaning of the word "strikes."

(*e*) *Lyons (J.) & Sons v. Wilkins*, [1896] 1 Ch. 811. See also s. 1 of

tenance of a strike known to be wrongful may be illegal (*f*). Strikes, otherwise, are combinations neither for accomplishing an unlawful end nor for accomplishing a lawful end by unlawful means (*g*). The question whether a strike is legal or illegal depends upon the nature and the mode of the concerted cessation. If this concerted cessation is in breach of contract, then it could not be said to be within the law, any more than in the case of an individual workman completing his current bargain and then choosing to remain idle. In this latter case the concert for the cessation of labour may be for the sole or deliberate or obvious purpose of restraining trade, in which case different legal consequences might ensue (*h*). Consequently, an association does not necessarily become unlawful by reason of its having the facilitation of strikes as one of its objects. But though the objects of an association which are for the purpose of maintaining strikes are now lawful objects if lawfully executed, still they are not objects to which agreements concerning them can be enforced by the Court (*i*). Where a rule not only discourages but prevents a member from going to work while a strike is in progress, it is illegal (*j*). Thus, the principle on which an association may be pronounced

the Trade Disputes and Trade Unions Act, 1927, as to statutory illegal strikes, *infra*, p. 268.

(*f*) *Smithies v. National Association of Operative Plasterers*, [1909] 1 K. B. 310; *National Sailors' and Firemen's Union v. Reed*, [1926] 1 Ch. 526.

(*g*) *Mullet v. United French Polishers' London Society* (1904), 20 T. L. R. 595.

(*A*) Per Lord Shaw, in *Russell v. Amalgamated Society of Carpenters and Joiners*, [1912] A. C. 421, at pp. 430, 435; *King v. Parker* (1876), 34 L. T. 837. As regards "general" strikes, *vide*, *R. v. Cooper* (1946), S. T. (N. S.) pp. 1249, 1316; *National Sailors' and Firemen's Union v. Reed*, [1926] 1 Ch. 526.

(*i*) *Sayer v. Amalgamated Society of Carpenters and Joiners* (1902), 19 T. L. R. 123, at p. 123.

(*j*) *Thomas v. The Portsmouth (A) Branch of the Ship Constructive and Shipwrights' Association* (1912), 28 T. L. R. 372; *Mudd v. General Union of Operative Carpenters and Joiners* (1910), 26 T. L. R. 512.

unlawful depends on whether the purposes for which the association is formed are unlawful; on whether the means whereby its purposes are effected are unlawful; and, assuming either of the foregoing to be unlawful, on whether the illegality be of such a kind as to taint the whole constitution of the association and so make it an unlawful association (*k*). If rules which characterise what the object of the association is indicate that the object, or the method of pursuing it, is inconsistent with public interest, then the character of such rules, taken as a whole, is such as to render unenforceable the individual rules, which would otherwise have been unobjectionable (*l*). The Unlawful Societies Act, 1799 (*m*), and the Seditious Meetings Act, 1817 (*n*), which rendered certain trade unions unlawful, are now of no effect to make trade unions criminal associations or unlawful at common law, owing to the enabling provisions of the Trade Union Act, 1871 (*o*).

“*Court.*”—The section extends not only to Courts of law but also to Courts of equity (*p*), that is, no unenforceable agreement, otherwise maintainable at common law, can be given effect to by construction in equity. It is doubtful how far an arbitrator acting under the Arbitration Act is a Court for the purpose of this section. In the Bankers’ Evidence Act, 1879, Court includes arbitrator. Although the defence under this section has not been taken in the inferior Court, it can be pleaded on appeal (*q*). In Scotland the sheriff has jurisdiction to

(*k*) *Per* Fletcher Moulton, L.J., in *Gomez v. Bristol Trade and Provident Society*, [1909] 1 K. B. 901, at p. 918.

(*l*) *Per* Vaughan Williams, L.J., in *Russell v. Amalgamated Society of Carpenters and Joiners*, [1910] 1 K. B. 508, at pp. 516, 517.

(*m*) 39 Geo. 3, c. 79, *infra*, p. 295.

(*n*) 57 Geo. 3, c. 19, *infra*, p. 295.

(*o*) *Luby v. Warwickshire Miners’ Association*, [1912] 2 Ch. 371; *Parr v. Lancashire and Cheshire Miners’ Federation*, [1913] 1 Ch. 366.

(*p*) *Per* Lord Lindley, in *Yorkshire Miners’ Association v. Howden*, [1905] A. C. 258, at p. 281.

(*q*) *Strick v. Swansea Tin Plate Co.* (1887), 36 Ch. D. 558;

decide whether section 4 is, or is not, a good defence (r). The Court may remove a case raising issues under the section from the county court to the High Court (s).

A county court judge has no jurisdiction to make a declaration that a resolution of a trade union purporting to expel a member from the union is *ultra vires* and void, nor, to give an injunction restraining the union from acting thereon. It is essential that there should be a money claim, and as no money claim for damages can be recovered by a member of a voluntary society of which he is a member, it is not possible to bring a claim for injunction within the jurisdiction of the county court (t).

"*Directly enforcing.*"—The word "directly" is important and limits the application of the section. Legal proceedings for purposes which do not constitute a direct enforcement, such as an action against the committee and trustees of a union, claiming for a declaration that the plaintiff was entitled to participate in the enjoyment of the property and effects of the trade union and in its rights, privileges and benefits, and that the pretended expulsion was invalid, and further claiming for an injunction restraining the defendants from excluding him from such participation, is not an action brought for the purpose of *directly enforcing* an agreement between members of a trade union to provide benefits to members (u). Where an agreement itself cannot be

Burke v. Amalgamated Society of Dyers, [1906] 2 K. B. 563, where the point was so taken on appeal for the first time. See also *London, Edinburgh and Glasgow Assurance Co. v. Partington* (1903), 19 T. L. R. 389; *General Union of Operative Carpenters v. O'Donnell* (1877), 11 Ir. L. T. (Jo.) 282.

(r) *Alison v. Balmain* (1883), 10 R. 12.

(s) *Donkin v. Pearson*, [1911] 2 K. B. 412.

(t) *Rees v. Cheshire County Court Judge, etc.*, [1921] 2 K. B. 694.

(u) *Amalgamated Society of Carpenters and Joiners v. Braichwaite*, [1922] A. C. 440, disapproving *Rigby v. Connol* (1880), 14 Ch. D. 482, as regards a claim not to be expelled from the union; see also *Duke v. Littleboy* (1880), 49 L. J. Ch. 803; *Aitken v. Associated Carpenters*

enforced, debts created under it can form the foundation of an account stated and are recoverable (*v*). The word "directly" means enforcing by direct order as distinguished from enforcing by the recovery of damages for the breach (*w*). In any event, an action for damages will not lie by a member of a voluntary society against the society (*x*).

Restraining Misappropriation of Funds.—To restrain the trustees of a branch, at the suit of the parent trustees of a trade union, from applying funds contrary to the rules is not a "direct enforcement," for it is but a means of preserving the *status quo* (*y*). So also an injunction will lie to restrain members from misapplying the funds of the society, for the restriction or misapplication is not more than an *indirect* enforcement (*z*).

If the object of the action were to establish the plaintiff's title to a benefit or benefits provided for members of the association, then it would fall within the prohibition, and this *a fortiori* if the action claimed had any such benefit for the plaintiff individually. But if no application of the funds in favour of the plaintiff is claimed by the action it is otherwise, if all that is sought is that the funds shall not be dealt with otherwise than in accordance with the rules, though the result may be that, if the plaintiff ever becomes entitled to any benefit under the rules, there will be funds available for that purpose which would otherwise have disappeared; the object of the action is not directly to enforce any agreement to provide

and *Joiners of Scotland* (1885), 12 R. 1206; *Chamberlain's Wharf v. Smith*, [1900] 2 Ch. 605; *M'Kernan v. United Operative Masons' Association* (1874), 1 R. 453; *Shanks v. Same* (1874), 1 R. 823.

(*v*) *Evans & Co. v. Heathcote*, [1918] 1 K. B. 418.

(*w*) *Per Buckley, L.J.*, in *Cope v. Crossingham*, [1909] 2 Ch. 148, at p. 159.

(*x*) *Kelly v. National Society of Operative Printers* (1915), L. J. K. B. 2236; *Clarke v. Ferris*, [1926] N. I. 1.

(*y*) *M'Laren v. Miller* (1880), 1 R. 867.

(*z*) *Wolfe v. Mathews* (1882), 21 Ch. D. 194; *Alfin v. Hewlett* (1902), 18 T. L. R. 664.

a benefit for him, but at most only to do so indirectly (a). The reinstatement by the Court of a member alleged to have broken a rule for payment of subscriptions, who in law has not broken the rule, is within the jurisdiction (b).

Restraining Expulsion.—An order that the defendant should pay money to the plaintiff would be a direct enforcement of the agreement for the application of the funds; but if all that is sought is to prevent the payment of the money to some one else, either that is no enforcement or it is an indirect enforcement (c). So also when a member of a registered trade union had been expelled by a resolution of the executive committee and brought an action to obtain reinstatement on the ground that the resolution of expulsion was *ultra vires* and void, and an injunction restraining the defendants, their officers, agents or servants from acting upon or enforcing the resolution, or such part of it as referred to his expulsion, it was held that the action was not a proceeding instituted with the object of *directly enforcing* an agreement for the application of the funds of the union "to provide benefits to members," and that the action was therefore maintainable (d).

The distinction is made clear in the case of *Cope v. Crossingham* (e), in which the plaintiffs, the union trustees of a registered trade union, admittedly illegal apart from

(a) *Houden v. Yorkshire Miners' Association*, [1903] 1 K. B. 308; *M'Dowall v. M'Ghee* (1913), 2 S. L. T. 238; *Steele v. South Wales Miners' Federation*, [1907] 1 K. B. 361.

(b) *Amalgamated Society of Carpenters and Joiners v. Braithwaite*, [1922] A. C. 440.

(c) *Per Lord Halsbury, L.C., in Yorkshire Miners' Association v. Houden*, [1905] A. C. 266, at p. 261.

(d) *Osborne v. Amalgamated Society of Railway Servants*, [1911] 1 Ch. 540; *Kelly v. National Society of Operative Printers* (1915), L. J. K. B., 2236; *Blackall's Case* (1923), 39 T. L. R. 41. In any event a member of a voluntary unincorporated association cannot recover damages as against the association for a breach of contract contained in the rules. The committee of the society is the agent of all the members, but the members cannot recover from the other members damages for the acts of the committee (*ibid.*, *per Swinfen Eady, L.J.*, at p. 633).

(e) [1909] 2 Ch. 148.

the 1871 Act, brought an action against the trustees of a branch, claiming a declaration that a resolution providing for secession and for distribution of the funds in its possession was *ultra vires* of the branch; an injunction restraining the trustees of the branch from dealing with the funds otherwise than in accordance with the society's rules; the removal of the trustees of the branch and the appointment of new trustees; and administration by the Court of the funds and property of the branch. It was unanimously held that the action, apart from the claim for administration, was not instituted with the object of directly enforcing an agreement within the meaning of section 4 of the 1871 Act; but it was held that the Court had no jurisdiction to make any order for payment which would be an administration of the funds, though it would, if necessary, grant an injunction (*f*). On the other hand, the Court is not prevented from declaring invalid a ballot to pass a resolution which would make the members liable to pay a levy where the ballot was improperly held (*g*).

The observation of Astbury, J., in *National Sailors, etc., Union v. Reed* (*h*) that "no member can lose his benefits by refusing to obey unlawful orders" is only reconcilable with the authorities if the union was lawful at common law; but see now 1927 Act, section 2, *supra*, p. 19.

Expulsion.—The right to expel must be strictly in conformity with the rules (*Innes v. Wylie* (*i*); *Fisher v. Keane* (*j*)). Where there is a rule providing that a member may be expelled if his conduct is injurious, a fair inquiry must be made and the member given an opportunity of stating his case (*Labouchere v. Wharnccliffe* (*k*);

(*f*) See also *McLaren v. Miller* (1880), 7 R. 867; *Sansom v. London and Provincial Union of Licensed Vehicle Workers* (1920), 36 T. L. R. 866.

(*g*) *Brodie v. Bevan* (1921), 38 T. L. R. 172.

(*h*) [1926] Ch. 536, at p. 540.

(*i*) (1844) 1 Car. & Kir. 257.

(*j*) (1878) 11 Ch. D. 353.

(*k*) (1879) 13 Ch. D. 346.

James v. Chartered Accountants (Institute) (l); *Dawkins v. Antrobus (m)*; *Burn v. National Amalgamated Labourers' Union (n)*; *Walstenholme v. Amalgamated Musicians' Union (o)*; *Walton v. Yorkshire Miners' Association (p)*. If natural justice is satisfied and there is no question of malice or bias, the decision of the domestic forum will stand (q). Nor is expulsion a tortious act, and so protected under section 4 of the Trades Disputes Act, 1906 (r).

As to expulsion for refusal to take part in or continue to take part in an illegal strike, and the remedies therefor, vide the Trade Disputes and Trade Unions Act, 1927, s. 2, *infra*, p. 269.

An action on an account stated is not a "direct enforcement" (s). In an action for declaration of membership, the county court has no jurisdiction (t).

"*Transact business.*"—Such a contract, unlike a claim to benefit, is directly restrainable by injunction (*Chamberlain's Wharf, Ltd. v. Smith (u)*).

"*Employ or be employed.*"—The agreements herein contemplated are agreements between members of a trade union as to the conditions of employment, and not as to whether a member shall or shall not be employed. That is to say, the conditions are conditions of employment in regard to such things as wages, hours and bonds or arrangements between the employer and employee. They are not conditions upon which a man shall seek employment or return to his trade, but are the conditions of his employ-

(l) (1907) 98 L. T. 225.

(m) (1881) 17 Ch. D. 615.

(n) [1920] 2 Ch. 364.

(o) [1920] 2 Ch. 388.

(p) *Per Russell, J.*, unreported; vide *Young v. Ladies' Imperial Club*, [1930] 2 K. B. 523.

(q) *Thompson v. British Medical Association*, [1924] A. C. 764.

(r) *Parr v. Lancashire and Cheshire Miners' Federation*, [1913] 1 Ch. 366.

(s) *Evans & Co., Ltd. v. Heathcote*, [1918] 1 K. B. 418.

(t) *R. v. Cheshire County Court Judge*, [1921] 2 K. B. 694.

(u) [1900] 2 Ch. 605.

ment when he is actually employed (*v*). It has been held in Scotland that an action to restrain an expulsion for a refusal to labour during a strike is an act arising out of the question of being employed, and the Court will not entertain it (*w*), but an action restraining a trade union from expelling a member who is employed under a co-partnership scheme has now been entertained by the House of Lords (*Amalgamated Society of Carpenters, Cabinet Makers and Joiners v. Braithwaite* (*x*)).

“*Payment of any subscription or penalty.*”—A penalty under this section need not be a penalty at common law. It is possible that section 4 may not comprise all things which would be called penalties at common law, but probably is confined to matters such as fines and exclusion from the trade union or from benefit (*y*).

“*Expulsion.*”—As regards expulsion, though in the earlier cases the Court refused to make the order (*Rigby v. Connol* (*z*); *Aitken v. Associated Carpenters and Joiners of Scotland* (*a*); *Chamberlain's Wharf v. Smith* (*b*)), of late years injunctions have been granted in *Amalgamated Society of Carpenters v. Braithwaite* (*c*); *Osborne v. Amalgamated Society of Railway Servants* (*d*); *Wolfe v. Mathews* (*e*); *Parr v. Lancashire and Cheshire*

(*v*) *Per* Phillimore, L.J., in *Baker v. Ingall*, [1911] 2 K. B. 132, at p. 139; *sed vide Baker v. Ingall*, [1912] 3 K. B. 106, in which the Court of Appeal reversed the judgment of the Divisional Court, but did not question the construction above cited; *Mullet v. United French Polishers' London Society* (1904), 20 T. L. R. 595.

(*w*) *Per* Lord Mackenzie, in *Smith v. Scottish Typographical Association*, [1919] S. C. 43.

(*x*) [1922] A. C. 440.

(*y*) *Baker v. Ingall*, [1912] 3 K. B. 106. See *Mullet v. United French Polishers' London Society* (1904), 91 L. T. 133; *Drennan v. Associated Ironmoulders of Scotland*, [1921] S. C. 151.

(*z*) (1880) 14 Ch. D. 482.

(*a*) (1885) 12 R. 1206.

(*b*) [1900] 2 Ch. 605.

(*c*) [1922] A. C. 440.

(*d*) [1911] 1 Ch. 540.

(*e*) (1882) 21 Ch. D. 194.

Miners' Federation (f); *Kelly v. National Society of Operative Printers* (g); *Smith v. Scottish Typographical Association* (h); *Clarke v. Ferrie* (i), and such an action will now lie. *Supra*, pp. 33 and 34.

"*Agreement.*"—A collateral agreement to repay benefits to the trade union by a member after their receipt is unenforceable. See also *Mineral Water, etc., Trade Protection Society v. Booth* (j).

"*Benefits.*"—An agreement to repay benefits is an agreement for the application of benefits under the section (k). The word "benefits" is limited to benefits such as sick and strike pay; it does not include indemnity for the costs of an appeal in a compensation case (l). Burial benefit is within the section (m). As to liability for loss of benefit for refusal to take part in an illegal strike, *vide Trade Disputes and Trade Unions Act, 1927, s. 2, infra*, p. 276.

"*To members.*"—The dependant of a deceased member suing in his own right in respect of a claim under the rules is not "a member," and consequently can bring his action (n); but the nominee of a deceased member apparently is (o), so also is the executor of a deceased mem-

(f) [1913] 1 Ch. 366.

(g) (1915) L. J. K. B. 2236.

(h) [1919] S. C. 43.

(i) [1926] N. I. 1.

(j) (1887) 36 Ch. D. 465.

(k) *Baker v. Ingall, ibid.*; *sed vide Wilkie v. King*, [1911] S. C. 1310, decided before *Baker v. Ingall* was reversed on appeal.

(l) *Less v. Lancashire and Cheshire Miners' Association* (1906), *Times Newspaper*, June 20th; *General Union of Operative Carpenters and Joiners v. O'Donnell* (1877), 11 I. L. T. (Journal) 282; *Rae v. Plate Glass Merchants' Association* (1919), 56 S. L. R. 315. See also *MacKendrick v. National Union of Dock Labourers*, [1911] S. C. 83.

(m) *McLaren v. National Union of Dock Labourers*, [1918] S. C. 834. As to provident benefits, see *Income Tax Act, 1918*.

(n) *Love v. Amalgamated Society of Lithographic Printers*, [1912] S. C. 1078.

(o) *Crocker v. Knight*, [1892] 1 Q. B. 702; *Winder v. Kingston-upon-Hull* (1888), 20 Q. B. D. 412; *Guardians of St. Mary, Islington v. Amalgamated Society of Engineers* (1902), 66 J. P. 665.

ber (*p*). The right of a member of a trade union to bring an action to restrain the union from applying its funds to political purposes does not descend to his widow and executrix (*q*).

“*Between one trade union and another.*”—An action brought to restrain a federation of trade unions from expelling a constituent union is unenforceable as being an action for the purpose of directly enforcing an agreement between one trade union and another. Moreover, the Court will not grant a declaration where it has no jurisdiction to grant a remedy (*r*).

“*But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful.*”—The only disabilities under which a trade union or its members lie relate to the enforcement of contracts, and not to their validity (*s*). For this reason a member of a trade union is not precluded by section 4 from obtaining a declaration of membership if he has been wrongly suspended, for, in that case, the contract of membership is the contract which the plaintiff seeks to enforce, and such a demand for reinstatement is not a legal proceeding instituted with the object of directly enforcing an agreement for the application of the funds of the trade union to provide benefits for members, for if relief is granted, and the plaintiff is declared a member of the trade union, the effect of that will not be to enforce an agreement for the application of the funds of the trade union to provide benefits for him.

Declaring him a member *simpliciter* not only does not directly enforce the application of funds for his benefit, but does not even help him in any future proceeding to enforce any such agreement. In such a case all that the

(*p*) *Burke v. Amalgamated Society of Dyers*, [1906] 2 K. B. 583.

(*q*) *Martin's Executrix v. M'Ghes*, [1914] S. C. 628.

(*r*) *McLuskey v. Cole*, [1922] 1 Ch. 7; *Holland v. London Society of Compositors* (1924), 40 T. L. R. 440.

(*s*) *Per Fletcher Moulton, L.J.*, in *Osborne v. Amalgamated Society of Railway Servants*, [1911] 1 Ch. 540.

Court is asked to do is to declare that the plaintiff is entitled to the performance of the agreement to accept and to keep him as member (*t*).

Thus, there is nothing in section 4 to forbid a Court to entertain legal proceedings to enforce the member's right to his vote or his right to his distributive share in winding up, and an order to restore him to membership will do no more than make him what he was before, namely, a member with the same unenforceable rights, for an order to restore membership with unenforceable rights is no order to enforce those rights (*u*).

Money paid for an illegal purpose (*e.g.*, money paid on a contract in unlawful restraint of trade) cannot be recovered back (*w*).

There is no provision in the Trade Union Acts, similar to that which obtains in the case of the Friendly Societies Acts, providing for compulsory arbitration between the members of trade unions in cases of dispute. Where an arbitration rule does exist, the Court would probably stay proceedings (Arbitration Act, 1889, section 4 (*x*)), but there is no direct authority for saying that the mere existence of a rule would be taken as conclusive evidence of submission to it (see *Catt v. Wood* (*y*)). It is possible that the institution of a domestic forum might give the Court a jurisdiction on special case as an indirect enforcement of an agreement not itself entertainable (*sed vide Drennan v. Associated Iron Moulders of Scotland*, [1921] S. C. 151).

(*t*) *Ibid.*, at p. 44. In Scotland a declarator is rarely granted without relief; see also *McLuskey v. Cole*, [1922] 1 Ch. 7, where no relief was granted.

(*u*) *Per* Buckley, L.J., in *Osborne's Case*, [1911] 1 Ch. 540, at pp. 561, 565 *et seq.*

(*w*) *Barclay v. Pearson*, [1893] 2 Ch. 154. In any event the member of a trade union cannot sue the union for damages (*Kelly v. National Society of Operative Printers* (1915), L. J. K. B. 2236; *Clark v. Ferris*, [1926] N. I. 1). *Sed vide* s. 2 of the Trade Disputes and Trades Unions Act, 1927, *infra*, p. 276.

(*x*) 52 & 53 Vict. c. 49.

(*y*) [1910] A. C. 404; [1908] 2 K. B. 458.

PROVISIONS OF 18 & 19 VICT. c. 63 ; 30 & 31 VICT.
c. 117 ; 25 & 26 VICT. c. 89, ETC., NOT TO
APPLY TO TRADE UNIONS.

5. The following Acts, that is to say,

(1) The Friendly Societies Acts, 1855 and 1858,
and the Acts amending the same ;

(2) The Industrial and Provident Societies Act,
1876, and any Act amending the same ;
and

(3) The Companies Acts, 1862 and 1867,

shall not apply to any trade union, and the registration of any trade union under any of the said Acts shall be void, and the deposit of the rules of any trade union made under the Friendly Societies Acts, 1855 and 1858, and the Acts amending the same, before the passing of the Act, shall cease to be of any effect.

“*Friendly society.*”—[“Notwithstanding anything in section 5 of the principal Act contained, a trade union, whether registered or not, which insures or pays money on the death of a child under ten years of age shall be deemed to be within the provisions of sections 62 to 67 of the Friendly Societies Act, 1896 ”] (Trade Union Act Amendment Act, 1876, sections 2, 9) (*infra*, pp. 114, 122).

“*Act amending the same.*”—Section 38 (1) of the Interpretation Act, 1889 (z), provides where any Act repeals and re-enacts the provisions of any former Act, references in any such Act to the provisions so repealed are, unless the contrary intention appears, to be construed as references to the provisions so re-enacted.

The whole of the Acts dealing with Friendly Societies

were consolidated in the Friendly Societies Act, 1896 (a), which Act has since been amended by the Friendly Societies Acts, 1908 (b) and 1924 (c).

Payment on Death of Child.—[“Notwithstanding anything in this section, a trade union, whether registered or unregistered, which insures or pays money on the death of a child under ten years of age shall be deemed to be within the provisions of section 28 of the Friendly Societies Act, 1875”] (d).

For section 28 of the Friendly Societies Act, 1875, is now substituted sections 62 to 67 of the Friendly Societies Act, 1896. By the operation of these sections and sections 84 (f) and 89 of the same Act, a trade union or branch, whether registered or unregistered, which pays money on the death of a child under ten years of age otherwise than is provided in the Act is guilty of an offence under the Act, and is liable to a fine of not more than £5, which is recoverable in a court of summary jurisdiction (e).

On the other hand, although “insuring” as well as “paying” is prohibited by section 62, there is apparently no provision of the Act of 1896 making such insuring by a trade union a specific offence as it is in the case of paying, nor any penalty attached to such an act, and therefore, while a summary prosecution would fail, an indictment for so insuring could probably be sustained (f).

The provisions referred to are as follows; namely, [no

(a) 59 & 60 Vict. c. 25, now sections 62–67 of the Friendly Societies Act, 1896.

(b) 8 Edw. 7, c. 32. See Baden Fuller, “Law of Friendly Societies” (Stevens), 4th ed. For text of Act, *infra*, p. 328.

(c) 14 & 15 Geo. 5, c. 11.

(d) Trade Union Act Amendment Act, 1876 (39 & 40 Vict. c. 22), s. 2.

(e) 59 & 60 Vict. c. 25. *Connor v. London and Provincial Assurance Co.*, 47 Ir. L. T. R. 148.

(f) See “Friendly Societies and Industrial and Provident Societies” (Baden Fuller), 4th ed., p. 137. As to nomination, see Trade Union Act Amendment Act, 1876, s. 10 (*infra*, p. 123); Children Act, 1908 (8 Edw. 7, c. 67), s. 7.

such society or branch may insure or pay on the death of a child under five years of age any sum which, added to any amount payable on the death of that child by any other society or branch, exceeds £6, or on the death of a child under ten years of age any sum of money which, added to any amount payable on the death of that child by any other society or branch, exceeds £10]. Sections 62 to 67, Friendly Societies Act, 1896; "Friendly Societies" (Baden Fuller), 4th ed., pp. 137—143.

Medical Society.—A registered trade union or branch thereof may contribute to the funds and take part, by delegates or otherwise, in the government of a medical society that is a society for the purpose of relief in sickness by providing medical attendance and medicine (*g*), but may not withdraw from contributing to the funds of such a medical society except on three months' notice, and payment of all contributions accrued or accruing due to the expiration of the notice (*h*).

Such contributing trade unions are not members of the medical society to which they contribute so as to be bound by rules as to arbitration of disputes under the rules of the medical society (*i*).

Unregistered Trade Union.—While a trade union cannot be a registered friendly society, it is not so clear how far those provisions of the Acts which apply only to unregistered Friendly Societies apply to trade unions. Unregistered societies to which the Friendly Societies Acts apply are such as have their principal objects substantially the same as those set out in section 8 of the 1896 Act, *i.e.*, the object of providing by voluntary subscription of the members, with or without donations, for the relief or maintenance of members and their dependants, the insurance on the death of members or on the birth of their children,

(*g*) Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 22 (1), (2).

(*h*) *Ibid.*, s. 22 (3).

(*i*) *Snell v. Vine* (1890), Diprose and Gammon, "Friendly Society Cases," p. 313.

the relief of members in distress, the endowment of members or their nominees, or the guaranteeing the performance of their duties by officers or servants of the society or any branch.

It is clear that if the society is illegal at common law by reason of its being in restraint of trade or otherwise, while it may be a trade union, it cannot be a friendly society of any type (*k*).

The question therefore can only arise in the case of those trade societies which are legal apart from the Trade Union Act, 1871 (*l*). The fact that the society is registered under the Trade Union Acts can make no difference in this connection (*m*).

On the other hand, the section under consideration specifically enacts that the Friendly Societies Acts *shall not apply* to a trade union, and it is arguable under these circumstances that a trade union cannot be treated in any way as an unregistered society under those Acts.

The fact that specific provision for the limited application of the Friendly Societies Acts to trade unions is made in section 2 of the Trade Union Act Amendment Act, 1876, and in section 20 of the Friendly Societies Act, 1896, strengthens this contention.

In *Winder v. Governors and Guardians of Kingston-upon-Hull Corporation for the Poor* (*n*) it was held that section 23 of the Divided Parishes and Poor Law Amendment Act, 1876 (*o*) (which gives the guardians power to recover the cost of a pauper's relief out of an annuity paid by the unregistered friendly society to a pauper), does *not* apply to a trade union.

(*k*) *Hornby v. Close* (1867), L. R. 2 Q. B. 153; *Farrar v. Close* (1869), L. R. 4 Q. B. 602.

(*l*) *Knowles v. Booth* (1884), 32 W. R. 432; *Swaine v. Wilson* (1889), 24 Q. B. D. 262.

(*m*) *Gozney v. Bristol, etc., Trade and Provident Society*, [1909] 1 K. B. 901.

(*n*) (1888) 20 Q. B. D. 412. See also *Guardians of St. Mary, Islington v. Amalgamated Society of Engineers* (1902), 66 J. P. 665.

(*o*) 39 & 40 Vict. c. 61.

As, however, the matter has never been directly judicially determined, it is convenient to set out those parts of the Friendly Societies Acts which would apply to a trade union lawful at common law, and which consequently may constitute an unregistered friendly society.

Unregistered Friendly Society.—It is doubtful how far such a society is a partnership (*p*), or a mere voluntary association analogous to a club (*q*).

A person does not by reason of his service in the Territorial and Reserve Forces or Militia, or Naval or other Volunteers, lose his interest in such an unregistered friendly society or branch, nor can he be fined for absence from any meeting if his absence is occasioned in the discharge of his duty as certified by his commanding officer, any rules of the society notwithstanding (*r*); disputes between such a member and the society can be decided by a Court of summary jurisdiction (*s*).

“Registration shall be void.”—*Cf.* section 71 (3) of the Friendly Societies Act, 1896; if a friendly society registers as a company, the registry of the society under that Act “shall thereupon become void and shall be cancelled by the Chief Registrar.” It will be noted that in the section under consideration there is no provision as to express cancellation. It would appear that the words “shall be void” mean void *ab initio* as distinguished from becoming void on cancellation, as in the Friendly Societies Act referred to.

Nor does “void” mean “voidable” here. When the word “void” has some object of public policy in view

(*p*) *Beaumont v. Meredith* (1814), 3 Ves. & B. 180; *Silver v. Barnes* (1839), 6 Bing. N. C. 180.

(*q*) *Oldham Our Lady's Sick and Burial Society v. Taylor* (1887), 3 T. L. R. 472; Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 1.

(*r*) Friendly Societies Act, 1896, s. 43 (1); Territorial and Reserve Forces Act, 1907 (7 Edw. 7, c. 9), s. 28 (3); Order in Council, March 19th, 1903.

(*s*) Section 43 (2), *ibid.*

which requires the strict construction, the word receives its natural full force and effect (*t*).

“*The deposit of rules.*”—While the deposit of the rules of a trade union as a registered society have no effect, if a trade union is an unregistered friendly society, the rules may be held to constitute the contract between the members and the society, notwithstanding this provision (*u*). For such a case the rules are not “deposited” with the registrar.

“*Before the passing of this Act.*”—*I.e.*, this provision as to the invalidity of deposit. The provision in sub-section 1 is limited to amendments of the Friendly Societies Acts prior to 1871.

The effect of denying to a trade union the right of registration as a friendly society can only be of moment in the case of a trade union lawful at common law.

A registered friendly society is not affected by any of the provisions of the Unlawful Societies Act, 1799 (*w*), or the Seditious Meetings Act, 1817 (*x*), so long as no business is transacted other than that which directly or undeniably relates to the objects of the society or branch as declared in the rules thereof, except in the case where two justices of the peace ask for full information of the society or branch and it is refused (*y*).

Under those Acts any trade union which requires its members to take any oath or assent to any test not required by law, or who has members not known to the general body of members, is guilty of an offence, and all persons permitting meetings of such a society are liable to penalties, and the licence of the public-house where a meeting of such a society takes place may be declared to be forfeited (*infra*, p. 295).

(*t*) *Rex v. Hipswell*, (1828) 8 B. & C. 466; *Maxwell on Statutes*, pp. 250—257.

(*u*) *Lakby v. Costin* (1888), 21 Q. B. D. 401.

(*w*) 39 Geo. 3, c. 79.

(*x*) 57 Geo. 3, c. 19.

(*y*) Friendly Societies Act, 1896, s. 32.

An unregistered friendly society, such possibly as a trade union, though otherwise lawful at common law, coming under these Acts is therefore not protected by the Friendly Societies Acts; but the matter is now of little importance, since it has been judicially held that both these statutes are now inoperative by reason of the enabling provisions of the Trade Union Acts (z).

Registered friendly societies are also under certain circumstances exempt from stamp duty (a), and they are accorded preference in claims against deceased and bankrupt officers' estates (b), and the members have the protection of a statutory audit valuation and returns and balance sheets and the internal settlement of disputes.

These privileges do not attach to unregistered friendly societies, nor consequently to trade unions. As to the position of trade unions under the National Insurance Acts, *infra*, pp. 383 *et seq.*

"*The Industrial and Provident Societies Act, 1876, and any Act amending the same.*"—The Industrial and Provident Societies Act, 1893, is now the principal Act dealing with this matter. By it societies may be registered with limited liability, in which no person other than a registered society may have any interest in shares exceeding £200, to carry on any industry, business, or trade specified by its rules (c).

The liability of the members is limited, and there is exemption from income tax under Schedules C and D (d). This limitation of the rights of trade unions and the corresponding denial of the right to registration as a limited

(z) *Luby v. Warwickshire Miners' Association*, [1912] 2 Ch. 371; *Parr v. Lancashire and Cheshire Miners' Federation*, [1913] 1 Ch. 366.

(a) Friendly Societies Act, 1896, s. 33; Income Tax Act, 1918 (8 & 9 Geo. 5, c. 40), s. 39.

(b) *Ibid.*, s. 25.

(c) Section 4.

(d) Section 24; Income Tax Act, 1918, s. 39 (4).

company have become of importance by reason of the Trade Union Act, 1913 (e).

By that Act it is now lawful for a trade union to apply its funds for any lawful objects or purposes for the time being authorised under its constitution (f).

It is therefore now possible for a trade union to carry on a trade or business, a purpose previously *ultra vires* (g).

Through the operation of section 5 of the Trade Union Act, 1871, the liability of the members of the society will remain unlimited, as the society can be registered neither as an industrial society nor as a limited liability company.

In practice, therefore, to limit the liability of its members, it will be desirable for a trade union which wishes to trade to inaugurate a subsidiary industrial society or a limited liability company (h).

"*The Companies Acts, 1862 and 1867.*"—This must now read "The Companies (Consolidation) Act, 1908" (i).

The term "trade union" means (*inter alia*) any combination, whether temporary or permanent, for imposing restrictive conditions on the conduct of any trade or business (k). If, therefore, a trading company is such a combination, it is a trade union, and its registration as a limited liability company is void (l). If, however, these are not "principal objects" within the meaning of the Trade Union Act, 1913, it is not a trade union (m).

(e) *Infra*, p. 134; 2 & 3 Geo. 5, c. 30.

(f) *Ibid.*, section 1 (1).

(g) *Osborne v. Amalgamated Society of Railway Servants*, [1910] A. C. 87.

(h) *Vide Bennett v. National Amalgamated Society of Operative Painters, etc.*, (1915), 31 T. L. R. 203; *Carter v. United Society of Boiler-makers, etc.*, (1915) W. N. 334; 60 S. J. 44.

(i) 8 Edw. 7, c. 69, s. 294. Section 294 contains a complementary provision.

(k) Trade Union Act Amendment Act, 1876, s. 16.

(l) *Edinburgh and District Aerated Water Bottle Manufacturing Defence Association, Ltd. v. Jenkinson & Co.* (1903), 5 F. 1159; *British Association of Glass Bottle Manufacturers, Ltd. v. Nettlefold* (1911), 27 T. L. R. 537; *Evans & Co. v. Heathcote*, [1918] 1 K. B. 418.

(m) *Per Lord Sumner in Performing Right Society, Ltd. v. London*

Apparently an unregistered trade union which is an assurance company may be wound up under the Companies Act, 1908 (n).

Before the passing of the 1876 Act there might possibly have been some doubt as to whether a society imposing conditions with regard to the transaction of business was a trade union, and this doubt led to the passing of section 16 of the Act of 1876, which further defines a trade union as being a combination for imposing restrictive conditions on any trade or business (o).

The terms of the statutory definition are very wide, so that in order to show that a combination is not a trade union it is insufficient to show that the regulations imposing restrictive conditions on any trade are only such as are necessary to secure results beneficial to such trade (p).

Thus, a trading association, which fixes the rate at which trading companies, federated to the association, may charge for their goods, and a society, which imposes restrictions on the federated trading companies as to the employment by them of particular persons, are trade unions (q).

The registration as a company of a society which is in part a trade union is not conclusive that the registration is lawful (r).

Assurance Companies.—A registered union, carrying on

Theatre of Varieties, [1923] A. C. 1, at p. 25; *Performing Rights Society, Ltd. v. Edinburgh Magistrates*, [1922] S. C. 165.

(n) See Assurance Companies Act, 1909 (9 Edw. 7, c. 49), s. 15.

(o) *Per Lord Alverstone, in Chamberlain's Wharf v. Smith*, [1900] 2 Ch. 605, at p. 612.

(p) *Per Lord Moncrieff, in Edinburgh and District Aerated Water Manufacturers, etc. v. Jenkinson & Co.* (1903), 5 F. 1159, at p. 1163.

(q) *Mineral Water Bottle, etc. v. Booth* (1887), 36 Ch. D. 465. See also *Urmston v. Whitelegg* (1891), 55 J. P. 453; *Glasgow Potted Meat Manufacturers Society v. Geddes* (1902), 10 S. L. T. 481; *Aberdeen Master Masons Incorporation, Ltd. v. Smith*, [1908] S. C. 669.

(r) *Bristol Association of Glass Bottle Manufacturers v. Nettlefold* (1911), 27 T. L. R. 527.

life, fire, accident, or employers' liability insurance or bond investment, is not an assurance company under the Assurance Companies Act, 1909 (s), and is exempt from its provisions, which require (*inter alia*) a deposit of £20,000 (t), accounts, statements, and actuarial reports to be kept, etc. (u). So also an unregistered trade union carrying on insurance business, and originally established more than twenty years before July 1st, 1910, may, on application, receive from the Board of Trade the exemption conferred by that Act on registered trade unions, if it appears to the Board, after consulting the Chief Registrar of Friendly Societies, that the society is one to which it is inexpedient that the provisions of the Act should apply (w).

The Assurance Companies Acts may therefore apply to unregistered trade unions. Section 7 of the Trade Union Act Amendment Act, 1876 (x), has been repealed (y).

It is provided, however, that "life assurance" under the Assurance Companies Act, 1909, does not include superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged, or who have been engaged, in any particular profession, trade or employment, or the dependants of such persons (z), which covers most trade union benefits. Insurance for loss of tools is affected by the provision that an insurance is not to be deemed to be a fire insurance by reason only of the fact that fire is one of the risks covered (a).

The Assurance Companies Act does not apply to trade unions which are associations of masters if they satisfy the Board of Trade that they are carrying on business

(s) 9 Edw. 7, c. 49, s. 1. For text, *infra*, p. 334.

(t) *Ibid.*, s. 2.

(u) *Ibid.*, ss. 3 and 12.

(w) *Ibid.*, s. 35.

(x) 39 & 40 Vict. c. 22, s. 57.

(y) Assurance Companies Act, 1909 (6 Edw. 7, c. 49), s. 37, Sched. IX.; as to the National Insurance Act, 1924, *vide infra*, pp. 383 *et seq.*

(z) Assurance Companies Act, 1909, s. 29.

(a) *Ibid.*, s. 28 (3).

wholly or mainly for the mutual insurance of its members against employers' liability or other risk connected with the employment of workmen in their trade (b).

Winding up.—Where a trade union is a life assurance company it can, apparently, be wound up as such a company under the Companies (Consolidation) Act, 1908 (c), on a petition of ten or more policy-holders, and owning policies of the aggregate value of not less than £10,000, presented by leave of Court in a *prima facie* case with security for costs, and such an assurance company is an unregistered company under the 1908 Act. As to dissolution generally, *infra*, p. 128.

Registered Trade Unions.

REGISTRY OF TRADE UNIONS.

6. Any seven or more members of a trade union may by subscribing their names to the rules of the union, and otherwise complying with the provisions of this Act with respect to registry, register such trade union under this Act, provided that if any one of the purposes of such trade union be unlawful such registration shall be void.

“*Registered trade unions.*”—Any combination which is for the time being registered as a trade union shall be deemed to be a trade union so long as it continues to be so registered (d). Only an existing trade union can be registered, not a prospective one (e). The fact that an amalgamation of two unions had been registered as one new union is not conclusive that the amalgamation has been valid (f).

The Act makes provision for the registration of trade

(b) Assurance Companies Act, 1909, s. 33 (a).

(c) *Ibid.*, s. 15.

(d) Trade Union Act, 1913, s. 2 (1).

(e) *In re National Union of Ship Stewards*, [1925] 1 Ch. 20.

(f) *Booth v. Amalgamated Marine Workers Union*, [1926] 1 Ch. 904.

unions, with resulting advantages not given to unregistered societies. The Act, in this respect, is framed on the lines of the Companies Act, 1862, and provides that any seven or more members of a trade union may, by subscribing their names to the rules of the union, register the union with a name and the exclusive right thereto. Such union can buy and sell lands and personal estate, without limit of amount, for the use and benefit of such trade union and the members thereof. Trustees have power to bring and defend actions touching such property. Treasurers and officers are bound to account, and annual returns have to be made to the Registry of the assets and liabilities, receipts and expenditure of the union, and the union must have rules in the scheduled form, by which, amongst other things, it is required to state the whole of its objects, and provision is made for its amalgamation with other unions and its winding up.

A registered trade union is thus a statutory legal entity, anomalous in that, although consisting of a fluctuating body of individuals, and not being incorporated, it can own property and act by agents (*g*).

In addition to these matters a trade union by registration is affected in its relation to the Friendly Societies Acts (*h*), the Assurance Companies Act (*i*), and the Income Tax Act, 1918, section 39 (*k*).

A registered trade union is neither a corporation nor a partnership (*l*); it is a species of *quasi*-corporation (*m*).

(*g*) Per Farwell, L.J., in *Osborne v. Amalgamated Society of Railway Servants*, [1909] 1 Ch., at p. 190.

(*h*) *Supra*, p. 38.

(*i*) *Supra*, p. 47.

(*k*) Income Tax Act, 1908, *infra*, p. 342.

(*l*) *Osborne v. Amalgamated Society of Railway Servants*, [1910] A. C. 87; *Yorkshire Miners' Association v. Howden*, [1905] A. C. 266, 280; *Taff Vale Railway v. Amalgamated Society of Railway Servants*, [1901] A. C. 426, 427, 439; *Re Amos, Carrier v. Price*, [1891] 3 Ch. 159, 164; *Mackendrick v. National Union of Dock Labourers of Britain and Ireland* (1910), 48 So. L. R. 17.

(*m*) Per Cozens-Hardy, M.R., in *Osborne v. Amalgamated Society of*

A legal entity is created under the Trade Union Act, 1871, by its registration, which, though not perhaps in the strict sense a corporation, is nevertheless a newly incorporated body created by statute (n).

As to registration where union carries on business in more than one country, *vide* 1876 Act, section 6, *infra*, p. 118.

Powers.—The powers of a registered trade union are distinguishable from those of an unregistered one in respect of the following matters :—

(1) With regard to the holding of land and other property in the names of trustees without specific vesting.

(2) With regard to summary remedies against fraud whenever any person—

(a) obtains possession of the property of the trade union by false representation or imposition ;

(b) having possession of such moneys, etc., wilfully withholds or fraudulently misapplies them ;

(c) wilfully applies any part of such moneys, etc., to purposes other than those directed in the rules, the penalty being a fine not exceeding £20, and costs not exceeding 20s., and in default of payment, imprisonment with or without hard labour for not more than three months.

(3) If a trade union has stock in the funds, and a trustee is away from the United Kingdom, becomes bankrupt, or a lunatic, dies, or has been removed, or if it is unknown whether he is alive or dead, a registered trade union, instead of having to apply to the High Court or to take such other proceedings as it would have to do if unregistered, can have the stock transferred by direction of the Registrar, on payment of £1 fee.

(4) Treasurers or other officers are legally bound to render account and give up all effects and property in

Railway Servants, [1909] 1 Ch. 163, at p. 174 ; *per* Farwell, L.J., *ibid.*, at p. 191.

(n) *Per* Lord Brampton in *Taff Vale Railway v. Amalgamated Society of Railway Servants*, [1901] A. C. 426, at p. 442.

their hands or custody on being required to do so, and may be compelled to do so in any competent Court.

(5) Members of registered trades unions may dispose at death of sums payable by the union, not exceeding £100, by written nomination without a will, and this nomination may be made by youths of sixteen, who cannot make a will till they are twenty-one.

(6) Where there is no will and no nomination, the trustees may distribute sums under £100 without letters of administration being taken out.

(7) Money due to a member of illegitimate birth may be thus distributed as if he had been legitimate.

(8) A registered union may sue and be sued in its registered name and has a legal process for change of name.

(9) Its rules, and other important documents relating to it, are placed on record in a public office, whence authentic copies can be obtained, which are evidence in any Court of justice.

(10) A registered trade union is expressly exempted from the provisions of the Assurance Companies Act, 1909, under which it would appear that unregistered trade unions may render themselves liable to heavy penalties for not complying with the statutory requirements.

(11) It is entitled to exemption from income tax under Schedules A, C, and D in respect of interest and dividends applicable and applied wholly for the purpose of provident benefits, i.e., payments during sickness or incapacity from personal injury or while out of work, or to an aged member by way of superannuation, or to a member who has met with an accident or lost his tools by fire or theft, or in discharge or aid of funeral expenses on death of a member or the wife of a member, or as provision for the children of a deceased member, where such payments are expressly authorised by the registered rules. This exemption, however, does not extend to a union by the rules of which the amount insured to any member or person nominated by or claiming under him exceeds a total sum of £300, or

the amount of an annuity granted to a member or his nominee exceeds £52 per annum (*infra*, p. 342).

(12) A registered trade union or any branch of a registered trade union may contribute to the funds and take part in the government of a medical society registered under the Friendly Societies Act, 1896, s. 22 (*nn*).

“*Seven or more members.*”—A person becomes a member on acceptance of his entrance and contributions and on receipt by him of a card of membership (*o*).

A person under the age of twenty-one, but above the age of sixteen, may be a member of a trade union, but cannot be a member of the committee of management, trustee, or treasurer (*p*). Probably such a member would not be competent to be a signatory for registration,

“*By subscribing their names to the rules of the Union and otherwise complying with the provisions of this Act with respect to registry.*”

Upon an application for the registration of a trade union which is already in operation, the Registrar, if he has reason to believe that the applicants have not been duly authorised by such trade union to make the same, may, for the purpose of ascertaining the fact, require from the applicants such evidence as may seem to him necessary (*q*).

By regulation 4 of the Regulations dated November 1st, 1876, made by the Secretary of State as to the registration of trade unions, as amended by Regulations made by the Secretary of State, April 29th, 1890, and by the Secretary for Scotland, May 8th, 1890, application for

(*nn*) Memorandum of Chief Registrar.

(*o*) *Luby v. Warwickshire Miners' Association*, [1912] 2 Ch. 371; *Parr v. Lancashire and Cheshire Miners' Federation*, [1913] 1 Ch. 366, at p. 373.

(*p*) Trade Union Act Amendment Act, 1876, s. 9.

(*q*) Secretary of State's Regulations, No. 3, *infra*, p. 356; *R. v. Whitley Partners* (1886), 32 Ch. D. 337; *Dennison v. Jeffs*, [1896] 1 Ch. 611.

registry of a trade union must be made in the following form :—

FORM A, Reg. 4 (*infra*, pp. 356, 363).

(Trade Union Acts, 1871 and 1876 (34 & 35 Vict. c. 31,
and 39 & 40 Vict. c. 22.)

Application for Registry of Trade Union.

1. This application is made by the seven persons whose names are subscribed at the foot hereof.

2. The name under which it is proposed that the trade union on behalf of which this application is made shall be registered is as set forth in Rule No. . . .

To the best of our belief there is no other existing trade union, whether registered or not registered, the name of which is identical with the proposed name, or so nearly resembles the same as to cause confusion.

3. The place for meeting for the business of the [*name of trade union*] and the office to which all communications and notices may be addressed is at . . . as set forth in Rule No. . . .

4. The [*name of trade union*] was established on the . . . day of . . .

5. The whole of the objects for which the [*name of trade union*] is established and the purposes for which the funds thereof are applicable are set forth in Rule No. . . .

6. The conditions under which the members may become entitled to benefits assured are set forth in Rule No. . . .

7. The fines and forfeitures to be imposed on members are set forth in Rule No. . . .

8. The manner of making, altering, amending, and rescinding rules is set forth in Rule No. . . .

9. The provision for the appointment and removal of a general committee of management, of trustee or trustees, treasurer and other officers, is set forth in Rule No. . . . (*this will only be necessary in cases where the trade union has been in operation more than a year previous to the date of the application*).

10. The provision for the investment of funds and for the periodical audit of accounts is set forth in Rule No. . . .

11. The provision for the inspection of the books and names of the members by every person having an interest in the funds is set forth in Rule No. . . .

12. The provision for the manner of dissolving the trade union is set forth in Rule No. . . .

13. Accompanying this application are sent :—

(1) Two printed copies, each marked A, of the Rules.

- (2) A list marked B of the titles and names of the officers.
- (3) A general statement marked C showing :—
- (a) The assets and liabilities of the [*name of trade union*] at the date up to which the statement is made out.
 - (b) The receipts and expenditure of [*name of trade union*] during the year preceding the date (*this date will be fixed by the Registrar*) up to which the statement is made out, such expenditure being set forth under separate heads corresponding to the several objects of the trade union.

14. We have been duly authorised by the trade union to make this application on its behalf, such authorisation consisting of (*this will only be necessary where the trade union has been in operation before the date of the application*) :—

(Signed) 1.
2.
3.
4.
5.
6.
7.

day of 19 .

In paragraph 14 must be stated whether the authority to make this application was given by a resolution of a general meeting of the trade union, or, if not, in what other way it was given.

Two copies of rules must be signed by the seven members signing this application.

The application should be dated and forwarded to "The Registrar of Friendly Societies."

"*Register such trade union.*"—The Registrar of Friendly Societies cannot register any combination as a trade union unless in his opinion, having regard to the constitution of the combination, the principal objects of the combination are statutory objects (that is, the objects mentioned in section 16 of the Trade Union Act Amendment Act, 1876, namely, the regulation of the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or the imposing of restrictive conditions on the conduct of any trade or business, and also the provision of benefits to members), and may withdraw the certificate of registration of any

such registered trade union if the constitution of the union has been altered in such a manner that, in his opinion, the principal objects of the union are no longer statutory objects, or if in his opinion the principal objects for which the union is actually carried on are not statutory objects (*r*).

Any person aggrieved by any refusal of the Registrar to register a combination as a trade union may appeal to the High Court on the conditions directed by Rules of Court (*s*).

As regards conditions of registration generally, see sections 13 to 18 of this Act (*t*) and sections 6, 8, 11, 13, and 14 of the Trade Union Act Amendment Act, 1876 (*u*).

"*If any of the purposes of the trade union be unlawful.*"—This does not include purposes unlawful only because they are in restraint of trade (*w*).

"*Shall be void.*"—Notwithstanding that a purpose of a trade union is unlawful, until the certificate of registration is withdrawn or cancelled by the Registrar it is still effective, for section 6 of the Trade Union Act, 1871, must be read with section 8 of the Trade Union Act, 1876, which empowers the Registrar of Friendly Societies to withdraw or cancel the certificate of registration of a trade union on proof "that the registration of the trade union has become void under section 6 of the Trade Union Act, 1871 (*x*), *infra*, p. 119.

As to the status, etc., of a registered trade union, *vide infra*, pp. 134 *et seq.*

As to the certification of an unregistered trade union, *vide infra*, p. 141.

(*r*) Trade Union Act, 1913, s. 2 (1); 1 (2).

(*s*) Trade Union Act, 1913, s. 2 (4); for Rules of Court thereunder, *infra*, pp. 82, 83.

(*t*) *Infra*, pp. 78-102.

(*u*) *Infra*, pp. 119, 124, 127, 128.

(*w*) *Swaine v. Wilson* (1889), 24 Q. B. D. 252, 256.

(*x*) *Parr v. Lancashire and Cheshire Miners' Association*, [1913] 1 Ch. 366. *Sed vide Booth v. Amalgamated Marine Workers' Union*, [1926] 1 Ch. 904.

BUILDINGS FOR TRADE UNIONS MAY BE PURCHASED OR LEASED.

7. It shall be lawful for any trade union registered under this Act to purchase or take upon lease in the names of the trustees for the time being of such union any land (*not exceeding one acre (y)*) and to sell, exchange, mortgage or let the same, and no purchaser, assignee, mortgagee, or tenant shall be bound to enquire whether the trustees have authority for any sale, exchange, mortgage, or letting, and the receipt of the trustees shall be a discharge for the money arising therefrom; and for the purpose of this section every branch of a trade union shall be considered a distinct union.

"*It shall be lawful for any trade union registered.*"—The meaning of these words is not very clear.

In *Re Amos, Carrier v. Price* (z), North, J., appears to have held that an unregistered trade union cannot hold land even through trustees. Apart from the section, the holding may be bad for perpetuity (a).

It may be that a registered trade union is sufficiently a corporation apart from this section to be incapable of holding land. Certainly its power to hold must be strictly limited to the ambit of the section.

"*Purchase.*"—Purchase means "buy," not "acquire, otherwise than by descent or escheat" (b).

"*Trustees.*" (*Vide infra, pp. 55 et seq.*)—All real estate

(y) The words of limitation are now repealed (Law of Property Act, 1922 (12 & 13 Geo. 5, c. 16), s. 106).

(z) [1891] 3 Ch. 159.

(a) *Per* North, J., in *Re Amos, Carrier v. Price, Ibid.*, at p. 164.

(b) *Ibid.*, at p. 165; Mortmain and Charitable Uses Act; Law of Property Act, 1925.

of the union is vested in the trustees thereof by virtue of section 8 of this Act.

"*Land.*"—Such land is limited to land connected with the administration of the business of the society. The section does not give power to acquire land as a substratum of the society (*d*), *sed quære* having regard to the wide provisions of the Trade Union Act, 1913, section 1.

But see now the Trade Union Act, 1913, section 1 (1), whereby the objects which a trade union may pursue are no longer restricted to the "statutory objects," but extend (subject to special provisions as to the furtherance of political objects) to such other lawful objects as may be authorised by its rules, and a trade union may now apply its funds for any lawful objects or purposes for the time being authorised under its constitution.

"*Mortgage.*"—There does not appear to be any general power to borrow otherwise than on the security of land. Probably a society may have a rule authorising borrowing so long as such borrowing is incidental to the conduct of its business. The Trade Union Act, 1913, section 1, is sufficiently wide to support the power (*e*).

"*Devise.*"—A devise of land by will is void—(1) as not being within this section, and (2) as being in the nature of a perpetuity (*f*).

Library.—A registered union may maintain a library or reading-room (Libraries Offences Act, 1898) (*ff*).

As to branch trustees, *vide* Trade Union Act Amendment Act, 1876, section 3, *infra*, p. 115.

(*d*) *Re Amos, Carrier v. Pries* [1891] 3 Ch. 159, at p. 166.

(*e*) *In re Badger, Mansell v. Cobham*, [1905] 1 Ch. 568; *Loing v. Reid* (1869), L. R. 5 Ch. 4; *Murray v. Scott* (1884), 9 A. C. 519; *Pere v. Clegg* (1861), 30 L. J. Ch. 742.

(*f*) *Per* North, J., in *Re Amos, Carrier v. Pries*, *supra*, at p. 164; *Re Clark's Trust* (1875), 1 Ch. D. 497; *Re Clarke*, [1901] 2 Ch. 110; *Re Drummond*, [1914] 2 Ch. 90.

(*ff*) 61 & 62 Vict. c. 53. Penalties are imposed for disorder (*a*, 2).

When a branch has no trustees, lands in the hands of a branch would, presumably, be vested in the trustees of the parent union.

PROPERTY OF THE TRADE UNION VESTED IN
TRUSTEES.

8. All real and personal estate whatsoever belonging to any trade union registered under this Act shall be vested in the trustees for the time being of a trade union appointed as provided by this Act for the use and benefit of such trade union and the members thereof, and the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch [or of the trustees of the trade union if the rules of the trade union so provide] (*g*), and be under the control of such trustees, their respective executors or administrators, according to their respective claims and interests, and upon the death or removal of any such trustees the same shall vest in the succeeding trustees for the same estate and interest as the former trusts, without any conveyance or assignment whatsoever, save and except in the case of stocks and securities in the public funds of Great Britain and Ireland, which shall be transferred into the names of such new trustees, and in all actions or suits, or indictments, or summary proceedings before any Court of summary jurisdiction, touching or concerning any such property, the same shall be stated to be the property of the

(*g*) The words in brackets were inserted by s. 3 of the Trade Union Act Amendment Act, 1876, *infra*, p. 115.

person or persons for the time being holding the said office of trustee, in their proper names, as trustees of such trade union, without any further description.

"*All real and personal estate.*"—As to *real estate*, *vide supra*, section 7 of this Act, p. 56. See also Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), ss. 49 and 50, for similar provisions.

As to *personal estate*. A registered trade union may hold property to any amount (*h*). The words of the Act are "all real and personal estate whatsoever," which means in effect all property generally (*i*), and "the property so held is the property of the union; the union is the beneficial owner" (*k*). It is not necessary that the trustees should be members of the union (*l*).

"*Shall be vested*" *i.e.*, Vested by operation of this section.—An unregistered trade union, like any other voluntary association, may by deed or other instrument vest its property in trustees, but such vesting is not statutory. Where the trusts of a fund declared by the rules are void for illegality, a contributor claiming by way of resulting trust cannot enforce it by originating summons, but must proceed by action to enforce the trust (*m*).

"*In the trustees.*"—*Vide infra*, p. 77.—The Public

(*h*) *Taff Vale Railway v. Amalgamated Society of Railway Servants*, [1901] A. C. 426, 441; *per Farwell, L.J.*, in *Osborne v. Amalgamated Society of Railway Servants*, [1909] 1 Ch. 163, at p. 191. The limitation of realty to one acre has now been abolished (Law of Property Act, 1922), 13 & 13 Geo. 5, c. 18, s. 106).

(*i*) *Curle v. Lester* (1893), 9 T. L. R. 480; *Linaker v. Fisher* (1901), 84 L. T. 421.

(*k*) *Per Lord Lindley in Taff Vale Railway v. Amalgamated Society of Railway Servants*, [1901] A. C. 416, at p. 444; *Brown v. Stoerki* (1889), 74 Mich. 269; *Shipwrights' Association v. Mitchell* (1910), 60 Wash. 529.

(*l*) *Per Lord Davey in Yorkshire Miners' Association v. Howden*, [1905] A. C. 256, at p. 271.

(*m*) *Re Amalgamated Society of Railway Servants*, [1910] 2 Ch. 547.

Trustee may presumably be appointed (*n*). The word here used is plural, but see Schedule (4) hereof, which speaks of "trustee or trustees." As to the holding by the Public Trustee of War Loan Stock, see the War Loan (Supplemental Provisions) Act, 1915 (5 & 6 Geo. 5, c. 93), ss. 8 and 9.

"*Shall be vested in the trustees of such branch*" (or of the trustees of the trade union if the rules of the trade union so provide).—*Vide Cope v. Crossingham* (*o*).

"*Or removal.*"—In section 9 hereof the words are death, resignation, or removal; this is apparently *casus omissus*.

"*Shall vest in the succeeding trustees.*"—*I.e.*, by force of statute without instrument. Succeeding trustees against whose predecessors an injunction has been obtained may commit contempt of Court (*p*). As to the registration of the land of the society in succeeding trustees, see the Land Registration Act, 1925, and rule 31 thereunder. See also Port of London Act, 1908, and regulations thereunder as to transfer of Port of London Stock.

"*Except in the case of stocks and securities in the public funds of Great Britain and Ireland, which shall be transferred in the cases of new trustees.*"—By section 4 of the Trade Union Act Amendment Act, 1876, "when any person, being or having been a trustee of a trade union or of any branch of a trade union, and whether appointed before or after the legal establishment thereof, in whose name any stock belonging to such union or branch transferable at the Bank of England or Bank of Ireland is standing, either jointly with another or others, or solely, is absent from Great Britain or Ireland respectively, or becomes bankrupt or files any petition or executes any deed for liquidation of his affairs by assignment or arrangement, or for composition with his creditors, or becomes a lunatic, or is dead, or has been removed from his office of

(*n*) Public Trustee Act, 1906 (6 Edw. 7, c. 55).

(*o*) [1909] 2 Ch. 148.

(*p*) *Avery v. Andrews* (1882), 51 L. J. Ch. 414.

trustee, or if it be unknown whether such person is living or dead, the Registrar, on application in writing from the secretary and three members of the union or branch, and on proof satisfactory to him, may direct the transfer of the stock into the names of any other persons as trustees for the union or branch; and such transfer shall be made by the surviving or continuing trustees, and if there be no such trustees, or if such trustees refuse or be unable to make such transfer, and the Registrar so direct, then by the Accountant-General or Deputy or Assistant Accountant-General of the Bank of England or Bank of Ireland, as the case may be; and the Governors and Companies of the Bank of England and Bank of Ireland respectively are hereby indemnified for anything done by them or any of their officers in pursuance of this provision against any claim or demand of any person injuriously affected thereby."

This provision is not limited in terms to a registered trade union, although the reference to the Registrar suggests that such is the meaning to be applied to it.

As regards War Loan covered by the War Loan (Supplemental Provisions) Act, 1915, and its transference from the Bank of England to the Post Office Register, see that Act and the arrangements made thereunder.

"*In all actions, etc., touching or concerning such property.*"—As to actions by or against trustees generally, vide section 9 of this Act (*q*). It may be necessary to prove that the parties are actually the trustees (*r*). Where there are no appointed trustees, see *R. v. Tankard* (*s*).

Sections 8 and 9 of the Trade Union Act, 1871, expressly provide for actions *in respect of property* being brought by and against the trustees, and this intention, it has been said, impliedly excludes such trustees from being sued in

(*q*) *Infra*, p. 63.

(*r*) *R. v. Essex* (1857), 30 L. T. 171; *R. v. Marks* (1866), 10 Cox, C. C. 367.

(*s*) [1894] 1 Q. B. 549.

tort (*t*), but such liability in tort is recognised in section 4 (2) of the Trade Disputes Act, 1906 (*u*). The liability imposed on trustees by section 9 of that Act is preserved unimpaired by the 1906 Act. Such torts may conceivably include those committed through the misuse of the property of the union, or may extend to all actions in tort where the trustees are parties and the judgment would reach the property (*v*). An action to establish a title to a trust fund, even where there may have been a conversion, is not an action in respect of a tortious act (*w*). A person under the age of twenty-one may not be a trustee (Trade Union Act Amendment Act, 1876, section 9).

ACTIONS, ETC., BY OR AGAINST TRUSTEES, ETC.

9. The trustees of any trade union registered under this Act, or any other officer of such trade union who may be authorised so to do by the rules thereof, are hereby empowered to bring or defend, or cause to be brought or defended, any action, suit, prosecution or complaint in any Court of law or equity touching or concerning property, right, or claim to property of the trade union; and shall and may, in all actions concerning the real or personal property of such trade union, sue and be sued, plead and be impleaded, in any Court of law or equity, in their proper names, without other description than the title of

(*t*) Per Farwell, L.J., in *Vacher v. London Society of Compositors*, [1912] 3. K. B. 547.

(*u*) *Infra*, p. 262.

(*v*) Per Lord Atkinson, in *Vacher v. London Society of Compositors*, [1913] A. C. 107, at p. 125. Certain *dicta* in the case appear to extend the liability to all torts where the trustees are made defendants. See Lord Haldane, *ibid.*, at p. 115, Lord Moulton, at p. 127.

(*w*) *Booth v. Amalgamated Marine Workers' Union*, [1926] 1 Ch. 904.

their office ; and no such action, suit, prosecution or complaint shall be discontinued or shall abate by the death or removal from office of such persons or any of them, but the same shall and may be proceeded in by their successor or successors as if such death, resignation, or removal had not taken place ; and such successors shall pay or receive the like costs as if the action, suit or prosecution or complaint had been commenced in their names for the benefit of or to be reimbursed from the funds of such trade union, and the summons to be issued to such trustee or other officer may be served by leaving the same at the registered office of the trade union.

See Friendly Societies Act, 1896, section 94, for a similar provision.

Where the general secretary is given power by the rules to sue, this does not disentitle the trustees (*x*). It may be necessary to prove that the parties suing are actually the trustees (*y*).

Where trustees or other officers are sued under the Act, the trustees are not personally liable and execution cannot be obtained against them personally (*z*). The governing body of the society have power to choose the solicitor (*a*) and take independent advice (*b*).

The trustees of an unregistered union have no status under the Act (*c*), nor can an unregistered society be sued

(*x*) *General Railway Workers' Union v. Macdonald* (1900), 37 So. L. R. 721.

(*y*) *R. v. Essex* (1857), 30 L. T. 171.

(*z*) *Wormwell v. Hailstone* (1830), 6 Bing. 668 ; *Harrison v. Timmins* (1838), 4 M. & W. 510 ; *Linaker v. Pilcher* (1901), 70 L. J. K. B. 396 ; *Osborne v. Amalgamated Society of Railway Servants*, [1909] 1 Ch. 163, at p. 193. See *vide Carter's Case* (1915), 60 S. J. 44.

(*a*) *Laskey v. Runtz* (1908), 34 T. L. R. 496.

(*b*) *Heinrich v. Sutton* (1871), 6 Ch. 230.

(*c*) *Jarrott v. Ackerley* (1915), 113 L. T. 371.

in its name (d). According to the *Taff Vale Case* (e), in the case of a registered trade union, it is otherwise.

Other Procedure in England.—Apart altogether from this section, both in the case of a registered and of an unregistered trade union, the society may sue and be sued, *otherwise than in contract or tort* (e.g., for an injunction to restrain an improper application of the funds) (f), in a representative action. Order 16, rule 9, of the Supreme Court provides that “where there are numerous persons having the same interest in one cause or matter, one or more of such persons having the same interest in such cause or matter may sue or be sued or may be authorised by the Court or a judge to defend in such cause or matter, on behalf of or for the benefit of all persons so interested.”

The representative capacity ought to be stated in the title of the writ (g), and also in the indorsement (h), and must be stated on the title of statement of claim (i).

The persons selected in a representative action to be plaintiffs and defendants must be persons who, from their position, may be partly taken to represent the trade union (k). They should, if possible, be persons who are managers of the union, having control over it or its funds, such as the executive committee and the trustees (l). The persons suing or being sued must have at least a

(d) *Bloom v. National Federation of Discharged and Demobilised Sailors and Soldiers* (1913), 35 T. L. R. 50; *Walker v. Sur*, [1914] 2 K. B. 930.

(e) [1910] A. C. 426.

(f) *Parr v. Lancashire and Cheshire Miners Federation*, [1913] 1 Ch. 366; *Wood v. McCarthy*, [1893] 1 Q. B. 435; *Grossman v. Granville Club* (1884), 24 Sol. J. 513; *re Priest*, [1915] W. N. 134.

(g) *Re Royle*, 5 Ch. D. 540.

(h) R. S. C., Ord. 3, r. 1; Ord. 70, r. 1.

(i) *Re Tottenham*, [1896] 1 Ch. 623.

(k) *Yorkshire Miners' Association v. Howden*, [1905] A. C. 256; *Taff Vale Railway v. Amalgamated Society of Railway Servants*, [1901] A. C. 426.

(l) *Per Lord Macnaghten, ibid.*, at p. 439; *per Lord Lindley, ibid.*, at p. 433.

common interest with those whom they represent (*m*). The president, vice-president, and secretary have been held sufficiently representative without the trustees (*n*).

When the persons selected are not sufficiently representative to sue as plaintiffs, the Court may add others to remedy the deficiency (*o*); so also persons may be made representative defendants, even against their will (*p*).

Where an injunction was claimed to prevent several defendants from watching and besetting certain places for the purpose of preventing workmen from offering their services to a master, it was held that such defendants could be properly joined in one action (*q*).

A branch secretary is not a person who can be said to be properly representative (*r*).

An action against a society to enforce an agreement to compromise proceeding with a member may be maintained against the trustees (*s*).

Maintenance.—Assistance of a member or official in a personal suit may be beyond the powers of the union and maintenance (*Greig's Case*; *Alfn's Case*; *Oram's Case* (*t*)).

As to discovery and costs in such cases, see *Jones' Case* and *Adam's Case* (*u*).

Registered name.—A registered trade union may sue and be sued in tort in its registered name, for, although a corporation and an individual may be the only entities known to the common law which can be sued, it is compe-

(*m*) *Duke of Bedford v. Ellis*, [1901] A. C. 1.

(*n*) *Parr v. Lancashire and Cheshire Miners' Federation*, [1913] 1 Ch. 368, 375.

(*o*) *Charnock v. Court and Others*, [1899] 2 Ch. 35.

(*p*) *Wood v. McCarthy*, [1893] 1 Q. B. 435; *Bruce's Case* (1918), 53 I. L. T. 24.

(*q*) *Walkers v. Green*, [1899] 2 Ch. 696.

(*r*) *Thomas's Case* (1912), 28 T. L. R., at pp. 373-374.

(*s*) *Roberts v. Page* (1876), 1 Q. B. D. 476.

(*t*) (1905) 22 T. L. R. 274; (1902) 18 T. L. R. 664; [1914] 1 Ch. 98.

(*u*) [1910] A. C. 4; [1921] 1 K. B. 495.

tent to the Legislature to legalise such a procedure (y). It is quite true that a registered trade union is not a corporation, but it has a registered name, which is nothing more than the collective name of its members (z). It is probable that a trade union can also properly be sued in contract in its registered name.

In so far, however, as the right to sue a trade union in its registered name arises by operation of the Trade Union Act, 1871, when, by section 4 of that Act, the Court is precluded from entertaining an inter-union domestic action, and the action is sought to be established as common law on the ground that the society is not in restraint of trade, the trade union apparently should not be sued in its registered name, as that power arises only through the Trade Union Act, 1871, which, in such a case, cannot be relied upon (a).

A branch cannot, in all probability, sue or be sued in its official name unless it is separately registered (b).

Representative Actions.—Despite certain *dicta* in the *Taff Vale Case* that a trade union could be sued in a representative action for damages and if the trustees were added an order could be obtained (c)

(y) *Per* Farwell, J., in *Taff Vale Railway v. Amalgamated Society of Railway Servants*, [1901] A. C. 426, at p. 427; an unincorporated body though registered, is not necessarily in this position (*Bloom v. National Federation of Discharged and Demobilised Soldiers and Sailors*, [1918] W. N. 337).

(z) *Per* Lord Macnaghten, *Taff Vale Railway v. Amalgamated Society of Railway Servants*, *supra*, at pp. 439, 440. In *Gould v. South Wales Miners' Federation and Others* the Miners' Federation of Great Britain were struck out as defendants on the ground that, not being registered they could not be sued in their trade union name (unreported, Younger J., July, 1917). *St. Paul Typothetac v. St. Paul Bookbinders' Union* (1905), 94 Minn. 37; *United States Heater Co. v. Iron Moulders' Union* 129 Mich. 354.

(a) *Russell v. Amalgamated Society of Carpenters and Joiners*, [1912] A. C. 421, at p. 430.

(b) *Thomas v. Portsmouth "A" Branch of the Ship Constructive Association* (1912), 23 T. L. R. at pp. 372, 373, 374.

(c) *Per* Lord Lindley, in *Taff Vale Case*, [1901] A. C. 426, at p. 433 *per* Lord Macnaghten, *ibid.*, at p. 438.

the law now seems to be that no such action will lie (*d*).

Procedure in Scotland.—Where an association, such as a registered trade union, is authorised to sue and be sued by particular office bearers, that procedure may be followed (*e*). In the case of an unregistered trade union, action may proceed in the general name of the association, with the addition of three members (*f*), but not by its general name alone (*g*).

Actions against Trustees.

Section 4 (2) of the Trade Disputes Act, 1906, provides that "Nothing in this section shall affect the liability of the trustees of a trade union to be sued in the events provided for by the Trade Union Act, 1871, section 9, except in respect of any tortious act committed by or on behalf of a union in contemplation or furtherance of a trade dispute" (*h*), which indicates a liability in certain cases not covered by the section so to be sued in tort. According to Lord Macnaghten, however, it is not easy to see what is the object of section 4 (2) of the 1906 Act (*i*).

"*Any action.*"—The trustees can sue and be sued in tort, where a proprietary interest is concerned (*k*).

"*Toucing or concerning property, right, or claim to property of the trade union.*"—The jurisdiction of the

(*d*) Per Lawrence, L.J., in *Hardie and Lans, Ltd. v. Chilton* (1927), 43 T. L. R. 709, at p. 711; *Walker v. Sur*, [1914] 2 K. B. 930; *Newcastle Marine Service Association v. Toms*, [1916] 2 K. B. 243; per Lord Parker in *London Association for Protection of Trade v. Greenlands, Ltd.*, [1916] 2 A. C. 15; *Duke of Bedford v. Ellis* [1901], A. C. 1.

(*e*) Court of Session Practice (Mackay), clxxii.; *Tanroch v. Reed* (1829), 7 S. 605.

(*f*) *Smith v. Lothian*, 4 Irv. 170, at p. 539; *Agnew v. Addison* (1892), 20 R. 19.

(*g*) *Culcreugh Cotton Co. v. Mathie* (1822), 2 S. 41; *Kerr v. Clyde Shipping Co.* (1839), 1 D. 901.

(*h*) 6 Edw. 7, c. 47.

(*i*) *Vacher v. London Society of Compositors*, [1913] A. C. 107, at p. 119.

(*k*) *Linaker v. Pilcher* (1901), 70 L. J. K. B. 396; *Ropkins v. Hall* (1894), 10 T. L. R. 466. As to suits for defamation, *supra*, p. 17.

Court over a voluntary association such as a trade union arises either (1) out of its property, or (2) out of civil right, or (3) by statute.

(1) *Property*.—"The foundation of the jurisdiction is the right of property vested in the member of a voluntary association and of which he is unjustly deprived. . . . There is no jurisdiction to decide upon the rights of persons to associate together when the association possesses no property. Persons, and many persons, do associate together without any property in common at all. . . . But if the association has no property, and takes no subscriptions from its members, I cannot imagine that any Court could interfere with such an association if some of the members declined to associate with some others. The Courts, as such, have never dreamt of enforcing agreements strictly personal in their nature. . . . If property is the foundation of the jurisdiction, the plaintiff, if he can succeed at all, must succeed on the ground that some right of property to which he is entitled has been taken away from him" (m).

(2) *Civil Right*.—"The only ground upon which a member could maintain an action against a voluntary association of this kind would be that he had suffered patrimonial or pecuniary loss, or that he had been deprived of some civil right" (n). As to civil as distinguished from proprietary rights. "There are many rights which could not be called rights of property, which, nevertheless, the law will protect, as, for instance, if there was an association of men subscribing for a benevolent purpose, say, for the endowment of a scientific institution, the whole funds of the association being dedicated to that charitable purpose on the terms that the administration should be under the control of the association, I can see no reason why membership of such an association should not have

(m) *Per* Jessell, M.R., in *Rigby v. Connol* (1880), 4 Ch. D. 482, at p. 487; *Murray v. Johnstone* (1895), 23 R. 981.

(n) *Per* Lord Inglis in *Aitken v. Associated Carpenters and Joiners of Scotland* (1885), 12 R., at p. 1206.

the same legal protection' as would be given in the case of an association where the members had a beneficial interest in the funds. In the case of a trade union there is undoubted interest in property even in the narrow sense of the word."

"The funds of the union belong to the members, and are, by reason of agreement and trusts which are valid in law, appropriated to the purpose of the trade union, and more especially to giving benefits to members. Should the trade union be dissolved these funds would be divided amongst its members. While it is in existence these members are eligible, and are the only persons who are eligible, to receive the benefits which by its rules follow from membership. They have no right to come to the Courts to protect the misapplication of those funds. It is true that they cannot enforce the application of the funds to the granting of those benefits, but that is a defect in their remedies and not in their rights" (o).

It is a consequence of this defect in remedy, but not in right, that the Courts in England will make a declaration even when they are precluded by section 4 of the 1871 Act or otherwise from granting relief (p). Thus also, where it is competent for the Court to entertain an action, in the case of registered trade unions, suing or sued in its registered name, a judgment against such trade union can only be enforced against its property, and to reach

(o) *Per* Fletcher Moulton, L.J., in *Osborne v. Amalgamated Society of Railway Servants*, [1911] 1 Ch. 540, at p. 562; *Martin's Executrix v. M'Ghee*, [1914] S. C. 628. As to the power of the Attorney-General to restrain the application of the funds of a trade union in contravention of s. 1 of the Trade Disputes and Trade Union Act, 1927, see s. 7 of the Act, *infra*, p. 290.

(p) *Per* Fletcher Moulton, L.J., in *Gosney v. Bristol Trade and Provident Society*, [1909] 1 K. B. 901, and *Osborne v. Amalgamated Society of Railway Servants*, *supra*; R. S. C., Ord. 25, r. 5; *sed vide McLuskey v. Cole*, [1922] 1 Ch. 7. In Scotland the Courts decline to pronounce a decree in a form in which they cannot enforce it (*per* Lord Inglis, in *Aitken v. Associated Carpenters and Joiners of Scotland* (1885), 12 R. 1206).

that property it may be necessary to sue the trustees also, for it is expressly provided by statute that, in the case of a *registered* trade union, the trustees or other officers duly authorised by the rules may bring or defend any action or prosecution concerning the property of the union (*g*). An official suing for salary can make the trustees defendants, as the judgment concerns the property of the union (*r*).

(3) A statutory right is given to the Attorney-General to intervene by injunction in illegal strikes and lock-outs (1927 Act, section 7, *infra*, p. 290).

"*No such action shall abate.*"—New trustees may bring an action to recover funds from the old retiring trustees and the new branch trustees from the old branch trustees, but new branch trustees are not trustees of the union and so not accountable to the parent trustees (*s*).

LIMITATION OF RESPONSIBILITY OF TRUSTEES.

10. A trustee of any trade union registered under this Act shall not be liable to make good any deficiency which may arise or happen in the funds of such trade union, but shall be liable only for the moneys which shall be actually received by him on account of such trade union.

"*Shall not be liable to make good.*"—Trustees sued, whether in contract or in tort, under section 9 of this Act are entitled to be indemnified out of the funds of the union (*t*). See also Trustee Act, 1893 (56 & 57 Vict. c. 53),

(*g*) *Taff Vale Railway v. Amalgamated Society of Railway Servants*, [1901] A. C. 426.

(*r*) *Curle v. Lester* (1893), 9 T. L. R. 480.

(*s*) *Per Cozens-Hardy, M.R.*, in *Cops v. Crossingham*, [1909] 2 Ch. 148, at p. 159.

(*t*) *Linaker v. Pilcher* (1901), 70 L. J. K. B. 396. See also s. 9 hereof, and the remarks of Lord Farwell and Lord Macnaghten in *Vacher's Case*, [1912] A. C. 105.

section 24, and Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), section 49 (3).

Generally a trustee is entitled to be paid out of trust property the full costs of proceedings he has properly instituted or defended on behalf of the trust "moneys" (*u*). Trustees are liable for moneys under their control which they distribute or deal with contrary to the rules (*x*). As to the duty of a treasurer to pay moneys to the trustees, *vide* section 11 of this Act.

"*Actually received by him.*"—Even in the case of an unregistered trade union, it may be said that the trade union, like a company, is a trustee of its property for its individual members (*y*), and an implied trust for the trade union and its trustees may, as in the analogous case of the director of a company (*z*), be attached to the trustees not to make personal profit out of the trade union (*a*).

The trustee is liable for his own acts and defaults, but not for the acts and defaults of his co-trustees (*b*).

TREASURERS, ETC., TO ACCOUNT.

11. Every treasurer or other officer of a trade union registered under this Act, at such times as by

(*u*) *Merry v. Pownall*, [1898] 1 Ch. 306; *Re Budgett*, [1895] 1 Ch. 202; *Re Lova, Hill v. Spurgeon*, (1886), 29 Ch. D. 348; *Re Chennell, Jones v. Chennell* (1878), 8 Ch. D. 492; *Muskerry v. Skeffington* (1868), 3 H. L. 144; *Stephens v. Newborough* (1848), 11 Beav. 403; *York v. Brown* (1844), 1 Coll. 260; *Dunkin v. Ward* (1837), 1 Jur. 735; *Fearn v. Young* (1804), 10 Ves. 184.

(*x*) *Cox v. James* (1882), F. S. Cas. 282; *Holmes v. Taylor* (1889), F. S. Cas. 285; *Scott v. Evans*, F. S. Cas. 560; *Carter v. United Society of Boilermakers, etc.* (1915), 60 S. J. 44; *Wise v. Perpetual Trustee Co., Ltd.*, [1903] A. C. 139.

(*y*) *Russell v. Wakefield Waterworks Co.* (1875), L. R. 20 Eq. 474.

(*z*) *York and North Midland Railway Company v. Hudson* (1853), 16 Beav. 485.

(*a*) *Vide* Lord Lindley, in *Yorkshire Miners' Association v. Howden*, [1905] A. C. 256, at p. 280.

(*b*) *Re Cardiff Savings Bank*, [1892] 2 Ch. 100, 108.

the rules of such trade union he should render such account as hereinafter mentioned, or upon being required so to do, shall render to the trustees of the trade union, or to the members of such trade union at a meeting of the trade union, a just and true account of all moneys received and paid by him since he last rendered the like account and of the balance then remaining in his hands, and of all bonds or securities of such trade union, which account the said trustees shall cause to be audited by some fit and proper person or persons by them to be appointed; and such treasurer, if thereunto required, upon the said account being audited shall forthwith hand over to the said trustees the balance which on such audit appears to be due from him, and shall also, if required, hand over to such trustees all securities and effects, books, papers, and property of the said trade union in his hands or custody; and if he fail to do so the trustees of the said trade union may sue such treasurer in any competent Court for the balance appearing to have been due from him upon the account last rendered by him, and for all the moneys since received by him on account of the said trade union, and for the securities and effects, books, papers and property in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of the said trade union; and in such action the said trustees shall be entitled to recover their full costs of suit, to be taxed as between attorney and client.

“*Treasurer.*”—The rules must provide (*inter alia*) for the appointment of such an officer (Schedule I., section 4).

A person under the age of twenty-one may not be a treasurer (Trade Union Amendment Act, 1876, s. 9).

“*Render to the trustees or the members.*”—The ordinary equitable machinery for preserving the trust property and for executing the trusts on which it is held is available to the members (c).

As to the recovery of funds, *vide infra*, pp. 74 *et seq.*

There does not appear to be any penalty provided if a treasurer fail to do the things required in this section beyond a right of action at common law.

“*Upon the said account being audited.*”—The rules must contain (*inter alia*) particulars providing for the inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union (d). The members of the trade union are entitled to employ an accountant to inspect the books and accounts for them, provided that the accountant gives an undertaking that the information obtained will only be used for informing his clients of the result of the inspection (e). The onus of showing that in employing an accountant a member is not acting *bonâ fide* lies on the trade union resisting the inspection (f).

“*In any competent Court.*”—There is apparently no jurisdiction given to a Court of summary jurisdiction under this section. By section 19 of the Act offences and penalties under this Act may be prosecuted and recovered in manner provided by the Summary Jurisdiction Acts, but here the right of suit is not in the nature of a penalty, nor is the refusal to deliver the moneys or property of the union an offence; a competent Court would apparently include a county court which would entertain the action at common law.

(c) *Stevens v. Chown*, [1901] 1 Ch. 894.

(d) (1871) 34 & 35 Vict. c. 31, s. 14 (1); Sched. I.

(e) *Norrey v. Keep*, [1909] 1 Ch. 561.

(f) *Dodd v. Amalgamated Marine Workers' Union*, [1924] 1 Ch. 115, per Lord Hanworth, M.R., at p. 120.

"*Attorney and client.*"—As to costs between solicitor and client, *vide* R. S. C., Order 65; County Courts Act, 1888, section 118 (51 & 52 Vict. c. 43); *Tory v. Dorchester Corporation* (g).

PUNISHMENT FOR WITHHOLDING MONEY, ETC.

12. If any officer, member or other person being or representing himself to be a member of a trade union registered under this Act, or the nominee, executor, administrator, or assignee of a member thereof, or any person whatsoever, by false representation or imposition obtain possession of any moneys, securities, books, papers, or other effects of such trade union, or, having the same in his possession, wilfully withhold or fraudulently misapply the same, or wilfully apply any part of the same to purposes other than those expressed or directed in the rules of such trade union or any part thereof, the Court of summary jurisdiction for the place in which the registered office of the trade union is situate, or [by the Court of summary jurisdiction for the place where the offence has been committed] (h) upon a complaint made by any person on behalf of such trade union, or by the Registrar, or in Scotland at the instance of the Procurator Fiscal of the Court, to which such complaint is competently made, or by the trade union, with his concurrence, may, by summary order, order such officer, member, or other person to deliver up all such moneys, securities, books, papers, or other effects to the trade union, or to repay the amount

(g) [1907] 1 K. B. 393.

(h) Trade Union Act Amendment Act, 1876 (39 & 40 Vict. c. 22), s. 5, *infra*, p. 117.

of money applied improperly, and to pay, if the Court think fit, a further sum of money not exceeding twenty pounds together with costs not exceeding twenty shillings; and, in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs aforesaid, the said Court may order the said person so convicted to be imprisoned, with or without hard labour, for any time not exceeding three months: Provided that nothing herein contained shall prevent the said trade union, or in Scotland Her Majesty's Advocate, from proceeding by indictment against the said party: Provided also that no person shall be proceeded against by indictment if a conviction shall have been previously obtained for the same offence under the provisions of this Act.

This section is similar in effect to section 87 (3) of the Friendly Societies Act, 1896 (i).

"*By false representation or imposition.*"—The remedy is limited to cases where there has been fraud or dishonesty. Inability to pay or mistaken honest misapplication are not within the section (k).

"*Wilfully withhold or fraudulently misapply.*"—A treasurer receiving goods to a certain value and failing to account for part may be held *prima facie* to have withheld or misapplied the money under this section (l), but an officer cannot apparently be prosecuted for refusing to give up to a new society the property of an old society out of which it has been formed (m), for an assignee of an

(i) 59 & 60 Vict. c. 25.

(k) *Madden v. Rhodes*, [1906] 1 K. B. 534; *Barrat v. Markham* (1872), L. R. 7 C. P. 405; *Scott v. Wilson* (1893), 9 T. L. R. 492.

(l) *R. v. Bennett* (1894), 63 L. J. M. C. 181; *R. v. Dent* (1843), 1 C. & K. 249; *R. v. Smith* (1862), 31 L. J. M. C. 154.

(m) *Patrick v. Gilbert* (1870), 18 W. R. 315.

official cannot be prosecuted by the society for money owing from the official (*n*). Failure to account is *prima facie* evidence of wilful withholding (*R. v. Bennett* (*o*)). Withholding is a continuing offence, and the six months limit for beginning proceedings does not appear to apply (*p*). *Vide* Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), section 11.

Proceedings will not lie against the assignee of an officer unless the actual property of the society can be traced to his hands (*g*).

"*Order such officer to deliver up.*"—Two different proceedings have been mixed together, namely :

(1) A penalty for wilfully withholding or misapplying property or money ;

(2) An order to deliver up or repay, with, in both cases, imprisonment in default of repayment or delivery up (*r*).

"*In default the Court may order the person so convicted to be imprisoned.*"—If the election is to have recourse to the remedy provided by this section, and the claim of the society is satisfied by his conviction, he cannot afterwards be sued civilly (*s*).

This does not appear to be the case when a trade union, registered or unregistered, has proceeded against an official under the Falsification of Accounts Act, 1875 (*t*), nor when an unregistered union prosecutes under section 9 of this Act—at any rate, in Scotland (*u*).

(*n*) *Ex parte O'Donnell, Minerva Lodge v. Gladstone* (1866), 35 L. J. M. C. 99.

(*o*) (1894) 63 L. J. M. C. 181.

(*p*) *Mayer v. Harding* (1867), 17 L. T. N. S. 140 ; *Mackie v. Fox* (1911), 105 L. T. 523.

(*q*) *Ex parte O'Donnell* (1865), L. R. 1 Q. B. 274 ; *Patrick v. Gilbert* (1870), 18 W. R. 315 ; *Ex parte Jordan* (1851), 15 J. P. 767.

(*r*) *Per* Lord Halsbury, L.C., in *Vernon v. Watson*, [1891] 2 Q. B. 288, at p. 290.

(*s*) *Per* Field, J., in *Knight v. Whitmore* (1885), 53 L. T. 233, at p. 259.

(*t*) 38 & 39 Vict. c. 24 ; *United Builders' Labourers v. Stevenson* (1906), *Times* newspaper, February 7th.

(*u*) *Agnew v. Addison* (1892), 20 R. p. 19.

It is doubtful how far, after a conviction has been obtained under the latter limb of the section, the order compelling return of the documents or money is still operative. Probably the conviction is an execution of the civil debt amounting to a *capias ad satisfaciendum* (x). Prosecution under this section does not prevent the trustees bringing actions for breach of trust (y).

Other remedies.—The Falsification of Accounts Act, 1875 (38 & 39 Vict. c. 24), referred to, affords protection both to registered and unregistered trade unions; it enacts that any person (employed by a trade union) who, with intent to defraud (z), mutilates or destroys a book, security or account of the union, or makes a false entry in an account, is liable to penal servitude for seven years or imprisonment for two years.

The Larceny Act, 1916 (5 & 6 Geo. 5, c. 50), s. 40 (4), enables the beneficial co-owners of the property to be prosecuted for stealing or embezzling their common property. A trade union can, apparently, avail itself of this section (a) as being a society formed for participation in profits. A Young Men's Christian Association is not such a society (b).

The treasurer may be sued civilly for money had and received (c). An agreement that no proceedings should be taken is void (d). The trustees of an unregistered

(x) See *R. v. Truscott* (1899), 81 L. T. 188; *Vernon v. Watson* (1891), 2 Q. B. 288.

(y) Per Lord Lindley, in *Taff Vale Railway v. Amalgamated Society of Railway Servants*, [1901] A. C. 426.

(z) Vide *R. v. Drewett* (1906), 96 J. P. 37. It is sufficient to allege a general attempt to defraud (Indictments Act, 1916, Sched. I., r. 10).

(a) *R. v. Steiner*, 39 L. J. M. C. 54; *R. v. Tankard*, [1894] 1 Q. B. 549.

(b) *R. v. Robson* (1885), 16 Q. B. D. 137.

(c) *Sinden v. Bankes* (1861), 30 L. J. Q. B. 102; *Sharp v. Warren* (1818), 6 Pr. 131; *Ex p. James* (1883), 48 J. P. 54.

(d) *Andrews v. Southwark* (1885), F. S. Cas. 73; *Connor v. Roile* (1870), 23 L. T. 817; *Jones v. Merionethshire Building Society*, [1892] 1 Ch. 173; *Ward v. Lloyd* (1843), 6 Man. & G. 785; *Flower v. Sadler* (1832), 10 Q. B. D. 572; *McClatchie v. Haslam* (1891), 17 Cox, C. C. 402.

union can sue the treasurer for moneys of the society which he has converted to his own use (e).

Registry of Trade Union

REGULATIONS FOR REGISTRY.

13. With respect to the registry, under this Act, of a trade union, and of the rules thereof, the following provisions shall have effect :—

- (1) An application to register the trade union and printed copies of the rules, together with a list of the titles and names of the officers, shall be sent to the Registrar under this Act :
- (2) The Registrar, upon being satisfied that the trade union has complied with the regulations respecting registry in force under this Act, shall register such trade union and such rules :
- (3) No trade union shall be registered under a name identical with that by which any other existing trade union has been registered, or so nearly resembling such name as to be likely to deceive the members or the public :
- (4) Where a trade union applying to be registered has been in operation for more than a year before the date of such application, there shall be delivered to the Registrar before the registry thereof a general statement of the receipts, funds, effects and expenditure of such trade union in the

(e) *Marrs v. Thompson* (1902), 86 L. T. 759. As to injunctions to restrain misapplication of funds, *supra*, p. 30.

same form, and showing the same particulars, as if it were the annual general statement required as hereinafter mentioned to be transmitted annually to the Registrar :

- (5) The Registrar upon registering such trade union shall issue a certificate of registry, which certificate, unless proved to have been withdrawn or cancelled, shall be conclusive evidence that the regulations of this Act with respect to registry have been complied with :
- (6) One of [His] Majesty's Principal Secretaries of State may from time to time make regulations respecting registry under this Act, and respecting the seal (if any) to be used for the purpose of such registry, and the forms to be used for such registry, and the inspection of documents kept by the Registrar under this Act, and respecting the fees if any, to be paid on registry, not exceeding the fees specified in the Second Schedule to this Act, and generally for carrying this Act into effect.

“*With respect to the registry.*”—The following provisions apply only to a registered trade union, and it would appear, therefore, that a trade union can be certified as such under section 2 (3) of the Trade Union Act, 1913 (*f*), without compliance with this section. Only an existing trade union can be registered, and not a prospective union (*g*).

“*And of the rules thereof.*”—Application for registry

(*f*) 2 & 3 Geo. 5, c. 30.

(*g*) *In re National Union of Shipstewards*, [1925] 1 Ch. 20.

of a trade union must be by two printed copies of the rules, marked and signed as mentioned in Form A of the Secretary of State's regulations (*h*) (*vide* section 14 hereof).

"*An application to register.*"—The application to register a trade union must be sent to the Registrar on a prescribed form (*i*) (*vide* sub-section 6 hereof). Where a trade union, applying to be registered, has been in operation for more than a year before the date of such application, there must be delivered to the Registrar, before the registry thereof, a general statement of the receipts, goods and effects, and expenditure of such trade union in the same form and showing the same particulars as if it were the annual general statement required under section 16 of this Act, and be transmitted annually to the Registrar (*k*) (*infra*, p. 99).

"*Registrar under this Act.*"—The Registrars of Trade Unions under the Act to whom application to register is made are the Registrars of Friendly Societies (*l*). By the Friendly Societies Act, 1896, for the purpose of registering friendly societies, a Chief Registrar and one or more Assistant Registrars of Friendly Societies for England and Assistant Registrars for Scotland and Ireland are appointed by and hold office during the pleasure of the Treasury. Every Chief Registrar must be a barrister of not less than twelve months' standing. One at least of the Assistant Registrars for England and every Assistant Registrar for Ireland must be a barrister or solicitor of, respectively, not less than seven years' standing. Every Assistant Registrar for Scotland must be an advocate, writer to the signet, or solicitor of not less than seven years' standing in their respective profes-

(*h*) Regulation 4, Form A, *infra*, pp. 356, 363.

(*i*) *Ibid.*, *supra*, p. 53.

(*k*) Trade Union Act, 1871, s. 13 (6). *Quare* how far signature by an agent is sufficient, *Re Whitley Partners* (1886), 32 Ch. D. 331; *Dennison v. Jeffs*, [1896] 1 Ch. 611.

(*l*) (1871) 34 & 35 Vict. c. 31, s. 17.

sions (m). The Assistant Registrars are subordinate to the Chief Registrar (n).

The Central Office of the Chief Registrar is the Central Office of the Registrar of Friendly Societies, who exercises the functions of the Registrar for England (o). The Assistant Registrars for Scotland and Ireland are required to send to the Central Office in London copies of all documents registered or recorded by them, as the Chief Registrar may from time to time direct (p). See also for the purposes of the Trade Union Act, 1913, the definition of Registrar contained in section 7 of that Act.

"*The Registrar, upon being satisfied.*"—The Registrar's functions are ministerial and not judicial (q).

Upon an application for the registration of a trade union which is already in operation, the Registrar, if he has reason to believe that the applicants have not been duly authorised by such trade union to make the same, may, for the purpose of ascertaining the fact, require from the applicants such evidence as may seem to him necessary (r).

No power, however, is given to him to administer an oath or compel the production of documents (s).

The issue of a certificate of registry, unless proved to have been withdrawn or cancelled, is conclusive evidence that the regulations of the Act with respect to registry have been complied with (t). The registration of a proposed amalgamation as one trade union is not conclusive

(m) (1896) 59 & 60 Vict. c. 25, s. 51; regulation 1, *infra*, p. 356.

(n) *Ibid.*, s. 3.

(o) *Ibid.*, s. 8 (1); *vide* Friendly Societies Act, 1896, *infra*, p. 328.

(p) *Ibid.*, s. 4.

(q) *R. v. Registrar of Friendly Societies* (1872), L. R. 7 Q. B. 741. *Cf.* Friendly Societies Act, 1895, s. 11.

(r) Regulation 3.

(s) *Vide* Registrar's report in *R. v. Registrar of Friendly Societies* (1872), L. R. 7 Q. B. 741; *Peel's Case* (1867), L. R. 2 Ch. 674; *Oakes v. Turquand* (1867), 2 H. L. 325; *Re National Debenture and Assets Corporation*, [1891] 2 Ch. 505.

(t) Trade Union Act, 1871, s. 13 (5).

evidence that the amalgamation has been validly accomplished (u).

“*Shall register.*”—The Registrar may not register any combination as a trade union unless, in his opinion, having regard to the constitution of the combination, the principal objects are “statutory objects” (x).

As to “statutory objects,” *vide infra*, p. 134.

Where separate applications have been made by different sections of a trade union for registration in the same name, the Registrar may refuse to register either, for the effect of registering either section of the society by the name claimed by both would be virtually to give that section the control of the funds of the society. “The Registrar, as soon as he found each body of persons claiming as against one another a large sum of money, is bound to say, ‘I won’t alter the position of the parties, or do anything by registering one set of applicants which may prejudice the others’” (y).

As to withdrawal of certificate of registration under the Trade Union Act, 1913, section 2 (1), *see infra*, p. 141.

Any person aggrieved by any refusal of the Registrar to register a combination as a trade union under the 1913 Act may appeal to the High Court within the time and in the manner and on the conditions directed by Rules of Court (z).

The Rules are as follows :—

1. All appeals to the High Court under section 2 (4) of the Trade Union Act, 1913, shall be brought in the Chancery Division of the High Court and shall be commenced by originating notice of motion within two months of the decision of the Registrar or within such further time as the Registrar or the Court may think fit to allow. And the Rules of the Supreme Court for the time being in force shall (except if and so far as otherwise provided by these Rules) apply to all proceedings on any such appeal.

(u) *Booth v. Amalgamated Marine Workers’ Union*, [1926] A. C. 904.

(x) Trade Union Act, 1913 (2 & 3 Geo. 5, c. 30), s. 2 (2).

(y) *Per Blackburn, J.*, in *R. v. Registrar of Friendly Societies*, *supra*, at p. 744; *Wilkinson v. Jagger* (1887), 36 W. R. 169.

(z) No appeal apparently lies for withdrawal or cancellation on the grounds given by the 1876 Act, s. 8.

2. The notice of motion shall be headed with a reference to the Trade Union Act, 1913, and also with a reference to the decision of the Registrar which is appealed against, and shall contain or have scheduled or annexed thereto a concise statement of the grounds of the appeal, and no grounds other than those comprised in such statement shall (except with the leave of the Court and on such terms, if any, as the Court shall think just) be allowed to be taken by the appellant at the hearing of the motion.

3. The Court may at any stage of the motion direct that the same be served on any persons that the Court may think proper: Provided always that, except where the trade union or alleged trade union in question are themselves the appellants, such trade union or alleged trade union, or any person who appeared before the Registrar and in whose favour he decided, shall (unless the Court shall otherwise order) be respondents or one of the respondents to the motion.

4. At any stage of the motion the Court may, if it shall appear to be expedient to do so, cause notice to be given by advertisement or otherwise of the time when the motion will be, or is likely to be, heard and disposed of, or otherwise make provision for enabling any persons interested in the trade union or alleged trade union in question or in the subject-matter of the appeal to appear and be heard on the motion.

5. At any stage of the motion the Court may, if thought fit, give any such special directions for the hearing and disposal of the motion either on affidavit evidence or with witnesses or otherwise and generally at such time and in such manner as may be just and convenient.

6. In all proceedings on any such appeal the Court shall have all the powers vested by the Act in the Registrar and may make any order which might or ought to have been made by the Registrar.

7. In all proceedings on any such appeal the costs of and incident thereto, including the costs of and incident to any proceedings before the Registrar, shall be in the discretion of the Court (a).

“A name identical with that.”—In *R. v. Registrar of Friendly Societies* (b), each of two sections of an unregistered trade union applied to register by the name

(a) Statutory Rules and Orders (1913), p. 2269, 1274/L. 27.

(b) (1873) L. R. 7 Q. B. 741. See also *National Society of Operative Printers' Assistants v. Smith and Others* (1910), *Times* newspaper, April 8th; *Amalgamated Society of Woodcutting Machinists v. Brook*, per Eve, J. (1927, May), unreported.

which the original society had always borne. The Registrar heard evidence from each side, and, finding that there was a *bonâ fide* dispute, refused to register the trade union at all until the decision of the Court should determine the legal position of the parties. The Registrar's refusal was approved. Blackburn, J., said: "The effect of registering either section of the society by the name claimed by both would be virtually to give that section control of the funds of the society. I think the Registrar, as soon as he found each body of persons claiming against one another a large sum of money, was bound to say, 'I won't alter the position of the parties or do anything by registering one set of applicants which may prejudice the others.'"

As to change of name generally, see Trade Union Amendment Act, 1876, section 11 (c). The section has no application to an unregistered union. As to the protection at common law, *vide Hendrills v. Montagu; Saunders v. Sun Life Assurance Co. of Canada (d)*.

"*Any other existing.*"—Existing presumably at the date when application is made for registration (e). A society may be restrained from carrying on business under a name calculated to deceive (f).

"*Annual general statement.*"—*Infra*, p. 99.

"*Certificate conclusive evidence that regulations have been complied with.*"—Any combination which is for the time being registered as a trade union shall be deemed to be a trade union so long as it continues to be so registered (g), but the certificate of the Registrar is not conclusive evidence as to whether the society is or is not

(c) *Infra*, p. 112.

(d) (1881) 17 C. D. 638; [1894] 1 Ch. 537.

(e) *Re South Melbourne Building Society* (1883), 9 Victoria Law Reports (Equity), 64; *R. v. Registrar of Companies*, [1912] 3 K. B. 23.

(f) *Manchester Unity Independent Order of Oddfellows v. Canadian Independent Order of Oddfellows* (1896), Diprose & Gammon, "Friendly Society Cases."

(g) Trade Union Act, 1913, s. 2 (1).

lawful (h), nor as to the validity of the proceedings taken by a trade union for the passing of such rules and regulations (i).

"*One of His Majesty's Secretaries of State.*"—In practice the Secretary of State for Home Affairs, in Scotland the Secretary [of State] for Scotland.

"*Make regulations.*"—The existing regulations are dated November 1st, 1876, made by the Secretary of State as to the Registration of Trade Unions, as amended by Regulations made by the Secretary of State, April 29th, 1890, and July 28th, 1892, and by the Secretary for Scotland, May 8th, 1890, and July 28th, 1892 (k).

"*The forms.*"—As to the forms, *vide infra*, pp. 363 *et seq.*

"*The fees.*"—The fees are as follows :—

	£	s.	d.
For the certificate of registry of a trade union	1	0	0
For the certificate of registry of an alteration of rules	0	10	0
For a certificate that an unregistered trade union is a trade union	2	0	0
For the certificate of registry of a change of name	1	0	0
For a direction to transfer stock	2	0	0
For registry of notice of a dissolution	0	5	0
For registry of amalgamation by each trade union amalgamating	1	0	0
For every document (except as otherwise provided) required to be authenticated by a Registrar or to bear the seal of the central office	0	5	0
For every inspection on the same day of documents (whether one or more) in the custody of the Registrar relating to one and the same trade union	0	2	6
For every copy or extract of any document in the custody of the Registrar not exceeding 215 words 1s. 6d., and if exceeding that number 6d. per folio of 72 words, in addition to the fee, if any, for the signature of a Registrar or seal of the central office.			

(h) *Gomey v. Bristol Trade and Provident Society*, [1909] 1 K. B. 901 ; *Booth v. Amalgamated Marine Workers' Union*, [1926] 1 Ch. 904.

(i) *Osborne v. Amalgamated Society of Railway Servants*, [1909] 1 Ch. 163 ; [1910] A. C. 87.

(k) Statutory Rules and Orders (1890), p. 1015.

For any document certified as a true copy of a document in the custody of the Registrar, when the copy so certified is not made by the Registrar, 9*d.*, for an examination of such copy, and if the copy exceeds 216 words, for every additional folio of 72 words, 3*d.* (in addition to the fee for the signature of a Registrar or seal of the central office). Provided that the fees to be charged for the examination of copies of rules or alterations of rules for recording in another country shall not be greater in respect of each country in which they are to be recorded than the fees paid for the certificate and registry of the union or the alteration of rules.

No fee is payable for—

The cancelling or withdrawal of certificate of registry ;

Any notice of change of office ;

Any document or copy of document supplied to a public department.

The Chief Registrar may also dispense with the fee for inspection of documents in cases where he may consider it of public interest to do so (1).

“*Generally for carrying this Act into effect.*”—The functions of the Registrar, save where specially provided in the Trade Union Acts, are ministerial and not judicial. There is no power given under the Trade Union Acts to administer an oath or compel the production of documents (m).

RULES OF REGISTERED TRADE UNIONS.

14. With respect to the rules of a trade union registered under this Act, the following provisions shall have effect :

- (1) The rules of every such trade union shall contain provisions in respect of the several matters mentioned in the First Schedule to this Act.

(1) Trade Union (Amendment of Fees) Regulation, 1922 ; S. R. & O., No. 844.

(m) See *E. v. Registrar of Friendly Societies* (1872), L. R. 7 Q. B., at p. 743.

- (2) A copy of the rules shall be delivered by the trade union to every person on demand on payment of a sum not exceeding one shilling.

"*The rules.*"—As regards rules dealing with expenditure of moneys on political objects (*infra*, p. 145). As regards rules dealing with National Health Insurance administration (*infra*, p. 383). The construction of the rules is for the Court, and not for a jury (*n*). In case of doubt as to the meaning of rules application may be made to the Court to determine their construction (*o*). The Court may declare the meaning of a rule even where by reason of section 4 of the Trade Union Act, 1781, it cannot give relief (*p*). The Court may determine whether the rules authorise strike pay (*q*), or expenditure of moneys on objects alleged to be *ultra vires*, such as a newspaper (*r*).

"*The First Schedule.*"—The schedule of matters to be provided for by the rules of trade unions registered under the Act is as follows :—

1. The name of the trade union and place of meeting for the business of the trade union.

(*n*) *Per* Wills, J., in *Old v. Robson* (1890), 62 L. T. 282, at p. 284; *per* Farwell, L.J., in *Russell v. Amalgamated Society of Carpenters and Joiners*, [1910] 1 K. B. 506, at p. 521.

(*o*) *Re Durham Miners' Association, Watson v. Cann* (1900), 17 T. L. R. 39. The application may be by originating summons (*Williams v. Cotter* (1925), *Times* newspaper, May 8th).

(*p*) *Per* Fletcher Moulton, L.J., in *Osborne v. Amalgamated Society of Railway Servants*, [1911] 1 Ch. 540, at p. 560; *Denaby and Cadeby Main Collieries Co., Ltd. v. Yorkshire Miners' Association*, [1906] A. C. 384; *per* Fletcher Moulton, L.J., in *Gorney v. Bristol Trade and Provident Society*, [1909] 1 K. B., at p. 918; *sed vide McLuskey v. Cole*, [1922] 1 Ch. 7.

(*q*) *Yorkshire Miners' Association v. Howden*, [1905] A. C. 256; [1903] 1 K. B. 308, at p. 330.

(*r*) *Bennett v. National Amalgamated Society of Operative House and Ship Painters, etc.* (1915), 31 T. L. R. 203; *Carter v. United Society of Boilermakers, etc.* (1915), 60 Sol. Jo. 44. As to the powers of the Registrar under Trade Union Act, 1913, s. 3 (2), to remedy a breach of the rules dealing with political objects, *vide Forster v. National Amalgamated Union of Shop Assistants*, [1927] 1 Ch. 539, *infra*, p. 146.

2. The whole of the objects for which the trade union is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such trade union.

3. The manner of making, altering, amending, and rescinding rules.

4. A provision for the appointment and removal of a general committee of management, of a trustee or trustees, treasurer or other officers.

5. A provision for the investment of the funds and for an annual or periodical audit of accounts.

6. The inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union (s).

ANALYSIS OF THE FIRST SCHEDULE.

“*The name.*”—As to prohibition of identical name with existing union (*vide* section 13 (3) hereof, *supra*, p. 83). A trade union may, with the approval in writing of the Chief Registrar of Friendly Societies, or, in the case of trade unions registered and doing business exclusively in Scotland or Ireland, of the Assistant Registrar for Scotland or Ireland respectively, change its name by the consent of not less than two-thirds of the total number of members.

No change of name shall affect any right or obligation of the trade union or of any member thereof, and any pending legal proceedings may be continued by or against the trustees of the trade union or any other officer who may sue or be sued on behalf of such trade union notwith-

(s) *Cf.* Friendly Societies Act, 1896, s. 9 (3), First Schedule.

standing its new name (*t*). No provision is made as regards changing the name of a branch or of an unregistered union.

Otherwise as to the name (*vide* section 13 (3) hereof, *supra*, p. 83). A registered trade union may sue and be sued in its registered name in tort (*u*), but an unregistered trade union cannot (*x*).

Vide Friendly Societies Act, 1896, sections 10, 69, First Schedule.

"*The whole of the objects.*"—The omission of objects from the objects rule will not make the execution of those objects *ultra vires* if they are otherwise provided for in the constitution. The rules as a whole are an exhaustive constitution (*y*). It is certainly *ultra vires* a trade union to undertake purposes which are not reasonably within its possible lawful objects (*z*).

An alteration of the objects which would make the society a thing different from the society as formed by its constitution for a different purpose is probably beyond the powers of the society, at any rate without the consent of all the members (*a*). The substratum of the society cannot be changed by a mere majority, but some of the objects may be discontinued (*b*).

Restrictions are placed upon the pursuance of political objects by the Trade Union Act, 1913, section 3 (*infra*,

(*t*) Trade Union Act Amendment Act, 1876, s. 11, *infra*, p. 124. *Vide* Trade Union Act, 1871, ss. 13 (3), 24; Forms of Registrar, N, O; Regulations of Registrar, 2, 16.

(*u*) *Taff Vale Railway v. Amalgamated Society of Railway Servants*, [1901] A. C. 426.

(*x*) *Bloom's Case* (1918), 35 T. L. R. 50; *Gould v. South Wales Miners' Federation and Others*, per Younger, J., July, 1917, unreported.

(*y*) *Re Durham Miners' Association*, *Watson v. Cann* (1900), 17 T. L. R. 39; *Oram v. Hutt*, [1913] 1 Ch. 259; *Bennett v. National Amalgamated Society of Operative House and Ship Painters and Decorators and Others* (1915), 31 T. L. R. 203.

(*z*) *Wilson v. Scottish Typographical Association* (1912), S. C. 534; *Oram v. Hutt*, [1914] 1 Ch. 98.

(*a*) *Murray v. Scott*, 9 A. C. 519; *Harrington v. Sendall*, [1903] 1 Ch. 921.

(*b*) *Thellusson v. Valentia*, [1907] 2 Ch. 1.

p. 145); otherwise, by the same Act, it is lawful for a trade union to apply the funds of the union for any lawful objects or purposes for the time being authorised under its constitution (c), but a trade union, by reason of the Trade Union Act, 1913, must have one at least of the following objects as principal objects within its constitution—i.e., objects for regulating the regulations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business together with the object of the provision of benefits to members (d).

“*The purposes for which the funds shall be applicable.*”—Before the Trade Union Act, 1913, the funds of the union could not be expended on objects beyond those defined in the Trade Union Act Amendment Act, 1876 (e), and while the 1913 Act is generally enabling, certain restrictions are placed by it upon the constitution of a political fund and its use (f). The restrictions are, however, apparently limited to the application of funds, and do not extend to the pursuance of political objects as such except so far as regards their financial aspect (g), nor to the expenditure of money on political objects other than those specifically named (h).

The financing of a general labour newspaper is an object which may require specific mention to avoid being *ultra vires* (i), so also the method of expenditure

(c) Trade Union Act, 1913, s. 1 (1). See *Bennett v. National Amalgamated Society of Operatives House and Ship Painters, etc.* (1915), 31 T. L. R. 203; *Carter v. United Society of Boilermakers and Iron and Steel Ship-builders* (1915), 60 Sol. J. 44.

(d) Trade Union Act, 1913, s. 1 (2).

(e) *Amalgamated Society of Railway Servants v. Osborne*, [1910] A. C. 87.

(f) Trade Union Act, 1913, s. 3.

(g) *Ibid.*, 1913, s. 1 (1).

(h) *Forster v. Amalgamated Union of Shop Assistants and Clerks*, [1927] 1 Ch. 539.

(i) *Bennett v. National Painters, etc.*, *supra*; *Carter v. United Society of Boilermakers, etc.*, *ibid.*; *sed vide Forster's Case, supra*.

of money upon the legal assistance of members may require authorisation to avoid maintenance (*k*), *supra*, p. 65.

"*Conditions entitling to benefit.*"—As to the right to enforce a claim for benefit, see section 4 of this Act, *supra*, pp. 18 *et seq.*

As to benefits under the National Insurance Acts, *infra*, pp. 389 *et seq.*

As to exclusion from benefit and powers (a) of the Registrar in political cases, *infra*, p. 146; (b) of Court in illegal strikes and lock-outs, *infra*, p. 276.

As to nominations of benefit, *infra*, p. 122. A nomination to benefit may prove unenforceable by reason of section 4 of the Trade Union Act, 1871 (?).

To pay members strike pay who strike in breach of the rules is *ultra vires* (*m*).

"*Fine.*"—A fine is part of the property of the trade union (*n*).

As to how far fines are enforceable, see section 4 of this Act, *supra*, p. 34; *Mullet's Case* (*o*). Where the union is lawful at common law the fine is presumably recoverable under the contract of membership at common law.

There is no provision similar to that in section 92 of the Friendly Societies Act, 1896, for recovery before a Court of summary jurisdiction. Suspension and expulsion if authorised by the rules may be

(*k*) *Oram v. Hutt*, [1917] 1 Ch. 98; *Greig v. National Amalgamated Union of Shop Assistants* (1906), 22 T. L. R. 274; *Gordon v. Pyppe* (1892), 20 R. 23. As to workmen's compensation cases, see *Allen v. Francis*, [1914] 3 K. B. 1065; *Bobbie v. Crosby* (1915), 3 B. W. C. C. 236.

(*l*) *Crocker v. Knight*, [1892] 1 Q. B. 702.

(*m*) *Re Durham Miners' Association, Watson v. Cann* (1900), 17 T. L. R. 39; *Howden v. Yorkshire Miners' Association*, [1903] 1 K. B. 308; [1905] A. C. 256.

(*n*) *Per Jessel, M.R.*, in *Rigby v. Connol* (1880), 14 Ch. D. 482, at p. 490.

(*o*) (1905) 91 L. T. 133; *Baker v. Ingall*, [1912] 3 K. B. 106.

validly imposed as a consequence of refusal to pay a fine (*p*).

“*The manner of altering, amending, and rescinding rules.*”—The rules can only be altered in accordance with express provisions of the rules themselves. If there be no rule authorising alteration of rules, the rules are unalterable save with the consent of all the members (*q*). A rule which is altered according to the manner prescribed is good in its amended form if the altered rule has been arrived at by substantially following the prescribed procedure, although there be some immaterial formality, and does not purport to abrogate the principles of the society (*r*), but generally amendments must be in accordance with the rules (*s*). The mere fact that an amended rule is registered does not make it valid if it is otherwise invalid (*t*). Until rules are actually amended the old rules prevail (*u*), the date of amendment being the time of the resolution of the change, and not the date of registration (*x*).

With regard to a ballot for political action under the Trade Union Act, rules for such ballot where the certificate of the Registrar has been obtained may become operative notwithstanding that the rules of the union as to alteration of rules have not been complied with (Trade Union Act, 1913, section 4 (2); see also National Insurance Act, 1924, *infra*, p. 385).

(*p*) *Catt v. Wood*, [1910] A. C. 404.

(*q*) *Harrington v. Sendall*, [1903] 1 Ch. 921; *Dawkins v. Antrobus* (1881), 17 Ch. D. 615.

(*r*) *Amalgamated Society of Engineers v. Jones* (1913), 29 T. L. R. 484; *Dunn v. Bevan* (1921), *Times Newspaper*, August 31st.

(*s*) *Osborne v. Amalgamated Society of Railway Servants*, [1909] 1 Ch. 163.

(*t*) *Ibid.*, at p. 176; *Dewhurst v. Clarkson* (1854), 3 E. & B. 194; *Rosenberg v. Northumberland Building Society* (1889), 22 Q. B. D. 373.

(*u*) *Houden v. Yorkshire Miners' Association*, [1903] 1 K. B. 308.

(*x*) *Osborne v. Amalgamated Society of Railway Servants*, *ibid.*, at p. 176.

A duly amended rule is binding upon an insane member (*y*), and generally, where the rules contain a provision for alteration, effectual when carried by a definite majority, every member is bound by such alteration (*z*) unless such alteration goes to alter the substratum of the whole society (*x*). Resolutions, in the absence of specific rule, may be binding on a member (*b*).

Alterations of rules must be registered with the Registrar of Friendly Societies. The fee for registration of alterations is ten shillings (*c*).

An alteration of the rules of a trade union may be either :—

(a) A partial alteration, consisting of the addition of a new rule or part of a rule or rules to the existing rules, or of the substitution of a new rule or part of a rule or rules for any of the existing rules, or of a rescission of any of the existing rules or any part thereof without any substitution or of more than one or all of those modes ; or

(b) A complete alteration consisting of the substitution of an entire set of rules for the existing set of rules (*d*).

An application for the registration of a partial alteration of rules must be made by seven members of the trade union, and must be in the Form C of the regulation, and must be accompanied by a statutory declaration in Form D and by a printed copy of the existing rules, and by the following documents :—

(a) If the partial alteration consists of the addition or substitution of a new rule or part of a rule or rules, two copies of such rule or part of a rule or rules, each copy being marked O and signed by each of the applicants.

(*y*) *Burke v. Amalgamated Society of Dyers*, [1906] 2 K. B. 583.

(*z*) *Steele v. South Wales Miners' Federation*, [1907] 1 K. B. 361.

(*a*) *Wilson v. Scottish Typographical Association*, [1912] S. C. 534.

The Husson v. Valentia, [1907] 2 Ch. 1; *Harrington v. Sendall*, [1903] 1 Ch. 931.

(*b*) *Steele v. South Wales Miners' Federation*, *ibid.*

(*c*) Regulation 24, *infra*, p. 360.

(*d*) Regulation, 6, *infra*, p. 357.

(b) If the partial alteration consists of the rescission of any of the rules without any substitution, two copies of the resolution for such rescission, each copy being marked O and signed by each of the applicants.

The Registrar, before registering the partial alteration of rules, must ascertain that the rules of the trade union, if altered in accordance with the proposed partial alteration, will provide for all the matters required by the above-mentioned Acts to be provided for by the rules of a registered trade union (e).

The certificate of registry of a partial alteration must be in Form E, and must be delivered to the applicants attached to one of the copies of the rule or rules, or, when the alteration consists of rescission merely, attached to the old set of rules (f).

An application for the registration of a complete alteration must be made by seven members of the trade union and in Form F, and must be accompanied by a statutory declaration in Form D and by a printed copy of the existing rules and by two printed copies of the new rules, each copy being marked P and signed by each of the applicants; and the Registrar, before registering the new set of rules, must ascertain that it provides for all matters which, by the above-mentioned Acts, are to be provided for by the rules of a registered trade union (g).

The certificate of registry of a complete alteration of rules must be in Form G, and must be delivered to the applicants attached to one of the copies of the new set of rules (h).

For forms, *infra*, pp. 366-369.

As to addition or alteration of political rules, *infra*, p. 154.

(e) Regulation 7, *infra*, p. 357.

(f) Regulation 8, *infra*, p. 357.

(g) Regulation 9, *infra*, pp. 357, 358.

(h) Regulation 10. See also regulations 4, 11, 24; Forms H and I; Trade Union Act, 1871, ss. 13 (1), (2), 14 (18), Sched. I.; Trade Union Act, 1913, ss. 3 (1), (4), 4 (1), (2), and 6; Forms 1-3, *infra*, pp. 356 *et seq.*

As to rules authorising amalgamations, see Trade Union (Amalgamation) Act, 1917 (i): see also Fry, J., in *Wolfe v. Mathews* (k); *Booth v. Amalgamated Marine Workers' Union* (l); *Sheet Iron Workers' Society v. Boiler-makers' Society* (m).

As to rules dealing with dissolution, *infra*, p. 128.

"A committee of management."—Usually called the executive committee.

An infant above the age of sixteen cannot be a member of the committee of management (Trade Union Act Amendment Act, 1876, section 9).

It is doubtful whether the members of the committee of management must be members of the trade union, for a trustee need not be (n). A policeman may not be a member of a trade union (o).

"Trustee or trustees."—*Supra*, pp. 62 *et seq.*

"Treasurer."—*Supra*, pp. 71 *et seq.*

"Investment of the funds."—The investment of funds must be a genuine investment, governed by a general consideration of trustee investment or by a specific authorisation. An investment cannot be used as a cloak to finance objects not otherwise authorised as the subjects of investment (p).

The War Loan (Supplemental Provisions) Act, 1915 (5 & 6 Geo. 5, c. 93), permits the Public Trustee to hold the funds of a registered trade union, and in Scotland

(i) *Infra*, p. 169.

(k) (1882) 10 W. R. 838, at p. 839.

(l) [1926] Ch. 904.

(m) (1924) 40 T. L. R. 294.

(n) *Per* Lord Davey, in *Yorkshire Miners' Association v. Houden*, [1905] A. C. 256, at p. 271; *per* Lord Robson in *Russell v. Amalgamated Society of Carpenters and Joiners*, [1912] A. C. p. 421, at p. 438; *per* Lord Atkinson in *Vacher v. London Society of Compositors*, [1913] A. C. at p. 124.

(o) Police Act, 1919 (9 & 10 Geo. 5, c. 46), s. 2, *infra*, p. 171.

(p) *Bennett v. National Amalgamated Society of Operative House and Ship Painters, etc.* (1915), 31 T. L. R. 203; *Carter v. United Society of Boiler-makers, etc.* (1915), 60 Sol. Jo. 44.

permits the fund to be invested in the name of the "Accountant of Court."

There is no limitation as to the nature of the investment. Cf. Friendly Societies Act, 1896, section 44.

"Annual or periodic" audits.—As to the statement of the results of such audits to the Registrar, see section 16 hereof (g).

As to the duties of the treasurer as to accounts, see section 11 hereof (r).

"Inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union."—The members of the trade union are entitled to employ an accountant to inspect the books and accounts for them, provided that the accountant gives an undertaking that the information obtained will only be used for informing his clients of the result of the inspection (s).

A member of a trade union in such a case, if proper, may employ an accountant to assist him. The onus of showing that in employing an accountant the member is not acting *bonâ fide* lies on the trade union resisting that inspection (t).

The right to inspect includes a right to take copies (u).

A member may see the books at reasonable times (x). Similarly he may make inquiries to ascertain how the funds should be divided on dissolution (y).

"A copy of the rules shall be delivered."—It is a misdemeanour for any person, with intent to mislead or

(g) *Infra*, p. 99.

(r) *Supra*, p. 71.

(s) *Norrey v. Keep*, [1909] 1 Ch. 561; *Bevan v. Webb*, [1901] 2 Ch. 59.

(t) *Dodd v. Amalgamated Marine Workers' Union*, [1922] 1 Ch. 116; *Holland v. Dickson* (1888), 37 C. D. 609; *Davies v. Gas Light & Coke Co.*, [1909] 1 Ch. 708.

(u) *Mutter v. Eastern and Midlands Railway Co.* (1888), 38 Ch. D. 92; *Nelson v. Anglo-American Land Mortgage Co.*, [1897] 1 Ch. 130.

(x) *Kerr v. Kant* (1913), R. & R. 223.

(y) *Re Printers and Transferers' Amalgamated Trades Protection Society*, [1899] 2 Ch. 184.

defraud, to give to any person who intends to become or is a member of a trade union a copy of the rules incorrect in whole or in part, whether by addition, alteration or omission, or to give to any such person a copy of the rules of an unregistered trade union on the pretence that such trade union is in fact registered (z).

REGISTERED OFFICE OF TRADE UNIONS.

15. Every trade union registered under this Act shall have a registered office to which all communications and notices may be addressed ; if any trade union under this Act is in operation for seven days without having such an office, such trade union and every officer thereof shall each incur a penalty not exceeding five pounds for every day during which it is so in operation.

Notice of the situation of such registered office and of any change therein shall be given to the Registrar and recorded by him ; until such notice is given the trade union shall not be deemed to have complied with the provisions of this Act.

“ *Under this Act.* ”—*I.e.*, under the Trade Union Acts, 1871 to 1927 (a).

“ *Registered office.* ”—Where a union's registered office was in England and it was there registered as a union, but there existed an unregistered branch in Glasgow with a copy of its rules deposited in Scotland, it was to be subject to Scottish jurisdiction (b).

“ *All notices.* ”—There is no special provision as to service for legal proceedings, as a *quasi* corporate body

(z) Trade Union Act, 1871, s. 18, *infra*, p. 101.

(a) Trade Disputes and Trade Unions Act, 1927, s. 8 (1).

(b) *Mackendrick v. National Union of Dock Labourers in Great Britain and Ireland*, [1911] S. C. 83.

the trade union, as such, can only appear through a solicitor (R. S. C., O. 12, r. 1, note in Annual Practice, cf. Friendly Societies Act, 1896, s. 94 (4); *vide Mercantile Investment Trust Co. v. International Co. of Mexico* (c)).

"*Incur a penalty.*"—Not necessarily at the suit of the Registrar (Trade Union Act Amendment Act, 1876, s. 15, *infra*, p. 131).

"*Any change therein.*"—The removal of the registered office of a trade union from one country to another within the meaning of section 6 of the Trade Union Act Amendment Act, 1876, does not render it necessary to re-register the trade union in the country in which its new registered office is situate (d).

Business in different countries.—All matters requiring registry must be registered in and returns and notices sent to the Registrar of the country in which the registered office of the trade union is for the time being situate, copies of matters requiring registry being forwarded for recording to the Registrar of each of the "other countries in which it is carrying or intending to carry on business" (e).

A trade union may be registered in more than one country; if registered in one and possessed of branches in another, it may be subject to the jurisdiction of both (f). See section 6 of the Trade Union Amendment Act, 1876, *infra*, p. 118.

Trade Unions carrying or intending to carry on business in more than one country shall be registered in the country in which their registered office is situate; but copies of the rules of such unions, and of all amendments of the

(c) [1893] 1 Ch. 484.

(d) Regulation 15A, "country" means England and Wales, Scotland or Northern Ireland; Trade Union Act Amendment Act, 1876, s. 15.

(e) Regulation 15B, *infra*, p. 358.

(f) *Mackendrick v. National Union of Dock Labourers in Great Britain and Ireland* (1910), 48 Sc. L. R. 17. See also Regulations 15, 15A, 15B, Form M, *infra*, pp. 358, 371.

same, shall, when registered, be sent to the Registrar of each of the other countries, to be recorded by him, and until such rules be so recorded the union shall not be entitled to any of the privileges of this Act or the principal Act, in the country in which such rules have not been recorded, and until such amendments of rules be recorded the same shall not take effect in such country (g).

**ANNUAL RETURNS TO BE PREPARED AS REGISTRAR
MAY DIRECT (gg).**

16. A general statement of the receipts, funds, effects, and expenditure of every trade union registered under this Act shall be transmitted to the Registrar before the first day of June in every year, and shall show fully the assets and liabilities at the date, and the receipts and expenditure during the year preceding the date to which it is made out of the trade union; and shall show separately the expenditure in respect of the several objects of the trade union, and shall be prepared and made out to such date, in such form, and shall comprise such particulars, as the Registrar may from time to time require; and every member of, and depositor in, any such trade union shall be entitled to receive, on application to the treasurer or secretary of that trade union, a copy of such general statement, without making any payment for the same.

Together with such general statement there shall be sent to the Registrar a copy of all alterations of rules and new rules and changes of officers

(g) Trade Union Act Amendment Act, 1876, s. 6; *Mackendrick v. National Union of Dock Labourers in Great Britain and Ireland*, 48 So. L. R. 17.

(gg) For form of Annual Return, see *infra*, pp. 378—382.

made by the trade union during the year preceding the date up to which the general statement is made out, and a copy of the rules of the trade union as they exist at that date.

Every trade union which fails to comply with or acts in contravention of this section, and also every officer of the trade union so failing, shall be liable to a penalty not exceeding five pounds for each offence.

Every person who wilfully makes or orders to be made any false entry in or any omission from any such general statement, or in or from the return of such copies of rules, shall be liable to a penalty not exceeding fifty pounds for each offence.

Section 4 (6) of the Trade Disputes and Trade Union Act, 1927, provides that [“Section sixteen of the Trade Union Act, 1871 (which provides for the transmission to the Registrar of annual returns by registered trade unions), shall apply to every unregistered trade union, so far as respects the receipts, funds, effects, expenditure, assets and liabilities of the political fund thereof,”] (*infra*, p. 167).

As to the initial statement on formation, *supra*, pp. 78, 80. *Vide* Annual Return, Form, pp. 378—383.

Cf. Friendly Societies Act, 1896, section 27.

REGISTRARS.

17. The Registrars of the friendly societies in England, Scotland, and Ireland shall be the Registrars under this Act.

The Registrar shall lay before Parliament annual reports with respect to the matters transacted by such Registrars in pursuance of this Act.

"*The Registrars.*"—The Registrars of trade unions to whom application to register is made are the Registrars of friendly societies (*h*). By the Friendly Societies Act, 1896, for the purpose of registering friendly societies, a Chief Registrar and one or more Assistant Registrars of friendly societies for England and Assistant Registrars for Scotland and Ireland are appointed by and hold office during the pleasure of the Treasury. Every Chief Registrar must be a barrister of not less than twelve years' standing. One at least of the Assistant Registrars for England and every Assistant Registrar for Ireland must be a barrister or solicitor of, respectively, not less than seven years' standing. Every Assistant Registrar for Scotland must be an advocate, writer to the signet, or solicitor of not less than seven years' standing in their respective professions (*i*). The Assistant Registrars are subordinate to the Chief Registrar (*k*).

The Central Office of the Chief Registrar exercises the functions of the Chief Registrar for England (*l*). The Assistant Registrars for Scotland and Ireland are required to send to the Central Office in London copies of all documents registered or recorded by them, as the Chief Registrar may from time to time direct (*m*).

CIRCULATING FALSE COPIES OF RULES, ETC., A MISDEMEANOR.

18. If any person with intent to mislead or defraud gives to any member of a trade union registered under this Act, or to any person intending or applying to become a member of such trade union,

(*h*) *Vide* Trade Union Act, 1871 (34 & 35 Vict. c. 31), s. 13.

(*i*) Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 1; Regulation 1, *infra*, p. 356.

(*k*) *Ibid.*, s. 3.

(*l*) Friendly Societies Act, 1896, s. 1 (1).

(*m*) *Ibid.*, s. 4 (2), as to the status and powers of Registrars; and see generally the Friendly Societies Act, 1896, ss. 1—4.

a copy of any rules or of any alterations or amendments of the same other than those respectively which exist for the time being on the pretence that the same are the existing rules of such trade unions, or that there are no other rules of such trade union, or if any person with the intent aforesaid gives a copy of any rules to any person on the pretence that such rules are the rules of a trade union registered under this Act which is not so registered, every person so offending shall be deemed guilty of a misdemeanor.

Legal Proceedings.

SUMMARY PROCEEDINGS FOR OFFENCES,
PENALTIES, ETC.

19. In England all offences and penalties under this Act may be prosecuted and recovered in manner directed under the Summary Jurisdiction Acts.

In England summary orders under this Act may be made and enforced on complaint before a Court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

Provided as follows :—

1. The Court of summary jurisdiction when hearing and determining an information or complaint shall be constituted in some one of the following manners ; (that is to say),

(a) In England,

(1) In any place within the jurisdiction of a metropolitan police magistrate or other stipendiary magistrate, of such magistrate or his substitute :

- (2) In the City of London, of the Lord Mayor or any alderman of the said city :
- (3) In any other place, of two or more justices of the peace sitting in petty sessions (*mm*).

In Scotland all offences and penalties under this Act shall be prosecuted and recovered by the procurator fiscal of the county in the sheriff Court under the Provisions of the Summary Procedure Act, 1864.

In Scotland summary orders under this Act may be made and enforced on complaint in the sheriff Court.

All jurisdictions, powers and authorities necessary for giving effect to these provisions relating to Scotland are hereby conferred on the sheriffs and their substitutes.

Provided that in England and Scotland (*mm*)—

2. The description of any offence under this Act in the words of such Act shall be sufficient in law.

3. Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant or prosecutor.

“ *The Summary Jurisdiction Acts.* ”—*I.e.*, the Summary Jurisdiction Act, 1848 (*n*) ; the Summary Jurisdiction Act, 1879 (*o*) ; the Summary Jurisdiction Act, 1887 (*p*) ;

(*mm*) As to Northern Ireland, see the Government of Ireland (Companies and Societies, etc.), Order, 1922 (S. R. & O. 184).

(*n*) 11 & 12 Vict. c. 43.

(*o*) 42 & 43 Vict. c. 49.

(*p*) 47 & 48 Vict. c. 43.

see also the Criminal Justice Administration Act, 1914 (*g*), etc. As to summary jurisdiction generally, see Stone's Justice's Manual.

"*On complaint.*"—That is, apparently, not by information. The determination of a complaint involves the dismissal or approval of the complaints, but not conviction or acquittal, as does an information (*r*).

"*An information.*"—It is difficult to reconcile these words with absence of all reference to information in the preceding paragraph.

APPEAL TO QUARTER SESSIONS.

20. In England or Ireland if any party feels aggrieved by any order or conviction made by a Court of summary jurisdiction on determining any complaint or information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following :

- (1) The appeal shall be made to some Court of general or quarter sessions for the county . . . (*s*) (*for remaining text, infra*, p. 224).

Appeals in England are now regulated by the Summary Jurisdiction Act, 1879, section 31, as applied by the Summary Jurisdiction Act, 1884, section 6, and the Criminal Justice Administration Act, 1914.

"*Conviction.*"—The facts which are a necessary ingredient of the offence must be set out in the conviction (*t*).

(*g*) 4 & 5 Geo. 5, c. 58, and any Act amending; Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13.

(*r*) 11 & 12 Vict. c. 43, s. 1. *Per* Hayes, J., in *R. v. Dillon* (1859), 11 L. C. R. 232, at p. 238.

(*s*) Repealed as regards England from the word "county" to the end of the section (47 & 48 Vict. c. 43, which Act applies certain provisions of the Summary Jurisdiction Acts to this and other Acts).

(*t*) *Smith v. Moody*, [1903] 1 K. B. 56.

"*If any party.*"—An appeal will lie against the dismissal of the summons (*u*).

APPEAL IN SCOTLAND AS PRESCRIBED BY
20 GEO. 2, C. 43.

21. In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the next circuit Court of justification, or where there are not circuit Courts to the High Court of Justiciary at *Edinburgh*, in the same manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of His Majesty King George the Second, chapter forty-three (*x*), in regard to appeals to circuit Courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force.

All penalties imposed under the provisions of this Act in Scotland may be enforced in default of payment by imprisonment for a term to be specified in the summons or complaint, but not exceeding three calendar months.

All penalties imposed and recovered under the provisions of this Act in Scotland shall be paid to the sheriff clerk, and shall be accounted for and paid by him to the Queen's and Lord Treasurer's Remembrancer on behalf of the Crown.

(*u*) *Gibson v. Lawson*, [1891] 2 Q. B. 545, at p. 557; 42 & 43 Vict. c. 49, s. 33.

(*x*) Repealed as to words in italics in part, 31 & 32 Vict. c. 119, s. 1; Statute Law Revision Act, 1867.

INTERESTED PERSON NOT TO ACT AS A MEMBER OF
A COURT OF APPEAL.

22. A person who is a master, or father, son, or brother of a master, in the particular manufacture, trade, or business in or in connexion with which any offence under this Act is charged to have been committed, shall not act as or as a member of a Court of summary jurisdiction or appeal for the purposes of this Act.

“Business in connexion with which.”—The fact that three of the magistrates are shareholders in shipping companies insured in an association which is a member of a federation of which the informant is an official is not evidence of bias (*y*) (see generally Stone’s Justices’ Manual, “Interested Justices, Bias,” and Part II. hereof, *infra*, p. 178).

Definitions.

23. In this Act :—

The term “Summary Jurisdiction Acts” means as follows :

As to England, the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled “An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders,” and any Acts amending the same :

As to Ireland, within the police district of Dublin metropolis, the Acts regulating the powers and duties of justice of the peace for such district, or

(*y*) *R. v. McKenzie*, [1892] 2 Q. B. 519.

of the police of such district, and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act amending the same.

In Scotland the term "misdemeanor" means a crime and offence.

But see now Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13, (6-10), and the Summary Jurisdiction Acts.

The term "trade union" means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business as would, if this Act had not passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade: provided that this Act shall not affect—

- (1) Any agreement between partners as to their own business;
- (2) Any agreement between an employer and those employed by him as to such employment;
- (3) Any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade, or handicraft.

*Definition of Trade Union (yy).—*So much of section 23 of this Act as defines the term "trade union," "except the proviso" qualifying such definitions, is repealed by section 16 of the Trade Union Act Amendment Act, 1876, *infra*, p. 132 (*vide* Bankes, L.J., in *Performing Rights Society v. London Theatre of Varieties* (z)).

(yy) See, generally, pp. 132 *et seq.* and pp. 134 *et seq.*

(z) [1922] 2 K. B. 433, at pp. 443 and 444.

The definition of a trade union is further amended by the Trade Union Act, 1913, and is now defined as:

“Any combination, whether temporary or permanent, [the principal objects of which are under its constitution statutory objects]” (a). . . .

To which must be added, by virtue of the unrepealed portion of section 16 of the 1876 Act,—

[Whether such combination would or would not, if the Principal Act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade] (*infra*, p. 132).

Apart from these words, trade unions not unlawful at common law would not come within the definition (b).

“*Except the proviso.*”—The unrepealed provisos of section 23 of the 1871 Act are set out *supra*, p. 107.

The proviso of section 23 of the Trade Union Act, 1871, is not repealed; it provides that “this Act shall not affect—

- “ (1) Any agreement between partners as to their business :
- “ (2) Any agreement between an employer and those employed by him as to such employment :
- “ (3) Any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade, or handicraft.”

This proviso has not been judicially construed; its purpose would appear to be to leave the general law as to restraint of trade by agreement unaffected, except in so far as such an agreement is made by a trade union

(a) *Infra*, p. 109; Trade Union Act, 1913 (2 & 3 Geo. 5, c. 30), s. 2 (1).

(b) *Per* Lord Robson, in *Russell v. Amalgamated Society of Carpenters and Joiners*, [1912] A. C. 421, at p. 440. See also *Gozney v. Bristol Trade and Provident Society*, [1909] 1 K. B. 901; *Osborne v. Amalgamated Society of Railway Servants*, [1911] 1 Ch. 540.

or the members thereof in circumstances covered by the Trade Union Acts. "It is to be observed that the Act did not go to the length of abrogating or altering the general law against restraint of trade—it drafted an exception on it in favour of certain classes of persons" (c).

"*Combination*."—It is not certain how far the branches of a combination within the United Kingdom which are outside the United Kingdom are covered by the phrase.

"*Whether temporary or permanent*."—These words have not been judicially construed; it is conceived that a strike committee or association convened *ad hoc* for the purpose of a particular dispute would be a temporary combination.

"*Statutory objects*."—These words in s. 2 (1) of the 1913 Act mean the objects mentioned in section 16 of the Trade Union Act Amendment Act, 1876—namely, the "regulation of the relations between workmen and masters, or between workmen and workmen, or between masters and masters" or "the imposing of restrictive conditions on the conduct of any trade or business," and "also the provision of benefits to members" (d).

"*Regulation of the relations*."—These words include the provision of benefits (*per* Farwell, L.J., in *Osborne v. Amalgamated Society of Railway Servants* (e)), although these are now explicitly added to the definition of a trade union by section 2 of the 1913 Act. See also *Gozney v. Bristol Trade and Provident Society* (f).

"*Workmen*."—By section 5 (3) of the Trade Disputes Act, 1906 (g), which is to be construed as one with the Trade Union Acts (h), the expression "workmen" is

(c) *Per* Lord Robson, in *Russell's Case*, *ibid.*, at p. 440. *Performing Rights Society v. London Theatre of Varieties*, [1924] A. C. 1.

(d) Trade Union Act, 1913, s. 1 (2), *infra*, p. 134.

(e) [1909] 1 Ch. 163, at p. 188.

(f) [1909] 1 K. B. 901, at pp. 903 and 919.

(g) 6 Edw. 7, c. 47.

(h) Trade Union Act, 1913, s. 8 (3).

defined, *inter alia*, as "any persons employed in trade or industry."

A musician is, apparently, a workman within this definition (*i*), and an actor may be (*j*) *sed quære* a doctor (*k*).

"*The imposing of restrictive conditions on the conduct of any trade or business.*"—These words were inserted in the definition of a trade union by section 16 of the Trade Union Act Amendment Act, 1876. According to Lord Alverstone, there might possibly have been some doubt whether a society which imposed conditions with regard to the transaction of business was a trade union, and this led to the passing of section 16 of the Act of 1876 (*l*).

Manufacturers' associations, having mutual arrangements as to the sale price of their goods or as to rates, may thus be held to be combinations imposing restrictive conditions (*m*), but on the other hand a society whose principal object is the working of patents will not be held to be a trade union solely because it has an ancillary power to regulate prices (*n*).

As to the relations of such associations with the Companies Acts, *supra*, pp. 45—48 *et seq.*

A limited company, by seeking to pass resolutions

(*i*) *Dallimore v. Williams and Jesson* (1913), 29 T. L. R. 67.

(*j*) *Brimelow v. Casson*, [1924] 1 Ch. 302.

(*k*) *Cf. Pratt v. B.M.A.*, [1919] 1 K. B. 244.

(*l*) *Per* Lord Alverstone, in *Chamberlain's Wharf, Ltd. v. Smith*, [1900] 2 Ch. 605, at p. 612.

(*m*) *Edinburgh and District Aerated Water Manufacturers' Defence Association v. Jenkinson & Co.* (1903), 5 F. 1159; *Chamberlain's Wharf v. Smith*, [1900] 2 Ch. 605; *Mineral Water Bottle Exchange and Trade Protection Society v. Booth* (1887), 36 Ch. D. 465; *Glasgow Potted Meat Manufacturers' Society v. Geddes* (1902), 10 S. L. T. 481; *Urmston v. Whitelegg* (1890), 55 J. P. 453; *Aberdeen Master Masons' Association, Ltd. v. Smith*, [1908] S. C. 669; *Evans & Co. v. Heathcote*, [1918] 1 K. B. 418; *Rae v. Plate Glass Merchants' Association and Others* (1919), 56 So. L. R. 315; *Performing Rights Society v. Magistrates of Edinburgh*, [1922] S. C. 165; *Performing Rights Society v. London Theatre of Varieties*, [1924] A. C. 1.

(*n*) *British Association of Glass Bottle Manufacturers v. Nettlefold* (1911), 27 T. L. R. 527.

ultra vires its memorandum, cannot make itself a trade union (o).

"Also the provision of benefits to members."—This must be read as including an additional object which may or may not be combined with one of those previously enumerated (p). The words in any case are tautologous, as they are implied in the definition of regulation of relations (q).

REPEAL OF TRADES UNION FUNDS PROTECTION ACT, 1869, AS HEREIN STATED.

24. *The Trade Union Funds Protection Act, 1869, is hereby repealed.*

Provided that this repeal shall not affect:—

- (1) *Anything duly done or suffered under the said Act:*
- (2) *Any right or privilege acquired or any liability incurred under the said Act:*
- (3) *Any penalty, forfeiture, or other punishment incurred in respect of any defence under the said Act:*
- (4) *The institution of any investigation or legal proceeding or any other remedy for ascertaining, enforcing, recovering or imposing any such liability, penalty, forfeiture or punishment as aforesaid.*

"The Trade Union Funds Protection Act, 1869" (r).—

(o) *Aberdeen Master Masons' Association, Ltd. v. Smith*, [1908] S. C. 669.

(p) *Per Bankes, L.J.*, in *Performing Rights Society v. London Theatre of Varieties*, [1922] 2 K. B. 433, at p. 444.

(q) *Per Farwell, L.J.*, in *Osborne v. Amalgamated Society of Railway Servants*, [1909] 1 Ch. 163, at p. 191.

(r) This proviso was in the part repealed by the Statute Law Revision Act, 1883.

This Act was passed in consequence of the decisions in *Hornby v. Close* (s) and *Farrer v. Close* (t), which laid it down that a trade union operating in restraint of trade should not take advantage of the Friendly Societies Act, 1855, for the purpose of prosecuting the fraudulent officials. Section 1 of the 1869 Act provided that an association having rules which may operate in restraint of trade shall not be deemed, for the purpose of the Friendly Societies Act, 1855, section 24, to be a society established for a purpose which is illegal or not to be a friendly society. The necessity for this Act ceased on the passing of the Trade Union Act, 1870, and has since been repealed under the Statute Law Revision Act.

SCHEDULES.

FIRST SCHEDULE.

OF MATTERS TO BE PROVIDED FOR BY THE RULES OF TRADE UNIONS REGISTERED UNDER THIS ACT.

1. The name of the trade union and place of meeting for the business of the trade union.
2. The whole of the objects for which the trade union is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such trade union.
3. The manner of making, altering, amending, and rescinding rules.
4. A provision for the appointment and removal of a general committee of management, of a trustee, treasurer, and other officers.
5. A provision for the investment of the funds, and for an annual or periodical audit of accounts.

(s) (1867) L. R. 2 Q. B. 153.

(t) (1869) L. R. 4 Q. B. 602.

6. The inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union.

For analysis of this schedule, *supra*, pp. 88 *et seq.*

SECOND SCHEDULE.

	£	s.	d.
For registering trade union	1	0	0
For registering alterations in rules	0	10	0
For inspection of documents	0	2	6

See also Trade Union (Amendment of Fees) Regulations, 1922, S. R. & O., No. 844.

II.

TRADE UNION ACT (1871) AMENDMENT ACT, 1876 (39 & 40 VICT. c. 22).

AN ACT TO AMEND THE TRADE UNION ACT, 1871.
June 30th, 1876.

Whereas it is expedient to amend the Trade Union Act, 1871 :—

CONSTRUCTION AND SHORT TITLE.

1. This Act and the Trade Union Act, 1871, hereinafter termed “the principal Act,” shall be construed as one Act, and may be cited together as “the Trade Union Acts, 1871 and 1876,” and this Act may be cited separately as “The Trade Union Act Amendment Act, 1876.”

“*This Act and the Trade Union Act, 1871.*”—The Trade Disputes and Trade Unions Act, 1927 (*u*), the Trade Union (Amalgamation) Act, 1917 (*v*), the Trade Union Act, 1913 (*x*), the Trade Disputes Act, 1906 (*y*), and the above Acts may be cited together as the Trade Union Acts, 1871 to 1927 (*z*).

TRADE UNIONS TO BE WITHIN SECTION 28 OF FRIENDLY SOCIETIES ACT, 1875.

2. Notwithstanding anything in section five of the principal Act contained, a trade union, whether

(*u*) 17 & 18 Geo. 5, c. 22.

(*v*) 7 & 8 Geo. 5, c. 24.

(*x*) 2 & 3 Geo. 5, c. 30.

(*y*) 6 Edw. 7, c. 47.

(*z*) 17 & 18 Geo. 5, c. 22, s. 8 (1), *infra*, p. 291.

registered or unregistered, which insures or pays money on the death of a child under ten years of age shall be deemed to be within the provisions of [sections 62—67 of the Friendly Societies Act, 1896].

See section 5 of the principal Act, *supra*, p. 39.

In the original text, section 28 of the Friendly Societies Act, 1875.

The salient provisions are set out under section 5 of the principal Act, *supra*, p. 39; *vide* Baden Fuller, "Friendly Societies," 4th edition, pp. 137-143.

AMENDMENT OF SECTION 8 OF PRINCIPAL ACT.

3. Whereas by section eight of the principal Act it is enacted that "the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch"; the said section shall be read and construed as if immediately after the hereinbefore recited words there were inserted the words "or of the trustees of the trade union, if the rules of the trade union so provide."

See section 8 of the principal Act, *supra*, p. 58. The effect is that if the rules do not so provide, the real or personal estate remains vested in the branch trustees.

Vide Cope v. Crossingham, [1909] 2 Ch. 148; *Avery v. Andrews* (1882), 51 L. J. Ch. 414.

PROVISION IN CASE OF ABSENCE, ETC., OF TRUSTEE.

4. When any person, being or having been a trustee of a trade union or of any branch of a trade union, and whether appointed before or after the

legal establishment thereof, in whose name any stock belonging to such union or branch transferable at the Bank of England or Bank of Ireland is standing, either jointly with another or others, or solely, is absent from Great Britain or Ireland respectively, or becomes bankrupt or files any petition, or executes any deed for liquidation of his affairs by assignment or arrangement, or for composition with his creditors, or becomes a lunatic, or is dead, or has been removed from his office of trustee, or if it be unknown whether such person is living or dead the Registrar, on application in writing from the secretary and three members of the union or branch, and on proof satisfactory to him, may direct the transfer of the stock into the names of any other persons as trustees for the union or branch; and such transfer shall be made by the surviving or continuing trustee, and if there be no such trustee, or if such trustees refuse or be unable to make such transfer and the Registrar do direct, then by the Accountant-General or Deputy or Assistant Accountant-General of the Bank of England or Bank of Ireland, as the case may be; and the Governors and Companies of the Bank of England and Bank of Ireland respectively are hereby indemnified for anything done by them or any of their officers in pursuance of this provision against any claim or demand of any person injuriously affected thereby.

Every application to the Registrar to direct a transfer of stock shall follow, as near as may be, Form P, and shall be accompanied by a statutory declaration in Form Q, or as near thereto as the facts admit, and by the certificate

of the stock in respect of which the application is made (a).

Before making the application the trade union shall submit to the Registrar for examination a draft copy on foolscap paper, written on one side only of the proposed application and declaration (b).

The Registrar, before directing the transfer, may require further proof of any statement in the application (c).

The Registrar shall give a direction in Form R, so framed in each case as to suit the particular circumstances, and shall register the same and deliver the same to the applicants indorsed with the word "registered" and duly authenticated (d).

See section 8 of the principal Act, *supra*, and notes thereon, pp. 58-62.

"A trustee."—As to trustees generally, *supra*, pp. 56 *et seq.*

"Legal establishment thereof."—This section is not in terms confined in its operation to registered trade unions, but the words "legal establishment" of the union seem to suggest registration.

As to the effect of the War Loan (Supplemental Provisions) Act, 1915, and the Powers of the Public Trustee, *supra*, pp. 60, 61.

JURISDICTION IN OFFENCES.

5. The jurisdiction conferred in the case of certain offences by section 12 of the principal Act upon the Court of summary jurisdiction for the place in which the registered office of a trade union is situate may be exercised either by that Court or

(a) Regulation 17, *infra*, p. 359.

(b) Regulation 18, *infra*, p. 359.

(c) Regulation 19, *infra*, p. 359.

(d) Regulation 20, *infra*, p. 360. For forms, *infra*, pp. 373-375.

by the Court of summary jurisdiction for the place where the offence has been committed.

See section 12 of the principal Act, *supra*, p. 74.

REGISTRY OF UNIONS DOING BUSINESS IN MORE
THAN ONE COUNTRY.

6. Trade unions carrying or intending to carry on business in more than one country shall be registered in the country in which their registered office is situate, but copies of the rules of such unions, and of all amendments of the same, shall, when registered, be sent to the Registrar of each of the other countries, to be recorded by him, and until such rules be so recorded the union shall not be entitled to any of the privileges of this Act or the principal Act, in the country in which such rules have not been recorded, and until such amendments of rules be recorded the same shall not take effect in such country.

Vide *Mackendrick v. National Union of Dock Labourers in Great Britain and Ireland* (1910), 48 So. R. T. 17, and Regulations 15A (a), 15B (a) (*infra*, p. 358).

LIFE ASSURANCE COMPANIES ACT NOT TO APPLY
TO REGISTERED UNIONS.

7. *Whereas by the Life Assurance Companies Act, 1870, it is provided that the said Act shall not apply to societies registered under the Acts relating to friendly societies : the said Act (or the amending Acts) shall not apply nor be deemed to have applied to trade unions registered or to be registered under the principal Act.*

Repealed by Assurance Companies Act, 1909 (9 Edw. 7, c. 49), s. 37, Sched. IX. As to general provisions of the Assurance Companies Acts, *vide* section 5 of the principal Act, *supra*, pp. 46-48.

WITHDRAWAL OR CANCELLING OF CERTIFICATE.

8. No certificate of registration of a trade union shall be withdrawn or cancelled otherwise than by the Chief Registrar of Friendly Societies, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, by the Assistant Registrar for Scotland or Ireland, and in the following cases :

- (1) At the request of the trade union to be evidenced in such manner as such Chief or Assistant Registrar shall from time to time direct.
- (2) On proof to his satisfaction that a certificate of registration has been obtained by fraud or mistake, or that the registration of the trade union has become void under section six of the Trade Union Act, 1871, or that such trade union has wilfully and after notice from a Registrar whom it may concern, violated any of the provisions of the Trade Union Acts, or has ceased to exist.

Not less than two months' previous notice in writing, specifying briefly the ground of any proposed withdrawal or cancelling of certificate (unless where the same is shown to have become void as aforesaid, in which case it shall be the duty of the Chief or Assistant Registrar to cancel the same forth-

with), shall be given by the Chief or Assistant Registrar to a trade union before the certificate of registration of the same can be withdrawn or cancelled (except at its request).

A trade union whose certificate of registration has been withdrawn or cancelled shall, from the time of such withdrawal or cancelling, absolutely cease to enjoy as such the privileges of a registered trade union, but without prejudice to any liability actually incurred by such trade union, which may be enforced against the same as if such withdrawal or cancelling had not taken place.

As to withdrawal of certificate, *vide* 1913 Act, *infra*, p. 141.

“*Certificate of registration.*”—As to a certificated un-registered trade union, see Trade Union Act, 1913, section 2 (3), *infra*, p. 141.

“*Assistant Registrar.*”—The application to register is to the Registrar; the Assistant Registrars are only imported into the principal Act by virtue of the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 51.

“*In such manner.*”—The following regulations have been made :—

Every request by a trade union for withdrawal or cancelling of its certificate of registration shall be sent to the Chief Registrar or Assistant Registrar for Scotland or for Ireland, as the case may require, in Form J (e).

Notice before withdrawal or cancelling of certificate, where required, shall be in Form K (f)

The withdrawal or cancelling of certificate shall be in Form L (g).

(e) Regulation 12, *infra*, p. 359.

(f) Regulation 13, *infra*, p. 359.

(g) Regulation 14, *infra*, p. 359.

"*Has become.*"—If void *ab initio*, section 6 of the principal Act applies.

"*Void under section six*" [*of the principal Act*].—By section 6, if any of the purposes of a trade union are unlawful, the registration is void: unlawful means unlawful otherwise than being in restraint of trade (*h*). Notwithstanding that a vote is illegal, a registered trade union can be sued in its registered name, and retains, therefore, its registered condition until the certificate is withdrawn or cancelled (*i*).

By section 2 (1) of the Trade Union Act, 1913, the Registrar may withdraw the certificate of registration from a trade union if the constitution of the union has been altered in such a manner that, in his opinion, the principal objects of the trade union are no longer statutory objects, or if in his opinion the principal objects for which the union is actually carried on are not statutory objects.

This section appears to give the Registrar judicial powers of inquiring into the actual conduct of the trade union. Nevertheless the Registrar has no power to summon witnesses or call for documents.

Appeal.—No appeal lies under this Act, but any person aggrieved by the withdrawal of a certificate of registration on the ground that the principal objects have ceased to be "statutory objects" may appeal to the High Court, or in Scotland to the Court of Session, within the time and in the manner and on the conditions directed by Rules of Court (*k*). (For Rules, *supra*, p. 82.)

"*Cease to enjoy.*"—The trade union will become an unregistered trade union as from the date of cancellation. No other consequences seem to follow.

(*h*) *Swains v. Wilson* (1889), 24 Q. B. D. 252.

(*i*) *Parr v. Lancashire and Cheshire Miners' Federation*, [1913] 1 Ch. 366. See s. 6 of the principal Act and the notes thereunder, *supra*, p. 43.

(*k*) Trade Union Act, 1913, s. 2 (4).

"*Any liability may be enforced*"—*i.e.*, against the trustees under s. 9 of the 1871 Act.

MEMBERSHIP OF MINORS.

9. A person under the age of twenty-one, but above the age of sixteen, may be a member of a trade union, unless provision be made in the rules thereof to the contrary, and may, subject to the rules of the trade union, enjoy all the rights of a member except as herein provided, and execute all instruments and "give all acquittances" necessary to be executed or given under the rules, but shall not be a member of the committee of management, trustee, or treasurer of the trade union.

"*Give all acquittances.*"—As agent; this does not appear to override any disabilities or protection enforced by common law or statute upon infancy.

NOMINATION.

10. A member of a trade union not being under the age of sixteen years may, by writing under his hand, delivered at, or sent to, the registered office of the trade union, nominate any person not being an officer or servant of the trade union (unless such officer or servant is the husband, wife, father, mother, child, brother, sister, nephew or niece of the nominator), to whom any moneys payable on the death of such member not exceeding [one hundred] (*l*) pounds shall be paid at his decease,

(*l*) £50 in the original Act. Provident Nominations and Small Intestacies Act, 1883 (46 & 47 Vict. c. 47), s. 3; for text, *infra*, p. 324.

and may from time to time revoke or vary such nomination by a writing under his hand similarly delivered or sent; and on receiving satisfactory proof of the death of a nominator, the trade union shall pay to the nominee the amount due to the deceased member not exceeding the sum aforesaid.

Cf. Friendly Societies Act, 1906, section 56.

"*Writing.*"—Includes printing—Interpretation Act, 1889 (52 & 53 Vict. c. 63), Regulation 20.

As to attestation, vide *R. v. Gill* (1920), R. C. R. 63; *Morton v. Everet*, [1908] S. C. 171.

"*Delivered at or sent.*"—A delivery to the secretary may be good (*Hughes v. Hardy* (1885), F. S. Cas. 402).

"*Registered office.*"—*Supra*, pp. 97-99.

"*Nominate.*"—A nomination may be partly printed, and if made in a book kept at the office is deemed to be delivered at such office (m).

"*Any person.*"—Vide *Lavin v. Howley* (1897), 102 L. T. (Journal) 560.

As to assignment of nomination, vide *Re Griffin*, [1902] 1 Ch. 135.

If a member of a registered trade union, entitled from the funds thereof to a sum not exceeding £100, dies intestate, and without leaving any subsisting nomination at the time of his death, such sum shall be payable, without letters of administration, to the person who appears to a majority of the trustees, upon such evidence as they may deem satisfactory, to be entitled by law to receive the same (n).

If a member of any trade union who is entitled to make a nomination under this Act, or the Acts hereby amended, is illegitimate, and has died intestate, die without having made any such nomination, subsisting as to death, the trustees may pay the sum which such member might have

(m) *Ibid.*, s. 7.

(n) *Ibid.*, s. 8.

nominated to or amongst the person or persons who, in the opinion of the majority of them, would have been entitled thereto if such member had been legitimate, or if there are no such persons, then the deposits shall be dealt with as the Commissioners of the Treasury may direct.

All payments made by trustees under these powers are valid against persons claiming as next of kin or representative of the deceased; but such next of kin or representative may recover money paid by the trustees from the recipients (o).

The above provisions as to nomination may prove to be unenforceable at law where the trade union is illegal at common law.

In *Crocker v. Knight* (p) it was held by the Court of Appeal (Kay and Lindley, L.JJ.) that section 4 of the 1871 Act prevents the Court from entertaining legal proceedings to enforce the foregoing provisions as to nomination. "If section 10 of the 1876 Act had meant to repeal section 4 of the 1871 Act, I should have expected to find in it some such words as 'notwithstanding anything contained in section 4 of the principal Act, such nominee shall be entitled to sue'" (q).

CHANGE OF NAME.

11. A trade union may, with the approval in writing of the Chief Registrar of Friendly Societies, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, of the Assistant Registrar for Scotland or Ireland respec-

(o) Provident Nominations and Small Intestacies Act, 1883 (46 & 47 Vict. c. 47), s. 9. For the provision as to the prevention of frauds on the revenue in respect of moneys available for nomination, and for provisions in respect of nomination in the Channel Islands and the Isle of Man, *vide* Provident Nominations and Small Intestacies Act, 1883 (46 & 47 Vict. c. 47), ss. 10, 11, *infra*, p. 324.

(p) [1892] 1 Q. B. 702, at p. 707.

(q) *Per* Kay, L.J., *ibid.*, at p. 708, *supra*, p. 38.

tively, change its name by the consent of not less than two-thirds of the total numbers of members.

No change of name shall affect any right or obligation of the trade union or of any member thereof, and any pending legal proceedings may be continued by or against the trustees of the trade union or any other officer who may sue or be sued on behalf of such trade union notwithstanding its new name.

“*Change its name.*”—No trade union shall be registered under a name identical with that by which any other existing trade union has been registered, or so nearly resembling such name as to be likely to deceive the members or the public (r).

The application for approval and notice of change of name of a trade union shall be in Form N, and shall be sent in duplicate, accompanied by a statutory declaration in Form O, to the Chief Registrar, or, in the case of a trade union registered and doing business exclusively in Scotland or Ireland, to the Assistant Registrar for Scotland or Ireland, as the case may require. The Chief or Assistant Registrar, before approving the change of name, shall ascertain that the new name is not identical with that of any existing trade union known to him, or so nearly resembling the same as to be calculated to deceive; and if the change of name be approved, the word “approved” shall be written at the foot or end of each copy of the application, and the same shall be signed by the Chief Registrar or by such Assistant Registrar as the case may require, and shall be transmitted by him to the Central Office for registry (s).

(r) Trade Union Act, 1871, s. 13 (3); s. 3, *supra*, pp. 83, 84. See also *E. v. Registrar of Friendly Societies* (1872), L. R. 7 Q. B. 741.

(s) Regulation 16, *infra*, p. 359. For forms, *infra*, p. 372.

AMALGAMATION.

12. Any two or more trade unions may [if in the case of each or every such trade union, on a ballot being taken, the votes of at least fifty per cent. of the members entitled to vote thereat are recorded, and of the votes recorded those in favour of the proposal exceed by twenty per cent. or more the votes against the proposal] (t), become amalgamated together as one trade union, with or without any dissolution or division of the funds of such trade unions, or either or any of them, but no amalgamation shall prejudice any right of a creditor of either of any union party thereto.

For the full text of the Trade Union Amalgamation Act, 1917, *infra*, p. 157.

Section 12 applies to the amalgamation of one or more registered trade unions with one or more unregistered trade unions (u).

It would appear, as the effect of the 1917 Act, the rules now need not specifically authorise the amalgamation (x), but if they do not reliance must be placed upon the statute, the conditions of which must be complied with (y).

The obligation of registration on amalgamation can only apply to registered trade unions. See Trade Union (Amalgamation) Act, 1917, s. 2 (1).

In such cases, where two or more trade unions become amalgamated together, notice shall be given to the Central Office in duplicate in Form T accompanied by statutory declarations from each such trade union in Form U, and the Central Office shall return to the amalgamated union

(t) The words in brackets are inserted in place of repealed words; Trade Union (Amalgamation) Act, 1917, s. 1 (1), *infra*, p. 169.

(u) *Ibid.*, s. 1 (2).

(x) *Vide* Fry, J., in *Wolfe v. Matthews* (1882), 30 W. R. 838, at p. 839.

(y) *Per* Tomlin, J. in *Booth's Case*, [1928] Ch. 904, at p. 920.

one copy of the notice with the word "registered" duly authenticated (z).

"*May become amalgamated.*"—No statutory power for two unions to amalgamate is conferred except subject to the condition precedent contained therein. Although under section 13 of this Act, notice in writing of an amalgamation must be sent to the Registrar and registered, yet an amalgamation which is rendered invalid by reason of a failure to comply with the above condition is not validated by registration of the notice nor is the registration of the notice conclusive of the validity of the amalgamation (*Booth v. Amalgamated Marine Workers' Union*, [1926] Ch. 904; *Sheet Iron Workers' Society v. Boilermakers' Society* (1924), 40 T. L. R. 294).

"*No amalgamation shall prejudice a creditor.*"—Where the amalgamation is invalid, the amalgamated union holds the funds as trustees for the constituent unions (*Booth's Case*, *ibid.*).

REGISTRATION OF CHANGES OF NAMES AND AMALGAMATIONS.

13. Notice in writing of every change of name or amalgamation signed, in the case of a change of name, by seven members, and countersigned by the secretary of the trade union changing its name, and accompanied by a statutory declaration by such secretary that the provisions of this Act in respect of changes of name have been complied with, and in the case of an amalgamation signed by seven members, and countersigned by the secretary of each of every union party thereto, and accompanied by a statutory declaration by each or every such secretary that the provisions of this Act in

(z) Regulation 22, *infra*, p. 360; for forms, *infra*, p. 377.

respect of amalgamations have been complied with, shall be sent to the Central Office established by the Friendly Societies Act, 1875 (*a*), and registered there, and until such change of name or amalgamation is so registered the same shall not take effect.

For form of notice, *infra*, p. 377.

For legal results of notice of amalgamation, vide *Booth's Case*, [1926] Ch. 904, *supra*, p. 127.

DISSOLUTION.

14. The rules of every trade union shall provide for the manner of dissolving the same, and notice of every dissolution of a trade union under the hand of the secretary and seven members of the same, shall be sent within fourteen days thereafter to the Central Office hereinbefore mentioned, or, in the case of trade unions registered and doing business exclusively in Scotland or Ireland, to the Assistant Registrar for Scotland or Ireland respectively, and shall be registered by them: Provided that the rules of any trade union registered before the passing of this Act shall not be invalidated by the absence of a provision for dissolution.

"*The rules of every trade union.*"—The words of this section are "the rules of every trade union," *i.e.*, registered or unregistered. But, since there is no statutory obligation upon an unregistered trade union to have rules at all, and since the effect of this section, as applied to an unregistered trade union, would apparently be to compel an unregistered union, if it has rules, to register such rules only as provide for dissolution, and, if it has no rules, to make rules providing for dissolution, the provisions of

(a) 38 & 39 Vict. c. 60.

this section would, in all probability, be considered by the Court to apply to a registered trade union only.

The proviso to the section gives additional force to this suggestion.

Where there is no provision for dissolution in the rules of an unregistered society in the analogous case of an unregistered friendly society, the society cannot be dissolved except by the consent of all members or by order of the Court, and the Court ought not to interfere, unless there is a practical impossibility of the society continuing (b).

"Notice."—When a trade union is dissolved, notice of the dissolution shall be given to the Central Office, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, to the Assistant Registrar for Scotland or Ireland, as the case may require, in duplicate, and the Central Office or Assistant Registrar shall return one copy to the trade union indorsed with the word "registered" and duly authenticated (c).

Expelled members may be properly excluded from a winding-up (d).

On the dissolution of a trade union, in the absence of specific rules as to the distribution of the funds, a trust exists in favour of the members, and the funds must be distributed according to the amounts contributed by each, disregarding fines and forfeitures (e). As to the disposal of surpluses after claims have been satisfied, vide *Braith-*

(b) *Blake v. Smiher* (1906), 22 T. L. R. 698.

(c) Regulation 21; for form, *infra*, p. 376. The observations of Tomlin, J., in *Booth's Case* as to the non-conclusive effect of notice of amalgamation will presumably apply also to notice of dissolution, [1926] A. C. 904, at p. 920.

(d) *Strick v. Swansea Tin-Plate Co.* (1887), 36 Ch. D. 558. Cf. *Re Printers and Transferrers Amalgamated Trades Protection Society*, [1899] 2 Ch. 184; *Cunnack v. Edwards*, [1896] 2 Ch. 679; *Re Lead Co.'s Workmen's Fund Society*, [1904] 2 Ch. 196.

(e) *Re Printers and Transferrers Amalgamated Trades Protection Society*, [1899] 2 Ch. 184. See *vide Strick v. Swansea Tin-Plate Co.* (1887), 36 Ch. D. 558.

waite v. A.-G., Tierney v. Tough, Re Customs' Officers Mutual Guarantee Funds (f).

As to the property being claimed by the Crown as *bona vacantia*, see *Cunnack v. Edwards; Re Juvenile Foresters (g).*

If the purpose of the union for which the funds have been contributed is illegal, an originating summons to determine the proportions of members is inappropriate (*h*). As to societies similar to trade unions and withdrawal therefrom, see *Finch v. Oake (i).*

There is no special provision as to any instrument of dissolution such as is contained in sections 78 and 79 of the Friendly Societies Act, 1896. Where the dissolution is by signature of a member it may be made by an agent (*Dennison v. Jeffs*); but see *R. v. The Justices of Kent and Second Edinburgh, etc. v. Aitken (j)*. An infant can apparently consent to a dissolution (*Dennison v. Jeffs, ibid.*); but not through an agent if he is under sixteen (*Rudd v. James (k)*).

As to the rights of a minority under rules, see *Kemp v. Wright; Botten v. The City Building Society (kk)*.

An approved society cannot be dissolved without the sanction of the Minister of Health (National Health Insurance Act, 1924, ss. 37 and 40).

Winding up.—By reason of the powers conferred upon a trade union by the Trade Union Act, 1913, s. 1, a trade union can carry on business (subject to there being not more than twenty persons in the association or, in the case of banking, not more than ten) (Companies Act, 1908 (8 Edw. 7, c. 69, s. 1 (i.), (ii.)). In these circumstances a trade union which has less than twenty or ten

(f) [1909] 1 Ch. 510; [1914] I. R. 142; [1917] 2 Ch. 18.

(g) [1896] 2 Ch. 679; [1923] R. C. R. 51.

(h) *Re Amalgamated Society of Railway Servants, Addison v. Pilcher*, [1910] 2 Ch. 547.

(i) [1896] 1 Ch. 409.

(j) [1896] 1 Ch. 611; (1873) L. R. 8 Q. B. 305.

(k) (1892) 29 S. L. R. 456.

(kk) [1895] 1 Ch. 121; [1895] 2 Ch. 441.

members as the case may be in the case of its carrying on business or banking respectively, and a trade union with any number of members in the case of a trade union carrying on business as an assurance company, may be an unregistered company within the meaning of s. 267 of the Companies (Consolidation) Act, 1908.

In that case it would appear that such an unregistered company may be wound up under the provisions of s. 268 of the Companies (Consolidation) Act.

In the case of Friendly Societies, where there are analogous provisions, winding-up orders have been made in many cases ; but there does not appear to be a case where a trade union has availed itself of this jurisdiction.

PENALTY FOR FAILURE TO GIVE NOTICE.

15. A trade union which fails to give any notice or send any document which it is required by this Act to give or send, and every officer or other person bound by the rules thereof to give or send the same, or if there be no such officer, then every member of the committee of management of the union, unless proved to have been ignorant of, or to have attempted to prevent the omission to give or send the same, is liable to a penalty of not less than one pound and not more than five pounds recoverable at the suit of the Chief or any Assistant Registrar of Friendly Societies, or of any person aggrieved, and to an additional penalty of the like amount for each week during which the omission continues.

Cf. Friendly Societies Act, 1896, s. 84.

" *Fails* "—*Vide R. v. Senior (l)*.

(l) [1899] 1 Q. B. 283.

"Which it is required by this Act to give."—*I.e.*, carrying on or intending to carry on business in more than one country, changing name, amalgamation or dissolution, etc.

As to who may be informer, see *Cole v. Coulton (m)*.

As to notices and statements under the principal Act, *vide* section 15 thereof, *supra*, p. 97.

DEFINITION OF "TRADE UNION" ALTERED.

16. So much of section twenty-three of the principal Act as defines the term trade union, except the proviso qualifying such definition, is hereby repealed, and in lieu thereof be it enacted as follows :

The term "trade union" means any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the principal Act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade.

"Except the proviso," *supra*, p. 107.

See section 23 of the principal Act, *supra*, p. 106, and Trade Union Act, 1913, s. 1 (2), *infra*, p. 134.

Before the passing of the 1876 Act there might possibly have been some doubt as to whether a society imposing conditions with regard to the transaction of business was a trade union, and this doubt led to the passing of section 16 of the Act of 1876, which further defines a trade union

as being a combination for imposing restrictive conditions on any trade or business (n).

• The definition in the above section and the provision of benefits to members constitute the "statutory objects" of a combination which is a trade union (o).

Full definition.—The full definition of a trade union is thus to be found in part—

(a) in the Act of 1871, s. 23 (*supra*, p. 106),

(b) in the Act of 1876, s. 16,

(c) in the Act of 1913, ss. 1 and 2 (*infra*, p. 134),

to each of which reference should be made.

(n) *Per* Lord Alverstone, M.R., in *Chamberlain's Wharf, Ltd. v. Smith*, [1900] 2 Ch. 605, at p. 612; *Evans & Co., Ltd. v. Heathcote*, [1918] 1 K. B. 418; *Performing Rights Society, Ltd. v. London Theatre of Varieties, Ltd.*, [1924] A. C. 1; *Kirk v. Magistrates of Edinburgh*, [1922] S. C. 165.

(o) Trade Union Act, 1913, s. 1 (2), *infra*, p. 134.

III.

TRADE UNION ACT, 1913.

(2 & 3 GEO. 5, c. 30).

AN ACT TO AMEND THE LAW WITH RESPECT TO
THE OBJECTS AND POWERS OF TRADE UNIONS.

[*March 7th*, 1913.]

AMENDMENT OF LAW AS TO OBJECTS AND POWERS OF TRADE UNIONS (*p*).

1.—(1) The fact that a combination has under its constitution objects or powers other than statutory objects within the meaning of this Act shall not prevent the combination being a trade union for the purposes of the Trade Union Acts, 1871 to 1906, so long as the combination is a trade union as defined by this Act, and, subject to the provisions of this Act as to furtherance of political objects, such trade union shall have power to apply the funds of the union for any lawful objects or purposes for the time being authorised under its constitution.

(2) For the purposes of this Act, the expression "statutory objects" means the objects mentioned in section sixteen of the Trade Union Act Amendment Act, 1876, namely, the regulation of the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or the imposing of restrictive conditions on

(*p*) See, generally, pp. 107 *et seq.* and pp. 132 *et seq.*

the conduct of any trade or business, and also the provision of benefits to members.

"*Or powers.*"—The meaning of powers as distinguished from objects is not very clear. There is no definition of statutory powers.

"*Other than the statutory objects.*"—*I.e.*, those defined in sub-section 2 hereof.

"*Shall not prevent.*"—The significance of these words arises from the fact that the definition of a registered trade union contained in the Acts of 1871 and 1876 is a limiting and restrictive definition (*a*). Those Trade Union Acts (before the passing of this Act) constituted, as it were, a charter of incorporation; they rendered some things lawful which would otherwise be unlawful, and what is not within the ambit of the statutes (for which must now be read the Trade Union Act, 1913) is prohibited to a trade union (*b*).

It is a broad and general principle that companies incorporated by statute for special purposes and societies, whether incorporated or not, owing their constitution and their status to Act of Parliament, and having their objects and powers defined thereby, cannot apply their funds to any purpose foreign to the purposes for which they were established, or embark on any undertaking in which they were not intended by Parliament to be concerned (*c*).

(*a*) *Per* Cosens-Hardy, M.R., in *Osborne v. Amalgamated Society of Railway Servants*, [1909] 1 Ch. 163, at p. 175.

(*b*) *Per* Earl of Halsbury, *ibid.*, [1910] A. C. 87, at p. 93. In *Osborne's Case* Lord Macnaghten and Lord Atkinson clearly, and Cosens-Hardy, M.R., and Farwell, L.J., less clearly, applied the principle only to registered trade unions. Lord Halsbury seems to apply it to all trade unions. In *Wilson v. Typographical Association* (1911), 1 S. L. T. 253, Lord Skerrington expressed a definite opinion that the principle of the *Osborne* decision had no application to an unregistered union, though in this particular case he held that the application of union funds to political purposes was unlawful as being a breach of contract. Vice-Chancellor Leigh Clare in the Lancaster Chancery Court, on July 10th, 1910, applied the principle of *ultra vires* to an unregistered union.

(*c*) *Per* Lord Macnaghten in *Amalgamated Society of Railway Servants v. Osborne*, [1910] A. C. 87, at p. 94.

Whenever a corporation is created by Act of Parliament, with reference to the purposes of the Act, solely with a view to carrying those purposes into execution, not only the objects which the corporation may legitimately pursue must be ascertained from the Act itself, but the powers which the corporation may lawfully use in furtherance of these objects must either be expressly conferred or derived by reasonable implication from its provisions (*d*); and this principle is not confined to corporations created by special Acts of Parliament. It applies with equal force in every case where a society or association, formed for purposes recognised and defined by an Act of Parliament, places itself under the Act and by so doing obtains some statutory immunity or privilege. This law applies to all companies created by statute for a particular purpose (*e*).

In the case of *Amalgamated Society of Railway Servants v. Osborne* (*f*), it was said that "a definition which permitted trade unions to do the particular things named in the statute, and in addition all things not in themselves illegal, would be no definition at all" (*g*), but this is substantially the position effected by the 1913 Act.

"*Trade Union Acts, 1871 to 1906.*"—For this now read "Trade Union Acts, 1871 to 1927" (*h*).

"*So long as the combination is a trade union as defined by this Act.*"—*I.e.*, so long as the trade union has for its principal objects the statutory objects set out in the second sub-section of this section.

"*Subject to the provisions of this Act as to the furtherance of political objects.*"—See section 3 hereof.

"*Any lawful objects or purposes.*"—*I.e.*, any purposes lawful at common law or by statute, including objects

(*d*) *Per* Lord Watson in *Wenlock v. River Dee Co.* (1885), 10 App. Cas. 362.

(*e*) *Per* Lord Blackburn in *Ashbury Railway Carriage, etc., Co. v. Riche* (1874), L. R. 7 H. L. 653.

(*f*) [1910] A. C. 87.

(*g*) *Ibid.*, *per* Lord Macnaghten, at p. 94.

(*h*) Trade Disputes and Trade Unions Act, 1927, s. 8 (1).

in restraint of trade and objects contemplated by this Act.

By reason of the powers conferred upon a trade union by the Trade Union Act, 1913, section 1, a trade union can carry on business (subject to there being not more than twenty persons in the association or in the case of banking not more than ten (Companies Act, 1908, 8 Edw. 7, c. 69, s. 1 (i.), (ii.))). In practice, however, the unlimited liability attaching to the members of a trade union who trade collectively would probably induce such a trade union to carry on business through a subsidiary company or industrial society whose members' liability is limited.

As regards trade unions carrying on life assurance business, *vide supra*, p. 46. As regards unlawful objects or purposes in the nature of illegal strikes, *vide infra*, p. 268.

"*Constitution.*"—An unregistered or temporary trade union need not have written rules, but its constitution would probably include any enabling objects.

Before the passing of this Act, among the powers which were held to be *ultra vires* a registered trade union was the right to collect and administer funds for political purposes either to return and pay members of Parliament (i), or for the purpose of municipal representation (k). It was also probably *ultra vires* a trade union to carry on a trade or a newspaper (l), and after the *Osborne Case*, until the passing of the Act of 1913, the dictum of Mathew, J., in *Linaker v. Pilcher* (m), that a trade union could carry on a newspaper could not be regarded as correct, though, while a trade union could not at that time lawfully publish a newspaper in the

(i) *Amalgamated Society of Railway Servants v. Osborne*, [1910] A. C. 87.

(k) *Wilson v. Amalgamated Society of Engineers and Others*, [1911] 2 Ch. 324.

(l) *Per Farwell, L.J.*, in *Osborne v. Amalgamated Society of Railway Servants*, [1909] 1 Ch. 163, at p. 192.

(m) (1901) 84 L. T. 421.

ordinary sense of the word, it was probably within its rights in issuing a sheet sent to the members containing reports of their proceedings and the like (a). Now, however, a trade union can clearly carry on any business or undertaking authorised by its constitution, and (subject to the undertaking or financing of a particular newspaper being political within the meaning of section 3 of this Act, in which case the above obligations might still apply where the requirements of that section have not been complied with) a trade union may have power to finance or carry on a newspaper (b).

“*The objects mentioned in section 16 of the Trade Union Act, 1876*” (*vide supra*, p. 132).—Strictly speaking, the definition contained in section 16 of the Act of 1876 is not a definition of objects, but of a trade union. It is only by virtue of the various *dicta* in *Osborne's Case* that the elements of the definition can be deemed to be the objects of a trade union. By the 1913 Act the decision in the *Osborne Case* is to this extent adopted, and the definition in the 1876 Act is given statutory form as objects.

Section 16 of the Act of 1876 defines a trade union as “any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on any trade or business.” Before the *Osborne Case* no difficulty seems to have arisen in the application of this definition, and the Courts interpreted it somewhat widely, bringing under it combinations which have little to do with the popular conception of a trade union, such as a “tea clearing-house” and societies for the mutual protection of traders, which included among their rules provisions

(a) *Per* Farwell, L.J., in *Osborne v. Amalgamated Society of Railway Servants*, [1909] 1 Ch. 163, at p. 192.

(b) *Vide* *Forster v. National Amalgamated Union of Shop Assistants*, [1927] 1 Ch. 539; *Bennet v. National Amalgamated Society of Operative House and Ship Painters, etc.* (1915), 31 T. L. R. 203; *Carter v. United Society of Boilermakers, etc.* (1915), 60 Sol. J. 44.

imposing restrictive conditions (c). Nor did the scope of the definition, as such, directly come into question in the *Osborne Case*. The defining section was material only as affording an argument that the Legislature had intended trade unions or, at any rate, registered trade unions, to have no power to pursue purposes other than those mentioned in that section, except in so far as a power to pursue other purposes might be inferred from other provisions of the Trade Union Acts. But two of the Lords Justices expressed the opinion that, at any rate in some cases, the pursuit of other purposes might disentitle a combination to the status of a trade union, even though its purposes included those mentioned in the defining section. Thus Farwell, L.J., said: "The defendants' contention that the mere assumption of the name of trade union with some one rule that is in restraint of trade can possibly give to the persons assuming it the extraordinary privileges of the Acts of 1871 to 1906 is extravagant." So, too, Fletcher Moulton, L.J.: "I cannot agree with the view that any combination that has among its objects the regulation of such matters as are referred to in the statutory definition is *ipso facto* a trade union, and within the purview of the Acts relating to trade unions. . . . In my opinion a trade union, for the purposes of these Acts, must substantially be a trade union as defined and nothing more, always bearing in mind that there are important collateral or ancillary purposes, such as benefits to members, insurances, etc., which fairly come within the meaning of trade union purposes. For example, if an association of masters of less than twenty in number were to form a trading combination, they would not, in my opinion, be exempt from actions of tort merely because their resolutions aimed at the restriction of their competitors' trade

(c) *Vide* the "Present Law of Trade Disputes" (W. M. Geldart, 1913); *Mineral Water Bottle Exchange v. Booth* (1887), 36 Ch. D. 465; *Edinburgh, etc. Aerated Water Association v. Jenkinson* (1903), 40 Sc. L. R. 825; *Chamberlain's Wharf v. Smith*, [1900] 2 Ch. 605.

in a manner which would, before the Act of 1871, have been unlawful at common law by reason of being in restraint of trade. Nor would a combination, a substantial part of whose objects was political, be protected from actions for libel merely because it also sought to regulate the relations between masters and masters or between masters and workman" (d).

"*And also.*"—These words must be read as including an additional object which may or may not be combined with one of those previously enumerated (e).

The purpose of adding the words "the provision of benefits to members" arises from the doubt expressed by Lord Atkinson in *Osborne v. Amalgamated Society of Railway Servants* (f) as to whether such an object is covered by the words "regulating the relationships between workmen and workmen." In that case his Lordship expressed the view that the provision of benefits was certainly a purpose collateral or ancillary to that set forth in the definition.

"*Benefits.*"—As to the meaning of the word "benefits," a word which occurs in section 4 of the Act of 1871, see that section and the notes thereunder (*supra*, p. 35) and the above comments. See also *Lees v. Lancashire and Cheshire Miners' Association* (g).

DEFINITION OF TRADE UNION (gg).

2.—(1) The expression "trade union" for the purpose of the Trade Union Acts, 1871 to 1906,

(d) *Vide Gaskell v. Lancashire Miners' Association* (1912), 28 T. L. R. 518, in which the ingenious argument was used, without success, that because a society had political objects which were *ultra vires*, therefore it was not a trade union.

(e) *Per Bankes, L.J.*, in *Performing Rights Society v. London Theatre of Varieties*, [1926] 2 K. B. 433, at p. 444.

(f) [1910] A. C. 87, at p. 102; see also *Farwell, L.J.*, [1908] 1 K. B. 163, at p. 191.

(g) (1906) *Times* newspaper, June 20th; *Baker v. Ingall*, [1912] 3 K. B. 108.

(gg) See, generally, pp. 107 *et seq.* and pp. 132 *et seq.*

and this Act, means any combination, whether temporary or permanent, the principal objects of which are under its constitution statutory objects : Provided that any combination which is for the time being registered as a trade union shall be deemed to be a trade union as defined by this Act so long as it continues to be so registered.

(2) The Registrar of Friendly Societies shall not register any combination as a trade union unless in his opinion, having regard to the constitution of the combination, the principal objects of the combination are statutory objects, and may withdraw the certificate of registration of any such registered trade union if the constitution of the union has been altered in such a manner that, in his opinion, the principal objects of the union are no longer statutory objects, or if in his opinion the principal objects for which the union is actually carried on are not statutory objects.

(3) Any unregistered trade union may, if they think fit, at any time without registering the union apply to the Registrar of Friendly Societies for a certificate that the union is a trade union within the meaning of this Act, and the Registrar, if satisfied, having regard to the constitution of the union and the mode in which the union is being carried on, that the principal objects of the union are statutory objects, and that the union is actually carried on for those objects, shall grant such a certificate, but the Registrar may, on an application made by any person to him for the purpose, withdraw any such certificate if satisfied, after

giving the union an opportunity of being heard, that the certificate is no longer justified.

(4) Any person aggrieved by any refusal of the Registrar to register a combination as a trade union, or to give a certificate that an unregistered trade union is a trade union within the meaning of this Act, or by the withdrawal under this section of a certificate of registration, or of a certificate that an unregistered union is a trade union within the meaning of this Act, may appeal to the High Court, or in Scotland to the Court of Session, within the time and in the manner and on the conditions directed by Rules of Court.

(5) A certificate of the Registrar that a trade union is a trade union within the meaning of this Act shall, so long as it is in force, be conclusive for all purposes.

“Trade Union.”—The result of the procedure adopted in defining a trade union in the Acts of 1871, 1876 and 1913 is: (a) that the qualification contained in the proviso to section 23 of the Act of 1871 still remains part of the definition of a trade union; (b) that the whole of section 16 of the Act of 1876 forms part of the definition in spite of the fact that part only of its provisions are repealed in the Act of 1913; (c) that the definition must be treated as qualified by the provisions of section 1 (1) and by the proviso in section 2 (1) of the Act of 1913 (*h*).

“And this Act.”—And the Trade Union (Amalgamation) Act, 1917 (7 & 8 Geo. 5, c. 24), s. 2, and the Trade Disputes and Trade Unions Act, 1927 (17 & 18 Geo. 5, c. 22).

“Whether temporary or permanent.”—These words have

(*h*) Per Bankes, L.J., in *Performing Rights Society v. London Theatre of Varieties*, [1922] 2 K. B. 433, at p. 443. See also *Performing Rights Society v. Magistrates of Edinburgh*, [1922] S. C. 165.

never been judicially construed; it is conceived that an *ad hoc* strike committee might form a temporary combination.

“*Under its constitution.*”—A society, when its principal defined objects are statutory objects, may apparently, in fact, devote its principal energies and moneys to non-statutory objects.

“*Principal.*”—That is, principal in the opinion of the Registrar (see sub-section 2), subject to appeal.

“*Statutory objects.*”—See section 1 (2) of this Act.

“*For the time being registered.*”—These words give a statutory significance to registration which did not exist before the passing of the 1913 Act.

“*Shall not register.*”—For a trade union to be capable of registration it must have come into existence before the date of the application for registration and not be merely a proposed trade union at that date (i). Apparently, in registering, the Registrar can only look to the ostensible objects as contained in the constitution.

“*May withdraw.*”—The words of this section are very wide, and appear to give the Registrar considerable judicial power. It would seem that in considering the withdrawal of a certificate of registration, though not in granting it, he may now inquire into the actual conduct of the trade union as well as into its constitution. Under the 1871 and 1876 Acts the Registrar must cancel the certificate of registration if he is satisfied that the purposes of a trade union are or have become unlawful, but apparently he has no power under those statutes to cancel the certificate if a trade union, having lawful purposes, acts unlawfully, except when, after due notice from him, it wilfully violates the Trade Union Acts (*supra*, p. 19).

“*The mode in which the union is being carried on.*”—In granting a certificate the Registrar may inquire into the actual working of the trade union, though, apparently, he cannot in the case of registration. This

(i) *In re National Union of Shipstewards*, [1925] 1 Ch. 30.

would seem to preclude a new union from receiving a certificate.

"*And that the union is actually carried on.*"—These words seem tautologous, as the mode in which the union is carried on has already been laid down as a matter into which the Registrar may inquire.

"*Any person.*"—These words seem to be without limitation.

"*After giving the union.*"—This right is not expressly given in the case of the withdrawal of registration.

"*Any person aggrieved.*"—It is not clear whether the union itself can appeal under this sub-section, but apparently it can.

"*Rules of Court.*"—*Supra*, pp. 82, 83.

"*Be conclusive for all purposes.*"—*Cf.* sub-section 1 in the case of a registered union, where the equivalent words are "shall be deemed to be a trade union." See, generally, Trade Union Act, 1871, section 13 (*supra*, p. 78); Trade Union Act Amendment Act, 1876, section 8 (*supra*, p. 119).

In the "Present Law of Trade Disputes" (p. 51) Professor Geldart points out: "A question of great difficulty raised by these provisions, especially when taken in connexion with section 4 of the Trade Disputes Act, 1906, is the following. The Act of 1913 provides that a certificate given to an unregistered union is to be conclusive for all purposes 'so long as it is in force.' Does this mean 'conclusive as regards all acts done while it is in force,' or 'conclusive in any action brought while it is in force' ? To put the question in a concrete form, suppose that a body which claims to be a trade union commits a tort against a stranger, who then sues the body. Will it suffice, in order that the body should get the immunity given by section 4 of the Trade Disputes Act, that it held a certificate at the time when the tort was committed, even though the certificate has since been withdrawn on the ground that the Registrar is satisfied that the certificate is no longer justified ? or will it suffice

that the body at the time when the action is brought holds a certificate, even though it held no certificate when the act was committed, and was only enabled to obtain a certificate by altering its constitution subsequently to the commission of the tort? Neither result seems satisfactory. The best solution practically would be to hold that a certificate is conclusive only if it was in force both at the time when the act was done and also at the time when the action is brought, but it may be doubted whether the words of the statute are sufficient to bear this interpretation."

RESTRICTION ON APPLICATION OF FUNDS FOR
CERTAIN POLITICAL PURPOSES.

3.—(1) The funds of a trade union shall not be applied either directly or in conjunction with any other trade union, association, or body, or otherwise indirectly, in the furtherance of the political objects to which this section applies (without prejudice to the furtherance of any other political objects), unless the furtherance of those objects has been approved as an object of the union by a resolution for the time being in force passed on a ballot of the members of the union taken in accordance with this Act for the purpose by a majority of the members voting; and where such a resolution is in force, unless rules, to be approved, whether the union is registered or not, by the Registrar of Friendly Societies, are in force providing—

- (a) That any payments in the furtherance of those objects are to be made out of a separate fund (in this Act referred to as the political fund of the union). *The remainder of the paragraph is now repealed (Trade Dis-*

rules and Trade Union Act, 1927 (s. 3 (1)), Second Schedule); and

- (b) That a member who is exempt from the obligation to contribute to the political fund of the union, shall not be excluded from any benefits of the union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the union (except in relation to the control or management of the political fund) by reason of his being so exempt, and that contribution to the political fund of the union shall not be made a condition for admission to the union.

(2) If any member of a trade union alleges that he is aggrieved by a breach of any rule made in pursuance of this section, he may complain to the Registrar of Friendly Societies, and the Registrar after giving the complainant and any representative of the union an opportunity of being heard may, if he considers that such a breach has been committed, make such order for remedying the breach as he thinks just under the circumstances; and any such order shall be binding and conclusive on all parties without appeal and shall not be removable into any Court of law or restrainable by injunction (in Scotland by interdict), and on being recorded in the County Court (in Scotland the Sheriff Court), may be enforced as if it had been an order of such Court.

(3) The political objects to which this section applies are the expenditure of money—

- (a) On the payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election to Parliament or to any public office, before, during, or after the election in connection with his candidature or election ; or
- (b) On the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate ; or
- (c) On the maintenance of any person who is a member of Parliament or who holds a public office ; or
- (d) In connection with the registration of electors or the election of a candidate for Parliament or any public office ; or
- (e) On the holding of political meetings of any kind, or on the distribution of political literature or political documents of any kind, unless the main purpose of the meetings or of the distribution of the literature or documents is the furtherance of statutory objects within the meaning of this Act.

The expression " public office " in this section means the office of member of any county, county borough, district, or parish council or board of guardians, or of any public body who have power to raise money, either directly or indirectly, by means of a rate.

(4) A resolution under this section approving political objects as an object of the union shall take effect as if it were a rule of the union and may be

rescinded in the same manner and subject to the same provisions as such a rule.

(5) The provisions of this Act as to the application of the funds of a union for political purposes shall apply to a union which is in whole or in part an association or combination of other unions as if the individual members of the component unions were the members of that union and not the unions ; but nothing in this Act shall prevent any such component union from collecting from any of their members who are not exempt on behalf of the association or combination any contributions to the political fund of the association or combination.

[No assets of a trade union other than those forming part of the political fund shall be directly or indirectly applied or charged in furtherance of any political object to which section three of the Trade Union Act, 1913, applies ; and any charge in contravention of this subsection shall be void.] (Trade Disputes and Trade Unions Act, 1927, s. 4 (2), *infra*, p. 167.)

“ *The funds.* ”—The limitation on the defined political objects is wholly confined to the application of funds and assets ; therefore the pursuance of political objects not involving the application of funds or assets is generally permissible under section 1 (1), if it is authorised under the constitution, without any of the restrictions imposed by this section. As regards unregistered unions, the obligation as to political objects is directly imposed by the 1913 Act ; there is some doubt whether otherwise the doctrine of *ultra vires* would apply to them (*k*).

“ *Otherwise indirectly.* ”—It is doubtful how far a trade

(*k*) *Supra*, p. 135.

union would be "indirectly" so expending money if it were a part of an association which improperly expended the money without the knowledge of the union.

"*Political objects.*"—See sub-section 3. Other political objects do not fall within the section and are generally permissible.

"*Without prejudice.*"—Other political objects fall within section 1 (1) as generally permissible without a ballot, when within the constitution.

The rules for the taking of the ballot must be approved by the Registrar. Model rules have in fact been issued by the Registrar, but the Registrar has no power under the statute to issue rules himself, but only to approve rules submitted (l).

"*Rules to be approved.*"—The like observations apply.

"*Separate fund.*"—No general assets of a trade union may be charged with the payment of the political fund (Trade Disputes and Trade Union Act, 1927 (17 & 18 Geo. 5, c. 22), s. 4 (2)).

"*Exemption in accordance with this Act.*"—See now the Trade Disputes and Trade Unions Act, 1927, s. 4, *infra*, p. 164.

"*Shall not be excluded.*"—As to the remedy of an excluded member, *vide Forster v. National Amalgamated Union of Shop Assistants*, [1927] 1 Ch. 539.

"*Aggrieved by breach of rule.*"—Where a valid resolution has been passed and rules have been approved by the Registrar of Friendly Societies, a complaint that the political funds have been misapplied should be by action on breach of rule and not on the Statute (*per Eve, J.*, in *Forster v. The National Amalgamated Union of Shop Assistants* (m)).

"*May complain to the Registrar.*"—When a complaint is made to the Registrar by a member, if he fails to get relief, it is not open to him to resort to the Court; but

(l) Section 4, *infra*, p. 155.

(m) [1927] 1 Ch. 539, at p. 546.

quære whether if the member elects he can if he wishes go to the Court and not to the Registrar (*Forster's Case*) (n).

"*An opportunity of being heard.*"—The Registrar has no power to call for documents or compel the presence of witnesses or administer an oath.

"*Make such order.*"—The following are the County Court Rules as to the Recording and Enforcement of Orders of the Registrar of Friendly Societies under the Trade Union Act, 1913 (2 & 3 Geo. 5, c. 30), s. 3 :—

The following Rules shall stand as Order XLIB. of the County Court Rules, 1903, and shall be read and construed with those Rules and the subsequent Rules amending the same.

ORDER XLIB.

THE TRADE UNION ACT, 1913, SECTION 3.

1. (Order XLIB., rule 1.—Certificate Order under 2 & 3 Geo. 5, c. 30, s. 3 ; Form 431a.) Where on the complaint of a member of a trade union (in these rules referred to as "the complainant") that he is aggrieved by a breach by the union of any rule made in pursuance of section three of the Trade Union Act, 1913, an order for remedying the breach has been made by the Registrar of Friendly Societies under the said section, the Registrar shall, upon application made by him, issue his certificate of such order sealed with the seal of the Registry, according to the form in the Appendix.

2. (Order XLIB., rule 2. Costs of obtaining certificate.) If a solicitor is employed for the purpose by the complainant, there shall be allowed to such solicitor for the costs of obtaining the certificate five shillings, and such costs shall be entered on the certificate by the Registrar.

3. (Order XLIB., rule 3. Presentation and recording of certificate.) On the presentation of the certificate to the Registrar of the County Court in the district of which the complainant resides, or to the Registrar of the County Court in the district of which the registered office of the trade union, if registered, or the general office of the trade union, if unregistered, is situate, with a note of presentation appended thereto according to the form in the Appendix and a copy of the certificate written on foolscap paper,

(n) [1927] 1 Ch. 539.

the Registrar shall on payment of the prescribed fee (if any) seal the certificate and record the same by pasting it into the then current minute book of the Court on or about the last page of such book, and shall seal and date the copy of the certificate, and return it to the person presenting the certificate.

4. (Order XLIs., rule 4. Costs of recording certificate. If a solicitor is employed for the purpose by the complainant there shall be allowed to such solicitor for the costs of recording a certificate five shillings, which, with the fee (if any) for recording the certificate, shall be entered by the Registrar on the certificate and the copy therefor.

5.—(1) (Order XLIs., rule 5. Execution on default of compliance with order.) Where a certificate of an order made by the Registrar of Friendly Societies has been recorded under these Rules, execution may issue out of the Court in which the certificate is recorded against the goods and chattels of the union in default, in the same or the like manner as if the order of the Registrar of Friendly Societies had been made by the Court in which the certificate had been recorded.

(2) (Proof of amount due.) The party applying for execution shall satisfy the Registrar as to the amount in payment of which default has been made.

(3) (Cost of obtaining and recording certificate.) The entry on the certificate of the costs (if any) allowed for obtaining the certificate, and of the costs and fee (if any) allowed for recording the certificate, shall be an authority for the Registrar to add the said costs and fee to the amount to be recovered by execution.

(4) (Form of warrant : Form 432b.) The warrant of execution shall be according to the form in the Appendix.

6.—(1) (Other proceedings for enforcement of order.) The County Court Rules for the time being in force as to proceedings for the recovery of money due under judgment or orders of the County Court otherwise than by execution, or for the enforcement of such judgment or orders otherwise than by execution, shall, with the necessary modifications, apply to proceedings for the recovery of money due under, or the enforcement of any order of the Registrar of Friendly Societies of which a certificate has been recorded pursuant to these Rules.

(2) (Complainant and trade union deemed to be plaintiff and defendants.) For the purposes of any such proceedings the certificate of the order shall be deemed to be a judgment or order of the County Court in which the certificate has been recorded and the complainant shall be deemed to be the plaintiff and the trade union or the trustee or any other officer of the union authorised by

the rules thereof to bring or defend or cause to be brought or defended any legal proceedings on behalf of the union shall be deemed to be defendants.

(3) (Costs.) The costs of any such proceedings shall be in the discretion of the judge ; and if the union are ordered to pay such costs the judge may order the costs and fee (if any) allowed for obtaining the certificate to be included in the costs so ordered to be paid. The costs shall be taxed on such scale as the judge shall direct.

7. (Payment out of Court. Where the certificate lost or destroyed.) No money shall be paid out of Court without production of the sealed copy of the certificate, provided that in the event of such copy being lost or destroyed another copy may be sealed and given to the proper person upon proof by affidavit or otherwise to the satisfaction of the Registrar of the County Court that the person applying is the proper person, and that he is entitled to the money in Court, and upon payment of a fee of one shilling.

“ *Binding and conclusive without appeal.* ”—These words must be read subject to the general rights of the Courts to review for excess of jurisdiction (see *Forster's Case* (o)).

“ *Not removable by injunction.* ”—The remedies of certiorari, mandamus or prohibition apparently remain.

“ *Expenditure of money.* ”—The objects contemplated by the section are objects involving the expenditure of money. Other political objects not involving the expenditure of money do not therefore fall within the section.

“ *Prospective candidates.* ”—This phrase must probably be construed very broadly ; it is not limited to an adopted candidate.

“ *Public office.* ”—The expression means the office of member of any county, county borough, district or parish council or board of guardians, or of any public body who have power to raise money either directly or indirectly by means of a rate (o).

“ *Maintenance.* ”—This probably includes time and travelling allowances.

“ *Distribution of political literature.* ”—Probably the

production and publication of political literature, as distinguished from its distribution, is within the section (*vide In re Shelley* and *In re Barrow* (1886), 4 O'M. & H. 52 and 76).

Where the rules of a union sanctioned investments in a company whose object was to print and publish a newspaper "in the interests of and to promote the policy from time to time of the political party known as the Labour Party," Warrington, J., expressed the opinion that the expenditure of money on such a publication was not a genuine investment (*p*).

"*Political.*"—The meaning of this word is not very clear. The words "address of a political nature" occur in the Copyright Act, 1911, s. 20.

"*Unless the main purpose.*"—There are three classes of political documents: (1) Those falling within this section; (2) those whose main purpose is the furtherance of statutory objects; (3) those falling within neither category. In the third case no question as to the political fund can arise if the expenditure is authorised under the general constitution; the second case presents a question of fact as to the main purpose of the document to be decided in each individual case.

"*As if it were a rule.*"—Such a resolution may therefore be taken notwithstanding that the provisions of rules of the union as to the alteration of rules or the making of new rules have not been complied with (*infra*, section 4 (2) hereof).

"*As if the individual members.*"—The effect of these words is to make the combination of unions itself a trade union for political though not necessarily for industrial purposes. The ballot for political action, therefore, must

(*p*) *Bennett v. National Amalgamated Society of Operative House and Ship Painters and Others* (1915), 31 T. L. R. 203; see also *Carter v. Boilermakers, etc., Association* (1915), 60 Sol. J. 44; *vide Farwell, L.J., in Osborne v. Amalgamated Society of Railway Servants*, [1909] 1 Ch. 163, at p. 192; *Linaker v. Fisher* (1901), 70 L. J. (K. B.) 396.

be taken for the whole of the component membership and decided according to a majority of the whole vote.

"Nothing shall prevent any component union from collecting."—*Sed quære*, if moneys are taken illegally, whether the component union or the combination of unions or both is responsible (g).

PROVISION FOR BALLOT.

4.—(1) A ballot for the purposes of this Act shall be taken in accordance with rules of the union to be approved for the purpose, whether the union is registered or not, by the Registrar of Friendly Societies, but the Registrar of Friendly Societies shall not approve any such rules unless he is satisfied that every member has an equal right, and, if reasonably possible, a fair opportunity of voting, and that the secrecy of the ballot is properly secured.

(2) If the Registrar of Friendly Societies is satisfied, and certifies, that rules for the purposes of a ballot under this Act or rules made for other purposes of this Act which require approval by the Registrar, have been approved by a majority of members of a trade union, whether registered or not, voting for the purpose or by a majority of delegates of such a trade union voting at a meeting called for the purpose, those rules shall have effect as rules of the union, notwithstanding that the provisions of the rules of the union as to the alteration of rules or the making of new rules have not been complied with.

"Rules of the union to be approved."—Although the statute does not specifically prescribe rules, model rules

(g) *Vide s. 4 (2).*

for the ballot have been approved by the Registrar of Friendly Societies. They are as follows :—

TRADE UNION ACT, 1913.
MODEL RULES I.
BALLOT AT GENERAL OFFICE.

Note.

These model rules have been prepared in a form which appears most likely to be of general application to a ballot at the general office.

The Chief Registrar will consider in each case the particular circumstances of the union and will be willing to approve modifications suggested to meet such circumstances, provided that he is satisfied that every member has an equal right and, if reasonably possible, a fair opportunity of voting, and that the secrecy of the ballot is properly secured, as the Act requires.

.....Union.

. PARTIAL ALTERATION OF RULES.

RULES FOR BALLOT UNDER THE TRADE UNION ACT, 1913.

1. The Executive Committee shall cause to be printed a number of ballot papers in the form hereinafter provided, and also a number of copies of these ballot rules having at the end copies of the certificates of approval and registration equal respectively to the number of the members of the union, and shall cause every such ballot paper to be stamped with the stamp or seal of the union. No ballot paper shall be used for voting which is not so stamped.

2. Every ballot paper shall be in the following form :—

Trade Union Act, 1913.

.....Union.

Do you vote in favour of the resolution approving the furtherance of political objects within the meaning of the Trade Union Act, 1913, as set out on the back hereof, as an object of the above union ?

Yes.

Stamp or seal of Union.

No.

You must place a cross thus, X, in one, and one only, of the two spaces provided above ; otherwise your vote will not be counted.

You must not sign or make any other mark on the paper ; if you do, your vote will not be counted.

This paper must be enclosed in the envelope sent herewith and returned so as to reach the general office on or before 19

On the back of every ballot paper the following shall be printed :

The political objects referred to are as follows :—

The expenditure of money—

(a) on the payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election to Parliament or to any public office, before, during, or after the election in connection with his candidature or election ; or

(b) on the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate ; or

(c) on the maintenance of any person who is a member of Parliament or who holds a public office ; or

(d) in connection with the registration of electors or the selection of a candidate for Parliament or any public office ; or

(e) on the holding of political meetings of any kind, or on the distribution of political literature or political documents of any kind, unless the main purpose of the meetings or of the distribution of the literature or documents is the furtherance of statutory objects within the meaning of the Act ; that is to say, the regulation of the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or the imposing of restrictive conditions on the conduct of any trade or business, and also the provision of benefits to members.

The expression " public office," in the above, means the office of member of any county, county borough, district, or parish council, or board of guardians, or of any public body who have power to raise money, either directly or indirectly, by means of a rate.

3. There shall be sent with every ballot paper an envelope on which shall be printed " Ballot Paper. The Scrutineers..... Union," followed by the address of the general office.

4. No member shall be entitled to more than one vote, or shall vote on or send in more than one ballot paper.

5. Nothing shall be written or printed and no mark shall be

made on any part of any ballot paper or envelope or be inserted in any envelope, save as provided in rules 1, 2, 3, and 9 hereof, and in particular nothing shall be marked or indicated on any ballot paper or envelope or be inserted in any envelope by any person which can in any way identify the member voting. Any contravention of this rule by a member voting shall render the ballot paper invalid, and the vote shall not be counted.

6. The Executive Committee shall determine on what date or dates the ballot papers shall be sent to the members and before what date they shall be returned, and the date and time when the votes shall be counted. Such dates shall be advertised in the first available issue of the journal, report, or other periodical publication of the union, if any.

7. It shall be the duty of the chairman of the Executive Committee and the general secretary to secure that a ballot paper, a copy of these ballot rules and an envelope addressed in accordance with rule 3 hereof is delivered to every member of the union, and that each ballot paper delivered to a member is checked off against the name of the member in the general register of members or other record of membership.

8. Every member desiring to vote must return his ballot paper duly marked on or before the date mentioned on the ballot paper to the general office in the envelope provided; and the general secretary shall place such envelopes, unopened, as and when received, in a locked receptacle, and so retain them until the time fixed for the counting of the votes.

9. The Executive Committee shall appoint three members of the union who are not members of the Executive Committee to be scrutineers and, at the date and time appointed for the counting of the votes, the scrutineers shall destroy any ballot papers at the general office which have not been used for voting, and shall then open the envelopes and count the votes in the presence of the chairman of the Executive Committee, the general secretary, and as many members of the Executive Committee as desire to attend.

The scrutineers or a majority of them shall decide whether any ballot paper shall be rejected as being invalid under rule 5 hereof, and shall forthwith separate any paper so rejected and mark it "Rejected."

The scrutineers shall add up the total number of votes given for and against and the total number of votes rejected, and the result shall be certified on two forms of return supplied by the Chief Registrar of Friendly Societies, signed by the scrutineers, the chairman of the Executive Committee, and the general

secretary. One of these returns shall be forthwith posted up and kept posted up in a conspicuous place accessible to members at the general office of the union for at least one month, and the other shall be forthwith sent to the Chief Registrar of Friendly Societies.

A copy of such return shall be printed in the next available issue of the journal, report, or other periodical publication of the union, if any, and a copy shall be sent forthwith to the secretary of each branch and shall be handed by him for perusal to any member at his request.

10. As soon as the result has been certified as aforesaid, the chairman of the Executive Committee shall secure the ballot papers which have been counted and those which have been rejected respectively in two sealed parcels and shall forthwith deposit them with the union's trust securities and keep them so deposited for six months. During that time they shall be open to inspection by the Chief Registrar of Friendly Societies or any person or persons authorised in writing by him and shall, at his written request, be sent to his office. At the end of six months they shall be destroyed by, or under the supervision of, the chairman of the Executive Committee and the general secretary.

TRADE UNION ACT, 1913.

MODEL RULES II.

BALLOT AT BRANCHES.

Note.

These model rules have been prepared in a form which appears most likely to be of general application to a ballot at branches.

The Chief Registrar will consider in each case the particular circumstances of the union and will be willing to approve modifications suggested to meet such circumstances, provided that he is satisfied that every member has an equal right and, if reasonably possible, a fair opportunity of voting, and that the secrecy of the ballot is properly secured, as the Act requires.

.....Union.

PARTIAL ALTERATION OF RULES.

RULES FOR BALLOT UNDER THE TRADE UNION ACT, 1913.

1. The Executive Committee shall cause to be printed a number of ballot papers in the form hereinafter provided equal to the number of the members of the union, and shall cause a number of

such ballot papers equal to the number of the members of the branch to be sent in due time to the secretary of each branch. On receipt of such ballot papers the secretary shall at once stamp every ballot paper with the stamp of the branch, or, if there be no such stamp, shall sign them, and no ballot paper shall be used for voting which is not so stamped or signed.

The Executive Committee shall also cause to be printed and supply to every branch a number of copies of these ballot rules having at the end copies of the certificates of approval and registration sufficient for the purposes provided in rules 6 and 15 hereof.

2. Every ballot paper shall be in the following form :—

Trade Union Act, 1913.

.....Union.

Do you vote in favour of the resolution approving the furtherance of political objects within the meaning of the Trade Union Act, 1913, as set out on the back hereof, as an object of the above union ?

Yes.

Stamp of Branch or signature
of Branch Secretary.

No.

You must place a cross thus, X, in one, and one only, of the two spaces provided above, otherwise your vote will not be counted.

You must not sign or make any other mark on the paper ; if you do, your vote will not be counted.

On the back of every ballot paper the following shall be printed :

The political objects referred to are as follows :—

The expenditure of money—

(a) On the payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election to Parliament or to any public office, before, during, or after the election in connection with his candidature or election ; or

(b) on the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate ; or

(c) on the maintenance of any person who is a member of Parliament or who holds a public office ; or

(d) in connection with the registration of electors or the selection of a candidate for Parliament or any public office ;
or

(e) on the holding of political meetings of any kind, or on the distribution of political literature or political documents of any kind, unless the main purpose of the meetings or of the distribution of the literature or documents is the furtherance of statutory objects within the meaning of the Act ; that is to say, the regulation of the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or the imposing of restrictive conditions on the conduct of any trade or business, and also the provision of benefits to members.

The expression " public office," in the above, means the office of member of any county, county borough, district, or parish council, or board of guardians, or of any public body who have power to raise money, either directly or indirectly, by means of a rate.

3. Nothing shall be written or printed, and no mark shall be made on any part of any ballot paper, save as provided in rules 1, 2, 15, and 16 hereof, and in particular nothing shall be marked or indicated on any ballot paper by any person which can in any way identify the member voting.

4. The Executive Committee shall fix the period within which the ballots at the branches shall be taken, and the committee of each branch shall decide as soon as possible at what time or times within that period and at what place the ballot of that branch shall be taken. Such time or times and place shall be fixed so as to give all the members of the branch, so far as possible, a fair opportunity of voting.

5. Notice shall be published in such manner, whether in the union's journal or report or otherwise, as notices are usually given by the union or its branches to its members that a ballot will take place on the question whether the furtherance of political objects within the meaning of the Trade Union Act, 1913, shall be an object of the union, and that particulars of the time or times and place of the ballot are obtainable from the secretaries of the respective branches.

6. A notice stating the time or times and place of the ballot and a copy of these ballot rules shall be posted and kept posted up for at least 14 days before the earliest time appointed for the taking of the ballot at the branch in a conspicuous place accessible

to members at the office or meeting-place of each branch, and the secretary of each branch shall take steps to secure that every member of the branch is informed, as far as practicable, of the time or times and place of the ballot, and that he is entitled, if unable to attend, to apply for and receive a ballot paper under rule 15 hereof, and shall also supply any member with a copy of these rules at his request.

7. The committee of each branch shall provide, if practicable, a separate room or, if that is not practicable, a separate portion of a room, for the taking of the ballot, together with writing materials and a ballot box, which shall be kept locked from the commencement of the ballot until the time when the votes are counted.

8. The taking of the ballot shall be in charge of three scrutineers, two at least of whom shall be present throughout. Such scrutineers shall be appointed by the committee of the branch from members of the branch who are not members of the committee. One of such scrutineers, appointed for the purpose by the committee, shall retain the key of the ballot box and be responsible for its being kept locked as aforesaid.

9. No person shall be present in the room or portion of a room, as the case may be, during the voting, except the president, the secretary of the branch, the scrutineers, and the members who are actually voting.

10. Each member on presenting himself for the purpose of voting shall forthwith produce to one of the scrutineers, if required, satisfactory evidence of his membership, and his name or number shall be forthwith checked off by such scrutineer in the contribution book or other record of membership, and he shall be handed a ballot paper, on which he shall make his cross.

11. The member shall make his cross secretly, and shall not show his ballot paper to any person, but shall forthwith place it in the ballot box, and immediately quit the room or portion of the room, as the case may be.

12. If a member voting does not make a cross or places a cross in more than one of the spaces provided, or places any mark on the ballot paper or on the envelope mentioned in rule 15 hereof, or inserts anything in such envelope other than the ballot paper, by which he may be afterwards identified or otherwise, the ballot paper shall be invalid and the vote shall not be counted.

13. No member voting or other person shall take any ballot paper out of the voting-room, and no paper shall be deposited in the ballot box other than the ballot papers deposited therein by

the members voting or by the scrutineers as provided in rules 14 and 15 hereof.

14. If any member voting satisfies a scrutineer that he is incapacitated by blindness or other physical cause from voting in manner prescribed by these rules or is unable to read, such scrutineer may mark the ballot paper in manner directed by such member, and shall forthwith place such ballot paper in the ballot box.

15. Any member who will be unable to attend at any of the times appointed for voting must, if he desires to vote, write to the secretary of his branch, informing him that he will be unable to attend, and at the same time informing him of his number, if any, and address, and applying for a ballot paper, and the secretary shall thereupon check off his name or number in the contribution book or other record of membership and forward a ballot paper to him in such time as to enable him to return it in time for the purpose of voting. He shall forward him at the same time a copy of these rules and a notification of the time before which the ballot paper must be returned, and also an envelope on which shall be printed or written "Ballot Paper," and which shall be addressed to "The Scrutineers" at the office or voting place of the branch. Such member shall mark the ballot paper in manner hereinbefore provided and shall return the same enclosed in the envelope so as to reach the office or voting place of the branch before the time fixed for the conclusion of the voting at that branch. Nothing shall be marked, indicated, or inserted on or in the envelope or ballot paper by any person which can in any way identify the member so voting. The secretary shall place such envelopes unopened, as and when received, in a locked receptacle, and so retain them until the conclusion of the voting. He shall then hand them to the scrutineers in the voting-room. The scrutineers, or one of them in the presence of the others, shall open such envelopes and forthwith place the ballot papers contained therein in the ballot box before the box is opened, and they shall be counted in the same manner as the other ballot papers.

The secretary shall deliver to the scrutineers at the commencement of the voting a list of the members to whom he has sent ballot papers under this rule with their numbers, if any, and also their applications for ballot papers. The scrutineers shall check the list with the applications and shall not hand a ballot paper to any member who has so applied.

16. At the conclusion of the voting, and after the ballot papers received under the last preceding rule have been placed in the ballot box, all ballot papers at the branch which have not been used for voting shall be destroyed by the scrutineers. The ballot

box shall then be opened by the scrutineer in charge of the key, and the votes for or against shall be counted by the three scrutineers in the presence of one another and in the presence of the branch president, the branch secretary, and as many members of the branch committee as desire to attend. The scrutineers or a majority of them shall decide whether any ballot paper shall be rejected as being invalid under rule 12 hereof, and shall forthwith separate any paper so rejected and mark it "Rejected."

The result shall be certified on two forms of return provided by the Chief Registrar of Friendly Societies, signed by the three scrutineers, the branch president, and the branch secretary. One form shall be retained by the branch secretary for at least three months and handed by him for perusal to any member at his request, the other shall be sent forthwith to the general office. The Executive Committee shall obtain from the Chief Registrar and supply to each branch the forms required for this purpose.

17. When all the returns have been received from the branches, the Executive Committee or a sub-committee, consisting of not less than three members, specially appointed by the Executive Committee for the purpose, together with the chairman of the Executive Committee and the general secretary shall, as soon as may be, add up the total number of votes returned by the respective branches and the result shall be certified on two forms of return provided by the Chief Registrar of Friendly Societies, signed by the chairman, the general secretary, and three members of the committee or sub-committee, as the case may be. One copy of such return and one copy of the return from each branch shall be retained by the general secretary for at least three months and handed to any member for perusal at his request, the other copy of such return shall be forthwith sent to the Chief Registrar, together with the other copy of the return from each branch. A copy of the return certifying the result shall be published in the next available issue of the journal, report, or other periodical publication, if any, of the union, and a copy shall be sent forthwith to the secretary of each branch and shall be retained by him for at least three months and handed by him for perusal to any member at his request.

18. The ballot papers which have been counted and those which have been rejected shall, immediately after the result has been certified as aforesaid, be forwarded by the secretary of each branch to the general secretary in a sealed packet, and the general secretary shall forthwith deposit them with the union's trust securities and keep them so deposited for six months. During that time such packets and the ballot papers contained in them

or any of them shall be open to inspection by the Chief Registrar of Friendly Societies and any person or persons authorised in writing by him, and shall, at his written request, be sent to his office. At the end of six months they shall be destroyed by, or under the supervision of, the chairman of the Executive Committee and the general secretary.

“*Or by a majority of delegates.*”—Model Resolutions have been drafted as follows :—

MODEL RESOLUTIONS TO BE ADOPTED BY
MEMBERS OR DELEGATES.

TRADE UNION ACT, 1913.

.....Union.

It is hereby resolved :—

1. That the rules of the union be altered by the addition of the rules for ballot under the Trade Union Act, 1913, to be approved by the Chief Registrar of Friendly Societies ; and that a ballot be taken in accordance with such rules on a resolution approving the furtherance of political objects within the meaning of the said Act as an object of the union.

2. That, if a majority of the members of the union voting on such ballot pass such resolution, the rules of the union be further altered by adding the rules for the political fund of the union, to be approved by the Chief Registrar of Friendly Societies.

5 and 6.—These sections have been repealed (Trade Disputes and Trade Unions Act, 1927, First Schedule), and in lieu thereof section 4 of that Act has been substituted as follows :—

PROVISIONS AS TO POLITICAL FUND.

[4.—(1) It shall not be lawful to require any member of a trade union to make any contribution to the political fund of a trade union unless he has at some time after the commencement of this Act and before he is first, after the thirty-first

day of December, 1927, required to make such a contribution delivered at the head office or some branch office of the trade union, notice in writing in the form set out in the First Schedule to this Act of his willingness to contribute to that fund and has not withdrawn the notice in manner hereinafter provided; and every member of a trade union who has not delivered such a notice as aforesaid, or who, having delivered such a notice, has withdrawn it in manner hereinafter provided, shall be deemed for the purposes of the Trade Union Act, 1913, to be a member who is exempt from the obligation to contribute to the political fund of the union, and references in that Act to a member who is so exempt shall be construed accordingly:

Provided that, if at any time a member of a trade union who has delivered such a notice as aforesaid gives notice of withdrawal thereof, delivered at the head office or at any branch office of the trade union, he shall be deemed for the purposes of this subsection to have withdrawn the notice as from the first day of January next after the delivery of the notice of withdrawal.

For the purposes of this subsection a notice may be delivered personally or by any authorised agent, and any notice shall be deemed to have been delivered at the head or a branch office of a trade union if it has been sent by post properly addressed to that office.

(2) All contributions to the political fund of a trade union from members of the trade union who are liable to contribute to that fund shall be

levied and made separately from any contributions to the other funds of the trade union and no assets of the trade union, other than the amount raised by such a separate levy as aforesaid, shall be carried to that fund. . . .

(For remainder of this sub-section, forbidding the charging of the general assets, *vide supra*, p. 148.)

(3) All rules of a trade union made and approved in accordance with the requirements of section three of the Trade Union Act, 1913, shall be amended so as to conform to the requirements of this Act, and as so amended shall be approved by the Registrar of Friendly Societies (in this Act referred to as "the Registrar") within six months after the commencement of this Act or within such further time as the Registrar may in special circumstances allow, and if the rules of any trade union are not so amended and approved as aforesaid they shall be deemed not to comply with the requirements of the said section.

(4) Notwithstanding anything in this Act, until the thirty-first day of December, nineteen hundred and twenty-seven, it shall be lawful to require any member of a trade union to contribute to the political fund of the trade union as if this Act had not been passed.

(5) If the Registrar is satisfied, and certifies that rules for the purpose of complying with the provisions of this section or for the purposes of the Trade Union Act, 1913, as amended by this Act, which require approval of the Registrar, have been approved by a majority of the members of a

trade union voting for the purpose or by a majority of delegates of such a trade union voting at a meeting called for the purpose, the Registrar may approve those rules and those rules shall thereupon have effect as rules of the union notwithstanding that the provisions of the rules of the union as to the alteration of rules or the making of new rules have not been complied with.

(6) Section 16 of the Trade Union Act, 1871 (which provides for the transmission to the Registrar of annual returns by registered trade unions), shall apply to every unregistered trade union so far as respects the receipts, funds, effects, expenditure, assets, and liabilities of the political fund thereof.]

(As to this section generally, *infra*, p. 28.)

7. The Registrar of Friendly Societies means in relation to a registered trade union whose registered office is situate in England or Wales, the Chief Registrar of Friendly Societies, and in relation to a registered trade union whose registered office, or an unregistered trade union whose principal office, is situated in Scotland or Ireland, the Assistant Registrar of Friendly Societies for Scotland or Ireland respectively.

Vide Trade Union Act, 1871, s. 17; Friendly Societies Act, 1896, ss. 1 to 7. As to Ireland, *supra*, p. 11.

8. This Act may be cited as the Trade Union Act, 1913, and may be construed as one with the Trade Union Acts, 1871 and 1876; and this Act and the Trade Union Acts, 1871 and 1906, may

be cited together as the Trade Union Acts, 1871 to 1913.

The following schedule is substituted for the schedule to this Act by the Trade Disputes and Trade Unions Act, 1927, s. 4 (1) (Second Schedule) :—

[FORM OF POLITICAL FUND CONTRIBUTION NOTICE.

[Name of Trade Union.....

Name of member's branch (if any)

POLITICAL FUND (CONTRIBUTION NOTICE).

I hereby give notice that I am willing, and agree, to contribute to the Political Fund of the Union and I understand that I shall, in consequence, be liable to contribute to that Fund and shall continue to be so liable unless I deliver at the head office, or some branch office, of the Union a written notice of withdrawal: I also understand that after delivering such a notice of withdrawal I shall still continue to be liable to contribute to the political fund until the next following first day of January.

A..... B.....

Address

Membership number (if any).....

.....day of.....19....]

Infra, p. 294.

IV.

TRADE UNION (AMALGAMATION) ACT, 1917

(7 & 8 GEO. 5, c. 34).

AN ACT TO AMEND THE TRADE UNION ACT AMENDMENT ACT, 1876, WITH RESPECT TO THE AMALGAMATION OF TRADE UNIONS.

[*July 10th*, 1917.

AMALGAMATION OF UNIONS.

1.—(1) Any two or more trade unions may become amalgamated together as one trade union if in the case of each or every such trade union, on a ballot being taken, the votes of at least fifty per cent. of the members entitled to vote thereat are recorded, and of the votes recorded those in favour of the proposal exceed by twenty per cent. or more the votes against the proposal; and, accordingly, section 12 of the Trade Union Act Amendment Act, 1876, shall have effect as if for the words " by the consent of not less than two-thirds of the members of each or every such trade union " there were substituted the words " if in the case of each or every such trade union, on a ballot being taken, the votes of at least fifty per cent. of the members entitled to vote thereat are recorded, and of the votes recorded those in favour of the proposal exceed by twenty per cent. or more the votes against the proposal."

(2) For removing doubts it is hereby declared that the said section twelve applies to the amalga-

mation of one or more registered trade unions with one or more unregistered trade unions.

“*May become amalgamated.*”—No statutory power to amalgamate is conferred by the Acts of 1876 and 1917, except subject to the conditions precedent to as the ballot mentioned in the section (*r*). Where the rules do not authorise amalgamation the statutory power is the only one which can be relied upon (*s*).

A vote of one of two amalgamating unions only, the other union purporting to absorb the former without ballot, is not a valid amalgamation (*t*). See also Friendly Societies Act, 1896, s. 70.

“*Section 12, etc.*” (*supra*, p. 126).—An invalid amalgamation is not validated by registration of the purported amalgamation under section 13 of the 1876 Act, nor by the registration of the resulting union under section 13 (5) of the Act of 1871 (*u*).

SHORT TITLE AND CITATION.

2. This Act may be cited as the Trade Union (Amalgamation) Act, 1917, and the Trade Union Acts, 1871 to 1913, and this Act may be cited together as the “Trade Union Acts, 1871 to 1917.”

(*r*) *Per Tomlin, J.*, in *Booth v. Amalgamated Marine Workers Union*, [1926] 1 Ch. 904, at p. 919.

(*s*) *Ibid.*, *vide Fry, J.*, in *Wolfe v. Mathews* (1882), 20 W. R. at p. 839.

(*t*) *Sheet Iron Workers, etc., Society v. Boilermakers, etc., Society* (1924), 40 T. L. R. 294.

(*u*) *Per Tomlin, J.*, in *Booth's Case*, *ibid.*, at pp. 919, 920. *Cf. Dewhurst v. Clarkson* (1854), 3 E. & B. 194; *Rosenberg's Case* (1889), 22 Q. B. D. 373, 379.

V.
RESTRICTIONS ON RIGHT TO JOIN
TRADE UNIONS.

(1)
POLICE ACT, 1919
(9 & 10 GEO. 5, c. 46).

AN ACT TO AMEND THE LAW RELATING TO THE
POLICE IN GREAT BRITAIN. [*August 15th, 1919*]

CONSTITUTION OF POLICE FEDERATION.

1.—(1) For the purpose of enabling the members of the police forces of England and Wales to consider and bring to the notice of the police authorities and the Secretary of State all the matters affecting their welfare and efficiency, other than questions of discipline and promotion affecting individuals, there shall be established in accordance with the Schedule to this Act an organisation to be called the Police Federation, which shall act through local and central representative bodies as provided in that Schedule.

(2) The Police Federation and every branch thereof shall be entirely independent of and unassociated with any body or person outside the police service.

PROHIBITION AGAINST CONSTABLES BEING
MEMBERS OF TRADE UNIONS.

2.—(1) Subject as aforesaid, it shall not be lawful for a member of a police force to become, or after the expiration of one month from the passing of this Act to be, a member of any trade union, or of any association having for its objects, or one of its objects, to control or influence the pay, pensions, or conditions of service of any police force; and any member of a police force who contravenes this provision shall be disqualified for continuing to be a member of the force; and, if any member of a police force continues to act as such after becoming so disqualified, he shall forfeit all pension rights and be disqualified for being thereafter employed in any police force:

Provided that, where a man was a member of a trade union before becoming a constable, he may, with the consent of the chief officer of police, continue to be a member of that union during the time of his service in the police force.

(2) If any question arises whether any body is a trade union or an association to which this section applies, the question shall be determined by the Minister of Labour.

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POLICE FORCES TO WHICH ACT APPLIES.

12.—This Act shall apply to the City of London Police and to every police force to which the Police Act, 1880, applies; and, in relation to the City of

London Police, the expressions " police authority " and " police fund " mean the mayor, aldermen, and commonalty of the city of London in common council assembled, and the fund out of which the expenses of the city police are defrayed, and, in relation to any other police force, have the same meaning as in the Police Act, 1890.

APPLICATION TO SCOTLAND.

13.—(1) This Act shall apply to Scotland, with the substitution of references to the Secretary for Scotland for references to the Secretary of State, of references to Scotland for references to England and Wales, and of references to the Police (Scotland) Act, 1890, for references to the Police Act, 1890, and in the case of the Schedule, subject to such modifications as the Secretary for Scotland may by order prescribe for the purpose of adapting the provisions of that Schedule to the circumstances of Scotland.

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SHORT TITLE AND EXTENT.

15.—(1) This Act may be cited as the Police Act, 1919.

(2) This Act shall not extend to Ireland.

(2)

TRADE DISPUTES AND TRADE UNIONS
ACT, 1927.

AN ACT TO DECLARE AND AMEND THE LAW RELATING TO TRADE DISPUTES AND TRADE UNIONS, TO REGULATE THE POSITION OF CIVIL SERVANTS AND PERSONS EMPLOYED BY PUBLIC AUTHORITIES IN RESPECT OF MEMBERSHIP OF TRADE UNIONS AND SIMILAR ORGANISATIONS, TO EXTEND SECTION FIVE OF THE CONSPIRACY AND PROTECTION OF PROPERTY ACT, 1875, AND FOR OTHER PURPOSES CONNECTED WITH THE PURPOSES AFORESAID. [*July 29th, 1927.*]

REGULATIONS AS TO ORGANISATIONS OF WHICH ESTABLISHED CIVIL SERVANTS MAY BE MEMBERS.

5.—(1) Amongst the regulations as to the conditions of service in His Majesty's civil establishments there shall be included regulations prohibiting established civil servants from being members, delegates, or representatives of any organisation of which the primary object is to influence or affect the remuneration and conditions of employment of its members, unless the organisation is an organisation of which the membership is confined to persons employed by or under the Crown and is an organisation which complies with such provisions as may be contained in the regulations for securing that it is in all respects independent of, and not affiliated to any such organisation as aforesaid the membership of which is not confined to persons employed by or under the Crown or any federation

comprising such organisations, that its objects do not include political objects, and that it is not associated directly or indirectly with any political party or organisation :

Provided that the regulations made in compliance with the provisions of this section shall not prevent—

- (a) any person who is at the commencement of this Act an established civil servant from remaining a member of any trade union or organisation not composed wholly or mainly of persons employed by or under the Crown of which he had, at the commencement of this Act, been a member for more than six months if under the rules thereof there had on the fourth day of April, nineteen hundred and twenty-seven, accrued or begun to accrue to him a right to any future payment during incapacity, or by way of superannuation, or on the death of himself or his wife, or as provision for his children ; or
- (b) any person employed at the commencement of this Act by or under the Crown who thereafter becomes an established civil servant from remaining, so long as he is not appointed to a position of supervision or management, a member of any trade union or organisation, not composed wholly or mainly of persons employed by or under the Crown, of which he is a member at the date when he so becomes an established civil servant, if under the

rules thereof there has at that date accrued, or begun to accrue, to him a right to any future payment during incapacity, or by way of superannuation, or on the death of himself or his wife, or as provision for his children ; or

- (c) a person who in addition to being an established civil servant is, apart from his service as such, also engaged in some other employment or occupation from being a member, delegate, or representative of any trade union or organisation, of which the primary object is to influence or affect the remuneration or conditions of employment of persons engaged in that employment or occupation.

(2) Subject as hereinafter provided, any established civil servant who contravenes the regulations made under this section shall be disqualified for being a member of the Civil Service :

“ Provided that in the case of a first offence a civil servant shall forthwith be warned by the head of his department, and the said disqualification shall not take effect if within one month after such warning the civil servant ceases to contravene the said regulations.

(3) In this section—

- (a) the expression “ established civil servant ” means a person serving in an established capacity in the permanent service of the Crown, and includes any person who, having been granted a certificate by the Civil Service Commissioners, is serving a

probationary period preliminary to establishment; and

- (b) the expression "conditions of employment" means in relation to persons other than persons employed by or under the Crown the conditions of employment of persons employed under a contract of service.

PROVISIONS AS TO PERSONS EMPLOYED BY LOCAL AND OTHER PUBLIC AUTHORITIES.

6.—(1) It shall not be lawful for any local or other public authority to make it a condition of the employment or continuance in employment of any person that he shall or shall not be a member of a trade union, or to impose any condition upon persons employed by the authority whereby employees who are or who are not members of a trade union are liable to be placed in any respect either directly or indirectly under any disability or disadvantage as compared with other employees.

(2) It shall not be lawful for any local or other public authority to make it a condition of any contract made or proposed to be made with the authority, or of the consideration or acceptance of any tender in connection with such a contract, that any person to be employed by any party to the contract shall or shall not be a member of a trade union.

(3) Any condition imposed in contravention of this section shall be void.

As to the Trade Disputes and Trade Unions Act, 1927, generally, *infra*, p. 268.

PART II—CRIMINAL AND TORTIOUS.

Historical.

THE criminal and tortious liabilities of trade unions and their members for wrongs done by them which may give rise to prosecutions or actions in tort respectively, may be conveniently divided into two classes :—

- (a) those committed in combination ; and
- (b) those committed by individuals.

CRIMINAL LIABILITY.—*THE LAW BEFORE 1875.*

Conspiracy.

The history of the criminal liability of trade unions arising out of wrongful action in combination, known under the general name of “ conspiracy,” is as follows :—

Apart from statute, acts which are criminal if done by an individual are *à fortiori* criminal if done in combination, as for example through a trade union ; but unless there is a criminal conspiracy, that is unless two or more persons agree together to do something contrary to law, or wrong or harmful to another person, or to use unlawful means in the carrying out of an object not otherwise lawful, there is no crime committed unless either the object of the combination is unlawful or illegal methods are resorted to in the carrying of it out (*w*).

(*w*) Per Lord Brampton in *Quinn v. Leatham*, [1901] A. C. 495, at p. 528 ; *vide the Poulterers' Case* (1611), 9 Co. Rep. 55b. As for the earlier view of illegality, *vide R. v. Daniell* (1704), 6 Mod. R. 99 ; *R. v. Eccles* (1783), 1 Leach, 274 ; *Vertus v. Clive (Lord)* (1789), 4 Burr. 2472 ; as for the more recent view, *vide R. v. Stainer* (1870), L. R. 1 C. C. R. 230, *per Keating, J.*, at p. 235 ; *per Lord Hannen* at p. 58, and Lord Bramwell, at p. 46, in *Mogul Steamship Co. v. McGregor, Gow & Co.*, [1892] A. C. 25.

Statutory illegality.—From early times combinations in restraint of trade were made illegal conspiracies by statute, partly because the State for a very long time itself regulated the conditions of labour, partly because of an early belief, outside the strict domain of State control, in freedom of trade, and partly from a general aversion, not confined to English law, to combinations within the State which might possibly be hostile to it.

Among early statutes dealing with criminal combinations are to be noted three Acts of Edward I. (x); the Statutes of Labourers, 1349 and 1350 (y) (applied as late as 1818 to a combination to raise wages among cotton spinners), both of which fixed wages and made the evasion of their provisions criminal. Other similar statutes were passed—31 Edw. 3, stat. 1, c. 7; 34 Edw. 3, cc. 9—11; 42 Edw. 3, c. 6; 2 Rich. 2, c. 8; 7 Rich. 2, c. 5; 12 Rich. 2, cc. 3—9; 13 Rich. 2, c. 8, followed by 3 Hen. 6, c. 1 (1425), which forbade “the annual congregations and confederacies made by masons in their general chapters assembled to violate the Statutes of Labourers”; 4 Hen. 4, c. 14; 7 Hen. 4, c. 17; 2 Hen. 5, stat. 2, c. 2; 2 Hen. 6, c. 18; 6 Hen. 6, c. 3; 8 Hen. 6, c. 8; 4 Hen. 8, c. 5 (1512); 6 Hen. 8, c. 3 (1514); 3 & 4 Edw. 6, c. 22. In Scotland, according to Burnett, 237, “a combination to alter the price of labour is indictable at common law,” *vide* Hunter’s case (z) and Sprots’ case (a).

Similar legislation preventing combinations existed in Scotland, *i.e.*, 5 Jac. 1 (1411), dealing with “the fees of craftsmen, and the price of their work.” Other Acts are 7 Jac. 1 (Scotland—1413); (1426) Jac. 1, c. 4. The 5th Mary (Scotland—1547) dealt with “the price of craftsmen’s work.” These Acts forbade combinations.

(x) Ordinance of Conspirators (1292), 20 Edw. 1; (1300) 28 Edw. 1, c. 10; (1305) 33 Edw. 1.

(y) 23 Edw. 3; 25 Edw. 3, a. 2.

(z) (1837) 1 Swin. 550.

(a) (1844) 2 Broun 179.

Combination among silk-workers was forbidden in England by 14 Chas. 2, c. 15 (1662), and tailors' wages were regulated and agreements to raise them made illegal by 7 Geo. 1, c. 12 (1720—1). In 1725 "An Act to prevent unlawful combinations of workmen employed in the woollen manufactures, and for the better payment of their wages" was passed (12 Geo. 1, c. 34, 1725—6). This was followed by 4 Geo. 2, c. 14 (1730), "An Act to prevent unlawful combinations of workmen in all trades," in Ireland; by 22 Geo. 2, c. 27 (1748—9), which applied to the hat trade, and by 29 Geo. 2, c. 33 (1755—6), which provided for the fixing of piecework rates by the justices. In the reign of George III. some fifteen or sixteen other combination Acts were passed dealing with special trades prior to the nineteenth century (*b*).

In 1799 all combinations of workmen to regulate the conditions of their work were made illegal (*c*), and in 1800 the Combination Act of 1799 was amended and a new general consolidating Act "to prevent unlawful combinations of workmen" became law. This Act only differed from that of 1799 in providing machinery for arbitration. By the Combination Act of 1800 (*d*) every combination for obtaining an advance in wages, altering the hours of work or decreasing the amount of work or preventing any person employing whomsoever he might think fit to employ, or for preventing workmen hiring themselves, or attempting to induce workmen to leave their work, was declared illegal; so also was attending any meeting called to advance any of these objects.

(*b*) Such Acts were often passed with the express purpose of preventing incipient trade unionism—*e.g.*, 14 Geo. 3, c. 44 (1774), which forbade combinations among weavers; 17 Geo. 3, c. 56 (1777) (silk-weavers); 36 Geo. 3, c. 111 (1795) (hat trade). *Vide R. v. Hammond* (1799), 2 Esp. 719.

(*c*) (1799) 39 Geo. 3, c. 81. The Act of Edw. I and other earlier statutes were repealed. *Vide R. v. Saller* (1809), 5 Esp.; *R. v. Ferguson* (1819), 2 St. 489.

(*d*) (1800), 39 & 40 Geo. 3, c. 106. *Vide* (1802) 43 Geo. 3, c. 86. Combination Act, Ireland.

Combination Acts repealed.—In 1824 the Combination Laws Repeal Act (e) was passed, which removed all criminal liability of combinations incurred by advancing or fixing the rate of wages or altering the hours or quality of work imposed either by statute or common law. In 1825 an amending and qualifying Act was passed; by it the Combination Laws remained repealed, but new offences of "molestation, intimidation, threats and obstruction," which apply to individuals as well as to combination, to force or prevent a person accepting or giving employment or joining any association were specifically created (f).

The Act of 1817 (57 Geo. 3, c. 79), *supra*, pp. 14, 28, 43, which provides that societies employing delegates or committees is an unlawful combination, is unrepealed, as is also the Act of 1799 (39 Geo. 3, c. 79), which forbids combinations and unlawful oaths under that statute. The cases on unlawful oaths are not later than 1834, and are as follows:—*R. v. Marks* (g), *R. v. Moore* (h), *R. v. Ball* (i), *R. v. Lovelass* (k), and *R. v. Dixon* (l).

After 1825, therefore, in general a combination in restraint of trade for a *bond fide* trade purpose ceased to be a criminal offence so far as statute law was concerned.

With regard to the common law, however, it is now the better opinion that such a combination was never criminal (m), though the contrary opinion has in the past

(e) (1824) 5 Geo. 4, c. 95.

(f) 6 Geo. 4, c. 129.

(g) (1802) 3 East, 157.

(h) (1801) 6 East, 413, n.

(i) (1834) 6 C. & P. 563.

(k) (1834) 6 C. & P. 596.

(l) (1834) 6 C. & P. 601.

(m) *Per Fry, L.J.*, in *Mogul Steamship Company v. McGregor, Gow & Co.* (1889), 23 Q. B. D. 598, at p. 631. See also *R. v. Eccles* (1783), 1 Leach, 274; *Cousins v. Smith* (1807), 13 Ves. 542; and the Law of Criminal Conspiracies and Agreements, by the late Mr. Justice Wright

been held (n). Thus, though it is stated in Hawkins' Pleas of the Crown (1717) that "all confederacies whatsoever wrongfully to prejudice a third person are highly criminal at common law, as when divers persons confederate together by indirect means to impoverish a third person" (o), such an opinion was dissented from by Holt, C.J., in *R. v. Daniell* (p), who held that the criminal element in the cases both of *Kimberly* and *Sterling*, on which Hawkins based his *dicta*, arose in respect of conspiracies against the State, and that, therefore, they were no authority in respect of combinations which had no such anti-governmental objects or effect. The *dicta* in the *Poulterers' Case* (q) were thus extended far beyond their original intention.

One of the few reported cases in which a conviction for conspiracy at common law to raise wages was sustained is that of *R. v. Journeymen Tailors of Cambridge* (r), which is of doubtful authority, and on this case has been founded the *dictum* of Grose, J., in *R. v. Mawbey* (s), that

(1873); History of the Criminal Law (Stephen), vol. 3, p. 209; and Memorandum by Sir W. Erle (1869) to the Royal Commission of 1869; Conspiracy (Harrison), 1922.

(n) *R. v. Ferguson* (1819), 2 Stark. 489; *R. v. Bykerdike* (1832), 1 Mood. & R. 179; *R. v. Duffield* (1851), 5 Cox, C. C. 404; *Hilton v. Eckersley* (1855), 6 E. & B. 47, per Crompton, J., at p. 51.

(o) 1 Hawk. P. C. 446; cf. *R. v. Kimberly* (1662), 1 Levinz, 62; *R. v. Sterling* (1664), 1 Levinz, 128. According to Mr. Justice Wright, Law of Criminal Conspiracies and Agreements (1873), p. 11, a suggestion of a general doctrine that a combination may be criminal, although what it proposes would not be criminal apart from combination, begins to appear in the arguments of counsel towards the close of the seventeenth century (vide *R. v. Sterling* (1665), 1 Sid. 174; *Thorpe's Case* (1696), 5 Mod. 221; *Best's Case* (1705), 6 Mod. 185; *Vertus v. Lord Clive* (1769), 4 Burr. 2472.

(p) (1704) 6 Mod. 99.

(q) 9 Co. Rep. 556.

(r) (1721) 8 Mod. p. 10. Search was made in Britton, Bracton, Fleta, Granville, the Mirror and Year Books and Coke, etc. (Wright, p. 14), to discover early cases at common law without result. Cf. *Re Poulterers' Case* (1611), 9 Rep. 55.

(s) (1796) 6 T. R. 619.

"in conspiracy to raise wages, if several meet for the same purpose, it is illegal and the parties may be indicted for conspiracy." If, however, the combination is not for a genuine trade purpose, but *mala fide* to harm an individual, different considerations may apply (*t*) (see generally on this subject, *infra*, pp. 201, 240).

Nevertheless, after the passing of the Combination Laws Repeal Act the erroneous opinion became prevalent that conspiracies in restraint of trade were offences at common law, and a number of cases were decided in accordance with that doctrine (*u*).

In *R. v. Rowlands* (*w*) the leaders of a trade union, who had no immediate personal interest in the matter, insisted that an employer should pay his men a certain rate of wages, and, in order to compel him to do so, prevailed on his men to leave his employ until he agreed to the rate and prevailed on others not to enter his employment. Erle, J., held this to be a criminal conspiracy at common law in that, while workmen might themselves combine, a combination of strangers was a combination for the "purpose of injuring another and was a combination of a different nature, directed personally against the party to be injured; and the law allowing them to combine for the purpose of obtaining a lawful benefit to themselves gives no sanction to combinations which have for their immediate purpose the hurt of another. If a combination existed for the purpose of obstructing the prosecutors in carrying on their business, and forcing them to consent

(*t*) *Allen v. Flood*, [1898] A. C. 1; *Quinn v. Leatham*, [1901] A. C. 495. *Ware v. Motor Trades Association* [1921] 3 K. B. 40; *Sorrell v. Smith*, [1925] A. C. 700. Until 1800 there is no suggestion as to criminality in combinations of workmen at common law in the text-books (Wright). In Burn's Justice (1810), the only offences stated are statutory ones.

(*u*) Such as *R. v. Dixon* (1834), 6 C. & P. 601; *R. v. Harris* (1842), 1 C. & K. 179; *R. v. Seloby* (1847), 5 Cox, 495; *R. v. Bykerdike* (1832), 1 Mood. & R. 179, is ambiguously reported. See also the Scottish case of the *Fine Cotton Spinners* (Marshall, Glasgow, 1838).

(*w*) *Ibid.*

to the book of prices, and in pursuance of that concert they persuaded the free men and gave money to the free men to leave the employ of the prosecutors, the purpose being to obstruct them in their manufacture and to injure them in their business, and so to force their consent, with no other result to the parties combining than gratifying ill-will, that would be a violation of the law." A similar notion is retained in the doctrine of justification exemplified in *The Mogul Case* (x).

In *Hilton v. Eckersley* (y), which was the case of a masters' trade union, the problem arose whether a bond of a number of master spinners binding themselves to carry on their trade according to the resolutions of a majority was enforceable; it was alleged that, by reason of the bond, persons were deterred from hiring themselves. In the Queen's Bench, Crompton, J., thought that the bond was void because the act of entering into it was an indictable misdemeanor, as being a conspiracy in restraint of trade. Erle, J., thought that the bond was good, being rendered lawful by the exception contained in 6 Geo. 4, c. 129, s. 5, and Lord Campbell, C.J., held that the deed did not constitute an indictable conspiracy, but that it was void because it was opposed to public policy. The Court of Exchequer Chamber (consisting of six judges) thought that the deed was void because it was in restraint of trade, but expressed no opinion on the question whether or not it was an indictable conspiracy.

In *R. v. Bunn* (z), a case in which, owing to a strike of

(x) (1889) L. R. 23 Q. B. D. at p. 616; see also *R. v. Hewitt* (1851), 5 Cox, C. C. 162.

(y) (1855) 6 E. & B. 47; vide *R. v. Perham* (1859), 5 H. & N. 30; *Walsby v. Anley* (1861), 3 E. & E. 516; *O'Neill v. Longman* (1863), 4 B. & S. 376; *O'Neill v. Kruger* (1863), 4 B. & S. 389; *Wood v. Bowron* (1866), L. R. 2 Q. B. 21; *Skinner v. Kitch* (1867), L. R. 2 Q. B. 393; *Sheridan's Case* (1868), *Leeds Mercury*, August 13th.

(z) (1872) 12 Cox, C. C. 316; see also *R. v. Hibbert* (1875), 13 Cox, C. C. 82.

gas-stokers, London was deprived of light, the men were indicted for a conspiracy to coerce or molest their employers in carrying on their business. It was held by Lord Esher that there was an indictable conspiracy, because at *common law* it was an indictable conspiracy to force the company to carry on their business contrary to their own will by an improper threat or molestation, and that the great public inconvenience which such a strike would cause might cause a threat to strike suddenly to be an improper molestation, and also that a threat of a simultaneous breach of contract might amount to a conspiracy to prevent the employer from carrying on his business.

In the words of Mr. Justice Stephen: ". . . This case substantially decided, as far as its authority went, that, although a strike could no longer be punished as a conspiracy in restraint of trade, it might, under circumstances, be of such a nature as to amount to a conspiracy at common law to molest, injure, or impoverish an individual, or to prevent him from carrying on his business" (a). In consequence of this decision, a Royal Commission was appointed in 1874, and as a result was passed the Conspiracy and Protection of Property Act, 1875 (b), which nullified the decision, and that statute, together with the Trade Disputes Act, 1906, and the Trade Disputes and Trade Unions Act, 1927 (c), now constitute the principal statutory law affecting the trade union in its criminal and tortious aspects.

Individual Criminal Liability.

The individual criminal liability of members of trade unions (apart from liability from taking wages at rates forbidden by statute under the Statute of Labourers and

(a) History of the Criminal Law, Vol. 3, p. 226.

(b) Royal Commission on Master and Servants Act, 1867, and on Criminal Law Amendment Act, 1871.

(c) 6 Edw. 7, c. 47; 17 & 18 Geo. 5, c. 22.

subsequent Acts (*d*) arises principally in connection with their wrongful interference with the rights of others lawfully to dispose of their capital or labour as they will. The prohibition against such acts is to be found in the Combination Act of 1825 which, after re-enacting the repeal of various Acts against combinations in restraint of trade, proceeds to declare that if any person shall

- 1.—(1) By violence to the person or property, or (2) By threats or intimidation, or (3) By molesting or in any way obstructing another, force, or endeavour to force, any journeyman manufacturer, workman or other person hired or employed in any manufacture, trade or business—to depart from his hiring, employment or work, or to return his work before the same shall be finished ; or
- 2.—(1) Prevent, or endeavour to prevent, any journeyman manufacturer, or other person, not being hired or employed from hiring himself to or from accepting work or employment from any person or persons, or (2) Use or employ violence to the person or property of another, or (3) Threats or intimidation, or (4) Shall molest or in any way obstruct another, for the purpose of forcing or inducing such person (shortly) to belong to any trade union or to observe any trade union rule, or
- 3.—(1) By violence to the person or property of another, or (2) By any threats or intimidation, or (3) By molesting or in any way obstructing another, (4) Force, or endeavour to force, any manufacturer or person carrying on any trade or business, to make any alteration in his mode of regulating, managing, conducting or carrying on his business, or to limit the number of his apprentices, or the number or description of his journeymen, workmen or servants,

(*d*) 22 Vict. c. 34.

He may on conviction or indictment be sentenced to two months' imprisonment and hard labour; but not, apparently, by summary procedure.

Thus the terms "threat," "intimidation," "molestation," and "obstruction" which occur in so many later Statutes derive from the Act of 1825. Between 1825 and the passing of the Molestation of Workmen Act, 1859 (e), a very wide construction was given to these phrases, particularly in connection with combinations involving such acts, which were held to be criminal conspiracy. The meaning of the words was by the Act of 1825 left at large to the jury; but in the case of *R. v. Bykerdike* (f), a combination to tell employers whom they should employ was treated as a molestation; and in 1847 in *R. v. Selsby* (g), it was held that mere persuasion of people to agree not to work upon certain terms was not illegal within the Statute of 1825, unless the words convey the impression of intimidation. See also *R. v. Hewitt* (h), *R. v. Duffield* (i), in which case Erle, J., said that it would be an illegal threat to threaten a man (either with personal injury or with loss of comfort in any way). See also in *R. v. Rowlands* (j), Erle, J., extended the meaning of threat and intimidation to a case where it was said "If you work there, we shall strike against you"; and in *R. v. Perham* (k) to follow a man to his home was held to be intimidation—a decision which was subsequently given Statutory force.

By the Molestation of Workmen Act, 1859 (l), the phrases "molestation" and "obstruction" in the 1825 Statute were defined in the following terms:—

(e) 22 Vict. c. 34.

(f) (1832) 1 Mood. & R. 179.

(g) 5 Cox, C. C. 496, per Rolfe, B., p. 498.

(h) (1851) 5 Cox, C. C. 162.

(i) (1851) 5 Cox, C. C. 404, at p. 432.

(j) (1851) 5 Cox, C. C. 436, at p. 460.

(k) (1859) 5 H. & N. 20.

(l) 22 Vict. c. 34, s. 1.

"No workman or other person, whether actually in employment or not, shall by reason merely of his entering into an agreement with any workman or workmen, or other person or persons, for the purpose of fixing or endeavouring to fix the rate of wages or remuneration at which they or any of them shall work or by reason merely of his endeavouring peaceably, and in a reasonable manner and without threat or intimidation, direct or indirect, to persuade others to cease or abstain from work in order to obtain the rate of wages or the altered hours of labour so fixed or agreed upon, or to be agreed upon, shall be deemed or taken to be guilty of 'molestation' or 'obstruction' within the meaning of the said Act, and shall not therefore be subject or liable to any prosecution or indictment for conspiracy :

"Provided always, that nothing herein contained shall authorise any workman to break or depart from any contract or authorise any attempt to induce any workman to break or depart from any contract."

It will be observed that the words "threat" and "intimidation" remain undefined by this Act and were therefore still at large for the jury.

Under the 1859 Act, to notify to an employer a resolution of the men threatening to strike unless certain men were discharged was a threat and molestation within the meaning of the 1859 Act (*Walsby v. Anley (m)*), the distinction being between a warning which would give the employer an alternative and a threat to do something in any event to injure him (*n*). A threat to turn a man out of a union and black-list him was a molestation (*O'Neill v. Longman (o)*); but to discuss terms with an employer without telling him of a decision to strike was not a threat (*O'Neill v. Kruger (p)*); and similarly, if a resolution had

(m) (1861) 3 E. & E. 516.

(n) *Per* Cockburn, C. J., *ibid.*, at p. 521.

(o) (1863) 4 B. & S. 378.

(p) (1863) 4 B. & S. 389.

been passed to the employer at his request (*Wood v. Bowron* (g)). A threat to call a strike unless a person was discharged was criminal (*Shelbourne v. Oliver* (r)). So also to place pickets who use insulting words and follow persons is intimidation, molestation and obstruction (*R. v. Druiitt* (s)); but where there is no coercion or intimidation and no reasonable alarm excited, the mere picketing is not unlawful (t). To tell an employer that his men will be called out unless one of them join the union was a criminal offence (*Skinner v. Kitch* (u)); as also to ask people not to enter the service of an employer (*Springhead Spinning Co. v. Riley* (w)). The phrase "peaceful persuasion" is to be found in the case of *R. v. Shepherd* (x) and is lawful, a view already expressed by Bramwell, B., in *R. v. Druiitt* above referred to. See also *Wood v. Bowron* (y).

In 1867 the Royal Commission was appointed, and in 1871, in addition to the Trade Union Act, 1871, was passed an Act to amend the "criminal law relating to violence, threats and molestation" (z). This Act repealed the Act of 1825, and the Act of 1859 which amended it, and substituted for them an enactment inflicting imprisonment with hard labour up to three months on every one who, with a view to coerce another for trade purposes, should do any of the following things:—

- (1) Use personal violence.
- (2) Threaten so as to justify a magistrate in binding the threatener over to keep the peace.

(g) (1866) L. R. 2 Q. B. 21.

(r) (1866) 13 L. T. 630.

(s) (1867) 10 Cox, C. C. 592.

(t) *Per* Bramwell, B., at p. 601.

(u) (1867) L. R. 2 Q. B. 393.

(w) (1868) L. R. 6 Eq. 551.

(x) (1869) 11 Cox, C. C. 325.

(y) (1866) L. R. 2 Q. B. 21, *per* Mellor, J., at p. 28.

(z) (1871) 34 & 35 Vict. c. 32.

(3) Molest or obstruct in any of the following ways :—

- (a) By persistently following any person about from place to place ;
- (b) By hiding his tools, clothes, or other property ;
- (c) By watching or besetting his house, or following him along any street or road with two or more other persons in a disorderly manner.

It also further provided that, save as above stated, no one should be liable to any punishment for doing or conspiring to do any act, on the ground that such act restrains or tends to restrain the free course of trade.

It will be observed that the words " threaten " and " watch or beset " now received statutory definition.

In *R. v. Bunn* (a) in addition to the matter of conspiracy above referred to (b) it was held by Brett, J., that to strike in breach of contract may amount to improper threats and molestation, being acts amounting to the unjustifiable annoyance of an employer and being likely to deter a man of ordinary nerve.

According to Mr. Justice Stephen, " In consequence of this decision, a Royal Commission was appointed in 1874, and as a result was passed the Conspiracy and Protection of Property Act, 1875 " (c). This Act is unrepealed and remains the first principal statute dealing with the criminal liability of trade unions.

TORTIOUS LIABILITY.—THE LAW BEFORE 1906.

Conspiracy.

The origin of the action of conspiracy cannot be traced with certainty before the Statutes of Edward I. (d), on

(a) (1872) 12 Cox, C. C. 316 ; see also *R. v. Hibbert* (1875), 13 Cox, C. C. 82.

(b) *Supra*, p. 184.

(c) 38 & 39 Vict. c. 86.

(d) According to Coke, 2nd inst., 562, the writ of conspiracy existed at Common Law ; see *vide* Winfield, " History of Conspiracy," 29—37.

which Acts, namely, the Statute of Conspirators of 1300 and 1304 (e), the writ of conspiracy was founded. The mischief struck at was in general combinations maliciously "to indiot or acquit people or falsely to move or maintain pleas" (33 Edw. 1, st. 2). By the time of Edward III., by action on the case, the use of the writ was extended beyond interference with legal proceedings, but, as is the case to-day, the gist of the action was the damage suffered by the plaintiff. "Hence," as Professor Holdsworth states, "the cause of the action was not, as in the proceedings under the writ of conspiracy, the act of conspiracy, but the resulting damage" ("History of English Law," Vol. III., p. 406).

The particular form of wrongful combination which more particularly concerns the trade union is the conspiracy to entice or procure a person to depart from the service of his employers.

The Statute of Labourers, which required certain classes of persons to work and fixed their rates of wages, did not directly give a cause of action for enticing away servants; but a civil action in such a case (f) and a writ of trespass lay for taking away a servant (g).

By Statute 3 & 4 Edw. 6, c. 16, a statutory right of action was given, but in *Adam's case* (h), Gawdy, C.J., dissenting, it was held that procurement was essential, mere retainer of another's servant giving no right of action.

In *Blake v. Lanyon* (i), Gawdy's view that the right of

(e) 28 Edw. 1, st. 3, c. 10; 33 Edw. 1, st. 2; Y. B. 11 Hy. 7, Tr. pl. 7; *per* Fairfax, J., *Smith v. Crenshaw* (1625), W. Jones 93.

(f) *Per* Thirning, J., Y. B. 12 Rich. 2, 16; Y. B. 47 Edw. 3, Mich., pl. 15.

(g) Y. B. 26 Edw. 3, Mich., pl. 18; 47 Edw. 3, Mich., pl. 15; 12 Rich. 2, 37; 9 Edw. 4, Mich., pl. 4.

(h) *Adam's case* (1591), 1 Leo. 240.

(i) (1795), 6 T. R. 221, at p. 232; see also *Hart v. Aldridge*, 1 Cowp. 56.

action extended to anyone who refused to give up a servant, apart from procurement, was upheld, and the case was based on the interference with a contractual right. Finally, in *Lumley v. Gye* (*k*), the action was extended to cover any improper persuasion to break a contract. Malice or motive is not material (*l*).

If, therefore, the wrong under *Lumley v. Gye* is done in combination, it is equally wrong as if done by an individual, and, if damage is done, action will lie in conspiracy, but in addition an action will lie civilly in conspiracy to injure another even where no breach of contract is actually procured or persuaded.

The extension of the law of conspiracy in the sixteenth century is largely due to the development of tribunals outside the common law, such as the Council and the Star Chamber. Thenceforward there were two sources of conspiracy: the old basis of vexatious litigation and the later Star Chamber jurisdiction.

The *Poulterers' Case* (*m*) decided that proof of confederacy is essential, a view accepted by Willes, J., and upheld in the House of Lords in *Mulcahy v. R.* (*n*).

The view that combinations to do acts not in themselves torts might become tortious when done in combination by unlawful means became prevalent (*o*), and this view was sought to be extended to cover the case of combinations to raise wages (*p*). This view, since the eighteenth century, has been definitely abandoned; a concerted intention to injure apart from the pursuance of a lawful

(*k*) (1853) 2 E. & B. 216.

(*l*) Per Lord Herschell, in *Allen v. Flood*, [1898] A. C. 1, at p. 121, criticising *Bowen v. Hall* (1881), 6 Q. B. D. 333.

(*m*) (1611) 9 Co. Rep. 556.

(*n*) (1868) L. R. 3 H. L., at p. 317.

(*o*) Vide "Criminal Law," Kenny, pp. 289—290; Holdsworth, "History of Criminal Law," Vol. VIII., p. 381.

(*p*) *R. v. Journeymen Tailors of Cambridge* (1721), 8 Mod. 11; *Tubwomen v. Brewers of London*, (1721) 8 Mod., p. 11.

trade or labour interest is essential to found the action (g).

According to Lord Moulton (r), it is true that occasional *dicta* are to be found to the effect that combinations to better the conditions of labour are unlawful at common law, but the Courts have never accepted the law thus laid down, and eminent judges have expressed views to the contrary. Throughout the seventeenth and eighteen centuries no Court treated combinations to better the conditions of labour as being contrary to common law, and none of the series of legislative enactments resisting attempts of workmen to better the conditions of labour purported to declare or rest upon the common law (s). If we accept an *obiter dictum* by Grose, J., in *Rez v. Mawbey* (t), which was not intended to refer to the common law, but to the effect of statutes then in force, there were no judicial *dicta* in support of the suggested proposition until after the Legislature swept away all those statutes by the Combination Act of 1825.

(g) *Sorrell v. Smith*, [1925] A. C. 700; per Lord Cave, L.C., at p. 712; per Lord Dunedin, at p. 723.

(r) In *Gosney v. Bristol Trade and Provident Society*, [1909] 1 K. B. 901, at p. 923.

(s) As to decisions in the nineteenth century before the Act of 1875, see per Kay, L.J., *Lyons v. Wilkins*, [1896] 1 Ch. 811, at p. 828; *R. v. Bykerdike* (1832), 1 Mood. & R. 179; *R. v. Selby* (1847), 5 Cox, C. C. 496, n.; *R. v. Hewitt* (1851), 5 Cox, C. C. 162; *R. v. Duffield* (1851), 5 Cox, C. C. 404; *R. v. Rowlands* (1851), 17 Q. B. 671; *Hilton v. Eckersley* (1855), 6 E. & B. 47; *R. v. Perham* (1859), 5 H. & N. 30; *Walsby v. Anley* (1861), 30 L. J. M. C. 121; *O'Neill v. Longman* (1863), 4 B. & S. 376; *O'Neill v. Kruger* (1863), 4 B. & S. 389; *Wood v. Bowron* (1866), L. R. 2 Q. B. 21; *Shelbourne v. Oliver* (1866), 13 L. T. 630; *R. v. Druitt* (1867), 10 Cox, C. C. 592; *Skinner v. Kitch* (1867), L. R. 2 Q. B. 393; *Springhead Spinning Co. v. Riley* (1863), L. R. 6 Eq. 551.

(t) (1796) 6 T. R. 619, 636. *Gregory v. Duke of Brunswick* (1843), 6 Man. & G. 305, often cited against this proposition, is not in point. In that case organised hissing of an actor was held to be a conspiracy, and the case was decided on the question of malice (per Coltman, J.), and it is actionable for an individual to hiss maliciously.

Conclusions as to the common law which first appear in recent times, and are based upon no accepted principle of earlier date, are to be looked upon with great suspicion. Ever since 1824 the weight of authority is against this doctrine.

The problem raised by conspiracy as a tort really dates from the time when, as a result of the passing of the Conspiracy and Protection of Property Act of 1875, it was enacted that "a combination to do an act in contemplation or furtherance of a trade dispute should not be indictable as a conspiracy if the act committed by one person would not be a crime" (*u*). This Act did not prevent a person injured by such a conspiracy from bringing a civil action in tort for damages (*w*), so that after 1875 the civil action in conspiracy was alone open to the plaintiff.

Nevertheless, the nature of the liability as such can only be understood by reference to the previous history of criminal conspiracy, the tortious liability for the conspiracy developing out of the crime in the same manner as was the case in libel (*x*). The question, which was long in discussion, as to the nature of such a conspiracy was answered in two ways; first, that there is no such separate tort as conspiracy, and that the tort consisted, not in the conspiracy, but in the individual unlawful acts causing damage (*per* Scrutton, L.J., in *Ware and de Freville v. The Motor Trade Association* (*y*); *per* Astbury, J., in *Valentine v. Hyde* (*z*); *per* McCardie, J., in *Pratt v. The British Medical Association* (*a*)).

The other view is that the conspiracy is itself the cause

(*u*) 38 & 39 Vict. c. 86, s. 3.

(*w*) *Per* Lord Lindley, in *Quinn v. Leathem*, [1901] A. C. 495, at p. 542.

(*x*) See *Pedro v. Barrett*, 1 Ld. Raym. 81.

(*y*) [1921] 3 K. B. 40, at p. 70.

(*z*) [1919] 2 Ch. 129, at p. 149.

(*a*) [1919] 1 K. B. 244, at p. 255.

of action (*per* Atkin, L.J., in *Ware and de Freville v. The Motor Trade Association* (b); *per* Sargant, J., in *Reynolds v. The Shipping Federation* (c)).

The law was finally determined in *Sorrell v. Smith* (d), in which Lord Dunedin states in terms that he will endeavour to "say something clear to help in the future." He describes the view of McCardie, J., in *Pratt's case* (e), that the element of conspiracy is merely an incidental feature of the case, as a heresy, and approves of the view of Atkin, L.J., in *Ware and de Freville* (f), that the existence of conspiracy is vital to the action. He approves the view expressed by Atkin, L.J., that "the foundation of the decision was the principle expressly reserved in the decision in *Allen v. Flood* (g), that a combination to injure may be unlawful where the intention by one is not." This view, which is substantially approved by the whole of the House of Lords in that case, that "a combination by two or more persons for the purpose of injuring a man in his trade is unlawful, and if it results in damage to him is actionable," decides the contested issue whether conspiracy is in itself a tort where several persons combine to do acts, lawful or unlawful, with intention to injure another in the affirmative.

Individual Tortious Liability.

The history of the civil liability of an individual in interfering in the disposal of the capital or labour of others has already to some extent been discussed under its concerted aspects; but there is no doubt at all that since the decision in *Lumley v. Gye* (h) an action will lie against

(b) [1921] 3 K. B. 40, at pp. 84 and 90.

(c) [1924] 1 Ch. 28, at p. 40.

(d) [1925] A. C. 700.

(e) [1919] 1 K. B. 244, at p. 260.

(f) [1921] 3 K. B. 40.

(g) [1898] A. C. 1.

(h) (1853) 2 E. & B. 216.

an individual for wrongfully procuring a breach of contract. Moreover, at common law an action will lie against a man who unlawfully and knowingly procures a person to commit an actionable wrong to another person whereby the latter suffers actual pecuniary damage (i). Actual damage is the gist of the action (k).

In *Tarleton v. M'Gawley* (l) it was held that an action lay against the master of a ship for intentionally firing a cannon at negroes off the coast of Africa and thereby preventing them from trading with the plaintiffs. This decision was clearly approved by all the members of the House of Lords in *Allen v. Flood* and was equally approved in *Quinn v. Leatham*. In *Garret v. Taylor* (m) it had been previously held that an action would lie against a defendant who by threats of corporal hurt and of vexatious litigation prevented customers from dealing with and workmen from labouring for the plaintiff.

A consideration of the earlier decisions as to illegal means produces the following result :

Illegal means are acts of the nature of civil and criminal wrongs regardless of motive (n).

Personal violence against a third person to injure the plaintiff falls within the definition (o), or threats of

(i) *Lumley v. Gye* (1853), 2 E. & B. 216, per Erle, J., at p. 232; *Bowen v. Hall* (1881), 6 Q. B. D. 333; *Mogul Steamship Co. v. McGregor, Goss & Co.*, [1892] A. C. 25; *Allen v. Flood*, [1898] A. C. 1; *Quinn v. Leatham*, [1901] A. C. 495, at p. 510; *Read v. Friendly Society of Operative Stonemasons*, [1902] 2 K. B. 732; *National Phonograph Co., Ltd. v. Edison Bell Phonograph Co., Ltd.*, [1908] 1 Ch. 335.

(k) *Ward, Lock & Co., Ltd. v. Operative Printers' Assistants Society* (1906), 22 T. L. R. 327. See *Workman v. London and Lancashire Fire Insurance Co.* (1903), 19 T. L. R. 360; *Vicars v. Wilcocks* (1806), 8 East, 1.

(l) (1794) 1 Peake, 270; *Gloucester Grammar School case* (1410), Y. B. 11 Hy. 4, f. 21.

(m) (1820) Cro. Jac. p. 567.

(n) Per Lord Watson, in *Allen v. Flood*, [1898] A. C. 1, at p. 96.

(o) *Tarleton v. M'Gawley* (1799), 1 Peake, N. P. p. 270.

personal violence (*p*), or nuisance (*q*), or fraud (*r*), or libel (*s*); so also a coercive notification may be illegal (*t*); a mere notification that men will strike may not be (*u*), but a threat to inflict professional dishonour (*w*), and possibly the publication of black lists (*x*), are unlawful. Undue influence as well as special influence may constitute coercion (*y*), and, generally, coercive interference (*z*). As has already been stated, a combination may possibly itself constitute evidence of illegal means.

Finally, therefore, apart from statute, as regards *unconcerted* interference at common law, it is only where no contract or other legal right is interfered with in any way and no illegal means are employed, though the act done by the defendant may be one both calculated and intended to inflict upon the plaintiffs great loss and suffering, that it is not actionable. It does not matter what the particular act interfered with is, so long as it is not one which the person doing it has a definite legal right by contract, or by common law or statute law, to do (*a*), and a notification that there will be a strike unless

(*p*) *Garret v. Taylor* (1820), Cro. Jac. 567; *Keeble v. Hickeringill* (1707), 11 East, 573, n.

(*q*) *Lyons v. Wilkins*, [1899] 1 Ch. 255.

(*r*) *National Phonograph Co. v. Edison Bell Phonograph Co.*, [1908] 1 Ch. 335, at pp. 360, 368.

(*s*) *Per Bankes, L.J.*, in *Ware and de Freville v. Motor Trades Association*, [1921] 3 K. B. 40, at p. 60.

(*t*) *Quinn v. Leatham*, [1901] A. C. 495; *Sweeney v. Coote*, [1907] A. C. 221; *Hutley v. Simmons*, [1898] 1 Q. B. 181.

(*u*) *Allen v. Flood*, [1898] A. C. 1; *Whiss v. Riley*, [1921] 1 Ch. 1, following *Hodges v. Webb*, [1920] 2 Ch. 70.

(*w*) *Pratt v. British Medical Association*, *supra*.

(*x*) *Trollope v. London Building Trades Federation* (1895), 73 L. T. 342; but see *Ware and de Freville v. Motor Trades Association*, *ibid*.

(*y*) *MacKenzie v. Iron Trades Employers' Insurance Association*, [1910] S. C. 79, 84.

(*z*) *Per Lord Shaw* in *Conway v. Wade*, [1909] A. C. 506, at p. 524. See *Allen v. Flood*, [1898] A. C. 1; *Sweeney v. Coote*, [1907] A. C. 221; *Scottish Co-operative Society v. Glasgow Fishers Association* (1898), 35 Sc. L. R. 645.

(*a*) *Per Willis, J.*, in *Allen v. Flood*.

certain things happen is lawful in this sense (b); for, under these circumstances, if mere evil motive were to make that unlawful which would otherwise be lawful (c), or if to do intentionally that which is calculated in the ordinary course to damage another were actionable, it would lead to singular results (d).

One who committed an act not in itself illegal, but attended with consequences detrimental to several other persons, would incur liability to those he intended to injure, and the rest of them would have no remedy (e). Conversely, mere good motive will not justify illegal means (f).

There remains, however, for consideration the question of the liability of an individual not acting in concert for interfering with another's trade with intent to injure him, no unlawful act beyond this being present. "There is some authority for the view that what is unlawful in two is not lawful in one, and that the circumstance that two or more persons combine to cause the injury, while it may be very relevant as evidence of the purpose and as an aggravation of the damage, is not itself an essential element in the cause of action" (Viscount Cave, L.C., in *Sorrell v. Smith* (g); see also Palles, C.B., in *Kearney v. Lloyd* (h); Romer, L.J., in *Giblan's case* (i)); but the *ratio decidendi* in *Sorrell v. Smith*, that the conspiracy is of the gist of the action, produces the final conclusion

(b) *White v. Riley*, [1921] 1 Ch. 1.

(c) *Per* Lord Esher in *Temperton v. Russell*, [1893] 1 Q. B. 715; *Allen v. Flood*, [1898] A. C. 1.

(d) *Per* Bowen, L.J., in *Mogul Steamship Co. v. McGregor, Gow & Co.* (1889), 23 Q. B. D. 598.

(e) *Per* Lord Watson in *Allen v. Flood*, *supra*, at p. 100. See also *Joss v. Metallic Roofing Co. of Canada*, [1908] A. C. 514.

(f) *Pratt v. British Medical Association*, [1919] 1 K. B. 244; *per* Parke, B., in *Stevenson v. Newnham* (1853), 13 C. B. 285, at p. 297.

(g) [1925] A. C. 700, at p. 713.

(h) (1890) 26 L. R. Ir. 268, at p. 280.

(i) [1903] 2 K. B. 600, at p. 619.

that the action for mere injury is limited to a combination and is not by itself actionable in an individual, though Lord Lindley, in *Quinn v. Leatham* (*k*), has commented upon the anomaly of this result (see also *per* Lord Sumner, in *Sorrell v. Smith* (*l*)). In the words of Professor Holdsworth, the final result is to "make one law for the individual and another for a combination of individuals; for *Sorrell v. Smith* distinctly decides that acts done in combination, if done with intent to injure, are actionable, although the same acts are not actionable if done by one person" (*m*). The present law, as modified by the Acts of 1906 and 1927, is discussed at pages 240 *et seq.*, 254 *et seq.*, and 268 *et seq.*

(*k*) [1901] A. C. 495, at p. 537.

(*l*) [1925] A. C. 700, at p. 740.

(*m*) "History of English Law," Vol. VIII., at p. 397.

I.

CONSPIRACY AND PROTECTION OF
PROPERTY ACT, 1875
(38 & 39 VICT. c. 86).

[August 13th, 1875.

SHORT TITLE.

1. This Act may be cited as the "Conspiracy and Protection Act, 1875."

COMMENCEMENT OF ACT.

2. This Act shall come into operation on the first day of September one thousand eight hundred and seventy five.

Conspiracy and Protection of Property.

AMENDMENT OF LAW AS TO CONSPIRACY IN
TRADE DISPUTES.

3. An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen [or workmen and workmen] shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.

Nothing in this section shall exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any Act of Parliament.

Nothing in this section shall affect the law

relating to riot, unlawful assembly, breach of the peace or sedition, or any offence against the State or the Sovereign.

A crime for the purposes of this section means an offence punishable on indictment, or an offence which is punishable on summary conviction, and for the commission of which the offender is liable under the statute making the offence punishable to be imprisoned either absolutely or at the discretion of the Court as an alternative for some other punishment.

Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months, or such longer time, if any, as may have been prescribed by the statute for the punishment of the said act when committed by one person.

This section includes all the then existing law against combinations in reference to trade disputes (*per* Coleridge, C.J., in *Gibson v. Lawson* (n)). The section struck at the principle of the criminal law of conspiracy that it is the "agreement or combination" which is the essence of the crime, and that therefore a combination or agreement to do or procure to be done, something not in its own nature criminal if done by one person, might still be a crime (o). It has nothing to do with civil remedies (p), (as to which *supra*, pp. 190-199; *Quinn v. Leatham* (q);

(n) [1891] 2 Q. B. 545, at p. 560.

(o) *Per* Lord Atkinson in *Vacher v. London Society of Compositors*, [1913] A. C. 107, at p. 122.

(p) *Per* Lord Lindley in *Quinn v. Leatham*, [1901] A. C. 495, at p. 542.

(q) *Ibid.*, *per* Lord Macnaghten, at p. 512.

Allen v. Flood (r); *Giblan v. National Labourers' Union* (s); the Trade Disputes Act, 1906; and the Trade Disputes and Trade Unions Act, 1927 (t).

"*In contemplation or furtherance of a trade dispute.*"—These words are defined for the purposes of this Act and the Trades Disputes Act, 1906, by section 5 (3) of the latter Act as meaning "any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment or with the conditions of labour of any person."

The word "workmen" by the same sub-section is defined as "all persons employed in any trade or industry, whether or not in the employment of the employer with whom a trade dispute arises."

For a further discussion of the words "in contemplation or furtherance of a trade dispute" and "workmen," see the Trade Disputes Act, 1906, and the Trade Disputes and Trade Unions Act, 1927 (u).

"*Between employers and workmen.*"—These words in brackets are added by section 5 (3) of the Trade Disputes Act, 1906, the words "or workmen and workmen" being thereby retrospectively inserted.

"*Conspiracy.*"—Conspiracy consists in two or more persons agreeing together to do something contrary to law, or wrong and harmful to another person, or to use unlawful means in the carrying out of an object not otherwise unlawful (w).

As a conspiracy which is criminal is also actionable civilly in tort where damage is caused, it is convenient to discuss both aspects here together. An Act which would not be criminal if done by one person may be criminal if done by

(r) [1898] A. C. 1.

(s) [1903] 2 K. B. 600.

(t) *Infra*, pp. 240, 268.

(u) 6 Edw. 7, c. 47, *infra*, p. 240; 17 & 18 Geo. 5, c. 22, p. 268.

(w) *Per* Lord Brampton in *Quinn v. Leatham*, [1901] A. C. 495, at p. 528.

two or more in combination. But there is no conspiracy unless either the object of the combination is unlawful in the sense of being contrary to or forbidden by law, or illegal methods are resorted to in carrying it out (*x*). Thus, apart from the Acts of 1875 and 1906, a combination to engage in trade and increase profits is not a conspiracy if these are the true objects, even though it result in injury to others (*y*); but a combination to injure a man in his trade by inducing customers or servants to break their contracts with him or not to deal with him or continue in his employment, or a combination to injure a workman by inducing employers not to employ him, may be a conspiracy at common law (*z*). In view of recent decisions, such as *Sorrell v. Smith* (*a*), it would appear that although damage is essential to the civil action, it is the conspiracy and not the damage done which is the gist of the action, and the dictum of Bowen, L.J., in *Mogul's Case* needs qualification (*b*). Many cases of trade combination, however, are now no longer criminal conspiracies by reason of the 1875 Act (*c*).

Strikes.—Combinations solely to better the conditions of labour are not in themselves unlawful at common law (*d*), though the Act of 1927 has now created a new category of illegal strikes (*infra*, p. 205).

Apart from the 1927 Act, the question whether a strike

(*x*) *Per* Lord Watson in *Mogul Steamship Co. v. McGregor, Gow & Co.*, [1892] A. C. 25, at p. 41.

(*y*) *Mogul Steamship Co. v. McGregor, Gow & Co.*, [1892] A. C. 25.

(*z*) *Sorrell v. Smith*, [1925] A. C. 700; *Quinn v. Leatham*, [1901] A. C. 495; *Giblan v. National Amalgamated Labourers' Union of Great Britain and Ireland*, [1903] 2 K. B. 600; *Read v. Friendly Society of Operative Stonemasons*, [1903] 2 K. B. 732; *South Wales Miners' Federation v. Glamorgan Coal Co.*, [1905] A. C. 239.

(*a*) [1925] A. C. 700.

(*b*) *Per* Bowen, L.J., in *Mogul's Case* (1869), 23 Q. B. D. 548, at p. 616.

(*c*) *Per* Lord Coleridge in *Gibson v. Lawson*, [1891] 2 Q. B. 545, at p. 560.

(*d*) *Per* Fletcher Moulton, L.J., in *Gosney's Case*, [1909] A. C. 901, at p. 923.

is legal or illegal depends upon the nature and the mode of the concerted cessation. If this concerted cessation is in breach of contract, then it could not be said to be within the law, any more than in the case of an individual workman completing his current bargain and then choosing to remain idle. In this latter case the concert for the cessation of labour may be for the sole or deliberate or obvious purpose of restraining trade, in which case different legal consequences might ensue" (e). The maintenance of a strike is not necessarily illegal (f), and if a strike has taken place in breach of contract, but the broken contracts have expired, those who help to maintain the strike by supporting the workmen after their current contracts of service, on new terms, are not doing anything illegal (g). But to procure by combination a continuing breach of contract is unlawful (h). While there is nothing illegal in a strike, nor in continuing the support of strikers, it may be attended with circumstances, such as breach of contract or intimidation, which make it illegal (i).

Thus combinations which result in injury to another may be unlawful, when the object of the combination is injury; and if the injury is effected an action may lie for conspiracy (k). The question to be decided in each individual case is, how far the resulting injury is ancillary to a legitimate combination and how far the combination

(e) *Per* Lord Shaw in *Russell v. Amalgamated Society of Carpenters and Joiners*, [1912] A. C. 421, at pp. 430, 435; see also *King v. Parker* (1876), 34 L. T. 887.

(f) *Per* Buckley, L.J., in *Gozney's Case*, [1909] 1 K. B. 901, at p. 925; *vide* Lord Bramwell in *Mogul Steamship Co. v. McGregor, Gow & Co.*, [1892] A. C. 25, at p. 47.

(g) *Denaby and Cadeby Main Collieries, Ltd. v. Yorkshire Miners' Association*, [1906] A. C. 384.

(h) *Smithies v. National Association of Operative Plasterers*, [1909] 1 K. B. 310.

(i) *Gozney v. Bristol Trade and Provident Society*, [1909] 1 K. B. 901.

(k) *Sorrell v. Smith*, [1925] A. C. 700, *Ware's Case*, [1921] 3 K. B. 40.

exists for the purpose of injury. When the object of the combination is to benefit oneself, it can seldom—perhaps it can never—be effected without some consequence, loss, or injury to some one else. The mere fact that the effect of combination is injurious does not make it unlawful. The act complained of must amount to the violation of a right, or involve the use of unlawful means (*l*).

An apparent conflict is thus presented between two rights that are equally regarded by the law, the right of the employer to be protected in the legitimate exercise of his trade, and the right of the employed to dispose of their labour as seems best to them, provided they do no harm to others. We have to consider what is the legitimate boundary (*m*).

“*As a crime.*”—A crime is defined in paragraph 4 of this section.

“*For which a punishment is awarded by any Act of Parliament.*”—*E.g.*, under the 1927 Act. The immunity extends only to conspiracies at common law, and then only when the agreement is in contemplation or furtherance of a trade dispute.

“*Any offence against the State*” (*vide* Emergency Powers Act, 1920, *infra* p. 345).

By section 1 of the Trade Unions and Trade Disputes Act, 1927, section 1 (1), it is declared—

[(a) that any strike is illegal if it—

- (i) has any object other than or in addition to the furtherance of a trade dispute within the trade or industry in which the strikers are engaged; and
- (ii) is a strike designed or calculated to coerce

(*l*) *Mogul Steamship Co. v. McGregor, Gow & Co.* (1889), 23 Q. B. D. 598.

(*m*) *Per* Bowen, L.J., in *Mogul Steamship Co. v. McGregor, Gow & Co.* (1889), 23 Q. B. D. 598, at p. 616; *Quinn v. Leatham*, [1901] A. C. 495. See also *Kearney v. Lloyd* (1890), 26 L. R. Ir. 268; *Gregory v. Duke of Brunswick* (1843), 6 Man. & G. 205; *Huttley v. Simmons*, [1893] 1 Q. B. 131; Memorandum of Royal Commission on Trade Disputes, 1906.

the Government either directly or by inflicting hardship upon the community ; and

(b) that any lock-out is illegal if it—

(i) has any object other than or in addition to the furtherance of a trade dispute within the trade or industry in which the employers locking-out are engaged ; and

(ii) is a lock-out designed or calculated to coerce the Government either directly or by inflicting hardship upon the community :

and it is further declared that it is illegal to commence, or continue, or to apply any sums in furtherance or support of, any such illegal strike or lock-out.

For the purposes of the foregoing provisions—

(a) a trade dispute shall not be deemed to be within a trade or industry unless it is a dispute between employers and workmen, or between workmen and workmen, in that trade or industry, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour, of persons in that trade or industry ; and

(b) without prejudice to the generality of the expression “trade or industry” workmen shall be deemed to be within the same trade or industry if their wages or conditions of employment are determined in accordance with the conclusions of the same joint industrial council, conciliation board, or other similar body, or in accordance with agreements made with the same employer or group of employers.

(2) For the purposes of the 1927 Act—

(a) the expression “strike” means the cessation of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal, or a refusal under a

- common understanding of any number of persons who are, or have been so employed, to continue to work or to accept employment ;
- (b) The expression "lock-out" means the closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment ; and
- (c) a strike or lock-out shall not be deemed to be calculated to coerce the Government unless such coercion ought reasonably to be expected as a consequence thereof. (Section 8 (2).)

If any person declares, instigates, incites others to take part in or otherwise acts in furtherance of a strike or lock-out, declared by the 1927 Act to be illegal, he shall be liable on summary conviction to a fine not exceeding ten pounds or to imprisonment for a term not exceeding three months, or on conviction on indictment to imprisonment for a term not exceeding two years :

Provided that no person shall be deemed to have committed an offence under this section or at common law by reason only of his having ceased work or refused to continue to work or to accept employment.

(3) Where any person is charged before any court with an offence under this section no further proceedings in respect thereof shall be taken against him without the consent of the Attorney-General except such as the court may think necessary by remand (whether in custody or on bail) or otherwise to secure the safe custody of the person charged, but this subsection shall not apply to Scotland, or to any prosecution instituted by or on behalf of the Director of Public Prosecutions.]

See generally Trade Disputes and Trade Unions Act, 1927, *infra*, p. 268. As to the legality of "general" or "political" strikes or lockouts, *vide* Trade Disputes and Trade Unions Act, 1927, *infra*, p. 271.

BREACH OF CONTRACT BY PERSONS EMPLOYED
IN SUPPLY OF GAS OR WATER.

4. Where a person employed by a municipal authority or by any company or contractor upon whom is imposed by Act of Parliament the duty, or who have otherwise assumed the duty of supplying any city, borough, town, or place, or any part thereof, with gas or water, wilfully and maliciously breaks a contract of service with that authority or company or contractor, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city, borough, town, place, or part, wholly or to a great extent of their supply of gas or water, he shall on conviction thereof by a Court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds or to be imprisoned for a term not exceeding three months, with or without hard labour.

Every such municipal authority, company, or contractor as is mentioned in this section shall cause to be posted up, at the gasworks or waterworks, as the case may be, belonging to such authority or company or contractor, a printed copy of this section in some conspicuous place where the same may be conveniently read by the

persons employed, and as often as such copy becomes defaced, obliterated, or destroyed, shall cause it to be renewed with all reasonable despatch.

If any municipal authority or company or contractor make default in complying with the provisions of this section in relation to such notice as aforesaid, they or he shall incur on summary conviction a penalty not exceeding five pounds for every day during which such default continues, and every person who unlawfully injures, defaces, or covers up any notice so posted up as aforesaid in pursuance of this Act, shall be liable on summary conviction to a penalty not exceeding forty shillings.

Electricity.—[Section 4 of the Conspiracy and Protection of Property Act, 1875 (which relates to breaches of contract by persons employed in the supply of gas or water), shall extend to persons employed by a joint electricity authority or by any authorised undertakers in like manner as it applies to persons mentioned in that section, with the substitution of references to electricity for the references to gas or water.] (Electricity (Supply) Act, 1919, s. 31 (n).)

“*Municipal authority.*”—For definition of this phrase, see section 14 hereof.

“*Otherwise assumed*” (see section 14).

“*Maliciously.*”—This word, used in reference to any offence under the Act, be construed in the same manner as it is required by the 58th section of the Malicious Damage Act, 1861 (*o*), to be construed in reference to any offence committed under such last mentioned Act (*p*).

Thus no negligence or mischance amounts to a wilful

(n) 9 & 10 Geo. 5, c. 100.

(o) 24 & 25 Vict. c. 97.

(p) Section 15 hereof.

and malicious act (4 Bl. Com. 222; 3 Co. Inst. 67; 1 Hawk. c. 39, s. 19; 1 Hale, 566). In order to justify a conviction the act done must be done wilfully, or at least recklessly (*R. v. Pembilton* (g); *R. v. Latimer* (r); *R. v. Welch* (s)).

"As hereinafter mentioned."—See section 9 hereof.

WHERE A BREACH OF CONTRACT INVOLVING INJURY TO PERSONS OR PROPERTY.

5. Where any person wilfully and maliciously breaks a contract of service or hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose valuable property whether real or personal to destruction or serious injury, he shall on conviction thereof by a Court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

By section 6 (4) of The Trade Disputes and Trade Unions Act, 1927:

[If any person employed by a local or other public authority wilfully breaks a contract of service with that authority, knowing or having reasonable cause to believe that the probable consequence of his so doing, either alone or in combination with others, will be to cause injury or danger or grave inconvenience to the community, he shall be liable, on summary conviction, to a fine not

(g) (1874) L. R. 2 C. C. R. 119.

(r) (1886) 17 Q. B. D. 359.

(s) (1875) 1 Q. B. D. 23.

exceeding ten pounds or to imprisonment for a term not exceeding three months.]

Miscellaneous.

PENALTY FOR NEGLIGENCE BY MASTER TO PROVIDE FOOD, CLOTHING, ETC., FOR SERVANT OR APPRENTICE.

6. Where a master, being legally liable to provide for his servant or apprentice necessary food, clothing, medical aid, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, whereby the health of the servant or apprentice is or is likely to be seriously or permanently injured, he shall on summary conviction be liable either to a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding six months, with or without hard labour.

See Offences against the Person Act, 1861 (*t*), where a similar provision exists, by which statute the offence is treated as a misdemeanor with liability on conviction to penal servitude. See also Children Act, 1908 (8 Edw. 7, c. 67), section 12, as to assaults on persons under sixteen.

PENALTY FOR INTIMIDATION OR ANNOYANCE BY VIOLENCE OR OTHERWISE (*u*).

7. Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority—

(*t*) 24 & 25 Vict. c. 100, s. 20 ; as to costs under this Act, see s. 13 thereof.

(*u*) See, generally, pp. 245 *et seq.* and pp. 277 *et seq.*

- (1) Uses violence to or intimidates such other person or his wife or children, or injures his property ; or,
- (2) Persistently follows such other person about from place to place ; or,
- (3) Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof ; or,
- (4) Watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place ; or,
- (5) Follows such other person with two or more other persons in a disorderly manner in or through any street or road,

shall, on conviction thereof by a Court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section (u).

Intimidation—Alteration of law by 1927 Act.—[It is unlawful for one or more persons (whether acting on

(u) The words in italics were repealed by s. 2 (2) of the Trade Disputes Act, 1906 (6 Edw. 7, c. 47).

their own behalf or on behalf of a trade union or of an individual employer or firm, and notwithstanding that they may be acting in contemplation or furtherance of a trade dispute) to attend at or near a house or place where a person resides or works or carries on business or happens to be, for the purpose of obtaining or communicating information or of persuading or inducing any person to work or to abstain from working, if they so attend in such numbers or otherwise in such manner as to be calculated to intimidate any person in that house or place, or to obstruct the approach thereto or egress therefrom, or to lead to a breach of the peace; and attending at or near any house or place in such numbers or in such manner as is by this subsection declared to be unlawful shall be deemed to be a watching or besetting of that house or place within the meaning of section 7 of the Conspiracy and Protection of Property Act, 1875.

(2) In this section the expression "to intimidate" means to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family or to any of his dependants or of violence or damage to any person or property, and the expression "injury" includes injury to a person in respect of his business, occupation, employment or other source of income and includes any actionable wrong.

(3) In section 7 of the Conspiracy and Protection of Property Act, 1875, the expression "intimidate" shall be construed as having the same meaning as in this section.

(4) Notwithstanding anything in any Act it shall not be lawful for one or more persons, for the purpose of inducing any person to work or to abstain from working, to watch or beset a house or place where a person resides or the approach to such a house or place, and any person who acts in contravention of this subsection shall be liable on summary conviction to a fine not exceeding

twenty pounds or to imprisonment for a term not exceeding three months.] (Trade Disputes and Trade Unions Act, 1927, s. 3.)

It will be observed that by section 3 (2) of the 1927 Act the word "intimidate" has received a new statutory meaning. Comment on this new subsection is reserved for the discussion of the 1927 Act (*infra*, p. 277). The following statements, on the earlier law now need considerable qualification. In the present uncertain state of the law they are retained for reference :

"This section imposes liabilities in substitution for, and not in addition to, any liabilities for the like offences at common law. It gives 'in respect of some nuisance, as to which there was already a civil remedy, a summary remedy by summons before the magistrate,' and 'criminal prosecutions under it are limited to cases so tortious as to give a civil remedy also' (*w*). Where immunities have been conferred by the statute, as in the case of peaceful communication or information, 'to hold that the very same acts which are expressly legalised by statute remain nevertheless crimes punishable by the common law, would be contrary to good sense and elementary principle' (*x*). The section creates only one offence, the various sub-headings merely setting out different ways of committing the offence" (*y*).

"*Any other person.*"—A person on whom compulsion is exercised is protected whether he be a master or a workman.

"*With a view to compel.*"—The word "view" does not

(*w*) *Per* Vaughan Williams and Fletcher Moulton, L.J.J., in *Ward, Lock & Co., Ltd. v. Operative Printers' Society and Another* (1906), 22 T. L. R. 327.

(*x*) *Per* Lord Coleridge in *Gibson v. Lawson*, [1891] 2 Q. B. 545, at p. 560.

(*y*) *Wilson v. Renton* (1909), 47 Sc. L. R. 209; but an indictment charging a person with using violence to another or intimidation is bad for duplicity (*R. v. Edmondson* (1895), 59 J. P. 776).

(*z*) *Ward's Case*, *per* Vaughan Williams, L.J., at p. 276.

import motive ; it imports purpose (z). The compulsion complained of must be done wrongfully and without legal authority. Whether the compulsion is effective or not is immaterial (a). To issue bills asking men not to work during a strike is not a compulsion to make another abstain from doing a legal act (b), nor is it a compulsion to issue a bill asking union men to boycott a particular person (c) ; but to issue a general " black list " of non-union men apparently may be compulsion (d).

" *Wrongfully*."—The word " wrongfully " is not superfluous ; the Legislature inserted the word " wrongfully " expressly because it did not wish the Court to put that restrictive meaning on the word " compel " (e).

The words in a conviction " with a view to compel him to abstain from doing acts which he had a legal right to do " are bad and cannot be amended (f). The words " wrongfully and without legal authority " should be inserted in the complaint or indictment (g).

" *Intimidate*."—" Intimidate " (under the Act of 1875) means to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family or of violence or damage to any person or property and the expression " injury " includes injury other than physical or material injury (i).

As has been pointed out, the word " intimidate " has

(a) *Agnew v. Munro* (1891), 28 So. L. R. 335.

(b) *Peto v. Apperley* (1891), 35 Sol. J. 792.

(c) *Haile v. Lillingstone* (1891), 55 J. P. 676.

(d) *Trollope v. London Building Trades Federation* (1895), 72 L. T. 342.

(e) *Per Fletcher Moulton, L.J.*, in *Ward, Lock & Co., Ltd. v. Operative Printers' Society and Another* (1906), 22 T. L. R. 327. A conviction will not, however, be quashed because the word " wrongfully " is omitted from the complaint (*Clarkson v. Stuart* (1894), 22 R. (J.) 5).

(f) *R. v. McKensie*, [1892] 2 Q. B. 519, *per Bruce, J.*, at p. 523 ; see also *Smith v. Moody*, [1903] 1 K. B. 56.

(g) *Per Lindley, M.R.*, in *Lyons (J.) & Sons v. Wilkins*, [1899] 1 Ch. 255, at p. 266 ; see *Vaughan Williams, L.J.*, in *Ward, Lock & Co. v. Operative Printers' Society* (1906), 22 T. L. R. 327, at p. 329.

(i) *Trades Disputes and Trade Unions Act, 1927, s. 4 (2), (3)*.

now received a wider statutory meaning, and many of the earlier decisions upon it must now be read subject to that qualification. Before the passing of the 1927 Act (which, by section 4 (3) applies the definition there of intimidation to the 1875 Act), it was said that intimidation must at least be such as would justify a magistrate in binding over the intimidator to keep the peace towards the person intimidated (*k*), and that to constitute intimidation personal violence must be threatened (*l*). This is no longer law.

Before the passing of the 1927 Act the intimidation used need not have resulted in such compulsion as would induce serious apprehension of violence in a man of ordinary courage, if the intimidation is such as would justify a binding over of the intimidator to keep the peace (*m*). An intimidating letter to an employer that his shop would be picketed, in language so threatening as to make such employer afraid, would not have amounted to "intimidation" (*n*).

Nor was it intimidation within the reasonable construction of the statute to threaten an employer that workmen will be told to cease work, without, however, using violence (*o*). To communicate to a master a resolution of a union as to the number of apprentices he might employ was not an intimidation (*p*). Where a number of persons assembled, some hurling epithets at a man going to work and some throwing stones,

(*k*) *Gibson v. Lawson*, [1891] 2 Q. B. 545; *Curran v. Treleaven*, *ibid.*, 553; *R. v. McCarthy*, [1903] 2 I. R. 146, reversing *Judge v. Bennet* (1887), 36 W. R. 103.

(*l*) *Per Cave, J.*, in *R. v. McKeevit*, Liverpool Assizes, December 16th, 1809; *R. v. McCarthy*, [1903] 2 I. R. 146.

(*m*) *Agnew v. Munro* (1891), 18 R. (J.) 22.

(*n*) *Gibson v. Lawson*, [1891] 2 Q. B. 545; *Judge v. Bennet* (1887), 36 W. R. 103; and see Trade Disputes Act, 1906, s. 2 (1).

(*o*) *Per Lord Coleridge, C.J.*, in *Curran v. Treleaven*, [1891] 2 Q. B. 545, at p. 562.

(*p*) *Wood v. Bowron* (1866), L. R. 2 Q. B. 21.

the whole number, however, might have been guilty of intimidation (*g*).

The construction of the words "reasonable apprehension of injury" in so far as it is not exactly defined in the 1927 Act (*infra*, p. 281), may be assisted by a reference to these earlier cases.

The specific words of a threat need not be set out in the complaint (*r*), but should appear in the conviction (*s*).

An indictment charging a person with using violence to another or intimidation is bad for duplicity (*t*).

"*Persistently follows*."—The offence is not the following of a person in a disorderly manner, but such a following as would prevent a person doing such acts as he had a right to do (*u*).

These words first appear in the Criminal Law (Amendment) Act, 1871 (*v*).

Watching and Besetting—Alteration of law by 1927 Act, s. 3.—[Attending at or near any house or place in such numbers or in such manner as is by this subsection declared to be unlawful shall be deemed to be a watching or besetting of that house or place within the meaning of section seven of the Conspiracy and Protection of Property Act, 1875.]

That is to say for [one or more persons (whether acting on their own behalf or on behalf of a trade union or of an individual employer or firm, and notwithstanding that they may be acting in contemplation or furtherance of a trade dispute) to attend at or near a house or place

(*g*) *Young v. Peck* (1912), 29 T. L. R. 31. As to threats civilly actionable as distinguished from criminal intimidation, see Lord Herschel in *Allen v. Flood*, [1898] A. C. 1, at p. 123.

(*r*) *Clarkeon v. Stuart* (1894), 32 Sc. L. R. 4.

(*s*) *Metcalf v. Wiseman* (1888), 52 J. P. 439.

(*t*) *R. v. Edmondson* (1895), 59 J. P. 776.

(*u*) *Supra*, p. 214.

(*v*) *R. v. McKennis*, [1892] 2 Q. B. 519; *R. v. Wall* (1907), 21 Cox, C. C. 401; *McKinlay v. Hart* (1897), 25 R. (J.) 7; *vide Smith v. Thomason* (1890), 16 Cox, C. C. 740; *Vogelahn v. Gunter* (1896), 167 Mass. 92, in which all the English cases up to 1896 are discussed.

where a person resides or works or happens to be, for the purpose of obtaining or communicating information or of persuading or inducing any person to work or to abstain from working, if they so attend in such numbers or otherwise in such manner as to be calculated to intimidate any person in that house or place, or to obstruct the approach thereto or egress therefrom, or to lead to a breach of the peace.] (Trade Disputes and Trade Unions Act, 1927, s. 3 (1).)

Picketing.—[It is lawful for one or more persons on their own behalf or on behalf of a trade union or of an individual employer or firm, in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or of peacefully persuading any person to work or abstain from working.] (Trade Disputes Act, 1906, s. 2 (1).)

But by section 3 (4) of the Trade Disputes and Trade Unions Act, 1927, it is provided that [Notwithstanding anything in any Act it shall not be lawful for one or more persons, for the purpose of inducing any person to work or to abstain from working, to watch or beset a house or place where a person resides or the approach to such a house or place, and any person who acts in contravention of this subsection shall be liable on summary conviction to a fine not exceeding twenty pounds or to imprisonment for a term not exceeding three months.]

Law before 1927.—Men have no right to watch or beset the house where a person happens to be for the purpose of compelling him to abstain from doing that which he has a legal right to do (*w*).

Watching and besetting, to be wrongful, need not be extended in time nor occur in a particular place; a mere *attending* may possibly, though probably not, be wrongful

(*w*) *Per* Huddleston, B., in *R. v. Bould* (1876), 13 Cox, C. C. 282.

under the 1875 Act; nor need the persons watched and beset be actually employed at the time (*x*); but on this question there is some conflict of authority (*a*).

Civil Proceedings.—Civil actions for injunctions restraining improper watching and besetting under the 1875 Act are as follows:

In *Charnock v. Court* (*b*) the plaintiffs were master joiners at Halifax, the defendants officers of the joiners' trade union. During a strike at Halifax the masters, in order to fill the places of those on strike, invited men to come from Ireland. The defendants met some of these men at the landing-stage at Fleetwood, informed them of the strike, and peaceably persuaded them not to go to Halifax. As an inducement the trade union officers supplied them with railway tickets to go elsewhere, gave them money for a night's lodging, and further promised to pay their expenses and find work for them. The defendants were held liable for watching and besetting and were restrained by injunction from continuing to act as they had done. It was held that the attendance at the landing-stage at Fleetwood was a "watching and besetting" of the place where the Irish workmen happened to be, and this watching and besetting took place with a view to compel, not, it is true, the men, but the masters, to submit to the trade union's demands.

In *Lyons v. Wilkins*, where the defendants, officers of a trade union, ordered a strike against the plaintiffs and also against S., a person who made goods for the plaintiffs only, and their pickets, by their direction, watched and

(a) *Farmer v. Wilson* (1900), 69 L. J. Q. B. 496.

(a) See on the one hand, Vaughan Williams, L.J., in *Lyons (J.) v. Wilkins*, [1899] 1 Ch. 255, at p. 267, on the other, Lindley, M.R., at p. 274; also *Ward, Lock & Co., Ltd. v. Operative Printers' Society* (1906), 22 T. L. R. 327, in support of the innocence of such an act. The saving provisions of the 1875 Act have now been repealed by the 1906 Act, s. 2 (2).

(b) [1899] 2 Ch. 35. See also *Walters v. Green*, *ibid.*, p. 696; *Wallis v. United French Polishers' Society* (1905), *Times* newspaper, November 28th.

beset the works of the plaintiffs and of S. for the purpose of persuading workpeople to abstain from working for the plaintiffs, the Court of Appeal held that the defendants in so directing their pickets were guilty of an offence against section 7 (4) of this Act, and granted an interlocutory injunction to restrain the defendants and their agents from "watching or besetting" the plaintiffs' works for the purpose of persuading or otherwise preventing persons from working for them, or of any purpose except merely to obtain or communicate information; and also to restrain the defendants from preventing S., or any other persons, from working for the plaintiffs by withdrawing employees from their employment (c). This decision was approved by Lord Lindley in *Quinn v. Leathem* (d).

Besetting a person on a ship is within the section (e).

As regards damages, an act is only criminally punishable under section 7 if the doer of it could also be made civilly liable for damages by a person whose rights had been interfered with. Conduct, therefore, in respect of which an action would not lie owing to the provisions of the Trade Disputes Act, 1906, section 3, cannot be made the subject of an action for damages on the ground that the conduct was criminal under section 7 of the Conspiracy Act (f).

"Follows in a disorderly manner."—See "Persistently follows" and the case of *R. v. McKenzie* (g).

"As hereinafter mentioned."—*Vide* section 9 hereof.

8. Where in any Act relating to employers or workmen a pecuniary penalty is imposed in respect

(c) *Lyons v. Wilkins*, [1896] 1 Ch. 811.

(d) [1901] A. C. 495, at p. 501; see also the charge of Russell Gurney (Recorder of London) to the grand jury (printed in an address to the House of Commons), April 5th, 1875; see also *R. v. Bauld* (1876), 13 Cox, C. C. 282; *R. v. Hibbert* (1875), 13 Cox, C. C. 82.

(e) *Farmer v. Wilson* (1900), 69 L. J. Q. B. 496; s. 6 hereof.

(f) *Fowler v. Kibble*, [1922] 1 Ch. 140.

(g) [1892] 2 Q. B. 519.

of any offence under such Act, and no power is given to reduce such penalty, the justices or Court having jurisdiction in respect of such offence may, if they think it just so to do, impose by way of penalty in respect of such offence any sum not less than one fourth of the penalty imposed by such Act.

“*Not less than one fourth.*”—On a first offence the amount may be reduced to any sum (Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 4); *vide* Stone's Justices' Manual.

Legal Proceedings.

POWER FOR OFFENDER UNDER THIS ACT TO BE TRIED ON INDICTMENT AND NOT BY COURT OF SUMMARY JURISDICTION.

9. Where a person is accused before a Court of summary jurisdiction of any offence made punishable by this Act, and for which a penalty amounting to twenty pounds, or imprisonment, is imposed, the accused may, on appearing before the Court of summary jurisdiction, declare that he objects to being tried for such offence by a Court of summary jurisdiction, and thereupon the Court of summary jurisdiction may deal with the case in all respects as if the accused were charged with an indictable offence and not an offence punishable on summary conviction, and the offence may be prosecuted on indictment accordingly.

“*Court of summary jurisdiction.*”—Defined by section 13 hereof. As to Scotland, *vide* sections 18 and 19 hereof.

Apart from this section an injunction may be granted in the High Court to restrain injuries to property (*h*).

“*Declare that he objects.*”—The Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 17, enacts as follows: [A person when charged before a Court of summary jurisdiction, with an offence, in respect of the commission of which an offender is liable on summary conviction to be imprisoned for a term exceeding three months, and which is not an assault, may, on appearing before the Court, and before the charge is gone into but not afterwards, claim to be tried by a jury; and thereupon the Court of summary jurisdiction shall deal with the case in all respects as if the accused were charged with an indictable offence and not with an offence punishable on summary conviction, and the offence shall as respects the person so charged be deemed to be an indictable offence, and if the person so charged is committed for trial, or bailed to appear for trial, shall be prosecuted accordingly, and the expenses of the prosecution shall be payable as in cases of felony. . . . (3) This section shall not apply to the case of a child, unless the parent or guardian of the child is present; but if he is the claim under this section may be made by such parent or guardian.]

There are several statutes, such as that under consideration, which expressly enable a defendant, when accused of an offence punishable on summary conviction under those statutes, to insist upon a trial by indictment. It is the duty of the Court of summary jurisdiction before going into the case to inform the accused of his right to elect; and failure to do so invalidates the subsequent summary proceedings (*R. v. Cockshott* (*i*)). When the defendant elects to be tried on indictment the procedure and powers of the Court of trial are the same as in the case of an ordinary misdemeanor, and are not those of

(*h*) *Springhead Spinning Co. v. Riley* (1868), L. R. 6 Eq. 551; *Lyons (J.) & Sons v. Wilkins*, [1896] 1 Ch. 811, 826.

(*i*) [1898] 1 Q. B. 582.

the Court of summary jurisdiction (see *R. v. Manchester JJ.*, [1899] 1 Q. B. 571). It is not necessary to aver in this indictment that the defendant elected to be tried by a jury (*R. v. Chambers (k)*). The acts which the persons interfered with had a legal right to do should be specifically described (*R. v. McKenzie (l)*). In *Ex parte Wilkins (m)* "working as a shoe finisher" was held to be a sufficient description of such an act. In an indictment under section 7 (1) for "injuring property" the property injured must be specified (*Smith v. Moody (n)*).

PROCEEDINGS BEFORE COURT OF SUMMARY JURISDICTION.

10. Every offence under this Act which is made punishable on conviction by a Court of summary jurisdiction or on summary conviction, and every penalty under this Act recoverable on summary conviction, may be prosecuted and recovered in manner provided by the Summary Jurisdiction Act.

"Summary Jurisdiction Act" is defined in section 13 hereof. The definition now includes the Summary Jurisdiction Acts, 1879 (o) and 1884 (p).

See also the modifications imposed by section 9 hereof. As to Scotland, see sections 18 and 19.

REGULATIONS AS TO EVIDENCE.

11. Provided that on the hearing and determining of any indictment or information under

(k) (1896) 18 Cox, C. C. 401.

(l) [1892] 2 Q. B. 519.

(m) (1895) 18 Cox, C. C. 161.

(n) [1903] 1 K. B. 56.

(o) 43 & 43 Vict. c. 49.

(p) 47 & 48 Vict. c. 43.

sections 4, 5 and 6 of this Act, the respective parties to the contract, their husbands or wives, shall be deemed and considered as competent witnesses.

By the Criminal Evidence Act, 1898 (*g*), every person charged with an offence, and the wife or husband, as the case may be, is a competent witness for the defence in every stage of the proceedings. Section 11 hereof anticipates this general provision.

APPEAL IN ENGLAND.

Appeal to quarter sessions, as regards England, is now provided in part by the Summary Jurisdiction Acts, 1879, s. 31, 1884, s. 6, and the Criminal Justice Administration Act, 1914 (*r*), that is, after the word "county" mentioned below.

The present statutory law is therefore as follows :—

12. If any party feels aggrieved by any order or conviction made by such a Court of summary jurisdiction on determining any complaint or information, the party so aggrieved may appeal therefrom, subject to the following conditions and regulations :—

(1) The appeal must be made to the prescribed Court of general or quarter sessions, or if no Court is prescribed, to the next practicable Court of general or quarter sessions having jurisdiction in the county, [borough or place for which the said Court of summary jurisdiction acted, and holden not less than fifteen days after the day on

(*g*) 61 & 62 Vict. c. 36.

(*r*) 42 & 43 Vict. c. 49 ; 47 & 48 Vict. c. 43 ; 4 & 5 Geo. 5, c. 58.

which the decision was given upon which the conviction or order was founded :

(2) The appellant must, within the prescribed time, or if no time is prescribed within seven days after the day on which the said decision of the Court was given, give notice of appeal by serving on the other party and on the clerk of the said Court of summary jurisdiction notice in writing of his intention to appeal and of the general grounds of such appeal ;

(3) The appellant must, within the prescribed time, or if no time is prescribed within three days after the day on which he gave notice of appeal, enter into a recognisance before a Court of summary jurisdiction, with or without a surety or sureties as that Court may direct, conditioned to appear at the said sessions and to try such appeal, and to abide the judgment of the Court of Appeal thereon, and to pay such costs as may be awarded by the Court of Appeal, or the appellant may, if the Court of summary jurisdiction before whom the appellant appears to enter into a recognisance, think it expedient, give such other security, by deposit of money with the clerk of the Court of summary jurisdiction or otherwise, as that Court deem sufficient.

(4) Where the appellant is in custody, the Court of summary jurisdiction before whom the appellant appears to enter into a recognisance may, if the Court think fit, on the appellant entering into such recognisance on giving such other security as aforesaid, release him from custody.

(5) The Court of Appeal may adjourn the hearing of the appeal, and upon the hearing thereof may confirm, reverse or modify the decision of the Court of summary jurisdiction, or remit the matter, with the opinion of the Court of Appeal thereon, to a Court of summary jurisdiction acting for the same county, borough or place as the Court by whom the conviction or order appealed against was made, or may make such other order in the matter as the Court of Appeal may think just, and may by such order exercise any power which the Court of summary jurisdiction might have exercised, and such order shall have the same effect, and may be enforced in the same manner, as if it had been made by the Court of summary jurisdiction. The Court of Appeal may also make such order as to costs to be paid by either party as the Court may think just;

(6) Whenever a decision is not confirmed by the Court of Appeal, the clerk of the peace shall send to the clerk of the Court of summary jurisdiction from whose decision the appeal was made, for entry in his register, and also indorse on the conviction or order appealed against, a memorandum of the decision of the Court of Appeal, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto and shall be sufficient evidence of the said decision in every case where such copy or certificate would be sufficient evidence of such conviction or order.

(7) Where the appellant is in custody the

justice may, if he think fit, on the appellant entering into such recognisance as aforesaid, release him from custody.

(8) The Court of Appeal may adjourn the appeal, and, upon the hearing thereof, may confirm, reserve, or modify the decision of the Court of summary jurisdiction or remit the matter to the Court of summary jurisdiction, in which event the said last mentioned Court shall thereupon rehear and decide the information or complaint in accordance with the opinion of the said Court of Appeal. The Court of Appeal may also make such order as to costs to be paid by either party as the Court thinks just.]

The dismissal of a charge may also be appealed against (s).

APPEAL IN IRELAND.

(5) *The Court of Appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the Court of summary jurisdiction, or remit the matter to the Court of summary jurisdiction with the opinion of the Court of Appeal thereon, or make such other order in the matter as the Court thinks just, and if the matter be remitted to the Court of summary jurisdiction the said last mentioned Court shall thereupon rehear and decide the information in accordance with the opinion of the said Court of Appeal. The Court of Appeal may also make such order as to costs to be paid by either party as the Court thinks just (ss).*

(s) *Gibson v. Lawson*, [1891] 2 Q. B. 545, at p. 557.

(ss) As to Northern Ireland, see the Government of Ireland (Companies, Societies, etc.) Order, 1922, S. R. & O. 184.

Definitions.

GENERAL DEFINITIONS.

"THE SUMMARY JURISDICTION ACT."

13. In this Act,—

The expression "the Summary Jurisdiction Act" means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders," inclusive of any Acts amending the same ; and

See the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), and that of 1884 (47 & 48 Vict. c. 43), and the Criminal Justice Administration Act, 1914 (4 & 5 Geo. 5, c. 58); *vide* Stone's Justices' Manual.

"COURT OF SUMMARY JURISDICTION."

The expression "Court of summary jurisdiction" means—

(1) As respects the City of London, the Lord Mayor or any alderman of the said City sitting at the Mansion House or Guildhall Justice Room ; and

(2) As respects any police court division in the Metropolitan Police District, any metropolitan police magistrate sitting at the police court for that division ; and

(3) As respects any city, town, liberty, borough, place, or district for which a stipendiary magis-

trate is for the time being acting, such stipendiary magistrate sitting at a police court or other place appointed in that behalf; and

(4) Elsewhere, any justice or justices of the peace to whom jurisdiction is given by the Summary Jurisdiction Act: Provided that, as respects any case within the cognisance of such justice or justices as last aforesaid, an information under this Act shall be heard and determined by two or more justices of the peace in petty sessions sitting at some place appointed for holding petty sessions.

Nothing in this section contained shall restrict the jurisdiction of the Lord Mayor or any alderman of the City of London, or of any metropolitan police or stipendiary magistrate, in respect of any act or jurisdiction which may now be done or exercised by him out of court.

As to Scotland, see sections 18 and 19 hereof, *infra*, p. 236.

DEFINITIONS OF "MUNICIPAL AUTHORITY"
AND "PUBLIC COMPANY."

14. The expression "municipal authority" in this Act means any of the following authorities, that is to say, the Metropolitan Board of Works, the Common Council of the City of London, the Commissioners of Sewers of the City of London, the town council of any borough for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled, "An Act to provide for the Regulation of Municipal Cor-

porations in England and Wales," and any Act amending the same, any commissioners, trustees, or other persons invested by any local Act of Parliament with powers of improving, cleansing, lighting, or paving any town, and any local board.

Any municipal authority or company or contractor who has obtained authority by or in pursuance of any general or local Act of Parliament to supply the streets of any city, borough, town or place, or of any part thereof, with gas, or which is required by or in pursuance of any general or local Act of Parliament to supply water on demand to the inhabitants of any city, borough, town or place, or any part thereof, shall for the purposes of this Act be deemed to be a municipal authority or company or contractor upon whom is imposed by Act of Parliament the duty of supplying such city, borough, town or place, or part thereof, with gas or water.

"*Metropolitan Board of Works.*"—For which now read the London County Council (Local Government Act, 1888 (51 & 52 Vict. c. 41)).

"*Any Act amending the same.*"—See Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 242 (3).

It will be observed that the definition does not extend to electrical undertakings; but see the Electricity (Supply) Act, 1919 (9 & 10 Geo. 5, c. 100), s. 31; and see Trade Disputes and Trade Unions Act, 1927, s. 6, *infra*, p. 288.

"MALICIOUSLY" IN THIS ACT IS CONSTRUED AS IN MALICIOUS INJURIES TO PROPERTY ACT.

15. The word "maliciously" used in reference to any offence under this Act shall be construed

in the same manner as it is required by the fifty-eighth section of the Act relating to malicious injuries to property, that is to say, the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-seven, to be construed in reference to any offence committed under such last mentioned Act.

See sections 4 and 5 hereof. To justify conviction the act must be done wilfully or at least recklessly (*R. v. Pembliton* (t); *R. v. Latimer* (w); *R. v. Welch* (x); *R. v. Clemens* (y); *Heaven v. Crutchley* (z)).

Saving Clause.

SAVING AS TO SEA SERVICE.

16. Nothing in this Act shall apply to seamen or to apprentices to the sea service.

“*Seamen*” means persons employed under and subject to the Merchant Shipping Acts (a)—that is, every person (except masters and pilots) employed on board any ship. The exemption merely means that seamen cannot be made liable to punishment under the Act (b), it does not prevent them from bringing an action (c). Similar offences, when committed by seamen, are punishable under the Merchant Shipping Act, 1894, s. 236, with a fine of £10.

(t) (1874) L. R. 2 C. C. R. 119.

(w) (1886) 17 Q. B. D. 359.

(x) (1875) 1 Q. B. D. 23.

(y) [1898] 1 Q. B. 556.

(z) (1903) 68 J. P. 53.

(a) *R. v. Lynch*, [1898] 1 Q. B. 61; 57 & 58 Vict. c. 60, s. 742.

(b) *R. v. Wall* (1890), 112 C. C. C. Sess. Papers, 886; *R. v. Cole* (1891), 113 C. C. C. Sess. Papers, 622; *R. v. Phillips*, *ibid.*

(c) *Kennedy v. Cowie*, [1891] 1 Q. B. 771; *Farmer v. Wilson* (1900), 69 L. J. Q. B. 496.

Repeal.

REPEAL OF ACTS.

17. On and after the commencement of this Act, there shall be repealed :—

I. The Act of the session of the thirty-fourth and thirty-fifth years of the reign of Her present Majesty, chapter thirty-two, intituled “ An Act to amend the Criminal Law relating to Violence, Threats and Molestation.”

As to this Act, passed the same year as the Trade Union Act, 1871, *vide supra*, p. 189.

II. “The Master and Servant Act, 1867” (30 & 31 Vict. c. 141), and the enactments specified in the first Schedule to that Act, with exceptions following as to the enactments in such schedule ; (that is to say),

- (1) Except so much of sections one and two of the Act passed in the thirty-third year of the reign of King George the Third, chapter fifty-five, intituled “ An Act to authorise Justices of the Peace to impose fines upon Constables, Overseers and other Peace or Parish Officers for neglect of Duty, and on Masters of Apprentices for Ill-usage of such their Apprentices ; and also to make provision for the Execution of Warrants of Distress granted by Magistrates,” as relates to constables, overseers, and other peace or parish officers ; and
- (2) Except so much of sections five and six of an Act passed in the fifty-ninth year of

the reign of King George the Third, chapter ninety-two, intituled "An Act to enable Justices of the Peace in Ireland to act as such, in certain cases, out of the limits of the Counties in which they actually are ; to make Provision for the Execution of Warrants of Distress granted by them ; and to authorise them to Impose Fines upon Constables and other Officers for neglect of Duty, and on Masters for Ill-usage of their Apprentices," as relates to constables and other peace or parish officers ; and

- (3) Except the Act of session of the fifth and sixth years of the reign of Her present Majesty, chapter seven, intituled "An Act to explain the Acts for the better Regulation of certain Apprentices " ; and

(So much of this Act which is not here repealed is repealed by the Statute Law Revision Act (No. 2), 1888, "except so far as it relates to 32 Geo. 3, c. 37," so far as that Act is still in force.)

- (4) Except sub-sections one, two, three and five of section sixteen of the Summary Jurisdiction (Ireland) Act, 1851, relating to certain disputes between employers and the persons employed by them ;

(As to civil disputes between employers and employed in England, see Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90).)

III. Also there shall be repealed the following enactments making breaches of contract criminal,

and relating to the recovery of wages by summary procedure ; (that is to say),

- (a) An Act passed in the fifth year of the reign of Queen Elizabeth, chapter four, and intituled " An Act touching Dyvers Orders for Artificers, Labourers, Servants of Husbandrye, and Apprentices," *vide supra*, pp. 5, 7, 13.
- (b) So much of section two of an Act passed in the twelfth year of King George the First, chapter thirty-four, and intituled " An Act to prevent unlawful Combination of Workmen employed in the Woollen Manufactures, and for better Payment of their Wages," as relates to departing from service and quitting or returning work before it is finished ; and
- (c) Section twenty of an Act passed in the fifth year of King George the Third, chapter fifty-one, the title of which begins with the words " An Act for repealing several Laws relating to the Manufacture of Woollen Cloth in the County of York " and ends with the words " for preserving the credit of the said manufacture at the foreign market " ; and
- (d) An Act passed in the nineteenth year of King George the Third, chapter forty-nine, and intituled " An Act to prevent Abuses in the Payment of Wages to Persons employed in the Bone and Thread Lace Manufactory " ; and
- (e) Sections eighteen and twenty-three of an

Act passed in the session of the third and fourth years of Her present Majesty, chapter ninety-one, intituled "An Act for the more effectual Prevention of Frauds and Abuses committed by Weavers Sewers and other Persons employed in the Linen, Hempen, Union, Cotton, Silk, and Woollen Manufactures in Ireland, and for the better Payment of their Wages, for one year, and from thence to the end of the next Session of Parliament and

- (f) Section seventeen of an Act passed in the session of the sixth and seventh years of Her present Majesty, chapter forty, the title of which begins with the words "An Act to amend the Laws" and ends with the words "Workmen engaged therein"; and

By these sections servants in the woollen and cotton trades might recover their wages before a justice.

- (g) Section seven of an Act passed in the session of the eighth and ninth years of Her present Majesty, chapter one hundred and twenty-eight, and intituled "An Act to make further Regulation respecting the Tickets of Work to be delivered to Silk Weavers in certain cases."

I.e., the Silk Weavers Act, 1845, *supra*, p. 6.

Provided that,—

- (1) Any order for wages or further sum of compensation in addition to wages made in pursuance

of section sixteen of the Summary Jurisdiction (Ireland) Act, 1851, may be enforced in like manner as if it were an order made by a Court of summary jurisdiction in pursuance of the Employers and Workmen Act, 1875, and not otherwise; and

(2) The repeal enacted by this section shall not affect—

- (a) Anything duly done or suffered, or any right or liability acquired or incurred under any enactment hereby repealed; or
- (b) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or
- (c) Any investigation, legal proceeding, or remedy in respect of any such right, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not passed.

APPLICATION TO SCOTLAND.

18. This Act shall extend to Scotland, with the modifications following; (that is to say),

DEFINITIONS.

(1) The expression “municipal authority” means the town council of any royal or parliamentary burgh, or the commissioners of police of any burgh, town or populous place under the provisions of the General Police and Improvement (Scotland) Act, 1862, or any local authority under

the provisions of the Public Health (Scotland) Act, 1867 :

(2) The expression " the Summary Jurisdiction Act " means the Summary Procedure Act, 1864, and any Acts amending the same :

(3) The expression " the Court of summary jurisdiction " means the sheriff of the county or any one of his substitutes.

In Scotland the following provisions shall have effect in regard to the prosecution of offences, recovery of penalties and making of orders under this Act :—

(1) Every offence under this Act shall be prosecuted, every penalty recovered, and every order made at the instance of the Lord Advocate, or of the Procurator Fiscal of the sheriff Court :

(2) The proceedings may be on indictment in the Court of Justiciary in Edinburgh or on circuit or in a sheriff Court, or may be taken summarily in the sheriff Court under the provisions of the Summary Procedure Act, 1864 :

(3) Every person found liable on conviction to pay any penalty under this Act shall be liable, in default of payment within a time to be fixed in the conviction, to be imprisoned for a term, to be also fixed therein, not exceeding two months, or until such penalty shall be sooner paid, and the conviction and warrant may be in the form of No. 3 of Schedule K, of the Summary Procedure Act, 1864 :

(4) In Scotland all penalties imposed in pursuance of this Act shall be paid to the clerk of the Court imposing them, and shall by him be accounted for and paid to the Queen's and Lord

Treasurer's Remembrancer, and be carried to the Consolidated Fund.

RECOVERY OF PENALTIES, ETC., IN SCOTLAND.

19. In Scotland the following provisions shall have effect in regard to the prosecution of offences, recovery of penalties, and making of orders under this Act :

- (1) Every offence under this Act shall be prosecuted, every penalty recovered, and every order made at the instance of the Lord Advocate, or of the Procurator Fiscal of the sheriff Court :
- (2) The proceedings may be on indictment in the Court of Justiciary in Edinburgh or on circuit or in a sheriff Court, or may be taken summarily in the sheriff Court under the provisions of the Summary Procedure Act, 1864 :
- (3) Every person found liable on conviction to pay any penalty under this Act shall be liable, in default of payment within a time to be fixed in the conviction, to be imprisoned for a term, to be also fixed therein, not exceeding two months, or until such penalty shall be sooner paid, and the conviction and warrant may be in the form of No. 3 of Schedule K. of the Summary Procedure Act, 1864 :
- (4) In Scotland all penalties imposed in pursuance of this Act shall be paid to the clerk of the Court imposing them, and shall by him be accounted for and paid to the

Queen's and Lord Treasurer's Remembrancer, and be carried to the Consolidated Fund.

APPEAL IN SCOTLAND AS PRESCRIBED BY
20 GEO. 2, c. 43.

20. In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the next circuit Court of Justiciary, or where there are no circuit Courts to the High Court of Justiciary at Edinburgh, in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, in regard to appeals to circuit Courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force.

II.

TRADE DISPUTES ACT, 1906 (6 EDW. 7, c. 47).

Effect of 1927 Act.—As regards this Act generally.

By section 1 (4) of the Trade Disputes and Trade Unions Act, 1927, it is provided that the Trade Disputes Act, 1906 [shall not apply to any act done in contemplation or furtherance of a strike or lock-out which is by that Act declared to be illegal, and any such act shall not be deemed for the purposes of any enactment to be done in contemplation or furtherance of a trade dispute] (d).

AMENDMENT OF LAW OF CONSPIRACY IN THE CASE OF TRADE DISPUTES.

1. The following paragraph shall be added as a new paragraph after the first paragraph of section three of the Conspiracy and Protection of Property Act, 1875 :—

“An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.”

“*Combination.*”—This section alters the law of conspiracy where there is a trade dispute, but leaves it intact in every other case. It is based on the recommendation of the Majority Report of the Royal Commission on

(d) As to history hereof, *supra*, pp. 190 *et seq.* As to the Trade Disputes and Trade Unions Act, 1927, *infra*, p. 270.

Trade Disputes, 1906 (Cd. 2825), and frees persons acting in concert in cases of trade disputes from liabilities which might otherwise attach to them at common law (e).

It is to be noted that both the mischief and the exemption are confined to civil matters. The corresponding criminal liability was removed by section 3 of the Conspiracy and Protection of Property Act, 1875 (f), to which the section is an addition.

The immunities are not retrospective, and will not prevent the continuance of an action commenced against a trade union before the passing of the Act (g).

A conspiracy consists in the agreement of two or more persons to do an unlawful act or to do a lawful act by unlawful means (h). When the act done would be unlawful if done by an individual, no difficulty arises; but, apart from the liability of an individual, a combination of two or more persons wilfully to injure another in his trade is unlawful and, if it results in damage to him, actionable (i).

If the real purpose of the combination is not to injure another but to forward or defend the trade of those who enter into it, then no wrong is committed and no action will lie, although damage to another ensues (k).

(e) *Per Cosens-Hardy, M.R., in Conway v. Wade*, [1908] 2 K. B. 844, at p. 849.

(f) *Supra*, p. 200; but see now the Trade Disputes and Trade Unions Act, 1927, ss. 1 and 7.

(g) *Smithies v. National Association of Operative Plasterers*, [1909] 1 K. B. 310.

(h) *Per Willes, J., in Mulcahy v. Reg.* (1868), L. R. 3 H. L. 306, at p. 317.

(i) *Per Lord Cave, in Sorrell v. Smith*, [1925] A. C. 700, at p. 712; *Garret v. Taylor* (1620), Cro. Jac. 567; *Allen v. Flood*, [1898] A. C. 1; *Quinn v. Leatham*, [1901] A. C. 495; *Gregory v. Dubs of Brunswick* (1843), 6 Man. & G. 205; *Temperton v. Russell*, [1893] 1 Q. B. 715; *Giblan v. National Amalgamated Labourers' Union of Great Britain and Ireland*, [1903] 2 K. B. 600; *Skinner v. Gunton* (1669), 1 Wms. Saund. 229; *Barber v. Leister* (1847), 7 C. B. 175.

(k) *Ibid.*; *Mogul Steamship Co. v. McGregor, Gow & Co.*, [1892] A. C. 25; *Allen v. Flood*, [1898] A. C. 1; *Scottish Co-operative Wholesale*

A combination merely to interfere for legitimate trade purposes with another in his trade or labour which results in injury is not unlawful, unless such interference by one person would have been unlawful, but a combination expressly to injure another in his trade or labour may be unlawful (*l*).

A man may resist without much difficulty the acts of an individual; he would probably have at least the moral support of his friends and neighbours; but it is a very different thing when one man has to defend himself against many combined to do him wrong (*m*). Numbers may annoy and coerce when one may not. Annoyance and coercion by many may be so intolerable as to become actionable and produce a result which one alone would not produce (*n*).

In civil conspiracy damage is of the gist of the action (*o*).

"*If done without any such combination.*"—The section has particular reference to actions brought against persons

Society v. Glasgow Fishers' Trade Defence Association, 35 S. L. R. 645; *Mackenzie v. Iron Trades Employers' Insurance Association*, [1910] S. C. 79; *Ware and De Freville v. Motor Trade Association*, [1921] 3 K. B. 40; *Reynolds v. Shipping Federation*, [1924] 1 Ch. 28; *Mogul Steamship Case* (1889), 23 Q. B. D. 598, at p. 612; *Attorney-General for Australia v. Adelaide Steamship Co.*, [1913] A. C. 781, at p. 793; *Lumley v. Gye* (1853), 2 E. & B. 216; *South Wales Miners' Federation v. Glamorgan Coal Co.*, [1905] A. C. 239; *Conway v. Wade*, [1909] A. C. 506; *Larkin v. Long*, [1915] A. C. 814; *Boots v. Grundy* (1900), 82 L. T. 769; *Jenkinson v. Nield* (1892), 8 T. L. R. 540; *Workman v. London Fire Insurance*, (1903), 19 T. L. R. 360.

(*l*) *Per* Lord Coleridge, in *Mogul v. McGregor* (1888), 21 Q. B. D. 544, at p. 549; *per* Bowen, L.J., *ibid.*, 23 Q. B. D. 598, at p. 616; *Kearney v. Lloyd* (1890), 26 L. R. Ir. 268; *Boots v. Grundy* (1900), 82 J. P. 769; *Gregory v. Dukes of Brunswick* (1843), 6 Man. & G. 205.

(*m*) *Per* Lord Macnaghten in *Quinn v. Leatham*, [1901] A. C. at p. 512.

(*n*) *Per* Lord Brampton, *ibid.*, at p. 328; *per* Lord Lindley, *ibid.*, at p. 538.

(*o*) *Cotterell v. Jones* (1851), 11 C. B. 713; *Kearney v. Lloyd* (1890), 26 L. R. Ir. 268, 280; *Salaman v. Warner* (1891), 65 L. T. 132; *Sweeney v. Cote*, [1907] A. C. 221.

for interfering with or preventing the formation of contracts between other persons such as employers and their workmen.

Interferences resulting in breaches of contract are actionable whereby a party suffers actual pecuniary damage, if procured by a single individual (*p*), and such a cause of action may arise independently of any question of conspiracy (*q*); so also unconcerted interferences not so resulting in breach of contract are actionable if produced by unlawful means (*r*), but there must be an actual procurement (*s*); but unconcerted interferences, not unlawful and not produced by unlawful means, are not actionable (*t*). (*As to the meaning of illegal means, vide infra, pp. 256 et seq.*)

It is in such a case only that acts done in agreement or combination may be actionable even when they would not be actionable if done by an individual. Whether they are so actionable, through the combination itself producing the element of illegality, otherwise absent, must depend upon whether the concerted acts *prima facie* illegal can be justified or not (*u*). (*As to justification, vide infra, pp. 258 et seq.*)

This section appears to assume that at common law a combination may be unlawful even though when the same act done by one it would be lawful. According to

(*p*) *Lumley v. Gye* (1853), 2 E. & B. at p. 217; per Lord Macnaghten in *Quinn v. Leatham*, [1901] A. C. 495, at p. 510; *South Wales Miners' Federation v. Glamorgan Coal Co., Ltd.*, [1905] A. C. 239.

(*q*) Per McCardie, J., in *Pratt v. British Medical Association*, [1919] 1 K. B. 244.

(*r*) *Garret v. Taylor* (1620), Cro. Jac. 567; *Tarlton v. McGauley* (1793), 1 Peake, 270; *Keble v. Hickeringill* (1707), 11 East, p. 573; *Quinn v. Leatham*, [1901] A. C. 495; *Giblan v. National Amalgamated Labourers' Union*, [1903] 2 K. B. 600.

(*s*) *Wolstenholme v. Ariss*, [1920] 2 Ch. 403; *Davies v. Thomas*, [1920] 2 Ch. 189.

(*t*) *Allen v. Flood*, [1898] A. C. 1.

(*u*) *Quinn v. Leatham*, [1901] A. C. 495; *Hutley v. Simmons*, [1898] 1 Q. B. 181; *Bulcock v. St. Anne's Master Builders' Federation* (1902), 19 T. L. R. 27.

Lord Cave, "there is some authority for the view that what is unlawful in two is not lawful in one, and that the circumstance that two or more persons combine to cause the injury, while it may be very relevant as evidence of the purpose and as an aggravation of the damage, is not itself an essential element in the cause of action" (w); but, according to Lord Dunedin, the view of McCardie, J., in *Pratt v. British Medical Association* (x) that the element of conspiracy is a mere incidental feature, "is a heresy" (y); and Lord Dunedin approves of the view of Atkin, L.J., in *Ware and De Freville* (z) to the effect that, according to *Allen v. Flood* (a) and *Quinn v. Leathem* (b), an otherwise lawful act done by two or more in combination does become unlawful if done by the two or more in combination with intent to injure another. This view is also taken by Lord Buckmaster in *Sorrell's Case* (c) and would appear to be the law. Unless conspiracy is an actionable wrong in itself there can be little meaning in section 1 of this Act. In any event, where a trade dispute within the meaning of the Act is found to exist, the effect of section 1 of the Trade Disputes Act, it is submitted, is to assimilate the protection granted by section 3 to an individual who acts in contemplation or furtherance of a trade dispute (*infra*, p. 249) to a combination which may incur any further illegality by so acting.

"*In contemplation or furtherance of a Trade Dispute.*"—Discussed under section 3, where similar words occur, *infra*, p. 249.

(w) *Ibid.*, at p. 713; see also *per Palles, B.*, in *Kearney v. Lloyd* (1890), 26 L. R. Ir. 268, at p. 280; *per Romer, L.J.*, in *Giblan's Case*, [1903] 2 K. B. 800, at p. 819; McCardie, J., in *Pratt's Case*, [1919] 1 K. B. 244, at pp. 255 *et seq.*

(x) [1919] 1 K. B. 244, at p. 260.

(y) *Ibid.*, at p. 719.

(z) [1921] 3 K. B. 40, at p. 80.

(a) [1898] A. C. 1.

(b) [1901] A. C. 495.

(c) *Ibid.*, at p. 747.

PEACEFUL PICKETING (cc).

2.—(1) It shall be lawful for one or more persons acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working.

(2) Section seven of the Conspiracy and Protection of Property Act, 1875, is hereby repealed from "attending at or near" to the end of the section.

Limitation by 1927 Act.—By section 3 of the Trade Disputes and Trade Unions Act, 1927, it is declared [that it is unlawful for one or more persons (whether acting on their own behalf or on behalf of a trade union or of an individual employer or firm, and notwithstanding that they may be acting in contemplation or furtherance of a trade dispute) to attend at or near a house or place where a person resides or works or carries on business or happens to be, for the purpose of obtaining or communicating information or of persuading or inducing any person to work or to abstain from working, if they so attend in such numbers or otherwise in such manner as to be calculated to intimidate any person in that house or place, or to obstruct the approach thereto or egress therefrom, or to lead to a breach of the peace; and attending at or near any house or place in such numbers or in such manner as is by this sub-section declared to be unlawful shall be deemed to be a watching or besetting of that house

(cc) See generally pp. 211 *et seq.* and pp. 277 *et seq.*

or place within the meaning of section seven of the Conspiracy and Protection of Property Act, 1875.

(2) In this section the expression "to intimidate" means to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family or to any of his dependants or of violence or damage to any person or property; and the expression "injury" includes injury to a person in respect of his business, occupation, employment or other source of income and includes any actionable wrong.

(3) In section seven of the Conspiracy and Protection of Property Act, 1875, the expression "intimidate" shall be construed as having the same meaning as in this section.

(4) Notwithstanding anything in any Act it shall not be lawful for one or more persons, for the purpose of inducing any person to work or to abstain from working, to watch or beset a house or place where a person resides or the approach to such a house or place, and any person who acts in contravention of this subsection shall be liable on summary conviction to a fine not exceeding twenty pounds or to imprisonment for a term not exceeding three months (discussed, *supra*, pp. 212—217).]

The right under the 1906 Act to picket a house or place where a person resides or works or carries on business or happens to be merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working is thus limited by section 3 of the 1927 Act. By that section, where such attendance is "in such numbers or otherwise in such manner as to be calculated to intimidate" (as defined by that section) "any person in that house or place or to obstruct the approach thereto or egress therefrom or to lead to a breach of the peace," such attendance is now deemed to be an unlawful watching or besetting within the meaning of section 7 of the 1875 Act; and, in addition, by section 3(4) it is declared that to watch or

beset a house or place (including a watching or besetting as defined by the Act of 1927) for the purpose of inducing a person to work or to abstain from working, is unlawful.

For further discussion on the 1927 Act, *infra*, p. 277.

"*It shall be lawful.*"—This section in effect revives the Molestation of Workmen Act, 1859 (*d*), which excepted peaceful persuasion (as well as the communication of information) from the offences of molestation and obstruction contained in the Combination of Workmen Act, 1825 (*e*), a law which the Acts of 1875 had been said to repeal.

The immunity afforded by the 1906 Act must be strictly limited to peaceful picketing. Watching and besetting (as extended by section 3 of the 1927 Act to include intimidation by numbers, etc., as there defined) (*infra*, p. 279), or trespass, or any other improper act, is still unlawful. The Trade Disputes Act of 1906 and the 1875 Act must be read together, or rather the latter Act must be read as amended by the former. The 7th section of the 1875 Act was partially repealed by the 1906 Act, and section 7 of the 1875 Act must be read as if section 2 of the 1906 Act was embodied in it. The former Act relates to besetting or watching, which is plainly an external operation. The words in the 2nd section of the 1906 Act are in like manner to be read in connection with the words "besetting and watching," thus indicating what may be lawfully done without, but not within, a house or place. It was not intended to enlarge the field of operations—the physical area of the operations of representatives of trade unions or of others. It was never intended to authorise as a matter of right an invasion into a man's house or entry against the will of the owner (*f*).

(*d*) 22 Vict. c. 34.

(*e*) 6 Geo. 4, c. 129, *supra*.

(*f*) *Per* Lord O'Brien, L.C.J., in *Larkin v. Belfast Harbour Commissioners*, [1908] 2 I. R. 214.

Obstruction may be illegal under section 3 of the 1927 (*g*) Act.

The section deals with civil as well as criminal responsibility (*h*). Even apart from the section, there is no wrong committed; stationary pickets who cause no violence, obstruction, or nuisance and do nothing beyond communicating information invite no breach of contract (*i*).

The Trade Disputes Act, 1906, does not change the nature of the offence under the 1875 Act, or make it necessary to allege intimidation expressly in the complaints; it merely provides a defence (*k*).

"*A trade union.*"—This includes a branch (see section 5 (2) hereof).

"*Contemplation or furtherance of a trade dispute,*" *infra*, pp. 249 *et seq.*

"*Attend.*"—It is doubtful whether this extends to persistent watching (*l*).

"*At or near.*"—The section does not authorise trespass (*m*).

"*Communicating information.*"—It is doubtful whether this includes information to persons not parties to the dispute (*n*), and there must in any event be an intention proved actually to receive or communicate information (*o*). The section is not confined to members of a trade union (*p*).

(*g*) *Infra*, p. 279.

(*h*) *Per* Lord Atkinson in *Vacher & Sons, Ltd. v. London Society of Compositors*, [1913] A. C. 107, at p. 123.

(*i*) *Ward, Lock & Co., Ltd. v. Operative Printers' Assistants Society* (1906), 22 T. L. R. 327.

(*k*) *Wilson v. Renton* (1909), 47 Sc. L. R. 209. But see now Trade Disputes and Trade Unions Act, 1927, s. 3, *infra*, p. 277.

(*l*) *Per* Palles, B., in *R. v. Wall* (1907), 21 Cox, C. C. 401, at p. 403.

(*m*) *Larkin v. Belfast Harbour Commissioners*, [1908] 2 I. R. 214; *M'Cuaker v. Smith*, [1918] 2 I. R. 432.

(*n*) *Topin v. Feron* (1909), 43 I. L. T. 190.

(*o*) *Wilson v. Renton*, *ibid.*

(*p*) *Per* Lord Haldane, L.C., in *Vacher v. London Society of Compositors*, [1913] A. C. 107, at p. 111.

"Section 7 of the 1875 Act is hereby (in part) repealed."

The following words are repealed:—

"Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section" (*supra*, p. 212).

REMOVAL OF LIABILITY FOR INTERFERING WITH ANOTHER PERSON'S BUSINESS, ETC.

3. An act done by a person in contemplation or furtherance of a trade dispute is not actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills.

"In contemplation or furtherance of a trade dispute."—The words "in contemplation or furtherance" do not necessarily embrace every act done by a person with a view to bringing about a trade dispute (q).

To contemplate a trade dispute is to have before the mind some objective event or situation; it does not mean a contemplation, meditation, or resolve in regard to something as yet wholly within the mind and of a subjective character. And the term "furtherance of a trade dispute" must apply to a trade dispute in existence, and the act done must be in the course of it and for the purpose of promoting the interest of either party or both parties to it (r). The words "in contemplation or furtherance" are in the Conspiracy and Protection of Property Act,

(q) *Per Cosens-Hardy, M.R., in Conway v. Wade, [1908] 2 K. B. 844, at p. 249.*

(r) *Per Lord Shaw in Conway v. Wade, [1908] A. C. 506, at p. 512.*

1875; they mean either a dispute is imminent and the act is done in expectation and with a view to it, or that the dispute is already existing and the act is done in support of one side to it (*s*). It is help, assistance and encouragement to a dispute that the Legislature apparently had in view when it used the words "in furtherance"; must it not, when it uses, in juxtaposition with these words, the words "in contemplation," be held to have had in view a dispute which must, at the time the act it designed to protect was done, have been, at all events, "thought of" by some person who should be a party to it when it arose? (*t*).

The words "in contemplation," etc., do not cover the case of coercive interference in which the interferor may have in his own mind that if he does not get his own way he will take steps to bring a trade dispute into existence (*u*). "It is impossible to suppose, I think, that the Legislature ever intended that where perfect peace prevailed in any factory or establishment, and an intruder, a mere mischief-maker, actuated by greed, or some feeling of revenge, interfered, and by threats and molestation stirred up strife and disputes which neither employer nor workmen theretofore thought of, he should be made irresponsible because of the very mischief he intended and hoped to stir up" (*w*).

Even if the acts are done in furtherance of a trade dispute, if they are done in furtherance of a dispute to which the Act does not apply they may stand outside the protection of the Act (*x*).

As to the effect of malice, if there is a finding that, though the act complained of was done in furtherance of a trade dispute, the defendant was also actuated by

(*s*) Per Lord Loreburn, L.C., in *Conway v. Wade*, [1909] A. C. 506, at p. 508.

(*t*) Per Lord Atkinson, *ibid.*, at p. 517.

(*u*) Per Lord Shaw, *ibid.*, at p. 522.

(*w*) Per Lord Atkinson, *ibid.*, at p. 513.

(*x*) Per Lord Sumner in *Larkin v. Long*, [1915] A. C. 814, at p. 837.

malice, the protection of the Act will nevertheless apply (y).

"*Trade dispute*."—A trade dispute is defined by section 5 (3) hereof as follows:—

["In this Act and in the Conspiracy and Protection of Property Act, 1875, the expression 'trade dispute' means any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour of any person, and the expression 'workmen' means all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises,"] *infra*, p. 265.

"*Conspiracy and Protection of Property Act, 1875*."—By section 5 (3) of the Trade Disputes Act, 1906, the limiting words "between employers and workmen" in the 1875 Act definition are repealed (z) and the wider definition "between employers and workmen, or between workmen and workmen," substituted. It is to be observed that disputes between employers and employers are still excluded from the definition, *infra*, p. 265.

As to "a trade dispute within a trade or industry" within the meaning of the Trade Disputes and Trade Unions Act, 1927, *vide* section 1 (1) (a) thereof, *infra* p. 274.

"*Dispute*."—The words "trade dispute" must be construed strictly. To constitute a "trade dispute" a mere personal quarrel or grumbling or an agitation will not suffice. It must be something fairly definite and of real substance (a). In order that a dispute may be a trade dispute at all, a workman must be a party to it on each

(y) *Dallimore v. Williams and Jesson* (1912), 29 T. L. R. 67.

(z) Trade Disputes Act, 1906 (6 Edw. 7, c. 47), s. 5 (3); for definition of trade dispute, *infra*, p. 265.

(a) *Per* Lord Loreburn, L.C., in *Conway v. Wade*, [1909] A. C. 506, at p. 508.

side, or a workman on one side and an employer on the other. The term "trade dispute" does not necessarily include every case of personal difference between any one workman and one or more of his fellows. It is true that after a certain stage even such a dispute, although originally grounded, it may be, upon personal animosity, may come to be a subject in which sides are taken and may develop into a situation of a general aspect containing the characteristics of a trade dispute, but until it reaches that stage a "trade dispute" does not necessarily exist (b).

A dispute not in its origin a trade dispute will not become one merely because the officials of a workmen's union choose to assist one side or the other. Circumstances might occur where it would, but not every dispute in which officials of a union choose to interfere will be a trade dispute.

If B. and C. quarrel about the interests of A., that is not A.'s quarrel; still less is it A.'s quarrel when neither A. nor B. has any wish to dispute at all, and the whole object of the dispute which C. forces upon B. is to bring about the coercion of D. (c), a state of things from which it is supposed that hereafter it may ultimately reach the passive and placable A. (d).

Not every dispute in which workmen and their representatives take one side or the other is a trade dispute (e).

As to what is a trade dispute generally, see also *Barrett v. Evans*, 18 Lloyd's L. R. 310; *Brimelow v. Casson*, [1924] 1 Ch. 302; see also *Milligan's Case*, [1915] S. C. 937.

A trade dispute is not limited to a dispute between an employer and his men or between the men (f).

(b) *Per* Lord Atkinson, in *Conway's Case*, [1909] A. C. 508, at p. 517.

(c) *Per* Lord Parker in *Larkin v. Long*, [1915] A. C. 814, at p. 833.

(d) *Per* Lord Sumner, *ibid.*, at p. 838.

(e) *Per* Lord Parmoor, *ibid.*, at p. 846.

(f) *Dallimore v. Williams and Jesson* (1912), 29 T. L. R. 67.

A dispute solely whether a workman shall be a member of one trade union or another may be a trade dispute within the meaning of the Trade Disputes Act (*g*).

"*Workmen*."—A musician may be engaged in trade or industry (*h*). An actor may be a workman. The business of presenting histrionic performances to the public may be described as a trade or industry in which many persons, including actors, are employed (*i*).

In *Pratt v. British Medical Association* (*k*) the question whether doctors were workmen was not taken by the defence.

"*Whether or not in the employment*."—The immunity cannot be fairly confined to an act done by a party to the dispute; an outsider is equally exempt from liability although he may induce either masters or men to break contracts of employment (*l*).

"*Is not actionable*."—Despite the *dictum* of Holt, J., in *Keeble v. Hickeringill* (*m*), that "he that hinders another in his trade or livelihood is liable to an action for so hindering him," it cannot now be maintained that there is any specific right of this kind apart from or beyond the right of not being molested by acts which are unlawful in some definite way. Carrying on one's trade is matter of common right; so is competition; so is exercise of a man's choice as to the manner in which he shall trade or work. Interference with a man in his occupation may, according to circumstances, be a nuisance, trespass, or

(*g*) *White v. Riley*, [1921] 1 Ch. 1, reversing *Valentine v. Hyde*, [1919] 2 Ch. 129; see also *Gaskell's Case* (1912), 28 T. L. R. 518; and *Hodges v. Webb*, [1920] 2 Ch. 70; *Fowler v. Kibble*, [1922] 1 Ch. D. 140, at p. 150.

(*h*) *Dallimore v. Williams and Jesson*, *supra*. In this case the point was never taken by the plaintiff that musicians in a band were not workmen.

(*i*) *Brimelow v. Casson*, [1924] 1 Ch. D. 302, where the words "trade or industry" are discussed.

(*k*) [1919] 1 K. B. 244.

(*l*) *Per* Lord Loreburn, L.C., in *Comanby v. Wade*, [1909] A. C. 506, at p. 512, affirming *Comans-Hardy*, M.R., [1908] 2 K. B. at p. 849.

(*m*) (1707) 11 East, 574.

some other kind of wrong ; it is not a kind of wrong of itself. A man's right of freedom to carry on his trade is not of a higher kind than any other common right (*n*).

It is clear that a man validly contracts as he will because he is a free man (*o*). The liberty of a man to say how he will bestow his industry is the subject of the law's protection (*p*). But that right is subject to the rights of others, and the limitations have been clearly stated, not only in the continuation of the above passage in Sir William Erle's treatise, but also in the judgment of Lord Lindley in *Quinn v. Leatham* (*q*). He there says : " As to the plaintiff's rights, he had the ordinary rights of a British citizen. He was at liberty to earn his own living in his own way provided he did not violate some special law prohibiting him from so doing, and provided he did not infringe the rights of other people. This liberty involved liberty to deal with other persons who were willing to deal with him. This liberty is a right recognised by the law and is correlative to the general duty of every one not to prevent the free exercise of this liberty except so far as his own liberty of action may justify him in so doing. But a person's liberty or right to deal with others is nugatory unless they are at liberty to deal with him if they choose to do so. Any interference with their liberty to deal with him affects him. If such interference is justifiable in point of law he has no redress. Again, if

(*n*) As to history hereof *supra*, pp. 195 *et seq.* Pollock on Torts, 9th ed., pp. 240 and 242 ; see also *Allen v. Flood*, [1898] A. C. 1, *per* Lord Watson at p. 101, Lord Herschel at p. 132, Lord Davey at pp. 173—174 ; see also *Hodges v. Webb*, [1920] 2 Ch. 70, approved in *White v. Riley*, [1921] 1 Ch. 1, where the views of Astbury, J., in *Valentine v. Hyde*, [1919] 2 Ch. 129, were not accepted by the Court of Appeal.

(*o*) *Per* Lord Sumner in *Rodriguez v. Speyer Brothers*, [1919] A. C. 59, at p. 125.

(*p*) *Per* Bramwell, B., in *R. v. Druitt* (1867), 10 Cox, C. C. 592, at p. 800.

(*q*) [1901] A. C. at p. 494.

such interference is wrongful the only person who can sue in respect of it is, as a rule, the person immediately affected by it, another who suffers by it has usually no redress; the damage is too remote, and it would be obviously practically impossible and highly inconvenient to give legal redress to all who suffer from such wrongs. But if the interference is wrongful and is extended to damage a third person and he is damaged in fact, in other words if he is wrongfully and intentionally struck at through others and is thereby damnified, the whole aspect of the case is changed: the wrong done to others reaches him, his rights are infringed although indirectly, and damage to him is not too remote or unforeseen, but is the direct consequence of what has been done. Our law, as I understand it, is not so defective as to refuse him a remedy by an action under such circumstances."

At common law an action will lie against a man who unlawfully and knowingly procures a person to commit an actionable wrong to another person whereby the latter suffers actual pecuniary damage (*r*). Actual damage is the gist of the action (*s*).

Apart from the use of illegal means, it is an actionable wrong to interfere with contractual relations recognised by law if there is no sufficient justification for the interference (*t*). To procure a breach of contract is conse-

(*r*) *Lumley v. Gye* (1853), 2 E. & B. 216, per Erle, J., at p. 232; *Bowen v. Hall* (1881), 6 Q. B. D. 333; *Mogul Steamship Co. v. McGregor, Gow & Co.*, [1892] A. C. 25; *Allen v. Flood*, [1898] A. C. 1; *Quinn v. Leatham* [1901] A. C. 495, at p. 510; *Read v. Friendly Society of Operative Stonemasons*, [1902] 2 K. B. 732; *National Phonograph Co., Ltd. v. Edison Bell Phonograph Co., Ltd.*, [1908] 1 Ch. 335.

(*s*) *Ward, Lock & Co., Ltd. v. Operative Printers' Assistants Society* (1906), 22 T. L. R. 327. See *Workman v. London and Lancashire Fire Insurance Co.* (1903), 19 T. L. R. 360; *Vicars v. Wilcocks* (1806), 8 East, 1.

(*t*) *The Mogul Case*, [1892] A. C. 25; per Lord Macnaghten in *Quinn v. Leatham*, [1901] A. C. 495, at p. 510; *Lumley v. Gye* (1853), 2 E. & B. 217, per Erle, J., at p. 232; *Bowen v. Hall*, 6 Q. B. D. 333; per Lord Watson, in *Allen v. Flood*, [1898] A. C. 1, at p. 96.

quently unlawful (*u*); but there must be a real procurement (*w*).

Illegal Means.—Where there is no conspiracy or specific illegal act, such as procurement of breach of contract, illegal means at least must be present. The mere presence of malice does not constitute an illegality (*x*).

In some cases "malice" is postulated as an element in this tort. If the word means only that the act complained of is wilfully and knowingly done, or that it is done for the purpose of injuring another, then it is rightly used in this connection. But there is a tendency to interpret "malice" as connoting personal enmity or spite or some other evil motive; and as such a motive is neither an essential element in the offence nor conclusive of the offence having been committed, it seems better to forego the use of the word (*y*).

Illegal means are acts of the nature of civil and criminal wrongs regardless of motive (*z*). A threat to withdraw custom without breaking any law is not unlawful (*a*) and therefore also an unconcerted threat to call a strike (unless it be an illegal strike) is not unlawful (*b*); nor is the mere publication of stop lists or black lists (*c*), nor mere coercion or threat which is not otherwise unlawful (*d*).

(*u*) *Smithies v. The National Association of Operative Plasterers*, [1909] 1 K. B. 310; *Conway v. Wade*, [1909] A. C. 506; *Royal London Mutual Insurance, Ltd. v. Williamson* (1921), 37 T. L. R. 792.

(*w*) *Wolstenholme v. Arrise*, [1920] 2 Ch. 403; *Davis v. Thomas*, [1920] 2 Ch. 189; see also *Scrutton, Ltd. v. Lewis* (1913), *Times Newspaper*, January 16th; *Dallimore v. Williams* (1912), 29 T. L. R. 67; *Brimelow v. Casson*, [1924] 1 Ch. 302.

(*x*) *South Wales Miners' Federation v. Glamorgan Coal Co., Ltd.*, [1905] A. C. 239.

(*y*) *Per Lord Cave in Sorrell v. Smith*, [1925] A. C. 700, at p. 714.

(*z*) *Per Lord Watson in Allen v. Flood*, [1898] A. C. 1, at p. 96.

(*a*) *Sorrell v. Smith*, [1925] A. C. 700.

(*b*) *Hodges v. Webb*, [1920] 2 Ch. 70.

(*c*) *Ware's Case*, [1921] 3 K. B. 40; see also *Trollope's Case* (1895), 72 L. T. 373; *Pink's Case* (1892), 8 T. L. R. 216, 711; *Peto's Case* (1891), 35 Sol. Jo. 792; *Hailes' Case* (1891), 38 Sol. Jo. 792; *Jenkinson's Case* (1892), 8 T. L. R. 540; *Bulcock's Case* (1902), 19 T. L. R. 27.

(*d*) *Hodges v. Webb*, [1920] 2 Ch. 70.

Where no contract or other legal right is interfered with in any way and no illegal means are employed, though the act done by the defendant may be one both calculated and intended to inflict upon the plaintiffs great loss and suffering, that it is not actionable. It does not matter what the particular act interfered with is, so long as it is not one which the person doing it has a definite legal right by contract, or by common law or statute law, to do (e), and a notification that there will be a strike unless certain things happen is lawful in this sense (f); for, under these circumstances, if mere evil motive were to make that unlawful which would otherwise be lawful (g), or if to do intentionally that which is calculated in the ordinary course to damage another were actionable, it would lead to singular results (h).

One who committed an act not in itself illegal, but attended with consequences detrimental to several other persons, would incur liability to those he intended to injure, and the rest of them would have no remedy (i). Conversely, mere good motive will not justify illegal means (k).

On the other hand, specific wrongful acts may constitute illegal means, such as personal violence against a third person to injure the plaintiff (l), or threats of personal violence (m), or nuisance (n), or fraud (o), or libel (p).

(e) *Per* Wills, J., in *Allen v. Flood*, *supra*, at p. 51.

(f) *White v. Riley*, [1821] 1 Ch. 1.

(g) *Per* Lord Esher in *Temperton v. Russell*, [1893] 1 Q. B. 716; *Allen v. Flood*, *supra*.

(h) *Per* Bowen, L.J., in *Mogul Steamship Co. v. McGregor, Gow & Co.* (1889), 23 Q. B. D. 598.

(i) *Per* Lord Watson in *Allen v. Flood*, *supra*, at p. 100. See also *Joss v. Metallic Roofing Co. of Canada*, [1908] A. C. 514.

(k) *Pratt v. British Medical Association*, [1919] 1 K. B. 244; *per* Parke, B., *Stevenson v. Newham* (1853), 13 C. B. 235, at p. 297.

(l) *Tarleton v. M'Gawley* (1799), 1 Peake, N. P., p. 270.

(m) *Garrett v. Taylor* (1620), Cro. Jac. 567; *Keeble v. Hickeringill* (1707), 11 East, 573, n.

(n) *Lyons v. Wilkins*, [1899] 1 Ch. 255.

(o) *National Phonograph Co. v. Edison Bell Phonograph Co.*, [1908] 1 Ch. 335, at pp. 360, 368.

(p) *Per* Bankes, L.J., in *Ware's Case*, [1921] 3 K. B. 40, at p. 60.

Justification.—The effect of recent decisions, which appear to limit liability for interference to cases where in conspiracy there is either a procurement of breach of contract or an intent to injure, and in individual cases the use of specific illegal means, has narrowed the area in which the doctrine of justification may be applied; but where an act is still *prima facie* illegal, justification may still become material. It would appear from the decision of the House of Lords in *Sorrell's Case* (g), reversing the decision of Russell, J. (r), that in an action where neither on the one hand an intent to injure the plaintiff is proved, nor, on the other hand, the pursuit of a trade interest by the defendants and the defendants have no direct trade interest, that for want of intent in the combination to injure no action arises, and, consequently, no justification is necessary; but within the area of illegality, cases of justification may still arise.

Considerable difficulty may often arise in particular cases in ascertaining what is a "justification." It is not practically feasible to give an exhaustive definition of the word. Regard must be had to the circumstances of each case as it arises (s). The good sense of the tribunal would have to analyse the circumstances (t). A father may interfere to prevent his daughter marrying a man of criminal character (u). A person holding a prior contract with another inconsistent with that held by that other with a third is justified in inducing a breach of the second inconsistent contract (w). A duty to a profession to com-

(g) [1925] A. C. 700.

(r) [1923] 2 Ch. 32.

(s) *Per* Vaughan Williams, L.J., in *Giblan v. National Amalgamated Labourers' Union*, [1903] 2 K. B. 600, at p. 616, *per* Stirling, L.J., at p. 620.

(t) *Per* Bowen, L.J., in *Mogul Case* (1889), 23 Q. B. D. 598, at p. 618.

(u) *Per* McCardie, J., in *Pratt v. British Medical Association*, [1919] 1 K. B. 294, at p. 265.

(w) *Smithies v. National Association of Operative Plasterers*, [1909] 1 K. B. 337.

pel a person to pay a living wage so that they should not be driven to supplement their earnings by misconduct for gain has been held to be a justification (x).

A wrong understanding of rights or an absence of malice, or acting *bond fide*, or even an altruistic motive, are not a justification (y). Advancement of trade interest where illegal means will not be a justification (z).

Thus, what constitutes sufficient justification is a question of degree and must be defined in each case. It must be left to the Court to determine on which side of the line the case falls (a). Without malice, to protect one's own legitimate trade or labour interests may be a justification (b). To prevent a man from getting employment in order to make him pay a fine may not be, though, if done with just cause and excuse, such prevention may be justified (c).

To publish a list of persons with the object of intimidating them (d), or lists of men who refuse to strike, may be unjustifiable (e), but if the lists contain no false statement they may be justified, if it be shown that they were issued with a legitimate trade object and without ill-will to the

(x) *Brimelow v. Casson*, [1924] 1 Ch. 302; *Stott's Case*, [1916] 2 K. B. 504.

(y) *Per* Lords Macnaghten and Lindley, in the *Glamorgan Case*, [1905] A. C. 239, at pp. 246 and 255; *Larkin v. Long*, [1915] A. C. 830; *per* Darling, J., in *Read v. Friendly Society of Stonemasons*, [1902] 2 K. B. 732.

(z) *Garret v. Taylor* (1820), Cro. Jac. 567; *Tarleton v. M'Ganley* (1794), 1 Peake, N. P. 270; *Keeble v. Hickeringill* (1707), 11 East, 573; *Lyons v. Wilkins*, [1899] 1 Ch. 255; *Quinn v. Leatham*, [1901] A. C. 495; *Larkin v. Long*, [1915] A. C. 814.

(a) *Per* Bowen, L.J., in *Mogul Steamship Co. v. McGregor, Gow & Co.* (1889), 23 Q. B. D. 596, at p. 618; *Jenkinson v. Nield* (1892), 8 T. L. R. 540.

(b) *Scottish Co-operative Society v. Glasgow Fishers Association* (1898), 35 So. L. R. 645.

(c) *Conway v. Wade*, [1909] A. C. 506.

(d) *Quinn v. Leatham*, *supra*.

(e) *Trollope v. London Building Trades Federation* (1895), 72 L. T. 342; *McKernan v. United Operative Masons Association of Scotland* (1874), 11 So. L. R. 219; *Pink v. Federation of Trades and Labour Unions* (1892), 8 T. L. R. 216, 711.

person injured by them, or where there is no evidence to the contrary (*f*).

So also to issue black lists which contain no false statement if issued in pursuit of a legitimate trade object may be lawful (*g*); on the other hand, it has been held not to be justifiable to publish lists of a person's customers with the intention and effect of injuring that person in his business (*h*), or to publish lists of men who refuse to strike (*i*).

The fact that the acts of interference are done by officials of a union for its benefit is no justification (*k*).

Conclusions.

The final result of the dicta above cited may now be stated with reasonable clarity. First, it is now reasonably clear that for a cause of action to exist an individual for interfering with the contractual rights of others there must be present specific unlawful means, used without justification which means either take the form:—

(*a*) Of the procurement of a breach of contract; or

(*b*) Of civil or criminal wrong.

Dicta to the contrary, which rely upon allegations of coercion, threat, undue influence or special influence, are now to be regarded with suspicion (*l*).

(*f*) *Peto v. Apperley* (1891), 35 Sol. J. 792; *Haile v. Lillingstone* (1891), 35 Sol. J. 792; *Jenkinson v. Nield* (1892), 8 T. L. R. 540; *Bulcock v. St. Anne's Master Builders' Federation* (1902), 19 T. L. R. 27; *Ware and de Freville v. Motor Trades Association* (1921), 37 T. L. R. 213.

(*g*) *Peto v. Apperley* (1891), 35 Sol. J. 792; *Haile v. Lillingstone* (1891), 35 Sol. J. 792; *Jenkinson v. Nield* (1892), 8 T. L. R. 540.

(*h*) *Per FitzGibbon, L.J.*, in *Quinn v. Leatham*, [1901] A. C. 495, at p. 500; *per Lord Lindley, ibid.*, at p. 538.

(*i*) *Trollope v. London Building Trades Federation* (1895), 72 L. T. 342; *cf. McKernan v. United Operative Masons' Association of Scotland* (1874), 11 Sc. L. R. 219.

(*k*) *Larkin v. Long*, [1915] A. C. 830; *Giblan v. National Amalgamated Labourers' Union*, [1903] 2 K. B. 600; *Thomas v. Amalgamated Society of Carpenters and Joiners* (1902), *Times* newspaper, April 28th; *Read v. Friendly Society of Operative Masons, supra*; *Lyons v. Wilkins*, [1899] 1 Ch. 255.

(*l*) *Per Scrutton, L.J.*, in *Ware's Case*, [1921] 3 K. B. 40, at p. 66; *sed vide* *McCardie, J.*, in *Pratt v. British Medical Association*, [1919] 1

Secondly, in the case of concerted action to injure a man in his undertaking or labour, such concerted action, if it amount to conspiracy and result in damage, is itself an unlawful means and is actionable.

"*On the ground only.*"—If there be illegal threats or violence this section gives no protection, for then there is some other ground of action besides the ground that it induces some other person to break a contract and so forth (*m*).

Where there are illegal means used the common law therefore still obtains. There is perhaps a change where there is an interference without breach of contract unaccompanied by threats or violence (*n*). Similarly, it has been said, the immunity is not "on the ground *only* where the acts are coupled with coercion of the employer" (*o*).

If the existence of illegal means is essential at common law to this class of action, and at the same time the existence of illegal means excludes the protection of the Trade Disputes Acts because in such cases the interference is not on the ground *only*, it would appear that where there is no breach of contract this section does not in fact alter the common law, and is nugatory except in cases of conspiracy where illegal threat is not essential and section 1 of the Act applies.

"*To break a contract.*"—*Supra*, pp. 195, 256 *et seq.*

"*Is an interference.*"—*Supra*, pp. 195, 253 *et seq.*

K. B. 244; *Giblan's Case*, [1903] 2 K. B. 600; *Santen v. Busnach* (1913), 29 T. L. R. 214; *per* Lord James of Hereford in *Conway v. Wade*, [1909] A. C. 514; *Kearney v. Lloyd* (1890), 26 L. R. Ir. 268; *Hutley v. Simmons*, [1898] 1 K. B. 181; *Sweeney v. Coote*, [1907] A. C. 221; *Valentine v. Hyde*, [1919] 2 Ch. 129; *Glasgow Fishers' Case*, 35 S. L. R. 645.

(*m*) *Per* Lord Loreburn, L.C., in *Conway v. Wade*, [1909] A. C. 506, at p. 511; *see* Lord Haldane, L.C., in *Vacher's Case*, [1913] A. C. 107; *Milligan v. Ayr Harbour Trustees*, [1915] S. C. 937; *per* Peterson, J., in *Hodges v. Webb*, [1920] 2 Ch. 70, at p. 87.

(*n*) *Per* Lord Loreburn, L.C., in *Conway v. Wade*, *supra*, at p. 512.

(*o*) *Valentine v. Hyde*, [1919] 2 Ch. 129; *see* *vide* *White v. Riley*, [1921] 1 Ch. 1.

PROHIBITION OF ACTIONS OF TORT AGAINST
TRADE UNIONS.

4.—(1) An action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any Court.

(2) Nothing in this section shall affect the liability of the trustees of a trade union to be sued in the events provided for by the Trades Union Act, 1871, section nine, except in respect of any tortious act committed by or on behalf of the union in contemplation or in furtherance of a trade dispute.

But for the Trade Disputes Act, 1906, a registered trade union might be liable for the tortious acts of their servants done in the course of their employment, such as interfering with the legal rights of others in an industrial dispute (*p*).

The section is not limited to tortious acts committed in contemplation or furtherance of a trade dispute, but extends to all torts, such as libel (*q*).

"*Whether of workmen or masters.*"—For definition of the terms "workmen" and "masters," see section 5 (3), *infra*, p. 266. The words are not in themselves exhaustive of every type of trade union.

"*An action against a trade union.*"—A registered trade

(*p*) *Taff Vale Railway v. Amalgamated Society of Railway Servants*, [1901] A. C. 426.

(*q*) *Vacher & Sons, Ltd. v. London Society of Compositors*, [1913] A. C. 107; *Rickards v. Bartram* (1908), 25 T. L. R. 181.

union is liable, apart from this section, to be sued in tort (*r*) in its registered name.

A combination to impose restrictive conditions on any trade or business is a trade union within the meaning of the Trade Union Act, 1913, and applies to a trade union under the Act of 1906. The words "whether of workmen or of masters" are not words of limitation. The tests of a trade union are its objects, not its personnel, and the section must receive the wide meaning that those words appear to carry; so that every trade union, of whatever type, is entitled to the protection of the section (*s*).

"On behalf of themselves and all other members of the trade union."—Despite the statement of Lord Lindley in *Taff Vale Railway v. Amalgamated Society of Railway Servants* (*t*), that a trade union (whether registered or unregistered) can be sued on behalf of themselves and the other members of the society, and an injunction and judgment for damages obtained in a proper case in an action so framed, and Lord Macnaghten that a union, whether registered or unregistered, may be sued in a representative action, it would appear very doubtful, after the decision of the Court of Appeal in *Mercantile Marine Service Association v. Toms* (*u*), whether an unregistered trade union can be sued in a representative action in tort under Order XVI., r. 9. The principle in the *Mercantile Marine Service Association* case established conclusively that the Court ought not to pronounce a judgment which might bind the absent members of the association and make them liable for damages for conspiracy or for money had and received to the use of the plaintiffs (*w*).

(*r*) *Taff Vale Railway Co. v. The Amalgamated Society of Railway Servants*, [1901] A. C. 426.

(*s*) *Hardie and Lane, Ltd. v. Chilton and Others* (1927), 43 T. L. R. 709.

(*t*) [1901] A. C. 426, at p. 443.

(*u*) [1916] 2 K. B. 243.

(*w*) Per Lawrence, L.J., in *Hardie and Lane, Ltd. v. Chilton and Others*, *supra*, at p. 712; see also *London Association for the Protection of Trade v. Greenlands, Ltd.*, [1916] 2 A. C. 15, *supra*, pp. 64 et seq.

Agents and officials are still liable to be sued in tort so as to make themselves liable (x).

"*Any tortious act.*"—This must be read without qualification (y). It may include actions for money had and received (yy).

"*To have been committed.*"—An injunction probably can be obtained to restrain a future contemplated tort (z).

The Liability of Trustees to be Sued.—It would appear, according to Lords Haldane and Atkinson in *Vacher's Case* (a), that where an action in tort is brought otherwise than in respect of a tortious act committed by or on behalf of the union in contemplation or furtherance of a trade dispute, that the trustees of a registered trade union can still be sued and damages arising out of such tortious acts may be made effective against the property in the hands of the trustees (b).

On the other hand, Lord Macnaghten, in the same case, says that it is not easy to see the object of sub-section 2 of section 4 or to understand its precise meaning (c), a view in which Lord Moulton appears to concur (d).

Libel.—It is doubtful whether a trade union, illegal at common law, possesses a reputation entitling it to sue in libel, the legalising effect of section 3 of the 1871 Act appears to be limited to validating contracts and trusts.

"*The events provided.*"—A proceeding against the trustees under section 9 of the Act of 1871 is in fact, if

(x) *Bussey v. Amalgamated Society of Railway Servants and Bell* (1908), 24 T. L. R. 436; but see *Rickards v. Bartram* (1908), 25 T. L. R. 181; per Lord Moulton, in *Vacher's Case*, [1913] A. C. 107, at p. 130.

(y) *Vacher & Sons, Ltd. v. London Society of Compositors*, [1913] A. C. 107.

(yy) *Hardie and Lane's Case* (1927), 43 T. L. R. 709.

(z) Per Scrutton and Atkin, L.J.J., in *Ware v. Motor Trades Association*, [1921] 3 K. B. 40; *Burn v. Amalgamated Labourers' Union*, [1920] 2 Ch. 364.

(a) [1913] A. C. 107.

(b) *Ibid.*, per Lord Haldane, at p. 115; per Lord Atkinson, at p. 125.

(c) *Ibid.*, p. 119.

(d) *Ibid.*, at p. 129.

not in form, a proceeding *in rem* against the property of the trade union.

Judgment for damages against a trade union for torts committed by its agent, in whatsoever form the action may be brought, can only be satisfied out of the property vested in the trustees. The sub-section, while qualifying their liability to some extent by the introduction of the provisions common to sections 1, 2, and 3, was, I think, passed for greater caution and meets this possible danger (e).

The liability of the trustees of an unregistered trade union is not provided for by statute, and so apparently they cannot be sued under this section.

SHORT TITLE AND DEFINITION.

5.—(1) This Act may be cited as the Trade Disputes Act, 1906, and the Trade Union Acts, 1871 and 1876, and this Act may be cited together as the Trade Union Acts, 1871 to 1906.

(2) In this Act the expression "trade union" has the same meaning as in the Trade Union Acts, 1871 and 1876, and shall include any combination as therein defined, notwithstanding that such combination may be the branch of a trade union.

(3) In this Act and in the Conspiracy and Protection of Property Act, 1875, the expression "trade dispute" means any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour, of any person, and the expression "workmen" means all persons employed in trade or industry, whether or

(e) *Per Lord Atkinson in Vacher & Sons, Ltd. v. London Society of Compositors*, [1913] A. C. 107, at p. 125. For 1876 Act, s. 9, *supra*, p. 62.

not in the employment of the employer with whom a trade dispute arises; and, in section three of the last-mentioned Act, the words "between employers and workmen" shall be repealed.

"*May be cited together.*"—Now cited as the Trade Union Acts, 1871—1927 (1927 Act, s. 8 (1), *infra*, p. 291).

"*Trade union has the same meaning.*"—*Cf.* section 4 hereof—"a trade union, whether of workmen or masters." These words do not imply that other trade unions not composed either of workmen or masters are trade unions within this Act, but not within section 4 (*f*). The definition in the Acts of 1871 to 1876 has been amended by section 1 (2) of the Trade Union Act, 1913. The definition therefore herein contained would now appear to apply to every society under this Act (*g*).

"*May be the branch.*"—These words are probably unnecessary; a branch in any event is a trade union (*h*).

"*The employment or non-employment.*"—Whether a dispute is connected with the employment, etc., is a question of fact (*i*).

"*All persons employed in trade or industry.*"—It is doubtful how far this extends; a musician may be apparently a workman under the section (*k*). So also an actor (*l*). The meaning of "trade" is not limited to buying and selling only (*m*). The words trade or industry must not receive an unduly narrow definition (*n*).

(*f*) *Hardie and Lane, Ltd. v. Chilton*, 43 T. L. R. 709; *Johnston's Case*, [1921] S. C. 62.

(*g*) P. 120.

(*h*) *Vide Cops v. Crossingham*, [1909] 2 Ch. 148.

(*i*) *White v. Riley*, [1921] 1 Ch. 1; *Conway v. Wade*, [1909] A. C. 506; *Larkin v. Long*, [1915] A. C. 814; *Gaskell's Case* (1912), 28 T. L. R. 518. *Vide Guillet v. Benthall & Co.* (1916), 1 M. A. R., at p. 86.

(*k*) *Dallimore v. Williams* (1912), 29 T. L. R. at p. 67.

(*l*) *Brimelow v. Casson*, [1924] 1 Ch. 302.

(*m*) *Walker v. Crystal Palace Football Club, Ltd.*, [1910] 1 K. B. 87. *Bank of India v. Wilson* (1877), 3 Ex. D. 108, 113.

(*n*) *Brimelow v. Casson*, [1924] 1 Ch. 302.

A dispute between one employer and another is excluded from the definition of a trade dispute.

“ *Whether or not in the employment of the employer with whom the trade dispute arises.*”—A dispute with some employer is not an essential ingredient of every trade dispute under the Act (o).

As to the words “ same trade or industry ” in section 1 of the Trade Disputes and Trade Unions Act, 1927, *infra*, p. 274.

(o) *Conway v. Wade*, [1909] A. C. 506, at p. 512; *Dallimore v. Williams* (1912), 29 T. L. R. 67; *White v. Riley*, [1921] 1 Ch. 1.

III.
TRADE DISPUTES AND TRADE UNIONS
ACT, 1927

(17 & 18 GEO. 5, C. 22).

AN ACT TO DECLARE AND AMEND THE LAW RELATING TO TRADE DISPUTES AND TRADE UNIONS, TO REGULATE THE POSITION OF CIVIL SERVANTS AND PERSONS EMPLOYED BY PUBLIC AUTHORITIES IN RESPECT OF MEMBERSHIP OF TRADE UNIONS AND SIMILAR ORGANISATIONS, TO EXTEND SECTION FIVE OF THE CONSPIRACY AND PROTECTION OF PROPERTY ACT, 1875, AND FOR OTHER PURPOSES CONNECTED WITH THE PURPOSES AFORESAID.

[July 29th, 1927.]

ILLEGAL STRIKES AND LOCK-OUTS.

- 1.—(1) It is hereby declared—
- (a) that any strike is illegal if it—
 - (i) has any object other than or in addition to the furtherance of a trade dispute within the trade or industry in which the strikers are engaged ; and
 - (ii) is a strike designed or calculated to coerce the Government either directly or by inflicting hardship upon the community ; and
 - (b) that any lock-out is illegal if it—
 - (i) has any object other than or in addition to the furtherance of a trade dispute

within the trade or industry in which the employers locking-out are engaged ; and

(ii) is a lock-out designed or calculated to coerce the Government either directly or by inflicting hardship upon the community :

and it is further declared that it is illegal to commence, or continue, or to apply any sums in furtherance or support of, any such illegal strike or lock-out.

For the purposes of the foregoing provisions—

(a) a trade dispute shall not be deemed to be within a trade or industry unless it is a dispute between employers and workmen, or between workmen and workmen, in that trade or industry, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour, of persons in that trade or industry ; and

(b) without prejudice to the generality of the expression “ trade or industry ” workmen shall be deemed to be within the same trade or industry if their wages or conditions of employment are determined in accordance with the conclusions of the same joint industrial council, conciliation board, or other similar body, or in accordance with agreements made with the same employer or group of employers.

(2) If any person declares, instigates, incites others to take part in or otherwise acts in furtherance of a strike or lock-out, declared by this Act to be illegal, he shall be liable on summary conviction to a fine not exceeding ten pounds or to im-

prisonment for a term not exceeding three months, or on conviction on indictment to imprisonment for a term not exceeding two years :

Provided that no person shall be deemed to have committed an offence under this section or at common law by reason only of his having ceased work or refused to continue to work or to accept employment.

(3) Where any person is charged before any court with an offence under this section no further proceedings in respect thereof shall be taken against him without the consent of the Attorney-General except such as the court may think necessary by remand (whether in custody or on bail) or otherwise to secure the safe custody of the person charged, but this subsection shall not apply to Scotland, or to any prosecution instituted by or on behalf of the Director of Public Prosecutions.

(4) The provisions of the Trade Disputes Act, 1906, shall not, nor shall the second proviso to subsection (1) of section two of the Emergency Powers Act, 1920, apply to any act done in contemplation or furtherance of a strike or lock-out which is by this Act declared to be illegal, and any such act shall not be deemed for the purposes of any enactment to be done in contemplation or furtherance of a trade dispute :

Provided that no person shall be deemed to have committed an offence under any regulations made under the Emergency Powers Act, 1920, by reason only of his having ceased work or having refused to continue to work or to accept employment (p).

(p) For text of Emergency Powers Act, 1920, *infra*, p. 345; *Smith v. Wood* (1926), 73 T. L. R. 179.

Legality of General Strike.—The purpose of the declaratory words arises presumably from the doubt which had arisen on the authorities as to the conditions, if any, which would make a "general strike" illegal at common law.

In *National Sailors and Firemen's Union v. Reed* (a), Astbury, J. appears to hold that no person is protected by the Acts of 1875 and 1906 except the immediate parties to a dispute, but this view is directly contrary to authority (*vide* Lord Loreburn, L.C., in *Conway v. Wade* (b) and *Dallimore v. Williams and Jesson* (c), *supra*, p. 267). It is, therefore, respectfully suggested that the passage in Mr. Justice Astbury's interlocutory judgment in this connection that "The so-called general strike called by the Trades Union Congress Council is illegal, and contrary to law, and those persons inciting or taking part in it are not protected by the Trade Disputes Act, 1906. No trade dispute has been alleged or shown to exist in any of the unions affected, except in the miners' case, and no trade dispute does or can exist between the Trades Union Congress on the one hand and the Government and the nation on the other" (d), cannot be relied upon as a final expression of the common law.

If, on the other hand, the illegality relied upon arises from the fact that the third party affected is the "Government and the nation," there is authority to the contrary effect.

In *R. v. Cooper and Others* (e), Erskine, J., ruled that honestly and peaceably to advise the working classes to agree to desist from working for the purpose of obtaining the Charter is not in itself criminal, but it would be illegal if it was contemplated and intended through the pressure of distress from a simultaneous cessation of all work to

(a) [1926] 1 Ch. 586.

(b) [1909] A. C. 506, at p. 512.

(c) 29 T. L. R. 67.

(d) [1909] A. C. 506, at p. 540.

(e) 4 St. Tr. (N. S.) 1250.

produce tumult and through the operation of such results to press on the Government the adoption of the Charter (*f*).

The distinction is therefore made that the illegality depends not on the advice or cesser of work but on the means to be employed and the use to be made of that cessation.

On the other hand, Lord Denman, L.C.J., in the Court of Queen's Bench, said "recommending all persons to abstain from working altogether until the Charter became the law of the land is very different from demanding what wages a workman thinks he is entitled to. It is clearly illegal for persons to *compel* other workmen throughout the whole country to abstain from working until the Charter becomes the law of the land" (*g*). The word "compel," used in this connection, makes the *dictum* of Lord Denman ambiguous; so that it is not possible to say with certainty whether he does or does not agree with the opinion of Mr. Justice Erskine.

In *R. v. O'Connor* (*h*) it was submitted on behalf of the prosecution that to procure a general cessation of labour to promote the introduction of the Charter was unlawful; but the point was left by Baron Rolfe to the Court of Queen's Bench, he himself refusing to decide the matter. In the Court of Queen's Bench the defendant was acquitted on another ground and the question of the legality of the general strike was not discussed. It is to be observed that *O'Connor's Case* was heard in the first Court before the case of *The King v. Cooper* was appealed.

So far as guidance can be obtained from Statute Law, prior to the Act of 1927, it will be observed that under the Emergency Powers Act of 1920, where "it appears to His Majesty that any action has been taken or is immediately threatened by any persons or body of persons of such a nature and on so extensive a scale as to be calcu-

(*f*) 4 St. Tr. (N. S.) 1250, at p. 1311.

(*g*) *Ibid.*, at p. 1328.

(*h*) (1843), 4 St. Tr. (N. S.) 935.

lated, by interfering with the supply and distribution of food, water, fuel, or light, or with the means of locomotion, to deprive the community, or any substantial portion of the community, of the essentials of life, His Majesty may by proclamation (hereinafter referred to as a proclamation of emergency) declare that a state of emergency exists," and regulations may be made under such circumstances which would appear to contemplate a condition of a trade dispute on a very large scale; *but such regulations may not make it an offence for a person to take part in a strike or peacefully to persuade any other person to take part in a strike.* (The first limb of this proviso is still retained under section 1 (4) hereof (*infra*, p. 345)). It would appear, therefore, that in 1920 the Legislature enacted that striking in the circumstances authorising a proclamation under that statute was not by that statute at any rate to be made unlawful. If such strikes had been unlawful at common law, such a proviso might arguably be regarded as redundant.

"*Sympathetic*" strikes.—Strikes other than those to coerce the Government were clearly legal before the passing of the 1927 Act. In no case has the fact that the strike is "designed or calculated to inflict hardship upon the community" (section 1 (1) (a) (ii.) hereof) been regarded as an element in causing a strike to be illegal.

Subject to these observations, the law as to the legality of strikes prior to the 1927 Act has been stated as follows :—

A strike might have been illegal if it involved the wrongful acts (i). The maintenance of a strike known to be wrongful may be illegal (k). Strikes, otherwise, are combinations neither for accomplishing an unlawful end nor for accomplishing a lawful end by unlawful means (l).

(i) *Lyoas (J.) and Sons v. Wilkins*, [1896] 1 Ch. 811.

(k) *Smithies v. National Association of Operative Plasterers*, [1909] 1 K. B. 310.

(l) *Mullet v. United French Polishers' London Society* (1904), 20 T. L. R. 595.

The question whether a strike is legal or illegal depends upon the nature and the mode of the concerted cessation. If this concerted cessation is in breach of contract, then it could not be said to be within the law, any more than in the case of an individual workman completing his current bargain and then choosing to remain idle. In this latter case the concert for the cessation of labour may be for the sole or deliberate or obvious purpose of restraining trade, in which case different legal consequences might ensue (*m*).

Combinations solely to better the conditions of labour are not in themselves unlawful at common law. There is no foundation for the proposition that strikes are *per se* illegal or unlawful by the law of England. It is true that occasional dicta are to be found to the effect that combinations to better the conditions of labour are unlawful at common law, but the Courts have never accepted the law thus laid down, and eminent judges have expressed views to the contrary. Throughout the seventeenth and eighteenth centuries no Court treated combinations to better the conditions of labour as being contrary to common law (*n*).

"*Strike*."—A strike is defined in section 8 (2) (a) as follows:—"The expression 'strike' means the cessation of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal, or a refusal under a common understanding of any number of persons who are, or have been so employed, to continue to work or to accept employment."

"*Object*."—The expression "object" is not defined.

"*Trade dispute within a trade or industry*."—A trade dispute shall not be deemed to be within a trade or industry unless it is a dispute between employers and workmen,

(*m*) *Per* Lord Shaw in *Russell v. Amalgamated Society of Carpenters and Joiners*, [1912] A. C. 421, at pp. 430, 435; *King v. Parker* (1876), 34 L. T. 887.

(*n*) *Per* Fletcher Moulton, L.J., in *Gozney's Case*, [1909] 1 K. B. 901, at p. 923.

or between workmen and workmen, in that trade or industry, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour, of persons in that trade or industry ; and (b) without prejudice to the generality of the expression "trade or industry" workmen shall be deemed to be within the same trade or industry if their wages or conditions of employment are determined in accordance with the conclusions of the same joint industrial council, conciliation board, or other similar body, or in accordance with agreements made with the same employer or group of employers.

As to the expression "trade or industry generally," vide *Brimelow v. Casson*, [1924] 1 Ch. 302, and the cases there cited.

"*Calculated to coerce.*"—A strike or lock-out shall not be deemed to be calculated to coerce the Government unless such coercion ought reasonably to be expected as a consequence thereof (section 8 (2) (c) hereof).

"*Hardship.*"—*Cf.* section 6 (4) hereof, where the words "grave inconvenience to the community" are used.

"*Community.*"—The word "community," it is suggested, may extend only to the area of a local authority. *Cf.* section 6 (4) hereof, where the word is so used.

"*Lock-out.*"—A lock-out is defined in section 8 (2) (b) as follows :—

"The expression lock-out" means the closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment."

It will be observed that the definition of the purpose of a lock-out to "compel persons, or to aid another employer in compelling persons, to accept terms of employment," is

not consistent with the definition of an illegal lock-out which is expressed to have as its object the coercion of the Government.

“*Provisions of the Trade Disputes Act, 1906.*”—*Supra*, pp. 240-267.

“*Emergency Powers Act, 1920.*”—*Infra*, p. 345.

PROTECTION OF PERSONS REFUSING TO TAKE PART IN ILLEGAL STRIKES OR LOCK-OUTS.

2.—(1) No person refusing to take part or to continue to take part in any strike or lock-out which is by this Act declared to be illegal, shall be, by reason of such refusal or by reason of any action taken by him under this section, subject to expulsion from any trade union or society, or to any fine or penalty, or to deprivation of any right or benefit to which he or his legal personal representatives would otherwise be entitled, or liable to be placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the union or society, anything to the contrary in the rules of a trade union or society notwithstanding.

(2) No provisions of the Trade Union Acts, 1871 to 1917, limiting the proceedings which may be entertained by any court, and nothing in the rules of a trade union or society requiring the settlement of disputes in any manner shall apply to any proceeding for enforcing any right or exemption secured by this section, and in any such proceeding the court may, in lieu of ordering a person who has been expelled from membership of a trade union or society to be restored to membership, order that

he be paid out of the funds of the trade union or society such sum by way of compensation or damages as the court thinks just.

(3) As respects any strike or lock-out before the passing of this Act but since the first day of May, nineteen hundred and twenty-six, which, according to the law as declared by this Act, was illegal, this section shall have effect as if it had been in operation when the strike or lock-out took place.

“*Illegal strike or lock-out.*”—*Supra*, pp. 268 *et seq.*

“*Provisions limiting proceedings.*”—*Vide* section 4 of the Trade Union Act, 1871, and the cases there cited, *supra*, p. 17.

PREVENTION OF INTIMIDATION, ETC. (*nn*).

3.—(1) It is hereby declared that it is unlawful for one or more persons (whether acting on their own behalf or on behalf of a trade union or of an individual employer or firm, and notwithstanding that they may be acting in contemplation or furtherance of a trade dispute) to attend at or near a house or place where a person resides or works or carries on business or happens to be, for the purpose of obtaining or communicating information or of persuading or inducing any person to work or to abstain from working, if they so attend in such numbers or otherwise in such manner as to be calculated to intimidate any person in that house or place, or to obstruct the approach thereto or egress therefrom, or to lead to a breach of the peace; and attending at or near any house or place in such numbers or in such manner as is by this subsection declared to be unlawful shall be deemed

(*nn*) See, generally, pp. 211 *et seq.* and pp. 245 *et seq.*

to be a watching or besetting of that house or place within the meaning of section seven of the Conspiracy and Protection of Property Act, 1875.

(2) In this section the expression to "intimidate" means to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family or to any of his dependants or of violence or damage to any person or property, and the expression "injury" includes injury to a person in respect of his business, occupation, employment or other source of income, and includes any actionable wrong.

(3) In section seven of the Conspiracy and Protection of Property Act, 1875, the expression "intimidate" shall be construed as having the same meaning as in this section.

(4) Notwithstanding anything in any Act it shall not be lawful for one or more persons, for the purpose of inducing any person to work or to abstain from working, to watch or beset a house or place where a person resides or the approach to such a house or place, and any person who acts in contravention of this subsection shall be liable on summary conviction to a fine not exceeding twenty pounds or to imprisonment for a term not exceeding three months.

"In such numbers or otherwise in such manner."—No such provision appears in the earlier statutes, but in considering the question of intimidation as a fact the number of persons attending was always a relevant matter, as were all other material circumstances.

The word "intimidate" is to be interpreted according to the circumstances which may arise from time to

time (o); it is not a word of art, but a word of common use (p).

"*Intimidate.*"—The definition in sub-section 2 hereof (which by sub-section 3 applies also to the 1875 Act) is an extended one. At the time of the passing of this Act it was the law that to constitute intimidation personal violence must be used or threatened (q). It is now extended to mean "to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family or to any of his dependants, including injury in respect of his business, occupation, employment or other source of income, and any actionable wrong, or of violence or damage to any person or property" (section 3 (2), *supra*, p. 214).

"*Obstruct the approach thereto or egress therefrom.*"—That is, "attending in such numbers or otherwise," irrespective of intimidation.

By section 72 of the Highways Act, 1835 (r), it is an offence for any person to wilfully obstruct the passage of any highway. To render such a highway less convenient and commodious may constitute an obstruction (*Homer v. Cadman* (s); *Ball v. Ward* (t). See also Town Police Clauses Act, 1847, section 28 (u), and *R. v. Fermanagh JJ.* (v).

"*Calculated to lead to a breach of the peace.*"—This may justify arrest by a constable without warrant on view of a

(o) *Supra*, p. 215; *Gibson v. Lawson*, [1891] 2 Q. B. 545; *Curran v. Treleaven*, *ibid.*, 553; *R. v. McCarthy*, [1903] 2 I. R. 146.

(p) *Gibson v. Lawson*, *ibid.*, at p. 549; *per Tindal, C.J.*, in *O'Connell v. R.* (1849), 11 Cl. & Fin. 155, at p. 235.

(q) *Gibson v. Lawson*, [1891] 2 Q. B. 545; *per Cave, J.*, in *R. v. McKeevit*, Liverpool Assizes, December 16th, 1890; *R. v. McCarthy*, [1903] 2 I. R. 146.

(r) 5 & 6 Will. 4, c. 50.

(s) (1886) 55 L. J. 110.

(t) (1875) 33 L. T. 170.

(u) 10 & 11 Vict. c. 89.

(v) (1853) 14 L. R. Ir. 50.

breach of the peace (*Baynes v. Brewster (w)*; *R. v. Light (x)*; *R. v. Marsden (y)*).

"*Deemed to be a watching or besetting.*"—As to cases thereon, *supra*, p. 217.

By section 2 (2) of the Trade Disputes Act, 1906, the following words in section 7 of the 1875 Act were repealed, *i.e.*, "Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section." So that such an attendance may now be a watching and besetting if it is in a manner forbidden by section 7 of the 1875 Act as amended by sub-section 1 of this section.

"*Dependants.*"—The expression "dependants" is defined by section 4 of the Workmen's Compensation Act as follows: "such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child and parent or grandparent respectively."

For the cases on dependency under that Act, *vide Willis' "Workmen's Compensation Act, 1926,"* 29th ed., pp. 117 *et seq.*

In the National Health Insurance Act, 1924, the expression extends to any one "wholly or in part dependent upon another's earnings" (section 132).

(w) (1841) 2 Q. B. 375.

(x) (1857) 27 L. T. 1.

(y) (1868) 1 C. C. R. 131.

"*Violence.*"—*Vide* the cases under section 7 of the 1875 Act, *supra*, pp. 211 *et seq.*

"*Injury.*"—This includes injury to a person in respect of his business, occupation, employment and other source of income, and includes any actionable wrong.

It is uncertain whether the injury must in any case be such as would support an action for wrong. The phrase "includes" appears to justify a wider construction.

"*Any actionable wrong.*"—Wrongs not injuring property, such as defamation, appear to be included.

"*To watch or beset.*"—These words now include the definition of "watch or beset" in section 7 of the 1875 Act as amended and widened by section 1 of this Act.

PROVISIONS AS TO POLITICAL FUND.

4.—(1) It shall not be lawful to require any member of a trade union to make any contribution to the political fund of a trade union unless he has at some time after the commencement of this Act and before he is first after the thirty-first day of December, nineteen hundred and twenty-seven, required to make such a contribution delivered at the head office or some branch office of the trade union notice in writing in the form set out in the First Schedule to this Act of his willingness to contribute to that fund and has not withdrawn the notice in manner hereinafter provided; and every member of a trade union who has not delivered such a notice as aforesaid, or who, having delivered such a notice, has withdrawn it in manner hereinafter provided, shall be deemed for the purposes of the Trade Union Act, 1913, to be a member who is exempt from the obligation to contribute to the political fund of the union, and references in that

Act to a member who is so exempt shall be construed accordingly :

Provided that, if at any time a member of a trade union who has delivered such a notice as aforesaid gives notice of withdrawal thereof, delivered at the head office or at any branch office of the trade union, he shall be deemed for the purposes of this subsection to have withdrawn the notice as from the first day of January next after the delivery of the notice of withdrawal.

For the purposes of this subsection a notice may be delivered personally or by any authorised agent and any notice shall be deemed to have been delivered at the head or a branch office of a trade union if it has been sent by post properly addressed to that office.

(2) All contributions to the political fund of a trade union from members of the trade union who are liable to contribute to that fund shall be levied and made separately from any contributions to the other funds of the trade union and no assets of the trade union, other than the amount raised by such a separate levy as aforesaid, shall be carried to that fund, and no assets of a trade union other than those forming part of the political fund shall be directly or indirectly applied or charged in furtherance of any political object to which section three of the Trade Union Act, 1913, applies ; and any charge in contravention of this subsection shall be void.

(3) All rules of a trade union made and approved in accordance with the requirements of section three of the Trade Union Act, 1913, shall be

amended so as to conform to the requirements of this Act, and as so amended shall be approved by the Registrar of Friendly Societies (in this Act referred to as "the Registrar") within six months after the commencement of this Act or within such further time as the Registrar may in special circumstances allow, and if the rules of any trade union are not so amended and approved as aforesaid they shall be deemed not to comply with the requirements of the said section.

(4) Notwithstanding anything in this Act, until the thirty-first day of December, nineteen hundred and twenty-seven, it shall be lawful to require any member of a trade union to contribute to the political fund of the trade union as if this Act had not been passed.

(5) If the Registrar is satisfied, and certifies, that rules for the purpose of complying with the provisions of this section, or for the purposes of the Trade Union Act, 1913, as amended by this Act, which require approval by the Registrar have been approved by a majority of the members of a trade union voting for the purpose, by the executive or other governing body of such a trade union, or by a majority of delegates of such a trade union voting at a meeting called for the purpose, the Registrar may approve those rules and those rules shall thereupon have effect as rules of the union notwithstanding that the provisions of the rules of the union as to the alteration of rules or the making of new rules have not been complied with.

(6) Section sixteen of the Trade Union Act, 1871 (which provides for the transmission to the

Registrar of annual returns by registered trade unions), shall apply to every unregistered trade union so far as respects the receipts, funds, effects, expenditure, assets and liabilities of the political fund thereof.

“ *In the form set out in the First Schedule.*”—The form is as follows :—

FORM OF POLITICAL FUND CONTRIBUTION NOTICE.

Name of Trade Union.....

Name of member's branch (if any).....

POLITICAL FUND (CONTRIBUTION NOTICE).

I HEREBY give notice that I am willing, and agree, to contribute to the Political Fund of the Union and I understand that I shall, in consequence, be liable to contribute to that Fund and shall continue to be so liable unless I deliver at the head office, or some branch office, of the Union a written notice of withdrawal ; I also understand that after delivering such a notice of withdrawal I shall still continue to be liable to contribute to the political fund until the next following first day of January.

A.....B.....

Address

Membership number (if any).....

..... day of.....19.....

“ *No assets of a trade union.*”—*E.g.*, assets other than contributions, such as interest on the general fund, etc.

“ *Rules shall be approved by the Registrar.*”—The Registrar has issued model rules.

REGULATIONS AS TO ORGANISATIONS OF WHICH ESTABLISHED CIVIL SERVANTS MAY BE MEMBERS.

5.—(1) Amongst the regulations as to the conditions of service in His Majesty's civil establishments there shall be included regulations prohibiting established civil servants from being members, delegates, or representatives of any organisation of which the primary object is to influence or affect the remuneration and conditions of employment of its members, unless the organisation is an organisation of which the membership is confined to persons employed by or under the Crown and is an organisation which complies with such provisions as may be contained in the regulations for securing that it is in all respects independent of, and not affiliated to any such organisation as aforesaid the membership of which is not confined to persons employed by or under the Crown, or any federation comprising such organisations, that its objects do not include political objects, and that it is not associated directly or indirectly with any political party or organisation :

Provided that the regulations made in compliance with the provisions of this section shall not prevent—

- (a) any person who is at the commencement of this Act an established civil servant from remaining a member of any trade union or organisation not composed wholly or mainly of persons employed by or under the Crown of which he had, at the commencement of this Act, been a member for

more than six months if under the rules thereof there had on the fourth day of April, nineteen hundred and twenty-seven, accrued or begun to accrue to him a right to any future payment during incapacity, or by way of superannuation, or on the death of himself or his wife, or as provision for his children ;

- (b) any person employed at the commencement of this Act by or under the Crown who thereafter becomes an established civil servant from remaining, so long as he is not appointed to a position of supervision or management, a member of any trade union or organisation, not composed wholly or mainly of persons employed by or under the Crown, of which he is a member at the date when he so becomes an established civil servant, if under the rules thereof there has at that date accrued, or begun to accrue, to him a right to any future payment during incapacity, or by way of superannuation, or on the death of himself or his wife, or as provision for his children ;
or
- (c) a person who in addition to being an established civil servant is, apart from his service as such, also engaged in some other employment or occupation from being a member, delegate, or representative of any trade union or organisation, of which the primary object is to influence or affect the remuneration or conditions of employment

of persons engaged in that employment or occupation.

(2) Subject as hereinafter provided, any established civil servant who contravenes the regulations made under this section shall be disqualified for being a member of the Civil Service :

Provided that, in the case of a first offence, a civil servant shall forthwith be warned by the head of his department, and the said disqualification shall not take effect if within one month after such warning the civil servant ceases to contravene the said regulations.

(3) In this section—

(a) the expression “ established civil servant ” means a person serving in an established capacity in the permanent service of the Crown, and includes any person who, having been granted a certificate by the Civil Service Commissioners, is serving a probationary period preliminary to establishment ; and

(b) the expression “ conditions of employment ” means in relation to persons other than persons employed by or under the Crown the conditions of employment of persons employed under a contract of service.

“ *Regulations.* ”—Apparently there is nothing to prevent an Order in Council providing for the whole of this section. *Vide* Order in Council November 29th, 1884, as to the parliamentary candidature of civil servants.

PROVISIONS AS TO PERSONS EMPLOYED BY LOCAL
AND OTHER PUBLIC AUTHORITIES.

6.—(1) It shall not be lawful for any local or other public authority to make it a condition of the employment or continuance in employment of any person that he shall or shall not be a member of a trade union, or to impose any condition upon persons employed by the authority whereby employees who are or who are not members of a trade union are liable to be placed in any respect either directly or indirectly under any disability or disadvantage as compared with other employees.

(2) It shall not be lawful for any local or other public authority to make it a condition of any contract made or proposed to be made with the authority, or of the consideration or acceptance of any tender in connection with such a contract, that any person to be employed by any party to the contract shall or shall not be a member of a trade union.

(3) Any condition imposed in contravention of this section shall be void.

(4) There shall be added to section five of the Conspiracy and Protection of Property Act, 1875, the following provision, that is to say :—

“ If any person employed by a local or other public authority wilfully breaks a contract of service with that authority, knowing or having reasonable cause to believe that the probable consequence of his so doing, either alone or in combination with others, will be to cause injury or danger or grave inconvenience to the

community, he shall be liable, on summary conviction, to a fine not exceeding ten pounds or to imprisonment for a term not exceeding three months."

"*Local or public authority.*"—These words are not defined.

For a list of the Acts in which they are defined, see Stroud's Judicial Dictionary, 2nd Ed., p. 1115, Supplement, p. 319.

The phrase used in section 4 of the 1875 Act is "municipal authority," which is defined by section 14 as "any of the following authorities, that is to say, the Metropolitan Board of Works, the Common Council of the City of London, the Commissioners of Sewers of the City of London, the town council of any borough for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled 'An Act to provide for the Regulation of Municipal Corporations in England and Wales,' and any Act amending the same, any commissioners, trustees, or other persons invested by any local Act of Parliament with powers of improving, cleansing, lighting, or paving any town, and any local board."

"*Wilfully breaks.*"—The words "and maliciously" in section 5 of the 1875 Act are omitted. By section 15 of that Act the word "maliciously" is to be construed as it is in the Malicious Damage Act, 1861 (a).

No negligence or mischance amounts to a wilful and malicious act (4 Bl. Com. 222; 3 Co. Inst. 67; 1 Hawk. c. 39, s. 19; 1 Hale, 566). In order to justify a conviction the act done must be done wilfully, or at least recklessly (*R. v. Pembilton* (b); *R. v. Latimer* (c); *R. v. Welch* (d)).

(a) 24 & 25 Vict. c. 97.

(b) (1874) L. R. 2 C. C. R. 119.

(c) (1886) 17 Q. B. D. 359.

(d) (1875) 1 Q. B. D. 23.

"*Grave inconvenience to the community.*"—*Cf.* "hardship to the community," in section 1 hereof, *supra*, p. 275.

The "community" here contemplated must apparently be within the area of service of the local or public authority; it is undefined.

RESTRAINT OF APPLICATION OF FUNDS OF TRADE
UNIONS, ETC., IN CONTRAVENTION OF SECTION
1 OF ACT.

7. Without prejudice to the right of any person having a sufficient interest in the relief sought to sue or apply for an injunction to restrain any application of the funds of a trade union in contravention of the provisions of this Act, an injunction restraining any application of the funds of a trade union in contravention of the provisions of section one of this Act may be granted at the suit or upon the application of the Attorney-General.

In the application of this section to Scotland there shall be substituted therein for references to an injunction references to an interdict, and for the reference to the Attorney-General a reference to the Lord Advocate.

Apart from this section, the Attorney-General is not entitled to an injunction as a matter of right in every case where a public body is committing a breach of a statute, for the Court has a discretion in the case of actions by the Attorney-General as well as in other actions (e).

(e) *Att.-Gen. v. Wimbledon House Estate Co.*, [1904] 2 Ch. 42; *Att.-Gen. v. Grand Junction Canal Co.*, [1909] 2 Ch. 517, 518; *Att.-Gen. v. Birmingham, Tams, etc., District Board*, [1910] 1 Ch. 48, 53, 69; [1912] A. C. 788, 812; and see *Att.-Gen. v. Westminster Corporation*, [1924] 1 Ch. 455; [1924] 2 Ch. 421—425.

Proceedings to restrain railway companies or other public bodies from exceeding their powers are instituted by the Attorney-General (*f*). So also the Attorney-General may move for an injunction against any public body which exceeds its powers (*g*). Otherwise an injunction will only be granted at the suit of a party having sufficient interest in the relief sought (*h*).

SHORT TITLE, CONSTRUCTION, INTERPRETATION,
EXTENT AND REPEAL.

8.—(1) This Act may be cited as the Trade Disputes and Trade Unions Act, 1927, and shall be construed as one with the Trade Union Acts, 1871 to 1917, and this Act and the Trade Union Acts, 1871 to 1917, may be cited together as the Trade Union Acts, 1871 to 1927.

(2) For the purposes of this Act—

(a) the expression “strike” means the cessation of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal, or a refusal under a common understanding of any number of persons who are, or have been

(*f*) *Stockport Waterworks Co. v. Mayor, etc., of Manchester*, 9 Jur. (N. S.) 266; *Pudsey Gas Co. v. Bradford*, 15 Eq. 167; see *Att.-Gen. v. London and North Western Railway Co.*, [1900] 1 Q. B. 78; *London County Council v. Att.-Gen.*, [1902] A. C. 165, 168; *Att.-Gen. v. Pontypridd Waterworks Co.*, [1908] 1 Ch. 388; *Dundee Harbour Commissioners v. Nicol*, [1915] A. C. 561; *Birr R. D. C. v. Birr U. C.* (1915), 1 Ir. 419, 420.

(*g*) *London County Council v. Att.-Gen.*, [1902] A. C. 168; *Att.-Gen. v. Wimbledon House Estate Co.*, [1904] 2 Ch. 43, 44; *Att.-Gen. v. West Gloucester Water Co.*, [1909] 2 Ch. 346; *Att.-Gen. v. Westminster City Council*, [1924] 2 Ch. 420, 421; *Att.-Gen. v. Derby*, [1925] Ch. 808.

(*h*) *Wynne v. Lord Newborough*, 1 Ves. 164; *Leake v. Beckett*, 1 Y. & J. 339; *supra*, p. 68.

so employed, to continue to work or to accept employment ;

(b) the expression " lock-out " means the closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment ; and

(c) a strike or lock-out shall not be deemed to be calculated to coerce the Government unless such coercion ought reasonably to be expected as a consequence thereof.

(3) This Act shall not extend to Northern Ireland, except that the provisions of this Act relating to civil servants shall apply to civil servants employed in Northern Ireland in the administration of services with respect to which the Parliament of Northern Ireland has not power to make laws.

(4) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

" *The Trade Union Acts, 1871 to 1927.*"—That is—

The Trade Union Act, 1871 (34 & 35 Vict. c. 31).

The Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86).

The Trade Union Act, 1871, Amendment Act, 1876 (39 & 40 Vict. c. 22).

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The Trade Disputes Act, 1906 (6 Edw. 7, c. 47).

The Trade Union Act, 1913 (2 & 3 Geo. 5, c. 30).

The Trade Union (Amalgamation) Act, 1917 (7 & 8 Geo. 5, c. 34); and

The Trade Disputes and Trade Unions Act, 1927 (17 & 18 Geo. 5, c. 22).

“*Strike.*”—Apart from the Munitions of War Acts, now repealed, this is the only statutory definition of a strike. It differs from all other definitions in the authorities by including a combination to refuse employment. The refusal to accept employment is limited to persons who are or have been employed in a trade or industry. The offer of employment may presumably include the terms offered as the result of the compulsion of a lock-out (*q.v.*)

“*Lock-out.*”—Apart from the Munitions of War Acts, now repealed, this is the only statutory definition of a lock-out. It differs from the definition of a strike by including the *purpose* of the lock-out.

“*Done with a view to compel persons to accept terms of employment.*”—These words seem inconsistent with the definition of illegality in section 1 hereof which contemplates a lock-out “designed or calculated to coerce the Government.”

SCHEDULES.

FIRST SCHEDULE.

FORM OF POLITICAL FUND CONTRIBUTION NOTICE.

Name of Trade Union.....
Name of member's branch (if any).....

POLITICAL FUND (CONTRIBUTION NOTICE).

I HEREBY give notice that I am willing, and agree, to contribute to the Political Fund of the Union and I understand that I shall, in consequence, be liable to contribute to that Fund and shall continue to be so liable unless I deliver at the head office, or some branch office, of the Union a written notice of withdrawal: I also understand that after delivering such a notice of withdrawal I shall still continue to be

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liable to contribute to the political fund until the next following first day of January.

A.....B.....

Address.....

Membership number (if any).....

.....day of.....19.....

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
2 & 3 Geo. 5. c. 30.	Trade Union Act, 1913.	Subsection (2) of section four; in subsection (1) of section three the words from "and for the exemption" to "objects to contribute"; section five; section six; the Schedule.

PART III.—MISCELLANEOUS STATUTES AND REGULATIONS AFFECTING TRADE UNIONS.

I.

THE two Acts 39 Geo. 3, c. 79 (1799), and 57 Geo. 3, c. 19 (1817), have never been repealed, though the latter has been amended by the Statute Law Revision Acts, 1873 and 1890. They have been discussed in two cases—*Luby v. Warwickshire Miners' Association* (a) and *Parr v. Lancashire and Cheshire Miners' Federation* (b) (*supra*, p. 43).

In *Luby's Case*, in which the illegality of the society by reason of the statutes was in question, Neville, J., said that at the time of the passing of the Acts the branches and delegates of a modern trade union would have come within their prohibition. His Lordship held that the statutes were not obsolete, but that trade unions had become exonerated from their provisions by the Legislature (c). In *Parr's Case* the same arguments were repeated, but Neville, J., did not deal further with the matter in his judgment.

Friendly societies are expressly exempted from these two Acts (d).

II.

THE TRADE UNION ACT, 1871 (dd)

(34 & 35 VICT. c. 31).

[June 29th, 1871.

PRELIMINARY.

1. *Short Title*.—This Act may be cited as "The Trade Union Act, 1871."

(a) [1912] 2 Ch. 371.

(b) [1913] 1 Ch. 366.

(c) *Ibid.*, at pp. 379 and 380.

(d) Friendly Societies Act, 1896, s. 32.

(dd) *Supra*, pp. 10 *et seq.*

CRIMINAL PROVISIONS.

2. *Trade Union not Criminal.*—The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.

3. *Trade Union not unlawful for Civil Purposes.*—The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust.

4. *Trade Union Contracts, when not enforceable.*—Nothing in this Act shall enable any Court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely,

- (1) Any agreement between members of a trade union as such, concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ, or be employed :
- (2) Any agreement for the payment by any person of any subscription or penalty to a trade union :
- (3) Any agreement for the application of the funds of a trade union,—
 - (a) To provide benefits to members ; or,
 - (b) To furnish contributions to any employer or workman not a member of such trade union, in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union ; or
 - (c) To discharge any fine imposed upon any person by sentence of a court of justice ; or,
- (4) Any agreement made between one trade union and another ; or,
- (5) Any bond to secure the performance of any of the above-mentioned agreements.

But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful.

5. The following Acts, that is to say,

- (1) The Friendly Societies Acts, 1855 and 1858, and the Acts amending the same ;

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(2) The Industrial and Provident Societies Act, 1867, and any Act amending the same ; and

(3) The Companies Acts, 1862 and 1867,

shall not apply to any trade union, and the registration of any trade union under any of the said Acts shall be void, and the deposit of the rules of any trade union made under the Friendly Societies Acts, 1855 and 1858, and the Acts amending the same, before the passing of this Act, shall cease to be of any effect.

REGISTERED TRADE UNIONS.

6. *Registry of Trade Unions.*—Any seven or more members of a trade union may by subscribing their names to the rules of the union, and otherwise complying with the provisions of this Act with respect to registry, register such trade union under this Act, provided that if any one of the purposes of such trade union be unlawful such registration shall be void.

7. *Buildings for Trade Unions may be purchased or leased.*—It shall be lawful for any trade union registered under this Act to purchase or take upon lease in the names of the trustees for the time being of such union any land not exceeding one acre, and to sell, exchange, mortgage or let the same, and no purchaser, assignee, mortgagee, or tenant shall be bound to inquire whether the trustees have authority for any sale, exchange, mortgage, or letting, and the receipt of the trustees shall be a discharge for the money arising therefrom ; and for the purpose of this section every branch of a trade union shall be considered a distinct union.

8. *Property of the Trade Unions vested in Trustees.*—All real and personal estate whatsoever belonging to any trade union registered under this Act shall be vested in the trustees for the time being of a trade union appointed as provided by this Act for the use and benefit of such trade union and the members thereof, and the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch, and be under the control of such trustees, their respective executors or administrators, according to their respective claims and interests, and upon the death or removal of any such trustees the same shall vest in the succeeding trustees for the same estate and interest as the former trustees had therein, and sub-

ject to the same trusts, without any conveyance or assignment whatsoever, save and except in the case of stocks and securities in the public funds of Great Britain and Ireland, which shall be transferred into the names of such new trustees ; and in all actions, or suits, or indictments, or summary proceedings before any Court of summary jurisdiction, touching or concerning any such property, the same shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in their proper names, as trustees of such trade union, without any further description.

9. *Actions, etc., by or against Trustees, etc.*—The trustees of any trade union registered under this Act, or any other officer of such trade union who may be authorised so to do by the rules thereof, are hereby empowered to bring or defend, or cause to be brought or defended, any action, suit, prosecution or complaint in any Court of law or equity touching or concerning property, right, or claim to property of the trade union ; and shall and may, in all cases concerning the real or personal property of such trade union, sue and be sued, plead and be impleaded, in any Court of law or equity, in their proper names, without other description than the title of their office ; and no such action, suit, prosecution, or complaint shall be discontinued or shall abate by the death or removal from office of such persons or any of them, but the same shall and may be proceeded in by their successor or successors as if such death, resignation, or removal had not taken place ; and such successors shall pay or receive the like costs as if the action, suit, prosecution, or complaint had been commenced in their names for the benefit of or to be reimbursed from the funds of such trade union, and the summons to be issued to such trustee or other officer may be served by leaving the same at the registered office of the trade union.

10. *Limitation of Responsibility of Trustees.*—A trustee of any trade union registered under this Act shall not be liable to make good any deficiency which may arise or happen in the funds of such trade union, but shall be liable only for the moneys which shall be actually received by him on account of such trade union.

11. *Treasurers, etc., to account.*—Every treasurer or other officer of a trade union registered under this Act, at such times

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as by the rules of such trade union he should render such account as hereinafter mentioned, or upon being required so to do, shall render to the trustees of the trade union, or to the members of such trade union, at a meeting of the trade union, a just and true account of all moneys received and paid by him since he last rendered the like account, and of the balance then remaining in his hands, and of all bonds or securities of such trade union, which account the said trustees shall cause to be audited by some fit and proper person or persons by them to be appointed; and such treasurer, if thereunto required, upon the said account being audited, shall forthwith hand over to the said trustees the balance which on such audit appears to be due from him, and shall also, if required, hand over to such trustees all securities and effects, books, papers, and property of the said trade union in his hands or custody; and if he fail to do so the trustees of the said trade union may sue such treasurer in any competent Court for the balance appearing to have been due from him upon the account last rendered by him, and for all the moneys since received by him on account of the said trade union, and for the securities and effects, books, papers, and property in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of the said trade union; and in such action the said trustees shall be entitled to recover their full costs of suit, to be taxed as between attorney and client.

12. *Punishment for withholding Money, etc.*—If any officer, member, or other person being or representing himself to be a member of a trade union registered under this Act, or the nominee, executor, administrator, or assignee of a member thereof, or any person whatsoever, by false representation or imposition obtain possession of any moneys, securities, books, papers, or other effects of such trade union, or, having the same in his possession, wilfully withhold or fraudulently misapply the same, or wilfully apply any part of the same to purposes other than those expressed or directed in the rules of such trade union, or any part thereof, the Court of summary jurisdiction for the place in which the registered office of the trade union is situate upon a complaint made by any person on behalf of such trade union, or by the Registrar, or in Scotland at the instance of the procurator fiscal of the Court, to

which such complaint is competently made, or of the trade union, with his concurrence, may, by summary order, order such officer, member, or other person to deliver up all such moneys, securities, books, papers, or other effects to the trade union, or to repay the amount of money applied improperly, and to pay, if the Court think fit, a further sum of money not exceeding twenty pounds, together with costs not exceeding twenty shillings; and, in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs aforesaid, the said Court may order the said person so convicted to be imprisoned, with or without hard labour, for any time not exceeding three months: Provided, that nothing herein contained shall prevent the said trade union, or in Scotland Her Majesty's Advocate, from proceeding by indictment against the said party; provided also, that no person shall be proceeded against by indictment if a conviction shall have been previously obtained for the same offence under the provisions of this Act.

REGISTRY OF TRADE UNION.

13. *Regulations for Registry.*—With respect to the registry, under this Act, of a trade union, and of the rules thereof, the following provisions shall have effect:

(1) An application to register the trade union and printed copies of the rules, together with a list of the titles and names of the officers, shall be sent to the Registrar under this Act:

(2) The Registrar, upon being satisfied that the trade union has complied with the regulations respecting registry in force under this Act, shall register such trade union and such rules:

(3) No trade union shall be registered under a name identical with that by which any other existing trade union has been registered, or so nearly resembling such name as to be likely to deceive the members or the public:

(4) Where a trade union applying to be registered has been in operation for more than a year before the date of such application, there shall be delivered to the Registrar before the registry thereof a general statement of the receipts, funds, effects, and expenditure of such trade union in the same form, and showing the same particulars, as if it were the annual

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general statement required as herein-after mentioned to be transmitted annually to the Registrar :

(5) The Registrar upon registering such trade union shall issue a certificate of registry, which certificate, unless proved to have been withdrawn or cancelled, shall be conclusive evidence that the regulations of this Act with respect to registry have been complied with :

(6) One of Her Majesty's Principal Secretaries of State may from time to time make regulations respecting registry under this Act, and respecting the seal (if any) to be used for the purpose of such registry, and the forms to be used for such registry, and the inspection of documents kept by the Registrar under this Act, and respecting the fees, if any, to be paid on registry, not exceeding the fees specified in the Second Schedule to this Act, and generally for carrying this Act into effect.

14. *Rules of Registered Trade Unions.*—With respect to the rules of a trade union registered under this Act, the following provisions shall have effect :

(1) The rules of every such trade union shall contain provisions in respect of the several matters mentioned in the First Schedule to this Act :

(2) A copy of the rules shall be delivered by the trade union to every person on demand on payment of a sum not exceeding one shilling.

15. *Registered Office of Trade Union.*—Every trade union registered under this Act shall have a registered office to which all communications and notices may be addressed ; if any trade union under this Act is in operation for seven days without having such an office, such trade union and every officer thereof shall each incur a penalty not exceeding five pounds for every day during which it is so in operation.

Notice of the situation of such registered office, and of any change therein, shall be given to the Registrar and recorded by him ; until such notice is given the trade union shall not be deemed to have complied with the provisions of this Act.

16. *Annual Returns to be prepared as Registrar may direct.*—A general statement of the receipts, funds, effects, and expenditure of every trade union registered under this Act shall be transmitted to the Registrar before the first day of June in every year, and shall show fully the assets and liabilities at the

date, and the receipts and expenditure during the year preceding the date to which it is made out, of the trade union ; and shall show separately the expenditure in respect of the several objects of the trade union, and shall be prepared and made out up to such date, in such form, and shall comprise such particulars, as the Registrar may from time to time require ; and every member of, and depositor in, any such trade union shall be entitled to receive, on application to the treasurer or secretary of that trade union, a copy of such general statement, without making any payment for the same.

Together with such general statement there shall be sent to the Registrar a copy of all alterations of rules and new rules and changes of officers made by the trade union during the year preceding the date up to which the general statement is made out, and a copy of the rules of the trade union as they exist at that date.

Every trade union which fails to comply with or acts in contravention of this section, and also every officer of the trade union so failing, shall each be liable to a penalty not exceeding five pounds for each offence.

Every person who wilfully makes or orders to be made any false entry in or any omission from any such general statement, or in or from the return of such copies of rules or alterations of rules, shall be liable to a penalty not exceeding fifty pounds for each offence.

17. *Registrars.*—The Registrars of the friendly societies in England, Scotland, and Ireland shall be the Registrars under this Act.

The Registrar shall lay before Parliament annual reports with respect to the matters transacted by such Registrars in pursuance of this Act.

18. *Circulating False Copies of Rules, etc., a Misdemeanor.*—If any person with intent to mislead or defraud gives to any member of a trade union registered under this Act, or to any person intending or applying to become a member of such trade union, a copy of any rules or of any alterations or amendments of the same other than those respectively which exist for the time being on the pretence that the same are the existing rules of such trade union, or that there are no other rules of such trade union, or if any person with the intent aforesaid gives a

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copy of any rules to any person on the pretence that such rules are the rules of a trade union registered under this Act which is not so registered, every person so offending shall be deemed guilty of a misdemeanor.

LEGAL PROCEEDINGS.

19. *Summary Proceedings for Offences, Penalties, etc.*—In England and Ireland all offences and penalties under this Act may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts.

In England and Ireland summary orders under this Act may be made and enforced on complaint before a Court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

Provided as follows :

1. The " Court of Summary Jurisdiction," when hearing and determining an information or complaint, shall be constituted in some one of the following manners ; that is to say,

(a) In England,

(1) In any place within the jurisdiction of a metropolitan police magistrate or other stipendiary magistrate, of such magistrate or his substitute :

(2) In the city of London, of the Lord Mayor or any alderman of the said city :

(3) In any other place, of two or more justices of the peace sitting in petty sessions :

(b) In Ireland,

(1) In the police district of Dublin metropolis, of a divisional justice :

(2) In any other place, of a resident magistrate.

In Scotland all offences and penalties under this Act shall be prosecuted and recovered by the procurator fiscal of the county in the Sheriff Court under the provisions of the Summary Procedure Act, 1864.

In Scotland summary orders under this Act may be made and enforced on complaint in the Sheriff Court.

All the jurisdictions, powers, and authorities necessary for giving effect to these provisions relating to Scotland are hereby conferred on the sheriffs and their substitutes.

Provided that in England, Scotland, and Ireland—

2. The description of any offence under this Act in the words of such Act shall be sufficient in law.

3. Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant or prosecutor.

20. *Appeal to Quarter Sessions.*—In England or Ireland, if any party feels aggrieved by any order or conviction made by a Court of summary jurisdiction on determining any complaint or information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following :

(1) The appeal shall be made to some Court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days and not more than four months after the decision of the Court from which the appeal is made :

(2) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the Court of summary jurisdiction of his intention to appeal, and of the ground thereof :

(3) The appellant shall immediately after such notice enter into a recognizance before a justice of the peace in the sum of ten pounds, with two sufficient sureties in the sum of ten pounds, conditioned personally to try such appeal, and to abide the judgment of the Court thereon, and to pay such costs as may be awarded by the Court :

(4) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognizance as aforesaid, release him from custody :

(5) The Court of Appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the Court of summary jurisdiction, or remit the matter to the Court of summary jurisdiction with the opinion of the Court of Appeal thereon, or make such other order in the matter as the Court thinks just, and if the matter be remitted

to the Court of summary jurisdiction the said last-mentioned Court shall thereupon re-hear and decide the information or complaint in accordance with the opinion of the said Court of Appeal. The Court of Appeal may also make such order as to costs to be paid by either party as the Court thinks just.

21. Appeal in Scotland as prescribed by 20 Geo. 2, c. 43.—In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the next Circuit Court of Justiciary, or where there are no Circuit Courts to the High Court of Justiciary at Edinburgh, in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, in regard to appeals to Circuit Courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force.

All penalties imposed under the provisions of this Act in Scotland may be enforced in default of payment by imprisonment for a term to be specified in the summons or complaint, but not exceeding three calendar months.

All penalties imposed and recovered under the provisions of this Act in Scotland shall be paid to the sheriff clerk, and shall be accounted for and paid by him to the Queen's and Lord Treasurer's Remembrancer on behalf of the Crown.

22. Interested Person not to act as a Member of a Court of Appeal.—A person who is a master, or father, son, or brother of a master, in the particular manufacture, trade, or business in or in connexion with which any offence under this Act is charged to have been committed shall not act as or as a member of a Court of summary jurisdiction or appeal for the purposes of this Act.

DEFINITIONS.

23. Definitions.—In this Act—

As to the Term "*Summary Jurisdiction Acts.*"—The term Summary Jurisdiction Acts means as follows :

As to England, the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the Perform-

ance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders," and any Acts amending the same :

As to Ireland, within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district, and elsewhere in Ireland, "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same.

In Scotland the term "misdemeanor" means a crime and offence.

As to "*trade union*."—The term "trade union" means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business as would, if this Act had not passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade : Provided that this Act shall not affect—

- (1) Any agreement between partners as to their own business ;
- (2) Any agreement between an employer and those employed by him as to such employment ;
- (3) Any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade, or handicraft.

REPEAL.

24. Repeal of Trades Unions Funds Protection Act, 1869, as herein stated.—The Trades Unions Funds Protection Act, 1869, is hereby repealed.

Provided that this repeal shall not affect—

- (1) Anything duly done or suffered under the said Act :
- (2) Any right or privilege acquired or any liability incurred under the said Act :
- (3) Any penalty, forfeiture, or other punishment incurred in respect of any offence against the said Act :

- (4) The institution of any investigation or legal proceeding or any other remedy for ascertaining, enforcing, recovering, or imposing any such liability, penalty, forfeiture or punishment as aforesaid.

SCHEDULES.

FIRST SCHEDULE.

Of Matters to be provided for by the Rules of Trade Unions registered under this Act.

1. The name of the trade union and place of meeting for the business of the trade union.
2. The whole of the objects for which the trade union is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such trade union.
3. The manner of making, altering, amending, and rescinding rules.
4. A provision for the appointment and removal of a general committee of management, of a trustee or trustees, treasurer, and other officers.
5. A provision for the investment of the funds, and for an annual or periodical audit of accounts.
6. The inspection of the books and names of members or the trade union by every person having an interest in the funds of the trade union.

SECOND SCHEDULE.

Maximum Fees.

	£	s.	d.
For registering trade union . . .	1	0	0
For registering alterations in rules . . .	0	10	0
For inspection of documents . . .	0	2	6

III.

THE CONSPIRACY, AND PROTECTION OF
PROPERTY ACT, 1875 (a)

(38 & 39 VICT. c. 86).

[August 13th, 1875.]

1. *Short Title.*—This Act may be cited as the Conspiracy, and Protection of Property Act, 1875.

2. *Commencement of Act.*—This Act shall come into operation on the first day of September one thousand eight hundred and seventy-five.

CONSPIRACY, AND PROTECTION OF PROPERTY.

3. *Amendment of Law as to Conspiracy in Trade Disputes.*—An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.

Nothing in this section shall exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any Act of Parliament.

Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offence against the State or the Sovereign.

A crime for the purposes of this section means an offence punishable on indictment, or an offence which is punishable on summary conviction, and for the commission of which the offender is liable under the statute making the offence punishable to be imprisoned either absolutely or at the discretion of the Court as an alternative for some other punishment.

Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months, or such longer time, if any, as may have been prescribed by the statute for the punishment of the said act when committed by one person.

4. *Breach of Contract by Persons employed in Supply of Gas*
(a) *Supra*, pp. 200, *et seq.*

or Water.—Where a person employed by a municipal authority or by any company or contractor upon whom is imposed by Act of Parliament the duty, or who have otherwise assumed the duty of supplying any city, borough, town, or place, or any part thereof, with gas or water, wilfully and maliciously breaks a contract of service with that authority or company or contractor, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city, borough, town, place, or part, wholly or to a great extent of their supply of gas or water, he shall on conviction thereof by a Court of summary jurisdiction or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds or to be imprisoned for a term not exceeding three months, with or without hard labour.

Every such municipal authority, company, or contractor as is mentioned in this section shall cause to be posted up, at the gasworks or waterworks, as the case may be, belonging to such authority or company or contractor, a printed copy of this section in some conspicuous place where the same may be conveniently read by the persons employed, and as often as such copy becomes defaced, obliterated, or destroyed, shall cause it to be renewed with all reasonable despatch.

If any municipal authority or company or contractor make default in complying with the provisions of this section in relation to such notice as aforesaid, they or he shall incur on summary conviction a penalty not exceeding five pounds for every day during which such default continues, and every person who unlawfully injures, defaces, or covers up any notice so posted up as aforesaid in pursuance of this Act, shall be liable on summary conviction to a penalty not exceeding forty shillings.

5. Breach of Contract involving Injury to Persons or Property.

—Where any person wilfully and maliciously breaks a contract of service or of hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose valuable property whether real or personal to destruction or serious injury, he shall on conviction thereof by a Court of summary jurisdic-

tion, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

MISCELLANEOUS.

6. *Penalty for Neglect by Master to provide Food, Clothing, etc., for Servant or Apprentice.*—Where a master, being legally liable to provide for his servant or apprentice necessary food, clothing, medical aid, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, whereby the health of the servant or apprentice is or is likely to be seriously or permanently injured, he shall on summary conviction be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding six months, with or without hard labour.

7. *Penalty for Intimidation or Annoyance by Violence or otherwise.*—Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority,—

- (1) Uses violence to or intimidates such other person or his wife or children, or injures his property ; or,
- (2) Persistently follows such other person about from place to place ; or,
- (3) Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof ; or,
- (4) Watches or besets the house or other place where such other person resides, or works, or carries on business or happens to be, or the approach to such house or place ; or,
- (5) Follows such other person with two or more other persons in a disorderly manner in or through any street or road,

shall, on conviction thereof by a Court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

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Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.

8. *Reduction of Penalties.*—Where in any Act relating to employers or workmen a pecuniary penalty is imposed in respect of any offence under such Act, and no power is given to reduce such penalty, the justices or Court having jurisdiction in respect of such offence may, if they think it just so to do, impose by way of penalty in respect of such offence any sum not less than one-fourth of the penalty imposed by such Act.

LEGAL PROCEEDINGS.

9. *Power for Offender under this Act to be tried on Indictment and not by Court of Summary Jurisdiction.*—Where a person is accused before a Court of summary jurisdiction of any offence made punishable by this Act, and for which a penalty amounting to twenty pounds, or imprisonment, is imposed the accused may, on appearing before the Court of summary jurisdiction, declare that he objects to being tried for such offence by a Court of summary jurisdiction, and thereupon the Court of summary jurisdiction may deal with the case in all respects as if the accused were charged with an indictable offence and not an offence punishable on summary conviction, and the offence may be prosecuted on indictment accordingly.

10. *Proceedings before Court of Summary Jurisdiction.*—Every offence under this Act which is made punishable on conviction by a Court of summary jurisdiction or on summary conviction, and every penalty under this Act recoverable on summary conviction, may be prosecuted and recovered in manner provided by the Summary Jurisdiction Act.

11. *Regulations as to Evidence.*—Provided, that upon the hearing and determining of any indictment or information under sections four, five, and six of this Act, the respective parties to the contract of service, their husbands or wives, shall be deemed and considered as competent witnesses.

12. *Appeal to Quarter Sessions.*—In England or Ireland, if any party feels aggrieved by any conviction made by a Court

of summary jurisdiction on determining any information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following :

(1) The appeal shall be made to some Court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days and not more than four months after the decision of the Court from which the appeal is made :

(2) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the Court of summary jurisdiction of his intention to appeal, and of the ground thereof :

(3) The appellant shall immediately after such notice enter into a recognizance before a justice of the peace, with or without sureties, conditioned personally to try such appeal and to abide the judgment of the Court thereon, and to pay such costs as may be awarded by the Court :

(4) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognizance as aforesaid, release him from custody :

(5) The Court of Appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the Court of summary jurisdiction, or remit the matter to the Court of summary jurisdiction with the opinion of the Court of Appeal thereon, or make such other order in the matter as the Court thinks just, and if the matter be remitted to the Court of summary jurisdiction the said last-mentioned Court shall thereupon rehear and decide the information in accordance with the opinion of the said Court of Appeal. The Court of Appeal may also make such order as to costs to be paid by either party as the Court thinks just.

DEFINITIONS.

13. *General Definitions.*—In this Act,—

“*The Summary Jurisdiction Act.*” —The expression “the Summary Jurisdiction Act” means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled “An Act to facilitate the Performance of the Duties of Justices of the Peace out of

Sessions within England and Wales with respect to Summary Convictions and Orders," inclusive of any Acts amending the same; and

"*Court of Summary Jurisdiction.*"—The expression "court of summary jurisdiction" means—

- (1) As respects the city of London, the Lord Mayor or any alderman of the said city sitting at the Mansion House or Guildhall justice room; and
- (2) As respects any police court division in the Metropolitan Police District, any metropolitan police magistrate sitting at the police court for that division; and
- (3) As respects any city, town, liberty, borough, place, or district for which a stipendiary magistrate is for the time being acting, such stipendiary magistrate sitting at a police court or other place appointed in that behalf; and
- (4) Elsewhere, any justice or justices of the peace to whom jurisdiction is given by the Summary Jurisdiction Act: Provided that, as respects any case within the cognizance of such justice or justices as last aforesaid, an information under this Act shall be heard and determined by two or more justices of the peace in petty sessions sitting at some place appointed for holding petty sessions.

Nothing in this section contained shall restrict the jurisdiction of the Lord Mayor or any alderman of the city of London, or of any metropolitan police or stipendiary magistrate, in respect of any act or jurisdiction which may now be done or exercised by him out of Court.

14. *Definitions of "Municipal Authority and Public Company."*—The expression "municipal authority" in this Act means any of the following authorities, that is to say, the Metropolitan Board of Works, the Common Council of the city of London, the Commissioners of Sewers of the city of London, the town council of any borough for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intitled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and any Act amending the same, any commissioners, trustees, or other persons invested by any

local Act of Parliament with powers of improving, cleansing, lighting, or paving any town, and any local board.

Any municipal authority or company or contractor who has obtained authority by or in pursuance of any general or local Act of Parliament to supply the streets of any city, borough, town, or place, or of any part thereof, with gas, or which is required by or in pursuance of any general or local Act of Parliament to supply water on demand to the inhabitants of any city, borough, town, or place, or any part thereof, shall for the purposes of this Act be deemed to be a municipal authority or company or contractor upon whom is imposed by Act of Parliament the duty of supplying such city, borough, town, or place, or part thereof, with gas or water.

15. "*Maliciously*" in this Act construed as in *Malicious Injuries to Property Act*.—The word "maliciously" used in reference to any offence under this Act shall be construed in the same manner as it is required by the fifty-eighth section of the Act relating to malicious injuries to property, that is to say, the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-seven, to be construed in reference to any offence committed under such last-mentioned Act.

SAVING CLAUSE.

16. *Saving as to Sea Service*.—Nothing in this Act shall apply to seamen or to apprentices to the sea service.

REPEAL.

17. *Repeal of Acts*.—On and after the commencement of this Act, there shall be repealed :—

I. The Act of the session of the thirty-fourth and thirty-fifth years of the reign of Her present Majesty, chapter thirty-two, intituled "An Act to amend the Criminal Law relating to Violence, Threats, and Molestation ;" and

II. "The Master and Servant Act, 1867," and the enactments specified in the First Schedule to that Act, with the exceptions following as to the enactments in such schedule ; (that is to say,)

- (1) Except so much of sections one and two of the Act passed in the thirty-third year of the reign of King

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George the Third, chapter fifty-five, intituled "An Act to authorise Justices of the Peace to impose Fines upon Constables, Overseers, and other Peace or Parish Officers for neglect of Duty, and on Masters of Apprentices for Ill-usage of such their Apprentices; and also to make provision for the execution of Warrants of Distress granted by Magistrates," as relates to constables, overseers, and other peace or parish officers; and

- (2) Except so much of sections five and six of an Act passed in the fifty-ninth year of the reign of King George the Third, chapter ninety-two, intituled "An Act to enable Justices of the Peace in Ireland to act as such, in certain cases, out of the limits of the Counties in which they actually are; to make provision for the Execution of Warrants of Distress granted by them; and to authorise them to impose Fines upon Constables and other Officers for neglect of Duty, and on Masters for Ill-usage of their Apprentices," as relates to constables and other peace or parish officers; and
- (3) Except the Act of the session of the fifth and sixth years of the reign of Her present Majesty, chapter seven, intituled "An Act to explain the Acts for the better Regulation of certain Apprentices;" and
- (4) Except subsections one, two, three, and five of sections sixteen of "The Summary Jurisdiction (Ireland) Act, 1851," relating to certain disputes between employers and the persons employed by them; and

III. Also there shall be repealed the following enactments making breaches of contract criminal, and relating to the recovery of wages by summary procedure; (that is to say,)

- (a) An Act passed in the fifth year of the reign of Queen Elizabeth, chapter four, and intituled "An Act touching Dyvers orders for Artificers, Labourers, Servantes of Husbandrye, and Apprentices;" and
- (b) So much of section two of an Act passed in the twelfth year of King George the First, chapter thirty-four, and intituled "An Act to prevent unlawful Combination of Workmen employed in the Woollen Manufactures, and for better Payment of their Wages," as relates to

departing from service and quitting or returning work before it is finished ; and

- (c) Section twenty of an Act passed in the fifth year of King George the Third, chapter fifty-one, the title of which begins with the words " An Act for repealing several Laws relating to the Manufacture of Woollen Cloth in the County of York," and ends with the words " for preserving the credit of the said manufacture in the foreign market ;" and
- (d) An Act passed in the nineteenth year of King George the Third, chapter forty-nine, and intituled " An Act to prevent Abuses in the Payment of Wages to Persons employed in the Bone and Thread Lace Manufactory ;" and
- (e) Sections eighteen and twenty-three of an Act passed in the session of the third and fourth years of Her present Majesty, chapter ninety-one, intituled " An Act for the more effectual Prevention of Frauds and Abuses committed by Weavers, Sewers, and other persons employed in the Linen, Hempen, Union, Cotton, Silk, and Woollen Manufactures in Ireland, and for the better Payment of their Wages, for One Year, and from thence to the end of the next Session of Parliament ;" and
- (f) Section seventeen of an Act passed in the session of the sixth and seventh years of Her present Majesty, chapter forty, the title of which begins with the words " An Act to amend the Laws," and ends with the words " workmen engaged therein ;" and
- (g) Section seven of an Act passed in the session of the eighth and ninth years of Her present Majesty, chapter one hundred and twenty-eight, and intituled " An Act to make further Regulations respecting the Tickets of Work to be delivered to Silk Weavers in certain cases."

Provided that,—

(1) Any order for wages or further sum of compensation in addition to wages made in pursuance of section sixteen of " The Summary Jurisdiction (Ireland) Act, 1851," may be enforced in like manner as if it were an order made by a Court

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of summary jurisdiction in pursuance of the Employers and Workmen Act, 1875, and not otherwise ; and

- (2) The repeal enacted by this section shall not affect—
- (a) Anything duly done or suffered, or any right or liability acquired or incurred under any enactment hereby repealed ; or
 - (b) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed ; or
 - (c) Any investigation, legal proceeding, or remedy in respect of any such right, liability, penalty, forfeiture, or punishment as aforesaid ; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not passed.

APPLICATION OF ACT TO SCOTLAND.

18. *Application to Scotland.*—This Act shall extend to Scotland, with the modifications following ; that is to say,

- (1) *Definitions.*—The expression “municipal authority” means the town council of any royal or parliamentary burgh, or the commissioners of police of any burgh, town, or populous place under the provisions of the General Police and Improvement (Scotland) Act, 1862, or any local authority under the provisions of the Public Health (Scotland) Act, 1867 :
- (2) The expression “The Summary Jurisdiction Act” means the Summary Procedure Act, 1864, and any Acts amending the same :
- (3) The expression “the Court of summary jurisdiction” means the sheriff of the county or any one of his substitutes.

19. *Recovery of Penalties, etc., in Scotland.*—In Scotland the following provisions shall have effect in regard to the prosecution of offences, recovery of penalties, and making of orders under this Act :

- (1) Every offence under this Act shall be prosecuted, every penalty recovered, and every order made at the instance of the Lord Advocate, or of the Procurator Fiscal of the Sheriff Court :

- (2) The proceedings may be on indictment in the Court of Justiciary in Edinburgh or on circuit or in a sheriff court, or may be taken summarily in the sheriff court under the provisions of the Summary Procedure Act, 1864 :
- (3) Every person found liable on conviction to pay any penalty under this Act shall be liable, in default of payment within a time to be fixed in the conviction, to be imprisoned for a term, to be also fixed therein, not exceeding two months, or until such penalty shall be sooner paid, and the conviction and warrant may be in the form of No. 3 of Schedule K. of the Summary Procedure Act, 1864 :
- (4) In Scotland all penalties imposed in pursuance of this Act shall be paid to the clerk of the court imposing them, and shall by him be accounted for and paid to the Queen's and Lord Treasurer's Remembrancer, and be carried to the Consolidated Fund.

20. *Appeal in Scotland as prescribed by 20 Geo. 2, c. 43.*—In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the next Circuit Court of Justiciary, or where there are no Circuit Courts to the High Court of Justiciary at Edinburgh, in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, in regard to appeals to Circuit Courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force.

APPLICATION OF ACT TO IRELAND.

21. *Application to Ireland.*—This Act shall extend to Ireland, with the modifications following ; that is to say,

The expression "The Summary Jurisdiction Act" shall be construed to mean, as regards the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district ; and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Acts amending the same :

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The expression " Court of summary jurisdiction " shall be construed to mean any justice or justices of the peace, or other magistrate to whom jurisdiction is given by the Summary Jurisdiction Act :

The Court of summary jurisdiction, when hearing and determining complaints under this Act, shall in the police district of Dublin metropolis be constituted of one or more of the divisional justices of the said district, and elsewhere in Ireland of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions :

The expression " municipal authority " shall be construed to mean the town council of any borough for the time being, subject to the Act of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, entitled " An Act for the Regulation of Municipal Corporations in Ireland," and any commissioners invested by any general or local Act of Parliament, with power of improving, cleansing, lighting, or paving any town or township.

IV.

THE TRADE UNION ACT (1871) AMENDMENT
ACT, 1876 (a)

(39 & 40 VICT. c. 22).

[June 30th, 1876.]

1. *Construction and Short Title.*—This Act and the Trade Union Act, 1871, hereinafter termed the principal Act, shall be construed as one Act, and may be cited together as the "Trade Union Acts, 1871 and 1876," and this Act may be cited separately as the "Trade Union Acts Amendment Act, 1876."

2. *Trade Unions to be within s. 28 of Friendly Societies Act, 1875.*—Notwithstanding anything in section five of the principal Act contained, a trade union, whether registered or unregistered, which insures or pays money on the death of a child under ten years of age shall be deemed to be within the provisions of section twenty-eight of the Friendly Societies Act, 1875.

3. *Amendment of s. 8 of Principal Act.*—Whereas by section (a) *Supra*, pp. 114, *et seq.*

eight of the principal Act it is enacted that " the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch : " The said section shall be read and construed as if immediately after the hereinbefore recited words there were inserted the words " or of the trustees of the trade union, if the rules of the trade union so provide."

4. *Provision in Case of Absence, etc., of Trustee.*—When any person, being or having been a trustee of a trade union or of any branch of a trade union, and whether appointed before or after the legal establishment thereof, in whose name any stock belonging to such union or branch transferable at the Bank of England or Bank of Ireland is standing, either jointly with another or others, or solely, is absent from Great Britain or Ireland respectively, or becomes bankrupt, or files any petition, or executes any deed for liquidation of his affairs by assignment or arrangement, or for composition with his creditors, or becomes a lunatic, or is dead, or has been removed from his office of trustee, or if it be unknown whether such person is living or dead, the Registrar, on application in writing from the secretary and three members of the union or branch, and on proof satisfactory to him, may direct the transfer of the stock into the names of any other persons as trustees for the union or branch ; and such transfer shall be made by the surviving or continuing trustees, and if there be no such trustee, or if such trustees refuse or be unable to make such transfer, and the Registrar so direct, then by the Accountant-General or Deputy or Assistant Accountant-General of the Bank of England or Bank of Ireland, as the case may be ; and the Governors and Companies of the Bank of England and Bank of Ireland respectively are hereby indemnified for anything done by them or any of their officers in pursuance of this provision against any claim or demand of any person injuriously affected thereby.

5. *Jurisdiction in Offences.*—The jurisdiction conferred in the case of certain offences by section twelve of the principal Act upon the Court of summary jurisdiction for the place in which the registered office of a trade union is situate may be exercised either by that Court or by the Court of summary jurisdiction for the place where the offence has been committed.

6. Registry of Unions doing Business in more than one Country.—Trade unions carrying or intending to carry on business in more than one country shall be registered in the country in which their registered office is situate ; but copies of the rules of such unions, and of all amendments of the same, shall, when registered, be sent to the Registrar of each of the other countries, to be recorded by him, and until such rules be so recorded the union shall not be entitled to any of the privileges of this Act or the principal Act, in the country in which such rules have not been recorded, and until such amendments of rules be recorded the same shall not take effect in such country.

In this section "country" means England, Scotland, or Ireland.

7. Life Assurance Companies Acts not to apply to Registered Unions.—Whereas by the "Life Assurance Companies Act, 1870," it is provided that the said Act shall not apply to societies registered under the Acts relating to Friendly Societies : The said Act (or the amending Acts) shall not apply nor be deemed to have applied to trade unions registered or to be registered under the principal Act.

8. Withdrawal or Cancelling of Certificate.—No certificate of registration of a trade union shall be withdrawn or cancelled otherwise than by the Chief Registrar of Friendly Societies, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, by the Assistant Registrar for Scotland or Ireland, and in the following cases :

(1) At the request of the trade union to be evidenced in such manner as such Chief or Assistant Registrar shall from time to time direct :

(2) On proof to his satisfaction that a certificate of registration has been obtained by fraud or mistake, or that the registration of the trade union has become void under section six of the Trade Union Act, 1871, or that such trade union has wilfully and after notice from a Registrar whom it may concern, violated any of the provisions of the Trade Union Acts, or has ceased to exist.

Not less than two months' previous notice in writing, specifying briefly the ground of any proposed withdrawal or cancelling of certificate (unless where the same is shown to have become void as aforesaid, in which case it shall be the duty of the Chief

or Assistant Registrar to cancel the same forthwith) shall be given by the Chief or Assistant Registrar to a trade union before the certificate of registration of the same can be withdrawn or cancelled (except at its request).

A trade union whose certificate of registration has been withdrawn or cancelled shall, from the time of such withdrawal or cancelling, absolutely cease to enjoy as such the privileges of a registered trade union, but without prejudice to any liability actually incurred by such trade union, which may be enforced against the same as if such withdrawal or cancelling had not taken place.

9. *Membership of Minors.*—A person under the age of twenty-one, but above the age of sixteen, may be a member of a trade union, unless provision be made in the rules thereof to the contrary, and may, subject to the rules of the trade union, enjoy all the rights of a member except as herein provided, and execute all instruments and give all acquittances necessary to be executed or given under the rules, but shall not be a member of the committee of management, trustee, or treasurer of the trade union.

10. *Nomination.*—A member of a trade union not being under the age of sixteen years may, by writing under his hand, delivered at, or sent to, the registered office of the trade union, nominate any person not being an officer or servant of the trade union (unless such officer or servant is the husband, wife, father, mother, child, brother, sister, nephew, or niece of the nominator), to whom any moneys payable on the death of such member not exceeding fifty pounds shall be paid at his decease, and may from time to time revoke or vary such nomination by a writing under his hand similarly delivered or sent; and on receiving satisfactory proof of the death of a nominator, the trade union shall pay to the nominee the amount due to the deceased member not exceeding the sum aforesaid.

11. *Change of Name.*—A trade union may, with the approval in writing of the Chief Registrar of Friendly Societies, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, of the Assistant Registrar for Scotland or Ireland respectively, change its name by the consent of not less than two-thirds of the total number of members.

No change of name shall affect any right or obligation of the

trade union, or of any member thereof, and any pending legal proceedings may be continued by or against the trustees of the trade union or any other officer who may sue or be sued on behalf of such trade union notwithstanding its new name.

12. *Amalgamation.*—Any two or more trade unions may, by the consent of not less than two-thirds of the members of each or every such trade union, become amalgamated together as one trade union, with or without any dissolution or division of the funds of such trade unions, or either or any of them; but no amalgamation shall prejudice any right of a creditor of either or any union party thereto.

13. *Registration of Changes of Names and Amalgamations.*—Notice in writing of every change of name or amalgamation signed, in the case of a change of name, by seven members, and countersigned by the secretary of the trade union changing its name, and accompanied by a statutory declaration by such secretary that the provisions of this Act in respect of changes of name have been complied with, and in the case of an amalgamation signed by seven members, and countersigned by the secretary of each or every union party thereto, and accompanied by a statutory declaration by each or every such secretary that the provisions of this Act in respect of amalgamations have been complied with, shall be sent to the Central Office established by the Friendly Societies Act, 1875, and registered there, and until such change of name or amalgamation is so registered the same shall not take effect.

14. *Dissolution.*—The rules of every trade union shall provide for the manner of dissolving the same, and notice of every dissolution of a trade union under the hand of the secretary and seven members of the same, shall be sent within fourteen days thereafter to the Central Office hereinbefore mentioned, or, in the case of trade unions registered and doing business exclusively in Scotland or Ireland, to the Assistant Registrar for Scotland or Ireland respectively, and shall be registered by them: Provided that the rules of any trade union registered before the passing of this Act shall not be invalidated by the absence of a provision for dissolution.

15. *Penalty for Failure to give Notice.*—A trade union which fails to give any notice or send any document which it is required by this Act to give or send, and every officer or other

person bound by the rules thereof to give or send the same, or if there be no such officer, then every member of the committee of management of the union, unless proved to have been ignorant of, or to have attempted to prevent the omission to give or send the same, is liable to a penalty of not less than one pound and not more than five pounds, recoverable at the suit of the Chief or any Assistant Registrar of Friendly Societies, or of any person aggrieved, and to an additional penalty of the like amount for each week during which the omission continues.

16. *Definition of "Trade Union" altered.*—So much of section twenty-three of the principal Act as defines the term trade union, except the proviso qualifying such definition, is hereby repealed, and in lieu thereof be it enacted as follows :

The term "trade union" means any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the principal Act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade.

V.

PROVIDENT NOMINATIONS AND SMALL INTESTACIES ACT, 1883 (a)

(46 & 47 VICT. c. 47).

AN ACT TO EXTEND THE POWER OF NOMINATION IN FRIENDLY AND INDUSTRIAL, ETC., SOCIETIES, AND TO MAKE FURTHER PROVISION FOR CASES OF INTESTACY IN RESPECT OF PERSONAL PROPERTY OF SMALL AMOUNT.

[August 25th, 1883.

1. *Extent and Short Title of the Act.*—This Act extends to Great Britain and Ireland, and except section ten of the same, and so much thereof as relates to trade unions, to the Channel Islands, and except the said section ten, and so much as relates to industrial and provident societies and to trade unions, to

(a) *Supra*, pp. 122 *et seq.*

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the Isle of Man, and may be cited as the Provident Nominations and Small Intestacies Act, 1883.

2. Definition of Terms.—In this Act the expressions following have the following meanings :—

“ Directors ” means (1) in the case of a society or branch whose property is vested in trustees, the trustees for the time being ; (2) in the case of a Post Office savings bank and of a Post Office savings bank insurance, the Postmaster General ; (3) in any other case, the directing authority by whatever name it may be called :

“ Probate ” and “ letters of administration ” for Scotland mean confirmation :

“ Savings bank ” means a bank to which the Trustee Savings Bank Act, 1863, applies, and a Post Office savings bank :

“ Society ” includes a registered trade union :

“ Office ” means in the case of a society registered under the Friendly Societies Acts, the Industrial and Provident Societies Acts, or the Trade Union Acts, the registered office of such society :

In the case of a registered branch under the Friendly Societies Acts, the registered place of such branch :

In the case of a trustee savings bank or of a trustee savings bank insurance, the office or head of such bank :

In the case of a Post Office savings bank and of a Post Office savings bank insurance, the General Post Office.

3. Nomination by Member of Friendly Society of Person to receive Sums not over £100 at his Death.—The following enactments, namely, sub-sections three and four of section fifteen of the Friendly Societies Act, 1875, sub-sections five and six of section eleven of the Industrial and Provident Societies Act, 1876, section ten of the Trade Union Act Amendment Act, 1876, sections forty-one, forty-two, forty-three of the Trustee Savings Bank Act, 1863, section ten of an Act passed in the seventh and eighth years of the reign of Her present Majesty, intituled “ An Act to amend the Law relating to Savings Banks, and to the purchase of Government Annuities through the medium of Savings Banks,” and sub-head (e) of section six of the Government Annuities Act, 1882, respectively shall be read as if in the said sections of the said Acts the words one hundred pounds were substituted for the words fifty pounds.

4. *How a Nomination may be made.*—A nomination may be partly printed, and if made in a book kept at the office shall be taken to be delivered at such office.

5. *Nominations by Savings Bank Depositors.*—A depositor in a savings bank, not being under sixteen years of age, may by writing under his hand delivered at or sent to the office nominate any person, not being an officer or servant of the directors (unless such officer or servant be the husband, wife, father, mother, child, grandchild, brother, sister, nephew, or niece of the nominator), to whom any sum, not exceeding one hundred pounds, which may remain due to such depositor at his decease may be paid at such decease, and may from time to time revoke or vary such nomination by writing under his hand similarly delivered or sent; and on receiving satisfactory proof of the death of a nominator, the directors shall pay to the nominee the sum due to the deceased depositor, provided it does not exceed one hundred pounds.

6. *Extension of 38 & 39 Vict. c. 60, s. 15 (3), and 39 & 40 Vict. c. 45, s. 11 (5), (6).*—In sub-section three of section fifteen of the Friendly Societies Act, 1875, and in any nomination under the said Act which takes effect after this Act has come into operation the words "moneys payable by the society on the death of such member" shall include deposits made by such member under section eighteen of the said Act, and moneys accumulated for the use of such member under section nineteen of the said Act, with the interest on such deposit or moneys respectively. In sub-sections five and six of section eleven of the Industrial and Provident Societies Act, 1876, and in any nomination under the said Act which takes effect after this Act has come into operation, the words "shares" and "interest" respectively shall be taken to include loans and deposits made under sub-section (2 c) of section ten of the said Act.

7. *Provisions in Case of Intestacy and no Nomination.*—If any member of a registered trade union, entitled from the funds thereof to a sum not exceeding one hundred pounds, dies intestate and without having made any nomination which remains unrevoked at his death, such sum shall be payable, without letters of administration, to the person who appears to a majority of the directors, upon such evidence as they

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may deem satisfactory, to be entitled by law to receive the same.

8. Provision for Illegitimacy.—If a member of any society who is entitled to make a nomination under this Act or the Acts hereby amended is illegitimate, and has died intestate, and without having made any such nomination subsisting at his death, the directors may pay the sum which such member might have nominated to or among the person or persons who, in the opinion of the majority of them, would have been entitled thereto if such member had been legitimate, or, if there are no such persons, then the deposits shall be dealt with as the Commissioners of the Treasury may direct.

9. Payments made by Directors under the Power above given.—All payments made by directors under the powers aforesaid shall be valid with respect to any demand of any other person as next of kin of a deceased member, or as his lawful representative or person claiming to be such representative, against the society or savings bank, or the directors, but such next of kin, representative, or claimant shall have remedy for recovery of such money, so paid as aforesaid, against the person or persons who shall have received the same.

10. Conditions to be observed where Fund exceeds £80.—For the prevention of frauds on the revenue it is enacted as follows :

- (1) If the total sum with respect to which a nomination may be made under this Act by any person, or standing to the credit of any person in any society or savings bank at his death exceeds, after deduction of any moneys payable under the registered or certified rules of such society or savings bank or otherwise for the purpose of defraying the funeral expenses of such member the sum of eighty pounds sterling, the directors shall before making any payment to a nominee or otherwise under this Act require production of a duly stamped receipt for the succession or legacy duty payable thereon, or a letter, or a certificate from the Commissioners of Inland Revenue stating that none such is payable; such receipt or certificate shall be given by the said Commissioners upon payment of duty, or satisfactory proof of no duty being payable, as the case may be.

Nomination or Payment under this Act not to affect the Liability to Probate Duty.—(2) If, elsewhere than in Scotland, the total personal property, or in Scotland the whole movable estate, of any person entitled to make a nomination under this Act or the Acts hereby amended, or of any depositor in a savings bank, exceeds one hundred pounds sterling, any sum paid under this Act without probate or letters of administration shall, notwithstanding such nomination or payment, be liable to probate duty as part of the amount on which such duty is charged, and the directors shall be at liberty before making any such payment to require a statutory declaration by the claimant, or by one of the claimants, that the total personal estate of the deceased, including the sum in question, does not after deduction of debts and funeral expenses exceed the value of one hundred pounds.

11. *Channel Islands and Isle of Man.*—As respects the Channel Islands and the Isle of Man respectively, the following provision shall have effect. When any sum of money becomes payable on the death of a person entitled to make a nomination under this Act or the Acts hereby amended, such sum shall, in default of any direction or nomination such as is contemplated by the Friendly Societies Act, 1875, or by this Act, be paid to the deceased member's legal representative, according to the law of the island in which such deceased member was domiciled.

VI.

THE FRIENDLY SOCIETIES ACT, 1896 (a)

(59 & 60 VICT. c. 25).

AN ACT TO CONSOLIDATE THE LAW RELATING TO FRIENDLY AND OTHER SOCIETIES. [August 7th, 1896.

THE REGISTRY OFFICE.

1. *Registry Office.*—(1) There shall continue to be a Chief Registrar of Friendly Societies (in this Act called "the Chief Registrar"), and one or more Assistant Registrars of Friendly

(a) *Supra*, pp. 39 *et seq.*

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Societies for England (in this Act called "Assistant Registrars for England"), and the Chief Registrar and Assistant Registrars for England shall continue to constitute the Central Office of the Registry of Friendly Societies.

(2) There shall continue to be an Assistant Registrar of Friendly Societies for Scotland (in this Act called "Assistant Registrar for Scotland"), and an Assistant Registrar of Friendly Societies for Ireland (in this Act called "Assistant Registrar for Ireland").

(3) Every Chief Registrar and Assistant Registrar shall be appointed by and shall hold his office during the pleasure of the Treasury.

(4) The Chief Registrar shall be a barrister of not less than twelve years standing, and one at least of the Assistant Registrars for England, and the Assistant Registrar for Ireland, shall be a barrister or solicitor of not less than seven years standing, and the Assistant Registrar for Scotland shall be an advocate, writer to the signet, or solicitor of not less than seven years standing.

(5) The Central Office may, with the approval of the Treasury, have attached to it such assistants skilled in the business of an actuary and an accountant as may be required for discharging the duties imposed on the office by this Act.

2. Functions of the Central Office.—(1) The Central Office shall continue to exercise the functions and powers formerly vested—

(a) as respects trade unions, in the Registrar of Friendly Societies in England; and

and shall be entitled to receive all fees payable to those Registrars and barristers; and all enactments relating to those Registrars and barristers shall, so far as respects trade unions and such societies as aforesaid, be construed as applying to the Central Office.

3. Functions of Assistant Registrars generally.—(1) The Assistant Registrars shall, except as in this Act provided, be subordinate to the Chief Registrar.

(2) They shall, within the parts of the United Kingdom for which they are respectively appointed, exercise all functions and powers by this Act given to the Registrar, and may also

by the written authority of the Chief Registrar, exercise such of the functions and powers by this Act given to the Chief Registrar as he may delegate to them.

4. Functions of Assistant Registrars for Scotland and Ireland.

—(1) Subject to any regulations to be made under this Act, the Assistant Registrars for Scotland and Ireland respectively shall continue to exercise the functions and powers formerly vested—

- (a) as respects trade unions, in the Registrars of Friendly Societies in Scotland and Ireland ; and

and shall be entitled to receive all fees payable to those Registrars, the Lord Advocate or his deputed, and those barristers respectively ; and all provisions in any Acts of Parliament relating to those persons respectively shall be construed as applying to those Assistant Registrars.

(2) Subject as aforesaid, the Assistant Registrars for Scotland and Ireland shall—

- (a) send to the Central Office copies of all such documents registered or recorded by them as the Chief Registrar may direct : and
- (b) record such documents and matters as may be sent to them for record from the Central Office, and such other documents and matters as are in this Act required to be recorded : and
- (c) circulate and publish, or transmit to or from societies registered in Scotland or Ireland respectively, from or to the Central Office, such information and documents relating to the purposes of this Act as the Chief Registrar may, with the approval of the Treasury, direct : and
- (d) report their proceedings to the Chief Registrar as he may direct.

(3) An Assistant Registrar for Scotland or Ireland shall not refuse to record any rules or amendments of rules which have been registered by the Central Office.

6. The Chief Registrar shall every year make a report of his proceedings and of those of the Assistant Registrars, and of the principal matters transacted by him and them and of the

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valuations returned to or caused to be made by the Registrar during the year preceding, and that report shall be laid before Parliament.

7. All documents by this Act required to be sent to the Registrar shall be deposited with the rules of the societies to which the documents respectively relate, and shall be registered or recorded by the Registrar, with such observations thereon, if any, as the Chief Registrar may direct.

22. *Contributions from one Society to another.*—(1) A registered society or branch may contribute to the funds and take part by delegates or otherwise in the government of any other registered society or registered branch of a society, as provided in the rules of that first-named society or branch, without becoming a branch under this Act of that other society or branch.

(2) This section shall in respect of contributing to the funds and taking part in the government of a medical society, that is to say, a society for the purpose of relief in sickness by providing medical attendance and medicine, extend to any registered trade union or branch of a registered trade union.

(3) A registered society or trade union or branch shall not withdraw from contributing to the funds of any such medical society except on three months' notice to the society and on payment of all contributions accrued or accruing due to the date of the expiration of the notice.

PAYMENTS ON DEATH OF CHILDREN.

62. *Limitation of Amount payable.*—A society or branch, whether registered or unregistered, shall not insure or pay on the death of a child under five years of age any sum of money which, added to any amount payable on the death of that child by any other society or branch, exceeds six pounds, or on the death of a child under ten years of age any sum of money which, added to any amount payable on the death of that child by any other society or branch, exceeds ten pounds.

63. *Person to whom Payment may be made.*—A society or branch, whether registered or unregistered, shall not pay any sum on the death of a child under ten years of age except to

the parent of the child, or to the personal representative of the parent, and upon the production by the parent or his personal representative of a certificate of death issued by the Registrar of Deaths, or other person having the care of the register of deaths, containing the particulars mentioned in this Act.

64. Particulars of Certificates.—(1) Where application is made for a certificate of the death of a child for the purpose of obtaining a sum of money from a society or branch, the name of the society or branch, and the sum sought to be obtained therefrom shall be stated to the Registrar of Deaths.

(2) The Registrar of Deaths shall write on or at the foot of the certificate the words "to be produced to the society or branch (naming the same) said to be liable for payment of the sum of £. (stating the same)."

(3) All certificates of the same death shall be numbered in consecutive order.

65. Cases in which Certificates may be given.—(1) A Registrar of Deaths shall not give any one or more certificates of death for the payment in the whole of any sum of money exceeding six pounds on the death of a child under five years, or for the payment in the whole of a sum exceeding ten pounds on the death of a child under ten years.

(2) A Registrar of Deaths shall not grant any such certificate unless the cause of death has been previously entered in the register of deaths on the certificate of a coroner, or of a registered medical practitioner who attended the deceased child during its last illness, or except upon the production of a certificate of the probable cause of death under the hand of a registered medical practitioner, or of other satisfactory evidence thereof.

66. Inquiries by Society.—A society or branch, whether registered or unregistered, to which is produced a certificate of the death of a child which does not purport to be the first shall, before paying any money thereon, inquire whether any and what sums of money have been paid on the same death by any other society or branch.

67. Saving as to Insurable Interests, etc.—Nothing in this Act respecting payments on the death of children shall apply to insurances on the lives of children of any age, where the person insuring has an interest in the life of the person insured.

VII.

THE TRADE DISPUTES ACT, 1906 (a)

(6 EDW. 7, c. 47).

1. *Amendment of Law of Conspiracy in the Case of Trade Disputes.* 38 & 39 Vict. c. 86.—The following paragraph shall be added as a new paragraph after the first paragraph of section three of the Conspiracy and Protection of Property Act, 1875:—

“An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.”

2. *Peaceful Picketing.*—(1) It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.

(2) Section seven of the Conspiracy and Protection of Property Act, 1875, is hereby repealed from “attending at or near” to the end of the section.

3. *Removal of Liability for interfering with another Person's Business, etc.*—An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills.

4. *Prohibition of Actions of Tort against Trade Unions.*—(1) An action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by

(a) *Supra*, pp. 240 *et seq.*

or on behalf of the trade union, shall not be entertained by any Court.

(2) Nothing in this section shall affect the liability of the trustees of a trade union to be sued in the events provided for by the Trade Union Act, 1871, section nine, except in respect of any tortious act committed by or on behalf of the union in contemplation or in furtherance of a trade dispute.

5. *Short Title and Construction.*—(1) This Act may be cited as the Trade Disputes Act, 1906, and the Trade Union Acts, 1871 and 1876, and this Act may be cited together as the Trade Union Acts, 1871 to 1906.

(2) In this Act the expression "trade union" has the same meaning as in the Trade Union Acts, 1871 and 1876, and shall include any combination as therein defined, notwithstanding that such combination may be the branch of a trade union.

(3) In this Act and in the Conspiracy and Protection of Property Act, 1875, the expression "trade dispute" means any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour, of any person, and the expression "workmen" means all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises; and, in section three of the last-mentioned Act, the words "between employers and workmen" shall be repealed.

VIII.

ASSURANCE COMPANIES ACT, 1909 (a)

(9 EDW. 7, c. 49).

AN ACT TO CONSOLIDATE AND AMEND AND EXTEND TO OTHER COMPANIES CARRYING ON ASSURANCE OR INSURANCE BUSINESS THE LAW RELATING TO LIFE ASSURANCE COMPANIES, AND FOR OTHER PURPOSES CONNECTED THEREWITH. [December 3rd, 1909.

COMPANIES TO WHICH ACT APPLIES.

1. *Companies to which Act applies.*—This Act shall apply to all persons or bodies of persons, whether corporate or unin-

(a) *Supra*, p. 47.

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corporate, not being registered under the Acts relating to friendly societies or to trade unions (which persons and bodies of persons are hereinafter referred to as assurance companies), whether established before or after the commencement of this Act and whether established within or without the United Kingdom, who carry on within the United Kingdom assurance business of all or any of the following classes :—

- (a) Life assurance business ; that is to say, the issue of, or the undertaking of liability under, policies of assurance upon human life, or the granting of annuities upon human life ;
 - (b) Fire insurance business ; that is to say, the issue of, or the undertaking of liability under, policies of insurance against loss by or incidental to fire ;
 - (c) Accident insurance business ; that is to say, the issue of, or the undertaking of liability under, policies of insurance upon the happening of personal accidents, whether fatal or not, disease or sickness, or any class of personal accidents, disease, or sickness ;
 - (d) Employers' liability insurance business ; that is to say, the issue of, or the undertaking of liability under, policies insuring employers against liability to pay compensation or damages to workmen in their employment ;
 - (e) Bond investment business ; that is to say, the business of issuing bonds or endowment certificates by which the company, in return for subscriptions payable at periodical intervals of two months or less, contract to pay the bondholder a sum at a future date, and not being life assurance business as hereinbefore defined ;
- subject as respects any class of assurance business to the special provisions of this Act relating to business of that class.

35. Power of Board of Trade to exempt unregistered Trade Unions and Friendly Societies.—The Board of Trade may, on the application of any unregistered trade union originally established more than twenty years before the commencement of this Act, extend to the trade union the exemption conferred by this Act on registered trade unions, and may on the applica-

tion of an unregistered friendly society extend to the society the exemption conferred by this Act on registered friendly societies if it appears to the Board, after consulting the Chief Registrar of Friendly Societies, that the society is one to which it is inexpedient that the provisions of this Act should apply.

IX.

TRADE UNION ACT, 1913 (a)

(2 & 3 GEO. 5, c. 30).

AN ACT TO AMEND THE LAW WITH RESPECT TO THE OBJECTS AND POWERS OF TRADE UNIONS. [7th March, 1913.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. *Amendment of Law as to Objects and Powers of Trade Unions.*—(1) The fact that a combination has under its constitution objects or powers other than statutory objects within the meaning of this Act shall not prevent the combination being a trade union for the purposes of the Trade Union Acts, 1871 to 1906, so long as the combination is a trade union as defined by this Act, and, subject to the provisions of this Act as to the furtherance of political objects, any such trade union shall have power to apply the funds of the union for any lawful objects or purposes for the time being authorised under its constitution.

(2) For the purposes of this Act, the expression "statutory objects" means the objects mentioned in section sixteen of the Trade Union Act Amendment Act, 1876 (39 & 40 Vict. c. 22), namely, the regulation of the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or the imposing of restrictive conditions on the conduct of any trade or business, and also the provision of benefits to members.

2. *Definition of Trade Union.*—(1) The expression "trade union" for the purpose of the Trade Union Acts, 1871 to 1906, and this Act, means any combination, whether temporary or permanent, the principal objects of which are under its con-

(a) *Supra*, pp. 134 *et seq.*

stitution statutory objects : Provided that any combination which is for the time being registered as a trade union shall be deemed to be a trade union as defined by this Act so long as it continues to be so registered.

(2) The Registrar of Friendly Societies shall not register any combination as a trade union unless in his opinion, having regard to the constitution of the combination, the principal objects of the combination are statutory objects, and may withdraw the certificate of registration of any such registered trade union if the constitution of the union has been altered in such a manner that, in his opinion, the principal objects of the union are no longer statutory objects, or if in his opinion the principal objects for which the union is actually carried on are not statutory objects.

(3) Any unregistered trade union may, if they think fit, at any time without registering the union apply to the Registrar of Friendly Societies for a certificate that the union is a trade union within the meaning of this Act, and the Registrar, if satisfied, having regard to the constitution of the union and the mode in which the union is being carried on, that the principal objects of the union are statutory objects, and that the union is actually carried on for those objects, shall grant such a certificate, but the Registrar may, on an application made by any person to him for the purpose, withdraw any such certificate if satisfied, after giving the union an opportunity of being heard, that the certificate is no longer justified.

(4) Any person aggrieved by any refusal of the Registrar to register a combination as a trade union, or to give a certificate that an unregistered trade union is a trade union within the meaning of this Act, or by the withdrawal under this section of a certificate of registration, or of a certificate that an unregistered union is a trade union within the meaning of this Act, may appeal to the High Court, or in Scotland to the Court of Session, within the time and in the manner and on the conditions directed by rules of court.

(5) A certificate of the Registrar that a trade union is a trade union within the meaning of this Act shall, so long as it is in force, be conclusive for all purposes.

3. Restriction on Application of Funds for certain Political Purposes.—(1) The funds of a trade union shall not be applied,

either directly or in conjunction with any other trade union, association, or body, or otherwise indirectly, in the furtherance of the political objects to which this section applies (without prejudice to the furtherance of any other political objects), unless the furtherance of those objects has been approved as an object of the union by a resolution for the time being in force passed on a ballot of the members of the union taken in accordance with this Act for the purpose by a majority of the members voting; and where such a resolution is in force, unless rules, to be approved, whether the union is registered or not, by the Registrar of Friendly Societies, are in force providing—

- (a) That any payments in the furtherance of those objects are to be made out of a separate fund (in this Act referred to as the political fund of the union); and for the exemption in accordance with this Act of any member of the union from any obligation to contribute to such a fund if he gives notice in accordance with this Act that he objects to contribute: and
- (b) That a member who is exempt from the obligation to contribute to the political fund of the union shall not be excluded from any benefits of the union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the union (except in relation to the control or management of the political fund) by reason of his being so exempt, and that contribution to the political fund of the union shall not be made a condition for admission to the union.

(2) If any member of a trade union alleges that he is aggrieved by a breach of any rule made in pursuance of this section, he may complain to the Registrar of Friendly Societies, and the Registrar of Friendly Societies, after giving the complainant and any representative of the union an opportunity of being heard, may, if he considers that such a breach has been committed, make such order for remedying the breach as he thinks just under the circumstances; and any such order of the Registrar shall be binding and conclusive on all parties without appeal and shall not be removable into any court of law or restrainable by injunction, and on being recorded in the

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county court, may be enforced as if it had been an order of the county court. In the application of this provision to Scotland the sheriff court shall be substituted for the county court, and "interdict" shall be substituted for "injunction."

(3) The political objects to which this section applies are the expenditure of money—

- (a) On the payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election to Parliament or to any public office, before, during, or after the election in connection with his candidature or election ; or
- (b) On the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate ; or
- (c) On the maintenance of any person who is a member of Parliament or who holds a public office ; or
- (d) In connection with the registration of electors or the selection of a candidate for Parliament or any public office ; or
- (e) On the holding of political meetings of any kind, or on the distribution of political literature or political documents of any kind, unless the main purpose of the meetings or of the distributions of the literature or documents is the furtherance of statutory objects within the meaning of this Act.

The expression "public office" in this section means the office of member of any county, county borough, district, or parish council, or board of guardians, or of any public body who have power to raise money, either directly or indirectly, by means of a rate.

(4) A resolution under this section approving political objects as an object of the union shall take effect as if it were a rule of the union and may be rescinded in the same manner and subject to the same provisions as such a rule.

(5) The provisions of this Act as to the application of the funds of a union for political purposes shall apply to a union which is in whole or in part an association or combination of other unions as if the individual members of the component unions were the members of that union and not the unions ; but nothing in this Act shall prevent any such component union

from collecting from any of their members who are not exempt on behalf of the association or combination any contributions to the political fund of the association or combination.

4. *Approval of Rules.*—(1) A ballot for the purposes of this Act shall be taken in accordance with rules of the union to be approved for the purpose, whether the union is registered or not, by the Registrar of Friendly Societies, but the Registrar of Friendly Societies shall not approve any such rules unless he is satisfied that every member has an equal right, and, if reasonably possible, a fair opportunity of voting, and that the secrecy of the ballot is properly secured.

(2) If the Registrar of Friendly Societies is satisfied, and certifies that rules for the purpose of a ballot under this Act or rules made for other purposes of this Act which require approval by the Registrar, have been approved by a majority of members of a trade union, whether registered or not, voting for the purpose, or by a majority of delegates of such a trade union voting at a meeting called for the purpose, those rules shall have effect as rules of the union, notwithstanding that the provisions of the rules of the union as to the alteration of rules or the making of new rules have not been complied with.

5. *Notice of Objection to Contribute towards Political Objects.*—(1) A member of a trade union may at any time give notice, in the form set out in the Schedule to this Act or in a form to the like effect, that he objects to contribute to the political fund of the union, and, on the adoption of a resolution of the union approving the furtherance of political objects as an object of the union, notice shall be given to the members of the union acquainting them that each member has a right to be exempt from contributing to the political fund of the union, and that a form of exemption notice can be obtained by or on behalf of a member either by application at or by post from the head office or any branch office of the union or the office of the Registrar of Friendly Societies.

Any such notice to members of the union shall be given in accordance with rules of the union approved for the purpose by the Registrar of Friendly Societies, having regard in each case to the existing practice and to the character of the union.

(2) On giving notice in accordance with this Act of his objection to contribute, a member of the union shall be exempt,

so long as his notice is not withdrawn, from contributing to the political fund of the union as from the first day of January next after the notice is given, or, in the case of a notice given within one month after the notice given to members under this section on the adoption of a resolution approving the furtherance of political objects, as from the date on which the member's notice is given (a).

6. Mode of giving effect to Exemption from Contributions to Political Fund.—Effect may be given to the exemption of members to contribute to the political fund of a union either by a separate levy of contributions to that fund from the members of the union who are not exempt, and in that case the rules shall provide that no moneys of the union other than the amount raised by such separate levy shall be carried to that fund, or by relieving any members who are exempt from the payment of the whole or any part of any periodical contributions required from the members of the union towards the expenses of the union, and in that case the rules shall provide that the relief shall be given as far as possible to all members who are exempt on the occasion of the same periodical payment and for enabling each member of the union to know as respects any such periodical contribution, what portion, if any, of the sum payable by him is a contribution to the political fund of the union.

7. Definition of Registrar of Friendly Societies.—The Registrar of Friendly Societies means in relation to a registered trade union whose registered office, or an unregistered trade union whose principal office, is situated in England or Wales, the Chief Registrar of Friendly Societies, and in relation to a registered trade union whose registered office, or an unregistered trade union whose principal office, is situated in Scotland or Ireland, the Assistant Registrar of Friendly Societies for Scotland or Ireland respectively.

8. Short Title and Construction.—This Act may be cited as the Trade Union Act, 1913, and shall be construed as one with the Trade Union Acts, 1871 and 1876; and this Act and the Trade Union Acts, 1871 to 1906, may be cited together as the Trade Union Acts, 1871 to 1913.

(a) *Ss. 5 and 6 and the Schedule to the 1913 Act have been repealed by the Trade Disputes and Trade Unions Act, 1927, 2nd Schedule.*

X.

INCOME TAX ACT, 1918 (a)

(8 & 9 GEO 5, c. 40).

AN ACT TO CONSOLIDATE THE ENACTMENT RELATING TO
INCOME TAX. [August 8th, 1918.

39. . . . —(2) A registered trade union which is precluded, by Act of Parliament or by its rules, from assuring to any person a sum exceeding three hundred pounds by way of gross sum, or fifty-two pounds a year by way of annuity, shall be entitled to exemption from tax under Schedules A, C, and D in respect of its "interest and dividends" which are applicable and applied solely for the purpose of "provident benefits."

The expression "provident benefits" includes any payment, expressly authorised by the registered rules of the trade union, which is made to a member during sickness or incapacity from personal injury or while out of work, or to an aged member by way of superannuation, or to a member who has met with an accident, or has lost his tools by fire or theft, and includes a payment in discharge or aid of funeral expenses on the death of a member, or the wife of a member, or as provision for the children of a deceased member.

This section is in substitution for the Trade Union (Provident Funds) Act, 1893, which is repealed by this Act (*supra*, p. 52).

XI.

TRADE UNION (AMALGAMATION) ACT, 1917 (b)

(7 & 8 GEO. 5, c. 24).

AN ACT TO AMEND THE TRADE UNION ACT AMENDMENT ACT,
1876, WITH RESPECT TO THE AMALGAMATION OF TRADE
UNIONS. [July 10th, 1917.

1. *Amalgamation of Unions.*—(1) Any two or more trade unions may become amalgamated together as one trade union if in the case of each or every such trade union, on a ballot being taken, the votes of at least fifty per cent. of the members entitled to vote thereat are recorded, and of the votes recorded

(a) *Supra*, p. 52.(b) *Supra*, p. 169.

those in favour of the proposal exceed by twenty per cent. or more the votes against the proposal ; and, accordingly, section twelve of the Trade Union Act Amendment Act, 1876, shall have effect as if for the words " by the consent of not less than two thirds of the members of each or every such trade union " there were substituted the words " if in the case of each or every such trade union, on a ballot being taken, the votes of at least fifty per cent. of the members entitled to vote thereat are recorded, and of the votes recorded those in favour of the proposal exceed by twenty per cent. or more the votes against the proposal."

(2) For removing doubts it is hereby declared that the said section twelve applies to the amalgamation of one or more registered trade unions with one or more unregistered trade unions.

2. *Short Title and Citation.*—This Act may be cited as the Trade Union (Amalgamation) Act, 1917, and the Trade Union Acts, 1871 to 1913, and this Act may be cited together as the Trade Union Acts, 1871 to 1917.

XII.

POLICE ACT, 1919

(9 & 10 GEO. 5, c. 46).

AN ACT TO AMEND THE LAW RELATING TO THE POLICE IN GREAT BRITAIN (a). [August 15th, 1919.]

1. *Constitution of Police Federation.*—(1) For the purpose of enabling the members of the police forces of England and Wales to consider and bring to the notice of the police authorities and the Secretary of State all the matters affecting their welfare and efficiency, other than questions of discipline and promotion affecting individuals, there shall be established in accordance with the Schedule to this Act an organisation to be called the Police Federation, which shall act through local and central representative bodies as provided in that Schedule.

(2) The Police Federation and every branch thereof shall be entirely independent of and unassociated with any body or person outside the police service.

2. *Prohibition against Constables being Members of Trade Unions.*—(1) Subject as aforesaid, it shall not be lawful for a member of a police force to become, or after the expiration of

(a) *Supra*, p. 171.

one month from the passing of this Act to be, a member of any trade union, or of any association having for its objects, or one of its objects, to control or influence the pay, pensions, or conditions of service of any police force; and any member of a police force who contravenes this provision shall be disqualified for continuing to be a member of the force; and, if any member of a police force continues to act as such after becoming so disqualified, he shall forfeit all pension rights and be disqualified for being thereafter employed in any police force:

Provided that, where a man was a member of a trade union before becoming a constable, he may, with the consent of the chief officer of police, continue to be a member of that union during the time of his service in the police force.

(2) If any question arises whether any body is a trade union or an association to which this section applies, the question shall be determined by the Minister of Labour.

12. *Police Forces to which Act applies.*—This Act shall apply to the City of London Police and to every police force to which the Police Act, 1890, applies; and, in relation to the City of London Police, the expressions “police authority” and “police fund” mean the mayor, aldermen, and commonalty of the city of London in common council assembled, and the fund out of which the expenses of the city police are defrayed, and, in relation to any other police force, have the same meaning as in the Police Act, 1890.

13. *Application to Scotland.*—(1) This Act shall apply to Scotland, with the substitution of references to the Secretary for Scotland for references to the Secretary of State, of references to Scotland for references to England and Wales, and of references to the Police (Scotland) Act, 1890, for references to the Police Act, 1890, and in the case of the Schedule, subject to such modifications as the Secretary for Scotland may by order prescribe for the purpose of adapting the provisions of that Schedule to the circumstances of Scotland.

15. *Short Title and Extent.*—(1) This Act may be cited as the Police Act, 1919.

(2) This Act shall not extend to Ireland.

XIII.

EMERGENCY POWERS ACT

(10 & 11 GEO. 5, c. 55).

2. *Emergency Regulations.*

Provided also that no such regulation shall make it an offence for any person or persons to take part in a strike, or peacefully to persuade any other person or persons to take part in a strike.

"*No such Regulation.*"—By section 1 (4) of the Trade Disputes and Trade Unions Act, 1927, [the second proviso to subsection (1) of section two of the Emergency Powers Act, 1920, shall not apply to any act done in contemplation or furtherance of a strike or lock-out which is by this Act declared to be illegal.

Provided that no person shall be deemed to have committed an offence under any regulations made under the Emergency Powers Act, 1920, by reason only of his having ceased work or having refused to continue to work or to accept employment.] (*Vide Smith v. Wood (a).*)

XIV.

TRADE DISPUTES AND TRADE UNIONS ACT, 1927

(17 & 18 GEO. 5, c. 22) (b).

AN ACT TO DECLARE AND AMEND THE LAW RELATING TO TRADE DISPUTES AND TRADE UNIONS, TO REGULATE THE POSITION OF CIVIL SERVANTS AND PERSONS EMPLOYED BY PUBLIC AUTHORITIES IN RESPECT OF MEMBERSHIP OF TRADE UNIONS AND SIMILAR ORGANISATIONS TO EXTEND SECTION FIVE OF THE CONSPIRACY AND PROTECTION OF PROPERTY ACT, 1875, AND FOR OTHER PURPOSES CONNECTED WITH THE PURPOSES AFORESAID.

[July 29th, 1927.

1. *Illegal Strikes and Lock-outs.*—(1) It is hereby declared—
(a) that any strike is illegal if it—

(i) has any object other than or in addition to the

(a) (1926) 73 T. L. R. 178, *supra*, p. 270.

(b) *Supra*, p. 268.

furtherance of a trade dispute within the trade or industry in which the strikers are engaged ; and

(ii) is a strike designed or calculated to coerce the Government either directly or by inflicting hardship upon the community ; and

(b) that any lock-out is illegal if it—

(i) has any object other than or in addition to the furtherance of a trade dispute within the trade or industry in which the employers locking-out are engaged ; and

(ii) is a lock-out designed or calculated to coerce the Government either directly or by inflicting hardship upon the community :

and it is further declared that it is illegal to commence, or continue, or to apply any sums in furtherance or support of, any such illegal strike or lock-out.

For the purposes of the foregoing provisions—

(a) a trade dispute shall not be deemed to be within a trade or industry unless it is a dispute between employers and workmen, or between workmen and workmen, in that trade or industry, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour, of persons in that trade or industry ; and

(b) without prejudice to the generality of the expression " trade or industry " workmen shall be deemed to be within the same trade or industry if their wages or conditions of employment are determined in accordance with the conclusions of the same joint industrial council, conciliation board, or other similar body, or in accordance with agreements made with the same employer or group of employers.

(2) If any person declares, instigates, incites others to take part in or otherwise acts in furtherance of a strike or lock-out, declared by this Act to be illegal, he shall be liable on summary conviction to a fine not exceeding ten pounds or to imprisonment for a term not exceeding three months, or on conviction on indictment to imprisonment for a term not exceeding two years :

Provided that no person shall be deemed to have com-

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mitted an offence under this section or at common law by reason only of his having ceased work or refused to continue to work or to accept employment.

(3) Where any person is charged before any court with an offence under this section no further proceedings in respect thereof shall be taken against him without the consent of the Attorney-General except such as the court may think necessary by remand (whether in custody or on bail) or otherwise to secure the safe custody of the person charged, but this subsection shall not apply to Scotland, or to any prosecution instituted by or on behalf of the Director of Public Prosecutions.

(4) The provisions of the Trade Disputes Act, 1906, shall not, nor shall the second proviso to subsection (1) of section two of the Emergency Powers Act, 1920, apply to any act done in contemplation or furtherance of a strike or lock-out which is by this Act declared to be illegal, and any such act shall not be deemed for the purposes of any enactment to be done in contemplation or furtherance of a trade dispute :

Provided that no person shall be deemed to have committed an offence under any regulations made under the Emergency Powers Act, 1920, by reason only of his having ceased work or having refused to continue to work or to accept employment.

2. Protection of Persons refusing to Take Part in Illegal Strikes or Lock-outs.—(1) No person refusing to take part or to continue to take part in any strike or lock-out which is by this Act declared to be illegal, shall be, by reason of such refusal or by reason of any action taken by him under this section, subject to expulsion from any trade union or society, or to any fine or penalty, or to deprivation of any right or benefit to which he or his legal personal representatives would otherwise be entitled, or liable to be placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the union or society, anything to the contrary in the rules of a trade union or society notwithstanding.

(2) No provisions of the Trade Union Acts, 1871 to 1917, limiting the proceedings which may be entertained by any court, and nothing in the rules of a trade union or society

requiring the settlement of disputes in any manner shall apply to any proceeding for enforcing any right or exemption secured by this section, and in any such proceeding the court may, in lieu of ordering a person who has been expelled from membership of a trade union or society to be restored to membership, order that he be paid out of the funds of the trade union or society such sum by way of compensation or damages as the court thinks just.

(3) As respects any strike or lock-out before the passing of this Act but since the first day of May, nineteen hundred and twenty-six, which, according to the law as declared by this Act, was illegal, this section shall have effect as if it had been in operation when the strike or lock-out took place.

3. *Prevention of Intimidation, etc.*—(1) It is hereby declared that it is unlawful for one or more persons (whether acting on their own behalf or on behalf of a trade union or of an individual employer or firm, and notwithstanding that they may be acting in contemplation or furtherance of a trade dispute) to attend at or near a house or place where a person resides or works or carries on business or happens to be, for the purpose of obtaining or communicating information or of persuading or inducing any person to work or to abstain from working, if they so attend in such numbers or otherwise in such manner as to be calculated to intimidate any person in that house or place, or to obstruct the approach thereto or egress therefrom, or to lead to a breach of the peace; and attending at or near any house or place in such numbers or in such manner as is by this subsection declared to be unlawful shall be deemed to be a watching or besetting of that house or place within the meaning of section seven of the Conspiracy and Protection of Property Act, 1875.

(2) In this section the expression "to intimidate" means to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family or to any of his dependants or of violence or damage to any person or property, and the expression "injury" includes injury to a person in respect of his business, occupation, employment or other source of income, and includes any actionable wrong.

(3) In section seven of the Conspiracy, and Protection of

Property Act, 1875, the expression "intimidate" shall be construed as having the same meaning as in this section.

(4) Notwithstanding anything in any Act it shall not be lawful for one or more persons, for the purpose of inducing any person to work or to abstain from working, to watch or beset a house or place where a person resides or the approach to such a house or place, and any person who acts in contravention of this subsection shall be liable on summary conviction to a fine not exceeding twenty pounds or to imprisonment for a term not exceeding three months.

4. *Provisions as to Political Fund.*—(1) It shall not be lawful to require any member of a trade union to make any contribution to the political fund of a trade union unless he has at some time after the commencement of this Act and before he is first after the thirty-first day of December, nineteen hundred and twenty-seven, required to make such a contribution delivered at the head office or some branch office of the trade union, notice in writing in the form set out in the First Schedule to this Act of his willingness to contribute to that fund and has not withdrawn the notice in manner herein-after provided; and every member of a trade union who has not delivered such a notice as aforesaid, or who, having delivered such a notice, has withdrawn it in manner herein-after provided, shall be deemed for the purposes of the Trade Union Act, 1913, to be a member who is exempt from the obligation to contribute to the political fund of the union, and references in that Act to a member who is so exempt shall be construed accordingly:

Provided that, if at any time a member of a trade union who has delivered such a notice as aforesaid gives notice of withdrawal thereof, delivered at the head office or at any branch office of the trade union, he shall be deemed for the purposes of this subsection to have withdrawn the notice as from the first day of January next after the delivery of the notice of withdrawal.

For the purposes of this subsection a notice may be delivered personally or by any authorised agent and any notice shall be deemed to have been delivered at the head or a branch office of a trade union if it has been sent by post properly addressed to that office.

(2) All contributions to the political fund of a trade union from members of the trade union who are liable to contribute to that fund shall be levied and made separately from any contributions to the other funds of the trade union and no assets of the trade union, other than the amount raised by such a separate levy as aforesaid, shall be carried to that fund, and no assets of a trade union other than those forming part of the political fund shall be directly or indirectly applied or charged in furtherance of any political object to which section three of the Trade Union Act, 1913, applies ; and any charge in contravention of this subsection shall be void.

(3) All rules of a trade union made and approved in accordance with the requirements of section three of the Trade Union Act, 1913, shall be amended so as to conform to the requirements of this Act, and as so amended shall be approved by the Registrar of Friendly Societies (in this Act referred to as "the Registrar") within six months after the commencement of this Act or within such further time as the Registrar may in special circumstances allow, and if the rules of any trade union are not so amended and approved as aforesaid they shall be deemed not to comply with the requirements of the said section.

(4) Notwithstanding anything in this Act, until the thirty-first day of December, nineteen hundred and twenty-seven, it shall be lawful to require any member of a trade union to contribute to the political fund of the trade union as if this Act had not been passed.

(5) If the Registrar is satisfied, and certifies, that rules for the purpose of complying with the provisions of this section, or for the purposes of the Trade Union Act, 1913, as amended by this Act, which require approval by the Registrar have been approved by a majority of the members of a trade union voting for the purpose, by the executive or other governing body of such a trade union, or by a majority of delegates of such a trade union voting at a meeting called for the purpose, the Registrar may approve those rules and those rules shall thereupon have effect as rules of the union notwithstanding that the provisions of the rules of the union as to the alteration of rules or the making of new rules have not been complied with.

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(6) Section sixteen of the Trade Union Act, 1871 (which provides for the transmission to the Registrar of annual returns by registered trade unions), shall apply to every unregistered trade union so far as respects the receipts, funds, effects, expenditure, assets and liabilities of the political fund thereof.

5. *Regulations as to Organisations of which established Civil Servants may be Members.*—(1) Amongst the regulations as to the conditions of service in His Majesty's civil establishments there shall be included regulations prohibiting established civil servants from being members, delegates, or representatives of any organisation of which the primary object is to influence or affect the remuneration and conditions of employment of its members, unless the organisation is an organisation of which the membership is confined to persons employed by or under the Crown and is an organisation which complies with such provisions as may be contained in the regulations for securing that it is in all respects independent of, and not affiliated to any such organisation as aforesaid the membership of which is not confined to persons employed by or under the Crown or any federation comprising such organisations, that its objects do not include political objects, and that it is not associated directly or indirectly with any political party or organisation :

Provided that the regulations made in compliance with the provisions of this section shall not prevent—

- (a) any person who is at the commencement of this Act an established civil servant from remaining a member of any trade union or organisation not composed wholly or mainly of persons employed by or under the Crown of which he had, at the commencement of this Act, been a member for more than six months if under the rules thereof there had on the fourth day of April nineteen hundred and twenty-seven, accrued or begun to accrue to him a right to any future payment during incapacity, or by way of superannuation, or on the death of himself or his wife, or as provision for his children ; or
- (b) any person employed at the commencement of this Act by or under the Crown who thereafter becomes an

established civil servant from remaining, so long as he is not appointed to a position of supervision or management, a member of any trade union or organisation, not composed wholly or mainly of persons employed by or under the Crown, of which he is a member at the date when he so becomes an established civil servant, if under the rules thereof there has at that date accrued, or begun to accrue, to him a right to any future payment during incapacity, or by way of superannuation, or on the death of himself or his wife, or as provision for his children ; or

- (c) a person who in addition to being an established civil servant is, apart from his service as such, also engaged in some other employment or occupation from being a member, delegate, or representative of any trade union or organisation, of which the primary object is to influence or affect the remuneration or conditions of employment of persons engaged in that employment or occupation.

(2) Subject as hereinafter provided, any established civil servant who contravenes the regulations made under this section shall be disqualified for being a member of the Civil Service :

Provided that, in the case of a first offence, a civil servant shall forthwith be warned by the head of his department, and the said disqualification shall not take effect if within one month after such warning the civil servant ceases to contravene the said regulations.

(3) *Provisions as to Persons Employed by Local and other Public Authorities.*—In this section—

- (a) the expression “ established civil servant ” means a person serving in an established capacity in the permanent service of the Crown, and includes any person who, having been granted a certificate by the Civil Service Commissioners, is serving a probationary period preliminary to establishment ; and
- (b) the expression “ conditions of employment ” means in relation to persons other than persons employed by or under the Crown the conditions of employment of persons employed under a contract of service.

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6.—(1) It shall not be lawful for any local or other public authority to make it a condition of the employment or continuance in employment of any person that he shall or shall not be a member of a trade union, or to impose any condition upon persons employed by the authority whereby employees who are or who are not members of a trade union are liable to be placed in any respect either directly or indirectly under any disability or disadvantage as compared with other employees.

(2) It shall not be lawful for any local or other public authority to make it a condition of any contract made or proposed to be made with the authority, or of the consideration or acceptance of any tender in connection with such a contract, that any person to be employed by any party to the contract shall or shall not be a member of a trade union.

(3) Any condition imposed in contravention of this section shall be void.

(4) There shall be added to section five of the Conspiracy, and Protection of Property Act, 1875, the following provision, that is to say :—

“ If any person employed by a local or other public authority wilfully breaks a contract of service with that authority, knowing or having reasonable cause to believe that the probable consequence of his so doing, either alone or in combination with others, will be to cause injury or danger or grave inconvenience to the community, he shall be liable, on summary conviction, to a fine not exceeding ten pounds or to imprisonment for a term not exceeding three months.”

7. *Restraints of Application of Funds of Trade Unions, etc., in contravention of s. 1 of Act.*—Without prejudice to the right of any person having a sufficient interest in the relief sought to sue or apply for an injunction to restrain any application of the funds of a trade union in contravention of the provisions of this Act, an injunction restraining any application of the funds of a trade union in contravention of the provisions of section one of this Act may be granted at the suit or upon the application of the Attorney-General.

In the application of this section to Scotland there shall be

substituted therein for references to an injunction references to an interdict, and for the reference to the Attorney-General a reference to the Lord Advocate.

8. *Short Title, Construction, Interpretation, Extent and Repeal.*—(1) This Act may be cited as the Trade Disputes and Trade Unions Act, 1927, and shall be construed as one with the Trade Union Acts, 1871 to 1917, and this Act and the Trade Union Acts, 1871 to 1917, may be cited together as the Trade Union Acts, 1871 to 1927.

(2) For the purposes of this Act—

- (a) the expression “strike” means the cessation of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal, or a refusal under a common understanding of any number of persons who are, or have been so employed, to continue to work or to accept employment ;
- (b) the expression “lock-out” means the closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment ; and
- (c) a strike or lock-out shall not be deemed to be calculated to coerce the Government unless such coercion ought reasonably to be expected as a consequence thereof.

(3) This Act shall not extend to Northern Ireland, except that the provisions of this Act relating to civil servants shall apply to civil servants employed in Northern Ireland in the administration of services with respect to which the Parliament of Northern Ireland has not power to make laws.

(4) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

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SCHEDULES.

FIRST SCHEDULE.

FORM OF POLITICAL FUND CONTRIBUTION NOTICE.

Name of Trade Union.....
 Name of member's branch (if any).....

POLITICAL FUND (CONTRIBUTION NOTICE).

I hereby give notice that I am willing, and agree, to contribute to the Political Fund of the Union and I understand that I shall, in consequence, be liable to contribute to that Fund and shall continue to be so liable unless I deliver at the head office, or some branch office of the Union a written notice of withdrawal: I also understand that after delivering such a notice of withdrawal I shall still continue to be liable to contribute to the political fund until the next following first day of January.

A..... B.....

Address.....

Membership number (if any).....

.....day of.....19.....

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
2 & 3 Geo. 5, c. 30.	Trade Union Act, 1913.	In subsection (1) of section three the words from "and for the exemption" to "objects to contribute"; subsection (2) of section four; section five; section six; the Schedule.

XV.

REGULATIONS

Regulations dated November 1st, 1876, made by the Secretary of State as to the Registration of Trade Unions as amended by Regulations made by the Secretary of State, April 29th, 1890, and July 28th, 1922, and by the Secretary for Scotland, May 8th, 1890, and July 28th, 1922 (a).

TRADE UNION ACTS, 1871 (b) AND 1876 (c).

(1) In the following Regulations and Forms the terms "Chief Registrar" and "Assistant Registrar" mean respectively the chief registrar and assistant registrar of Friendly Societies, and the term "central office" means the central office established under the Friendly Societies Act, 1875.

(2) The registrar shall not register a trade union under a name identical with that of any other existing trade union known to him, whether registered or not registered, or so nearly resembling such name as to be likely to deceive the members or the public.

(3) Upon an application for the registration of a trade union which is already in operation, the registrar, if he has reason to believe that the applicants have not been duly authorised by such trade union to make the same, may, for the purpose of ascertaining the fact, require from the applicants such evidence as may seem to him necessary.

(4) Application for registry of a trade union shall be made in Form A subjoined to these regulations, and shall be accompanied by two printed copies of the rules, marked and signed, as mentioned in the said form.

(a) The amending Regulations which were made under the Acts of 1871 and 1876 and the Secretary of Scotland Act, 1887, are printed at length in *Statutory Rules and Orders*, 1890, p. 1015, and 1922, p. 844.

(b) 34 & 35 Vict. c. 31.

(c) 39 & 40 Vict. c. 22.

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(5) The certificate of registry of a trade union shall be in Form B subjoined to these Regulations.

(6) An alteration of the rules of a trade union may be either—

(a) A partial alteration, consisting of the addition of a new rule or part of a rule or rules to the existing rules, or of the substitution of a new rule or part of a rule or rules for any of the existing rules, or of a rescission of any of the existing rules or any part thereof without any substitution or of more than one or all of those modes ; or,

(b) A complete alteration consisting of the substitution of an entire set of rules for the existing set of rules.

(7) An application for the registration of a partial alteration of rules must be made by seven members of the trade union, and must be made in the Form C annexed hereto, and must be accompanied by a statutory declaration in Form D hereto annexed, and by a printed copy of the existing rules, and by the following documents :—

(a) If the partial alteration consists of the addition or substitution of a new rule or part of a rule or rules, two copies of such rule or part of a rule or rules, each copy being marked O and signed by each of the applicants.

(b) If the partial alteration consists of the rescission of any of the rules without any substitution, two copies of the resolution for such rescission, each copy being marked O and signed by each of the applicants.

The Registrar, before registering the partial alteration of rules, shall ascertain that the rules of the trade union, if altered in accordance with the proposed partial alteration, will provide for all the matters required by the above-mentioned Acts to be provided for by the rules of a registered trade union.

(8) The certificate of registry of a partial alteration shall be in Form E annexed thereto, and shall be delivered to the applicants, attached to one of the copies of the new rule or rules, or, when the alteration consists of rescission merely, attached to the old set of rules.

(9) An application for the registration of a complete alteration of rules shall be made by seven members of the trade union, and shall be in Form F annexed thereto, and must be

accompanied by a statutory declaration in Form D annexed hereto, and by a printed copy of the existing rules and by two printed copies of the new rules, each copy being marked P and signed by each of the applicants; and the Registrar before registering the new set of rules shall ascertain that it provides for all matters which, by the above-mentioned Acts, are to be provided for by the rules of a registered trade union.

(10) The certificate of registry of a complete alteration of rules shall be in Form G annexed hereto, and shall be delivered to the applicants attached to one of the copies of the new set of rules.

Recording of Rules already Registered.

(11) An application to record in one country rules or amendments of rules registered in another shall be made by the secretary or other officer of the trade union in Form H or I hereto annexed, and shall be accompanied by a copy of such rules or amendments duly authenticated.

Withdrawal or Cancelling of Certificate of Registration.

(12) Every request by a trade union for withdrawal or cancelling of its certificate of registration shall be sent to the Chief Registrar or Assistant Registrar for Scotland or for Ireland, as the case may require in Form J annexed hereto.

(13) Notice before withdrawal or cancelling of certificate, where required, shall be in Form K annexed hereto.

(14) The withdrawal or cancelling of certificate shall be in Form L annexed hereto.

Registered Office.

(15) Notice of the situation of the registered office of a trade union, and of any change therein, shall be given to the Registrar in Form M annexed hereto.

(15A) The removal of the registered office of a trade union from one country within the meaning of section 6 of the Trade Union Act Amendment Act, 1876, to another shall not render it necessary to re-register the trade union in the country in which its new registered office is situate (a).

(15B) All matters requiring registry shall be registered in and returns and notices sent to the Registrar of the country

(a) Regulations 15A and 15B were added by the Order of 1890.

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in which the registered office of a trade union is for the time being situate; copies of matters requiring registry being forwarded for recording to the registrar of each of the other countries in which it is carrying or intending to carry on business.

Change of Name.

(16) The application for approval, and notice of change of name of a trade union shall be in Form N annexed hereto, and shall be sent in duplicate, accompanied by a statutory declaration in Form O annexed hereto, to the Chief Registrar, or, in the case of trade unions registered and doing business exclusively in Scotland or Ireland, to the Assistant Registrar for Scotland or Ireland, as the case may require. The chief or Assistant Registrar, before approving the change of name shall ascertain that the new name is not identical with that of any existing trade union known to him, or so nearly resembling the same as to be calculated to deceive; and if the change of name be approved, the word "approved" shall be written at the foot or end of each copy of the application, and the same shall be signed by the Chief Registrar or by such Assistant Registrar as the case may require, and shall be transmitted by him to the central office for registry.

Transfer of Stock.

(17) Every application to the Registrar to direct a transfer of stock shall follow, as near as may be, Form P annexed hereto, and shall be accompanied by a statutory declaration in Form Q annexed hereto, or as near thereto as the facts admit, and by the certificate of the stock in respect of which the application is made.

(18) Before making the application, the trade union shall submit to the registrar for examination a draft copy, on foolscap paper, written on one side only, of the proposed application and declaration.

(19) The registrar, before directing the transfer, may require further proof of any statement in the application.

(20) The Registrar shall give a direction in Form R annexed hereto, so framed in each case as to suit the particular circumstances, and shall register the same and deliver the same to

the applicants, endorsed with the word "registered" and duly authenticated.

Dissolution.

(21) When a trade union is dissolved, notice of the dissolution shall be given to the central office, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, to the Assistant Registrar for Scotland or Ireland, as the case may require, in duplicate in Form S annexed hereto, and the Central Office or Assistant Registrar shall return one copy to the trade union, endorsed with the word "registered" and duly authenticated.

Amalgamation.

(22) Where two or more trade unions become amalgamated together, notice shall be given to the Central Office in duplicate in Form T annexed hereto, accompanied by statutory declarations from each such trade union in Form U annexed hereto, and the Central Office shall return to the amalgamated trade union one copy of the notice, endorsed with the word "registered" and duly authenticated.

Nominations.

(23) Every registered trade union shall keep a record or register of all nominations made by the members, and of all revocations and variations of the same, and for the recording or registering of every such nomination, revocation, or variation the rules of the trade union may require the member nominating to pay a sum not exceeding threepence.

Fees (b).

(24) The following fees shall be payable in advance under the Acts :—

	£	s.	d.
For the certificate of registry of a trade union	1	0	0
For the certificate of registry of an alteration of rules	0	10	0
For a certificate that an unregistered trade union is a trade union	2	0	0

(b) Amendment of Fees Regulation, 1922, S.R.O. No. 844.

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For the certificate of registry of a change of name	£	s.	d.
	1	0	0
For a direction to transfer stock	2	0	0
For registry of notice of a dissolution	0	5	0
For registry of amalgamation, by each trade union amalgamating	1	0	0
For every document (except as otherwise provided) required to be signed by a Registrar, or to bear the seal of the Central Office	0	5	0
For every inspection on the same day of documents (whether one or more), in the custody of the Registrar, relating to one and the same trade union	0	2	6

For a copy or extract of any document in custody of the Registrar, not exceeding 216 words 1s. 6d., and if exceeding that number 6d. per folio of 72 words, in addition to the fee, if any, for the signature of a Registrar, or seal of the Central Office.

For any document certified as a true copy of a document in the custody of the Registrar, when the copy so certified is not made by the Registrar, 9d. for the examination of such copy, and if the copy exceeds 216 words, for every additional folio of 72 words, 3d. (in addition to the fee for the signature of a Registrar or seal of the Central Office). Provided that the fees to be charged for the examination of copies of rules or alterations of rules for recording in another country shall not be greater in respect of each country in which they are to be recorded than the fees paid for the certificate of registry of the Union or of the alteration of rules.

No fee is payable for—

The cancelling or withdrawal of a certificate of registry.
Any notice of change of office.

Any document or copy of a document supplied to a public department.

The Chief Registrar may also dispense with the fee for inspection of documents in cases where he may consider it in the public interest to do so.

Authentication of Documents by Registrar.

(25) Every document under the Trade Union Acts, 1871 (d) and 1876 (e), bearing the seal of the Central Office, or the signature of the Chief Registrar or the Assistant Registrar for Scotland or Ireland, as the case may require, shall be deemed to be duly authenticated for the purposes of the said Acts and the regulations made thereunder.

Rich. Assheton Cross.

Whitehall,
1st November, 1876.

(d) 34 & 35 Vict. c. 31.

(e) 39 & 40 Vict. c. 22.

XVI.
FORMS

ORDERED TO BE USED IN REGISTRATION, ETC., OF TRADE UNIONS UNDER THE TRADE UNION ACTS, 1871 AND 1876.

For societies registered in Scotland the address "43, New Register House, Edinburgh," and in Ireland "9, Upper Ormond Quay, Dublin," will be substituted in the following forms for "28, Abingdon Street, Westminster."

FORM A.—Reg. 4.

Trade Union Acts, 1871 and 1876, 34 & 35 Vict. c. 31, and 39 & 40 Vict. c. 22.

Application for Registry of Trade Union.

1. This application is made by the seven persons whose names are subscribed at the foot hereof.

2. The name under which it is proposed that the trade union on behalf of which this application is made shall be registered is _____, as set forth in Rule No. _____.

To the best of our belief there is no other existing trade union, whether registered or not registered, the name of which is identical with the proposed name or so nearly resembles the same as to cause confusion.

3. The place of meeting for the business of the * _____, and the office to which all communications and notices may be addressed, is at _____, as set forth in Rule No. _____.

4. The * _____ was established on the _____ day of _____.

5. The whole of the objects for which the * _____ is established and the purposes for which the funds thereof are applicable are set forth in Rule No. _____.

6. The conditions under which members may become entitled to benefits assured are set forth in Rule No. _____.

7. The fines and forfeitures to be imposed on members are set forth in Rule No. _____.

8. The manner of making, altering, amending, and rescinding rules is set forth in Rule No. _____.

9. The provision for the appointment and removal of a general

* Name of trade union.

committee of management, of trustee or trustees, treasurer, and other officers, is set forth in Rule No. .

10. The provision for the investment of funds and for the periodical audit of accounts is set forth in Rule No. .

11. The provision for the inspection of the books and names of the members by every person having an interest in the funds is set forth in Rule No. .

12. The provision for the manner of dissolving the trade union is set forth in Rule No. .

13. Accompanying this application are sent—

1. Two printed copies, each marked A, of the rules.

2. A list, marked B, of the titles and names of the officers.

3. A general statement, marked C,* showing—

(a) The assets and liabilities of the † at the to which the statement is made out.

(b) The receipts and expenditure of † during the year preceding the date ‡ up to which the statement is made out, such expenditure being set forth under separate heads corresponding to the several objects of the trade union.

14. § We have been duly authorised by the trade union to make this application on its behalf, such authorisation consisting of

(Signed) 1.
2.
3.
4.
5.
6.
7.

day of 19 .

In paragraph 14 must be stated whether the authority to make this application was given by a resolution of a general meeting of the trade union," or, if not, in what other way it was given.

The two copies of rules must be signed by the seven members signing this application.

The application should be *dated*, and forwarded to "The Registrar of Friendly Societies, 28, Abingdon Street, Westminster, S.W."

* This will only be necessary in cases where the trade union has been in operation more than a year previous to the date of the application.

† Name of trade union.

‡ This date will be fixed by the registrar.

§ This will only be necessary where the trade union has been in operation before the date of the application.

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FORM B.—Reg. 5.

Trade Union Acts, 1871 and 1876.

Certificate of Registry of Trade Union.

It has been certified that the _____ has been registered under the Trade Union Acts, 1871 and 1876, this _____ day of 19 .

[Seal of Central Office, or signature of Assistant Registrar for Scotland or Ireland.]

FORM C.—Reg. 7

Trade Union Acts, 1871 and 1876.

Application for Registry of partial Alteration of Rules.

Trade Union. _____ Register No. _____

1. This application for the registry of a partial alteration of the rules of the _____ Trade Union, is made by the seven persons whose names are subscribed at the foot hereof.

With this application are sent—

- (a) A printed copy of the registered rules marked to show where and in what way they are altered :
- (b) Two printed [or written] copies of the alteration, each marked O, signed by each of the applicants :
- (c) A statutory declaration of an officer of this trade union, that in making the alteration of rules now submitted for registry the rules of the _____ Trade Union were duly complied with.

2. We have been duly authorised by the _____ Trade Union to make this application on its behalf, such authorisation consisting of a resolution passed at a general meeting on the * day of _____ 19 .

(Signed) 1.
2.
3.
4.
5.
6.
7.

† _____ day of _____ 18 .
To the Registrar of Friendly Societies,
Abingdon Street, Westminster.

* Here insert the date, or if there was no such resolution, state in what other way the authorisation was given.

† Here insert the date.

TRADE UNION LAW

FORM D.—Reg. 7, 9.

Trade Union Acts, 1871 and 1876.

Declaration accompanying Alteration of Rules.

Trade Union. Register No.

I of , an officer of the above-named trade union, do solemnly and sincerely declare that in making the alteration of the rules of the trade union, the application for the registry of which is appended to this declaration, the rules of the said trade union have been duly complied with.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Taken and received before me, one of
His Majesty's justices of the peace for
the county of at ,
in the said county, this day of
, 19 .

FORM E.—Reg. 8.

Trade Union Acts, 1871 and 1876.

Certificate of Registry of Partial Alteration of Rules.

Trade Union. Register No.

It is hereby certified that the foregoing partial alteration has been registered under the above-mentioned Acts this day of 19 .

[Seal of Central Office, or signature of
Assistant Registrar for Scotland or Ireland.]

FORM F.—Reg. 9.

Trade Union Acts, 1871 and 1876.

Form of Application for Registry of Complete Alteration of Rules.

Trade Union. Register No.

1. This application for the registry of a complete alteration of the registered rules of the Trade Union is made by the seven persons whose names are subscribed at the foot hereof.

2. The complete alteration submitted for registry is the substitution of the set of rules, two printed copies of which (each copy marked P, and signed by the applicants) accompany this application, for the set of rules already registered.

3. The name under which it is proposed that the trade union on behalf of which this application is made shall be registered is as set forth in Rule No. .

To the best of our belief there is no other existing trade union,

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whether registered or not registered, the name of which is identical with the proposed name, or so nearly resembles the same as to cause confusion.

4. The place of meeting for the business of the * , and the office to which all communications and notices may be addressed, is at , as set forth in Rule No. .

5. The * was established on the day of .

6. The whole of the objects for which the * is established, and the purposes for which the funds thereof are applicable, are set forth in Rule No. .

7. The conditions under which members may become entitled to benefits assured are set forth in Rule No. .

8. The fines and forfeitures to be imposed on members are set forth in Rule No. .

9. The manner of making, altering, amending, and rescinding rules is set forth in Rule No. .

10. The provision for the appointment and removal of a general committee of management, of trustee or trustees, treasurer, and other officers, is set forth in Rule No. .

11. The provision for the investment of funds and for the periodical audit of accounts is set forth in Rule No. .

12. The provision for the inspection of the books and names of the members by every person having an interest in the funds is set forth in Rule No. .

13. The provision for the manner of dissolving the trade union is set forth in Rule No. .

14. This application is accompanied by a statutory declaration of , an officer of the said trade union, to the effect that in making the alteration of rules now submitted for registry the rules of the trade union were duly complied with.

15. We have been duly authorised by the Trade Union to make this application on its behalf, such authorisation consisting of a resolution passed at a general meeting held on the day of

(Signed) 1.
2.
3.
4.
5.
6.
7.

day of 19 .
The Registrar of Friendly Societies,
28, Abingdon Street,
Westminster, S.W.

* Name of trade union.

† Here insert the date, or, if there was no such resolution, state in what other way authorisation was given.

TRADE UNION LAW

FORM G.—Reg. 10.

Trade Union Acts, 1871 and 1876.

Certificate of Registry of Complete Alteration of Rules.

Trade Union.

Register No.

It is hereby certified that the set of rules, copy whereof is appended hereto, has been registered under the above-mentioned Acts in substitution for the set of rules already registered for the

Trade Union this day of , 19 .

[Seal of Central Office or Signature of
Assistant Registrar for Scotland or Ireland.]

FORM H.—Reg. 11.

Trade Union Acts, 1871 and 1876.

Application to record Rules registered in another Country.

Trade Union.

Register No. . [Add England, Scotland, or Ireland, as
the case may be.]

To the Registrar of Friendly Societies.

Application to record the rules of the Trade Union is made by the secretary of the same.

1. The trade union carried [or intends to carry] on business in [Scotland, Ireland, or England, as the case may be] as well as in England, Scotland, or Ireland where the same is registered.

2. With this application are sent two printed [or written] copies of the rules of the trade union, one of such copies being under the seal of the Central Office [or under the signature of the Assistant Registrar for Scotland or Ireland].

(Signed)

Secretary.

Registered Office

Date day of

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FORM I.—Reg. 11.

Trade Union Acts, 1871 and 1876.

Application to record Amendments of Rules already recorded.

Trade Union.

Register No. [Add England, Scotland, or Ireland, as
the case may be.]
Recorded in [Scotland, Ireland, or England, as the case
may be] No.

To the Registrar of Friendly Societies.

Application to record an amendment of the rules of the
Trade Union is made by the secretary of the same.

1. The trade union carried on business in [Scotland, Ireland,
or England, as the case may be] as well as in [England, Scotland, or
Ireland] where the same is registered.

2. The rules of the trade union have been already recorded in
[Scotland, Ireland, or England, as the case may be].

3. With this application are sent two printed [or written] copies
of an amendment of such rules lately registered, one of such
copies being under seal of the central office [or under the
signature of the Assistant Registrar for Scotland or Ireland].

(Signed)

Secretary.

Registered Office .
Date day of .

FORM J.—Reg. 12.

Trade Union Acts, 1871 and 1876.

Request to withdraw or cancel Certificate of Registry.

Trade Union.

Register No. [If the trade union is registered in Scotland
or Ireland, add Scotland or Ireland, as the case may be.]

To the Chief Registrar [or in the case of a trade union registered
and doing business in Scotland or Ireland exclusively, to the Assis-
tant Registrar for Scotland or Ireland, as the case may be].

1. The above-mentioned trade union desires that its certificate
of registry under the Trade Union Acts may be withdrawn [or
cancelled] on the following ground, viz., [state reason for desiring

withdrawal or cancelling of certificate of registry] and at a general meeting * duly held on the day of 19 , it was resolved as follows :—

“ That the trustees be authorised to request the Chief (*or Assistant*) Registrar to withdraw [*or cancel*] the certificate of registry of this trade union.”

2. This request is made by the trustees accordingly.

Registered Office	Date	day of	19	.	}	Trustees.
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* If not at a general meeting, state in what manner the request has been determined upon.

FORM K.—Reg. 13.

Trade Union Acts, 1871 and 1876.

Notice before withdrawal or cancelling of Certificate of Registry.
Trade Union.

Register No. [*If the trade union is registered in Scotland or Ireland, add Scotland or Ireland, as the case may be.*]

Notice is hereby given to the above-mentioned trade union that it is the intention of the Chief Registrar [*or Assistant Registrar for Scotland or Ireland, as the case may be*] to proceed on the † day of 19 , to cancel [*or to withdraw*] the registry of the trade union, unless cause be shown to the contrary in the meantime.

The ground of such proposed cancelling [*or withdrawal*] is that the certificate of registry has been obtained by fraud [*or mistake*], or that the registry of the trade union has become void under s. 6 of the Trade Union Act, 1871, or that the trade union has wilfully and after notice from me violated the provisions of the above-mentioned Acts or has ceased to exist. [*The facts should be briefly specified where practicable.*]

(Signature)

Chief Registrar [*or Assistant Registrar for Scotland or Ireland*].

Date day of 19 .

† This will be not less than two months after the date of the notice.

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FORM L.—Reg. 14.

Trade Union Acts, 1871 and 1876.

Withdrawal or cancelling of Certificate of Registry.

Trade Union.

Register No. [If the trade union is registered in Scotland or Ireland, add Scotland or Ireland, as the case may be.]

The certificate of registry of the above-mentioned trade union is hereby withdrawn or cancelled at its request [or as the case may be]. The Registrar may, if he thinks fit, add a statement, as in Form K, of the ground of the cancelling.

(Signed)

Chief Registrar [or Assistant Registrar for Scotland or Ireland].

Date day of 19 .

FORM M.—Reg. 15.

Trade Union Acts, 1871 and 1876.

Notice of Change of Registered Office.

Trade Union.

Register No.

[If the trade union is registered in Scotland or Ireland, add Scotland or Ireland, as the case may be.]

To the Registrar of Friendly Societies.

Notice is hereby given that the registered office of the above-mentioned trade union is removed from in the parish of , and is now situate at in the parish of in the county of .

Dated this day of 19 .

} Trustees.

NOTE.—Until this notice has been given, the trade union will not have complied with the provisions of the Act.

*Received this day of notice of removal of the registered office of the , Register No. , to in the county of .

[Seal of Central Office, or signature of a Registrar.]

* This part to be detached by the registrar when the notice is registered, and returned to the trade union.

FORM N.—Reg. 16.

Trade Union Acts, 1871 and 1876.

Application for Approval, and Notice of Change of Name.

Name already registered

Registered No. [If the trade union is registered in Scotland or Ireland, add Scotland or Ireland, as the case may be.]

To the Chief Registrar [or Assistant Registrar for Ireland or Scotland, as the case may be] and Central Office.

Application for approval of a change of name of the above-mentioned trade union is made by the three persons whose names are subscribed at the foot hereof.

The following is a copy of a resolution passed by the consent of two-thirds of the total number of members of the trade union :—

[The resolution to be copied at length.]

And notice of the said change is hereby given to the Central Office for registry thereby.

			1.	}	Members.
			2.		
		Secretary.	3.		
Registered Office	.		4.		
			5.		
Dated	day of	19 .	6.		
			7.		

FORM O.—Reg. 16.

Trade Union Acts, 1871 and 1876.

Declaration to accompany Application for Approval of Change of Name.

County of to wit.

Name of trade union

Register No. [If the trade union is registered in Scotland or Ireland, add Scotland or Ireland, as the case may be.]

I, of, the secretary of the above-named trade union, do solemnly and sincerely declare that in making the change of name, notice of which is appended to this declaration, the provisions of the 39 & 40 Vict. c. 22, in respect of change of name, have been complied with.

And I make this solemn declaration, conscientiously believing

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the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Taken and received before me, one of
 His Majesty's justices of the peace for
 the said county of _____, at _____,
 in the said county, this _____ day of _____
 , 19 .

*FORM P.—Reg. 17.

Trade Union Acts, 1871 and 1876.

Application for Direction to transfer Stock.

Trade Union.

Register No.

Application for a direction to transfer stock is made by the four persons whose names are subscribed at the foot hereof, being the secretary and three members of the above-mentioned trade union.

1. The trade union on the _____ day of _____, duly appointed _____, of _____ in the county of _____ [*here name and describe all the trustees then appointed*] to be trustees.

2. On the _____ day of _____ the sum of _____ was invested in the purchase of _____ stock transferable at the Bank of England [or Ireland] in the names of the said trustees, and the same is still standing in their names, as follows [*state exactly in what names the stock stands*]:—

†3. The said _____ is absent from Great Britain [or Ireland] [or became bankrupt on the _____ day of _____, or filed a petition (or executed a deed) for liquidation of his affairs by assignment or arrangement or for composition with his creditors, on the _____ day of _____, or has become a lunatic, or died on the _____ day of _____, or has not been heard of for _____ years, and it is not known whether he is living or dead].

4. On the _____ day of _____ the trade union duly removed the said _____ from his office of trustee, and appointed [*give full name and description*] in his place.

5. Since such removal application has been made in writing to the said [*removed trustee*] to join in the transfer of the said stock into the names of the said [*here give the names of the other trustees, and of the new trustee appointed in the place of the one removed*] as

* This form applies (with the necessary modifications) to a branch of a trade union.

† This clause will not be necessary where the application is in consequence of the mere removal of a trustee.

trustees for the said trade union, but he has refused to comply [or has not complied] with such application. [*This paragraph may be omitted, or varied, as the facts require.*]

6. This application to the Registrar is made pursuant to 39 & 40 Viet. c. 22, s. 4, that he may direct the said stock to be transferred into the names of the said _____ as trustees for the trade union by _____

[*This blank should be filled by the names of the surviving or continuing trustees (if any), and if they be willing and able to make the transfer; or if there is no such trustee, or if any such trustee refuse or be unable to make the transfer, then by the words the Accountant-General, or Deputy, or Assistant Accountant-General of the said Bank; and a full statement of the facts and of the grounds of such refusal or inability should be made.*]

Secretary.
Member.
Member.
Member.

Registered Office . . .
Date day of 19 . . .
To the Registrar . . .

*FORM Q.—Reg. 17.

Trade Union Acts, 1871 and 1876.

Declaration verifying Statements in an Application for Direction to transfer Stock.

County of _____ to wit.

Trade Union. Register No.

I, _____ of _____, in the county of _____, do solemnly and sincerely declare that I am the secretary of the above-mentioned trade union.

That _____ and _____ whose names are subscribed at the foot of the application hereto annexed, are members of the said trade union.

That on the _____ day of _____ 19 _____, and therein mentioned, were appointed trustees of the said trade union.

That on the _____ day of _____ 19 _____, the sum of _____ was invested in the purchase of _____ stock, transferable at the

* This form applies (with the necessary modifications) to a branch of a trade union.

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Bank of England [or Ireland] in the names of the said trustees, and the declarant believes that it is still standing in their names, as follows [state as in Form P] :—

That the said _____ is absent from Great Britain [or Ireland] [or became bankrupt, etc., as in Form P].

That on the _____ day of _____ 19____, the said _____ was removed from his office of trustee, and _____ was appointed in his place.

That since such removal application has been made in writing to the said _____ to join in the transfer of the said stock into the names of the said _____ as trustees for the said trade union, but he has refused to comply [or has not complied] with such application. [This paragraph may be omitted or varied as the facts require.]

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Taken and received before me, one of
His Majesty's justices of the peace for
the said county of _____, at _____,
in the said county, this _____ day of _____,
19____.

*FORM R.—Reg. 20.

Trade Union Acts, 1871 and 1876.

Direction by the Registrar to transfer Stock.

Whereas it has been made to appear to the Registrar that stock, transferable at the Bank of England [or Ireland] is now standing in the names of _____ and _____ as trustees of _____ Trade Union registered under the above-mentioned Acts.

And that the said _____ is absent from Great Britain [or Ireland, or became bankrupt, etc., as in Form P].

And that _____ has been appointed trustee of the said trade union in place of the said _____.

† (a) The Registrar under the said Acts hereby directs, pursuant to section 4 of the 39 & 40 Vict., c. 22, that the said sum of _____ so standing in the books of the Governor and Company of the said Bank of England [or Ireland] in the names of the said _____ be transferred in the said books by the said _____ into the names of the said _____.

* This form applies (with the necessary modifications) to a branch of a trade union.

† The paragraphs marked (a) or (b) will be used as the case requires.

(b) And that there is no surviving or continuing trustee of the said trade union, or that the surviving or continuing trustee or trustees refuse or are unable to transfer the said stock.

The Registrar under the said Acts hereby directs, pursuant to section 4 of the 39 & 40 Vict. c. 22, that the said sum of _____, so standing in the books of the Governor and Company of the Bank of England [or Ireland] be transferred in the said books by the Accountant-General, or Deputy or Assistant Accountant-General, of the said Bank into the names of the said

Address _____

Date _____ day of _____ 19 ____ .

[Seal of Central Office, and signature of Chief Registrar or Assistant Registrar for England, or signature of Assistant Registrar for Scotland or Ireland.]

FORM S.—Reg. 21.

Trade Union Acts, 1871 and 1876.

Notice of Dissolution.

Trade Union.

Register No.

To the Central Office, 28, Abingdon Street,
Westminster [or

To the Assistant Registrar for Scotland or
for Ireland, *as the case may require*].

Notice is hereby given that the above-mentioned trade union was dissolved in pursuance of the rules thereof on the day of _____ 19 ____ .

1.	Secretary.
2.	Member.
3.	Member.
4.	Member.
5.	Member.
6.	Member.
7.	Member.
8.	Member.

Name and address to which
registered copy is to be
returned.

Date _____ day of _____ 19 ____

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FORM T.—Reg. 22.

Trade Union Acts, 1871 and 1876.

Notice of Amalgamation of Trade Unions.

(A) Trade Union. Register No.
(B) Trade Union. Register No.

[and so on if more than two].

To the Central Office, 28, Abingdon Street,
Westminster.

Notice is hereby given, that by the consent of two-thirds of the whole number of members of each or every of the above-mentioned trade unions they have resolved to become amalgamated together as one trade union.

And that the following are the terms of the said amalgamation [state the terms] :—

And that it is intended that the trade union shall henceforth be called the

Accompanying this notice is a copy of the rules intended to be henceforth adopted by the amalgamated trade union [which are the rules of the Trade Union].

[To be signed by seven members and the secretary of each trade union.]

Name and address to which
registered copy is to be
sent.

Date day of 19 .

FORM U.—Reg. 22.

Trade Union Acts, 1871 and 1876.

Trade Union. Register No.

I, of , the secretary of the above-mentioned trade union, do solemnly and sincerely declare that in the amalgamation of the said trade union with the , notice of which is appended to this declaration, the provisions of the Trade Union Act Amendment Act, 1876, in respect of amalgamations, have been duly complied with.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Taken and received before me, one of
His Majesty's justices of the peace for
the said county of , at
in the said county, this day of

19 .

XVII.

Register No. ANNUAL RETURN.
 County. FORM A.R. 15. T.U. No. 1.
 TRADE UNION ACTS, 1871 AND 1876.

ANNUAL RETURN PRESCRIBED BY THE REGISTRAR FOR A REGISTERED
 TRADE UNION.

Year ending 31st December.

*[The Trade Union's Balance Sheet cannot be accepted as a substitute
 for this Return.]*

This Return is to be sent to the Registrar before the following 1st of
 June.

A Copy of the Auditor's Report, if any, should also be sent, together
 with a Copy of the Printed Statement of Accounts.

Name of Trade Union

Number of Branches (if any)

Is the Trade Union a Branch of any other registered Trade Union ?

If so, state the Name and Register Number of that Trade Union

Date of commencement of Trade Union , 1 .

When first Registered , 1 .

Date of Registration of last Alteration of Rules , 1 .

Names of the present Trustees

Do the Rules of the Trade Union require Security to be given by
 Officers ? If so, state the number of the Rule

Name and Address of every Officer in receipt or charge of money, the	}	£
Amount of Security given by each, and whether by Bond, or Guarantee		£
Society ¹		£

State what provision (if any) is made for Old Age

The Audit for the Year has been conducted by who were
 appointed Auditors by under the authority of Rule No.

Registered Office of the Trade Union ² in the County of

Date , 1910.

¹ If the names are more than can be conveniently inserted here, they
 may be added (with the amount of security given) on a separate sheet.

² State full postal address.

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RETURN AS TO MEMBERS.

	Males.	Females.	Total.
Number of Members on the Books at the beginning of the year			
Number of Members admitted during the Year			
Together			
Number of Members who left during the Year, from whatever cause			
Total Number of Members on the Books at 31st December, 1909			
AGES OF MEMBERS AT THE END OF THE YEAR.			
Number of Members—			
16 and under 20 years of age			
20 " 50 " 			
50 " 65 " 			
65 years of age and over			
Total as above			

N.B.—With this Annual Return must be sent to the Registrar :—

- (1) A copy of the rules of the Trade Union as they exist at date to which this Return is made out.
- (2) A copy of all alterations of rules and new rules made by the Trade Union during the year preceding the date up to which this Return is made out.

The address to which Rules, Returns, and other Documents should be sent is as follows :

ENGLAND AND WALES : Registry of Friendly Societies, Central Office, 28, Abingdon Street, Westminster, London, S.W.

SCOTLAND : Registry of Friendly Societies, 3A, Howe Street, Edinburgh.

IRELAND : Registry of Friendly Societies, 12, South Frederick Street, Dublin.

[For particulars as to changes of officers see fourth page of this Return.]

GENERAL STATEMENT of the Income and Expenditure, Funds and Effects,

Dr. (1.) GENERAL

INCOME.		£.	s.	d.
Fines				
Entrance Fees				
Levies				
Contributions Paid by Members				
Where separate contributions are paid to particular Funds, this should be stated separately as follows :—				
To the Fund.				
To the Fund.				
To the Fund.				
Interest received or accrued during the year on the Funds invested				
Emblems, Rules, Cards, etc., sold				
Contributions from other Trade Unions (specify them)				
Other Contributions (specify them)				
Other Receipts (specify them)				
Total Income				
Amount of Funds at the beginning of the year, as per last year's Balance-sheet				
Total				

Dr. (2) BALANCE SHEET OF

LIABILITIES.		£.	s.	d.
To Amount of the several Funds, viz. :— (Here set forth separately the amount of each of the Funds.)				
Total Amount of Funds as shown in General Account (see above, A)				
Debts (if any) legally incurred by the Trustees on behalf of Trade Union ¹				
Cash due to Treasurer (if any).				
Other Liabilities ²				
Total				

Signatures of Trustees } Residing at
Residing at
Residing at

The undersigned, having had access to all the books and accounts of the Trade with the accounts and vouchers³ relating thereto, now sign the same as found to Signature of 1st Auditor
Address
Calling or Profession

If in any respect these accounts are incorrect, unvouched, or not in accordance which a copy is to be sent to the Registrar with this Statement.

- * Carry the total of inner column into outer column.
- ¹ Specify their nature.
- ² Specify them.
- ³ State amount and description of stock.
- ⁴ If on other securities state them separately.
- ⁵ State in whose hands.
- ⁶ Specify them.

of the **TRADE UNION, from 1st January to 31st December.**

ACCOUNT.		Cr.					
EXPENDITURE.		£	s.	d.	£	s.	d.
Trade Benefits :-							
Strike Pay to	Members						
Lock-out Pay to	Members						
Allowance to	Members seeking employment						
Other payments (specify them) to	Members						
Contributions to other Trade Unions							
Other Benefits :-							
Sickness Pay to	Members						
Superannuation Pay to	Members						
Sums paid at death of	Members						
Accident benefit to	Members						
Medical aid (including Salary of Surgeon)	Members						
Other payments (specify them) to	Members						
Management Expenses :-							
Salaries of Paid Officers (specify them)							
Rent							
Stationery and Printing, Postage, etc.							
Law Expenses							
Other expenses of Management (specify them)							
Total Expenditure							
Amount of Funds at end of the year, as per Balance-sheet below (A)							
Total							

FUNDS AND EFFECTS.		Cr.			
ASSETS.		Rate per cent. of Interest yielded.	£	s.	d.
By Investments :-					
1. In the	Savings Bank				
2. In the	Public Funds ¹				
3. Upon	Government Securities in Great Britain or Ireland				
4. Upon	Real Securities in Great Britain or Ireland				
5. In the	purchase of land				
6. In the	erection of offices and buildings				
7. In ²					
Cash in the	Post Office Savings Bank				
Cash in hand ³					
Other assets (if any) ⁴					
Deficiency (if Liabilities exceed Assets)					
Total					

Signature of Secretary
Residing at ⁵

Union, and having examined the foregoing General Statement and verified the same be correct, duly vouched, and in accordance with law.⁶

Signature of 2nd Auditor
Address
Calling or Profession

Date

with law, the Auditors are to make a Special Report to the Trade Union, of

¹ In certifying the Trade Union's Investments as shown in the Balance Sheet, the auditors should in all cases actually inspect the Mortgage Deeds and other securities representing the assets of the trade union, and also inspect the Bank Pass Book and the Post Office Savings Bank Book and ascertain that they have been duly made up and balanced to the 31st December.
² The Annual Return of a Trade Union having branches should include the income and expenditure funds and effects of all the branches. If the books and the accounts of the branches have not been submitted to the auditors signing this return, the fact should be stated.

Reg. No. .
Name of Trade Union

T.U. No.

TRADE UNION ACTS, 1871 AND 1876.

ANNUAL RETURN OF CHANGE OF OFFICERS DURING THE YEAR ENDING
31ST DECEMBER, 1909.

(If there has been no change during the year the form below should be
endorsed to that effect.)

Date of Change.	Title of Officer.	Name of Officer retiring.	Cause of retirement.	Name of Officer appointed.	Address.

In this space any further particulars may be inserted which are necessary to explain the facts set forth in the Return, or to throw light upon the history of the Trade Union during the year.

} Signatures
of
Trustees.

XVIII.

MISCELLANEOUS MATTERS AFFECTING TRADE
UNIONS.

A.

NATIONAL HEALTH INSURANCE (SYNOPSIS).

The present system of health insurance was first constituted in this country by the National Health Insurance Act, 1911, which had for its principal object the establishment of a national insurance fund, to which the State, the employer, and the employed would contribute in proportionate shares, and out of which provision would be made for the worker in time of sickness, disablement, and unemployment. The 1911 Act was amended by a number of Statutes passed between 1913 and 1923, all of which, however, have been consolidated in the National Health Insurance Act, 1924, which is now the principal Act. So far as unemployment insurance is concerned, this is now outside the purview of the 1924 Act, having become a matter subject to special Acts of Parliament (a). This synopsis concerns only National Health Insurance in so far as it affects trade unions.

Insured Persons.

Under the 1924 Act, every person of the age of sixteen and upwards engaged in any of the employments specified in Part I. of the First Schedule of the Act must be insured. Certain employments, such as employment in the forces of the Crown, or under any local or public authority under conditions of service entitling the person to rights in a superannuation fund, or as a teacher, are exempted (Part II. of Schedule I.), but power is given to the Minister of Health to extend the Act to such excepted employments. (b).

(a) *Infra*, p. 339.

(b) National Health Insurance Act, 1924, s. 1.

Exemptions.

The following classes of employed persons are exempted from the operation of the Act, namely, those who prove that : (i.) they are in receipt of any pension or income of the annual value of £26 or upwards, which does not depend upon their personal exertions ; or (ii.) are ordinarily and mainly dependent for their livelihood upon some other person ; or (iii.) are ordinarily and mainly dependent for their livelihood on earnings derived from an occupation or employment which does not make them employed persons within the meaning of the Act, such as a teacher (c).

Contributions.

The funds required for providing health insurance benefits are derived partly from contributions from employed persons, partly from contributions of the employers of those persons, and partly from moneys provided by Parliament (d).

Approved Societies.

Any trade union or branch thereof may be constituted an approved society, provided it complies with the requirements of the Act relating to approved societies (e). There is nothing, however, to prevent a trade union establishing for the purposes of the Act a separate section, consisting of insured persons (f), if the section is so constituted as to comply with the requirements of the Act relating to approved societies it may be approved by the Minister of Health, and will thereupon become an approved society. A branch of a trade union which is not separately registered may be recognised by the Minister for the purposes of the Act (g).

Before a society can be approved by the Minister it must satisfy the following conditions, viz. (a) that the society is not carried on for profit ; (b) that its constitution provides for its

(c) *Ibid.*, s. 2.

(d) *Ibid.*, ss. 4 and 5 ; as to rates of contribution, see Part II. of First Schedule to Widows' Pensions Act, 1925.

(e) 1924 Act, s. 29 (1).

(f) As to who may be an insured person see National Health Insurance Act, 1924, s. 1.

(g) *Ibid.*, and see s. 38.

affairs being subject to the absolute control of its members ; and (c) if the society has any honorary members, that its rules provide for their being excluded from voting on all matters arising under the Act (*h*). The Minister's approval may be unconditional or subject to the condition that the union within a specified time take all necessary steps, *e.g.*, by alteration of rules, to make the society comply with the requirements of the Act relating to approved societies (*i*).

A trade union including among its members persons resident in any national area, *e.g.*, Scotland, other than that in which its registered or head office is situate, *e.g.*, England, need only be approved in respect of England (*k*). If, however, a trade union has been approved for more than one national area, it may relinquish approval for any area other than that in which its registered office or head office is situate, upon satisfying the Joint Insurance Committee (*l*) either that no person being a member of the society is resident in the national area in respect of which approval is proposed to be relinquished, or that any members so resident were, at the time when they were admitted to membership of the society, resident in a national area in which the society will remain an approved society (*m*).

Rules of Approved Societies.

Every trade union which is recognised as an approved society must make proper provision, by rules, to the satisfaction of the Minister, for the government of the society. If the union has branches, provision must be made for (a) the government of the union and its branches ; (b) the determination of disputes arising between the society and any branch or between one branch and another ; (c) the administration of benefits by branches ; (d) the keeping of proper books of account by those branches ; and (e) the depriving of, and suspending from, the right of administering benefits any branch guilty of maladministration of benefits, or which is

(A) National Health Insurance Act, 1934, s. 29 (2).

(i) *Ibid.*, s. 29 (3).

(k) *Ibid.*, s. 30 (1); and see s. 132.

(l) See *ibid.*, s. 88.

(m) *Ibid.*, s. 30 (2).

convicted of any offence under the Act (*n*). The union must also comply with any regulations as to the place in which meetings are to be held (*o*), and, where there is any statutory requirement that the rules are to be registered, any rules approved under this Act by the Minister must be registered forthwith, but until they are so registered they nevertheless have effect as if they had been duly registered (*p*). Approval of the rules by the Minister, followed by registration, cures any antecedent irregularity in the procedure at the meeting by or at which such rules were adopted (*q*).

Every trade union which is an approved society is required to give adequate security to provide against malversation or misappropriation by its officials; the amount of such security is to be determined by the Minister (*r*).

No security is, however, required when the only funds coming into the hands of the union under this Act are such funds as are required for reimbursing the union in respect of sums previously expended by the union under the Act (*s*). In the case of a union with branches having insured persons among their members, security is to be given by the union in respect of each branch (*t*).

Any dividends or interest arising from securities deposited by a union under this section are to be paid or credited to the union (*u*).

A trade union approved under this Act cannot be dissolved without the sanction of the Minister, who may make regulations for the manner and conditions in and upon which the dissolution may be carried into effect, notwithstanding anything contained in any Act regulating the constitution of the society, *e.g.*, the Trade Union Acts (*v*).

A trade union may cease to be an approved society if the Minister of Health should think fit to withdraw approval.

(*n*) National Health Insurance Act, 1924, s. 34 (1).

(*o*) *Ibid.*, s. 34 (2).

(*p*) *Ibid.*, s. 34 (3).

(*q*) *Re Quinn*, [1921] 2 Ch. 318.

(*r*) National Health Insurance Act, 1924, s. 35 (1).

(*s*) *Ibid.*, s. 35 (1).

(*t*) *Ibid.*, s. 35 (2).

(*u*) *Ibid.*, s. 35 (4).

(*v*) *Ibid.*, s. 37.

Such withdrawal will follow failure on the part of the union to comply with any of the provisions or requirements of this Act relating to approved societies, or where the union or a branch thereof has been convicted of any offence under any Act regulating its constitution—*e.g.*, for offences under the Trade Union Acts (*w*)—or under any other Act (*x*).

In cases where the affairs of a branch of an approved society have been maladministered, the Minister may declare that the branch shall cease to be a branch for the purpose of the Act (*y*).

The manner and conditions in and upon which the secession, expulsion, or dissolution of a branch of an approved society in respect of its business under this Act may be carried into effect is to be provided for by regulations made under the Act (*z*). Similar provision must also be made in respect of the amalgamation of two or more approved societies or branches thereof (*a*).

Membership of Approved Societies.

Any insured person, and any person entitled to become an insured person (*b*), may apply to an approved society for membership (*c*), but such application may be rejected by such approved society, in accordance with its rules (*d*). So that any trade union which is an approved society may, in accordance with its rules, admit or reject any person applying for membership, or even expel any insured member. But no application for membership is to be refused on the ground of the age of the applicant (*e*).

A person must not be, or attempt to become, a member of more than one approved society at the same time, except that, in the case of a person who is a member of an approved society

(*w*) *Supra*, pp. 55, 119.

(*x*) National Health Insurance Act, 1924, s. 38 (1).

(*y*) *Ibid.*, s. 38 (3).

(*z*) *Ibid.*, s. 40.

(*a*) *Ibid.*, s. 39.

(*b*) *Ibid.*, s. 1.

(*c*) *Ibid.*, s. 41 (1).

(*d*) *Ibid.*, s. 41 (2).

(*e*) *Ibid.*, s. 41 (2).

under this Act, he may also become a member of the same or any other society (*e.g.*, a trade union) independently of the Insurance Act (*f*).

Membership of an approved society may be terminated by giving the prescribed notice at the prescribed times and on complying with the prescribed conditions, including the payment to the society of the prescribed fee. Any person who entered into insurance within the two years immediately preceding the date on which he gave notice of his desire to terminate his membership, and who has not previously been transferred from some other approved society, is exempt from the payment of such fee (*g*). It should be noted that if it appears to the Minister, having regard to the interests of the society as a whole, that it is not desirable that individual members of the society should be allowed to terminate their membership, the right of terminating such membership may be suspended by him, and, in such circumstances, no person may, except with the consent of the Minister, terminate his membership of that society (*h*).

If an insured person transfers from one approved society to another, a sum (called "transfer value") representing the liability under the Act of the first-mentioned society in respect of that person is to be transferred to the new society (*i*).

Any member of an approved society who is a minor may execute all instruments required under the rules of the society, but may not be a member of the committee or a trustee, manager, or treasurer of the society or any branch thereof (*k*).

Any business transacted under the Act by a trade union approved for the purposes of the Act is to be treated as part of the ordinary business of the union, and the requirements of the Trade Union Acts in relation to such ordinary business will apply in relation to the health insurance business transacted by the union (*m*).

(*f*) National Health Insurance Act, 1924, s. 42.

(*g*) *Ibid.*, s. 43 (1).

(*h*) *Ibid.*, s. 43 (1).

(*i*) *Ibid.*, s. 43 (2).

(*k*) *Ibid.*, s. 47.

(*m*) National Health Insurance Act, 1924, s. 33.

Administration of Benefits.

Insured persons are entitled to the following benefits (n) :

(a) Medical treatment and attendance (called " medical benefit ").

(b) Periodical payments to their insured members who are rendered incapable of work by some specific disease or by bodily or mental disablement of which notice has been given, commencing on the fourth day of the incapacity and continuing for a period not exceeding twenty-six weeks (called " sickness benefit ").

(c) In the case of the disease or disablement continuing after the termination of the period during which sickness benefit may continue, periodical payments during the continuance of the incapacity for work (called " disablement benefit ").

(d) A payment in the case of the confinement of the wife, or, where the child is a posthumous child, of the widow of an insured person, or of any other woman who is an insured person (called " maternity benefit ").

Note, however, that maternity benefit is payable to the wife of an insured person, although the husband and wife are not cohabiting and the child is not the child of the husband (o).

(e) Additional benefits as set out in Part II. of the Fourth Schedule of the 1924 Act, when such benefits are payable (p).

Medical benefit is administered through insurance committees (q), but the remaining benefits are administered by the approved societies, except in the case of insured persons who are not members of an approved society, when they are administered through the insurance committees (r).

Trade unions which are registered as approved societies are empowered to make rules, with the consent of the Minister of Health, as to the administration and payment of the above-

(n) National Health Insurance Act, 1924, s. 10.

(o) *Scott v. Northumberland Friendly Society*, [1920] 1 K. B. 174.

(p) National Health Insurance Act, 1924, s. 75.

(q) *Ibid.*, s. 24.

(r) *Ibid.*, ss. 13 and 14.

mentioned benefits (e). It has been held that, once the Minister has given his consent to such rules, a resolution of the union varying them would be illegal and *ultra vires* (f), although in general the courts will not interfere in cases of dispute where the matter is one of domestic administration (u).

Trade unions may make subscriptions and donations to hospitals, dispensaries, and other charitable institutions, or for the support of district nurses, and may appoint nurses for the purpose of visiting and nursing insured persons. Any sums so expended are to be treated as expenditure on such benefits as may be prescribed (v).

Financial Provisions relating to Approved Societies.

Every trade union registered as an approved society and every branch thereof must keep its books and accounts connected with health insurance administration separate from all other books and accounts, and in such form as may be prescribed. When required, such books and accounts must be submitted to audit by auditors to be appointed by the Treasury (w).

The trade union or its branch must also submit to have its assets and liabilities under the Act valued in accordance with the provisions of the Act, and must furnish such returns as the Minister may from time to time require (x).

The provisions of the Insurance Act relating to accounts, audit, valuation, and returns are to be substituted for the provisions of any other Act (e.g., Trade Union Acts) regulating the constitution of the trade union or its branch, so far as health insurance matters are concerned (y).

Where a trade union or branch thereof transacts other business besides health insurance, all funds and credits of the union or branch held for health insurance purposes must be held as the security of the members for such purposes as if

(e) National Health Insurance Act, 1924, s. 22.

(f) *Heard v. Pickthorns*, [1913] 3 K. B. 299.

(u) *Bailey v. Co-operative Wholesale Society*, [1914] 2 K. B. 233.

(v) National Health Insurance Act, 1924, s. 26.

(w) *Ibid.*, s. 72 (1) (a).

(x) *Ibid.*, s. 72 (1) (b), (d).

(y) *Ibid.*, s. 72 (2).

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they belonged to a union or branch only carrying on health insurance business. Nor will such funds be liable for any contracts of the union or branch for which they would not have been liable had the business of the union or branch been only health insurance business ; nor may such funds be applied to any purposes other than insurance (2).

The administration expenses of a union registered as an approved society or branch thereof, in respect of its health insurance business, must be kept in a separate account, showing the amount expended on administration by that union or branch thereof. The amount which may be carried to that account out of the health insurance contributions is to be limited, and any deficiency therein, if not otherwise defrayed, must be met forthwith by a special levy (a).

A trade union which is registered both as an approved society under the Trade Union Acts, 1871-1927, and which carries on private business as well as health insurance business, may, with the consent of the Minister : (i.) keep a joint account of the administration expenses of both the private and the insurance business, or (ii.) pay out of the funds standing to the credit of the administration account, kept in respect of insurance business, to the administration fund kept in respect of its private business, any sum as prescribed by the Minister, on the condition that the private business administration fund bears all or part of the administration expenses incurred in respect of the health insurance business (b).

A valuation of the assets and liabilities of a trade union or branch thereof arising out of national health insurance is to be carried out by a valuer to be appointed by or with the approval of the Treasury at the expiration of every five years or at such other times as the Minister may appoint (c).

If, upon making such valuation, a surplus is found, this may be disposed of by distributing any one or more additional benefits among the insured members of the union or branch,

(1) National Health Insurance Act, 1924, s. 72 (3).

(a) *Ibid.*, s. 73.

(b) *Ibid.*, s. 73.

(c) *Ibid.*, s. 74.

in accordance with a scheme which must be submitted by the union or branch to the Minister for his approval (*d*).

If there is a deficiency in the funds of the union or branch thereof, no additional benefits may be distributed under the scheme, until the deficiency is extinguished (*e*).

All contributions received in respect of health insurance are to be paid into a fund called the National Health Insurance Fund, which is under the control and management of the Minister of Health. Out of this fund are to be paid the sums required to reimburse trade unions acting as approved societies for any expenditure properly incurred by them in respect of benefits administered by them and in respect of the cost of administering such benefits (*f*).

Provision is also made for adjusting the financial transactions between the Minister of Health and trade unions acting as approved societies by crediting and debiting to the trade unions sums received or paid by the Minister on behalf of the unions (*g*).

Internal Government of Approved Societies.

Any dispute between a trade union which is an approved society or a branch thereof and an insured person who is a member thereof, or who has ceased to be a member thereof, or between such a trade union and one of its branches, or between any two or more of its branches, is to be decided in accordance with the rules of the union subject to a right of appeal to the Minister of Health (*h*). The same procedure must be followed in cases of dispute between a trade union which is an approved society and any person as to whether that person is or was at any date a member of that society for the purposes of health insurance (*i*).

The courts will not interfere in cases of dispute where the matter is one of domestic administration (*k*), but a question

(*d*) National Health Insurance Act, 1924, s. 75 (1) (a), (b).

(*e*) *Ibid.*, s. 75 (1) (c).

(*f*) *Ibid.*, s. 65.

(*g*) *Ibid.*, s. 71.

(*h*) *Ibid.*, s. 90 (1) (a).

(*i*) *Ibid.*, s. 90 (1) (b).

(*k*) *Bailey v. Co-operative Wholesale Society*, [1914] 2 K. B. 233.

affecting the legality of the rules (*l*), or whether the union has acted in an illegal and *ultra vires* manner, is not a matter of domestic administration (*m*). Disputes between a trade union which is an approved society and an insurance committee (*n*), or between an insured person and an insurance committee, are to be decided in accordance with regulations issued by the Minister of Health (*o*). Similar provision is made for settling disputes as to whether any employment or any class of employment is within the 1924 Act, or whether a person is employed within the meaning of the Act (*p*), or whether a person is entitled to become a voluntary contributor (*q*), or as to the rate of contributions payable by or in respect of any insured person (*r*).

Any trade union which is an approved society may, for the purpose of carrying on health insurance business, be registered as a friendly society under the Friendly Societies Act, 1896, notwithstanding that the contributions payable under the 1924 Act are not voluntary (*s*).

B.

UNEMPLOYMENT INSURANCE (SYNOPSIS).

Unemployment insurance was first made obligatory in 1911, by Part II. of the National Health Insurance Act of that year. Its operation was, however, restricted to certain trades, such as building, constructional (of railways, docks, etc.), ship-building, mechanical engineering, ironfoundry, saw milling, and vehicle constructing trades.

Further amendments were introduced by various Acts passed between 1911 and 1919, all of which were repealed by the Unemployment Insurance Act, 1920, which, as amended,

(*l*) *Re Quins*, [1921] 2 Ch. 318.

(*m*) *Heard v. Pickthorne*, [1913] 3 K. B. 299; see also *Scott v. Northumberland and Durham Miners' Approved Society*, [1920] 1 K. B. 174.

(*n*) National Health Insurance Act, 1924, s. 48.

(*o*) *Ibid.*, s. 90 (2).

(*p*) *Ibid.*, s. 1 (1).

(*q*) *Ibid.*, s. 1 (3).

(*r*) *Ibid.*, s. 4.

(*s*) *Ibid.*, s. 32.

is now the principal Act regulating unemployment insurance (*t*).

Under the 1920 Act every person of the age of sixteen and upwards engaged in any of the employments specified in Part I. of the First Schedule of the Act must be insured.

Certain employments, such as employment in agriculture, in domestic service (with certain exceptions), under any local or public authority, in a police force, in the service of any railway company, or in any public utility company, or under conditions of service enabling the person employed to rights in a superannuation fund, established by or in pursuance of an Act of Parliament, are exempted (Part I. of Schedule I.), but power is given to the Minister of Labour to extend the Act to such excepted employments (*u*).

The following classes of the employed persons are exempted from the operation of the Act, namely, those who prove that (i.) they are in receipt of any pensions or income of the annual value of £26 or upwards which does not depend upon their personal exertions, or (ii.) are ordinarily and mainly dependent for their livelihood upon some other person, or (iii.) those who are ordinarily and mainly dependent for their livelihood on earnings derived from an occupation, employment in which does not make them employed persons within the meaning of the Act, such as a domestic servant (*v*).

Contributions.

The funds required for providing unemployment benefits are derived partly from contributions by employed persons, partly from contributions by the employers of those persons, and partly from moneys provided by Parliament (*w*).

Unemployment Benefit.

Unemployment benefit is paid direct by the Employment Exchange or through an approved society (*x*), power being given to the Minister of Labour to make an arrangement with

(*t*) See "Industrial Law," Slessor and Henderson, Chapter XIII.

(*u*) Unemployment Insurance Act, 1920, s. 4.

(*v*) *Ibid.*, s. 3.

(*w*) *Ibid.*, s. 5; for present rates of contribution see Unemployment Insurance Act, 1925, First Schedule.

(*x*) Any trade union or branch thereof may be an approved society

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such society to repay such sums as are expended to their members, in respect of unemployment, equal to what such members would have received if no such arrangement had been made (y). The payment of unemployment benefit to the insured contributor is subject to the following conditions (z).

Conditions for Receipt of Unemployment Benefit.

(i.) That he proves that not less than thirty contributions have been paid in respect of him under this Act since the beginning of the first of the two insurance years next before the beginning of the benefit year in which the application is made.

(ii.) That he has made application for unemployment benefit in the prescribed manner, and proves that since the date of application he has been continuously unemployed.

(iii.) That he is capable of and available for work.

(iv.) That he is genuinely seeking work but unable to obtain suitable employment.

(v.) That he has attended any course of instruction when required to do so by an insurance officer.

It is, however, further provided (a) that a person is not to be deemed to have failed to fulfil the above statutory conditions by reason only that he has declined :

(a) An offer of employment in a situation vacant in consequence of a stoppage of work due to a trade dispute ; or

(b) An offer of employment in the district where he was last ordinarily employed at a rate of wages lower, or on conditions less favourable, than those which he might reasonably have expected to obtain having regard to those which he habitually obtained in his usual employment in that district, or would have obtained had he continued to be so employed ; or

if it complies with the requirements of the Insurance Acts (*supra*, p. 339).

(y) Unemployment Insurance Act, 1920, s. 17.

(z) *Ibid.*, s. 7, as amended by s. 3 of the Unemployment Insurance Act, 1924.

(a) *Ibid.*, s. 7, as amended by s. 3 of the 1924 Act.

(c) An offer of employment in any other district at a rate of wage lower, or on conditions less favourable, than those generally observed in that district by agreement between associations of employers and employees, or, failing any such agreement, than those generally recognised in that district by good employers.

Right to Review.

An insured contributor whose application for unemployment benefit is refused on the ground that he has not fulfilled the statutory condition that he is capable of and available for work but unable to obtain suitable employment is entitled to have his application reviewed from time to time (b), and the Minister may until June 30th, 1927, if he thinks fit so to direct, authorise the payment of unemployment benefit to an insured person even though the first statutory condition (*supra*) has not been fulfilled (c).

A person is not to be deemed to be unemployed who is following any occupation from which he is deriving any remuneration or profit, unless he be a person who when employed at his former occupation carried on in addition some other trade or business in his spare time, and after losing his main employment continued with his additional business, provided his daily remuneration therefrom does not exceed 3s. 4d. per day (d).

Disqualifications for Unemployment Benefit.

An insured contributor who has lost his employment by reason of a stoppage of work due to a trade dispute at a factory, workshop, or other place of employment is to be disqualified for receiving unemployment benefit so long as the stoppage of work continues (e). This provision does not, however, apply where he has become a *bonâ fide* employee elsewhere in the occupation which he usually follows, or has become regularly engaged in some other occupation (e).

(b) Unemployment Insurance Act, 1921 (No. 2), s. 10.

(c) Unemployment Insurance Act, 1920, s. 7 (2).

(d) Unemployment Insurance Act, 1925, s. 2.

(e) Unemployment Insurance Act, 1920, s. 8.

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The above provisions as to disqualification do not apply in any case in which the insured contributor proves that he is not participating in or financing or directly interested in the trade dispute which caused the stoppage of work, and that he does not belong to a grade or class of workers, members of which are participating in or financing or directly interested in the dispute. Nor is it to apply where the stoppage is due to an employer acting in a manner so as to contravene the terms of any agreement existing between a group of employers where the stoppage takes place or of a national agreement to either of which the employers and employees are contracting parties (*f*).

Where the stoppage of work is due to a trade dispute, the worker is disqualified from receiving unemployment benefit subject to the provisions just referred to (*g*). In a case heard by the umpire (*h*) in April, 1921, during the great coal stoppage, it was held that the notice of the employers terminating the existing arrangements contained an invitation to negotiate through the workmen's representatives for the continuance of work without interruption on the expiry of the notice, which invitation was not accepted, and that, therefore, the stoppage of work was due to a trade dispute. Unemployment benefit was accordingly refused.

Arrangements.

The Minister of Labour is empowered, on the application of a trade union, approved under the National Health Insurance Act, 1924, or any other association of employed persons (*i*), if the rules of such union or association provide for payments to the members thereof while unemployed, to make an arrangement with such union or association (*i*.) that unemployment benefit shall be paid to their members under the rules of the union or association instead of under this Act, and (*ii*.) that there shall be repaid periodically to the union or

(*f*) Unemployment Insurance Act (No. 2), 1924, s. 4.

(*g*) *Ibid.*

(*h*) Unemployment Insurance Act, 1920, s. 12.

(*i*) With certain exceptions, see Unemployment Insurance Act, 1920, s. 17 (1).

association out of the unemployment fund such sum as appears to be equivalent to the aggregate amount which their members would have been entitled to receive during that period by way of unemployment benefit under this Act, if no such arrangement had been made (*k*).

No such arrangement may be made unless the Minister is satisfied that the payments authorised by the rules of the union to its unemployed members exceeds, in respect of periods of unemployment amounting in the aggregate to not less than thirteen weeks in a period of twelve months, by at least five shillings per week in the case of men, four shillings per week in the case of women, two shillings and sixpence per week in the case of boys, and two shillings per week in the case of girls, and in respect of any further periods of unemployment in the same period of twelve months by at least half the several amounts aforesaid, the provision represented by unemployment benefit at the rate payable under this Act. In addition the Minister must be satisfied that the union's system of ascertaining wages and conditions prevailing in every employment in which its members are engaged and of obtaining from employers notification of vacancies for employment and giving notice thereof to its members is reasonably effective for securing that their unemployed members are brought with all practicable speed into communication with those employers having vacancies to fill (*l*).

Where such an arrangement has been made, the contributions due from any of the members of the union to the unemployment fund under this Act are to be treated as if such contributions formed part of the subscriptions payable by those members to the union, and notwithstanding anything in the rules of the union, the rates of subscription of such members may be reduced accordingly (*m*).

For the purposes of the Act, the amount of any sum which, but for this section, would have been paid to any person by way

(*k*) Unemployment Insurance Act, 1920, s. 17 (1); see also s. 12 of the Unemployment Insurance Act (No. 2), 1921, as amended by s. 9 of the Unemployment Insurance Act, 1922.

(*l*) Unemployment Insurance Act, 1920, s. 17, as amended by No. 2 Act, 1924, Second Schedule.

(*m*) Unemployment Insurance Act, 1920, s. 17 (2).

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of unemployment benefit is to be deemed to have been paid (n).

Regulations may be made by the Minister for giving effect to this section and for referring any question which may arise under this section to the insurance officers, courts of referees, or the umpire (o).

The fact that persons other than employed persons can be members of a union does not prevent the union being treated as a union for the purposes of making arrangements under this section, if the union is substantially a union for the benefit of employed persons (p).

The Minister may with the consent of the Treasury pay to any union with which an arrangement under this section is in force, by way of contribution towards the administrative expenses of the union in connection with the arrangement, such sum, not exceeding in any year an amount calculated at the rate of one shilling for each week of the aggregate number of weeks of unemployment in respect of which a repayment is made to the union under this section as he thinks fit. Any sum so paid is to be treated as part of the expenses incurred by the Minister under this part of the Act (q).

Schemes.

The power of the Minister under s. 18 of the 1920 Act to make special orders approving or making special schemes for the provision of insurance against unemployment in any industry is suspended until the expiration of one year from the termination of the deficiency period referred to in s. 16 of the Unemployment Insurance (No. 2) Act, 1921 (r).

Disputes, etc.

Any question arising as to the application of the Unemployment Insurance Acts is to be decided by the Minister of Labour, with a right of appeal to the High Court (s). Claim

(n) Unemployment Insurance Act, 1920, s. 17 (3).

(o) *Ibid.*, s. 12.

(p) *Ibid.*, s. 17 (5).

(q) *Ibid.*, s. 17 (6).

(r) Unemployment Insurance Act (No. 2), 1924, s. 8; see also Unemployment Insurance Act, 1920, ss. 18-21.

(s) Unemployment Insurance Act, 1920, s. 10.

to unemployed benefit is first made to insurance officers who are appointed for various areas (*t*). An appeal lies to the Court of Referees (*u*), consisting of one or more members chosen to represent employers, with an equal number of members chosen to represent insured contributors, and an independent chairman appointed by the Minister (*v*). A final appeal lies to the umpire, who is appointed by the Crown (*w*).

C.

CONCILIATION AND ARBITRATION.

Conciliation.

Acts of Parliament were passed in the reign of Queen Anne with the object of encouraging arbitration in trade disputes. Conciliation and Arbitration Acts were also passed in 1824, 1867, and 1872. In 1896 all existing Acts affecting arbitration between masters and workmen in trade disputes were repealed by the Conciliation Act of that year (*x*), now the principal Act, which was passed with the object of preventing trade disputes, through the introduction and establishment of district conciliation boards representing both masters and workmen. Under this Act, conciliation boards, constituted for the purpose of settling disputes between employers and workmen by conciliation or arbitration, may be registered. Proceedings for conciliation before a registered conciliation board are to be conducted in accordance with regulations made by the board itself (*y*).

The Act also provides that where a difference exists or is apprehended between an employer or any class of employers and workmen, or between different classes of workmen, the Minister of Labour may exercise all or any of the following powers (*z*):

(a) Inquire into the causes and circumstances of the difference;

(*t*) Unemployment Insurance Act, 1920, s. 11 (1).

(*u*) *Ibid.*, s. 13.

(*v*) *Ibid.*

(*w*) *Ibid.*, s. 12 (1).

(*x*) 59 & 60 Vict. c. 30.

(*y*) *Ibid.*, s. 1.

(*z*) *Ibid.*, s. 2 (1).

(b) Take such steps as to him may seem expedient for the purpose of enabling the parties to the difference to meet together by themselves or their representatives under the presidency of a chairman mutually agreed upon or nominated by the Minister of Labour or by some other person or body, with a view to the amicable settlement of the difference ;

(c) On the application of employers or workmen interested, and after taking into consideration the existence and adequacy of means available for conciliation in the district or trade and the circumstances of the case, appoint a person or persons to act as conciliator, or as a board of conciliation ;

(d) On the application of both parties to the difference, appoint an arbitrator.

Where a person is appointed to act as conciliator, his duty is to inquire into the causes and circumstances of the difference by communication with the parties, and otherwise to endeavour to bring about the settlement of the difference. Where a settlement of the difference is effected either by conciliation or by arbitration, memoranda of the terms thereof are to be drawn up and signed by the parties or their representatives, and a copy thereof delivered and kept by the Minister of Labour (a).

Conciliation boards are usually organised by the employers and workmen themselves in a particular industry, and are in no way subject to the control of the Government or other public authorities. The Conciliation Act of 1896 does, however, provide that, where it appears to the Minister of Labour that in any district or trade adequate means do not exist for having disputes submitted to the conciliation board for the district or trade, the Minister may appoint any person or persons to inquire into the conditions of the district or trade and to confer with the employers and employed, and, if the Minister thinks fit, with any local authority or body, as to the expediency of establishing a conciliation board for the district or trade. When a conciliation board is so formed for a particular district or trade, it is a private institution in the sense that it is controlled by the employers and

(a) 59 & 60 Vict. c. 30, s. 2 (2).

workmen themselves, independent of any Government control (b).

Arbitration.

The ordinary tribunals in this country have no jurisdiction over disputes arising out of employment (as distinguished from contracts in respect thereof), nor were any attempts made by legislation to provide tribunals for the purpose of dealing with any such disputes until 1919, in which year the Industrial Courts Act was passed (c). The principal object of the Industrial Courts Act was to provide machinery for the settlement of trade disputes, through the medium of an Industrial Court. Provision was also made for the setting up of courts of inquiry into the causes and circumstances of any trade dispute. The Act does not embody any principle of compulsory arbitration, as the consent of both parties to an industrial dispute must precede any reference to the industrial Court, or to a board of arbitration established under the Act, but such consent is not required for the purpose of setting up a court of inquiry into the causes and circumstances of the dispute, and the Minister of Labour may exercise his own discretion in the matter. It should be noted that the Industrial Court has the power to compel the attendance of witnesses.

The Act provides that, where any trade dispute, whether existing or apprehended, is reported to the Minister by or on behalf of either of the parties to the dispute, the Minister shall thereupon take the matter into his consideration, and take such steps as seem to him expedient for promoting a settlement thereof (d). The Minister may, if he thinks fit, and if both parties consent, either : (1) refer the matter for settlement to the Industrial Court ; or (2) refer the matter for settlement to the arbitration of one or more persons appointed by him ; or (3) refer the matter for settlement to a board of arbitration consisting of one or more persons nominated by or on behalf of the employers concerned and an equal number of persons nominated by or on behalf of the workmen con-

(b) Conciliation Act, 1896, s. 4.

(c) 9 & 10 Geo. 5, c. 49.

(d) *Ibid.*, s. 2 (1).

cerned and an independent chairman nominated by the Minister. In order to facilitate the nomination of persons to act as members of a board of arbitration, it is the duty of the Minister of Labour to constitute panels of persons appearing to him suitable so to act. Such panels are to include women (e).

The Minister may also refer to the Industrial Court for advice on any matter relating to, or arising out of, a trade dispute in general, or trade disputes of any class, or any other matter which, in his opinion, ought to be so referred (f). The expression "trade dispute" is defined under the Act as meaning any dispute or difference between employers and workmen, or between worker and worker, connected with the employment or non-employment or the terms of employment, and with the conditions of labour of any person (g).

The Industrial Court does not form part of the ordinary judicial system of the country. It is a special statutory tribunal set up with the principal object of providing machinery for the settlement of trade dispute. It is quite independent of the ordinary machinery of legal administration, and is in no sense under the control of the Government or of any Government Department, except in so far as the members of the Industrial Court are appointed by the Minister of Labour.

Constitution of Industrial Court.

An Industrial Court consists of persons appointed by the Minister of Labour, some of whom are independent persons, some are persons representing employers, some representing workmen, together with one or more women.

Members of the Industrial Court hold office for such term as may be fixed by the Minister at the time of his appointment.

For the purpose of dealing with any matter which may be referred to it, the court must be constituted of such members of the court as the president may direct.

The president of the court and the chairman of any division of the court is such person, being one of the independent

(e) Industrial Courts Act, 1919, s. 2 (2).

(f) *Ibid.*, s. 2 (3).

(g) *Ibid.*, Part IV.

persons aforesaid, as the Minister may by order, either generally or specially, appoint (h).

Procedure of Industrial Court.

The procedure of the Industrial Court is subject to the rules made by the Minister of Labour under the Act. Such rules must provide for reference in certain cases to a single member of the court, and must provide for enabling the court to sit in two or more divisions, and to sit with assessors, who may be men or women, for enabling the court or any division of the court to act, notwithstanding any vacancy in their number, and for enabling questions as to the interpretation of any award to be settled without special report or reference (i).

(h) Industrial Courts Act 1919, s. 1.

(i) *Ibid.*, s. 3.

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