THE LAW

RELATING TO

TRADE UNIONS

BY

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PREFACE.

THE aim of the author in compiling the present volume has been to make the law of Trade Unions intelligible to Trade Union officials and others who have not ready access to the Law Reports. Following the design adopted by him in his handbook on the "Amount of Compensation and Review of Weekly Payments under the Workmen's Compensation Act, 1906," he has therefore, in every case, given the full details of the facts, together with copious explanatory passages from the pronounced judgments. As this fulness of detail will often spare the legal practitioner who uses the book the necessity of consulting the Reports, it is hoped that in this convenience the lawyer may find compensation for a method of treatment somewhat more lengthy than is usual in a legal text-book.

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The plaintiff in this case alleged that he had been unjustly expelled from his trade union without having received notice of the charge made against him, and without being afforded any opportunity of being heard in his defence. He therefore sought (1) a declaration that a resolution of the executive committee of the trade union expelling him was *ultra vires* and illegal; (2) an injunction restraining the society from acting upon or enforcing the resolution.

So far, the case has not been tried on its merits, the parties having agreed to submit two questions of law to the decision of the Court before proceeding further. These questions were as follows: (1) Is the society at common law an unlawful association? (2) Is this action a legal proceeding which the Court, having regard to sect. 4 of the Trade Union Act, 1871, can entertain?

In considering the lawfulness of the association the following rules were discussed.

Rule 13.—(1) The executive committee is authorized to sanction trade movements of members for the following purposes and for no others, that is to say, (*a*) to prevent a reduction in wages, (*b*) to prevent an increase in the hours of labour, (*c*) to obtain an increase in wages, (*d*) to obtain a reduction in the hours of labour, (*e*) to remove unjust or oppressive conditions of employment.

(2) (*a*) The authority of the executive committee to give sanction to such trade movements is subject to the following conditions: (*a*) Before any step in connexion with a proposed movement is taken the sanction of the executive committee must be obtained. Should any movement take place before such sanction is obtained, the executive committee must afterwards endorse the same and give their sanction for its continuance. Any member striking without

the sanction of the executive committee, or in breach of his contract of service with his employer, or doing any other unlawful act or act in contravention of these rules, shall not be entitled to the benefit of the protection fund. . . . (*h*) Should the offer of arbitration be refused or ignored, and every effort at pacific settlement fail, then the executive committee may issue notice papers to the men for signature. If two-thirds of the men sign the notice papers, the executive committee may fix a day or days for handing the same to the company or companies, and upon a withdrawal from work in accordance with these notices it shall be the paramount duty of the executive committee to use every lawful means to assist the men in their struggle, which shall be directed by the general secretary. (*i*) Should the vote of the men be adverse to ceasing work, or should the number of the notices signed not warrant their being handed to the company or companies with a reasonable prospect of success, then the sanction of the executive committee shall be withdrawn from the said movement, and no further expense shall be defrayed from the society's funds in connexion therewith.

Rule 9.—(14) Any member or members found guilty of attempting to injure the society, or to break it up otherwise than as allowed by these rules, and the same being proved to the satisfaction of the executive committee, the committee shall expel him or them from the society, and he or they shall forfeit all claims on the funds and benefits of the society, but he or they shall have the right to appeal to the annual general meeting.

It was held that this group of rules contained no provision in restraint of trade such as would render the association illegal at common law.

The Master of the Rolls, after pointing out that the executive committee could only sanction a strike as distinct from ordering it, said, "Now it seems to me reasonably plain that the signing of the notices is a voluntary act, and that the only notices to be handed in are those which have been thus voluntarily signed. Mr. Justice Warrington held, and I agree, that there is no taint of illegality in this voluntary act on the part of the two-thirds majority. I can find nothing to hinder a man who has handed in his notice from resuming work. He will, under rule 3, cease to be entitled to strike pay, but that is all. Nor can I find any trace of an intention to call out, or to put pressure upon those members, the minority, who have not voluntarily signed [though Mr. Justice Warrington thought he found such an intention in rule 9, sub-rule 14]. . . . The society is a lawful association at common law. It is possessed of considerable property which belongs to the members, and any member unjustly excluded may invoke the assistance of the Court. This principle has been repeatedly acted upon in the case of West-End clubs."

ADDENDUM.

Lord Justice Fletcher Moulton said, "On reading the rules one is struck by the absence of all the familiar provisions relating to strikes, and the power of the society to direct whether men shall or shall not work under particular circumstances, which are so frequently to be found in the rules of trade unions."

It was argued on behalf of the society that it had the power to order a strike under rule 2 (4) (*f*), which provided that the annual meeting should have power to inaugurate any movement, or decree any proceedings in the interests of the society and its members. Dealing with this argument, his Lordship said, "These are very wide words, which, if taken in all their breadth, might cover almost anything. Some reasonable limit must be put upon them, and the proper mode of construction is, in my opinion, to treat the rules as indicating the nature of the movements or proceedings there referred to."

In deciding the second question the proper test, according to Fletcher Moulton, L.J., is to assume that the relief is granted and that the plaintiff is declared a member of the trade union. Will the effect of that be to enforce an agreement for the application of the funds of the trade union to provide benefits for him? Certainly not. By the statute that is the very thing which his membership does not enable a man to do, and therefore 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. It seems a logical contradiction to say that to put a man in a position where he cannot enforce a particular agreement is enforcing it.

His Lordship pointed out that in *Rigby* v. *Connol* the plaintiff had claimed more than a mere restoration to membership, for he attempted to obtain an order of the Court giving him a share in the assets of the union.

There is a dictum of Sir George Jessel in Rigby's case to the effect that a member of a trade union can only be legally protected in his right of membership when there is a right of property involved. Lord Justice Fletcher Moulton thought this dictum went too far, if, by the term "property," a beneficial interest in land or chattels was meant. There were many rights which, in such a sense, could not be called rights of property, which nevertheless, the law will protect. But in the case of a trade union such as the present, 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 purposes 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 the 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.

The Master of the Rolls said that the right of voting which a member had under rule 9 (11) is a property right.

THE
LAW RELATING TO TRADE UNIONS

CHAPTER I.

THE TRADE UNION: ITS FUNCTIONS AND STATUS.

Trade union not a creation of the Act of 1871.

THE growth and development of the combinations known as trade unions date from the passing of the statute 5 Geo. IV. c. 95. By this act all the prior statutes relating to combinations of workmen or masters for the purpose of raising or lowering the rate of wages, etc., were entirely swept away. The present Master of the Rolls, Sir H. H. Cozens-Hardy, has, on two occasions, found it necessary to point out that trade unions might legally exist before the Act of 1871. Thus in *Osborne* v. *The Amalgamated Society of Railway Servants* (*a*), he said, "It is important to observe that a trade union is not the creation of the Act of 1871," and again in *Gozney* v. *The Bristol Trade and Provident Society* (*b*), he says, "It is a common mistake to suppose that every trade union is, apart from the Act of 1871, an unlawful combination." Before the passing of the Act of 1871, trade unions were illegal only to this extent, that their members "could not bring actions to enforce their rights *inter se* nor could they successfully prosecute their officials for the misappropriation of their funds:" per Vaughan Williams, L.J., in *Yorkshire Miners' Association* v. *Howden* (*c*). Lord Shaw, in giving judgment in the House of Lords in *Osborne's case* (*d*), said, "Long before the statutes of 1871 and 1876 were enacted,

(*a*) 25 T. L. R. at p. 110.
(*b*) [1909] 1 K. B. at p. 915.
(*c*) [1903] 1 K. B. at p. 324.
(*d*) [1910] A. C. at p. 107.

trade unions were things in being, the general features of which were familiar to the public mind. They were associations of men bound together by common interests for common ends. Statute did not set them up, and, speaking for myself, I have some hesitation in so construing language of statutory recognition as a definition imposing such hard and fast restrictive limits as would cramp the development and energies and destroy the natural movements of the living organism."

Definition of trade union.

The first attempt to define a trade union is made in the Trade Union Act of 1871, section 23. The term "trade union" means such combination, whether temporary or permanent, for regulating the relations 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 good-will of a business or of instruction in any profession, trade, or handicraft.

In section 16 of the Act of 1876, the definition is amended by substituting for the words "such combination whether temporary or permanent, . . . as would, if this Act had not passed, have been deemed to have been an unlawful combination, . . ." the words "any combination whether temporary or permanent, . . . whether such combination would or would not, if the principal Act had not been passed, have been deemed to have been an unlawful combination."

The significance of the amendment seems to lie in the

fact that the definition of trade union is thereby widened so as to include benevolent purposes as being amongst the purposes of a trade union, for such purposes would not, of themselves, have made a trade union unlawful before the year 1871.

Benefit purposes sanctioned by statute.

The fact that benefit purposes are not expressly included in the definition of a trade union has given rise to a fear in certain quarters that the benevolent activities of trade unions are not sanctioned by law. There does not, however, appear to be any grounds for this uneasiness, for the frequent allusions to benefit and insurance in both the acts make it clear that Parliament recognised these purposes. See sections 4 and 5, and Schedule I., Clause 2 of the Act of 1871; and sections 2, 7, and 10 of the Act of 1876. Moreover, according to Fletcher Moulton, L.J., the adoption by the legislature of the well-known words "trade union" with all their associations, must be regarded as giving sanction to a form of activity which trade unions had engaged in from their origin, while Farwell, L.J., has stated that the arrangements for benefit and insurance are means for regulating the relations between workmen and workmen. See *Osborne* v. *Amalgamated Society of Railway Servants* (*e*).

Benefit purposes subordinate to trade purposes.

The provision of benefits is, however, clearly a subordinate function. In the words of Lord Macnaghten in the case of *Osborne* v. *Amalgamated Society of Railway Servants* (*f*), "They (trade unions) were combinations for trade purposes and for benevolent purposes as well. But when the struggle began which led to the Act of 1871, those who managed the case on the part of trade unions insisted that the benevolent purposes of a union were to be regarded as secondary and subordinate to the trade purposes. They urged . . . that the strength of the union and the confidence of its members simply consisted in this,

(*e*) 25 T. L. R. 107; 78 L. J. Ch. 204; [1909] 1 Ch. 163; 99 L. T. 945.
(*f*) [1910] A. C. 87; 101 L. T. 787; [1910] W. N. 3; 79 L. J. Ch. 87; 54 S. J. 215; 47 Sc. L. R. 613.

that it could, if so disposed, employ the whole of its funds in support of trade ends. . . . Hence it comes, I think, that the benevolent purposes of trade unions, though referred to in the Trade Union Acts, 1871 and 1876, are not mentioned either in the original or in the amended definition of the term 'trade union.' They are relegated to an inferior and subordinate position."

Trade unions as they affect competition between workmen and workmen.

In accordance with the view of the economists of the early part of the nineteenth century that social necessities and convenience demanded perfect freedom for the interplay of competition between individual and individual, any obstruction of freedom of individual bargaining was considered to be contrary to public policy, and in this respect the bargain between an individual workman and an individual employer was thought to be on the same footing as a bargain between one employer and another. This view profoundly affected not only the political theories of that period, but even theories of law. Sir William Erle, writing in 1868, says, "Wages are said to rise and fall by the action of competition between labour and capital, and this may be true in ultimate results. But the competition to which the law for securing a free course of trade relates is the competition between working men themselves, where the supply of labour exceeds the demand, and between employers where the demand for labour of a given kind, in a given locality, exceeds the supply. It seems inaccurate to describe the competition to be between the capitalist and the labourer, because the capitalist, in a stricter sense, is occupied in lending value at interest proportionate to risk, and is indifferent about wages and profits and production and prices. . . . Furthermore, it seems inaccurate to contradistinguish labourers or working men from capitalists or employers, as if they were separate classes; for both classes labour, and the labour of the brain for the employing class may be immeasurably more severe than the labour of the muscles for the working class. . . . I do not advert further

to competition between classes, because the law is concerned with the rights of individuals, and only indirectly with the interests of classes, and because the free course for trade secured by law is a free course for each individual to dispose of his labour or his capital according to his choice. . . ."

On this view of the matter trade unions would be, so far as their trade purposes are concerned, little more than associations of workmen whose object is to obtain for themselves better conditions of labour than their fellows in the same trade, who are not united. The case of the *Mogul Steamship Co.* v. *McGregor, Gow & Co.* (*g*), which decided that a number of shipowners who induced certain merchants not to deal with rival shipowners were acting lawfully, is an authority which justifies the action of a number of workmen who, by peaceful means, induce an employer not to employ certain other workmen. "Competition in labour," said Lord Shand in *Allen* v. *Flood* (*h*) . . . "is in all essentials analogous to competition in trade . . . and the same principles must apply."

In the industrial world this question generally arises in connection with the concerted refusal of members of a trade union to work with non-unionists. It has long been settled law that workmen may, by means of a strike, procure their employer to dismiss from his service non-unionists or men otherwise obnoxious to the strikers, and, so long as no unlawful means, such as violence, threats, etc., are resorted to, the material injury thus caused to the dismissed men gives them no cause of action against the strikers. This principle was recognised so long ago as 1861, in *Walsby* v. *Anley* (*i*), in which case Cockburn,

(*g*) [1892] A. C. 25; 61 L. J. Q. B. 295; 66 L. T. 1; 8 T. L. R. 182; 40 W. R. 337.
(*h*) [1898] A. C. 1; 67 L. J. Q. B. 119; 77 L. T. 717; 14 T. L. R. 125; 46 W. R. 258.
(*i*) 30 L. J. M. C. 121; 3 L. T. 666; 3 El. & El. 516; 9 W. R 271; 7 Jur. (N. S.) 465.

Chief Justice of the Common Pleas, said, "Every workman, so long as he is not bound by any contract, is entitled, when in the service of an employer, to the free and unfettered exercise of his own discretion, whether he will remain in that service in conjunction with any other workman with whom he may choose not to serve. . . . If several workmen consider others obnoxious personally, or on account of character or conduct, they have a perfect right to the exercise of their discretion, and to put the alternative to the employer of either retaining their services by discharging the obnoxious persons, or of retaining the latter and thus losing the others' services."

In *Allen* v. *Flood* (*h*) Lord Herschell said, "A man's right not to work or not to pursue a particular trade or calling, or to determine when, or where, or with whom he will work, is in law a right of precisely the same nature, and entitled to just the same protection, as a man's right to trade or work." And in the same case Lord Shand said, "A servant is surely entitled, for any reason sufficient in his judgment, or even from caprice, . . . to resolve that he will no longer continue, after the expiry of a current engagement, in service with another servant in the same employment. . . . . Amongst the rights of all workmen is the right of competition. . . . In the course of such competition, and with a view to secure an advantage to himself, I can find no reason for saying that a workman is not within his legal rights in resolving that he will decline to work in the same employment with certain other persons, and in intimating that resolution to his employer."

By the decision of the House of Lords in the case of the *Mogul Steamship Co.* v. *McGregor, Gow & Co.* (*g*), it is settled law that no action for a conspiracy lies against persons who act in concert to injure another and do injure him, but who, at the same time, are merely exercising their own rights and infringe no rights of other people.

See the judgment of Lord Lindley in *Quinn* v. *Leatham* (*j*).

Trade unions as they affect competition between employers and workmen.

The right of competition which the law thus recognises is thought to be so unfettered that the persons exercising it incur no civil liability (*k*) even when their action is prompted by malice or other improper motive. "The exercise by a person of a legal right does not become illegal because the motive of the action is improper or malicious (*Bradford Corporation* v. *Pickles*) (*l*). . . . On the same principle it may be affirmed that the exercise of any legal right in the course of competition in labour or trade, does not become illegal because it is prompted by a motive which is improper or even malicious," per Lord Shand in *Allen* v. *Flood* (*m*). But this rule may not be true in cases of conspiracy. See Phillimore, J., *infra*, p. 129.

The old view of the trade union as an organisation arising out of the competition between workmen and workmen must now be regarded as too narrow to cover social and industrial necessities. Whether or not the trade union was ever, in essence, a body of organised workmen warring on their unorganised fellows, there is now a considerable weight of authority in support of the wider view which takes into account the competition between workmen on the one hand and employers on the other, a competition which manifests itself in the attempt of the employer to obtain the services of the workman at the lowest wages that the workman will accept, and the counter-attempt of the workman to obtain for his services the highest wages that it is in the employer's power to give.

One of the functions of the workmen's trade union is

(*j*) [1901] A. C. 495; 85 L. T. 289; 70 L. J. P. C. 76; 17 T. L. R. 749, 50 W. R. 139; 65 J. P. 708.

(*k*) As to criminal liability, see p. 130, *infra*.

(*l*) [1895] A. C. 587; 64 L. J. Ch. 759; 73 L. T. 353; 44 W. R. 190; 60 J. P. 3.

(*m*) [1898] A. C. 1; 67 L. J. Q. B. 119; 77 L. T. 717; 14 T. L. R. 125; 46 W. R. 258.

now seen to be to secure by collective bargaining such remuneration and conditions of labour as could not, in the competitive market, be obtained by individual treaty. "From the moment that to establish a given business more capital is required than a journeyman can easily accumulate within a few years, skill alone is valueless, and is soon compelled to hire itself out to capital. Now begins the opposition of interest between employers and employed; now the latter begin to group themselves together; now rises the trade society. . . . The whole modern organisation of labour in its advanced form rests on a fundamental fact which has spontaneously and increasingly developed itself — namely, the definite separation between the functions of the capitalist and the workman, or, in other words, between the direction of industrial operations and their execution in detail" (*n*). Mr. and Mrs. Sidney Webb, in their History of Trade Unionism (*o*), speaking of the Industrial Revolution, remark that in the new system of industry a single employer was himself equivalent to a combination.

Nor is there wanting judicial authority for this wider conception of a trade union's functions. Lord Lindley, in *Lyons* v. *Wilkins* (*p*), said, "Trade unions up to a certain point have been recognised now as organs for good. They are the only means by which workmen can protect themselves from the tyranny of those who employ them." The case of *Ward, Lock & Co.* v. *The Operative Printers' Assistants Society* (*q*) has also an important bearing on this question. A trade union had stationed pickets to watch the plaintiffs' printing works with a view to inducing workmen to join the union and then determine their service by seven days' notice unless

(*n*) Dr. J. K. Ingram in Work and the Workman, quoted in Webb's History of Trade Unionism, p. 25.
(*o*) At p. 64.
(*p*) 65 L. J. Ch. 601; [1896] 1 Ch. 811; 74 L. T. 358; 12 T. L. R. 222, 278; 45 W. R. 19; 60 J. P. 325.
(*q*) 22 T. L. R. 327.

the plaintiffs would consent to raise their wages. In giving judgment for the defendants, Vaughan Williams, L.J., said, "No wrong would have been done to the plaintiff in the present case if the defendants had succeeded in persuading every printers' assistant in the country to join the union, and they had rendered it impossible for the plaintiffs to get men to work for them on the terms they desired. . . . The right of the plaintiffs to try to persuade a man to accept, and the right of the defendants to try to persuade a man to refuse, appear to me to be rights of freedom of individual action equally lawful and equally deserving of the protection of the law, so long as the means employed are lawful and right."

The special immunity given by the Trade Disputes Act, 1906, to acts done in contemplation or furtherance of a trade dispute, an immunity which is thought to extend to secondary strikes, is a statutory recognition of the lawfulness of the exercise of certain powers without which collective bargaining between workmen and employers cannot be real and effective.

Trade unions of employers.

Certain combinations of employers, no less than those of workmen, are brought within the Trade Union Acts. Thus, the definitions of section 23 of the Act of 1871 and of section 16 of the Act of 1876, include combinations for "regulating the relations between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business," while section 4 of the Act of 1871 refers to agreements "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."

A typical example of a union of employers is furnished by the case of *Hilton* v. *Eckersley* (*r*). Eighteen cotton manufacturers of Wigan, in order to offer an effective

(*r*) 25 L. J. Q. B. 199; 6 El. & Bl. 47; 12 Jur. (N. S.) 587; 4 W. R. 326.

resistance to certain trade unions of workmen, entered into an agreement with each other under which each member bound himself (*a*) to pay only such rates of wages as the majority should fix; (*b*) to employ his workpeople only for such times and periods as the majority should fix; (*c*) to obey the directions of the majority in the fixing of the hours of labour, the suspending of work, and the discipline and management of his establishment.

In *Urmston* v. *Whitelegg* (*s*), the Bolton Mineral Water Manufacturers' Association came before the Court. This was an association whose object was to maintain the price of mineral waters. By the rules the members bound themselves not to sell mineral water at less than 9*d.* per dozen bottles, or such other price as the committee might fix from time to time. The arrangement was to continue for ten years, and any member infringing it was to be liable to a penalty of £10. Nothing was said about the Trade Union Acts in this case, but the association was clearly within the definition of a trade union. See *infra*, p. 35. Another somewhat similar association for protecting the interests of mineral water manufacturers had registered itself as a company under the Companies Act of 1862. The 44th Article of its Articles of Association provided that no member of the society should employ any traveller, carman, or outdoor employee who had left the service of another member, without the consent in writing of his employer, until after the expiration of two years from his leaving such service. Chitty, J., was of opinion that, notwithstanding the fact that the association purported to be a company, it was, with reference to this article, a trade union. *Mineral Water Bottle Exchange, etc., Society* v. *Booth* (*t*).

The Edinburgh and District Aerated Water Manufacturers' Defence Association was registered under the Companies Acts, 1862–1890, for the objects (*inter alia*)

(*s*) 63 L. T. N. S. 455; 55 J. P. 453.
(*t*) 3 T. L. R. 740; 36 Ch. D. 465; 57 L. T. 573; 36 W. R. 274.

of protecting the interests of the trade, and also of protecting the bottles and boxes of the members from being dealt with by persons not having lawful authority. The 42nd Article of Association provided that "no member shall employ any traveller or other person having the sale or superintendence of the sale of goods to customers, who shall have been in the service of another member in the same capacity, until after the expiration of one year from his having left such service, unless the consent in writing of such other member to earlier employment be obtained." Article 39 prohibited members from buying or selling second-hand bottles bearing the names or trade marks of other manufacturers or bottlers without their written authority.

Bye-law 20 of the association prohibited members from exchanging bottles, etc., with non-members under a penalty of £5 for each offence.

It was held that, inasmuch as the Articles of Association and the bye-laws imposed certain restrictions upon the way in which the manufacturers should carry on their business, the association was a trade union, and that registration under the Companies Acts was void. It was pointed out in this case that it is not necessary, in order to render an association of this kind a trade union, that the restrictions on trade imposed by its rules should be unlawful. Lord Moncrieff said, "The leading object of the association appears to be not merely lawful, but laudable, namely, to protect the bottles and boxes of members bearing their name or trade mark from being used or dealt with by persons not having lawful authority. . . . The regulation of relations between masters and masters, and the restrictive conditions on the conduct of the trade may be, and so far as I can at present see, are, no more than are necessary to secure results beneficial to the general body of aerated water manufacturers. But, according to the definition in the Act of 1876, that is not the test." *Edinburgh and District Aerated*

Water Manufacturers' Defence Association, Ltd. v. *Jenkinson* (*u*).

By section 5 of the Trade Union Act, 1871, it is enacted that the Companies Acts shall not apply to any trade union, and that the registration of any trade union under these Acts shall be void (*v*). Section 7 of the Trade Union Act, 1876, provides that the Life Assurance Companies Act, 1870, and the amending Acts shall not apply to registered trade unions.

In the case of the *Aberdeen Master Masons' Incorporation, Ltd.* v. *Smith* (*w*), an association of master masons was formed to take over the assets and liabilities of a trade union. It was registered as a company, and the Memorandum of Association provided that the association should not impose on its members, or support with its funds, any regulation which, if an object of the association, would make it a trade union. Held that the association was not a trade union.

The facts in *Chamberlain's Wharf, Ltd.* v. *Smith* (*x*), were that certain dock companies and tea warehouse-keepers formed an association called the Tea Clearing House, the rules of which fixed the rates at which and the conditions under which members should deal with merchants, brokers, etc. No member was to warehouse or deposit tea with, or employ in connection with tea, or deal with any dock company or warehouse-keeper, who was not a member of the association. Any member breaking the rules was liable to be expelled by a resolution of the committee. Held that this association was a trade union.

The question whether an association is a trade union

As an association which, in effect, is a trade union, cannot escape the disabilities of a trade union by calling itself something else, so a body which does not come

(*u*) 5 F. 1159; 40 Sc. L. R. 825.
(*v*) By the same section it is provided that the Friendly Society's Acts and the Industrial and Provident Societies Act are not to apply to trade unions.
(*w*) [1908] S. C. 669.
(*x*) [1900] 2 Ch. 605; 69 L. J. Ch. 783; 83 L. T. 238; 49 W. R. 91.

within the limits of the definition of the Trade Union Acts, 1871 and 1876, cannot, by assuming the mere name of trade union, entitle itself to the immunities which those Acts give. See *Gozney* v. *Bristol Trade and Provident Society* (*y*). It seems also that where the main objects of an association are foreign to the purposes of a trade union as defined in the Trade Union Acts, the inclusion of objects which come within the definition is not sufficient to make the association a trade union. " The 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, 1876, and 1906 is extravagant": Farwell, L.J., in *Osborne* v. *Amalgamated Society of Railway Servants* (*z*). And in the same case Fletcher Moulton, L.J., said, " 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. The legislature did not create the name for the purposes of the 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. . . . Reading the Acts as a whole, one has no difficulty, therefore, in arriving at the conclusion that the definition in section 16 [of the Act of 1876] is not intended to exclude collateral or ancillary purposes of such well known types [as benefit and insurance purposes]. . . . But I cannot think that the legislature intended that objects, not at this time recognised as trade union objects, and not coming within the objects specified in the definition, might form part of the legitimate objects of a trade union within the purview of the Acts. . . . I see no reason to think that the

is one of substance and not of form.

(*y*) [1909] 1 K. B. 901; 78 L. J. K. B. 616; 100 L. T. 669; 25 T. L. R. 370; 53 S. J. 341.
(*z*) 25 T. L. R. 107; 78 L. J. Ch. 204; [1909] 1 Ch. 163; 99 L. T. 945.

legislature has altered its conception of a trade union since the date when the Act of 1871 was passed . . . and therefore I feel justified in taking into consideration not only the Acts of 1871 and 1876, but also the Trade Disputes Act of 1906, in considering the proper interpretation to be put on the definition. . . . Section 4, sub-section 1 of the Trade Disputes Act, 1906 . . . frees trade unions from liability in all actions of tort. Now I cannot bring myself to believe that the legislature would allow a combination whose purposes were to any extent trading or political propagandism, or any other lawful purpose which one would mention, which have nothing to do with the relations of masters and workmen, to obtain for itself such a statutory immunity by including within its purposes some regulations such as those adopted by genuine 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 re 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 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 of libel merely because it also sought to regulate the relations between masters and masters, or between masters and workmen."

Trade union a quasi-corporation.

Many of the difficulties which have arisen regarding the rights and liabilities and duties of trade unions have been due to the doubtful and uncertain nature of the trade union as a legal entity, for it is neither a corporation, nor an individual, nor a partnership between a number

of individuals. The only entities known to the Common Law as having the right to sue and the liability to be sued were the individual and the corporation. The legislature has, however, recognised the trade union, and has bestowed on it the capacity for owning property. This capacity for owning property and the necessity for acting by agents are the two essential qualities of a trade union which are also essential qualities of a corporation, and, on the principle *qui sentit commodum sentiri debet et onus*, the trade union and the corporation alike are liable to the extent of their property for the acts and defaults of their agents. Thus the trade union may be conveniently styled a quasi-corporation. See the judgment of Farwell, L.J., in the *Taff Vale Railway Co.* v. *Amalgamated Society of Railway Servants* (*a*).

But corporations are of two kinds, Common Law Corporations and Statutory Corporations, and since the decision in the case of *Osborne* v. *Amalgamated Society of Railway Servants* (*b*), it is clear that trade unions must be regarded as approximating in their character to Statutory Corporations, and therefore circumscribed in their activities by the doctrine of *ultra vires* as it is applied to trading companies registered under the Companies Acts. "It is a broad and general principle that companies, incorporated by statute for special purposes, and societies, whether incorporated or not, which owe their constitution and their status to an Act of Parliament, having their objects and powers defined thereby, cannot apply their funds to any purpose foreign to the purpose for which they were established, or embark on any undertaking in which they were not intended by Parliament to be concerned. . . . This principle is not confined to corporations created by special Acts of Parliament. It applies, I think, with equal force, in every case where a society or association

(*a*) [1901] A. C. 426; 70 L. J. K. B. 905; 85 L. T. 147; 17 T. L. R. 698; 50 W. R. 44; 65 J. P. 596.
(*b*) [1910] A. C. 87; 101 L. T. 787; [1910] W. N. 3; 79 L. J. Ch. 87; 54 S. J. 215; 47 Sc. L. R. 613.

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": Lord Macnaghten in *Osborne's case* (*b*).

In the same case Lord Atkinson said trade unions "are, when registered, quasi-corporations, resembling much more closely railway companies, incorporated by statute, than voluntary associations of individuals merely bound together by contract or agreement, express or implied. And it is plain that, as soon as this character was given to them, and the rights and privileges they now enjoy were conferred upon them, it became a matter of necessity to define the purposes and object to which they were at liberty to devote their funds raised from their members by enforced contributions. A definition which permitted them to do the particular things named, and, in addition, all things not in themselves illegal, would be no definition at all, and would serve no purpose at all. There must be some limit." See also the Scottish case of *Mackendrick* v. *National Union of Dock Labourers*: Appendix T.

The Earl of Halsbury also pointed out that the Trade Union Act has protected from interference three applications of trade union funds [see section 4, (3), (*a*), (*b*), (*c*)], and clearly suggested that so far as the spending of trade union money is concerned, nothing else is within the purposes of a trade union as defined by the 23rd and 16th sections of the two Acts.

Analogy between trade union and joint stock company.

The analogy thus instituted between the trade union and the joint stock company must be considered as extending so far that the Trade Union Acts may be compared with the Companies Acts; and the rules of a registered trade union with the Memorandum of Association of a registered company. "The Act [*i.e.* the Trade Union Act, 1871] is, as it were, the Charter of Incorporation, and it undoubtedly renders some things lawful, which, but for the enactment, would be unlawful, and,

with a degree of minuteness, gives authority to certain contracts and to certain applications of funds that appear to me to be absolutely exhaustive . . . the question of how far, and to what extent, trading corporations were limited by their Memorandum of Association, which bears a close resemblance to what is here enacted as applicable to trade unions, was very amply discussed in *Riche* v. *Ashbury Railway Carriage Company* (*c*). . . . It is true that the Act does not make the trade union a corporation, but, taking only the distinctive word used, 'a combination,' it can hardly be suggested that it legalises a combination for anything, and if some limit must be placed on its powers, one can only apply the same rules that were agreed to by the noble and learned Lords in that case. . . . This statute [the Trade Union Act, 1871] gives the charter for all such 'combinations,' and what is not within the ambit of that statute, is, I think, prohibited both to a corporation and a combination; it only exists as a legalised combination having power to act as a person and to enforce its rules within the limits of the statute, whatever those limits are": the Earl of Halsbury in *Osborne* v. *Amalgamated Society of Railway Servants* (*d*).

It must, however, be observed that the analogy between the registered rules of a trade union, and the Memorandum of Association of a trading company is not complete, for the freedom of a trade union to add to its objects by an alteration of its rules is much narrower than the freedom of a company to amend its Memorandum of Association.

Under section 9 of the Companies (Consolidation) Act, 1908, a company may, by special resolution, alter the provisions of its Memorandum of Association with respect to the objects of the company, so far as may be required

(*c*) L. R. 7 H. L. 653; 44 L. J. Ex. 185; 33 L. T. 451; 24 W. R. 794.
(*d*) [1910] A. C. 87; 101 L. T. 787; [1910] W. N. 3; 79 L. J. Ch. 87; 54 S. J. 215; 47 Sc. L. R. 613.

to enable it (*a*) to carry on its business more economically or efficiently; or (*b*) to attain its main purpose by new or improved means . . . or (*d*) to carry on some business which, under existing circumstances, may be conveniently or advantageously combined with the business of the company. . . . The alteration is not to take effect until and except in so far as it is confirmed, on petition, by the Court.

Rules of a trade union must not exceed the powers given by statute.

The First Schedule of the Trade Union Act, 1871, contains a list of the matters which must be provided for by the rules of a trade union. Amongst these are "the whole of the objects for which the trade union is to be established, and the purposes for which the funds thereof shall be available" (*e*). Speaking of this schedule in *Osborne's case*, Lord Macnaghten said "the rules were to specify the whole of the objects of the . . . union. But, of course, the objects to be specified were not, . . . any objects not in themselves illegal. They must be strictly within the scope of the Act. And the powers to be used in furtherance of these objects . . . must be either expressly conferred or derivable by reasonable implication from the provisions of the Act. . . . In . . . the case of a society owing its constitution and its status to an Act of Parliament, and registered under the Act with rules purporting to be in conformity therewith, if a controversy arises as to whether a particular rule is, or is not, *ultra vires*, the question must be, Does the rule merely provide a method of conducting business, or is it a rule making the society a thing different from that which is specified in the Act and meant by the Act?"

This, then, is the important difference between the Trade Union Acts and the Companies Acts. Under the latter Acts, and subject to certain formalities prescribed by them, a company may be formed for *any lawful object* desired by its promoters. These objects must be defined in the Memorandum of Association, and to them the

(*e*) Trade Union Act, 1871, Schedule I., Clause 2, Appendix E.

company must confine itself. It is, however, possible at any time, on obtaining the approval of the Court, to add to the original objects of the company any other lawful object. Under the Trade Union Acts, a trade union may be established only for the objects defined in the Acts. What these objects are to be the rules of the union must declare, but no object not included in the statutory definition can be included in the rules. A trade union, with the approval of the Registrar of Friendly Societies, may add to its original objects, but any such additional object must be not only lawful, it must also be an object authorised by the Trade Union Acts.

The main features of a trade union.

The position occupied in our legal system by a trade union may briefly be thus defined: It is a voluntary association of individuals. These individuals are no longer forbidden to make agreements in restraint of trade, though the Courts will not enforce such agreements. With this exception they are as much within the jurisdiction of the Courts as private individuals or corporations. They may own property, and legal proceedings both civil and criminal are available for its protection. The liability in contract of a trade union towards its members is enforced when such liability is not bound up with purposes that are in restraint of trade. Probably also a trade union is liable in tort except in cases of torts committed in contemplation or furtherance of a trade dispute. A trade union can pursue only certain objects prescribed by statute, and there is no method, save that of legislation, by which these objects can be added to.

Political activities of trade unions illegal, *Amalgamated Society of Railway Servants* v. *Osborne.*

There is nothing in the Trade Union Acts from which it can reasonably be inferred that trade unions, as defined by Parliament, were meant to have the power of collecting and administering funds for political purposes. And a rule which purports to confer on any trade union registered under the Act of 1871 a power to levy contributions from members for the purpose of securing parliamentary representation, whether it be an original rule of the union

or a rule subsequently introduced by amendment, is *ultra vires* and illegal. *Amalgamated Society of Railway Servants* v. *Osborne* (*f*). For the full discussion of the case, see Appendix A.

Can a trade union publish a newspaper or engage in trade?

It was said by Farwell, L.J., in *Osborne* v. *Amalgamated Society of Railway Servants* (*g*), that a trade union may not carry on trade or run a newspaper, because if that were so traders and newspaper proprietors could register themselves as trade unions. But it may be noticed that this does not quite coincide with his Lordship's statement in the same case that the mere assumption of the name of trade union, with some one rule that is in restraint of trade, cannot possibly give to the persons assuming it the privileges of the Trade Union Acts. And, according to his lordship, there does not seem to be any reason why objects not within the intention of the Trade Union Acts may not be pursued by a trade union if it does not pursue them *qua* trade union. "Both before and after that Act [the Act of 1871] all the individual members of such an association [viz. a trade union] might also form themselves into a co-operative society under the Industrial Acts, or a political society, or the like, but they would do so as individuals, not as a trade union, or they might, if less than twenty, trade as partners, but such partnerships would be outside and independent of their position as a trade union." Farwell, L.J., in *Osborne* v. *Amalgamated Society of Railway Servants* (*g*).

According to Mathew, J., in *Linaker* v. *Pilcher* (*h*), a trade union is not prevented by the Trade Union Acts from owning a newspaper, provided it was started in order to improve the condition and protect the interests of the members, and not for the purposes of profit and as

(*f*) [1910] A. C. 87; 101 L. T. 787; [1910] W. N. 3; 79 L. J. Ch. 87; 54 S. J. 215; 47 Sc. L. R. 613.

(*g*) 25 T. L. R. 107; 78 L. J. Ch. 204; [1909] 1 Ch. 163; 99 L. T. 945.

(*h*) 70 L. J. K. B. 396; 84 L. T. 421; 49 W. R. 413; 17 T. L. R. 256; see *infra*, p. 169.

a trading venture. But Farwell, L.J., in *Osborne* v. *Amalgamated Society of Railway Servants* (*g*) said that this case cannot be regarded as correct.

REGISTRATION, &c., OF A TRADE UNION.

(For Regulations and Official Forms, see Appendices G, H, & I.)

The registrars under the Trade Union Acts are the registrars of friendly societies in England, Scotland, and Ireland. They are required to lay before Parliament annual reports. [See section 17, Trade Union Act, 1871] (*i*).

Any seven or more members of a trade union may, on subscribing their names to the rules of the union, register it. If any one of the purposes of the union is unlawful, the registration is void. [See section 6, Trade Union Act, 1871] (*i*).

The following are the provisions with respect to registry [See section 13, Trade Union Act, 1871] (*i*) :—

(1) The application to register, printed copies of the rules, and a list of the titles and names of the officers of the union must be sent to the registrar. See also Rules 3 and 4, App. G, and Form A. App. H.

(2) If the registrar is satisfied that the regulations respecting registry have been complied with, he is to register the trade union and the rules.

(3) No trade union is to be registered under a name identical with or nearly resembling that of any existing registered union. See also Rule 2, App. G.

(4) Where application is made to register a trade union which has been in existence for more than a year, the applicants must deliver to the registrar a

(*i*) Appendix E.

general financial statement of the affairs of the union. See Form A R 15, App. I.

(5) Upon registering the trade union, the registrar is to grant a certificate of registry, which is to be conclusive evidence that the regulations respecting registry have been complied with. See Rule 5, App. G, and Form B, App. H.

(6) One of the Principal Secretaries of State is empowered from time to time to make regulations for carrying the Act into effect, including regulations respecting registry, the seal and forms used for registry, the inspection of documents kept by the registrar, and the fees to be paid on registry. The regulations and forms in Appendices G, H, and I, are issued in accordance with these powers.

Every registered trade union must have a registered office. Failure to comply with this requirement renders the union and every officer liable to a penalty.

Notice of the situation of the registered office must be given to the registrar, and the trade union has not complied with the provisions of the Act until this notice is given. See Rule 15, App. G, and Form M, App. H. [Section 15, Trade Union Act, 1871] (*i*).

A general financial statement of the affairs of every registered trade union must be sent to the registrar before June 1st, in every year. The expenditure in respect of the several objects of the union must be shown separately. Every member and depositor is entitled to a free copy on application. See Form A R 15, App. I.

Alterations of rules, new rules, and changes of officers made during the preceding year must be notified, and a copy of the rules as they exist at the date up to which the general financial statement is made out, must be sent with the statement. See Rules 6–11, App. G, and Forms C, D, E, F, G, H, and I, App. H.

Every trade union and every officer failing to comply with this section is liable to a penalty.

A penalty may be inflicted in respect of any false entry or omission. [Section 16, Trade Union Act, 1871] (*i*).

A certificate of the registrar that an alteration in the rules of a trade union has been registered under the Acts is not conclusive as to the validity of such alteration (*Osborne* v. *Amalgamated Society of Railway Servants* (*j*)).

Trade unions carrying on business in more than one country of the United Kingdom must be registered in that country in which the registered office is situated; but copies of the rules must be sent to the registrars of the other countries. [Section 6, Trade Union Act, 1876] (*k*). On this point see *Mackendrick* v. *National Union of Dock Labourers:* Appendix T.

The certificate of registration may be cancelled or withdrawn (1) at the request of the trade union, (2) on proof that it was obtained by fraud or mistake, or that the registration has become void under section 6 of the Act of 1871, or that the trade union has wilfully violated any of the provisions of the Trade Union Acts, or has ceased to exist. See Rules 12–14, App. G, and Forms J, K, and L; App. H.

Except where the certificate is withdrawn or cancelled at the request of the trade union, or has become void under section 6 of the Act of 1871, the registrar must give not less than two months' notice in writing to the trade union specifying briefly the ground of the proposed withdrawal or cancelling.

From the time of the withdrawal or cancelling of the certificate the trade union ceases to enjoy the privileges of a registered trade union, but any liability incurred by it may be enforced as if the withdrawal or cancelling had not taken place. [Section 8, Trade Union Act, 1876] (*k*).

A trade union may, with the consent of not less than

(*j*) 25 T. L. R. 107; 78 L. J. Ch. 204; [1909] 1 Ch. 163; 99 L. T. 945.
(*k*) Appendix F.

two-thirds of its members, and with the approval in writing of the registrar, change its name. [Section 11, Trade Union Act, 1876] (*k*).

Notice in writing of every change of name signed by seven members and countersigned by the secretary of the trade union, and accompanied by a statutory declaration that the provisions of the Act of 1876 in respect of changes of name have been complied with, must be sent to the central office established by the Friendly Societies Act, 1875, and registered there. See Rule 16, App. G, and Form N, App. H. [Section 13, Trade Union Act, 1876] (*k*).

Two or more trade unions, by the consent of not less than two-thirds of the members of each or every union, may amalgamate, with or without any dissolution or division of funds. But the rights of creditors of the parties to the amalgamation are not to be prejudiced by the amalgamation. [Section 12, Trade Union Act, 1876] (*k*).

Written notice of an amalgamation must be given as in the case of a change of name, but it must be signed by seven members and countersigned by the secretary of each of the unions, and the statutory declaration must be made by each secretary. See Rule 22, App. G, and Forms T and U, App. H. [Section 13, Trade Union Act, 1876] (*k*).

In *Wolfe* v. *Matthews* (*l*) an injunction was granted to restrain the amalgamation of two trade unions, on the ground (*inter alia*) that the evidence did not show the consent of two-thirds of the members of the society on whose behalf the injunction was claimed. See *infra*, p. 173.

A table of fees for registration, inspection of documents, etc., is given in Rule 24, App. G. See also Schedule II., Trade Union Act, 1871 (*m*).

The rules of a trade union must provide for the

(*l*) 21 Ch. D. 194; 30 W. R. 838; 51 L. J. Ch. 833; 47 L. T. 158.
(*m*) Appendix E.

dissolution thereof, and notice of dissolution must be given within fourteen days. See Rule 21, App. G, and Form S, App. H. [Section 14, Trade Union Act, 1876] (*k*).

A trade union which has not been registered under the Acts of 1871 and 1876 is not for that reason an illegal combination (*Wolfe* v. *Matthews*) (*l*). Farwell, L.J., in *Osborne* v. *Amalgamated Society of Railway Servants* (*n*), said, " The first four sections of the Act give protection to all trade unions, whether registered or unregistered, and the Act then proceeds to make provision for the registration of trade unions with resulting advantages not given to unregistered societies." As to the effect of registration, see *Mackendrick* v. *National Union of Dock Labourers:* Appendix T.

The use of the registered name in legal proceedings seems to be contemplated by the Acts of 1871, and 1876. Sections 15 and 16 of the former Act and section 15 of the latter require a registered trade union to comply with certain formalities, and visit penalties on such unions as fail to satisfy these requirements. These provisions evidently influenced the House of Lords in arriving at their decision in the *Taff Vale case* (*o*) that a trade union may be sued in tort in its registered name. Thus Lord Macnaghten said in this case, " When I find that the Act of Parliament actually provides for a registered trade union being sued in certain cases for penalties in its registered name, as a trade union, and does not say that the cases specified are the only cases in which it may be sued, I can see nothing contrary to principle or contrary to the Trade Union Acts in holding that a trade union may be sued in its registered name." But this use of the registered name in legal proceedings does not seem to be a matter of great practical importance for, according to Lord Lindley, in the *Taff Vale case*, " If the trade union

(*n*) 78 L. J. Ch. 204; [1909] 1 Ch. 163; 99 L. T. 945; 25 T. L. R. 107.
(*o*) [1901] A. C. 426; 70 L. J. K. B. 905; 85 L. T. 147; 17 T. L. R. 698; 50 W. R. 44; 65 J. P. 596.

could not be sued in this case in its registered name, some of its members (namely, its executive committee) could be sued on behalf of themselves, and the other members of the society, . . . if the trustees in whom the property of the society is legally vested were added as parties, or order could be made in the same action for the payment by them out of the funds of the society of all damages and costs for which the plaintiff might obtain judgment against the trade union. . . . This question . . . is not a question of substance but of form."

Where a registered trade union broke up into two sections, and each applied to be registered in the name of the original union, it was held that neither section could be registered in that name until a competent court had ascertained the legal status of each. 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 the control of the large funds belonging to the society" (*p*).

Rules of a Trade Union.

The rules of a registered trade union must provide for the following matters:—

1. The name and place of meeting of the trade union.
2. The objects of the union; the purposes for which the funds are applicable; the conditions under which benefit is payable; fines and forfeitures.
3. The manner of making, altering, amending, and rescinding rules.
4. The appointment and removal of a general committee of management, of a trustee or trustees, treasurer and other officers.
5. The investment of funds and audit of accounts.
6. The inspection of books and names of members.

(*p*) *The Queen* v. *The Registrar of Friendly Societies*, L. R. 7 Q. B. 741; 41 L. J. Q. B. 366; 27 L. T. 229.

[Section 14, Act of 1871; Schedule I., Act of 1871] (*q*).

A trade union is bound to deliver a copy of its rules to any one on payment of a sum not exceeding one shilling. [Section 14, Act of 1871] (*q*).

The objects of the union, which, by Clause 2 of the 1st Schedule, are to be set out in the rules, are not any objects not in themselves illegal. They must be objects strictly within the scope of the Act. And if a controversy arises as to whether a particular rule is or is not *ultra vires*, the question must be: Does the rule merely provide a method of conducting business, or is it a rule making the society a thing different from that which is specified in the Act, and meant by the Act? per Lord Macnaghten in *Amalgamated Society of Railway Servants* v. *Osborne* (*r*). The Court of Appeal in *Osborne's case* ruled that the certificate of the registrar that an alteration in the rules of a trade union has been registered under the Trade Union Acts is not conclusive as to the validity of such alteration (*s*).

Whether the Court will enforce the rules of a trade union depends on the question whether they are such that the Court would have enforced them before the passing of the Trade Union Act, 1871 (*Old* v. *Robson* (*t*) and *Gozney* v. *Bristol Trade and Provident Society* (*u*)). And even if some of the rules would, apart from the Trade Union Acts, be illegal, but the general objects of the society are not illegal, the rules that are lawful would be enforced (*Swaine* v. *Wilson*) (*v*). But if the legal and illegal

(*q*) Appendix E.

(*r*) [1910] A. C. 87; 101 L. T. 787; [1910] W. N. 3; 79 L. J. Ch. 87; 54 S. J. 215; 47 Sc. L. R. 613.

(*s*) 25 T. L. R. 107; 78 L. J. Ch. 204; [1909] 1 Ch. 163; 99 L. T. 945.

(*t*) 6 T. L. R. 151; 54 J. P. 597; 59 L. J. M. C. 41; 62 L. T. 282; 38 W. R. 415; see *infra*, pp. 40, 69.

(*u*) [1909] 1 K. B. 901; 78 L. J. K. B. 616; 100 L. T. 669; 25 T. L. R. 370; 53 S. J. 341; see *infra*, pp. 45, 68.

(*v*) 6 T. L. R. 121; 24 Q. B. D. 252; 59 L. J. Q. B. 76; 62 L. T. 309; 38 W. R. 261; 54 J. P. 484; see *infra*, pp. 44, 48, 69.

objects are so inextricably connected with each other that the lawful rules cannot be enforced without giving effect to those that are unlawful, the Court will not attempt to enforce either (*Cullen* v. *Elwin* (*w*) and *Russell* v. *Amalgamated Society of Carpenters and Joiners*) (*x*). The Court may declare the meaning of trade union rules even when it cannot enforce them, and if the persons in possession of trade union funds, or members who are interested in the funds and entitled to see that they are not wasted, were to apply to the Courts in a proper case for a declaration as to the meaning of the rules, as bearing on the distribution of the funds, it is probable that the Court would give its assistance, *per* Fletcher Moulton, L.J., in *Gozney* v. *Bristol Trade and Provident Society* (*u*). In *Yorkshire Miners' Association* v. *Howden* (*y*), it was alleged that the association had distributed strike pay under circumstances which did not, according to the rules of the association, warrant the distribution, and in deciding whether an injunction ought to be granted to restrain the misapplication of the funds, the Court found itself obliged to declare the meaning of certain rules. Rule 64 of the association provided that where in case of a dispute with an employer, the association, in accordance with the rules, sanctioned a cessation from work, the members so ceasing work were to receive certain specified amounts as strike pay. By Rule 72 no branch was to be allowed to strike or leave off work except by the sanction of a two-thirds majority of the branch. Rule 65 provided for the allowance of weekly strike pay in cases where members were thrown out of employment in consequence of any action legally taken.

Yorkshire Miners' Association v. Howden.

The men in two collieries ceased work without the

(*w*) 19 T. L. R. 426; 88 L. T. 686; 90 L. T. 840; 20 T. L. R. 490; see *infra*, pp. 49, 70.

(*x*) 79 L. J. K. B. 507; [1910] 1 K. B. 506; 102 L. T. 119; 26 T. L. R. 228; 54 S. J. 213; see *infra*, pp. 51, 53.

(*y*) [1905] A. C. 256; 74 L. J. K. B. 511; 92 L. T. 701; 21 T. L. R. 431; 53 W. R. 667.

sanction of the association and without giving due notice to the employers. The association refused strike pay, whereupon the men expressed their willingness to return to work, but as the employers presented a fresh contract for them to sign, the men gave fourteen days' notice so as to terminate the original contract in a regular manner. The association then resolved to grant strike pay. Howden, one of the members of the association, now brought an action for an injunction to restrain the association from using the funds contrary to the rules. Held, that Rule 64 did not authorise the union to allow weekly strike pay to the strikers, the sanction of the association for the continuance of the strike having been from a date subsequent to its original commencement. Speaking of this rule, Vaughan Williams, L.J., said (*z*), "It was contended that, having regard to what subsequently happened, . . . there was afterwards a strike in accordance with Rule 64, . . . the men did cease work originally without the sanction of the association, and, inasmuch as they have never resumed work, and have ever since remained out on strike, I do not see how it can be made out that they ever ceased work a second time with the sanction of the association within the meaning of Rule 64."

It was also argued for the association that when the employers refused to allow the men to resume work, except on the terms that they should sign fresh contracts, the council decided to regard the case as one of lock-out, and granted strike pay under Rule 65. Held, that the rule could not be applied because the men could not be said to have "been thrown out of employment" within its meaning. Vaughan Williams, L.J., said, "The resolution passed by the men, and the correspondence clearly show that the men never meant to resume work as before the strike, but only intended to go back for the purpose of putting the strike, which had already commenced, in

(*z*) In the Court of Appeal: [1903] 1 K. B. 308; 72 L. J. K. B. 176; 88 L. T. 134; 19 T. L. R. 193.

order under Rule 64. It would have been a sham return, and a sham resumption of work."

In re Durham Miners' Association.

Watson v. *Cann, In re Durham Miners' Association* (*a*) was a similar case. The management of the association was vested in a council under whom an executive committee acted. The rules provided that no lodge was to give notice of a strike until its case had been laid before a council or committee meeting for their approval; and Rule 5 directed that any lodge or number of men in a lodge ceasing work without the approval of either the committee or council, should forfeit all claims on the union. A number of men in a lodge ceased work on account of a dispute with their employer, without having laid their case before the council or committee for their approval. The executive committee refused to grant strike pay, but the council, on appeal, allowed it. The trustees of the society thereupon took out a summons to determine a point in the construction of the rules. Held that the resolution of the council was *ultra vires*. It was contended on behalf of the council that they had an independent power to make the grant, notwithstanding the rules. That, according to Rigby, L.J., depended on the question whether these rules constituted an exhaustive code. He thought they did, and therefore the council had no general overriding power, at any rate for the purpose of providing weekly allowances for the support of the members on strike.

Another argument put forward in defence of the council's action was that the resolution of the council to allow strike pay imported an approval by them of the strike, and that within the rule requiring the approval of either the executive committee or the council for a strike, there might be an approval after as well as before the cessation of work. The Court would not, however, adopt that contention.

One of the rules [Rule 22] provided that the committee should have power to grant money in deserving cases,

(*a*) 17 T. L. R. 39.

but Rigby, L.J., thought that the council had no power within that rule to provide strike allowances contrary to the code.

Greig v. *National Amalgamated Union of Shop Assistants.*

The object of another trade union, as stated in the rules, was the raising of funds which were to be applied (*inter alia*) to giving legal aid to members when necessity arose in their relations with employers; and, in case of a dispute arising between a member and his employer, or of unlawful treatment of a member by his employer, the executive committee were, if they considered the merits of the case justified such a course, to provide legal aid to the member. The union brought an action of libel on a member's behalf against the member's employer. It was held that they had no right to do this. Lord Alverstone said, "The limits within which a trade union might legitimately give legal aid to its members in protection of their interests on the ground of common interest could not be stretched to cover a case of alleged libel . . . there was nothing in the rules of this union to justify the action which had been taken in this case, although they might rightfully give a power to the union to intervene to protect the interests of its members in a *bonâ fide* dispute between master and man" (*Greig* v. *National Amalgamated Union of Shop Assistants, etc.* (*b*)).

Alfin v. *Hewlett* (*c*) was an action which arose out of the case of the *Taff Vale Railway Co.* v. *Amalgamated Society of Railway Servants.* In connection with the latter case the society had been advised that it would be necessary for their defence to be dissociated from that of James Holmes, the organising secretary. The executive committee of the society thereupon passed a resolution deciding that Holmes should receive full legal protection at the forthcoming trial. Certain members of the Liverpool and Southport branches now brought an action on behalf of themselves and all other members of those

(*b*) 22 T. L. R. 274; see *infra*, p. 76.
(*c*) 18 T. L. R. 664.

branches, asking for an injunction to restrain the trustees of the society from acting in pursuance of the resolution of the executive committee, and from employing the funds of the society on the separate defence of Holmes. On behalf of the society it was contended that under the rules the society was entitled to defray the expenses of Holmes's defence, because the executive committee had power to institute any legal proceedings it might deem to be in the interests of the members. On the construction of this rule Joyce, J., held that an injunction must be granted, as he was unable to draw any inference that Holmes's defence was vital to the interests of the society.

In an action brought by the trustees of a union to restrain a branch from uplifting the branch funds, it appeared that the standing committee which authorised the trustees to take action was one member short of the number prescribed by the rules; but, as the full number of committee-men had never been elected, it was not considered that the plaintiff's case was rendered defective by the omission: *M'Laren* v. *Miller* (*d*).

(*d*) 7 R. 867 (4th series).

CHAPTER II.

RESTRAINT OF TRADE.

A PROPER understanding of the law relating to restraint of trade is still necessary in a considerable class of trade union cases, where it is sought to enforce payment of benefits against a society. If the rules of the society are not in restraint of trade, then, as it was not illegal before the Act of 1871, an action will lie for the recovery of benefits due under the rules (*Swaine* v. *Wilson* (*a*)). But if the rules of the society are in restraint of trade, the society is, apart from the Act of 1871, illegal, and the Court will not enforce payment of benefits (*Cullen* v. *Elwin* (*b*)).

Doctrine of restraint of trade.

The notions of public policy on which the legal doctrine relating to restraint of trade is founded were well stated by Barons Alderson and Bramwell about the middle of the last century. The former, in giving judgment in *Hilton* v. *Eckersley* (*c*), said, "It is the privilege of a trader in a free country, in all matters not contrary to law, to regulate his own mode of carrying on [his trade] according to his own discretion and choice, . . . no power, short of the general law, ought to restrain free discretion." The latter judge, in *Reg.* v. *Druitt* (*d*), said, "The liberty of a man's

(*a*) 6 T. L. R. 121; 24 Q. B. D. 252; 59 L. J. Q. B. 76; 62 L. T. 309; 38 W. R. 261; 54 J. P. 484.
(*b*) 19 T. L. R. 426; 88 L. T. 686; 20 T. L. R. 490; 90 L. T. 840.
(*c*) 25 L. J. Q. B. 199; 6 El. & Bl. 47; 4 W. R. 326; 12 Jur. (N. S.) 587.
(*d*) 10 Cox C. C. 592; 16 L. T. 855.

mind and will, to say how he should bestow himself and his means, his talents, and his industry, was as much a subject of the law's protection as was that of his body. . . . The public had an interest in the way in which a man disposed of his industry and his capital." Vaughan Williams, L.J., in *Russell* v. *Amalgamated Society of Carpenters and Joiners* (*e*), said, "It is not every restraint of trade which makes an agreement unlawful in the sense that its provisions cannot be enforced at common law. The restraint of trade to have this effect must prejudice the community in some way. It may prejudice the community because it restricts to an unreasonable extent the freedom of contract of the individual who enters into the agreement, or because it unreasonably restricts the area from which employers may seek to obtain workmen. It may be observed that it cannot be said in the latter case, as it can in the former, that the restraint arises through the voluntary action of the person whose freedom of contract is restricted. In a case where the rules of a trade union prohibit members from working with non-union workmen, there is a restraint which prejudices employers and workmen, other than members of the union, quite independently of any action of their own." In the same case, Farwell, L.J., quoting Lord Chief Justice Tindal in *Horner* v. *Graves* (*f*), said that the test to be applied in order to decide whether a restraint of trade be reasonable or not, is to consider "whether the restraint is such only as to afford a fair protection to the interests of the party in favour of whom it is given, and not so large as to interfere with the interests of the public."

Nordenfelt v. *Maxim Nordenfelt & Co.*

The leading case on the subject of agreements in restraint of trade is *Nordenfelt* v. *Maxim Nordenfelt Gun and Ammunition Co.* (*g*). The facts were that a patentee and manufacturer of guns and ammunition had transferred his

(*e*) 79 L. J. K. B. 507; [1910] 1 K. B. 506; 26 T. L. R. 228; 102 L. T. 119; 54 S. J. 213.
(*f*) 9 L. J. (O. S.) C. P. 192; 7 Bing. 735; 5 M. & P. 768.
(*g*) 15 R. P. C. 421; 14 T. L. R. 487.

patents and business to a company and agreed not to engage, either directly or indirectly, in the business of a gun and ammunition maker for a period of twenty-five years, except on behalf of the company. It was held that, having regard to the nature of the business and the restricted number of customers, the agreement was not injurious to the public interest, nor wider than the protection of the company rendered necessary, and that it was therefore a valid agreement. Herschell, L.C., quoting Mr. J. W. Smith, said, "In order that a contract in restraint of trade may be valid at law, the restraint must be, first, partial, secondly, upon an adequate or, as the rule now seems to be, not on a merely colourable consideration, and there is a third requisite, namely, that it should be reasonable."

Conditions of validity of a contract in restraint of trade.

A combination for the mere purpose of raising prices has been held to be not enforceable on the ground (1) that there was no consideration, and (2) that the restrictions imposed were unreasonable as regards both time and space (*Urmston* v. *Whitelegg*) (*h*). A number of mineral water manufacturers had agreed with each other not to sell mineral water at less than 9*d.* a dozen bottles. There was no limit to the area within which the restrictions were to operate, and the period of the agreement was ten years. In discussing the question of consideration it was pointed out by Day, J., that the fact that each member of the association would get the benefit from the concurrence of the rest in the rule as to prices was no consideration. Reference was made to agreements by which a person who is taught the mysteries and secrets of a trade undertakes not to take advantage of the knowledge imparted to him to the detriment of his teacher. Such a contract is enforceable because it has an adequate consideration. In the Court of Appeal (*i*) Lord Esher, M.R.,

Combination to raise prices not necessarily unenforceable.

Urmston v. *Whitelegg.*

(*h*) 63 L. T. N. S. 455, and *supra*, p. 10.
(*i*) 55 J. P. 453.

speaking of the reasonableness of the agreement, said, "If a man was prevented by certain rules from selling his goods at any price he might choose for a time so long that it was unreasonable, or within a space so large that it was unreasonable, in either case it was a restraint on trade which the Court would not enforce. . . . The rules contain nothing to restrict the area. The space therefore is too large. Then ten years is too long in point of time. It is a length of time so unreasonable and so monstrous for such goods as these that no tribunal could possibly come to the conclusion that it was reasonable. That being so, these rules cannot be enforced." The Trade Union Acts do not seem to have been mentioned in this case, though the association was clearly within the limits of the definition of a trade union.

Urmston v. *Whitelegg* has been followed by the Court of Appeal in Ireland in the recent case of *Cade* v. *Daly* (*j*). A number of traders in the city of Cork formed an association of bottlers for the purpose of protecting the bottles, jars, and boxes of the members, and of carrying out a system of sorting, collecting, and storing bottles. By the rules of the association members could withdraw from membership on giving one month's notice. With a view to fixing the prices of certain intoxicating and non-intoxicating liquors within a radius of sixteen miles from Cork, a deed was executed, by which certain members bound themselves to each other not to sell at lower prices than the prices set forth in a schedule annexed to the deed. It was a term of the agreement contained in the deed that any member who was a party to it might withdraw from the agreement by giving six months' notice. One of the members of the association determined his membership of the association, and then, without having determined his liability under the deed, violated his agreement by selling liquors at less than the scheduled prices. The plaintiffs now brought an action for an injunction to

(*j*) [1910] 1 Ch. D. (Ir. R.) 306.

restrain the defendants from committing breaches of the agreement and for recovery of a penalty and damages. Held, that the agreement, being bounded by reasonable limits of space and time, and made with a view to protecting local trade as far as it may be legitimately protected, could be enforced by injunction against parties violating it. The Court therefore granted an injunction for six months, and ordered payment of the prescribed penalty. Though the association was well within the definition of a trade union, nothing was said about the Trade Union Acts. The reason for this omission, however, seems clearer in this case than in *Urmston* v. *Whitelegg*. Membership of the association having been terminated, but the period of notice for the determination of the agreement having some time to run, the only question for the Court to settle was whether the agreement was so unreasonable a restraint of trade as to be unenforceable. The Master of the Rolls said, "If the deed was purely and simply an association deed, and was *intra vires*, I should hold that Messrs. Daly & Co. were free from the obligation of the deed. . . . But I think it is impossible to hold otherwise than that the deed must be read as something distinct and apart from the rules and bye-laws of the association. . . . In effect the deed says: 'We, the members of the association, desire to fix the prices as regards any of the members of the association who are willing to sign this deed and remain bound by its provisions.' As regards them, they must not sell below certain prices. Though they still continue their membership of the association, they may retire from the obligation of the deed. They may retire from the association and from the obligations of the deed respectively, in the one case by giving one month's notice, and in the other case by giving six months' notice. . . . They cannot get out of their obligations under the deed except under its provisions." The case was distinguished from *Urmston* v. *Whitelegg*, the Master of the Rolls saying, "The test of

validity is reasonableness . . . and I cannot imagine a more unreasonable contract or agreement than that in *Urmston* v. *Whitelegg*. There was no limit as to what we are in the habit of calling space, and the limit as to time, instead of being six months, as here, was the very considerable period of ten years. There was no clause enabling a party to retire from the agreement."

In each of the following cases the rules or agreements considered by the Court were held to be unreasonable restraints on trade :—

Chamberlain's Wharf, Ltd. v. *Smith, supra*, p. 12.

Mineral Water Bottle Exchange, etc., Society v. *Booth, supra*, p. 10.

Hilton v. *Eckersley, supra*, p. 9.

Edinburgh and District Aerated Water Manufacturers' Defence Association, Ltd. v. *Jenkinson, supra*, p. 10.

"Trade rules" of a trade union often in restraint of trade.

In the Scottish case of *M'Kernan* v. *United Operative Masons' Association* (*k*) it appeared that some of the rules of the association provided for strikes. One of these rules was to the effect that a half-yearly list should be printed showing the names of those members who had worked in opposition on strikes or otherwise, and each collector was to receive a copy gratuitously. This rule was considered to be in restraint of trade. Speaking of it the Lord Justice-Clerk said, "The meaning of this is perfectly plain—that the names of those who have not been obedient to the association are to be circulated gratis. Manifestly, if that is done with a view of affecting the action of the members, there can be no question as to what the object or part of the object of the association was."

In *Cullen* v. *Elwin* (*l*) the following rules of a society were held to be illegal at Common Law as being in restraint of trade:—

Rule 34 (Section 1). During the slack seasons a fair

(*k*) 1 R. 4th series, 453.
(*l*) 19 T. L. R. 426; 20 T. L. R. 490; 88 L. T. 686; 90 L. T. 840.

equitable division of trade shall be compulsory in all shops. A fair equitable division of trade shall be held to mean that each man shall get trade to the same value as his fellow man or as near it as possible.

(Section 2). In no shop shall the dual system of piece-work and day-work be allowed to exist.

(Section 3). No member of this society shall, in future, be allowed to leave a workshop for the purpose of working outdoors or at home, except by express permission of his branch committee, such permission only to be granted in case of physical inability to remain in the workshop, and to be in all cases endorsed by a general meeting of the branch.

(Section 4). A working week shall not exceed fifty-four hours, each district or town to regulate its own time of starting in the morning and leaving off in the evening, and no overtime to be worked except in cases of necessity. Time lost on one day cannot be made up on the following or any subsequent day.

In *Sayer* v. *Amalgamated Society of Carpenters and Joiners* (*m*) it appeared that the book of rules of the society contained, in a page preceding the rules themselves, a copy of an address to be delivered by the branch president to members on admission. This address stated that the member would be expected to do all in his power to promote the extension of the society, and, as a trade unionist, unite in efforts to promote the best interests of the trade by endeavouring to increase the present rate of wages and improve the conditions of labour. Should any question of wages or other matters arise affecting him, he was required to submit the same to his branch. Rule 2 stated that the objects of the society were to raise funds for the protection and organisation of the trade, for mutual support in case of accident, for burial of members, for assistance in cases of distress, and to aid their own and any other organised trade.

(*m*) *Times*, Dec. 18th, 1902; 19 T. L. R. 122.

Old v. *Robson.*

The rules of this society were again examined in *Old* v. *Robson* (*n*). Those relevant to the point at issue were as follows:—

Rule 2. The objects of this society are to raise funds for the advancement and protection of trade; for the mutual support of its members in case of sickness, accident, and superannuation; for the burial of members and their wives; for the loss of tools by fire, water, or theft, and for assistance to members out of work.

Rule 26 was for the regulation of "duties of officers conducting trade movements," and, by clause 1, provided (*inter alia*) that on the receipt of the sanction of the executive council the district committee might at once communicate with the employers, . . . undertake the general management of the movement, and endeavour, if possible, to obtain an amicable settlement, and have power to fine, suspend, or expel any member who has refused to comply with the committee's decision. Clause 2 set out the duties of the strike or lock-out committee, and provided that it should, in conformity with the instructions received from the managing committee, pay members their strike pay, and see that each member signed an acknowledgment on the strike sheet of the amount he received.

Rule 32, clause 2, provided that during a strike or lock-out in a district where more than one branch of this society is situated, every member in receipt of trade privileges shall sign the vacant book or answer the roll-call.

Rule 34, headed "trade privileges," contained various provisions for the regulation of strike or lock-out committees and for the weekly audit of strike sheets and cash books, and as to temporary employment obtained by members during a strike or lock-out.

Rule 35, headed "unemployment benefit," contained regulations as to allowances to members out of work.

(*n*) 6 T. L. R. 151; 59 L. J. M. C. 41; 62 L. T. 282; 38 W. R. 415; 54 J. P. 597.

The objects of the society, thus set forth, were, apart from the Act of 1871, held to be illegal as being in restraint of trade. In *Old's case* Pollock, B., said, "Before the Act, part of the objects of this society would clearly have been illegal, as relating to restraint of trade. Thus there was power to expel a member for violating trade rules laid down by a district committee of trade unions (see Rule 26). That, at common law, would be illegal."

In *Rigby* v. *Connol* (*o*) the trade purposes of a society were to regulate the carrying on of the trade of journeymen hatters, to provide, in substance, that the number of apprentices to the trade should be limited; that the number of persons employed should be limited; that they should only work in shops in which no persons worked other than persons who were recognised by the Journeymen Hatters Fair Trade Union; and generally to control the affairs of the trade. The society was held to be, apart from the Act of 1871, an illegal society.

The objects of another society were, by the rules, declared to be to raise funds by entrance fees, periodical contributions of members, levies made by the central council, and by interest on capital, for the advancement, regulation, and protection of the trade, for the relief of members out of employment from some unjust cause of dispute existing between the employers and the members of the society, and to regulate the relations between them; for the mutual support of its members in case of sickness or accident, for insuring a sum of money to be paid on the death of a member, and a sum of money for defraying the expenses of the burial of a member's wife. Held that the main object of the society was in restraint of trade (*Burke* v. *Amalgamated Society of Dyers*) (*p*).

Of the rules discussed by the Court in *Russell* v. *Amalgamated Society of Carpenters and Joiners* (*q*) the

Russell v. *Amalgamated Society of Carpenters.*

(*o*) 14 Ch. D. 482; 49 L. J. Ch. 328; 42 L. T. 139; 28 W. R. 650.
(*p*) [1906] 2 K. B. 583; 75 L. J. K. B. 533.
(*q*) 79 L. J. K. B. 507; [1910] 1 K. B. 506; 102 L. T. 119; 26 T. L. R. 228; 54 S. J. 213; *infra*, p. 51.

following were considered to be an unlawful restraint of trade :—

Rule 36, clause 3. In any town or district where the managing committee, united trade committee, branch committee, or a summoned meeting of the branch consider it to their best interest that our members should refuse to work with non-union men, they shall be entitled to trade privileges.

Clause 6. All members out of employment previous to or during the progress of a strike or lock-out, . . . where at least one-sixth of the members of any district or branch are affected, . . . shall be entitled to trade privileges. Any member in receipt of trade privileges shall be supported as per rule until he again obtain employment. . . . Any members who may be withdrawn from their employment on the instruction of the managing committee, united trade committee, branch committee, or branch, shall be entitled to trade privileges.

Rule 48, clause 1. Members may be fined, suspended, or expelled for refusing to comply with the decision of the managing committee, branch committee, or branch ; . . . wilfully violating the recognised rules of the district ; taking a sub-contract or piece-work ; working for a sub-contractor or piece-worker ; fixing, using, or finishing work which has been made under unfair conditions or contrary to the recognised trade rules of the district.

Speaking of these rules, Vaughan Williams, L.J., said, " It seems to me that both clause 3 and clause 6 do put a restraint on trade which is inconsistent with the public weal. The latter clause, in effect, provides that members must cease to work whenever thay are told to do so by the committee." Of Rule 48, clause 1, he said, " This clause I consider one of the most material, as involving such a restraint of trade as to render the rules unenforceable. It seems to me that the substance of that clause amounts to a restraint of trade of such a character as to make the rule an unlawful rule. It trespasses on the

principle of freedom of contract. Men are not to be allowed to do piece-work, or to work in fixing, or using, or finishing work produced under conditions which the society considers unfair. Such a clause, in my opinion, tends seriously to hamper and restrain trade."

Rule 29, clause 10, provided that a branch or district should not be allowed to strike without first obtaining the sanction of the executive council, and the executive council was to have full power to declare a strike closed.

"I regard that clause," said his lordship, "as not giving the executive council power to order a strike, but rather as giving them power to prevent strikes, by providing that under no circumstances will a branch or district be allowed to strike without first obtaining the sanction of the executive council. It may be said that when the executive council give their sanction to a strike, they are ordering a strike to take place, and that in such a case they could put in force all the powers they have in the event of a decision of theirs not being acted upon. But I rather doubt whether that is the right view of the clause. If that clause stood alone, I should hesitate to say that it *per se* constituted such a restraint of trade as to make the rule an unlawful rule."

Mudd v. *General Union of Operative Carpenters and Joiners* (*r*) was decided soon after the case of *Russell*, and in accordance with the decision in that case. The following rules, *inter alia*, were considered by the Court:—

By Rule 28 (1), the members of any lodge or district desirous of soliciting their employers for any new privilege must communicate with the executive council, who are to instruct the general secretary to take steps for the voting of all the lodges in the kingdom, and no strike is to take place unless with the sanction of a two-thirds majority of the members voting thereon, and a levy is then to take place. Members not paying the levy and

(*r*) 26 T. L. R. 518; see also *infra*, p. 52.

fines to be out of benefit if the amount of arrears exceeds 14 weeks' contributions.

By Rule 28 (4), a general strike shall mean when leave has been given by the union to suspend labour for a new privilege or against an infringement affecting a whole town.

Sub-rule 5 provides for an audit of the strike books by a deputation, appointed by the executive council, to see as to the application of the fund to the eligible members only.

Rule 28 (6) provides for the appointment and payment of committees in places where there is a strike or lock-out, their duties being to see that the members in receipt of strike pay attend roll-call, and that each is paid and acknowledges such payment. They have also to transfer men to parts where they are wanted. Sub-rule 7 provides for a weekly return from the strike district to the general secretary. Sub-rule 8 deals with the management of strikes. Members not answering roll-call are to forfeit strike pay for the day. By sub-rule 15, where there is a strike, a member refusing to abide by the decision of his lodge or district committee, and who works in opposition to the men on strike, may be fined £2 or expelled.

Held, that the association was an illegal association.

Swaine v. Wilson.

In *Swaine* v. *Wilson* (*s*), the following rules, being challenged, were thought to be not in restraint of trade :—

Rule 42. If disagreeable circumstances arise between a member and his employer or manager, the committee may give him permission to leave the situation and claim the benefits of the society.

Rule 47. Members knowing of a vacant situation, and not informing fellow members who are out of a situation, or want a change, are to be liable to a fine.

Rule 48. A member, on applying for a situation at a place where a fellow member is working, must first ask him if there is about to be a vacancy. A penalty of 5*s.* or 10*s.* imposed for not doing so.

(*s*) 6 T. L. R. 121; 24 Q. B. D. 252; 59 L. J. Q. B. 76; 62 L. T. 309; 38 W. R. 261; 54 J. P. 484.

Rule 49. The committee may permit a member to refuse to teach a person his trade, and if, as a result, he lose his situation, he shall be entitled to an amount equal to his wages until he finds employment.

Rule 66. Members must not apply for situations where the advertisement does not state the name and address of the employer. A fine of 10*s.* is imposed for breach of this rule.

The Master of the Rolls said that, in his opinion, the rules which were challenged as vicious on the ground that they were in restraint of trade, were not so intended, but were intended for another object—namely, to prevent an extravagant outlay by the society upon its members, and the rules did not exceed that object, though perhaps, if carried out, they might to a certain extent restrain trade. They were therefore legal.

The rules of the Bristol Trade and Provident Society provided (*inter alia*) as follows :—

Rule 7 (2) (4). Should work be offered at the current rate of wages to any member receiving travelling relief, unless it be to fill the place of those fighting for better conditions, and he refuses to accept it, his allowance shall be at once stopped, and his card given up.

Rule 40, section 1. Members paying to the trade fund are to be entitled to dispute pay, travelling relief, and assistance to sue employers under the Employers' Liability and Workmen's Compensation Acts.

Rule 40, section 6. No officer or member of this society shall be authorised or permitted to take any active interest in, aid in any way, or otherwise assist any trade movement except in his private capacity.

Strike provisions may be nothing more than an

The Court of Appeal held that the objects of the society were not illegal, and that the rules amounted to no more than an insurance of the members against the consequences of a strike (*t*). Cozens-Hardy, M.R., said, "There

(*t*) *Gozney* v. *Bristol Trade and Provident Society*, [1909] 1 K. B. 901; 78 L. J. K. B. 616; 100 L. T. 669; 53 S. J. 341; 25 T. L. R. 370.

insurance against strikes.

is nothing in the rules which authorises the calling out of members or the assisting a strike, and section 6 shows that any such action is expressly prohibited. . . . The society is really a mutual insurance society against sickness, and loss of wages by reason of shortness of work (called travelling relief—Rule 7), or by reason of voluntary abstention from work (called strike pay). It is a harmless friendly society, and there is nothing unlawful in its objects." Speaking of Rule 7 (2) (4), Lord Justice Fletcher Moulton said, "The only objection raised to the rule is that it shows that the society regards it as a reasonable excuse that the work offered is to fill the place of those fighting for better conditions. I can see no reason why the society should not look upon this as a reasonable excuse."

Semble that strikes are not an illegal restraint of trade.

There are dicta in this case which support the view that the promotion of strikes is not an illegal restraint of trade. Thus Cozens-Hardy, M.R., said, "Now there is nothing illegal in a strike, although it may be attended with circumstances, such as breach of contract or intimidation, which make it illegal. Nor is there anything illegal in contributing for the support of strikers." And Fletcher Moulton, L.J., said that there is no foundation for the proposition that strikes are, *per se*, illegal or unlawful by the law of England, nor is it illegal to try to regulate the relations between employers and workmen, unless illegal means are used.

In *Russell* v. *Amalgamated Society of Carpenters and Joiners* (*u*) similar opinions were expressed. Thus Vaughan Williams, L.J., said, "In my opinion this judgment does not in any way trench upon the proposition, which I take to be undoubted, that a strike is not necessarily an illegal thing. . . . There is nothing contrary to the rules against restraint of trade in a society maintaining workmen who have so struck by providing them with funds." And

(*u*) 79 L. J. K. B. 507; [1910] 1 K. B. 506; 102 L. T. 119; 26 T. L. R. 228; 54 S. J. 213.

In the case of *Osborne* v. *Amalgamated Society of Railway Servants*, decided at the moment of publication, the Court of Appeal has held that certain rules of the society are not illegal as being in restraint of trade.

See Addendum.

Kennedy, L.J., quoting Hannen, J., in *Farrer* v. *Close* (*v*), said, "I am, however, of opinion that strikes are not necessarily illegal. A strike is properly defined as a simultaneous cessation of work on the part of the workmen, and its legality or illegality must depend on the means by which it is enforced, and on its objects. It may be criminal, as if it be part of a combination for the purpose of injuring or molesting either masters or men; or it may be simply illegal, if it be the result of an agreement depriving those engaged in it of their liberty of action, similar to that by which the employers bound themselves in the case of *Hilton* v. *Eckersley* (*w*); or it may be perfectly innocent, as if it be the result of the voluntary combination of the men for the purpose only of benefiting themselves by raising their wages, or for the purpose of compelling the fulfilment of an engagement entered into between employers and employed; or any other lawful purpose." And see the judgment of Lord Coleridge in *Mudd* v. *General Union of Operative Carpenters and Joiners*, *infra*, p. 52. For a contrary view, see judgment of Collins, M.R., in *Cullen* v. *Elwin*, *infra*, p. 50.

In speaking of strikes of this third class as "innocent," there can be no suggestion that agreements to enter upon such strikes are enforceable. Thus in the *Mogul Steamship Co.* v. *McGregor, Gow & Co.* (*x*), Lord Bramwell said, "I have always said that a combination of workmen, an agreement among them to cease work except for higher wages, and a strike in consequence, was lawful at common law; perhaps not enforceable *inter se*, but not indictable." The words of the Lord Justice-Clerk in *M'Kernan* v. *United Operative Masons' Association* (*y*) are very instructive on this point. "It would be a singular thing if

(*v*) 38 L. J. M. C. 132; 10 B. & S. 533; L. R. 4 Q. B. 602; 20 L. T. 802; 17 W. R. 1129.
(*w*) *Supra*, p. 9.
(*x*) [1892] A. C. 25; 61 L. J. Q. B. 295; 66 L. T. 1; 8 T. L. R. 182; 40 W. R. 337; 56 J. P. 101.
(*y*) 1 R. 4th series, 453.

Courts of Equity in England were applied to to enforce the provisions of trade unions as to working or not working, or as to the amount of wages or hours of labour which the members might agree upon among themselves; and one can quite well see that associations might be perfectly lawful in themselves, though having objects which a Court of law will not enforce." The Lord Justice-Clerk then instanced associations whose members were pledged to wear nothing but Irish manufactured clothing, associations whose members were pledged not to touch stimulants, and said "such engagements are nothing but promises; and the real ground why a Court of law will not interfere is that nobody has a legitimate or legal interest to compel performance of them. The mere interest arising from possible moral or commercial results is not such an interest as a Court of law will take notice of to enforce a restraint on the will of the party which has been voluntary on his part." See also Chapter V., *infra*.

Illegality of some rules will not always prevent the enforcement of others which are legal.

Where a portion only of the rules of a society are in restraint of trade, it does not follow as a matter of course that the Court will refuse to enforce other rules and agreements which are without this defect. Even if some of the rules are in restraint of trade, but the general object of the society is not illegal, though these rules cannot be enforced, a rule not having that object will not be tainted with that vice and can be enforced (*per* the Master of the Rolls in *Swaine* v. *Wilson*) (*z*). In the case of *Strick* v. *Swansea Tin Plate Co.* (*a*), the aid of the Court was asked in order to enforce a rule of the society by which it was provided that upon the winding up and closing of the business any fund that might then be in existence should, after payment of all expenses and the clearing off of all liabilities, be divided amongst the

Legal rules will be enforced if they can be separated from the illegal ones.

(*z*) 6 T. L. R. 121; 24 Q. B. D. 252; 59 L. J. Q. B. 76; 62 L. T. 309; 38 W. R. 261; 54 J. P. 484.
(*a*) 36 Ch. D. 558; 57 L. J. Ch. 438; 57 L. T. 392; 35 W. R. 831.

members of the association in the same proportions as they shall have contributed to the funds thereof. It was admitted that some of the other rules of the society were in restraint of trade, but the Court nevertheless ordered the funds to be distributed in accordance with the rules which were lawful.

At first sight it is somewhat difficult to reconcile this case with the *dicta* in *Old* v. *Robson* (*b*). "The only question," said Wills, J., in the latter case, "was whether the society would, at common law, have been illegal; if so, the incapacity of such a society to enforce its rules remained. And this applied to any of its rules;" and Baron Pollock said, "The society cannot get rid of its illegal objects by relying on those that are legal." The report of the case, however, shows that in a discussion between counsel and Wills, J., the latter considered that the friendly society objects and the trade union objects were so mixed up as to be inseparable. The decisions in the more recent cases of *Cullen* v. *Elwin* (*c*) (*supra*, p. 38, and *infra*, p. 70), *Russell* v. *Amalgamated Society of Carpenters and Joiners* (*d*), and *Burke* v. *Amalgamated Society of Dyers* (*e*), have now placed it beyond all doubt that when the objects of a society are in part lawful and in part unlawful, the Court will not enforce the lawful objects, if the fundamental objects of the society are unlawful, and the lawful objects are so mixed up with the unlawful ones that it is impossible to enforce one without enforcing the other. Lord Alverstone, when the first of these cases came before the Divisional Court, expressed the opinion that *Old's case* and *Swaine's case* were not incompatible with each other.

Tests of severability: (1) Does breach of

In *Cullen's case* the larger number of the rules of the society were those of a friendly society, but one was undoubtedly in restraint of trade, and it was held that an

(*b*) 59 L. J. M. C. 41; 6 T. L. R. 151; 62 L. T. 282; 38 W. R. 415; 54 J. P. 597.
(*c*) 19 T. L. R. 426; 20 T. L. R. 490; 88 L. T. 686; 90 L. T. 840.
(*d*) 79 L. J. K. B. 507; [1910] 1 K. B. 506; 102 L. T. 119; 26 T. L. R. 228; 54 S. J. 213.
(*e*) [1906] 2 K. B. 583; 75 L. J. K. B. 533.

illegal rule by member involve loss of benefit under legal rule? *Cullen* v. *Elwin*; *Russell* v. *Amalgamated Society of Carpenters, etc.*

action to enforce payment of a superannuation allowance could not be maintained. The reason for the decision (in the words of Wills, J.) was, that "the rules of the society which were the rules of a friendly society, and the rules which were the rules of a trade society and were in restraint of trade, were so inextricably mixed up that it was impossible to separate them." On appeal the decision of the Divisional Court was upheld. Collins, M.R., said, "It is possible for societies to frame rules which contain an element of illegality in them, without, at the same time, vitiating the whole system. . . . It is also possible for them to make rules which are apparently and ostensibly innocuous, and yet may vitiate the whole system, because, rightly understood, and considered as a whole, their innocent parts are merely ancillary to that part which is not, in point of law, deemed to be legal. The question on which side of the line the particular rules of a particular society fall is a question of fact in each case. [Speaking of the rules of the society under discussion] . . . it is perfectly impossible to say that the primary object of this society is not trade protection . . . by the ordinary means employed by trade unions—viz. by strikes and so on, which, at common law, are illegal. That is the main purpose of the society, and all these other provisions are really ancillary to that main purpose. . . . The portions which are objectionable are of express intention and purpose. They are so mixed up with the friendly society part of it that any member who breaks the trade rules is liable to lose everything that he has put into the society. It seems to me impossible under these circumstances to say that it is not a society with the most effectual guarantees that the members of it shall observe the rules which are made in restraint of trade. . . . If you cannot separate the one from the other, it seems to me the illegal portion is necessarily incorporated into the scheme of the friendly society portion of the work of the society."

In *Russell* v. *Amalgamated Society of Carpenters and Joiners* (*d*), the rules of the society (several of which are set out on p. 41, *supra*) showed that the object of the society was to provide for its members both trade union benefit and friendly society benefit, but there was no provision for the separation of the funds applicable to trade union purposes from those applicable to friendly society purposes. The rules, after empowering the committee of any branch of the society to issue instructions to members with regard to such matters as striking, resuming work, and refusing to work with non-union men, provided that it should be competent for any branch committee to expel any member from the society upon satisfactory proof being given that such member had refused to comply with their decision, or (*inter alia*) had taken any piece-work, or had fixed, used, or finished any work which had been made under unfair conditions.

It was held that on the true construction of the rules the society was, at common law, and apart from the provisions of the Trade Union Act, 1871, an illegal society, its main object being in restraint of trade, and that therefore an action to enforce payment of benefit could not be maintained.

The question of the separability of lawful and unlawful purposes was discussed very fully by Vaughan Williams, L.J., who said, "I quite recognise the possibility of there being rules which do not affect the main object of the association, which may be more or less in restraint of trade, but which will not prevent the enforceability of rules which are free from that objection. But, in my judgment, this is a proposition which only applies to rules which do not go to the main object of the association. If there are rules which indicate the object of the association, and that object is either in its character or in its working inconsistent with the weal of the public, I think in such a case we should be bound to say that the whole character of the rules was inconsistent with

our giving effect to individual rules here and there. . . . In dealing with this question of separability of rules, I should like to point out that this is not a case in which there are separate funds. . . . The expulsion clause shows that if a member disobeys a decision of a managing committee, branch committee, or branch meeting, he forfeits all interest in the society, losing not only a specified amount by a fine, but losing also all those benefits which, as a thrifty man, he sought to obtain by subscription to a friendly society. I think that when one is judging of the object of the society, one cannot leave out of consideration that fact—that a breach of the trade union rules involves the loss of benefits which have been given to a man as a member of a friendly society. For that fact by itself goes a long way towards the conclusion that the main object of the society is a trade union object, and not a friendly society object."

In the case of *Mudd* v. *General Union of Operative Carpenters and Joiners* (*f*) (see *supra*, p. 43, for the rules of the society relevant to the case), Lord Coleridge, J., stated the effect of the decision in *Russell* v. *Amalgamated Society of Carpenters and Joiners* in these terms, "If the objects of the trade union are in any substantial sense illegal, the whole trade union is an illegal association, and none of its rules can be enforced. On the other hand, if the objects of the trade union be in the main legal, the fact of the existence of a rule or rules which disclose an illegal purpose, if such rule or rules are not in regard to a main object of the society, will not make the whole society illegal. There is nothing illegal in a strike, nor in contributing funds in support of strikers, and if the defendants' rules in that regard had been limited to assisting strikes and supporting strikers, I should be disposed to hold that not to disclose an illegal purpose. . . . But here the rules go further than that. Rule 28, sub-rules 4, 6, and 15 (dealing with the misconduct of members),

(*f*) 26 T. L. R. 518.

are practically the same as Rule 48 (1) in the case of *Russell* v. *Amalgamated Society of Carpenters and Joiners*, in which it was held that such a rule contemplated such a restraint of trade as to make all the other rules generally, harmless or otherwise, unenforceable at law. This decision was grounded on the consideration that there was so strong a persuasion on the members to obey the rules, even contrary to their inclination, through fear of losing the benefits, as to make the rule in restraint of trade, and that being the dominant rule, it made all the others unenforceable. I am not at all inclined to enlarge or extend the law. I think that where all parties have agreed to be bound by, and have acted on certain rules, it must be very clearly shown that the rules having an illegal tendency are a main feature of the trade union before they can render unenforceable the harmless rules."

(2) Are there two sets of rules, and two funds for trade and benefit purposes respectively?

On the same question Farwell, L.J., in *Russell's case* (*g*), said, " If there were two distinct sets of rules constituting two distinct contracts, with separate funds applicable respectively to militant and beneficent purposes, exclusively each of the other, the case might be different, but there are here no separate funds, and nothing to prevent funds standing to the credit of benevolent purposes from being applied to militant purposes, and the two portions of the union are bound together by the indissoluble nexus that members may be entirely expelled from the society, and lose all the benefit advantages, by reason of some breach of a militant rule." In *Mudd* v. *General Union of Operative Carpenters and Joiners* (*f*), Lord Coleridge took into account the fact that the subscriptions of members went to the defraying of all the outgoings of the defendants, and that there were no separate funds for separate purposes.

The rules of the Amalgamated Society of Carpenters and Joiners were also considered in the case of *Sayer* v.

(*g*) 79 L. J. K. B. 507; [1910] 1 K. B. 506; 102 L. T. 119; 26 T. L. R. 228; 54 S. J. 213.

that society (*h*), *supra*, p. 39, the decision being the same as in the other cases mentioned. The society was held to be a society primarily for the organisation of trade, and the rules with the objects of a friendly society being a small part of the whole, no action could be maintained in respect of a claim for accident benefit.

In *Burke* v. *Amalgamated Society of Dyers* (*i*) also, the question of the separability of the purposes of a society was considered. The objects of the society, as set forth in Rule 1, are stated on p. 41, *supra*. Kennedy, J., said, "It seems to me a fair inference that where the main purpose of such a society is such that a member can hardly avail himself of it without bringing into operation the purposes of the society which are in restraint of trade, an action would not lie [to enforce payment of benefit]. . . . In the present case I am unable to sever the two classes of objects. The main object clearly was to protect the interests of the workman and to interfere in his relations with his employers, and though, no doubt, the benefits are not confined to that, but extend to allowances in respect of sickness and accidents, I am inclined to think that the society comes within section 4."

The separability of the trade and benevolent purposes of a trade union was also well discussed in *Hornby* v. *Close* (*j*) and *Farrer* v. *Close* (*k*).

It will be seen that from these cases the following principles emerge:—

1. Rules in restraint of trade are generally not enforceable.

2. Rules that are not in restraint of trade may be so mixed up with rules that are in restraint of trade, that to enforce the former would be, in effect, to enforce

(*h*) The *Times*, 18th December, 1902; 19 T. L. R. 122.
(*i*) [1906] 2 K. B. 583; 75 L. J. K. B. 533.
(*j*) 10 Cox C. C. 393; 8 B. & S. 175; 36 L. J. M. C. 43; L. R. 2 Q. B. 153; 15 L. T. 563; 15 W. R. 336.
(*k*) L. R. 4 Q. B. 602; 38 L. J. M. C. 132; 20 L. T. 802; 10 B. & S. 533; 17 W. R. 1129.

the latter. In such cases neither will be enforced. A good test of the inseparability of the rules is to ask whether a member who breaks the trade rules is liable to lose his rights to benefits due under the other rules, as in *Cullen* v. *Elwin* and *Russell* v. *Amalgamated Society of Carpenters and Joiners*. Another test is the existence or non-existence of a provision for the separation of the funds applicable to trade union purposes from those applicable to friendly society purposes (*Russell* v. *Amalgamated Society of Carpenters and Joiners*).

3. If the rules that are not in restraint of trade can be separated from the rules that are in restraint of trade, the Court will enforce the former.

A combination to trade, and to offer in respect of prices, discounts, and other trade facilities, such terms as will win so large an amount of custom as to render it unprofitable for rival customers to pursue the same trade is not unlawful. Thus an association of steamship companies and owners agreed among themselves as to the amount of shipping to be sent to certain ports, the division of cargoes amongst themselves, and the determination of the rates of freight. They also offered reduced rates of freight to shippers who shipped only with members of the association. Agents of the associated members were prohibited, on pain of dismissal, from acting in the interests of competing shipowners.

A combination to drive a trader out of the market by underselling him is not a restraint on trade: *Mogul Steamship Co.* v. *M'Gregor, Gow & Co.*

It was thought that though this agreement was not binding upon any of the parties to it if he chose to withdraw, and could not therefore be enforced against him; it was not, however, obnoxious to the rule of public policy regarding restraints on trade (*Mogul Steamship Co.* v. *McGregor, Gow & Co.* (*l*)).

On the same footing as an association of this kind is a combination of workmen and an agreement among them

(*l*) [1892] A. C. 25; 61 L. J. Q. B. 295; 66 L. T. 1; 8 T. L. R. 182; 40 W. R. 337; 56 J. P. 101; see also *infra*, p. 95.

to cease work except for higher wages. Such an agreement, though not enforceable amongst the members *inter se*, is quite lawful at common law, even though a strike be the consequence, *per* Lord Bramwell in the *Mogul case* (*l*).

Following the same reasoning it would appear that combinations similar to those in *Hilton* v. *Eckersley* (*m*), *Chamberlain's Wharf, Ltd.* v. *Smith* (*n*), and *Urmston* v. *Whitelegg* (*o*) would be to the same extent lawful, even though they resulted in a lock-out or boycott.

(*m*) *Supra*, p. 9. (*n*) *Supra*, p. 12.
(*o*) *Supra*, p. 10.

CHAPTER III.

LIABILITY OF TRADE UNIONS IN CONTRACT.

Sections 3 and 4, Trade Union Act, 1871.

THE Trade Union Act of 1871, in legalising Trade Unions, enacted in section 3 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 "(*a*). Section 4, however, qualifies the privilege thus bestowed, and removes certain classes of agreements outside the protection given by section 3, by providing as follows :—

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

(*a*) Appendix E.

(*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 (*b*).

The reasons for the enactment of section 4 were discussed at some length and with much precision in the Scottish case of *M'Kernan* v. *United Operative Masons' Association* (*c*). "There is something not very logical," said the Lord Justice-Clerk, "in saying the association is lawful, and the objects of the association, though in restraint of trade, are lawful, but you shall not be allowed to enforce these agreements in a Court of Law. . . . But . . . it was not thought desirable that the purposes of an association of this kind should be specifically enforced by Courts of Law. No doubt it would be a singular thing if Courts of Equity in England were applied to to enforce the provisions of trade unions as to working or not working, or as to the amount of wages or hours of labour which the members might agree upon among themselves; and one can quite well see that associations might be perfectly lawful in themselves, though having objects which a Court of Law will not enforce." His lordship referred to associations whose members were pledged to wear nothing but Irish manufactured clothing, and associations whose members were pledged not to touch stimulants. "Such agreements," he said, "are nothing but promises; and the real ground why a Court of Law will not interfere is that nobody has a legitimate or legal interest to compel performance of them. The mere interest arising from possible moral or commercial results is not such an interest as a Court of Law will take notice of to enforce a restraint

(*b*) Appendix E. (*c*) 1 R. 4th series, 453.

on the will of the party which has been voluntary on his part."

Object of the Trade Union Act is not to keep trade unions out of the jurisdiction of the Courts.

On the other hand, the object of the Trade Union Act is not to keep trade unions out of the jurisdiction of the Court altogether. It recites with great care what the Courts are not to interfere with, and that exemption from their jurisdiction is very precisely limited, *per* Earl of Halsbury in *Yorkshire Miners' Association* v. *Howden* (*d*). When the same case was before the Court of Appeal, Mathew, L.J., speaking of section 4, said, "It is clear that the intention of the legislature was that the internal affairs of the union should be something which must be managed among the men themselves, and that they were not to have the assistance of the Courts to enforce their regulations among their members."

The five classes of agreements named in section 4 are left by the Act in the position they occupied before the Act was passed. Nothing in section 4 makes them illegal; nothing in the Act enables a Court to enforce them directly. If, therefore, any agreement coming within the description of section 4 was lawful and enforceable before the passing of the Trade Union Act, 1871, it is still lawful and enforceable. The position created by the Act of 1871 was well stated by Lord Justice Vaughan Williams in the Court of Appeal in *Yorkshire Miners' Association* v. *Howden* (*e*), "If those provisions [sections 2 and 3] stood alone, then, subject to any practical difficulties which might arise from the fact of a trade union not being a corporate body, the result would be that there would be nothing to prevent a trade union from suing or being sued for the purpose of enforcing an agreement which was, in its nature, in restraint of trade . . . which no other person in the realm can do. The legislature appears to have thought that the agreements made between the members of trade

(*d*) [1905] A. C. 256; 74 L. J. K. B. 511; 92 L. T. 701; 21 T. L. R. 431; 53 W. R. 667.

(*e*) [1903] 1 K. B. 308; 72 L. J. K. B. 176; 88 L. T. 134; 19 T. L. R. 193.

unions being ordinarily in restraint of trade, some limitation ought to be imposed upon their power to bring actions in respect of such agreements, after the removal of their prior disabilities as provided by sections 2 and 3 of the Act; and therefore section 4 was passed for that purpose." Lord Lindley, in the same case in the House of Lords, also said, "The section [section 4] 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 (*d*)." And Stirling, L.J., in the Court of Appeal (*e*), said, "The section [4] clearly cannot be read as prohibiting the Courts from entertaining proceedings for enforcing every agreement with reference to the funds of trade unions. . . . The word 'directly' is important."

In the Scottish case of *M'Laren* v. *Miller* (*f*) Lord Ormidale said, "As to whether the expression 'enable' in the section [4] must be construed to mean that the Court cannot entertain any action in which damages are concluded for, . . . we were inclined to think that such actions were not necessarily excluded, but only that no aid was to be taken from the statute to make them competent, if, in themselves, they were incompetent at common law."

The distinction between trade union agreements enforceable at common law, and those to which section 4 applies, has been already dealt with in Chapter II., to which the reader is referred.

Meaning of "direct" enforcement.

The phrase "directly enforcing" has several times been the subject of judicial discussion and decision. In *Yorkshire Miners' Association* v. *Howden* (*d*) the plaintiff brought an action for an injunction to restrain the defendant association from misapplying the funds of the association or

(*f*) 7 R. 869 (4th series).

dealing with them in a manner contrary to the rules. It was held that the action was not instituted with the object of directly enforcing an agreement for the application of the funds to provide benefits for members within the meaning of the Trade Union Act, the object being not to apply but to prevent misapplication of the funds. "The object of this action," said Vaughan Williams, L.J., "is not to enforce the agreement contained in the rules by declaring that the plaintiff is entitled to participate in the property or benefits of the association. . . . I think the collocation of the words 'recovering damages for the breach of' with the words 'directly enforcing' in section 4 of the Trade Union Act, 1871, points to legal proceedings the object of which is the obtaining some personal benefit by the plaintiffs."

Cope v. Crosingham.

In *Cope* v. *Crosingham* (*g*), the trustees of a trade union were, notwithstanding section 4 of the Act of 1871, held entitled to bring an action for an injunction to restrain the trustees of a branch from distributing the branch funds or dealing with them otherwise than in accordance with the rules of the society. Buckley, L.J., said, "It may well be that that word [directly] means (by way of contrast) enforcing by direct order as distinguished from enforcing by recovery of damages for breach. This action is not, I think (within any meaning of the word 'directly'), such a legal proceeding as is excluded by section 4."

The Scottish Courts have followed a similar course. Thus in *M'Laren* v. *Miller* (*f*), the Motherwell branch of the Amalgamated Society of Railway Servants for Scotland passed a resolution that the branch drop all connection with the national society, and that two of their members be appointed to withdraw from the bank the money belonging to the branch, and to retain it in their hands until a scheme for its distribution among the members be prepared. The trustees of the national society asked

(*g*) 25 T. L. R. 593; 78 L. J. Ch. 615; [1909] 2 Ch. 148; 100 L. T. 945; 53 S. J. 559.

for an interdict to restrain the Motherwell branch from doing these acts which were in defiance of the rules of the society, and an interdict was granted until the rights of the parties could be determined. Lord Ormidale said, "To my mind, it is obvious that the expressions in the section [4] have no reference to actions of interdict, which are intended merely to preserve the *status quo*."

Wolfe v. *Matthews.*

In *Wolfe* v. *Matthews* (*h*) an amalgamation of two trade unions being projected, certain members of one of the unions sought an injunction to prevent the application of any of the funds of the society for the purposes of the amalgamation, on the ground that such a use of the funds was contrary to an agreement amongst the members that the funds of the society were to be used in providing benefits to members. Held, that the Court might entertain the proceedings, as such an injunction would not be a direct enforcement of the alleged agreement. Speaking of 'direct enforcement,' Fry, J., said, "If there is a contract by A to pay £100 to B, that contract is directly enforced by a judgment of the Court directing A to pay B. And the contract is only indirectly enforced, or not at all, by a judgment restraining A from paying the money to some one else. It is only by a stretch of language that such an order can be said to enforce A's contract."

Duke v. *Littleboy* no longer binding.

The decision in *Duke* v. *Littleboy* (*i*) seems inconsistent with the two previous cases. The central executive of a trade union having refused to authorise a strike of a branch, the latter passed a resolution to secede. The plaintiffs, as representing the central society, sought an injunction to restrain the defendants, who were the officers and trustees of the branch, from dividing the funds among the members of the branch and dealing with them contrary to the rules of the society. They also claimed payment of so much of the funds of the branch as should not be required for current expenses. It was held that the action

(*h*) 21 Ch. D. 194; 51 L. J. Ch. 833; 47 L. T. 158; 30 W. R. 838.
(*i*) 49 L. J. Ch. 802; 43 L. T. 216; 28 W. R. 977.

was a proceeding within section 4 (3) (*a*) of the Trade Union Act, 1871, and the injunction was refused.

It seems unlikely that this case can stand as law since *Yorkshire Miners' Association* v. *Howden* (*j*), notwithstanding that it was not there expressly overruled. Lord Lindley did, indeed, go so far as to suggest that the view of the majority of the judges was in conflict with *Duke* v. *Littleboy*, but he qualified his suggestion by adding that the object of the action in *Duke* v. *Littleboy* was wider than it was either in *Wolfe* v. *Matthews*, or in *Howden's case*.

The Court will declare the meaning of trade union rules though it will not enforce them.

Even when no claim under the rules of a trade union can be enforced, it is probable that the Courts may be asked to make declarations as to their meaning and effect, *per* Fletcher Moulton, L.J., in *Gozney* v. *Bristol Trade and Provident Society* (*k*). But the power of the Court to restrain by injunction the misapplication of funds does not extend so far as to enable it to determine how the fund is to be applied. Thus when *Cope* v. *Crosingham* was before the Chancery Division (*l*), Eve, J., said, "Having declared that a distribution amongst the members is *ultra vires* and contrary to the rules, I must leave it to members to say how the fund is to be applied."

Expulsion of members.

The Court will not interfere to protect a member of a trade union from expulsion unless the right for which he seeks protection is a right in the nature of property. A member of a trade union in Scotland was threatened with expulsion under the following circumstances: The society had, by resolution, imposed on him a fine of £5 in respect of a libel alleged to have been uttered by him against the society. The society subsequently, by another resolution, threatened his expulsion unless he signed an apology. The member now brought an action asking for

(*j*) [1905] A. C. 256; 74 L. J. K. B. 511; 92 L. T. 701; 21 T. L. R. 431; 53 W. R. 667.

(*k*) [1909] 1 K. B. 901; 78 L. J. K. B. 616; 100 L. T. 669; 25 T. L. R. 370; 53 S. J. 341.

(*l*) 24 T. L. R. 816; 77 L. J. Ch. 777; [1908] 2 Ch. 624; 99 L. T. 609; *infra*, p. 170.

these two resolutions to be set aside, and for a declaration that his expulsion was illegal, and that he was entitled to damages for loss of benefits attached to membership. It was held that no action lay at the instance of a member to enforce his right to membership unless he could show pecuniary loss, and that the only loss alleged was deprivation of right under a contract not enforceable by law; and that an action against a trade union directed to enforcing or recovering damages for breach of an agreement to provide benefits was incompetent. The Lord President said, "The effect of a decree reinstating the plaintiff as a member of the society would be nil, for it could not be enforced, and the Court would not place itself in such a position" (*Aitken* v. *Associated Carpenters and Joiners of Scotland* (*m*)). *Rigby* v. *Connol* (*n*) was a similar case. A member of a trade union had been fined for an alleged breach of a rule, and, on his refusal to pay the fine, was expelled. He brought an action against the committee and the trustees of the union claiming that they should be restrained from preventing his sharing in the benefits of the union. Held, that he was not entitled to relief.

Jessel, M.R., said, "The foundation of the jurisdiction of a Court of Equity to interfere in favour of a member of a society to prevent his being improperly expelled, is the right of property which such member has vested in him, which right would be infringed by his expulsion from the society. . . . The plaintiff did not state that there was any property—that was a fatal objection to the claim."

Several members of an association of employers were expelled under the following rule:—

Any person being a member of the said association, who shall not act upon and keep all the rules of the said association, shall thereupon cease to be a member thereof,

(*m*) 12 R. 4th series, 1206.
(*n*) 14 Ch. D. 482; 49 L. J. Ch. 328; 42 L. T. 139; 28 W. R. 650.

At the moment of publication the Court of Appeal has come to a decision in the case of *Osborne* v. *Amalgamated Society of Railway Servants*, which modifies considerably the doctrine laid down in *Rigby* v. *Connol* as to the power of the Courts to protect a member of a trade union from expulsion.

See Addendum.

and shall forfeit all moneys paid into the said association, and shall under no circumstances or conditions be entitled to any repayment, or to any compensation or allowance in respect of his being a member of the said association, or in respect of any claim which he may then have against the funds of the said association. . . . Another rule was to the effect that on the winding-up and closing of the business of the association, any funds that might be in existence should, after payment of all expenses and the clearing off of all liabilities, be divided amongst the members of the association in the same proportions as they should have contributed to the funds thereof. Five of the constituent firms who had been expelled under the first-mentioned rule claimed the right to participate in the distribution of the funds on the winding-up of the association. It was, however, held that the funds must be distributed in accordance with the rules (*Strick* v. *Swansea Tin Plate Co.*) (*o*).

In *Chamberlain's Wharf, Ltd.* v. *Smith* (*p*), a member of a traders' association (for rules and objects of which see *supra*, p. 12) had been expelled under a rule of the association for breaking the rules. The expelled member sought an injunction to restrain the committee from acting on the resolution to expel him, on the ground that he had not been given an opportunity of being heard in his own defence. It was held that section 4 of the Trade Union Act prevented the Court from interfering. "The plaintiffs," said Lord Alverstone, "claim the aid of the Court in order to maintain their position as being entitled to rights in the character of members of the association, . . . this action is a proceeding 'instituted with the object of directly enforcing' the agreement contained and embodied in the rules of the association."

In Scotland a member of a trade union applied to the union for payment of accident benefit in respect of the

(*o*) 36 Ch. D. 558; 57 L. J. Ch. 438; 57 L. T. 392; 35 W. R. 831.
(*p*) [1900] 2 Ch. 605; 69 L. J Ch. 783; 83 L. T. 238; 49 W. R. 91.

loss of an eye, but the application was rejected. The rules provided that a majority voting on such an application should bind the applicant without appeal to a Court of Law. The aggrieved member, however, brought an action in which he alleged that the procedure had been irregular. Held, that under section 4 of the Act of 1871 the claim could not be enforced in a Court of Law (*M'Kernan* v. *United Operative Masons' Association* (*q*)).

Fines.

Certain members of a trade union were fined for writing to an employer to say that they were willing to work with non-union men. They brought an action for an injunction to restrain the society from levying the fine, but were told that the action would not lie and that the only way of avoiding payment was to refuse to submit to the rules (*Mullett* v. *United French Polishers' Society* (*r*)). But any attempt of the society to enforce payment of the fine by any form of coercion, such as procuring the dismissal of the men from their employment, is actionable, and as such proceedings do not come within the meaning of a trade dispute, the Trade Disputes Act, 1906, gives no protection. See *Conway* v. *Wade* (*s*) and *Giblan* v. *National Amalgamated Labourers' Union of Great Britain and Ireland* (*t*), *infra*, pp. 89 and 84.

Gozney v. *Bristol Trade and Provident Society.*

If the rules of a society are not in restraint of trade, a member who has been fined for an alleged breach of those rules, may apply to the Court for a construction of the rules with a view to deciding whether or not there has been a breach, and for an order for the return of the fine (*Gozney* v. *Bristol Trade and Provident Society* (*u*)).

Urmston v. *Whitelegg* (*v*), *supra*, p. 10, and *Edinburgh*

(*q*) 1 R. 4th series, 453.
(*r*) 91 L. T. 133; 20 T. L. R. 595.
(*s*) 25 T. L. R. 779; 78 L. J. K. B. 1025; [1909] A. C. 506; 101 L. T. 248; 53 S. J. 754.
(*t*) [1903] 2 K. B. 600; 72 L. J. K. B. 907; 89 L. T. 386; 19 T. L. R. 708.
(*u*) [1909] 1 K. B. 901; 78 L. J. K. B. 616; 101 L. T. 669; 25 T. L. R. 370; 53 S. J. 341.
(*v*) 63 L. T. N. S. 455; 55 J. P. 453.

and District Aerated Water Manufacturers' Defence Association v. *Jenkinson* (*w*), *supra*, p. 10, were both cases in which a trade union sought unsuccessfully to obtain the aid of the Court in enforcing payment of a penalty by a member.

Trade unions as friendly societies.

It was said by Lord Macnaghten in *Osborne* v. *Amalgamated Society of Railway Servants* (*x*) that the purposes of a trade union are two-fold, viz. trade purposes and benevolent purposes, and that the latter are secondary and subordinate to the former. The definition in section 23 of the Trade Union Act, 1871, does not expressly include benevolent purposes, but from the reference to benefits in section 4 (3) (*a*) it is clear that the legislature recognises such purposes as coming properly within the scope of a trade union, and as Fletcher Moulton, L.J., pointed out in *Osborne's case* (*y*) the adoption by the legislature of the term "trade union" might reasonably be regarded as a recognition of the lawfulness of those benevolent activities which, from the commencement, have been always associated with the phrase "trade union." It has been already stated in Chapter I., p. 2, *supra*, that the amended definition in section 16 of the Act of 1876 is wide enough to include the ordinary purposes of a friendly society. Members of a trade union may thus, under certain circumstances, be in the position of members of an unregistered friendly society in regard to their power to enforce their claim to benefits which are in the nature of friendly society benefits. The Friendly Societies Acts and the Industrial and Provident Societies Acts are not, however, to apply to trade unions. See section 5, Trade Union Act, 1871, Appendix E.

Knowles v. *Booth*.

The case of *Knowles* v. *Booth* (*z*) decided on section 30,

(*w*) 5 F. 1159.
(*x*) [1910] A. C. 87; 79 L. J. Ch. 87; 101 L. T. 787; 26 T. L. R. 177; 54 S. J. 215.
(*y*) In the Court of Appeal, 78 L. J. Ch. 204; [1909] 1 Ch. 163; 99 L. T. 945; 25 T. L. R. 107.
(*z*) 32 W. R. 432.

sub-section (10), of the Friendly Societies Act, 1875, since repealed, is instructive. The plaintiff, a member of the Amalgamated Society of Engineers (none of whose rules were in restraint of trade) had summoned the defendant, representing the society, for three weeks' superannuation allowance. The society denied the jurisdiction of the magistrates to deal with the case, and, on the magistrates allowing the claim, appealed. Lord Coleridge, C.J., said, "Their [the magistrates'] jurisdiction to entertain the case turns on the question, Was this a friendly society? The objects of the society do not exactly follow the words of the Act of Parliament, but all the objects of this society are included in the list contained in the Act, and there is no suggestion in the Act that a society, to be a friendly society, must include all the objects stated in the Act. The objects of the society are substantially the same as those of the Act. This society is therefore a friendly society. It is admitted that it is an unregistered society, and cannot, therefore, claim the benefit of section 22 [now re-enacted by section 68 of the Friendly Societies Act, 1896. See Appendix R], which applies only to registered societies, and upholds the rights of societies to deal with disputes under their rules without appeal to any court under certain provisions."

Gozney v. *Bristol Trade and Provident Society.*

The ability of members of a trade union to enforce their rights to friendly society benefits depends upon the nature of the trade purposes of the union. If these purposes would not have been illegal before the Act of 1871, section 4 of that Act will not prevent the legal enforcement of the right to benefit. Thus in *Gozney* v. *Bristol Trade and Provident Society* (*a*), a member of a society in receipt of sick pay was fined 2*s.* 6*d.* for being out after six o'clock in the evening in breach of the society's rules. He brought an action for a declaration (1) as to the construction of certain rules of the society, (2) that he was right in carry-

(*a*) [1909] 1 K. B. 901; 78 L. J. K. B. 616; 100 L. T. 669; 25 T. L. R. 370; 53 S. J. 341; *supra*, p. 66.

ing out his doctor's orders, (3) that the society was wrong in fining him for doing so, (4) for the return of the fine. The rules of the society, which was registered under the Trade Union Acts, provided for the raising of funds (by entrance fees, subscriptions, etc.) for the purpose of superannuation and sick benefit, funeral fund, travelling fund, assisting members in recovering compensation for injuries, and a trade fund. For certain of the "trade" rules, see *supra*, p. 45. Held, that there was jurisdiction to entertain the claim. In the opinion of Cozens-Hardy, M.R., none of these rules could be objected to as being in restraint of trade. The society was really a mutual insurance society against sickness, and loss of wages by reason of shortness of work (travelling relief), or by reason of voluntary abstention from work (strike pay). It was a harmless friendly society, and there was nothing illegal in its objects.

Swaine v. *Wilson*.

See also *Swaine* v. *Wilson* (*b*), where a member of the Bradford Powerloom Overlookers' Friendly Society sued the officers of the society for £50 benefit due under the rules. The society was not registered either under the Trade Union Acts or the Friendly Societies Acts. The rules of the society were considered to be legal, and the plaintiff was held entitled to recover. The rules challenged are set out on p. 44, *supra*.

Old v. *Robson*.

In *Old* v. *Robson* (*c*), the question was raised whether the Amalgamated Society of Carpenters and Joiners, registered as a trade union, was a trade union or a friendly society. The rules of the society (several of which are set out on p. 40, *supra*) gave members a right to an allowance in case of sickness or infirmity. A member applied to the magistrates to order payment of the allowance under the jurisdiction given them by the Friendly Societies Acts. Held, that the magistrates had no

(*b*) 6 T. L. R. 121; 24 Q. B. D. 252; 59 L. J. Q. B. 76; 62 L. T. 309; 38 W. R. 261; 54 J. P. 484.

(*c*) 6 T. L. R. 151; 59 L. J. M. C. 41; 62 L. T. 282; 38 W. R. 415; 54 J. P. 597.

jurisdiction to make the order. Where the friendly society objects and the trade union objects are so mixed up as to be inseparable, the society cannot get rid of the latter by relying on the former. It was argued on the member's behalf that *Knowles* v. *Booth* (*d*), *supra*, p. 67, was an authority in support of the magistrates' jurisdiction, but Pollock, B., pointed out that in the case of *Knowles*, the society had no rules in restraint of trade. See also *Sayer* v. *Amalgamated Society of Carpenters and Joiners*, *supra*, pp. 39 and 53.

Cullen v. *Elwin.*

In *Cullen* v. *Elwin* (*e*) a superannuation allowance of which a member was in receipt was discontinued in consequence of the rule under which it was granted being struck out by a vote of the members. The plaintiff, who had not consented to the striking out of the rule, brought an action to enforce payment of the allowance. It was held that, inasmuch as the unlawful trade purposes and rules were so mixed up with those of the friendly society that the latter could not be enforced without giving effect to the former, no action was maintainable to enforce the right to friendly society benefit. Mathew, L.J., said, "On reading the rules . . . there can be no doubt that this is not a friendly society. The friendly part of it is only ancillary to the trade union part; and the condition and consideration for granting a superannuation allowance is that the applicant shall belong from the first to the trade union." See also pp. 38 and 49, *supra*.

Rule under which benefit payable rescinded.

The rules of the Amalgamated Society of Dyers have been already discussed on pp. 41 and 54, *supra*. A member of this society became insane and was removed to a lunatic asylum. His insanity was admittedly a sickness entitling him to benefit under the rules, and the society made payments to the man's wife for nearly a year. The rule under which sick pay was granted was then amended so as to exclude from benefit any member

(*d*) 32 W. R. 432.
(*e*) 20 T. L. R 490; 90 L. T. 840; 19 T. L. R. 426; 88 L. T. 686.

confined in a lunatic asylum. This amendment was in accordance with a rule of the society which gave power to alter the rules. Judgment was given for the defendants on the ground that the alteration of the rule was binding upon the plaintiff. Kennedy, J., said, "So long as he [the deceased] had the safeguard of the consent of a two-thirds majority to any alteration in the rules, the deceased agreed that alterations might be made." The question of jurisdiction was also considered (*Burke* v. *Amalgamated Society of Dyers* (*f*)).

But unless the rules of the society sanction it, no such amendment of the rules will be permitted, not even if a majority of the members are consenting parties. This seems to follow from the decision in *Harington* v. *Sendall* (*g*), in which it was held that where the rules of a club contain no express provision for the making of amendments or alterations therein, the majority of members assembled in general meeting have no inherent authority, against the wishes of the minority, to alter the rules forming the written contract by which the members are bound; and a dissentient member, who has declined to pay an increased subscription imposed at a general meeting, and who has been consequently posted as in default, will be entitled to an injunction to restrain the committee of the club from excluding him from its privileges. Joyce, J., said, "It is contended that there must be an inherent power in general meetings, by a numerical majority of the members for the time being present, to alter the rules, either in any manner they may think fit, or, at all events, within certain limits that have not been precisely defined. For this proposition, however, nothing that can really be called an authority has been cited before me."

Personal representative or

Section 4 of the Act of 1871 not only prevents legal proceedings being taken by a member of a trade union on an agreement to pay benefits, but applies equally to

(*f*) [1906] 2 K. B. 583; 75 L. J. K. B. 533.
(*g*) [1903] 1 Ch. 921; 72 L. J. Ch. 396; 88 L. T. 323; 51 W. R. 463.

assignee of member cannot enforce benefits.

prevent the personal representative of a deceased member or any assignee or nominee of a member taking such proceedings. Thus a member of a trade union having become a lunatic and an inmate of the Hull Borough Asylum, the governors and guardians of the asylum obtained a magistrate's order against the trade union for the payment of a balance due to the member under the rules. On appeal this order was quashed. "It appears to me," said Mathew, J., "that the guardians are really seeking to enforce the agreement in the name of the pauper, and that if we allowed this to be done, the Act [Trade Union Act] would be entirely defeated, since it would be possible, in every case of an agreement with a trade union not enforceable by law, to make an assignment of the claim, and then it could be enforced" (*Winder* v. *Governors, etc., of Kingston-upon-Hull Corporation for the Poor* (*i*)).

Russell v. *Amalgamated Society of Carpenters.*

The question was raised in another form in the case of *Russell* v. *Amalgamated Society of Carpenters and Joiners* (*j*) (*k*). Russell, who had been a member of the society for forty years, became insane, and was thereby entitled to sick benefit or, alternatively, to superannuation benefit. The society gave sick pay until he was removed to an infirmary, and subsequently to a lunatic asylum. Payment was then discontinued. On his death the widow brought an action for a declaration that she was entitled to receive all the moneys which had accrued to him from the time payments were discontinued until his death. The rules of the society as discussed in this case are set out on pp. 41 and 51, *supra*, and on the construction of these rules, the Court of Appeal (*k*) held that the society was, at common law, and apart from the Act of 1871, an illegal society, its main object being in restraint of trade,

(*i*) 20 Q. B. D. 412; 58 L. T. 582; 52 J. P. 535.
(*j*) 25 T. L. R. 520.
(*k*) 79 L. J. K. B. 507; [1910] 1 K. B. 506; 102 L. T. 119; 26 T. L. R. 228; 54 S. J. 213.

and that therefore the action could not be maintained. In the King's Bench Division (*j*), some other questions were discussed in connection with this case. It was alleged on behalf of the plaintiff, that when payment was discontinued, the society commenced to retain all moneys payable to Russell, by way of benefit, for the purpose of accumulating the same on behalf of and in trust for him. The answer of Phillimore, J., to that argument was that "the duty of the society, according to the rules, was to pay Russell, and nothing but a receipt from him could exonerate them. If Russell had agreed with the defendants that they should retain the moneys for him, there might be a new contract, which might have been enforced. But if there were no such arrangement, there was either no contract at all, or it was a *nudum pactum*."

Then it was argued for the plaintiff that although section 4 of the Trade Union Act of 1871 prevented legal proceedings being taken by a member on an agreement to pay benefits, it did not prevent the legal representative of a deceased member taking proceedings. "That section," said Phillimore, J., "applied quite as much to a representative of a deceased member as to the member himself."

Section 4 of Trade Union Act not affected by s. 7 of Provident Nominations, etc., Act, 1883:

Section 7 of the Provident Nominations and Small Intestacies Act, 1883, was also relied on by the plaintiff. This section provides as follows:—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 [trustees], upon such evidence as they may deem satisfactory, to be entitled by law to receive the same. The answer of Phillimore, J., to this was that the section applied only to a case where there was no administration, whereas in the present case the plaintiff was administratrix. Further, the Act was not intended

to give a right which the deceased member had not got, but only to give the representative of the deceased person the right to the money without taking out letters of administration.

Finally, it was suggested that the plaintiff was entitled to get back the payments which Russell had made because the trade union had not performed their part of the contract, and that there was therefore a failure of consideration. "But," said Phillimore, J., "if the mere non-performance of a contract could be treated as a failure of consideration, then there was no failure because there had been a part performance of the contract by the society; and further, if that contention was sound, any member who paid subscriptions into a trade union could get his subscriptions back. The fact that since 1871 there had been no case to that effect showed that the contention was not sound."

nor by s. 10 of Trade Union Act, 1876

By section 10 of the Trade Union Act, 1876 (as amended by section 7 of the Provident Nominations and Small Intestacies Act, 1883) (*l*), a member of a trade union may, in writing, nominate any person to receive on the death of such member any sum not exceeding £100 payable in respect of the nominator's death out of the funds of the union. This provision does not, however, empower a nominee to enforce his right to the moneys by an action. Thus in *Crocker* v. *Knight* (*m*) a member of a trade union died having made a will appointing the plaintiff his executrix, and nominating her to receive his funeral money from the society. The society disputed the claim, and the plaintiff brought an action against the secretary for payment. Held, that there was nothing in section 10 of the Act of 1876, or in the Act at all, to show that it was intended to repeal the provisions of section 4 of the Act of 1871. "The object of this section," said Lindley,

(*l*) See Appendix F.

(*m*) [1892] 1 K. B. 702; 61 L. J. Q. B. 466; 66 L. T. 596; 40 W. R. 353; 56 J. P. 420.

L.J., "was not to depart from the policy of the earlier Act, but was entirely different, to enable persons of sixteen years of age and upwards, without the necessity of making a will and incurring the expense of probate, to give away any small sums that may be due to them from the trade union."

Trade union conducting litigation in member's name may be liable for costs. *Lees* v. *Lancashire and Yorkshire Miners' Federation.*

An implied undertaking by a trade union to pay the costs of proceedings instituted by the union to enforce a member's right to compensation against his employers, is not an agreement to provide benefit within the meaning of section 4 of the Act of 1871, and the Court will therefore enforce such an undertaking (*Lees* v. *Lancashire and Cheshire Miners' Federation* (*n*)). The plaintiff in this case was a workman in the employment of a company which provided a scheme of compensation under section 3 of the Workmen's Compensation Act. This scheme was managed by the Andrew Knowles and Sons (Ltd.) Accident Society. The plaintiff, having been injured, received compensation for some weeks and then further payment was refused. The federation caused legal proceedings to be taken against the accident society, the plaintiff allowing his name to be used, and the federation impliedly undertaking to pay the costs of the proceedings. The action failed and the taxed costs were paid by the federation, but on an appeal, which also failed, the federation refused to pay the taxed costs of the accident society. The plaintiff now sued the federation, claiming a declaration that the federation was bound to indemnify him against liability for these costs, and an order that the federation should pay these costs to the accident society. It appeared that one object of the action was to obtain a decision on the powers of the accident society, for the general benefit of those members of the federation who were under the scheme. Ridley, J., gave judgment for the plaintiff and said that the undertaking was that the

(*n*) *Times*, June 20th, 1906.

federation . . . should be responsible for all the costs of the appeal. The case did not fall within section 4 of the Trade Union Act, 1871, the word "benefits" in that section having a more limited reference to such benefits as sick pay, and strike pay, and not to a special undertaking such as this was. On this point see also *Mackendrick* v. *National Union of Dock Labourers:* Appendix T.

Trade union may only conduct litigation on member's behalf where there is common interest.

A trade union may only assist a member in bringing an action, where the union and the member have a common interest in the matter under dispute, and if this rule is overstepped the trade union is guilty of the offence of maintenance. See the case of *Greig* v. *National Amalgamated Union of Shop Assistants, etc.* (*o*), *supra*, p. 81, and *infra*, p. 106.

Member of trade union may sue *in forma pauperis.*

A member of a trade union is not precluded from bringing an action *in forma pauperis* by reason of the fact that his trade union is assisting him in the litigation: see *Gordon* v. *Pyper* (*p*), where a workman who brought an action to recover damages in respect of injuries received during his employment, was allowed to prosecute an appeal *in forma pauperis*, notwithstanding the fact that he was supported in the litigation by a trade union.

Court will restrain payments of benefits that are not in accordance with the rules.

The Court will restrain a trade union from paying out benefits to members otherwise than in accordance with the rules. This question was raised in *Yorkshire Miners' Association* v. *Howden* (*q*) (*r*), and in *Watson* v. *Cann, In re Durham Miners' Association* (*s*). These two cases are dealt with on pp. 28–31, *supra*. In the latter case some doubt was felt as to whether the forfeiture provided for by Rule 51 applied to all claims on the association, whether in respect of its trade purposes or of its benevolent purposes. As Rule 51 was included with other

(*o*) 22 T. L. R. 274.
(*p*) 20 R. (House of Lords) 23.
(*q*) [1903] 1 K. B. 308; 72 L. J. K. B. 176; 88 L. T. 134; 19 T. L. R. 193.
(*r*) [1905] A. C. 256; 74 L. J. K. B. 511; 92 L. T. 701; 21 T. L. R. 431; 53 W. R. 667.
(*s*) 17 T. L. R. 39.

rules under the heading "Cessation of Labour," Lord Justice Romer thought that it must be inferred from the heading that the claims referred to in Rule 51 were confined to claims in respect of cessation of labour.

Where a member of an unregistered trade union, suing for accident benefit, applied to have the president and secretary of the trade union named as defendants to defend the action on behalf of and for the benefit of all the members, the Court granted the application under Order 16, rule 9 (*Wood* v. *McCarthy* (*t*)).

In *Curle* v. *Lester* (*u*) it was held that the trustees of a trade union might be sued under sections 8 and 9 of the Trade Union Act, 1871, by a servant of the union for salary due.

As to the power of a branch to bind a trade union in contract, see *Mackendrick* v. *National Union of Dock Labourers:* Appendix T.

(*t*) [1893] 1 Q. B. 775; 62 L. J. Q. B. 373; 9 T. L. R. 447; 69 L. T. 431; 41 W. R. 523.
(*u*) 9 T. L. R. 480.

CHAPTER IV.

LIABILITY OF TRADE UNIONS IN TORT.

Trade union may be sued in tort in its registered name.

Taff Vale Ry. Co. v. *Amalgamated Society of Railway Servants.*

THE case of the *Taff Vale Railway Co.* v. *The Amalgamated Society of Railway Servants* (*a*) is remarkable by reason of the decision therein arrived at that a registered trade union may be sued in tort in its registered name. The facts briefly were as follows:—The servants of the Taff Vale Railway Company having struck work, the company brought an action against the Amalgamated Society of Railway Servants in its registered name, and against Messrs Bell and Holmes, the general and organising secretaries of the society, asking for an injunction to restrain the society, their servants, agents, and others acting by their authority, from watching or besetting the Great Western Railway Station at Cardiff and other places for the purpose of persuading or otherwise preventing persons from working. The Amalgamated Society moved the Court to strike out the name of the society, but it was held that the society might be sued in its registered name. It would, however, seem that the liability of a trade union in tort has not been greatly changed by this decision. In the words of Lord Lindley, "If the trade union could not be sued in this case in its registered name, some of its members (namely, its executive committee) could be sued on behalf of themselves and the other members of the society. . . . If the trustees in whom the

(*a*) [1901] A. C. 426; 70 L. J. K. B. 905; 85 L. T. 147; 17 T. L. R. 698; 50 W. R. 44; 65 J. P. 596.

property of the society is legally vested were added as parties, an order could be made in the same action for the payment by them out of the funds of the society of all damages and costs for which the plaintiffs might obtain judgment against the trade union. . . . This question is not a question of substance but of mere form."

The point thus raised by Lord Lindley was, about the same time, discussed in *Linaker* v. *Pilcher* (*b*), where an action of libel had been brought against the trustees of the Amalgamated Society of Railway Servants in respect of an alleged libel contained in the *Railway Review*, of which the society were the printers and publishers. It was held that, inasmuch as the trustees were entitled to be indemnified out of the funds of the union in respect of a liability incurred by them as the registered proprietors of a paper carried on in the interests of the members of the trade union, they could be sued in their capacity as trustees so as to bind the funds of the union.

Trade Disputes Act, s. 1.

Trade unions are, owing to the fact that they are so often engaged in the promotion of strikes, peculiarly liable to the civil action of conspiracy (*c*), and it was to lessen this liability that section 1 of the Trade Disputes Act, 1906, was enacted. This section was said by Cozens-Hardy, M.R., in *Conway* v. *Wade* (*d*), to repeal the law of conspiracy where there is a trade dispute. It provides that "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."

Picketing, *per se*, only a wrong if it amounts to a nuisance.

Picketing, *per se*, is not, and, even before the passing of the Trade Disputes Act, was not a legal wrong. *Ward, Lock & Co.* v. *Operative Printers' Assistants' Society* (*e*)

(*b*) 70 L. J. K. B. 396; 84 L. T. 421; 17 T. L. R. 256; 49 W. R. 413.
(*c*) On the question whether a civil action will lie for conspiracy alone, See *infra*, p. 121 *et seq.*
(*d*) [1908] 2 K. B. 844; 78 L. J. K. B. 14; 24 T. L. R. 874.
(*e*) 22 T. L. R. 327

was decided before the Act came into force. The secretary of a trade union stationed pickets to watch the plaintiffs' printing works, for the purpose of inducing the plaintiffs' workmen to join the union, and then to determine their employment by proper notice, the object being to compel the plaintiffs to become employers of union men and to abstain from employing non-union men. There was no evidence that the pickets invited the men to break their contracts, and the picketing was carried out without causing by violence, obstruction, or otherwise, a common law nuisance. Held, that the plaintiffs had no cause of action. Fletcher Moulton, L.J., said, "No wrong would have been done to the plaintiffs in the present case if the defendants had succeeded in persuading every printer's assistant in the country to join the union, and they had rendered it impossible for the plaintiffs to get men to work for them on the terms they desired. . . . The right of the plaintiffs to try to persuade a man to accept, and the right of the defendants to try to persuade a man to refuse, appear to me to be rights of freedom of individual action equally lawful and equally deserving of the protection of the law, so long as the means employed are lawful and right. . . . With regard to picketing, it must be shown that the defendants, or one of them, were guilty of a wrongful act, *i.e.* that the picketing constituted an interference with the plaintiffs' action, wrongful at common law, or, as I think it may accurately be phrased, were guilty of a common law nuisance."

Picketing declared legal by s. 2, Trade Disputes Act.

Section 2, sub-section (1), of the Trade Disputes Act, 1906, declares the legality of peaceful picketing in the following terms:—"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 com-

municating information, or of peacefully persuading any person to work or abstain from working."

It has been held in an Irish case, *Larkin* v. *Belfast Harbour Commissioners* (*f*), that section 2 of the Trade Disputes Act, 1906, in legalising "peaceful picketing," does not confer a right to enter upon private property against the will of the owner. A bye-law of the Belfast Harbour Commissioners prohibited persons from addressing a crowd on any quay, etc., without permission in writing. Larkin, without such permission, addressed a crowd of workmen on a quay, the property of the commissioners, and advised the men to go back to work. On being prosecuted under the bye-law, it was argued in his defence that section 2, sub-section (1), of the Trade Disputes Act gave him a right to attend at or near a place where a person works, if he so attended for the purpose of peaceably persuading any person to work. Lord O'Brien, L.C.J., said, " What does the word ' at ' in the second section of the Trade Disputes Act, 1906, mean? Does the word ' at ' in that section include the word ' in ' ? . . . Do the words, ' to attend at or near a house or place where a person resides or works,' authorise a person of the specified class, that is to say, 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 not only in the immediate proximity of a house or place where a person resides or works, but in—within—the house or place itself? . . . If this be so, the legislature has indeed conferred on the specified class a right which, I think, neither trade unions nor any one connected with them has ever before claimed —a right to invade the privacy of a man's house, or the factory, or place of business where a man's work is carried on."

In pursuance of strikes trade unions or their officials have, in order to exert pressure on an employer, frequently

Procurement of breach of

(*f*) [1908] 2 Ir. R. 214.

contract is a tort. *Lumley* v. *Gye*.

induced persons under a contract with an employer to break their contract. In *Lumley* v. *Gye* (*g*) it was decided that the other party to the contract who is injured by such a breach has a right of action against the person who has procured the breach. A singer, W., had contracted with the lessee of a theatre, L., to sing at his theatre and not elsewhere, without his consent, during a certain term. G. induced W. to break the contract, and to refuse to sing for L. It was held that an action was maintainable at common law, as the maliciously procuring W. to break her contract was a wrongful act from which damage accrued to L.

Bowen v. *Hall* (*h*) was a somewhat similar case. P., who possessed a secret for the manufacture of bricks, entered into a written contract with B. to find all the labour for the making of bricks and baths, and also undertook not to engage himself to any one else for a term of five years. H., a manufacturer, and F., his manager, induced P. to depart from his exclusive contract to manufacture bricks and baths for B. Held, that an action lies against a third person who maliciously induces another to break his contract of exclusive personal service with an employer, which thereby would naturally cause, and did in fact cause, an injury to such employer, although the relation of master and servant may not strictly exist between the employer and the employed.

In *Temperton* v. *Russell* (*i*) certain master builders and three trade unions had agreed to certain rules for the regulation of their trades. A firm of builders refused to observe the rules, and the joint committee of the three trade unions sought to compel T. to cease to supply this firm with concrete, brick, and other building materials. R., the representative of the three societies, approached B.,

(*g*) 22 L. J. Q. B. 463; 2 El. & Bl. 216; 1 W. R. 432; 17 Jur. 827.
(*h*) 6 Q. B. D. 333; 50 L. J. Q. B. 305; 44 L. T. 75; 29 W. R. 367; 45 J. P. 373.
(*i*) [1893] 1 Q. B. 715; 62 L. J. Q. B. 412; 69 L. T. 78; 41 W. R. 565; 57 J. P. 676.

another builder, whom T. was supplying with building materials under a contract, and, by threatening to call out his workmen, induced B. to refuse to take any more goods from T. Held, that an action was maintainable for maliciously procuring the breaches of contract and also for maliciously conspiring together to injure T. by preventing persons from entering into contracts with him, and that the right of action for maliciously procuring a breach of contract is not confined to contracts in the nature of personal service.

Quinn v. Leatham.

In *Quinn* v. *Leatham* (*j*) the members of a trade union sought to compel L., a butcher, to dismiss all non-union men in his employment. M., a meat salesman, had, for many years, bought large quantities of meat from L. The secretary of the trade union wrote to M. and told him that his men would be called out if he bought any more meat from L. In consequence M. ceased to deal with L. The dealings between L. and M., which had lasted for twenty years, were regulated by no formal contract, but L. sent each week, as a matter of course, a certain quantity of meat which M., as a matter of course, accepted. There would thus be a tacit contract which would be properly terminated by M. at any time, intimating to L. that he need not send any more meat. There was therefore, so far as L.'s relations with M. were concerned, no inducement to break a contract, but merely an inducement of M. not to deal with L., or perhaps to determine a continuing contract.

One of L.'s servants was also persuaded to leave his employment.

It was held that a combination of two or more, without justification or excuse, to injure a man in his trade by inducing his customers or servants to break their contracts with him, or not to deal with him or continue in his employment, is, if it results in damage to him, actionable.

(*j*) [1901] A. C. 495; 70 L. J. P. C. 76; 85 L. T. 289; 17 T. L. R. 749; 50 W. R. 139; 65 J. P. 708.

Giblan v. National Amalgamated Labourers' Union.

Giblan v. *National Amalgamated Labourers' Union of Great Britain and Ireland* (*k*) is another case of this class. The treasurer of a branch of the society had withheld a sum of money belonging to the society, and, though a county court judgment had been obtained against him, failed to make a complete restitution. He was therefore expelled from the society. Subsequently Williams, the general secretary (on two occasions), and Toomey, the secretary of the branch to which Giblan had belonged (on four occasions), procured the dismissal of Giblan from his employment by giving notice to the employers that the other men would be withdrawn unless Giblan was discharged.

The jury, in answer to several questions put to them, found, *inter alia* . . . (3) That the defendants called out the men, or threatened to call them out, in order to compel the plaintiff to pay the arrears of his defalcations. (4) That this was done by Williams, but not by Toomey, in order to punish the plaintiff for not paying such arrears. (5) That what the defendants Williams and Toomey, or either of them, did was not to warn the employers that the union men would leave in consequence of their being unwilling to work with the plaintiff. (6) That it was not done in consequence of the union men objecting to work with the plaintiff.

Held, that two or more persons, such as officers of a trade union, are not justified in combining to prevent, and in fact preventing, a workman who is, or has been, a member of the union from obtaining any employment in his trade or calling, to his injury, merely with the object of enforcing payment of a debt due from him to the union. "Since the decision of the House of Lords in *Quinn* v. *Leatham*," said Romer, L.J., "I take it to be clear . . . that a combination of two or more, without justification, to injure a workman by inducing employers

(*k*) [1903] 2 K. B. 600; 72 L. J. K. B. 907; 89 L. T. 386; 19 T. L. R. 708.

not to employ him, or continue to employ him, is, if it results in damage to him, actionable. . . . I fully realise that considerable difficulty may often arise in particular cases in ascertaining what is a justification within the meaning of my statement. As to this, I can only say that regard must be had to the circumstances of each case as it arises, and that it is not practically possible to give an exhaustive definition of the word to cover all cases. . . . This is not a case where the defendants, knowing of the plaintiff's defalcations, thought it their duty to warn employers as to the plaintiff's character, or where the plaintiff's fellow-workmen by reason of that character declined to work with him. And further . . . the intent on the part of the defendants to injure the plaintiff appears from the finding of the jury. The intent of the defendants was to prevent the plaintiff obtaining or retaining employment, in order to compel him to pay a debt due from him, and from this the intent to injure the plaintiff appears to me to follow. . . . In my judgment, if a person who, by virtue of his position or influence, has power to carry out his design, sets himself to prevent, and succeeds in preventing, a man from obtaining or holding employment in his calling, to his injury, by reason of threats to or special influence upon the man's employers or would-be employers, and the design is to carry out some spite against the man, or has for its object to compel him to pay a debt, or any similar object not directly connected with the acts against the man, then that person is liable to the man for the damage consequently suffered. The conduct of that person would be, in my opinion, such unjustifiable molestation of the man, such an improper and inexcusable interference with the man's ordinary rights of citizenship, as to make him liable in an action."

What is a justification for procuring breach of contract? *Giblan* v. *National Amalgamated Labourers' Union.*

Stirling, L.J., said, "The acts of the defendants were not excused . . . by the fact that the plaintiff had been guilty of defalcations and owed a considerable sum to

the trade union. . . . If the existence of the default or debt were admitted as a valid excuse for depriving a defaulter or debtor of his employment, a punishment might be inflicted on him far greater than that which is allowed by the law."

The Stop-day Case.

An important case belonging to this class of cases is the "Stop-day Case"—*South Wales Miners' Federation* v. *Glamorgan Coal Co.* (*l*). In order to counteract the action of middlemen and merchants in the coal trade whose operations tended to lower the price of coal, and hence the rate of miners' wages, the federation, by its executive council, ordered certain stop days on which the men were to cease from work without giving the notices required by the sliding-scale agreement then in force between the miners and their employers. In an action brought by the employers against the federation and others, it was held by the House of Lords that it is unlawful, in the absence of legal justification, for persons to combine in procuring a breach of contract by others; and the absence of malice or sinister or indirect motive and the desire, in discharge of a supposed duty, to benefit the persons induced to break their contracts, constitute no defence to an action for damages based on such procurement. The main argument in the case for the federation was that though their conduct was *primâ facie* an actionable wrong, it was justifiable under the circumstances. Dealing with this argument Lord Macnaghten said, "That there may be a justification for that which in itself is an actionable wrong I do not for a moment doubt. . . . But what is the alleged justification in the present case? It was said that the council—the executive of the federation—had a duty cast upon them to protect the interests of the members of the union, and that they could not be made legally responsible for the consequences of their action, if they acted honestly in good faith, and without

(*l*) 74 L. J. K. B 525; [1905] A. C. 239; 92 L. T. 710; 21 T. L. R. 441; 53 W. R. 593.

any sinister or indirect motive. . . . But the alleged duty was created by the members of the union themselves, who elected or appointed the officials of the union to guide and direct their action, and then it was contended that the body to whom the members of the union have thus committed their individual freedom of action are not responsible for what they do if they act according to their honest judgment in furtherance of what they consider to be the interest of their constituents. It seems to me that if that plea were admitted there would be an end of all responsibility."

An intended or actual breach of one contract does not justify procurement of breach of another.

Smithies v. *National Association of Operative Plasterers.*

In *Smithies* v. *National Association of Operative Plasterers and Others* (*m*), the particular facts in which would now be covered by section 3 of the Trade Disputes Act, 1906, a trade union called out the workmen of the plaintiff because he refused to dismiss a foreman who had, at one time, been a member of the union, but had ceased to be so in consequence of his refusal to pay a fine. Two of the men who came out in response to the call of the union were engaged to work for the plaintiff for a term of years, which had not expired. There was in existence an agreement between the Association of Operative Plasterers and an employers' association to the effect that in the event of any dispute, a strike should not be sanctioned by the Association of Operative Plasterers until an attempt should have been made to have the matter considered by a joint committee of employers and operatives with a view to an amicable settlement. In their defence the defendants alleged that the employers were intending to avoid a settlement of the dispute in accordance with this agreement, and that they therefore had caused the strike. Held, that the trade union, in procuring a continuing breach of contract by the workmen, had rendered themselves liable in damages to the employer, and that a *bonâ fide* belief on the part of the union that the employers

(*m*) [1909] 1 K. B. 310; 78 L. J. K. B. 259; 100 L. T. 172; 25 T. L. R. 205; and see *infra*, p. 110.

were intending to evade a settlement of the dispute in accordance with the agreement, or even an actual intention on the part of the employers to do so, did not constitute a cause or excuse which would justify the trade union in procuring the breach, by workmen, of contracts of service with the employers. "I have no doubt," said Buckley, L.J., "that it might be a justification . . . if the union had done no more than induce Forrester to break a contract which Smithies, having regard to the provisions of the National Agreement, never ought to have made with Forrester. But this is not the contention which is raised. The contention of the defendants here is: 'We were entitled to induce Forrester to break his contract with you, because you had broken your contract, as contained in the National Agreement, with us.' This is setting up that where there are two independent contracts, the breach of one by the one party, entitles the breach of the other by the other party. This contention cannot, in my opinion, be maintained."

Read v. *Operative Stonemasons.*

Where A, by threats, induces B to break his contract with C, it is no justification that the contract between B and C is a breach of a contract into which B has entered with A. Thus in *Read* v. *Friendly Society of Operative Stonemasons* (*n*) a trade union had an agreement with an employer under which the latter was to observe a certain rule of the society relating to apprentices. The employer, in defiance of this agreement, received the plaintiff as an apprentice to the trade of stonemason. The officers of the society protested, and, on a threat by them to call out their members, the employer refused to continue to teach the plaintiff. The plaintiff now sued the society for wrongfully and maliciously inducing the employer to break the contract of apprenticeship, and for maliciously conspiring to procure the contract to be broken. Held, that he had a good cause of action.

(*n*) [1902] 2 K. B. 732; 71 L. J. K. B. 994; 87 L. T. 493; 19 T. L. R. 20: 57 W. R. 115; 66 J. P. 822.

Collins, M.R., said, "They conspired to enforce, by threats, the breach of an agreement, justifying their conduct on the ground that the employers were under an obligation to the society not to make such agreement. . . . Where illegal means have been used to bring about a breach of contract to the detriment of a third party, 'just cause' cannot come into the discussion at all."

In *Conway* v. *Wade* (*o*) the facts were as follows:— Conway had made himself obnoxious to his fellow-workmen by reason of his refusal to pay a fine imposed by his trade union. Wade, a delegate of the union, spoke to the foreman of the works and told him he had better stop Conway, or there would be trouble with the men. Conway was accordingly discharged, and brought an action in the County Court against Wade. The jury found that Wade had uttered a threat to Conway's employers with the intention of preventing him from getting work; that this was done to compel Conway to pay the fine, and to punish him for not paying it; that this was not done only to warn Conway's employers that the union men would leave in consequence of their being unwilling to work with Conway; that it was not done in consequence of their being unwilling to work with him; and that Wade did something more than act on behalf of the men employed by Conway's employers.

Judgment was given in the County Court for Conway, and this judgment the House of Lords subsequently upheld. It should be mentioned, however, that the case came before the House of Lords on the question whether Wade's action had been done in contemplation or furtherance of a trade dispute.

The facts of this case as found by the jury distinguish it from *Allen* v. *Flood* (see *infra*, p. 95), where a trade union delegate procured the dismissal of two men by informing the employers that if these men were not

(*o*) [1909] A. C. 506; 78 L. J. K. B. 1025; 101 L. T. 248; 25 T. L. R. 779; 53 S. J. 754.

discharged, the men whom he represented would leave work. It appeared, however, that Allen's communication to the employers was a warning and not a threat uttered with the design of bringing pressure to bear on the minds of the employers. But if Allen had induced the employers to act as they did by wilfully misrepresenting to them the men's intentions, he might have rendered himself liable (*p*).

On this question of justification, see also *Peto* v. *Apperley* (*q*), *Haile* v. *Lillingstone* (*r*), *Trollope* v. *London Building Trades' Federation* (*s*), and the judgment of Lord Loreburn in *Conway* v. *Wade*, *infra*, p. 102.

Malice. The judgments and dicta in some of these cases contain expressions which suggest that in cases of this kind malice and an intention to do injury are the gist of the action. The correct view seems to be that to procure a breach of contract "maliciously" is to do so with the knowledge that a contract exists. Thus Crompton, J., in *Lumley* v. *Gye* (*t*), said, "It must now be considered clear law that a person who, wrongfully and maliciously, or, which is the same thing, with notice, interrupts the relation subsisting between master and servant, by procuring the servant to depart from the master's service . . . whereby the master is injured, commits a wrongful act, for which he is responsible at law." And in *Temperton* v. *Russell* (*u*) A. L. Smith, L.J., said, "To maintain the cause of action sued on there must be evidence that the defendant, with knowledge of the existence of a contract, had induced one of the contracting parties to break his contract, to the injury of the other contracting party." In *Allen* v. *Flood* (*v*), the House of Lords has very definitely pronounced that an act, lawful in itself, is not converted by

(*p*) See judgment of Lord Macnaghten in *Allen* v. *Flood*.
(*q*) *Law Times*, October 10th, 1891; *infra*, p. 159.
(*r*) *Ibid.*; *infra*, p. 160.
(*s*) 12 T. L. R. 373; 72 L. T. 342; *infra*, p. 161.
(*t*) 2 El. & Bl. 216; 22 L. J. Q. B. 463; 17 Jur. 827; 1 W. R. 432.
(*u*) *Supra*, p. 82.
(*v*) [1898] A. C. 1; 67 L. J. Q. B. 119; 77 L. T. 717; 14 T. L. R. 125; 46 W. R. 258.

a malicious or bad motive into an unlawful act so as to make the doer of the Act liable in a civil action. But according to Lord Herschell this must not be regarded as applying to the case of conspiracy, which is anomalous. Lord Justice Romer, in *Giblan* v. *National Amalgamated Labourers' Union of Great Britain and Ireland* (*vv*), certainly thought that an intention on the part of the defendants to injure the plaintiff would render their conduct unjustifiable.

Inducement of persons not to enter into contracts.

It was said in *Temperton* v. *Russell* (*w*) that there is no distinction between inducing persons to break contracts already entered into, and inducing them not to enter into contracts not yet concluded. And in support of this view it may be pointed out that Lord Loreburn said in *Conway* v. *Wade* (*x*) that 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 labour as he wills, even if there is no threat, nor violence, nor breach of contract, is an actionable wrong, unless it is done in contemplation or furtherance of a trade dispute. But in *Allen* v. *Flood* (*v*) Lord Herschell refused to assent to the proposition. Referring to *Temperton* v. *Russell*, he said, " It was said that there seemed to be no good reason why, if an action lay for maliciously inducing a breach of contract, it should not equally lie for maliciously inducing a person not to enter into a contract. So far from thinking it a small step from the one decision to the other, I think there is a chasm between them. The reason for a distinction . . . appears to me to be this, that in the one case the act procured was the violation of a legal right, for which the person doing the act which injured the plaintiff could be sued as well as the person who procured it; whilst in the other case no legal right was violated by the person who did the act from which

(*vv*) [1903] 2 K. B. 600; 72 L. J. K. B. 907; 89 L. T. 386; 19 T. L. R. 708.

(*w*) [1893] 1 Q. B. 715; 62 L. J. Q. B. 412; 69 L. T. 78; 9 T. L. R. 298; 41 W. R. 565; 57 J. P. 676; 4 R. 376; *supra*, p. 82.

(*x*) [1909] A. C. 506; 78 L. J. K. B. 1025; 101 L. T. 248; 25 T. L. R. 779; 53 S. J. 754.

the plaintiff suffered; he would not be liable to be sued in respect of the act done, whilst the person who induced him to do the act would be liable to an action." See also judgment of Lord Loreburn in *Conway* v. *Wade*, *infra*, p. 102.

Inducement of persons to terminate contracts in regular fashion.

It seems to follow from Lord Herschell's reasoning that A violates no legal right of C by inducing B, by lawful means, to terminate in regular fashion a contract into which B has entered with C. Nor does this conclusion seem to be in conflict with *Quinn* v. *Leatham* (*y*) if we remember that Munce was induced to terminate his contract with Leatham by the threat that his men would be called out if he continued his dealings with Leatham. And it was suggested in *Allen* v. *Flood* (*z*) that if Allen had procured the dismissal of the two shipwrights by wilfully misrepresenting to the employers the intention of the boilermakers, an actionable wrong would have been committed. In the Scottish case of *Cowper & Sons* v. *Macfarlane*, it appears from Lord Gifford's judgment that in actions for procuring breaches of contract allegations of false statements and misrepresentation are no less relevant than allegations of personal violence. See 16 Sc. L. R. at p. 384.

Breach of a contract to work for persons not determined. *Walters* v. *Green*.

Walters v. *Green* (*a*) was an action brought by several members of an association of master builders in Hull against the officials of various trade unions. A strike in the building trade had led the association to import into Hull numbers of workmen to replace the strikers. The statement of claim alleged that the defendants had combined and conspired together to watch railway stations and other places where the imported workmen might happen to be, for the purpose of persuading those workmen not to work for any member of the association. Held, that these acts constituted a cause of action. Stirling, J., said, "The contracts which were made here with the

(*y*) [1901] A. C. 495; 70 L. J. P. C. 76; 85 L. T. 289; 17 T. L. R. 749; 50 W. R. 139; 65 J. P. 708.

(*z*) 1898 A. C., *per* Lord Macnaghten, at p. 149.

(*a*) [1899] 2 Ch. 696; 68 L. J. Ch. 730; 81 L. T. 151; 15 T. L. R. 532; 48 W. R. 23; 63 J. P. 742.

workmen were made on behalf of the masters' association, and the workmen were to work for such members of that body as should be specified by the association or some member thereof. They were intercepted before they went to work or any member had been specified, ... I think that the intercepting of the men, so that a particular master lost the chance of employing those particular men who were intercepted, is a sufficient damage to enable the master to sue."

In *McElrea* v. *United Society of Drillers* (*b*) a workman who had been expelled from the society was refused employment by a foreman at the instance of the secretary of the society. It was alleged that the foreman was influenced by threats uttered by the secretary. The plaintiff's case however broke down by reason, *inter alia*, of his failure to prove coercion. The Master of the Rolls, speaking of the evidence given by the foreman, said, " He was the foreman in the yard where the plaintiff was employed, and it was clear that he was alive to the difficulties which arose when non-union workmen were introduced among union men. He said in his evidence that as the men in the yard were society men he was afraid friction might arise if non-society men were introduced. In my opinion, the plaintiff failed to prove coercion, and the evidence called by him negatived the influence which coercion was to effect."

In *Huttley* v. *Simmons* (*c*) the defendant had induced a cab proprietor not to engage the plaintiff to drive a cab, nor to let him have a cab on hire to be driven by him. This was done in order to injure the plaintiff, and to procure some indirect advantage for the members of the trade union for whom the defendant was acting, but not to procure any advantage for the defendant himself. Darling, J., thought that no legal right of the plaintiff had been violated.

Bulcock v. *St. Anne's Master Builders' Federation* (*d*) was

(*b*) *Times*, February 17th, 1905.
(*c*) [1898] 1 Q. B. 181; 67 L. J. Q. B. 213; 14 T. L. R. 150.
(*d*) 19 T. L. R. 27.

an action brought by a workman against the federation for procuring his dismissal from employment. The workman who had ceased to work for a member of the federation in consequence of a strike obtained employment in another town. The federation asked the Lancashire and Cheshire Building Trades Society, to which it was affiliated, to intervene in order to procure the plaintiff's new employer to dismiss him. The employer, who was a member of another similar federation, also affiliated to the Lancashire and Cheshire Trades Society, was pledged, under the rules of the federation, not to employ any workman who was on strike or locked out from the shop of another member, and in order to avoid any trouble with the other members of the federation he dismissed the plaintiff. Held, that there was no evidence of any actionable wrong done to the plaintiff by the defendants. The Lord Chief Justice said, "It would not be disputed that some combination between masters might be lawful that might get them into trouble and inconvenience if they did not obey the rules of their association. Thompson and Brierley dismissed the plaintiff, not in consequence of threats, though probably they had in their mind that to continue to employ him might get them into trouble. They, within their legal rights, did not continue to employ the plaintiff. The judge had found that there was no evidence of any act done with an intention to injure the plaintiff, and that there was no evidence of anything except acts by the defendants to further their own purposes."

In the course of a lock-out in the tailoring trade an association of master tailors circulated a "black list" containing the names of men locked out, and asking master tailors not to employ such men. In consequence of this list the plaintiff was refused work, and brought an action against the president of the Sheffield branch of the association. The Court held that the principle of the *Mogul Steamship case* applied, that there was no evidence that the defendants were actuated by any other motive

than self-interest, and that if that were so, and they were not desirous of injuring the plaintiff, that was not actionable (*Jenkinson* v. *Nield* (*e*)); see also *Ward, Lock & Co.* v. *Operative Printers' Assistants' Society* (*f*).

Allen v. *Flood* (*g*) and the *Mogul Steamship Company* v. *McGregor, Gow & Co.* (*h*) are cases the facts in which bear a strong resemblance to those in *Quinn* v. *Leatham* (*i*) and *Temperton* v. *Russell* (*j*).

Allen v. Flood.

In *Allen* v. *Flood*, Allen, an official of a trade union, induced an employer to dismiss two workmen by informing him that the men whom he represented would leave work unless this were done. The men dismissed were shipwrights who had incurred the resentment of their fellows (who were boiler makers) by undertaking to do iron work on a previous job. The employers were under no obligation to continue to employ the two men, and the case was thus one of procuring the termination rather than the breach of a contract. It was held that Allen's conduct was not actionable.

The Mogul case.

In the *Mogul Steamship Company's case* (see *supra*, p. 55) the plaintiff company desired to join the association of steamship companies, but were refused entrance. They then sent two of their steamers to Hankow to secure homeward cargoes, but the agents of the association sent circulars to the shippers at Hankow reminding them that if they shipped by these two steamers they would be excluded from participating in the six-monthly return. Steamers belonging to the association were also despatched to Hankow to underbid the plaintiff's steamers, with the result that the latter could only secure freights at low

(*e*) 8 T. L. R. 540.
(*f*) 22 T. L. R. 327.
(*g*) [1898] A. C. 1; 67 L. J. Q. B. 119; 77 L. T. 717; 14 T. L. R. 125; 46 W. R. 258.
(*h*) [1892] A. C. 25; 61 L. J. Q. B. 295; 66 L. T. 1; 8 T. L. R. 182; 40 W. R. 337; 56 J. P. 101.
(*i*) [1901] A. C. 495; 70 L. J. P. C. 76; 85 L. T. 289; 17 T. L. R. 749; 50 W. R. 139; 65 J. P. 708.
(*j*) [1893] 1 Q. B. 715; 62 L. J. Q. B. 412; 69 L. T. 78; 9 T. L. R. 298; 41 W. R. 565; 57 J. P. 676.

and unremunerative rates. Certain agents of members of the association were also dismissed because they had acted for the plaintiffs. Held, that no legal right of the plaintiffs had been violated by the defendants' conduct. Speaking of the dismissal of the agents Lord Watson said, "The withdrawal of agency at first appeared to me to be a matter attended with difficulty, but on consideration I am satisfied that it cannot be regarded as an illegal act. In the first place it was impossible that any honest man could impartially discharge his duty of finding freights to parties who occupied the hostile position of the appellants and respondents; and in the second place the respondents gave the agents the option of continuing to act for one or other of them in circumstances which placed the appellant at no disadvantage."

Allen v. *Flood* and the *Mogul case* distinguished from *Quinn* v. *Leatham* and *Temperton* v. *Russell*.

The facts which distinguish the two classes of cases are, that in *Allen* v. *Flood* and the *Mogul case* the acts of the defendants were acts of trade competition, done with the intention of benefiting themselves by securing such advantages as competitors in trade are constantly striving for. In the cases of Quinn and Temperton the acts complained of were done, not so much with the intention of benefiting the defendants as injuring the plaintiffs (a material element in cases where conspiracy is alleged, see *supra*, p. 91). Thus Lord Shand said in *Quinn* v. *Leatham* (*k*), "As to the vital distinction between *Allen* v. *Flood* and the present case, it may be stated in a single sentence. In *Allen* v. *Flood* the purpose of the defendant was, by the acts complained of, to promote his own trade interest, which, it was held, he was entitled to do, although injurious to his competitors, whereas in the present case, while it is clear there was combination, the purpose of the defendants was to injure the plaintiff in his trade as distinguished from the intention of legitimately advancing their own interests. . . . The ground of the judgment [in *Allen* v. *Flood*] of

(*k*) [1901] A. C. 495; 70 L. J. P. C. 76; 85 L. T. 289; 17 T. L. R. 749; 50 W. R. 139; 65 J. P. 708.

the majority of the House, however, varied in expression by their lordships, was, as it appears to me, that Allen in what he said and did was only exercising the right of himself and his fellow-workmen as competitors in the labour market—and the effect of injury thus caused to others from such competition which was legitimate, was not a legal wrong. . . . The defendants here have no such defence as legitimate trade competition. . . . They acted by conspiracy, not for any purpose of advancing their own interests as workmen, but for the sole purpose of injuring the plaintiff in his trade." Lord Lindley in the same case said, " In this country it is now settled by the decision of this House in the case of the Mogul Steamship Company, that no action for a conspiracy lies against persons who act in concert to damage another, and do damage him, but who, at the same time, merely exercise their own rights and who infringe no rights of other people."

Scottish Co-operative Society v. *Glasgow Fleshers.*

The case of the *Scottish Co-operative Wholesale Society, Ltd.* v. *Glasgow Fleshers' Trade Defence Association* (*l*) bears a close resemblance to that of the *Mogul Steamship Co.* v. *McGregor, Gow & Co.* (*m*). An association of butchers in a particular locality intimated to the cattle salesmen in a particular market that they would not, in future, bid at the auction sales in that market unless the salesmen declined to receive bids made by the Co-operative Stores. In consequence the salesmen inserted a notice in their conditions of roup to the effect that they would not accept bids from any one representing the Co-operative Stores, and, in pursuance of such notice, refused such bids. The market in question was held on a public wharf, where any one was entitled to transact business or to act as salesman, but it was, for the time being, the only place in Scotland licensed for the landing of American and Canadian

(*l*) 35 Sc. L. R. 645.
(*m*) [1892] A. C. 25; 61 L. J. Q. B. 295; 66 L. T. 1; 8 T. L. R. 182; 40 W. R. 337; 56 J. P. 101.

cattle. The Co-operative Association brought an action against the salesmen and the butchers, against the former for an interdict prohibiting the insertion of the condition above referred to in their articles of roup, and against the latter for damages for the loss which they alleged they, the society, had sustained through the action of the butchers in inducing the salesmen not to sell to them. Held, that the action was irrelevant in respect (*a*) that the salesmen were entitled to insert the conditions of sale complained of; and (*b*) that the butchers were not liable for damages for inducing the salesmen to do an act, lawful in itself, by means which they were entitled to adopt. "It would be absurd," said Lord Kincairney, "to shut one's eyes to the obvious fact that the ultimate aim of these defenders was, at least in part, and probably wholly, the furtherance of their own interests by disabling and putting an end to the competition of the Co-operative Society fleshers, firstly as bidders, and secondly as retailers. . . . It cannot, I think, be doubted that if A informs B that he will not deal with him unless he ceases to deal with C, and C thereby loses the custom of B, C has no action against A, although he may in fact have suffered loss through his interference; and if it should appear or be admitted that A made his request or demand for no other reason than because he disliked C and wished to injure him, that, according to the doctrine of *Flood* v. *Allen*, would make no difference. . . . The distinction between the action of one and that of several has no doubt been taken by various judges in England in different cases. But I confess I am not able to think that it matters here. It appears to me that the fleshers acted within their legal rights. It may be regrettable that they happened to have as much in their power. That is the accident of their position and of the peculiar character of the foreign cattle market. . . . I think that this case is strictly analogous to the case of the Mogul, and is not a case of mere malicious purpose—a case which indeed

must occur seldom, if at all, in business transactions."

The foregoing decisions relating to the procuring of breaches of contract are now less important than they once were, for section 3 of the Trade Disputes Act, 1906, enacts that :—" 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." It will be noticed that the only contracts referred to in the section are contracts of employment. Section 3, Trade Disputes Act.

The term " trade dispute " is thus defined in section 5, sub-section (3) of the Act :—" 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 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." Definition of "trade dispute."

Whether a trade dispute is in existence or contemplation is a question of fact. " A mere personal quarrel, or grumbling, or an agitation will not suffice. It must be something fairly definite and of real substance," *per* Lord Loreburn in *Conway* v. *Wade* (*n*). The facts in this case are given on p. 89, *supra*. In view of the findings of the jury that Wade's threat to the employers of Conway was Trade dispute a question of fact.

(*n*) 25 T. L. R. 779 ; 78 L. J. K. B. 1025 ; [1909] A. C. 506 ; 101 L. T. 248 ; 53 S. J. 754.

made in order to compel Conway to pay the arrear of the fine, and to punish him for not paying it, the Master of the Rolls, in the Court of Appeal, thought that there was an existing trade dispute in furtherance of which the threats were uttered, namely, a dispute between some members of the union and the plaintiff arising out of the non-payment of the fine. He further thought that there was ground for holding that the threat was in contemplation of another trade dispute, namely, a dispute between the employers and the union men if the plaintiff continued to work (*o*). The House of Lords, however, upheld the finding of the jury that there was no trade dispute.

In *Quinn* v. *Leatham* (*p*) it was stated that the words "trade dispute between employers and workmen" in section 3 of the Conspiracy and Protection of Property Act, 1875, do not include a dispute on trade union matters between workmen who are members of a trade union, and an employer of non-union workmen who refuses to employ members of a trade union. But the wording of the above definition in the Trade Disputes Act seems to cover such a dispute.

The Master of the Rolls, giving judgment in the case of *Conway* v. *Wade* (*o*) in the Court of Appeal, expressed the opinion that a "trade dispute" cannot be limited to a dispute between a body of men on one side and a body of men on the other side, but includes a dispute between an individual on one side and a body of men on the other. It does not, however, include a dispute between employers and employers, although it expressly includes a dispute between workmen and workmen.

In the same case the phrase "in contemplation or furtherance of a trade dispute" was examined with considerable care. The jury in the County Court had, in

(*o*) [1908] 2 K. B. 844; 24 T. L. R. 874; 78 L. J. K. B 14.
(*p*) [1901] A. C. 495; 70 L. J. P. C. 76; 85 L. T. 289; 17 T. L. R. 749; 50 W. R. 139; 65 J. P. 708.

addition to their other findings (see p. 89, *supra*), found that there was no trade dispute either existing or contemplated by the men. The Master of the Rolls, in the Court of Appeal (*o*), thought that even if there is no existing trade dispute, the act may be justified whether it prevents the contemplated trade dispute from arising or stimulates it. And, though the House of Lords on the findings of the jury reversed the decision of the Court of Appeal, there is nothing in the opinions expressed by the learned Lords on that occasion which is directly contrary to the opinion of the Master of the Rolls on this point. Referring to the words "in contemplation or furtherance of a trade dispute," Lord Loreburn said, "I think they mean that 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. In either case the act must be genuinely done as described, and the dispute must be a real thing, imminent or existing. The words, however, cannot fairly be confined to an act done by a party to the dispute. . . . A dispute may have arisen, for example, in a single colliery of which the subject is so important to the whole industry that either employers or workmen may think a general lock-out or a general strike is necessary to gain their point. Few are parties to it, but all are interested in the dispute. If, however, some meddler sought to use the trade dispute as a cloak beneath which to interfere with impunity in other people's business or work, a jury would be entirely justified in saying that what he did was done in contemplation or furtherance, not of a trade dispute, but of his own designs, sectarian, political, or purely mischievous as the case might be."

The Master of the Rolls, in the Court of Appeal, had said that if the trade dispute has arisen, the act must be in furtherance of it, and if the act is done by a peacemaker with a view to terminating the dispute, it is not protected. Dealing with this argument, Lord Loreburn

said (*q*), "In regard to a peacemaker, who, in the opinion of the Court of Appeal, is not protected under this section, he requires no protection. A peacemaker is not, under the laws of this country, and never has been, liable in an action."

The law relating to interference with contracts, etc.

The liability at common law and under the Trade Disputes Act, 1906, respectively, for inducing some one not to employ or not to serve another is thus conveniently summarised by Lord Loreburn in his judgment in *Conway* v. *Wade* (*q*), "The law [before 1906] stood as follows :—

(*a*) Before the Trade Disputes Act.

If the inducement was accompanied by violence or threats (always remembering that a warning is one thing and a threat is another) there was a good ground of action. I next suppose there was no violence and no threat, and yet the inducement involved a breach of contract; then, also, it was established after a long controversy commencing with *Lumley* v. *Gye* . . . that an action could be maintained unless . . . some sufficient justification could be made good. But suppose one person simply induced some one not to employ another or not to serve another, without violence or threat or breach of contract, would an action lie? . . . I believe there has not been either a conclusive or an exhaustive answer to that question. The further difficulty arises, what is a sufficient justification? Is it supplied by self-interest, or by trade competition, or by what other condition or motive? No answer in general terms has ever been given, and perhaps no answer can be given. A parallel difficulty arises where the inducement is by two or more persons acting together. . . . Certainly some dicta in recent cases gave rise to an apprehension that it might be held unlawful for men to induce others to join them in a strike, especially in what is termed a secondary strike; for the essence of a strike consists of inducing others not to serve particular employers, or, as the case may be, any employers in a particular trade. . . .

(*q*) 25 T. L. R. 779; 78 L. J. K. B. 1025; [1909] A. C. 506; 101 L. T. 248; 53 S. J. 754.

That, stated generally, was the state of the law preceding the Trade Disputes Act, 1906. . . . Let me say how this [section 3 of the Trade Disputes Act, 1906] alters the existing law. . . . If there be threats or violence, this section gives no protection in any case; for then there is some other ground of action beside the ground that it induces some other person to break a contract and so forth. So far there is no change. If the inducement be to break a contract without threat or violence, then this is no longer actionable, provided always that it was done in contemplation or furtherance of a trade dispute. . . . In this respect there is a change. If there be no threat or violence and no breach of contract, and yet there 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 labour as he wills, there again is perhaps a change. It is not to be actionable provided that it was done in contemplation or furtherance of a trade dispute. So there is no longer any question in such case whether there was sufficient justification or not."

(b) After the Trade Disputes Act.

Section 4, sub-section (1), of the Trade Disputes Act, 1906, prohibits in general terms all actions of tort against trade unions: "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."

Section 4, Trade Disputes Act.

Sub-section (2) is less sweeping in its phraseology: "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 furtherance of a trade dispute."

It will be noticed that in sub-section (2) the phrase

"tortious act" is qualified by the words "committed in contemplation or furtherance of a trade dispute," whilst in the first sub-section it is used without such qualification. The extent of the immunity thus given to trade unions is therefore a matter of some doubt. In *Osborne* v. *Amalgamated Society of Railway Servants* (*r*), Fletcher Moulton, L.J., in the Court of Appeal said, "Section 4, sub-section (1) of the Trade Disputes Act, 1906 . . . frees trade unions from liability in all actions of tort," and implies that libel is one of the wrongs from the consequences of which they are protected by the sub-section. In *Bussy* v. *Amalgamated Society of Railway Servants and Bell* (*s*), an action for malicious prosecution, it was held that the section is general in its application, and is not limited to a tortious act arising out of a trade dispute.

Immunity probably only extends to cases of trade disputes.

Rickards v. *Bartram.*

On the other hand, *Rickards* v. *Bartram* (*t*) decided that an action of libel was maintainable against a trade union, and that section 4 of the Trade Disputes Act, 1906, had no application, there being no trade dispute either in existence or in contemplation at the time of publication of the alleged libel. Darling, J., said that it had been submitted to him that where trade unions were concerned it was possible for the unions to commit wrongs against individuals without any corresponding remedy on the part of the person wronged. That meant that unions could be guilty of slander, libel, assault, battery, false imprisonment and malicious prosecution, and that the person aggrieved had no remedy against the union. . . . He (the learned judge) held that trade unions were amenable if they did such things, unless those things were done in contemplation or furtherance of a trade dispute.

Members and officials of trade unions liable personally unless protected by section 3.

The immunity given by sub-section (1) of section 4 of the Trades Disputes Act, 1906, does not extend to the members and officials of trade unions personally. These

(*r*) 25 T. L. R. 107; 78 L. J. Ch. 204; [1909] 1 Ch. 163; 99 L. T. 945.
(*s*) 24 T. L. R. 437.
(*t*) 25 T. L. R. 181.

appear to be still liable for all torts committed by them, other than those in respect of which section 3 gives an immunity. In *Bussy* v. *Amalgamated Society of Railway Servants and Bell*, the facts were as follows:—Bussy, an advertisement contractor, brought out a souvenir of a congress of the Railway Women's Guild, and obtained money from advertisers on the alleged false pretence that the souvenir was the official production of the Amalgamated Society of Railway Servants. The Society prosecuted him at the Middlesex Sessions, but the case was stopped, and the plaintiff acquitted. He thereupon brought an action for malicious prosecution against the society and its secretary, Mr. Bell. Held, that an action will lie against a member or official of a trade union for a tort committed by him when acting on behalf of himself and all other members of the union, section 4 only preventing him from being so sued as to render the trade union, as such, and its funds liable for the tortious act. Darling, J., said, "Mr. Bell, by his defence, claims that he, being an official of a trade union, is personally entitled to the same immunity as is now to be enjoyed by his employers. I cannot think that this is the meaning of the statute. . . . The officials or members of the trade union are not liable to be sued 'on behalf of themselves and all other members of the trade union,' in the sense that they cannot be sued so as to make the trade union, as such, and the funds of it, liable for their acts. The words of the section are not explicit; but unless they are to be understood as I think, it would follow that not only a trade union, but all its officials, in numbers unlimited, might, without liability to make reparation in damages, be guilty of any and every wrong known to the law, such as slander, libel, assault, wounding, false imprisonment, and even the wrong here complained of. . . . I am not convinced that Parliament can have meant that no one committing any of these wrongs should be liable to make reparation if he were privileged to occupy

Bussy v. *Amalgamated Society of Railway Servants.*

a post as official of a trade union and could satisfy a jury that he acted on their behalf alone. The immunity claimed for Mr. Bell appears inadmissible, since it would involve that, were all the members of a trade union also officials of it, there would be absolute irresponsibility for them all and singular, and such cases might well occur, for a union of masters might many times consist of very few members, and all of these might be officials." See also *Linaker* v. *Pilcher*, *infra*, p. 169.

Maintenance.

Greig v. *Shop Assistants.*

The case of *Greig* v. *National Amalgamated Union of Shop Assistants, Warehousemen, and Clerks* (*u*) illustrates the necessity for caution on the part of trade unions who embark on litigation on a member's behalf. The rules of the society provided that in cases of disputes arising between members and their employers, or unlawful treatment of members by their employers, the executive committee were, if they considered the merits of the case justified such a course, to provide legal aid for members. A member of the union was dismissed by his employers without the necessary notice. The general secretary of the union wrote to the employer, who stated that the man was dismissed for dishonesty. The union took proceedings for recovering a week's wages in lieu of notice, and the employer paid. The executive committee then obtained the member's consent to bring an action for libel against the employer in respect of the letter. The action was brought by the union and dismissed with costs. The employer then brought an action against the trade union to recover his taxed costs of the action, alleging that the defendants had instigated the member to commence and prosecute an action, and had maintained the action by undertaking to pay and paying the whole of the costs of the solicitors who had acted for the member in the action.

Held, that the union had instigated the plaintiff to bring the action, for which there was no reasonable or

(*u*) 22 T. L. R. 274.

probable cause, that the union had wrongfully maintained the plaintiff in the action having no common interest, and that therefore they were liable. Lord Alverstone said, "The limits within which a trade union might legitimately give legal aid to its members in protection of their interests on the ground of common interest could not be stretched to cover a case of alleged libel."

Section 9 of the Trade Union Act, 1871, is referred to in sub-section (2) of section 4 of the Trade Disputes Act. The former section is discussed in Chapter VI., *infra*. The effect of it is, briefly, to enable trustees or officials of trade unions to bring or defend actions and other proceedings concerning trade union property. Their liability thus to be sued is expressly preserved by the Trade Disputes Act. The exception contained in sub-section (2) of section 4 of the latter Act was probably designed to prevent the possibility of a trade union being harassed or made liable, by means of an action brought colourably under section 9 of the Act of 1871, in respect of a tort committed in contemplation or furtherance of a trade dispute.

Section 9 of Trade Union Act, 1871, as affected by sect. 4, sub-s. (2) of Trade Disputes Act.

Within the limits prescribed by the Trade Disputes Act, 1906, trade unions are liable for the torts of their agents just as individuals and corporations are. The foundation of this liability has been said to be the capacity of the trade union to own property and act by agents. "It is competent to the legislature," said Farwell, J., "to give to an association of individuals which is neither a corporation, nor a partnership, nor an individual, a capacity for owning property and acting by agents; and such capacity, in the absence of express enactment to the contrary, involves the necessary correlative of liability, to the extent of such property, for the acts and defaults of such agents" (*Taff Vale Railway Co.* v. *Amalgamated Society of Railway Servants* (*v*)).

Liability of Trade Unions for the torts of their agents.

(*v*) [1901] A. C. at p. 429.

Onus of Proof.

The case of *Airey* v. *Weighill* (*w*) was decided by the Court of Appeal on the question of the responsibility of a trade union for the acts of certain of its officials who had procured the dismissal of an obnoxious workman by ordering the members of the union to send in their notices. The Court held that the onus of proving that the union was responsible for the acts of its officers lay on the plaintiff. In the Court below the secretary of the lodge gave evidence that the matter was discussed at a meeting of the lodge, and that the lodge came to the conclusion that they should not advise the men to strike. The jury were asked the question:—Did the officers act in pursuance of orders from the lodge or with the approval of the lodge? The answer was "Yes, with the approval of the lodge, in view of the fact that from fifteen to seventeen members, in addition to the president, out of forty present at the lodge meeting, acted in direct opposition to the alleged unanimous vote of the lodge."

The Master of the Rolls said that the conclusion of the jury seemed to be based on the assumption that the evidence of Elliot [the secretary] was false, and that it was not true that the meeting had passed any resolution advising the men not to strike. But that was not enough; in order to support the conclusion it was necessary for the jury to have found that there was a resolution of the lodge authorising the strike. And the fact that they disbelieved in the existence of a particular resolution was no ground for affirming the existence of some other resolution. In his opinion, it was quite compatible with the existence of the resolution spoken to by Elliot that the men should have taken the course which they in fact adopted. It might well be that they thought it would be better, if possible, to obtain the sanction of the lodge before they sent in their notices, but that when they failed to get that sanction they proceeded to act on their own account to bring about the discharge of the plaintiff. He therefore thought there was

(*w*) *The Times*, Feb. 11th, 1905.

no evidence to justify the finding of the jury on that question. Reliance was laid on the decision of the Court of Appeal in *Giblan* v. *National Amalgamated Labourers' Union of Great Britain and Ireland* (*x*), but to his mind the reasoning of that case was conclusive against the plaintiff's contention. That was a clear case of agency. Here there was no trace of assent on the part of the union to what was done.

Denaby and Cadeby Main Collieries v. *Yorkshire Miners' Association.*

Smithies v. *Operative Plasterers.*

The responsibility of an association, consisting of numerous branches, for the acts of branch officials was considered in the cases of *Denaby and Cadeby Main Collieries* v. *Yorkshire Miners' Association* (*y*) and *Smithies* v. *National Association of Operative Plasterers* (*z*). In the former case the delegates of two branches of the Yorkshire Miners' Association urged the branch members to strike, and a resolution for a strike having been passed by the branches, the men left work without giving proper notice to their employers. The strike, as thus commenced, was not in accordance with the rules of the association, but the association subsequently granted strike pay to the men. In an action brought by the employers against the association to recover damages for wrongfully procuring the men to break their contracts of service, the House of Lords held that the association was not responsible for the action of delegates or of branch officials or committees in procuring a strike under circumstances not authorised by the rules of the association; also that the association had not incurred any liability by giving strike pay after the strike commenced. Lord Loreburn, after reading certain rules of the association regulating the procedure in cases of strikes, said, "Can it be said in face of these rules that the association is liable in damages for the

(*x*) [1903] 2 K. B. 600; 72 L. J. K. B. 907; 89 L. T. 386; 19 T. L. R. 708.

(*y*) [1906] A. C. 384; 75 L. J. K. B. 961; 95 L. T. 561; 22 T. L. R. 543.

(*z*) [1909] 1 K. B. 310; 78 L. J. K. B. 259; 100 L. T. 172; 25 T. L. R. 205; *supra*, p. 87.

action of delegates, or of branch officials, or committees in procuring a strike (whether accompanied or not by a breach of contract), without a ballot, without the sanction of the council, and without a registered vote of the entire association? In my opinion the association is not so liable.

Delegates are not the agents of the union in their districts.

The delegates are agents of the branches to represent them in the council. When acting in the council they are agents of the entire association, to do the business of the council. They are not the agents of the association to represent it or act for it in their localities, either as to strikes or other matters."

But this decision of the House of Lords in no way exonerates the central body from responsibility for the acts of branch officials, if the central body in fact orders or authorises the branch officials to do the acts complained of. See judgment of Vaughan Williams, L.J., in *Smithies* v. *National Association of Operative Plasterers* (*z*).

It was maintained on the plaintiffs' behalf in the *Denaby and Cadeby Main Colliery case* that the association had committed a wrongful act in granting strike pay against the rules. Speaking of this charge, Lord Loreburn said, "The wrong committed by the central council of the association was against its own members in dissipating their funds, not against the employers, who had no interest in the funds. . . . It is a novel argument that they should acquire a right of action from the fact that the money so paid was derived by breach of trust from the funds of the association whom they sue. It is an attempt by persons who are no parties to a trust, to sue for breach of it those who are parties."

Certain of the facts in *Smithies' case* (*z*) have been given on p. 87, *supra;* those material to the question of the principal's liability for the acts of an agent, as found by the Lord Chief Justice, were as follows:—The Birmingham branch of the association, with knowledge that it was thereby inducing and procuring a breach of contract, called upon two workmen to leave the plaintiff's service.

The central association, without knowledge that the men were under special contract with the plaintiff, had communicated to the branch officials its approval of the intention of the branch to call out the men. Subsequently, the central association, having learnt that the two men were under a contract, ratified the action of the branch by paying strike pay to these men.

The Court of Appeal was unanimous in its judgment for the plaintiff, on the ground that the association, after knowledge of the existence of a contract, maintained the strike by paying strike pay and so procured the men to commit continuing breaches of the contract which bound them to the plaintiff.

Knowledge of a branch may be imputed to the union.

Besides considering the relations of agent and principal as between a trade union branch and the central association, the Court discussed the question of imputing to a central association the knowledge of the branch.

Vaughan Williams, L.J., said, "I think that there is nothing in the rules of the National Association of Operative Plasterers or their constitution to prevent the reasoning of Lord Loreburn in the case of *Denaby and Cadeby Main Collieries, Ltd.* v. *Yorkshire Miners' Association* applying to the present case. The House of Lords in that case held that the branch officials were not, as such, officers or agents of the central body, but in my judgment the decision in the House of Lords in no way exonerates the central body from responsibility, if a central body in fact orders or authorises the branch officials wrongfully to withdraw men from their employment. . . . I should like, however, before finishing my judgment, to say a few words as to the knowledge of the defendant association on January 17, the day on which the men were called out, for I have had some doubt as to whether, for this purpose, the knowledge of the branch was the knowledge of the defendant association. No doubt the knowledge of an agent—when such knowledge is the knowledge of something material to the particular transaction and

something which it is the agent's duty to communicate to his principal—the principal will be affected by; and, if it is the agent's duty to make the communication, his principal is affected with notice, whether the communication was in fact made or not. But I have to consider in the present case whether the fact that the branch was asking the union to sanction the strike either makes the union and branch stand in the relation of principal and agent, or in such relation that the duty to communicate would justify the imputation of the knowledge of the branch as the knowledge of the defendant association. I have grave doubts as to this. It is quite clear that the relation is not that of principal and agent. The case seems to be that two bodies having a common object, the one engages with the other that it will not take a course which will in all probability throw an obligation to make money payments for maintenance on the other body without the sanction of that body. It is, of course, plain that the body asking for the sanction is bound to make full disclosures of all material facts, especially in a case in which the course for which sanction is asked is a course which, if taken without sufficient cause, may damage third persons, and possibly throw liabilities on both the body asking the sanction and the body giving its sanction. But the general position that where a person asks sanction and it is given, the person giving it must have imputed to him all the knowledge of the petitioner, seems too wide."

Buckley, L.J., held a somewhat different opinion. "It is necessary," he said, "next to determine what were the relative positions of the union and the branch. Rule 1 provides that the association shall consist of districts, and each district may consist of branches. The branch is not the association domiciled for local purposes in a locality, but is what I may call (borrowing an expression from another branch of the law) a subordinate integer, and exists as a member of the association. The branch, under

the rules, is, in certain respects, unable to act without the sanction of the association, and is the body from whom the association is entitled to receive information to guide the association in determining whether to give or refuse sanction. Then it is provided by the rules—Rule 26 (1) that no district shall cause its members to cease work without the sanction of the executive; and Rule 26 (4) contains a power in the executive council to close a strike. Rule 27 (2) provides that no branch or district shall cause its members to cease work without first obtaining the sanction of the executive council as per Rule 26 (1). The effect of the rules is, I think, that the branch stood towards the union in such a position as that the branch was a member of the union which owed to the union the duty of communicating to them all material facts within their knowledge relevant to the question whether the union should or should not sanction a strike. If the branch, with the sanction of the union, declared a strike, such knowledge as the branch at that time had of facts material to the strike is, I think, for the purposes of liability, to be attributed to the union."

The view of Kennedy, L.J., on the question of imputation of knowledge is in direct opposition to that of Buckley, L.J. Thus his lordship said, "Having regard to the decision of the House of Lords in the *Denaby case*, . . . and to the rules of this association, I cannot hold that the relations of the association to the branch were such as to make the acts of the branch, however illegal, the acts of the association, or such as to justify, as an inference of law, that what the branch knew, the defendant association knew also."

The secretary of the branch had, in a letter to the union, stated that it was the intention of the branch to strike, and two days later the branch received a letter from the union containing this passage: "Concerning the matter of objectionables, I have to inform you that the whole of your committee's actions have

been endorsed, including final resolutions to withdraw. . . ."

Speaking of this letter, Lord Justice Kennedy said, "The authorisation of a strike—that is what the 'withdrawal of workmen' means in the letter . . . —does not, in my view, necessarily imply the authorisation of an illegal cessation of work. If the matter had, so far as the action of the association was concerned, stopped there, the association could not, in my opinion, properly have been held liable for the act of the branch in persuading Forrester and Ecclesby to break their contracts with the plaintiff."

Another feature of a very complicated case still remains to be noticed. There was in existence a board of conciliation consisting of six employers and six workmen. The six workmen thus constituting the workmen's conciliation committee were, in effect, a committee of the branch. As members of the conciliation committee, these men had knowledge of the contract which bound Forrester and Ecclesby to serve the plaintiff for a term of years, and from this fact Vaughan Williams and Buckley, LL.JJ., inferred knowledge by the branch.

Where trade union officials act on their own responsibility in matters concerning which they have received no instructions, or for which the rules make no provision, the liability of the trade union must depend on the question whether the acts complained of are such as a trade union may rightly perform. "Trade unions," said Stirling, J., in *Walters* v. *Green* (*a*), "are legal bodies, and *prima facie* their officers cannot be presumed to have authority to do or sanction anything other than that which trade unions may lawfully do."

The rule stated in *Barwick* v. *English Joint Stock Bank*

In *Giblan* v. *National Amalgamated Labourers' Union of Great Britain and Ireland* (*b*), for facts in which see

(*a*) [1899] 2 Ch. 696; 68 L. J. Ch. 730; 81 L. T. 151; 15 T. L. R. 532; 48 W. R. 23; 63 J. P. 742.

(*b*) [1903] 2 K. B. 600; 72 L. J. K. B. 907; 89 L. T. 386; 19 T. L. R. 708.

p. 84, *supra*, it was held that not only were the officers of the union liable for the injury caused by them to the plaintiff, but the union itself was also liable for the wrongful acts committed by them as its agents. Vaughan Williams, L.J., said, "It is said that the rules of the union did not authorise the acts of Williams and Toomey, but, be that how it may, the acts were not *ultra vires* of the union but only of its officers, and the union in general meeting undoubtedly adopted the acts of Williams and Toomey and took the benefit of them." And Lord Justice Stirling said, "Now Williams and Toomey were the servants and agents of the trade union, and the principle which governs the liability of the last named defendants for the acts of their agents is expressed with great clearness by Mr. Justice Willes in . . . *Barwick* v. *English Joint Stock Bank* (*c*). 'The general rule is that the master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the master's benefit, though no express command or privity be proved.' This principle was expressly held to be applicable to trade unions in *Taff Vale Railway Co.* v. *Amalgamated Society of Railway Servants* (*d*). . . . Under the rules of the union it was part of the duties of the executive committee to protect its funds from misappropriation, with power to prosecute any officer of the union or member or other person who appropriated, misapplied, or withheld the funds of the union. The executive committee clearly had power to direct the officers of the union to recover the funds misappropriated by the plaintiff. Further, in the absence of the executive committee, Williams, the general secretary, had full power to take any action for the executive committee that the rules allowed. It must be taken that Williams and Toomey, in doing what they did, were acting as officers of the union charged with the duty of recovering

applied to trade unions. *Giblan* v. *Labourers' Union.*

(*c*) 36 L. J. Ex. 147; L. R. 2 Ex. 265.
(*d*) [1901] A. C. 426; 70 L. J. K. B. 905; 85 L. T. 147; 17 T. L. R. 698; 50 W. R. 44; 65 J. P. 596.

the misappropriated funds from the plaintiff. What they did was a tort. Further, it was committed for the benefit of the union. It seems to me that the conditions pointed out by Mr. Justice Willes were satisfied. It was pointed out that the acts of the defendants Williams and Toomey were beyond the powers of the executive committee as defined by Rule XIV. It may be that if a member of the trade union had applied to the Court to interfere by way of injunction to restrain the two defendants from committing the acts of which the plaintiff complained, the Court would have seen its way to interfere, on the principles laid down in *Howden* v. *Yorkshire Miners' Association* (*e*); but the question is a different one when the plaintiff complains of a wrong which has actually been committed by the agents of a trade union. . . . I think that the present case falls within the principles laid down in *Limpus* v. *General Omnibus Co.* (*f*) rather than within *Poulton* v. *L. S. W. R. Co.* (*g*)."

The power of a branch to bind a trade union in contract was considered in *Mackendrick* v. *National Union of Dock Labourers:* Appendix T.

The doubtful question whether conspiracy *per se* is an actionable wrong is discussed in Chapter V. pp. 121–126, *infra.*

(*e*) [1905] A. C. 256; 74 L. J. K. B. 511; 92 L. T. 701; 21 T. L. R. 431; 53 W. R. 667.
(*f*) 1 H. & C. 526; 32 L. J. Ex. 34; 9 Jur. (N. S.) 333; 7 L. T. 641; 11 W. R. 149.
(*g*) 8 B. & S. 616; 36 L. J. Q. B. 294; L. R. 2 Q. B. 534; 17 L. T. 11; 16 W. R. 309.

CHAPTER V.

STRIKES.

A STRIKE has been defined by Lord Justice Kay in *Lyons & Sons* v. *Wilkins* (*a*) as "an agreement between persons who are working for a particular employer not to continue working for him." Sir William Erle (*b*) asserts the legality of strikes in the following words:—"As to combinations, each person has a right to choose whether he will labour or not, and also to choose the terms on which he will consent to labour, if labour be his choice. The power of choice in respect of labour and terms which one may exercise and declare singly, many, after consultation, may exercise jointly, and they may make a simultaneous declaration of their choice, and may lawfully act thereon for the immediate purpose of obtaining the required terms; but they cannot create any mutual obligation having the legal effect of binding each other not to work, or not to employ unless upon the terms allowed by the combination." In *Farrer* v. *Close* (*c*), Hannen, J., said, "I am, however, of opinion that strikes are not necessarily illegal. A strike is properly defined as a simultaneous cessation of work on the part of workmen, and its legality or illegality must depend on the

Legality of strikes affirmed.

(*a*) 65 L. J. Ch. 601; [1896] 1 Ch. 811; 74 L. T. 358; 12 T. L. R. 222, 278; 45 W. R. 19; 60 J. P. 325.
(*b*) The Law Relating to Trade Unions.
(*c*) 38 L. J. M. C. 132; 10 B. & S. 533; L. R. 4 Q. B. 602; 20 L. T. 802; 17 W. R. 1129.

means by which it is enforced, and on its objects. It may be criminal, as if it be part of a combination for the purpose of injuring or molesting either masters or men; or it may be simply illegal, if it be the result of an agreement depriving those engaged in it of their liberty of action, similar to that by which the employers bound themselves in the case of *Hilton* v. *Eckersley* (*d*); or it may be perfectly innocent, as if it be the result of the voluntary combination of the men for the purpose only of benefiting themselves by raising their wages, or for the purpose of compelling the fulfilment of an engagement entered into between employers and employed, or any other lawful purpose." And Cozens-Hardy, M.R., said in the case of *Gozney* v. *Bristol Trade and Provident Society* (*e*), "It is a common mistake to suppose that every trade union is, apart from the Act of 1871, an unlawful combination. . . . There is nothing illegal in a strike, although it may be attended with circumstances such as breach of contract or intimidation which make it illegal. Nor is there anything illegal in contributing to the support of strikers." But it was said by Lopes, L.J., in *Temperton* v. *Russell* (*f*) that a strike promoted for the purpose of doing injury, and with the knowledge that a breach of contract would thereby be caused, would be actionable.

Statutes relating to strikes.

The statutes dealing with strikes are—

(1) 6 Geo. IV. c. 129, s. 3.

(2) 22 Vict. c. 34.

(3) Trade Union Act, 1871.

(4) Conspiracy and Protection of Property Act, 1875.

(5) Trade Disputes Act, 1906.

The two first-mentioned Acts are now repealed, but as they and the cases decided on them contain much that

(*d*) See p. 9, *supra*.

(*e*) [1909] 1 K. B. 901; 78 L. J. K. B. 616; 100 L. T. 669; 25 T. L. R. 370; 53 S. J. 341.

(*f*) [1893] 1 Q. B. 715; 62 L. J. Q. B. 412; 69 L. T. 78; 9 T. L. R. 393; 41 W. R. 565; 57 J. P. 676.

is useful in helping one to understand the other Acts and decisions, they are set out in the Appendices B and C. The section in the Trade Union Act of 1871 which refers to strikes is section 2. It enacts that 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. (Appendix E.)

The extent to which strikes and trade unions have been legalised by the Trade Union Act of 1871 may be gathered from the following judicial dicta :—

In *Lyons & Sons* v. *Wilkins* (*g*), Lindley, L.J., said, " Strikes which were formerly considered illegal have now been legalised, and trade unions which were formerly considered illegal have now been legalised—at all events so far as all the doctrines as to restraint of trade are concerned, and a strike can now be conducted up to a certain point with perfect legality. . . . Parliament has not yet conferred upon trade unions the power to coerce people and to prevent them from working for anybody upon any terms that they like." And Lord Brampton in *Quinn* v. *Leatham* (*h*) said, " The members of a trade union have no more legal right to commit what would otherwise be unlawful wrongs than if the association to which they are attached had never come into existence. They have no more right to coerce others pursuing the same calling as themselves to join their society, or to adopt their views or rules, than those who differ from them and belong to other trade associations would have a right to coerce them. The Legislature in conferring upon trade unions such privileges as are contained in the Trade Union Acts, 1871 and 1876, does not empower them to

(*g*) 65 L. J. Ch. 601 ; [1896] 1 Ch. 811 ; 74 L. T. 358 ; 12 T. L. R. 222, 278 ; 45 W. R. 19 ; 60 J. P. 325.
(*h*) [1901] A. C. 495 ; 70 L. J. P. C. 76 ; 85 L. T. 289 ; 17 T. L. R. 749 ; 50 W. R. 139 ; 65 J. P. 708.

do more than make rules for the regulation of their conduct and to provide for their own mutual assistance, and leaves each member as free to cease to belong to it and to repudiate every obligation for the future observance of its rules, as though he had never joined it, and most certainly it has not conferred upon any association or any member of it a licence to obstruct or interfere with the freedom of any other person in carrying on his business or bestowing his labour in the way he thinks fit, provided only it is lawful, and although a combination of members of a trade union for certain purposes is no longer unlawful and criminal as a conspiracy merely because the objects of that combination are in restraint of trade, no protection is given to any combination or conspiracy which, before the passing of the Act of 1871, would have been criminal for other reasons."

Conspiracy.

The subject of strikes is so closely connected with that of conspiracy that the law relating to the former cannot well be explained without some discussion of the latter. "A conspiracy," said Lord Brampton in *Quinn* v. *Leatham* (*h*), "consists of an unlawful combination of two or more persons to do that which is contrary to law, or to do that which is wrongful and harmful towards another person. It may be punished criminally by indictment, or civilly by an action on the case in the nature of conspiracy if damage has been occasioned to the person against whom it is directed. It may also consist of an unlawful combination to carry out an object, not in itself unlawful, by unlawful means. The essential elements, whether of a criminal or of an actionable conspiracy, are, in my opinion, the same, though to sustain an action damage must be proved. . . . It is not necessary in order to constitute a conspiracy that the acts agreed to be done should be acts which, if done, would be criminal. It is enough if the acts agreed to be done, although not criminal, are wrongful, *i.e.* amount to a civil wrong. . . . The overt acts which follow a conspiracy form of

themselves no part of the conspiracy ; they are only things done to carry out the illicit agreement already formed, and if they are sufficient to accomplish the wrongful object of it, it is immaterial whether singly those acts would have been innocent or wrongful, for they have in their combination brought about the intended mischief, and it is the wilful doing of that mischief, coupled with the resulting damage, which constitutes the cause of action, not of necessity the means by which it was accomplished."

In *Reg.* v. *Warburton* (*i*), Cockburn, C.J., said, "It is not necessary in order to constitute a conspiracy that the acts agreed to be done should be acts which, if done, would be criminal. It is enough if the acts agreed to be done although not criminal are wrongful, *i.e.* amount to a civil wrong." And Brett, J., in *Reg.* v. *Bunn* (*j*) thus defined conspiracy. "If persons agree together to do some unlawful thing, and proceed to do it, they are guilty of conspiracy ; or if they agree to do a lawful thing by unlawful means and proceed to carry out their agreement by those means, they are guilty of conspiracy. I say that if they proceed to carry it out (for it signifies not whether they do carry it out) they are guilty of conspiracy."

Three classes of conspiracy

The opinions thus expressed correspond very closely with the more concisely expressed view of Fitzgerald, J., in his charge to the jury in *Reg.* v. *Parnell* (*k*). "Conspiracy has been aptly described as divisible under three heads—where the end to be attained is in itself a crime ; where the object is lawful, but the means to be resorted to are unlawful ; and where the object is to do injury to a third party or to a class, though if the wrong were effected by a single individual it would be a wrong but not a crime."

Is conspiracy *per se* actionable ?

Though the expressions "actionable conspiracy" and

(*i*) L. R. 1 C. C. 274 ; 40 L. J. M. C. 22 ; 23 L. T. 473 ; 19 W. R. 165 ; 11 Cox, C. C. 584 ; *infra*, p. 126.
(*j*) 12 Cox, C. C. 316.
(*k*) 14 Cox, C. C. at p. 513.

"action on the case in the nature of conspiracy" are in constant use there is a considerable amount of doubt whether an action will really lie for conspiracy. In *Boots v. Grundy and Others* (*l*) the language used by Phillimore, J., certainly implies that an indictable conspiracy is necessarily actionable; while Bigham, J., in the same case, said, "I think that though probably all conspiracies, as I define them, are criminal, and therefore indictable, no conspiracy can give rise to a civil action, unless it violates, or threatens to violate, the rights of an individual as distinguished from the rights of the public at large."

Boots v. *Grundy.*

The cases of *Salaman* v. *Warner* and *Kearney* v. *Lloyd* may be quoted as authorities for the proposition that an action is not maintainable for conspiracy alone.

Salaman v. *Warner and Others* (*m*) was a case in which a broker attempted to recover damages in respect of losses sustained on the Stock Exchange through a conspiracy amongst the promoters of a certain company to fraudulently "rig" the market. The promoters of the company had issued a prospectus in which they stated that two-thirds of the shares of the company would be offered to the public at par. They caused sales and purchases of the shares to be announced in the papers, thus causing the plaintiff and others to believe that the shares were on the market. They induced the plaintiff to contract to sell them large numbers of shares, and then applied, in the names of nominees, for very large numbers of shares which were allotted to the nominees. They thus made it impossible for the plaintiff to complete his contract except by buying shares from them, the defendants, at the defendants' own price. Held, that there was no cause of action.

Salaman v. *Warner.*

Day, J., said, "I at once disavow the legal term 'conspiracy' as having any legal efficacy on the civil side of our Courts. It is a well understood term on the Crown

(*l*) 82 L. T. 769; 48 W. R. 638; W. N. 142.
(*m*) 7 T. L. R. 431 and 484; 65 L. T. 132.

side, but there is no remedy that I am aware of in respect of it on the civil side, other than that obtainable against each individual member of the conspiracy. It must be shown, not that there is a conspiracy, but that the defendants (whether by combination or otherwise is immaterial) have infringed some legal right." In the same case, in the Court of Appeal, the Master of the Rolls said that it was not true to say that a civil action could be brought for a conspiracy. If persons conspired to do an illegal thing, or to do a legal thing in an illegal way, they were liable to an indictment and not to an action. They were only liable to an action if they conspired to do something against the rights of the plaintiff and had effected their purpose and committed a breach of those rights. The plaintiff must therefore show that the conspiracy was to injure his rights, and that those rights had been injured. He had, in fact, to carry his case as far as if there were no conspiracy at all. The fact of there having been a conspiracy did not increase his right of action in the least, though it did not diminish it."

Kearney v. Lloyd.

The Irish case of *Kearney* v. *Lloyd* (*n*) was an action brought by a Protestant incumbent of a parish against certain of his parishioners who had combined and agreed with each other to abstain from contributing to a voluntary fund called the Sustentation Fund on which the incumbent's income was partly dependent. The combination and agreement was partly with the intention of injuring the plaintiff and obliging him to leave the parish, and partly with the intention of promoting the religious interests of the parish. The defendants had not combined to induce other parishioners not to contribute. The plaintiff was injured and was obliged to leave the parish. Held, that these acts did not constitute any legal injury to the plaintiff and that the action was not maintainable. "If anything is well settled in law," said Palles, C.B., "it is that in cases of this description, in which the old writ

(*n*) 26 L. R. (Ir.) 268.

of conspiracy did not lie, the gist of the action is not the conspiracy itself, but the wrongful acts done in pursuance of it. The cause of action must exist, although the allegation of conspiracy be struck out. . . . If, then, each defendant, acting separately and independently of his fellows, refrained from subscribing in the same manner in all respects, other than in combination, in which he did here, and if the same result ensued, *i.e.* that the plaintiff was obliged to resign, no legal right of the plaintiff would have been invaded. If, then, the acts of the defendants are wrongful as against the plaintiff, they must be so merely by reason of the pre-concert; and thus we come to this, on which the whole case must rest—does that pre-concert render wrongful the acts which otherwise would have been innocent? As to this, it is to be observed that there is no element of wrong in the mode in which this pre-concert was obtained, as distinct from the pre-concert itself. It is not alleged that the adherence to it of any party was obtained by fraud, intimidation, breach of contract in which the plaintiff was interested, or other means wrongful towards the plaintiff. *Green* v. *Button* (*o*) would probably amount to an authority that if such an agreement had been procured by fraud, the present action might be maintainable against the person guilty of the fraud, although the parishioners were not under an absolute duty to subscribe; and I have myself very little doubt that the same result would follow had the pre-concert been procured by intimidation or other wrongful means."

The question as to whether a civil action can be maintained for conspiracy merges into the question whether the element of wrong which is a necessary constituent of a conspiracy, includes only civil wrongs or torts, or extends so far as to take in offences against morality or against public policy. Darling, J., in *Huttley* v. *Simmons and*

(*o*) 2 C. M. & R. 707; 1 Gale, 349; 1 Tyr. & G. 118; 5 L. J. Ex. 81.

Others (*p*) (an action brought against several members of a trade union who had conspired to induce a cab proprietor not to engage the plaintiff, nor to let him have a cab to drive), said that a conspiracy to do certain acts gives a right of action only where the acts agreed to be done, and in fact done, would, had they been without pre-concert, have involved a civil wrong. In so holding, his lordship considered himself concluded by the judgment of Palles, C.B., in the Irish case of *Kearney* v. *Lloyd* (*q*). But Palles, C.B., would appear to have recognised a wider principle than the one thus stated, for he is content to state (at p. 287) that there is no clear and satisfactory authority for the proposition that "a conspiracy to do an act neither criminal, nor immoral, nor contrary to public policy, nor amounting to a civil wrong against an individual, can be the subject of an action or an indictment." His Lordship also undoubtedly suggests that the *Mogul case* is no authority for holding that a conspiracy to do acts which are in restraint of trade is not actionable (*r*).

Semble that a conspiracy to do an act that is immoral or against public policy, though not tortious, is actionable. Palles, C.B. Phillimore, J.

In *Boots* v. *Grundy* (*s*) the Court was divided. Bigham, J., who considered that the allegation of conspiracy disclosed no cause of action, said that the result of *Kearney* v. *Lloyd* (*q*) was that no conspiracy was known to the law which had not for its object the accomplishment of an unlawful act (not necessarily a criminal act) or which did not involve the use of unlawful means. But his Lordship left it uncertain as to whether he would include under the term "unlawful act" not only torts but offences against morality and public policy. Phillimore, J., who discussed the law of conspiracy at some length, was of opinion that a confederacy to injure, which can be carried out without the commission of any tort actionable against an individual, may, nevertheless, be a conspiracy. *Reg.*

(*p*) [1898] 1 Q. B. 181; 67 L. J. Q. B. 213; 14 T. L. R. 150; *supra*, p. 93.
(*q*) 26 L. R. (Ir.) 268.
(*r*) *Ibid.* at p. 288.
(*s*) 82 L. T. 769; 48 W. R. 638; W. N. 142.

v. *Robinson* (*t*) was referred to as an example in point, where a man and woman, who had married under an assumed name for the purpose of raising a specious title to the estate of the person whose name was assumed, were indicted and convicted of conspiracy. Another case referred to was *Reg.* v. *Warburton* (*u*), where a member of a partnership, who had agreed with a third party to deprive his partner of all interest in some of the partnership property by false entries and documents, was convicted of conspiracy. His lordship did not think there was any actionable wrong committed in *Robinson's case*, nor did he think that in *Warburton's case* the injured partner would have had any civil remedy except in the Court of Chancery. Boycotting was also mentioned, his Lordship saying that if and where the practice of boycotting "maliciously and without just cause and excuse" was carried on to such an extent as to deprive a man or woman of the means of livelihood, it would be a blot upon our law if the confederate boycotters could not be punished. In each of these three cases he thought the confederacy would be both indictable and actionable.

Boycotting.

So far as trade disputes are concerned, the question is settled for indictments, by section 3 of the Conspiracy and Protection Act, 1875 (*v*), and for civil actions by section 1 of the Trade Disputes Act, 1906 (*w*).

The element of numbers in conspiracy.

Two elements which have to be considered in connection with conspiracy are the influence of numbers, and the presence of malice or other wrongful motive. In the *Mogul case* (*x*) it was urged on behalf of the plaintiffs that inasmuch as there were several companies united in the attempt to shut out the Mogul Company from the

(*t*) 1 Leach, 37.
(*u*) L. R. 1 C. C. 274; 40 L. J. M. C. 22; 23 L. T. 473; 19 W. R. 165; 11 Cox, C. C. 584.
(*v*) Appendix J.
(*w*) Appendix K.
(*x*) [1892] A C. 25; 61 L. J. Q. B. 295; 66 L. T. 1; 8 T. L. R. 182; 40 W. R. 337; 56 J. P. 101; *supra*, pp. 55 and 95.

China trade, the acts complained of were not justifiable on the ground of their being done in the ordinary course of trade competition. The Court rejected the argument because, in that case, the thing done—the trading by a number of persons together—effected no more than the act of a single person. But the Earl of Halsbury, L.C., admitted that there are many things which might lawfully be done by an individual which become unlawful when done by a number of persons. And Lord Bramwell, dealing with the objection that it would be strange that that should be unlawful if done by several which is not unlawful if done by one, pointed out: (1) that a man may encounter the acts of a single person, yet not be fairly matched against several; (2) that the act when done by an individual is wrong, though not punishable, because the law avoids the multiplicity of crimes—*de minimis non curat lex*—while if done by several it is sufficiently important to be treated as a crime. In *Quinn* v. *Leatham* (*y*) it was said by Lord Lindley that while intentional damage which arises from the mere exercise of the rights of many is not actionable, coercion is a wrong, and that in considering whether coercion has been applied or not, numbers cannot be disregarded.

In *Boots* v. *Grundy* (*z*), Phillimore, J., said, "That any single person can use his utmost endeavour to prevent third persons from dealing with another man, and thus deprive him of his trade and even of his means of livelihood, is settled by the decision of the House of Lords in *Allen* v. *Flood*, and I presume that what one could do any number of persons acting separately and without concert could equally do. But the effectual strength of one, or even of a number acting separately, is as nothing compared with the force of a combination which may be irresistible. If, in such a case, the injured person has no

(*y*) [1901] A. C. 495; 70 L. J. P. C. 76; 85 L. T. 289; 17 T. L. R. 749; 50 W. R. 139; 65 J. P. 708.
(*z*) 82 L. T. 769; 48 W. R. 638; W. N. 142.

cause of action either for damages or an injunction he is without remedy; for if the combination be not actionable, it certainly is not criminal."

The element of malice in conspiracy.

On the question of wrongful motive the following pronouncements are important:—

Lopes, L.J., in *Temperton* v. *Russell* (*a*): "A combination by two or more persons to induce others not to deal with a particular individual or enter into contracts with him, if done with the intention of injuring him, is an actionable wrong if damage results therefrom." In the same case A. L. Smith, L.J., explained that to induce a person who has made a contract with another to break that contract, in order to hurt the person with whom it has been made, to hamper him in his trade, or to put undue pressure upon him, or to procure some indirect advantage for the person himself, is, in point of law, to do it maliciously.

Quinn v. *Leatham.*

In *Quinn* v. *Leatham* (*y*) (for the facts in which see p. 83 above), it was held that a combination of two or more, without justification or excuse, to injure a man in his trade by inducing his customers or servants to break their contracts with him, or not to deal with him, or continue in his employment, is, if it results in damage, actionable. Lord Macnaghten said, "I have no hesitation in saying that I think the decision [of the Court of Appeal in Ireland] was right, not on the ground of malicious intention—that was not, I think, the gist of the action—but on the ground that a violation of a legal right committed knowingly is a cause of action." Lord Shand drew a distinction between a combination in pursuance of trade objects and resulting in such injury as may be caused by legitimate competition, and a combination in pursuance of a malicious purpose to injure; but it would seem that this is not sufficient to support the view that malicious intention is of the gist of a civil action for

(*a*) [1893] 1 Q. B. 715; 62 L. J. Q. B. 412; 69 L. T. 78; 9 T. L. R. 393; 41 W. R. 565; 57 J. P. 676; *supra*, p. 83.

conspiracy, though it is a material factor in a criminal indictment.

In *Kearney* v. *Lloyd* (*b*), Palles, C.B., referring to the *Mogul case*, said that in that case the judges of the Court of Appeal seem to have thought the actual intention of the defendants to be material, and certainly each of their judgments is based upon the fact that there the intention of the parties to the agreement was to protect their own interests. And Phillimore, J., in *Boots* v. *Grundy* (*c*), said, "Given the confederacy, the motive and purpose make all the difference. If a number of persons, because of political or religious hatred, or from a spirit of revenge for previous real or fancied injury, combine to oppress a man and deprive him of his means of livelihood, for the mere purpose of so-called punishment, I think the sufferer has his remedy. If the combination be to further their own prosperity, if it be constructive, or destructive only as a means to being constructive, the case is otherwise." Phillimore, J., in *Boots* v. *Grundy*.

On the other hand, Lord Shand in *Allen* v. *Flood* (*d*) declared that the exercise by a person of a legal right does not become illegal because the motive of the action is improper or malicious (*e*), and that therefore on the same principle it may be affirmed that the exercise of any legal right in the course of competition in labour or in trade does not become illegal because it is prompted by a motive which is improper or even malicious.

Lord Lindley also in *Allen* v. *Flood* (*d*), said that an act otherwise lawful, although harmful, does not become actionable by being done maliciously, in the sense of proceeding from a bad motive and with intent to annoy or harm, but that in applying this proposition care must

(*b*) 26 L. R. (Ir.) 268; *supra*, p. 123.
(*c*) 82 L. T. 769; 48 W. R. 638; W. N. 142.
(*d*) [1898] A. C. 1; 67 L. J. Q. B. 119; 77 L. T. 717; 14 T. L. R. 125; 46 W. R. 258.
(*e*) See *Bradford Corporation* v. *Pickles*, [1895] A. C. 587; 64 L. J. Ch. 759; 73 L. T. 353; 44 W. R. 190; 60 J. P. 3.

be taken to bear in mind that in the case under discussion criminal responsibility had not to be considered. But the dicta in *Allen* v. *Flood* relating to conspiracy are, however, deprived of much of their weight by the fact that Kennedy, J., who tried the case in the Queen's Bench Division ruled that there was no evidence to support a charge of conspiracy.

Semble, that *Allen* v. *Flood* does not apply to cases of conspiracy.

The question was also considered in *Curran* v. *Treleaven* (*f*), an appeal from the decision of a Court of Summary Jurisdiction on a case brought under the Conspiracy and Protection of Property Act. The Recorder of Plymouth had held that though an agreement between the men to strike to benefit themselves would be a lawful agreement, yet a strike which would have the effect of injuring an employer would be illegal and indictable at common law. A specially constituted Court of five judges refused to support the Recorder's decision. "It is true," said Lord Coleridge, C.J., "that where the object is injury, if the injury is effected, an action will lie for the malicious conspiracy which has effected it, and therefore it may be that such conspiracy, if it could be proved in fact, would be indictable at common law. But . . . where the object is to benefit one's self, it can seldom, perhaps it can never, be effected without some consequent loss or injury to some one else. . . . Where the object is not malicious, the mere fact that the effect is injurious does not make the agreement either illegal or actionable, and therefore it is not indictable."

In trade conspiracies self-interest a justification.

The question of justification in cases of conspiracies to procure breaches of contract or to interfere with another's trade or business was also discussed in the "Stop-Day Case" (*g*), and in *Giblan* v. *National Amalgamated Labourers' Union, Etc.* (*h*).

(*f*) [1891] 2 Q. B. 545; 61 L. J. M. C. 9; 65 L. T. 573; 7 T. L. R. 652; 17 Cox, C. C. 354; 55 J. P. 485; *infra*, p. 142.
(*g*) 74 L. J. K. B. 525; [1905] A. C. 239; 92 L. T. 710; 21 T. L. R. 441; 53 W. R. 593; *supra*, p. 86.
(*h*) [1903] 2 K. B. 600; 72 L. J. K. B. 907; 89 L. T. 386; 19 T. L. R. 708; *supra*, p. 84.

The statute law concerning conspiracies in reference to trade disputes is now contained in the Conspiracy and Protection of Property Act, 1875 (*i*), and the Trade Disputes Act, 1906 (*j*). These two Acts must be read together, or rather the former must be read as amended by the latter. Section 3 of the Conspiracy and Protection of Property Act, as amended by section 1, and section 5, sub-section (3), of the Trade Disputes Act, now reads as follows :— The Conspiracy and Protection of Property Act, 1875, and the Trade Disputes Act, 1906.

"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 shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.

"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.

"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

(*i*) Appendix J. (*j*) Appendix K.

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."

Extent of immunity given by these acts.

The immunity thus given by the section is by no means a wide one. Its limits are, briefly, as follows :—

1. It can only be claimed in cases of trade disputes. As to the interpretation of the term "trade dispute," see above, p. 99, *supra*.

2. It cannot be claimed in respect of any act which, if committed by one person, would be a crime, but in paragraph 4 of the section crime is defined so as to cover the acts prohibited by sections 4 and 5 of the Act, see p. 134, *infra*.

3. It cannot be claimed in respect of acts which amount to rioting, unlawful assembly, breach of the peace, sedition, or any offence against the State or Sovereign (paragraph 3).

4. It cannot be claimed in respect of any conspiracy which is, by Act of Parliament, made punishable (paragraph 2).

5. Paragraph 5 imposes a limit on the sentence which may be inflicted when the act done or procured to be done is punishable only on summary conviction, and a limit is not already prescribed by statute.

Speaking of section 3 in *Lyons and Sons* v. *Wilkins* (*k*), Kay, L.J., said, "There you get the fact that strikes are legalised by Act of Parliament, and that one person would not be indictable for a crime by endeavouring to encourage or bring about that which in itself is not illegal—namely, a strike." And in *Quinn* v. *Leatham* (*l*), Lindley, L.J., said, "The Conspiracy and Protection of Property Act, 1875, clearly recognises the legality of strikes and lock-outs up to a certain point. It is plainly legal now for workmen to combine not to work except on their own

(*k*) 65 L. J. Ch. 601; [1896] 1 Ch. 811; 74 L. T. 358; 12 T. L. R. 222, 278; 45 W. R. 19; 60 J. P. 325.

(*l*) [1901] A. C. 495; 70 L. J. P. C. 76; 85 L. T. 289; 17 T. L. R. 749; 50 W. R. 139; 65 J. P. 708.

terms. On the other hand, it is clearly illegal for them or any one else to use force or threats of violence to prevent other people from working on any terms which they think proper."

In *Gibson* v. *Lawson* (*m*), a case under this Act, the view was put forward that strikes and combinations expressly legalised by statute might yet be treated as indictable conspiracies at common law, and Lords Bramwell and Esher were quoted in support of the view. But this was emphatically negatived by Lord Herschell. "It seems to us," he said, "that the law concerning combinations in reference to trade disputes is contained in 38 & 39 Vict. c. 86, and in the statutes referred to in it, and that acts which are not indictable under that statute are not now, if indeed they ever were, indictable at common law."

It has been held in the case of *The King* v. *Duguid* (*n*) that where one of the parties to a conspiracy is protected by statute from the consequences of his conduct, the other party may still be convicted, and from this it seems to follow that an individual who conspired with a trade union might, under certain circumstances, be indicted or sued while the trade union was free from liability.

From the judgment of Lord Bramwell in *Reg.* v. *Druitt*(*o*) (for facts in which see p. 153, *infra*) it seems that if a number of persons, A, B, C, etc., agree on a certain object and appoint others, say D and E, to carry it out, and these latter do carry out the purpose in an unlawful manner, though without the knowledge of A, B, C, etc., who appointed them, then A, B, C, etc., are not liable if the unlawful acts of D and E are not the necessary consequences of their being placed in the position in which A, B, C, etc., have placed them.

The protection given by the Act of 1875 is no more than

(*m*) [1891] 2 Q. B. 545; 61 L. J. M. C. 9; 65 L. T. 573; 17 Cox, C. C. 354; 55 J. P. 485.
(*n*) 22 T. L. R. 506; 75 L. J. K. B. 470; W. N. 100
(*o*) 10 Cox, C. C. 592; 16 L. T. 855.

a protection against liability to criminal proceedings. The Trade Disputes Act, 1906, adds to this an exemption from liability to a civil action for damages. Section 1 of the latter Act provides as follows :—

The following paragraph shall be added as a new paragraph after the first paragraph of section 3 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" (*p*).

The immunity against civil proceedings thus given is, of course, subject to the limitations enacted in section 3 of the Conspiracy and Protection of Property Act, so far as those limitations are applicable in the case of a civil action, see p. 132, *supra*.

Sections 4 and 5 contain important exceptions to the freedom given by section 3. These sections were described by Lord Coleridge in *Gibson* v. *Lawson* (*m*) as being "almost in the nature of provisoes upon the third section."

Malicious breaches of contract by gas and water employees.

Section 4 applies only to the employees of any company, contractor, or municipal authority engaged in supplying gas or water. Any such employee who wilfully and maliciously breaks his contract of service, knowing that the probable consequences of his so doing will be to deprive the consumers of their supply of gas or water, is liable to a penalty of twenty pounds or to three months' imprisonment.

Malicious breaches of contract which endanger person or property.

By section 5 any person who wilfully and maliciously breaks his contract of service or hiring, knowing that the probable consequences of his so doing will be the endangering of life or limb, or the exposing of valuable property to destruction or serious injury, is liable to the same punishment as is imposed by section 4.

Section 15, by reference to the Malicious Injuries to

(*p*) Appendix K.

Property Act, 1861, defines maliciously in such a way as not to restrict it to malice conceived against the owner of the property affected. See Appendix Q.

Section 7. Unlawful incidents of a strike.

Notwithstanding the exemptions from liability in both criminal and civil proceedings conferred by section 3 of the Conspiracy and Protection of Property Act, as thus amended, there is still a wide ground left for the commission both of crimes and civil wrongs in the course of a strike or lock-out, see p. 133, *supra*, and p. 148, *infra*. Picketing, boycotting, watching, besetting, coercion, threats, intimidation, and molestation are terms in common use to describe acts usually associated with strikes which may still render those who commit them liable to criminal proceedings or to a civil action for damages. While section 3 of the Conspiracy and Protection of Property Act, 1875, legalises strikes, section 7 prohibits certain acts of which strikes are usually the occasion, and enacts a penalty. The acts thus specifically forbidden are :—

The use of violence.

Intimidation.

Injury to property.

Following.

Hiding property or depriving or hindering the owner from the use thereof.

Watching and besetting.

The full text of section 7 is as follows :—

"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 herein-after 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."

Peaceful picketing.

In the original Act this section contained one more paragraph, but this is repealed by section 2, sub-section (2), of the Trade Disputes Act, 1906, and in its place sub-section (1) of that section must now be read. This reads as follows:—

"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" (*q*).

In *Wilson* v. *Renton* (*r*), a Scottish case in which a number of strikers were charged, under section 7 of the Conspiracy and Protection of Property Act, with "persistent following" and "watching and besetting," the accused were unable to rely on section 2 of the Trade Disputes Act, because none of them had received from or communicated to the men against whom their acts were directed any information, and had not even attempted to speak to them.

(*q*) Appendix K.
(*r*) [1910] S. C. (J.) 32; 47 Sc. L. R. 209; see also *infra*, pp. 139, 154.

The acts forbidden by section 7 of the Conspiracy and Protection of Property Act are substantially those forbidden by section 3 of the Act of 6 Geo. IV. c. 129 (see Appendix B), and both sections are but re-enactments of the common law. It was said by Fletcher Moulton, L.J., in *Ward, Lock & Co.* v. *Operative Printers' Assistants Society* (*s*), that section 7 of the Conspiracy and Protection of Property Act legalises nothing and renders nothing illegal that was not so before, its object being solely to visit certain selected classes of acts which were previously wrongful, *i.e.* were at least civil torts, with penal consequences. The general law was well stated by Lord Bowen in the *Mogul case* (*t*), and approved by Lord Herschell in *Allen* v. *Flood* (*u*). "Intimidation, obstruction, and molestation are forbidden; so is the intentional procurement of a violation of individual rights, contractual or otherwise, assuming always that there is no just cause for it. The intentional driving away of customers by violence; the obstruction of actors on the stage by preconcerted hissing; the disturbance of wild fowls in decoys by the firing of guns; the impeding or threatening of workmen or servants; the inducing persons under personal contracts to break their contracts—all are instances of such forbidden acts."

It was said by Collins, J., in the case of *The Queen* v. *Mackenzie* (*v*), the facts in which are given on p. 165, *infra*, that the gist of the offence of "following" created by section 7, "is not the following of a person in a disorderly manner, but such a following as to prevent a person doing such acts as he has a right to do," and that a conviction for this offence was bad which omitted to specify the particular act which the person was compelled to abstain from doing.

(*s*) 22 T. L. R. 327.
(*t*) [1892] A. C. 25; 61 L. J. Q. B. 295; 66 L. T. 1; 8 T. L. R. 182; 40 W. R. 337; 56 J. P. 101.
(*u*) [1898] A. C. 1; 67 L. J. Q. B. 119: 77 L T. 717; 14 T. L. R. 125; 46 W. R. 258.
(*v*) [1892] 2 Q. B. 519; 61 L. J. M. C. 181; 67 L. T. 201; 17 Cox, C. C. 542; 41 W. R. 144; 56 J. P. 712.

In *Smith* v. *Moody* (*w*) a conviction in the following form was considered:—"That S, . . . with a view to compel M to abstain from working for Messrs. B, Ltd., which he had a legal right to do, unlawfully, wrongfully, and without legal authority did injure the property of the said M . . ." Held, that the act which S sought to compel M to abstain from doing was sufficiently specified in the conviction, but that the conviction was bad on its face and must be quashed in that it did not specify what property of M had been injured.

In the Scottish case of *Stuart* v. *Clarkson* (*x*) a complaint under section 7 (1) of the Conspiracy and Protection of Property Act, 1875, set forth that the seven persons accused did, with a view to compel A, B, and C to abstain from working at certain pits, as the said persons had a legal right to do, intimidate them by assembling with a number of other persons in a large crowd, and parading the streets and the neighbourhood of the houses of A, B, and C, shouting and kicking at their doors and flourishing sticks, all in a threatening manner, and using threats of violence to them if they continued to work, contrary to section 7 of the Act. The relevancy of the complaint was objected to on the following grounds: (1) That it did not state that the accused took an active part in the proceedings of the crowd; (2) that it did not set forth the *ipsissima verba* of the threats alleged; (3) that it omitted the words "wrongfully and without legal authority," which were essential to the description of the statutory offence; and (4) that it did not specify which of the five offences set forth in the five sub-sections was meant to be charged. The Court repelled all the objections, but the Lord Justice Clerk expressed the opinion that it was an unfortunate mode of stating the offence to allege that the accused did intimidate "by assembling with a crowd."

(*w*) [1903] 1 K. B. 56; 72 L. J. K. B. 438; 87 L. T. 682; 19 T. L. R. 7; 20 Cox, C. C. 369; 51 W. R. 252; 67 J. P. 69.
(*x*) Cases in Court of Session, 4th series, 22 (J.) 5.

The proper mode would have been to say that they did assemble with a crowd with the purpose of doing such and such things and did do them. His Lordship also thought that it was advisable that the words "wrongfully and without legal authority," since they appear in the statute, should be inserted in a complaint charging the statutory offence.

In charging an offence under section 7 it is not necessary to specify the sub-section. *Wilson* v. *Renton*.

In a recent Scottish case, *Wilson and Others* v. *Renton* (*y*), the complaint set forth that the accused "with a view to compel A and B to abstain from doing . . . work which . . . the said A and B had a right to do . . . wrongfully and without legal authority did, with a number of other persons, persistently follow the said A and B about from place to place, viz. . . . and did watch and beset the place of work and houses of A and B and the approaches, contrary to the Conspiracy and Protection of Property Act, 1875. Section 7." The Court was asked to convict the accused "of the contravention charged."

Objections were raised to the relevancy of the complaint on the ground (1) that it did not specify the particular sub-section or sub-sections of section 7 alleged to have been contravened; (2) that in view of section 2 (1) of the Trade Disputes Act, 1906, it should have contained an express charge of intimidation; (3) that whereas the charges were alternative, the prayer was general. All three objections were over-ruled. The Lord Justice Clerk said, "In my opinion the prosecutor was not bound to tie himself up to one sub-section. . . . There is only one offence created by section 7; the sub-sections merely set forth different modes of committing the offence, and it is therefore unnecessary to do more than specify the section in order to state a relevant case." Dealing with the second objection his Lordship said, "It is said . . . that intimidation must be charged, and that idea is based, as

(*y*) [1910] S. C. (J.) 32; 47 Sc. L. R. 209. For facts in the case see p. 154, *infra*.

I understand, upon the supposition that the nature of the offence charged has been changed by the Act of 1906. . . . It appears to me that that section [section 2 of the Trade Disputes Act] in no way alters what it is necessary to libel under section 7 of the Act of 1875. It is still an offence persistently to follow a person about from place to place. It is still an offence to watch and beset a house of another person or other place where such person happens to be or the approach to such place or house. These are still offences. . . . All that this section of the Act of 1906 does is to enact that if the prosecutor tries to prove that either of these things is done, it will be a good answer on the part of the person accused, if he satisfies the tribunal that all that was done was, that one or more persons attended at or near a house or place for the purpose of peacefully obtaining or communicating information, or peacefully persuading a person to work or abstain from working. It is not necessary under sub-sections (2) or (4) of the 7th section of the Act of 1875, that there should be any intimidation in the sense of that word at all."

The "compelling" mentioned in section 7 is a compulsion either of the employer or the workman, and either may, by pressure brought to bear on the other, be "compelled," indirectly, to abstain from doing or to do any act which he has a legal right to do or abstain from doing. "To compel the employer by inducing the men not to work for him seems to me to be precisely within the language of the 4th sub-section. It is 'watching or besetting' a house for the purpose of compelling the employer not to do an act which he has a lawful right to do—namely to make such terms with his workmen as he and they may mutually agree upon. If that is done through the medium of the persuasion of the workmen, no compulsion being put on the workmen themselves, but compulsion being put by that means on the employer, that seems to me to be distinctly within the 4th sub-section,"

per Kay, L.J., in *Lyons and Sons* v. *Wilkins* (*z*), for the facts in which see p. 147, *infra*.

This reasoning no longer applies in cases of trade disputes, for if section 2 of the Trade Disputes Act be interpreted in the light of *Reg.* v. *Shepherd* (*a*), it seems clear that the consequences which follow from the picketing are immaterial if nothing more is done than to communicate or obtain information or to peacefully persuade persons to work or abstain from work. See *infra*, p. 152.

Procurement of breaches of contract, interference with trade, etc.

With regard to the procuring of breaches of contract of employment, interference with trade, etc., or with the right of a person to dispose freely of his own capital or labour, such acts are not in themselves to be actionable if done in contemplation or furtherance of a trade dispute. (Section 3, Trade Disputes Act, 1906.) But if attended by acts, unlawful in themselves, such as violence, intimidation, etc., both criminal and civil liability are incurred. Most of the old cases on strikes are therefore, in the main, still applicable, and they are accordingly set out below at some length, any changes made in the law by the Trade Disputes Act being pointed out.

The "Stop-Day Case."

The "Stop-Day Case" (*South Wales Miners' Federation* v. *Glamorgan Coal Co.*), has already been mentioned at p. 86, *supra*.

Intimidation. *Gibson* v. *Lawson*. *Curran* v. *Treleaven*.

In *Gibson* v. *Lawson* (*b*) a number of members of the Amalgamated Society of Engineers, in order to compel Gibson to join their union, resolved not to work with him after a certain date. This resolution was communicated by Lawson to the foreman, who thereupon discharged Gibson in order to prevent a strike. No violence or threats of violence were used, though Gibson said he was afraid that because of what Lawson had said he would lose his work and be unable to obtain employment anywhere

(*z*) 65 L. J. Ch. 601; [1896] 1 Ch. 811; 74 L. T. 358; 12 T. L. R. 222, 278; 45 W. R. 19; 60 J. P. 325.
(*a*) 11 Cox, C. C. 325.
(*b*) [1891] 2 Q. B. 545; 55 J. P. 485; 61 L. J. M. C. 9; 65 L. T. 573; 17 Cox, 354; 7 T. L. R. 652.

Intimidation.

where the Amalgamated Society of Engineers predominated numerically over his own society. Held, that there was no evidence of intimidation within the meaning of section 7 (1) of the Conspiracy and Protection of Property Act.

The facts in *Curran* v. *Treleaven* (*b*) were as follows:—Curran and two other trade union secretaries had informed an employer named Treleaven that if he did not cease to employ non-union men they would call out all their members. At a meeting of the members this course was resolved upon, and Curran subsequently made this statement to Treleaven's men and others in Treleaven's presence, "Inasmuch as Mr. Treleaven still insists on employing non-union men, we, your officials, call upon all union men to leave their work. Use no violence, use no immoderate language, but quietly cease to work, and go home." The union men in consequence of this statement ceased to work. Held, that there was no evidence of intimidation by Curran within the meaning of section 7 (1).

These two cases were considered together, and in arriving at his decision, Lord Coleridge seems to have been guided somewhat in his interpretation of the word "intimidation" by a definition contained in the Criminal Law Amendment Act, 1871 (*c*) (repealed by the Conspiracy and Protection of Property Act), by which intimidation was limited to such intimidation as would justify a magistrate in binding over the intimidator to keep the peace towards the person intimidated—in other words, to such intimidation as implies a threat of violence.

To constitute the offence of intimidation within the meaning of section 7 of the Act, it is not necessary that the person against whom it is directed should be induced thereby to abstain from doing what he has a legal right to do, etc. Thus in the Scottish case of *Agnew* v. *Munro* (*d*), a complaint under section 7 (1) set forth that the accused,

(*c*) See Appendix D.
(*d*) Cases in Court of Session, 4th series, 18 (J.) 22.

with a view to compel A. B. to abstain from a work on which he was engaged, and which he had a legal right to do, did wrongfully and without legal authority intimidate A. B. by threatening him while so working with personal violence if he continued to work. It was held that the complaint was relevant although it did not state that the threat had the effect of inducing A. B. to abstain from work. Lord Wellwood said, "To prove the statutory charge I think it is sufficient to prove that the intimidation used was such as to induce serious apprehension of violence in the mind of a man of ordinary courage, although it might not be successful in making him afraid." Intimidation.

In the case of *Allen* v. *Flood* (*e*) the action of a number of boilermakers in threatening to strike, and of their delegate in communicating the threat to the employer, was considered. The employers had engaged two shipwrights who had, on a previous occasion, interfered with the trade of the boilermakers by doing boilermaker's work. The case, according to Lord Shand, was one of competition in labour, in all respects analogous to competition in trade. It is part of the workman's right of competition to resolve that he will decline to work in the same employment with certain other persons, and to intimate that resolution to his employers. The boilermaker's action was comparable with the conduct of a tradesman who induces the customers of another tradesman to cease making purchases from one with whom he has long dealt, and, instead, to deal with him, a rival in the trade. The boilermakers were said to be marking their sense of the injury which they thought the shipwrights were doing them, in trenching on their proper line of business, and, at the same time, to be taking a practical measure to prevent a recurrence of what they considered an improper invasion of their special department *Allen* v. *Flood.*

(*e*) [1898] A. C. 1; 67 L. J. Q. B. 119; 77 L. T. 717; 14 T. L. R. 125; 46 W. R. 258.

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of work. But the decision in this case (according to Lord Macnaghten) has no bearing on any case which involves the element of oppressive combination. As in *Gibson's case*, Allen had procured the dismissal of the two shipwrights by telling the manager and the foreman that if they did not discharge these men the boilermakers would knock off work. Dealing with the argument that this statement was a threat, Lord Herschell said, "It is undeniable that the terms 'threat,' 'coercion,' and even 'intimidation,' are often applied in popular language to utterances which are quite lawful, and which give rise to no liability either civil or criminal. They mean no more than this, that the so-called threat puts pressure . . . on the person to whom it is addressed to take a particular course. . . . Even . . . if it can be said without abuse of language that the employers were 'intimidated and coerced' by the appellant, even if this be in a certain sense true, it by no means follows that he committed a wrong or is under any legal liability for his act. Everything depends on the nature of the representation or statement by which the pressure was exercised. The law cannot regard the act differently because you choose to call it a threat or coercion instead of an intimidation or warning." See also *McElrea* v. *United Society of Drillers* (*f*) and *Bulcock* v. *St. Anne's Master Builders' Federation* (*g*).

When a crowd is assembled for such an unlawful purpose as to compel people to abstain from working when they think it is to their interest to do so, all those persons who are in the crowd, not accidentally or without their own will, but forming part of it, with the purpose for which the crowd is assembled, are guilty of the offence to commit which the crowd was assembled. *Per* Lord Young in *Stuart* v. *Clarkson* (*h*), see *supra*, p. 138.

(*f*) The *Times*, April 14, 1904, and February 17, 1905; *supra*, p. 93.
(*g*) 19 T. L. R. 27; *supra*, p. 93.
(*h*) Cases in Court of Session, 4th series, 22 (J.) 5.

In *M'Kinlay* v. *Hart* (*i*) it was proved that a locked-out engineer had formed one of a hostile and disorderly crowd, which was following three workmen in the employment of a firm of engineers, "booing" and shouting at them with a view to compel them to abstain from doing work for the firm. The accused had joined the crowd of his own accord and had followed along with it in its pursuit of the three men, but it was not proved that he had personally "booed" or shouted. Held, that he was rightly convicted. Intimidation.

The cases of *Reg.* v. *Bunn and Others* (*j*) and *Walsby* v. *Anley* (*k*), decided before 1875, are still instructive. In the former case the servants of a gas company being offended by the dismissal of a fellow-servant agreed together to quit and did quit their employers' service without notice, by reason of which the company was seriously impeded in the conduct of its business. Evidence was adduced at the trial to show that one of the defendants had threatened certain of the non-strikers, to one of whom he had said that if he did not go with the other men he would be "spotted," while he had told another to put on his clothes or else put up with the consequences. Speaking of these threats, Brett, J., said, "It is not merely an agreement to stop work, but it certainly is a kind of threat and annoyance—and a terrible annoyance. . . . It is a lamentable thing that Dilley should threaten a man with that which, for a workman, is as great a crime as he could very well commit—a moral crime as against a fellow workman to say to him, 'Mind! you shan't follow your own will; if you do you shall be spotted;' that is to say, you shall be sneered at and be considered degraded by all the men of your own position and by your fellow workmen." *Reg.* v. *Bunn.*

In the case of *Walsby* v. *Anley* (*k*), Anley, a builder, *Walsby* v. *Anley.*

(*i*) Cases in Court of Session, 4th series, 25 (J.) 7.
(*j*) 12 Cox, C. C. 316.
(*k*) 30 L. J. M. C. 121; 3 El. & Bl. 516; 7 Jur. (N. S.) 465; 36 L. T. 666; 9 W. R. 271.

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had refused to employ, and for some time did not employ, any man who would not sign a declaration pledging himself not to be a member of or support any society which interfered with the arrangements of employers or the hours or terms of labour. About thirty workmen signed a paper in which they stated that they would all cease work unless the men who were under this declaration were discharged. The result of the action is not now material as the case was decided under section 3 of 6 Geo. IV. c. 129 (now repealed), which makes it unlawful by threats to endeavour to force a master to limit the description of his workmen. The following words of Cockburn, C.J., should, however, be noticed. "Every workman so long as he is not bound by any contract is entitled, when in the service of an employer, to the free and unfettered exercise of his own discretion whether he will remain in that service in conjunction with any other workman with whom he may not choose to serve. . . . If several workmen consider others obnoxious personally or on account of character or conduct, they have a perfect right to the exercise of their discretion, and to put the alternative to the employer of either retaining their services by discharging the obnoxious persons, or of retaining the latter and thus losing the other's services. . . . But if the men go further and do not fairly give the master the alternative, but seek to coerce him, by threats of doing something which is likely to operate to his injury, into the discharge of the obnoxious persons, then I think the case properly comes within the operation of the 3rd section of the Act. In the present case it was not one man who went to the master in order to put the alternative to him, but several who went with the object, by striking or threatening to leave their employ, of controlling the master in the management of his business."

Conway v. *Wade*.

Conway v. *Wade* (*l*) was decided under the Trade

(*l*) [1909] A. C. 506; 78 L. J. K. B. 1025; 101 L. T. 248; 25 T. L. R. 779; 53 S. J. 754.

Disputes Act, 1906. The particulars of the case are given on p. 89, *supra*. They closely resemble those in *Gibson* v. *Lawson* (*m*). One important difference is the fact that, as Wade's action was without the authority of the union, his interference must be presumed to have taken place in a spirit of hostility to Conway. It should be noticed that *Gibson* v. *Lawson* was a criminal proceeding under section 7 of the Conspiracy and Protection of Property Act, and that *Conway* v. *Wade* was a civil action for damages. Intimidation.

Quinn v. *Leatham* (p. 83, *supra*) and *Temperton* v. *Russell* (p. 82, *supra*) were both cases in which trade unions brought pressure to bear upon employers by inducing workmen not to work for them or tradesmen not to deal with them. The elements of intimidation and violence were, however, quite absent, and, following the decision in *Gibson* v. *Lawson* (*m*), no proceedings under section 7 (1) of the Conspiracy and Protection of Property Act could be successfully brought in respect of such conduct, while section 3 of the Trade Disputes Act, 1906, prevents a civil action being brought in respect of such acts when done in contemplation or furtherance of a trade dispute. *Quinn* v. *Leatham*. *Temperton* v. *Russell*.

It was held in *Lyons and Sons* v. *Wilkins* (*n*) that picketing—that is, watching or besetting the house, or place of business, or the approach thereto, of any person within the meaning of section 7, sub-section (4) of the Conspiracy and Protection of Property Act, 1875—excepting when such picketing is for the limited purpose of obtaining or communicating information, [and it may now be added since the passing of the Trade Disputes Act] or of peacefully persuading any person to work or abstain from working, is illegal, and will be restrained by interlocutory injunction. In this case the works of the employer and Picketing. *Lyons* v. *Wilkins*.

(*m*) [1891] 2 Q. B. 545; 65 L. T. 573; 61 L. J. M. C. 9; 17 Cox, C. C. 354; 55 J. P. 485.

(*n*) 65 L. J. Ch. 601; [1896] 1 Ch. 811; 74 L. T. 358; 12 T. L. R. 222, 278; 45 W. R. 19; 60 J. P. 325; *supra*, p. 140.

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of a sub-contractor of the employer were picketed. The pickets were provided with cards and instructed to accost work-people and to show them and give them copies of the card. On the cards was a printed statement requesting workmen and others to abstain from taking work from the employer pending the dispute. The pickets carried matters rather far, they followed one or two persons into the premises of the employer; they stopped another and searched the bag that he was carrying. North, J., in granting an injunction to restrain the defendants from committing the acts complained of, could not say that their conduct amounted to intimidation, though he thought it went beyond mere voluntary persuasion. Lindley, L.J., said, "Picketing . . . for that limited purpose, [*i.e.* merely to communicate or obtain information, and since 1906 to peacefully persuade any person to work or abstain from working] and conducted in that way for that simple object, is not made a criminal offence, and, I suppose, must consequently be taken to be a lawful act. Therefore, one cannot say as an abstract proposition, that all picketing is unlawful, because if all that is done is attending at or near a house in order merely to obtain or communicate information [or since 1906 to peacefully persuade any person to work or abstain from working] that is lawful. But it is easy to see how, under cover of that, a great deal may be done which is absolutely illegal. It would be wrong to station people about a place of business or a house under pretence of merely obtaining or communicating information [or peacefully persuading any person to work or abstain from working], if the object and effect were to compel that person so picketed not to do that which he has a perfect right to do, and it is because this proviso [to section 7] is often abused and used for an illegal purpose that such disputes as these very often arise. They [the pickets] were not there merely to obtain or communicate information, but to put pressure upon the plaintiffs by persuading people not to enter into their

employment; that is 'watching or besetting' within sub-section (4) [of section 7 of the Conspiracy and Protection of Property Act] and is not 'attending merely in order to obtain or communicate information.'" The decision in this case is now, for cases of trade disputes, revoked by section 2 of the Trade Disputes Act. See also pp. 152 and 153, *infra*. Picketing.

It will be noticed that the application in this case was made in the Chancery Division, and the point was raised that the defendants ought to be left to the summary jurisdiction of the magistrates. The objection was overruled. Lindley, L.J., said, "This is obviously a case in which a man's property, his trade, his livelihood, and the good-will of his business will be absolutely ruined if what is complained of is not peremptorily stopped; and according to the well-known principles by which the Court of Chancery has been guided, it is a case in which a person's property and trade are so interfered with that he may come to the Court for the protection which an injunction affords him" (*o*). In this connection it may be pointed out that in *Ward, Lock & Co.* v. *Operative Printers' Assistants' Society* (*p*), Fletcher Moulton, L.J., speaking of section 7 of the Conspiracy and Protection of Property Act, said that its object was solely to visit certain selected classes of acts which were previously wrongful, *i.e.* were at least civil torts, with penal consequences, see p. 137, *supra*.

Picketing so easily degenerates into intimidation, and is so apt to constitute a common law nuisance, that the courts will always construe with the utmost strictness the statutory provisions which legalise it. In *Reg.* v. *Bauld* (*q*), an early case decided under the Conspiracy and Protection of Property Act, 1875, the argument was put forward that if watching and besetting were done merely Statutes regulating picketing will be construed strictly. *Reg.* v. *Bauld*.

(*o*) See also *Charnock* v. *Court*, *infra*, p. 155, and *Walters* v. *Green*, *supra*, p. 92.
(*p*) 22 T. L. R. 327.
(*q*) 13 Cox, C. C. 282.

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for the purpose of persuading men to quit their employment it was not illegal. The statute of 22 Vict. c. 84 had permitted workmen, etc., to peacefully persuade others to cease or abstain from work, and though this statute had been repealed by the Conspiracy and Protection of Property Act, 1875, it might have been expected that the freedom given by the old statute was implied in the proviso to section 7 of the new one, but this view was emphatically negatived by Baron Huddlestone. "The statute" [The Conspiracy and Protection of Property Act], he said, "allows watching or attending near a place for the purpose of obtaining or communicating information, but this is the only exception. . . . They have no right to compel any other persons to abstain from doing any act which they have a legal right to do, and for that purpose to watch or beset the house or other place where such person or persons reside. Now on this rests the great question of picketing. . . . This watching or besetting is a very serious offence unless it is confined to merely obtaining or communicating information, and this cannot be too well known. . . . You will, however, see how difficult and dangerous it is in your effort not to do what is wrong, and to guard against the abuse of the practice. If you wish by your own conduct to assert your rights to 'picket,' you are almost certain to get into difficulty; for whatever you may intend, there will be some among you who will go beyond what is intended as 'watching and besetting' within the exemption of the Act." See also *Charnock* v. *Court*, p. 155, *infra*.

Persuading to work or not to work in connection with a trade dispute is now expressly legalised by section 2 of the Trade Disputes Act, but the freedom thus granted may be as narrowly construed as was the permission given by the Act of 1875 to obtain or communicate information. If, therefore, the persuasion to work or abstain from working be accompanied by circumstances which raise a presumption of intimidation, such as an inordinately large

number of persuaders, or insulting remarks or gestures, or, it may be, a determination to offer persuasion or information to those who do not desire to receive it, then the rights given by section 2 of the Act of 1906 will have been exceeded. Picketing.

Brett, J., in *Reg.* v. *Bunn and Others* (*r*), explaining the term "molestation" as used in the Criminal Law Amendment Act, 1871 (see Appendix D), said, "There would be an improper molestation if anything was done with an improper intent which you think was an unjustifiable annoyance and interference with the masters in the conduct of their business, and which, in any business, would be such annoyance and interference as would be likely to have a deterring effect upon masters of ordinary nerve." Molestation and intimidation

The case of *Judge* v. *Bennett* (*s*) is a good illustration in point. B., a woman and a boot manufacturer, having discharged some rivetters, received from J., the secretary of a trade union, a notice that unless she took back all the men the finishers would be stopped, and the shop picketed. Two men acted for some days as pickets, but were orderly and used no violence. The letter caused fear to B. Held, that the magistrate was right in holding that J. had used intimidation within the meaning of the Conspiracy and Protection of Property Act, 1875. Stephen, J., said, "The word intimidation may mean any kind of threat, provided it made the person against whom it was used reasonably afraid, and if so, then it is contrary to the statute. It may be that a threat may be conveyed in such a way as not to cause fear in the person threatened. But here the magistrate finds that the threat did cause fear, and, that being so, I think the conviction was right." A. L. Smith, J., said, "The mere fact of the picket men being orderly does not prevent their conduct being an intimidation." *Judge* v. *Bennett.*

Lord Justice Stirling thought that the defendants in

(*r*) 12 Cox, C. C. 316.
(*s*) 52 J. P. 247; 36 W. R. 103.

Molestation. *Giblan v. National Amalgamated Labourers' Union.*

Giblan's case (*t*), by persisting in the acts of which Giblan complained, had been guilty of coercion. "These acts," he said, "were directed to inflict harm on the plaintiff by preventing him from obtaining or retaining employment, and consequently from earning his livelihood in the only way in which he could do so. . . . They did these acts from time to time, as the plaintiff succeeded in obtaining employment, by going to his employer and threatening that they would resort to the powers which were, or were believed to be vested in them, as officers of a trade union, and which involved resort to the power of numbers in a way which might, and probably would, cause detriment to the employer. It may, in my opinion, be fairly inferred from the evidence that this course of conduct was intended to be continued until he made terms satisfactory to the trade union. Such acts, so persisted in, seem to me to be in the nature of molestation or coercion; and although they do not involve recourse to physical force, I am far from satisfied that they are not such as to be illegal even if done by a single individual."

Consequence immaterial if picketing itself is peaceful.

On the other hand, it seems clear that whatever may be the result of attending to obtain or communicate information, or to peacefully persuade any person to work or abstain from work, such conduct is perfectly legal if unattended by any of the disagreeable incidents alluded to. Thus in *Reg.* v. *Shepherd* (*u*) a number of men were indicted under 6 Geo. IV. c. 129, s. 3 (*v*), for conspiracy to force men to leave their employment. The evidence was to the effect that the defendants merely waited outside the place where the workmen were employed, and tried to induce them not to work there, and that their conduct was peaceable.

Reg. v. *Shepherd.*

(*t*) [1903] 2 K. B. 600; 72 L. J. K. B. 907; 89 L. T. 386; 19 T. L. R. 708.
(*u*) 11 Cox, C. C. 325.
(*v*) Appendix B.

Under 22 Vict. c. 34 (*w*), not then repealed, persons who merely endeavoured peaceably, and in a reasonable manner, and without threats or intimidation, to persuade others to cease or abstain from work were not to be liable under the statute 6 Geo. IV. c. 129, s. 3. It was held that the question was whether they had endeavoured to control the free action or overcome the free will of the workmen by force or intimidation. If there had been merely persuasion, no matter what the consequence was, peaceable and unaccompanied by menace or violence, this would not render the defendants amenable to criminal justice, they being protected by 22 Vict. c. 34. Molestation.

Reg. v. *Druitt* (*x*) was decided before the Conspiracy and Protection of Property Act was passed. A strike having been declared among some tailors, pickets were stationed about the doors of the employers to note workpeople who went in and out for the purpose of deterring them from continuing in such employment and inducing them to join the union. It was proved that insulting expressions and gestures were used by the pickets to the non-union people. Held, that this was intimidation, molestation, and obstruction within the meaning of 6 Geo. IV. c. 129, s. 3 (*v*), and 22 Vict. c. 34 (*w*). Bramwell, B., was of opinion that "if picketing could be done in a way which excited no reasonable alarm or did not coerce or annoy those who were the subjects of it, it would be no offence in law. . . . Even . . . if the picket did nothing more than his duty as a picket, and if that duty did not extend to abusive language and gestures such as had been described, still, if that was calculated to have a deterring effect on the minds of ordinary persons by exposing them to have their motions watched, and to encounter black looks, that would not be permitted by the law of the land. . . . If the jury were satisfied that this system, though not carried beyond watching and observation, was still so serious a molestation and obstruction as to have *Reg.* v *Druitt.*

(*w*) Appendix C. (*x*) 10 Cox, C. C. 592.

an effect upon the minds of the work-people, then they ought to find these three men guilty."

Persistent following. *Smith* v. *Thomasson.*

The case of *Smith* v. *Thomasson* (*y*) was decided on sub-section (2) of section 7 of the Conspiracy and Protection of Property Act, which forbids "persistent following." During a strike Smith was posted as a picket outside works at which he had been engaged. When the workmen who had taken the place of the strikers came out, one of them, Thomasson, was silently followed, at a short distance, by Smith down two streets. A crowd which had been waiting outside the works also followed Thomasson with hostile words and gestures. Held, that the justices were right in convicting Smith under section 7 of the Act. "The legislature," said Pollock, B., "does not intend in the 2nd sub-section [of section 7] to deal with intimidation by a crowd of people. The act of one person is sufficient to constitute an offence. Further, it is very clear that the legislature intended to prevent mere acts, though done without any expressed intention. It was for the magistrates to say whether the act complained of was, in fact, an act of intimidation. There was here plenty of evidence that the defendant, in intently dogging the footsteps of the workman, committed the act which the statute defines as 'persistently following.' There were the further facts before the magistrates that many other persons were pursuing a common course with the appellant."

Wilson v. *Renton.*

Wilson v. *Renton* (*z*) was a Scottish case involving charges of "persistent following" and "watching and besetting." A number of coopers who were on strike awaited the appearance of two non-strikers outside a brewery at the dinner hour, followed them through the street to their homes, waited until they came out again, and followed them back to the brewery. The crowd was not disorderly, and no violence of any kind was used, but

(*y*) 16 Cox, C. C. 740; 62 L. T. 68; 54 J. P. 596.
(*z*) [1910] S. C. (J.) 32; 47 Sc. L. R. 209; see also *supra*, pp. 136, 139.

the feeling of the crowd was evidently hostile and there were shouts of "scab" and "blackleg," though it was not proved that the accused men uttered these words. These facts were considered by the Court to justify a conviction on the charge of "persistent following."

Watching and besotting.

And one of the strikers who had remained in the street near the house in which one of the non-strikers lived, and had given a signal to the other strikers to re-form and follow the man back to his work when he came out, was held to have been rightly convicted of "watching and besetting" with a view to compelling a person to abstain from doing what he had a legal right to do. It was proved that none of the crowd received from, or communicated to, the non-strikers any information, and that they did not even speak or attempt to speak to them. This fact prevented the accused from relying on section 2 of the Trade Disputes Act as a defence.

Charnock v. *Court.*

It was held in *Charnock* v. *Court* (*a*) that "watching or besetting" within the meaning of sub-section (4) of section 7 of the Conspiracy and Protection of Property Act, does not necessarily mean any lengthened watching, and is not limited to places which the person watched or beset habitually frequents. During the course of a strike two agents of a trade union attended at a landing stage to await the arrival of a steamer containing workmen imported by the masters from Ireland to replace the men on strike, and on the arrival of the steamer they informed the Irish workmen of the strike, and offered to pay their expenses if they would go elsewhere to work. Held, that the attendance at the landing stage was with a view to compel the masters to conduct their business in accordance with the requirements of the men, and was not in order merely to communicate information; and (2) that it was a watching or besetting within sub-section (4) of section 7 of the Conspiracy and Protection of Property

(*a*) [1899] 2 Ch. 35; 68 L. J. Ch. 550; 80 L. T. 564; 47 W. R. 633; 63 J. P. 456.

Act. An interlocutory injunction was granted against the officers of the union (*b*). But see now Trade Disputes Act, 1906, s. 3.

Persons watched and beset need not be in employment.

An offence may be committed under sub-section (4) of section 7 of the Conspiracy and Protection of Property Act, even though the persons who happen to be in the place beset are not in the service or employment of any other person. Thus in *Farmer* v. *Wilson and Others* (*c*) a federation of shipowners had provided a depôt ship for men intending to serve as seamen on their ships. Certain men were on board the depôt ship and had entered into engagements with the federation to remain on board until engaged to serve as seamen on ships belonging to members of the federation, receiving in the mean time daily wages and rations from the federation. Wilson and others, with a view to compelling these men to abstain from remaining on board the depôt ship and fulfilling their engagements, beset the ship and the approaches thereto. Held, that they ought to be convicted, as it was immaterial for the purpose of the sub-section that the relationship of master and servant did not exist between the federation and the men.

Farmer v. *Wilson.*

The federation was not qualified under section 111 of the Merchant Shipping Act, 1894, by licence or otherwise to engage or supply seamen to be entered on any ship in the United Kingdom. The point was therefore raised that there was no offence within the meaning of section 7, inasmuch as the respondents had not attempted to compel the seamen to abstain from doing what they had a legal right to do. But the objection was overruled on the ground that though fulfilling the engagements might not be an act which the men had a legal right to do, remaining on board the depôt ship and receiving wages and rations were such acts.

(*b*) See also *Walters* v. *Green*, p. 92, *supra*.
(*c*) 69 L. J. Q. B. 496; 82 L. T. 566; 16 T. L. R. 309; 19 Cox, C. C. 502; 64 J. P. 486.

Watching and besetting.

Ward, Lock & Co. v. *Operative Printers' Assistants.*

The offence of "watching and besetting" (section 7, sub-section (4), of the Conspiracy and Protection of Property Act) was discussed in the recent case of *Ward, Lock & Co.* v. *Operative Printers' Assistants' Society* (*d*). A trade union secretary had stationed pickets to watch the plaintiffs' printing works for the purpose of inducing the workmen employed there to join the union, and then to determine their employment by proper notices, the object being to compel the plaintiffs to become employers of union men and to abstain from employing non-union men. There was no evidence that the pickets invited the men to break their contracts, and the picketing was carried out without causing by violence, obstruction, or otherwise, a common law nuisance. Held, that no offence had been committed within the meaning of section 7, sub-section (4). Vaughan Williams, L.J., said, "There is no evidence . . . of the pickets employed by the union having done anything beyond obtaining or communicating information; but I think there is evidence that the defendants both induced workmen to join the union, and employed pickets to watch and beset the printing premises with a view to compel the plaintiffs to become employers of unionists, and to abstain from employing non-unionists. The evidence shows this to have been done without causing by violence, obstruction, or otherwise, a common law nuisance." See also p. 79, *supra*.

Wallis v. *United French Polishers' London Society* (*e*) is a picketing case on the other side of the line. During a strike the defendant society stationed two men each day, and on some days more, to walk up and down outside the plaintiff's establishment with cards in their hats headed pickets, and which stated that the plaintiff's French polishers were on strike against a reduction of 1*d*. an hour in their wages. It was admitted that the men did not speak to any one entering, or about to enter or leave, the plaintiff's establishment. The plaintiff alleged that the

(*d*) 22 T. L. R. 327. (*e*) The *Times*, November 28, 1905.

fact that the men walked up and down the pavements outside his shop with cards in their hats was a nuisance and annoyance to him. An injunction was granted. The Master of the Rolls said that what was done as described in the affidavits amounted to a wrongful watching and besetting without legal authority, and that it did not come within what might be called the proviso to section 7 [of the Conspiracy and Protection of Property Act].

Pickets must not trespass.

Section 2, sub-section (1), of the Trade Disputes Act, 1906, in legalising peaceful picketing, confers no right upon pickets to enter upon private property without the permission of the owner. *Larkin* v. *Belfast Harbour Commissioners* (*f*). In this case Lord O'Brien, L.C.J., after pointing out that the Trade Disputes Act and the Conspiracy and Protection of Property Act must be read together, considered section 2 of the former Act in conjunction with section 7, sub-section (4), of the latter. "Watching and besetting," he said, "plainly means an external operation—something not within a house or place but without it. . . . And the words in the 2nd section of the Trade Disputes 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." The following comments of Madden, J., are also instructive. "If the act of watching or besetting is carried out with such a degree of molestation as to amount to a nuisance at common law, the motive is immaterial, and the nuisance could be restrained by injunction, or made the subject of indictment, according as it was of a public or a private character. This was clearly established by the decision of the Court of Appeal in England in *Lyons* v. *Wilkins* (*g*). . . . The effect of this section [section 2, Trade Disputes Act], read in the

Larkin v. *Belfast Harbour Commissioners.*

(*f*) [1908] 2 Ir. R. 214; *supra*, p. 81.
(*g*) [1896] 1 Ch. 811; 65 L. J. Ch. 601; 74 L. T. 358; 12 T. L. R. 222, 278; 45 W. R. 19; 60 J. P. 325.

light of the antecedent legislation, is, in my opinion, perfectly clear. It legalised . . . a course of action which might otherwise, if carried out in a certain manner, have amounted to a nuisance at common law, provided such course of action is resorted to merely for effecting certain specified peaceful purposes. To this extent only does the Act affect the enjoyment of private property. 'Watching' might be so carried out as not to involve a nuisance, but the word 'beset' almost necessarily connotes an interference with the common law right of the owner of the house or business premises beset to the enjoyment of his property. . . . The interference with private right attributed to 'picketing' . . . sounded in nuisance and not in trespass."

"Black Lists."

A device somewhat frequently resorted to in strikes and lock-outs is the posting and distributing of bills in which one of the parties to the dispute is held up to shame while public sympathy is solicited for the other. Cases have arisen in which it has been argued that such conduct comes within the limits of the terms coercion and intimidation. As in the *Mogul case* (*h*), the acts of the defendants were considered to be no more than ordinary acts of trade competition, and therefore not actionable, so, in cases of this class, the test seems to be: Is the posting of the circular no more than is required for the furtherance of the legitimate objects of the trade union?

Peto v. *Apperley*.

Peto v. *Apperley* (*i*) was an action for an injunction to restrain the secretary of a trade union from posting and distributing copies of a notice which was in these terms:—

"London United Trade Committee of Carpenters and Joiners.—Wanted—Carpenters and Joiners to keep away from Cane Hill Asylum, pending the settlement of the London strike. By order of the Committee, W. Apperley, secretary, *pro tem.*"

(*h*) [1892] A. C. 25; 61 L. J. Q. B. 295; 66 L. T. 1; 8 T. L. R. 182; 40 W. R. 337; 56 J. P. 101.
(*i*) *Law Times*, October 10, 1891.

Jeune, J., refused the injunction, saying that the objects were the objects of a trade union society, and it was clear on the evidence that no threats or intimidation had been used within the meaning of the Conspiracy and Protection of Property Act, 1875. . . . There was, on the evidence, no personal spite or feeling against the plaintiff. . . . The whole point was whether there was "just cause or excuse" . . . for what was being done. It was done in furtherance of the objects of a trade union and not illegal. Anything done in pursuance of those objects was done with "just cause or excuse." That appeared to him to be the test whereby the present case would ultimately have to be decided.

Haile v. *Lillingstone.*

Haile v. *Lillingstone* (*i*), decided at the same time, was a much stronger case. The secretary of a branch of the Shop Assistants' Union posted and distributed the following notice:—

"Boycott the Sweater.—An appeal to the public and trade unionists. Patronise the shops who close at five on Thursdays. We, the undersigned, . . . appeal to you . . . to refuse your custom to and boycott Haile, cheesemonger—the blackleg tradesman—who has acted the part of Pecksniff right through the agitation; and let every self-respecting man and woman, with a sense of duty towards others, resent the contemptible part played by Haile, and support the shop assistants in the vigorous measures taken against those who, by their refusal to co-operate with their fellow-tradesmen in shortening the hours of labour, are making our lives one weary round of toilsome monotonous labour. . . . The boycott is the only weapon now left us to use, having tried moral pressure and Acts of Parliament without avail, and all hope in that direction has been crushed out; therefore boycott the above and deal exclusively with those who, by giving a few hours' leisure to their assistants, show they are worthy of support.

"(*Signed*) W. Lillingstone."

Jeune, J., said that he was clearly of opinion that there was no cause of action in the present case, for the reasons he had given in *Peto* v. *Apperley*; . . . after the Plymouth intimidation case [*Curran* v. *Treleaven*, *supra*, p. 141] . . . it could not be said that the acts complained of amounted to intimidation.

Trollope v. *London Building Trades' Federation.*

In the case of *Trollope* v. *London Building Trades' Federation* (*j*) the decision of the Court was against the exhibition of the poster. The facts were as follows:— The Federation having ordered a strike on two large jobs which were being carried out by Messrs. Trollope, the contractors, eight or nine members of the Federation refused to come out. The defendants then issued to every one of their 750 lodges a poster 3 feet by 2 feet, edged with black, and containing the names of the men who had so rendered themselves obnoxious. This was called Trollope's "black list." Hawkins, J., said to the jury that whether there was malice was an important issue which they would have to determine. . . . If this publication took place, was it a publication in the form in which it appears, merely in the honest interest of the union people, or was it . . . a malicious production published for the purpose of forcing Messrs. Trollope to send about their business men then in their employ with whom they found no fault? . . . Was it published by these men in the course of their duty as officials of their society, or was it done to punish Messrs. Trollope for daring to keep these men in their employ? . . . In considering these matters they must look at the form of the placard, the heading, "Trollope's Black List," and the mourning border. Was it in a form calculated to keep men away from Trollope's and injure their business, and was it calculated to prevent the men whose names appeared in it from getting work?

The jury found that the list was not published *bonâ fide* for the purpose of protecting the interests of the association,

(*j*) 12 T. L. R. 373; 72 L. T. 342.

but maliciously, to compel Messrs. Trollope to dismiss certain of their men who were under contracts to serve them; that it was published vindictively; that it was calculated to injure, and did injure, Messrs. Trollope and their workmen. Damages and an injunction granted.

In *Pink* v. *Federation of Trades and Labour Unions* (*k*) an interim injunction was granted to restrain some of the defendants from circulating a letter asking the secretaries of co-operative societies to acquaint their members with the conduct of a firm of jam manufacturers who, it was alleged, had boycotted five lightermen in their employment because they were members of a trade union. The object of the circular was admittedly to induce members of co-operative societies to purchase goods other than those of the offending firm. The injunction was granted not only in respect of the circular in question, but in respect of any future similar circulars.

Seamen. Section 16, Conspiracy and Protection of Property Act. Section 236, Merchant Shipping Act, 1894.

The position of seamen under the Conspiracy and Protection of Property Act is somewhat anomalous. Section 16 of that Act is as follows:—

"Nothing in this Act shall apply to seamen or to apprentices to the sea service." (*l*).

The term "seaman" must be taken in the limited sense of the definition in the Merchant Shipping Acts, *per* Lord Russell, C.J., in *Reg.* v. *Lynch and Jones* (*m*).

By section 742 of the Merchant Shipping Act, 1894, seaman is defined to include "every person (except masters, pilots, and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship."

The offences against which the Conspiracy and Protection of Property Act provides are, when committed by seamen, dealt with under section 257 of the Merchant

(*k*) 67 L. T. 258; 8 T. L. R. 216, 711.
(*l*) Appendix J.
(*m*) [1898] 1 Q. B. 61; 67 L. J. Q. B. 59; 79 L. T. 568; 14 T. L. R. 78; 18 Cox, C. C. 677; 46 W. R. 205.

Shipping Act, 1854, re-enacted in section 236 of the Merchant Shipping Act, 1894, which provides that: "Every person who by any means whatever persuades or attempts to persuade any seaman or apprentice to neglect or refuse to join or proceed to sea or to desert from his ship, or otherwise to absent himself from his duty shall, for each such offence, in respect of each seaman or apprentice, be liable to a fine not exceeding ten pounds."

Section 16 of the Conspiracy and Protection of Property Act, 1875, means only that the punishments prescribed by the Act are not to fall on seamen. Thus where a seaman was indicted under section 7 of this Act for unlawfully intimidating a fireman with a view to compel him to abstain from serving as a fireman on board a certain ship, the indictment was quashed on the ground that the prisoner being a seaman, nothing in the Act under which he was indicted would apply to him. *Reg.* v. *Wall* (*n*).

Reg. v. *Wall.*

The ruling in *Reg.* v. *Wall* was followed in *Reg.* v. *Phillips* and *Reg.* v. *Cole* (*o*), where two seamen were indicted under the Conspiracy and Protection of Property Act, 1875, for unlawfully using personal violence in order to prevent another person doing a lawful act. A verdict of not guilty was directed.

Reg. v. *Phillips.*

Reg. v. *Cole.*

But the case of an offence against a seaman by a person who is not a seaman, is not excluded from the Act by section 16. In *Kennedy* v. *Cowie* (*p*), Kennedy, a fireman, had signed articles to serve on a certain ship as fireman. As he left the shipping office he was met by Cowie, who was a delegate of the Seamen's and Firemen's Union, but who was not himself a seaman. Cowie, it was alleged, intimidated Kennedy, in consequence of which the latter abstained from joining the ship. It was held that Cowie

Kennedy v. *Cowie.*

(*n*) 112 C. C. C. Sess. Papers, 880.
(*o*) 113 C. C. C. Sess. Papers, 622.
(*p*) [1891] 1 Q. B. 771; 60 L. J. M. C. 170; 64 L. T. 598; 17 Cox, C. C. 320; 39 W. R. 686; 53 J. P. 680.

was not protected by section 16. Day, J., said, "All which is meant by this saving clause is that nothing in the Act shall make persons who are seamen responsible for the offences there dealt with."

Only persons actually engaged as seamen are protected by section 16. *Reg.* v. *Lynch and Jones.*

Persons whose calling or occupation is the sea, but who are not actually employed or engaged as seamen, are not exempted by section 16 of the Conspiracy and Protection of Property Act from the operation of that Act. *Reg.* v. *Lynch and Jones* (*m*). The prisoners had been indicted and convicted for an offence under this Act. They followed the sea as a calling, each of them having been engaged as fireman on board steamships, but on the day in question they were not engaged or employed as firemen or seamen on board ship. It was not shown when either of them had been last so employed or engaged. Lord Russell of Killowen, C.J., said, "Why are seamen exempted from the provisions of the Act and not a carpenter or any other workman or artificer? If seaman means seafaring man it would be difficult to suggest any reason for so large an exception; whereas, if it is taken in the limited sense of the definition in the Merchant Shipping Act, a reason for such exception might possibly be found in the special legislation of those acts applicable to the limited class of seamen as therein defined." Speaking of section 257 of the Merchant Shipping Act, 1854, he said, "This provision creates a wide distinction between a seaman actually employed or engaged under the Merchant Shipping Act and a mere seafaring man not so actually employed or engaged."

The point was raised whether, as the Merchant Shipping Act, in defining seaman, adds the words "on board any ship," a seaman would be liable under the Conspiracy and Protection of Property Act, if he committed the alleged illegal act ashore. In answer, Lord Russell said that such an objection had no real foundation, as the employment or engagement must be decided as a fact in each case, and a seaman may well be held to be employed or engaged

on board a ship although at the particular point of time he may have been sent ashore on duties connected with the ship.

Section 22 of the Trade Union Act, 1871, forbids interested persons to act as members of a court of summary jurisdiction or appeal for the purposes of the Act. In the case of *The Queen* v. *Mackenzie and Others* (*q*) an officer of a trade union was convicted under section 7 of the Conspiracy and Protection of Property Act, 1875, of the offence of leading a large crowd after an agent of the Shipping Federation, Ltd., with a view to compel him to abstain from following his occupation. Three of the magistrates who heard the case owned shares in shipping companies which were insured in an association which was a member of the Shipping Federation, Ltd., but Collins, J., thought that the circumstances were not such as to raise a presumption of bias on the part of the magistrates objected to.

(*q*) [1892] 2 Q. B. 519; 67 L. T. 201; 61 L. J. M. C. 181; 17 Cox, C. C. 542; 41 W. R. 144; 56 J. P. 712.

CHAPTER VI.

TRADE UNION FUNDS.

Trade union funds subject to the ordinary laws which regulate trust funds.

THE power of the Courts to interfere in matters relating to trade union property and funds is derived in part from their jurisdiction in equity to restrain the misapplication or direct the application of any trust property, and in part from the provisions of the Trade Union Acts.

In *Yorkshire Miners' Association* v. *Howden* (*a*), Lord Lindley said, "The Trade Union Act, 1871, contains a carefully framed scheme to enable trade unions to acquire and to hold, through the medium of trustees, funds for the benefit of their members who, as already observed, are expressly mentioned in section 8 . . . The natural legal inference would be that the ordinary equitable machinery for preserving the trust property, and for executing the trusts on which it is held, would be available for the members." And in the Scottish case of *M'Laren* v. *Miller* (*b*), where it was sought to prevent a branch society from dealing wrongfully with the funds, Lord Giffard said, "It is said that they are in possession of certain funds belonging to the society, and it is alleged by the pursuers that the defenders propose to uplift these funds and apply them to purposes not authorised by the objects or by the rules of the society. If this be so, a decree to prevent such a proceeding will be quite as competent against these

(*a*) [1905] A. C. 256; 74 L. J. K. B. 511; 92 L. T. 701; 21 T. L. R. 431; 53 W. R. 667.
(*b*) 7 R. 867.

trustees of a trade union society, allowed and recognised by law, as it would be against any private trustee misusing or embezzling private trust funds." Lord Ormidale, dealing with the argument that in such cases section 4 of the Trade Union Act, 1871, deprived the Court of jurisdiction, said, "To my mind it is obvious that the expressions in the section have no reference to actions of interdict, which are intended merely to preserve the *status quo*."

Special provision is also made by the Trade Union Acts.

The special provisions of the Trade Union Acts relating to the property and funds of trade unions will now be dealt with.

A registered trade union and each branch of a trade union may acquire and hold land not exceeding one acre in extent, and, if necessary, may dispose of the same by sale, exchange, mortgage, etc. (Trade Union Act, 1871, section 7 (*c*)). It is only under this Act that such acquisition and holding are possible. Otherwise, the Mortmain Acts and the prohibitions of perpetuities remain in force. The word "purchase" as used in section 7 has been held to mean purchase in the ordinary sense of "buying for money," and not in the technical sense of acquiring otherwise than by descent or escheat. Consequently a devise of land by will to a trade union is invalid (*In re Amos, Carrier* v. *Price* (*d*)).

The real and personal property of a registered trade union is vested in the trustees of the union, while the property of a branch is vested in the branch trustees. But section 3 of the Act of 1876 permits the property of a branch to be vested in the trustees of the union if the rules of the union so provide (*e*). Where there is a change of trustees any property consisting of stocks and securities in the public funds must be transferred into the names of the new trustees, but all other kinds of property vest in

(*c*) Appendix E.
(*d*) [1891] 3 Ch. 159; 60 L. J. Ch. 570; 65 L. T. 69.
(*e*) Appendix F.

the trustees without any new assignment or conveyance (section 8 of the Trade Union Act, 1871 (*c*), and section 3 of the Trade Union Act, 1876 (*e*)). See also *Cope* v. *Crosingham*, *infra*, p. 170.

Where a trustee of a trade union is absent from the country, or becomes bankrupt etc., or a lunatic, or dies, or is removed from office (*f*), or if it be not known whether he is alive or dead, and there be standing in his name at the Bank of England or Ireland any stock belonging to the trade union, the Registrar of Friendly Societies may direct the transfer of the stock in the names of other persons as trustees (section 4, Trade Union Act, 1876 (*g*)).

The trustees of a trade union need not be members thereof (Lord Davey in *Yorkshire Miners' Association* v. *Howden* (*h*)).

Actions relating to trade union property.

Actions and other proceedings relating to trade union property may be brought or defended, either by the trustees or by any other officer of a trade union authorised by the rules (section 9, Trade Union Act, 1871 (*i*)).

It was said by Farwell, J., in *Taff Vale Railway Co.* v. *Amalgamated Society of Railway Servants* (*j*), that sections 8 and 9 of the Trade Union Act, 1871, in expressly providing for actions in respect of property being brought by or against the trustees, impliedly exclude the trustees from being sued in tort, and from that it followed that an action in tort must be brought against the society in its registered name. But by section 4 of the Trade Disputes Act, 1906, trade union funds are no longer liable for torts committed on behalf of a trade union by its officers or

(*f*) A trustee is removable under an express power contained in the instrument creating the trust, or under the Trustee Act, 1893, ss. 10 & 25. See Appendix S.

(*g*) Appendix F. See also Appendix G. Rules 17–20 and Appendix H. Forms P, Q, and R.

(*h*) [1905] A. C. 256; 74 L. J. K. B. 511; 92 L. T. 701; 21 T. L. R. 431; 53 W. R. 667.

(*i*) Appendix E.

(*j*) [1901] A. C. 426; 70 L. J. K. B. 905; 85 L. T. 147; 17 T. L. R. 698; 50 W. R. 44; 65 J. P. 596.

members, though if the wrong complained of is not done in contemplation or furtherance of a trade dispute, there is reason to believe that the funds of the union are still liable. See *Rickards* v. *Bartram, supra,* p. 104.

In *Linaker* v. *Pilcher* (*k*) an action of libel was brought against the trustees of the Amalgamated Society of Railway Servants in respect of a libel contained in the *Railway Review* of which the society were the publishers and proprietors. The newspaper had been registered under the Newspaper Libel and Registration Act, 1881, in the names of the trustees of the society. It was held that the trustees were entitled to be indemnified out of the funds of the union in respect of the liability incurred by them as the registered proprietors of the paper, and that they could be properly sued in their capacity as trustees so as to bind the funds of the union. But see p. 107 as to suggested meaning of sub-section (2) of section 4, Trade Disputes Act, 1906.

And where the general secretary of a trade union was dismissed without notice and brought an action against the trustees for twenty-three weeks' salary, it was held that under sections 8 and 9 the trustees were properly made defendants (*Curle* v. *Lester* (*l*)).

Dispute between trade union and branch as to property of branch.

Where there is a dispute between the executive council of a trade union and a branch of the same, and the latter refuses to deliver up the property of the branch, an action may be brought under section 9 against the branch trustees for the recovery of the property (*Madden* v. *Rhodes* (*m*), see also *infra,* p. 178).

Relationship between trade union and branch may be such as to empower the former to prevent a misapplication of branch funds.

The rules of a society may be such as to enable the society to prevent a branch misapplying the funds, though they do not empower it to compel the branch to pay over

(*k*) 70 L. J. K. B. 396; 84 L. T. 421; 49 W. R. 413; 17 T. L. R. 256.
(*l*) 9 T. L. R. 480.
(*m*) [1906] 1 K. B. 534; 75 L. J. K. B. 329; 94 L. T. 741; 22 T. L. R. 356; 54 W. R. 373; 70 J. P. 230.

Cope v. *Crosingham.*

to the society the funds in hand. Thus in *Cope* v. *Crosingham* (*n*) (*o*) the members of a branch, being dissatisfied at the suspension of the general secretary, passed a resolution threatening to secede from the union and to distribute the funds among its members unless the secretary was reinstated. When the new secretary requested the branch secretary to pay over the funds of the branch the latter refused and threatened to distribute them.

The rules of the society relevant to the matter in dispute were thus summarised by Eve, J.:—

In the event of a deficiency in the funds of the central society there was power vested in the executive committee to make a levy up to a very large percentage on all the funds of the branches.

It was the duty of the branch to contribute a sum of 6*s.* a year, or 1*s.* 6*d.* a quarter, to the head office fund in respect of each financial member of the branch.

There was a special fund, the Labour Representation Fund, of 1½*d.* per annum per head, which was payable without deduction to the head office. There was a provision that any surplus of the sick pay over certain fixed amounts, which vary with the membership of the branch, should be paid to the central society.

It was held that an action by the trustees of the trade union to restrain the misapplication of the funds of the branch was maintainable, notwithstanding section 4 of the Trade Union Act, 1871.

The Court made a declaration that the resolution of the seceding branch of the trade union to distribute the funds of the branch among the members of the branch was *ultra vires* the rules of the branch, and granted an injunction restraining the branch trustees from making such distribution of the branch funds, or from dealing with the same otherwise than in accordance with the rules. In the

(*n*) 24 T. L. R. 816; 77 L. J. Ch. 777; [1908] 2 Ch. 624; 99 L. T. 609.
(*o*) Affirmed by Court of Appeal, 25 T. L. R. 593; 78 L. J. Ch. 615; [1909] 2 Ch. 148; 100 L. T. 945; 53 S. J. 559.

Chancery Division (*n*) Eve, J., said, " It is said on behalf of the defendants that the fund belongs to the members of the branch and that the head trustees have nothing to do with it. The answer to that is that the society is very much interested in the carrying on of the branches as the rules of the society clearly show. The rules establish this —that the society is largely interested in the property of the branches, and that the head trustees have sufficient interest in the branch fund to entitle them to maintain this action." And in the Court of Appeal (*o*) Buckley, L.J., said, " The outcome of these provisions [the rules of the union] I think is that the branch does not exist as a separate union . . . Although a branch has, under the rules, separate trustees, it has not separate funds in the sense of being entitled, as regards such sums as under the rules are, from time to time, left in its hands, to a right to those funds in the branch as distinguished from a right to them in the society. . . . The funds are not the funds of the branch as distinguished from the union, but the funds of the branch as a constituent part of the union."

The Court of Appeal refused to make any order that the defendants should pay over the funds of the branch in their hands to the plaintiff. Dealing with this claim the Master of the Rolls said, " Now by section 8 of the Act of 1871, the real and personal estate of any branch of a trade union is vested in the trustees of such branch, and not in the trustees of the union. It is true that, by section 3 of the Act of 1876, section 8 is amended by inserting after the words ' trustees of such branch,' the words ' or of the trustees of the trade union if the rules of the trade union so provide.' But I am clearly of opinion that there is nothing to be found in the rules of this trade union to prevent the application of section 8. Indeed it is plain that the rules contemplate and expressly provide that the branch funds shall be vested in the branch trustees. This seems to strike at the root of the plaintiff's title to require payment of the money in the hands of the

defendants. It is no doubt true that the rules contain numerous provisions for the payment of various sums out of branch funds to the head office and to other persons (such as branch secretary, and branch auditors, and members for sick pay), and on the other hand for payment by the head office of various sums to or for the benefit of members of the branch. This, however, involves the administration of the funds according to the rules, and to order payment would be a direct enforcement of an agreement for the application of funds to provide benefits to members, and would therefore fall within section 4. I do not intend to indicate an opinion that new trustees of the union could not maintain an action to recover funds from former trustees, and the same would apply to new trustees of the branch as against former trustees of the branch. That would not involve any administration. But I am unable to apply that principle in the present case. I think that branch trustees never were trustees of the union and were never accountable as such." Buckley, L.J., however, went so far as to suggest that effect might be given to the rights of preservation of the funds by an order to hand over the funds to the new branch trustees if and when such were appointed.

The facts in *Duke* v. *Littleboy* (*p*) were somewhat like those in *Cope* v. *Crosingham*. The central executive of a trade union having refused to sanction a strike of a branch, the branch passed a resolution to secede. The president, general secretary, and other members of the executive council brought an action against the president, secretary, treasurer, and trustees of the branch asking for an injunction to restrain them from dividing the funds of the branch, or from dealing with them contrary to the rules. The injunction was refused on the ground that to grant it would be a direct enforcement of an agreement within the meaning of section 4 of the Trade Union Act, 1871.

(*p*) 49 L. J. Ch. 802; 43 L. T. 216; 28 W. R. 977.

Since the case of *Yorkshire Miners' Association* v. *Howden* (*q*), the decision in which is an agreement with *M'Laren* v. *Miller* (*r*) and *Wolfe* v. *Matthews* (*s*), *Duke* v. *Littleboy* can no longer be binding.

In the Scottish case of *M'Laren* v. *Miller* (*r*), an interdict was granted at the instance of the trustees of the Amalgamated Society of Railway Servants for Scotland to restrain a branch of the society from withdrawing from the bank money belonging to the branch with a view to its distribution among the branch members in defiance of the rules of the society. Lord Giffard, in granting the interdict, said that a decree to prevent the defendants uplifting the funds of the branch and applying them to purposes not authorised by the objects or rules of the society, would be quite as competent against the trustees of a trade union allowed and recognised by law, as it would be against any private trustee, though care must be taken to so frame the interdict that the funds of the society should not be locked up indefinitely or permanently.

In *Wolfe* v. *Matthews* (*s*), two trade unions having amalgamated, certain members of one of the societies sought an injunction to prevent the funds of their society being applied to the purposes of the amalgamation, on the ground that such application was contrary to an agreement among the members of the society that its funds should be used for providing benefits to the members. The injunction was granted on the ground that the rules did not authorise any amalgamation, or any such application of the funds as proposed, and that the evidence did not show the consent of two-thirds of the members as required by section 12 of the Act of 1876.

The judgments pronounced in *Yorkshire Miners'* A member of a trade union

(*q*) [1905] A. C. 256; 74 L. J. K. B. 511; 92 L. T. 701; 21 T. L. R. 431; 53 W. R. 667.
(*r*) 7 R. 867.
(*s*) 21 Ch. D. 194; 51 L. J. Ch. 833; 47 L. T. 158; 30 W. R. 838.

may bring an action to restrain misapplication of funds where trustees will not do so.

Yorkshire Miners' Association v. *Howden.*

Association v. *Howden* (*u*) (*q*) (for the facts in which, see *supra*, p. 28) contain passages which throw much light on the constitution of a trust under the Trade Union Acts, 1871 and 1876. Section 4 of the Act of 1871 does not prevent an individual member from bringing an action on behalf of the members of the association to restrain a misapplication of funds, when it is plain that the trustees will not do so. This is in accordance with the principle under which an individual member of a joint stock company is allowed to sue in his own name to prevent something being done which is *ultra vires*, and it is not a condition precedent to the maintenance of the action by an individual member of the union that he should have applied to the trustees to take action for that purpose where it is clear that the application would have been useless. *Per* Vaughan Williams, L.J., in the Court of Appeal (*u*). "It is," said Stirling, L.J., "the right of any one of their *cestuis que trust*, as the members of the association are expressly declared to be under the term of the Act of Parliament, to bring an action to restrain such misapplication." And Lord Halsbury in the House of Lords (*q*) said, "The trustees of a trade union being the persons in whom the property of the union is vested, they are subject to the ordinary law which protects trust property from being diverted from its proper objects." And see the words of Lord Lindley quoted at p. 166, *supra*. See also the case of *Alfin* v. *Hewlett*, p. 31, *supra*.

Dissolution of trade union. Disposal of funds.

The rules of every trade union must provide for the dissolution of the union (section 14, Trade Union Act, 1876) (*v*).

Strick v. *Swansea Tin Plate Co.*

In *Strick* v. *Swansea Tin Plate Co.* (*w*) the affairs of a trade union which was being wound up came before the Court. One of the rules of the association provided that

(*u*) [1903] 1 K. B. 308; 72 L. J. K. B. 176; 88 L. T. 134; 19 T. L. R. 193.
(*v*) Appendix F.
(*w*) 36 Ch. D. 558; 57 L. J. Ch. 438; 57 L. T. 392; 35 W. R. 831.

upon the winding-up and closing of the business of the association any funds that might be in existence should, after payment of all expenses and the clearing off of all liabilities, be divided amongst the members of the association in the same proportion as they should have contributed to the funds. Another rule was as follows: "Any person, being a member of the said association, who shall not act upon and keep all the rules of the said association, shall thereupon cease to be a member thereof, and shall forfeit all moneys paid into the said association, and shall under no circumstances or conditions be entitled to any repayment, or to any compensation or allowance in respect of his being a member of the said association, or in respect of any claim which he may then have against the funds of the said association."

Several members who had been expelled under the latter rule claimed to share in the distribution, but the Court held that the funds must be distributed according to the rules, and that only existing members were entitled to participate in the distribution.

In re Printers' and Transferrers' etc., Society.

Where no provision is made by the rules of a society for the distribution of the funds on a dissolution, the Court will distribute the funds amongst the existing members at the time of dissolution. Thus in the case *In re the Printers' and Transferrers' Amalgamated Trades Protection Society* (*x*), the rules of the society contained no provision for the distribution of its funds on a dissolution. At the time of dissolution, the society consisted of 201 members, and possessed funds to the amount of £1000. It was held that there was a resulting trust in favour of those who had subscribed to the fund, and that the money was divisible amongst the existing members in proportion to the amount contributed to the funds by each member, irrespective of the fines or payments made by or to members in accordance with the rules.

(*x*) [1899] 2 Ch. 184; 68 L. J. Ch. 537; 47 W. R. 619; W. N. 86; 15 T. L. R. 394.

Cunnack v. *Edwards.*

In *Cunnack* v. *Edwards* (*y*) a society registered under the Friendly Societies Act, 1829, had been established to raise by subscriptions, fines, and forfeits of its members, a fund to provide annuities for widows of deceased members. When the last widow annuitant died there was in existence a surplus of £1250. Held, that there was no resulting trust in favour of the legal personal representatives of members of the society, that the society was not a charity, and therefore the unexpended fund was not applicable *cy-près* to charitable purposes, and that the fund passed to the Crown as *bona vacantia*. Lord Halsbury described the arrangement as a business-like one, each member of the society contributing a certain sum on the understanding that if he predeceased his wife, she should receive an annuity. Thus, when the last annuitant died, the beneficial interest of each contributor had been entirely exhausted.

Queen v. *Registrar of Friendly Societies.*

In the case of *The Queen* v. *The Registrar of Friendly Societies* (*z*) a trade union broke up into two sections, and each applied to be registered under the old name. As the effect of registering either section under that name would have been to give that section the control of the funds belonging to the society, it was held that neither could then be registered until a competent Court had ascertained the legal status of each.

Protection of trade union funds against dishonesty of officials.

Liability of Trustees, Officers, etc., to Account; Punishment for Dishonesty, etc.

The rules of every registered trade union must provide for :—

(*a*) The appointment and removal of a general committee of management, of a trustee or trustees, treasurer, and other officers.

(*b*) The investment of the funds and an annual or periodical audit of accounts.

(*y*) [1896] 2 Ch. 679; 65 L. J. Ch. 801; 75 L. T. 122; 12 T. L. R. 614; 45 W. R. 99.
(*z*) L. R. 7 Q. B. 741; 41 L. J. Q. B. 366; 27 L. T. 229.

(*c*) 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 (Schedule I. Trade Union Act, 1871, clauses 3, 4, and 5 (*a*)).

In *Norey* v. *Keep and Others* (*b*) it was held that certain members of a trade union were entitled to an inspection of the books and accounts by an accountant on their behalf, such accountant to give an undertaking not to make use of the information acquired except for the purpose of advising his clients.

A trustee of a registered trade union is only liable in respect of moneys which have been actually received by him, and cannot otherwise be called upon to make good any deficiency in the funds (section 10, Trade Union Act, 1871 (*a*)).

The treasurer must render an account of his treasurership when required, and, when the account has been audited, must, if required, hand over any balance of moneys due from him, and all property of the union in his hands. If he fail to hand over such balance or property, the trustees may sue him therefor (section 11, Trade Union Act, 1871 (*a*). Cf. Friendly Societies Act, 1896, s. 55, Appendix R).

Any person, whether a member of a trade union or not, who, by fraud, obtains possession of any of the property of a trade union, or who, being in possession of such property, wilfully withholds or fraudulently misapplies it, or wilfully applies it to purposes not sanctioned by the rules, may be summoned before a Court of Summary Jurisdiction. The Court may order him to deliver up the property, to repay the money improperly applied, and to pay, if it think fit, a penalty of £20 and £1 costs. If the person so ordered make default in complying with the order, he is liable to imprisonment for three months.

(*a*) Appendix E.
(*b*) 25 T. L. R. 289; 78 L. J. Ch. 334; [1909] 1 Ch. 561; 100 L. T. 322.

It is possible to proceed against such person by indictment instead of by summary procedure (section 12, Trade Union Act, 1871) (*a*).

Section 12 of Trade Union Act, 1871, and section 87 (3) of Friendly Societies Act, 1896, compared.

This section is, in substance, the same as section 24 of the Friendly Societies Act, 1855, re-enacted by section 87, sub-section (3), of the Friendly Societies Act, 1896 (see Appendix R), and in the case of *Barrett* v. *Markham* (*c*) it was decided that to render the treasurer of a friendly society liable to the penalties imposed by the last-named section, for withholding or misapplying moneys of the society which have come to his hands as treasurer, it must be shown that he has been guilty of some fraud or misrepresentation. Mere inability to pay over the money to the trustees is not enough.

Barrett v. *Markham* and *Madden* v. *Rhodes*.

Willis, J., said, "A civil remedy having been given against a defaulting officer by section 22 [re-enacted by section 55, Friendly Societies Act, 1896. See Appendix R] (*d*), a proceeding of a criminal or penal nature is given by section 24 in respect of something which is of a criminal character. . . . I found my decision upon the language used . . . in section 24. 'If any officer having any moneys, securities, etc., of the society in his possession, shall withhold or misapply the same.'—That clearly means a withholding or misapplying under circumstances importing misconduct. And this is confirmed by the proviso at the end of the section. 'Provided that nothing herein contained shall prevent the said society from proceeding by indictment, etc. . . .' It is evident that the section intended to create an offence."

The decision in *Barrett* v. *Markham* was used by the Court as a guide in *Madden* v. *Rhodes* (*e*). A branch of a trade union having refused to obey the instructions of the society, the executive council of the society demanded

(*c*) L. R. 7 C. P. 405; 41 L. J. M. C. 118; 27 L. T. 313; 36 J. P. 535.

(*d*) Cf. section 11, Trade Union Act, 1871 (Appendix E).

(*e*) [1906] 1 K. B. 534; 75 L. J. K. B. 329; 94 L. T. 741; 22 T. L. R. 356; 54 W. R. 373; 70 J. P. 230.

the resignation of the branch officers and committee, and authorised two of the general trustees to go to the branch and compel the branch trustees to deliver up the moneys, books, and all property held by them in trust for the society. The branch society called for the withdrawal of the resolution, failing which, they threatened to withdraw from the society. The society then issued a summons under section 12 of the Trade Union Act, 1871, against the trustees of the branch, complaining that they, having in their possession certain moneys, books, etc., of the society, wilfully withheld the same. No fraud or dishonesty was alleged. Held, that in the absence of fraud an officer of a trade union is not liable to the penalties imposed by section 12 of the Trade Union Act, 1871, but that under section 9 of that Act, an action may be brought against him for the recovery of the money. Lord Alverstone said, "Looking at the latter words of section 12 and the nature of the punishment to be inflicted, I should have thought that the section was clearly dealing with something more than a mere civil wrong. . . . In my opinion section 9 of the Act of 1871 gives quite as full a civil remedy as section 22 of the Act of 1855 [Friendly Societies Act] (*f*) does, and I am unable to agree with the contention that the effect of section 4 of the Act of 1871 is to prevent section 9 from being applicable to the circumstances of the present case. In my opinion the dispute in this case, which is one between the officials of a trade union and the trustees of a branch of the union relating to the property of the union, is one which is directly contemplated by section 9."

The offences dealt with in section 12 are criminal offences.

As will be seen from the judgment of Lord Alverstone above, the acts dealt with in section 12 are criminal offences, and the failure to appreciate this fact led the magistrates into an error in the case of *Reg.* v. *Trustcott* (*g*). Summonses having been taken out under

(*f*) Re-enacted by section 55, Friendly Societies Act, 1896 (Appendix R).

(*g*) 81 L. T. 188; 19 Cox, C. C. 379.

section 12 against two branch officials for wilfully withholding from the trustees of the union certain sums of money, the men were ordered to pay the amount withheld. They neglected to comply with the order and application was made under section 12 for their committal. The magistrates, however, being under the impression that the liability of the two men to pay the money ordered to be paid was only a civil debt, thought that they were prevented by section 6 of the Summary Jurisdiction Act, 1879, from committing the men to prison, unless judgment summonses were issued and proof given that they had means. Lawrence, J., thought the magistrates had come to a wrong conclusion upon the point, and that they might have made an order for imprisonment in default of payment of the money.

Imprisonment under section 12 extinguishes liability to repay the money.

Knight v. *Whitmore.*

Vernon v. *Watson.*

Imprisonment under section 12 operates as an extinguishment of the debt. It is not only a punishment for the criminal offence, it is also execution upon the person of the debtor with regard to the money found to be due. Thus in *Knight* v. *Whitmore* (*h*) the treasurer of a branch of a registered trade union was proceeded against under section 12, and was convicted of unlawfully and fraudulently misapplying the money. He was ordered to repay it, and in addition was fined £5. Having failed to pay as ordered, he was sent to prison for two months. Subsequently the general secretary of the society sued him in the County Court for the sum he had appropriated. It was held that as the plaintiff had had recourse to the remedy provided by section 12 of the Trade Union Act, and the defendant had been punished, the punishment suffered by him operated as an extinguishment of the debt. "I think," said Field, J., "if a prosecutor after having recourse to the criminal procedure was enabled to proceed against a defendant as for a civil debt, it would lead to oppression."

(*h*) 53 L. T. 233; 33 W. R. 907.

Vernon v. *Watson* (*i*) was a similar case brought under section 16 (9) of the Friendly Societies Act, 1875, re-enacted in section 87 (3) of the Friendly Societies Act, 1896 (see Appendix R) (*j*). An officer of a friendly society who had misapplied money belonging to the society was convicted and fined £5 and ordered to repay the money, or, in default to be imprisoned for two months. The man went to prison, but the trustees subsequently applied to the justices for a distress warrant to levy the amount ordered to be repaid. This was refused on the ground that there was no power to issue it. They then brought an action to recover the money. Held, that the conviction, order, and imprisonment upon summary proceedings under the statute were a bar to the civil action. Lord Esher said, "The sentence . . . for misapplying money belonging to the society is a sentence for an offence, but part of the sentence is that the money shall be repaid. The sentence, therefore, is an order for the repayment of the money found to be due. It is a judgment for the repayment of the money, and the person who has committed the offence is sent to prison for non-payment. The imprisonment is execution with regard to the money found to be due, as well as punishment for the criminal offence. You have, therefore, an order to repay the money, then execution by imprisonment, which is execution upon the person of the debtor. I doubt whether a distress warrant could be issued to enforce the order; but the Act provides a mode of execution by imprisonment. Sub-section (9) [of section 16 of the Friendly Societies Act, 1875] does not oblige the society to proceed under its provisions. There is nothing to prevent them from bringing an action to recover the money misappropriated. . . . If a party chooses to take the remedy provided by the statute, and gets an order for repayment under

(*i*) [1891] 2 Q. B. 288; 60 L. J. Q. B. 472; 64 L. T. 728; 39 W. R. 519; 56 J. P. 85.
(*j*) Cf. section 12, Trade Union Act, 1871 (Appendix E).

sub-section (9), and execution upon that order, he cannot afterwards, according to ordinary principles, bring an action for the same debt."

It is difficult to reconcile with these two cases the case of the *United Builders' Labourers' Union* v. *Stevenson* (*k*). A trade union secretary was prosecuted for falsifying the books of the union and defrauding the union of considerable funds. He was convicted and sentenced to a term of imprisonment. On the expiration of the term the plaintiffs sued him for various sums amounting to £557 as moneys received by him to the use of the plaintiffs, being items improperly charged as expenses and receipts unaccounted for. Judgment was given for the amount claimed. Farwell, J., said that the defendant being sued on his own published account, and proved to be liable, had really no answer to the plaintiff's claim (see *infra*, p. 186).

Quære, whether criminal procedure outside the Trade Union Acts available for protection of trade union funds?

There still remains to be discussed the criminal liability (outside the Trade Union Acts) of dishonest officers of trade unions.

Hornby v. *Close*.

Farrer v. *Close*.

In the case of *Hornby* v. *Close* (*l*), decided in 1867, a branch of the Boiler Makers and Iron Shipbuilders' Society attempted to avail itself of the summary jurisdiction provided by section 24 of the Friendly Societies Act (now section 87 (3) of the Friendly Societies Act, 1896 (*m*)), for the punishment of an officer of the society who was withholding certain moneys of the society. The purposes of the society were partly benevolent and partly in restraint of trade, being those of an ordinary trade union. It was held that the summary jurisdiction given to the magistrates by section 24 of the Act did not apply to cases of fraud or misappropriation of the funds of such a society on the part of any of its members, firstly, because the society

(*k*) The *Times*, February 7, 1906.
(*l*) 10 Cox, C. C. 393; 8 B. & S. 175; 36 L. J. M. C. 43; L. R. 2 Q. B. 153; 15 L. T. 563; 15 W. R. 336.
(*m*) See Appendix R.

was not a friendly society within the meaning of the Friendly Societies Act; secondly, because the trade union purposes were illegal. Cockburn, C.J., said, "I am very far, indeed, from saying that a trade union, constituted for such a purpose, would bring those who are members of it within the criminal law; but, inasmuch as in all the cases of trade unions that have come under my observation, there are always rules and regulations that operate in restraint of trade, then on the same principle as that on which, in the case of *Hilton* v. *Eckersly* (*n*), . . . the combination of the masters . . . was held . . . to be not criminally illegal, but so far illegal, in respect to civil rights and obligations, that the breach of an agreement founded on them could not be enforced in a court of law, I think here one of the main objects of this society is to constitute a society for the purposes, and to carry out the objects of a trade union, and that it is illegal to the extent and in the sense of the decision of that case. . . .

"I think, therefore, for two reasons, that it is impossible to hold that this case comes within the 44th and 9th section of the Friendly Societies Act [1855]. In the first place, because the purposes for which a trade union is organised are not analogous purposes to those for which benevolent societies, properly so called, are constituted; and secondly, because, although the members may not be criminally responsible for these arrangements among themselves, and although there may be rules and regulations and agreements to which they may, if they think proper, subject themselves with a view to their common incorporation, yet such rules, being in restraint of trade, are by the law of the land illegal. I think the magistrates were right in deciding that the case did not come within the Act of Parliament."

Farrer v. *Close* (*o*) was decided in 1869 on an information

(*n*) See *supra*, p. 9.
(*o*) L. R. 4 Q. B. 602; 38 L. J. M. C. 132; 20 L. T. 802; 10 B. & S. 533; 17 W. R. 1129.

under sections 24 and 44 of the Friendly Societies Act, 1855, against an officer of a trade union (the Amalgamated Society of Carpenters and Joiners) charging him with having misappropriated £40 of the society's money. The justices dismissed the information on the ground that the rules of the society, as shown by the evidence, were illegal and in restraint of trade, and that the society was not within section 44 of the Friendly Societies Act, 1855. On appeal, the Court being equally divided, the appeal was dismissed. The rules of the society were ambiguous, but Cockburn, C.J., and Mellor, J., who decided against the society, did so on the ground that they considered them to be, in effect, illegal as being in restraint of trade. Hannen and Hayes, JJ., took the view that the rules did not show an illegal purpose, and held that the justices were wrong in dismissing the information.

Reg. v. *Stainer.*

Much doubt has been cast upon the decisions in *Hornby* v. *Close* and *Farrer* v. *Close* by the cases of *Reg.* v. *Stainer* (*p*) and *Reg.* v. *Tankard* (*q*). In the former case it was held by the Court for Crown Cases Reserved that an unregistered friendly society or trade union may prosecute its servants for embezzlement of its property, though some of its rules may be void as being in restraint of trade, and contrary to public policy. The rules of the society in question imposed fines upon members for working beyond certain hours, or for applying for work at a firm where there was no vacancy, or for taking a person into a shop to learn weaving where there was no vacant loom. Cockburn, C.J., said, "According to the cases of *Farrer* v. *Close* (*o*) and *Hilton* v. *Eckersley* (*r*), such rules would be illegal and void, and any contract arising on these rules would also be void, as being in restraint

(*p*) 11 Cox, C. C. 483: L. R. 1 C. C. R. 230; 39 L. J. M. C. 54; 21 L. T. 758; 18 W. R. 439;
(*q*) 17 Cox, C. C. 719; [1894] 1 Q. B. 548; 63 L. J. M. C. 61; 70 L. T. 42; 42 W. R. 350; 58 J. P. 300.
(*r*) *Supra*, p. 9.

of trade and contrary to public policy, but the Court in those cases carefully abstained from saying that there was any criminal illegality in the rules. I do not think that such rules must be considered as criminal, and as affecting the society's title to its property. . . . The late Act (32 & 33 Vict. c. 61) (*s*) [repealed by the Trade Union Act, 1871] has said that trade union societies are to have the privileges and advantages of the Friendly Societies Acts, which give a right to proceed against their officers for embezzlement of funds in a summary way, before magistrates, to conviction and punishment. It was urged that the statute only applies to societies registered under the Friendly Societies Act, but whether that be so or not the statute may be regarded as an intimation of the legislature that such societies should not be prevented from having the protection of the law against those persons who may embezzle their property." And Keating, J., said, " The late Act (32 & 33 Vict. c. 61), if confined to registered friendly societies, contains a clear intimation of the legislature that the mere fact of societies having rules that are void, as being in restraint of trade, shall not cause such societies to be deemed illegal so as to deprive them of the protection of the law in respect of their property."

If it be true, as suggested by Cockburn and Keating, JJ., that Parliament, in passing the Trade Union Funds Protection Act, 1869, intended that societies with rules in restraint of trade should be able to avail themselves of the protection of the law in respect of their property, it may be contended that the right thus conceded is wide enough to allow to trade unions the same resort to the criminal law as is enjoyed by other bodies and persons. The writer therefore ventures to suggest that proceedings under the Larceny Act, 1861, as amended by the Larceny Act, 1901 (see Appendix M), and under the Falsification of Accounts Act, 1875 (see Appendix N), are available

(*s*) Trade Union Funds Protection Act, 1869.

for the protection of trade union funds. It may be pointed out that, by section 86 of the Larceny Act, 1861, criminal proceedings for the fraudulent misappropriation of property are no bar to civil remedies for the wrong sustained. It may be that herein lies the explanation of the apparently strange judgment in the case of the *United Builders' Labourers' Union* v. *Stevenson* (*t*). (See *supra*, p. 182).

Larceny Act, 1868.

Reg. v. *Blackburn.*

An Act of 1868, to amend the law relating to larceny and embezzlement (Russell Gurney's Act, see Appendix L), renders liable to the ordinary punishment for larceny or embezzlement any co-partner or joint-owner who steals or embezzles the property belonging to the co-partnership or to the joint-owners. Under this Act a secretary of a trade union has been convicted of appropriating the moneys of the society and sentenced to a term of imprisonment (*Reg.* v. *Blackburn* (*u*)).

In *Reg.* v. *Robson* (*v*) it has been held that an association which has not for its object gain or profit is not within the Act of 1868. Thus a member of a Young Men's Christian Association who had embezzled money obtained by him on behalf of the association could not be convicted, under the Act.

Reg. v. *Tankard.*

In *Reg.* v. *Tankard* (*w*) the treasurer of an unregistered club was indicted and convicted, under Russell Gurney's Act, for embezzling moneys paid to him on behalf of the club. The club, which was called the Bowling Feast Club, traded with its members in coal and cloth, from which trading profits were made. Profits were also derived by it from fines paid by the members and from interest paid by the members on loans from the club. The whole of the profits of the club were divided equally amongst all

(*t*) *Times*, February 7, 1906.
(*u*) 11 Cox, C. C. 157.
(*v*) 15 Cox, C. C. 772; 16 Q. B. D. 137; 55 L. J. M. C. 55; 53 L. T. 823; 34 W. R. 276; 50 J. P. 488.
(*w*) 17 Cox, C. C. 719; [1894] 1 Q. B. 548; 63 L. J. M. C. 61; 70 L. T. 42; 42 W. R. 350; 58 J. P. 300.

the members each year. The club was an illegal association by reason of section 4 of the Companies Act, 1862, which forbids the formation of a company, association, or partnership, consisting of more than twenty persons, for the purpose of carrying on any business (other than banking), which has for its object the acquisition of gain, unless it is registered as a company. By a similar reasoning to that followed in *Reg.* v. *Stainer* (*supra*, p. 184) the Court decided that the members of the club were, despite its illegality, the beneficial owners of the property of the club within the meaning of Russell Gurney's Act. "Here are a number of people," said Lord Coleridge, C.J., "who join together, not for a criminal purpose, but for a purpose which is not legalised. . . . It has been decided with regard to friendly societies that it did not follow that, because they did not, in all respects, comply with the law as to such societies . . . they were not to be treated as if they did not exist at all, and it was put on the ground that they were not criminal associations, and that, therefore, they could possess property. The moment it was admitted that the argument involved the necessity of admitting that this money belonged to nobody, and that anybody might scramble for it, counsel for the prisoner put himself out of Court."

Trade union funds and income tax.

The invested funds of a trade union which are applied solely in payment of provident benefits are exempted from income tax. (See Trade Union (Provident Funds) Act, 1893. Appendix O.)

APPENDICES.

APPENDIX A.

TRADE UNIONS AND PARLIAMENTARY REPRESENTATION. AMALGAMATED SOCIETY OF RAILWAY SERVANTS *v.* OSBORNE (*a*).

The rules of the Amalgamated Society of Railway Servants, so far as they are material to this case, were as follows:—

RULE II.

Government of the Society.

1. For the supreme government of the society there shall be an annual general meeting. . . . 3. The annual general meeting shall be held in October of each year. . . . 4 (*a*) The annual general meeting shall have power to amend, rescind, or make rules every three years (except an alteration is recommended by the executive committee in the interim as urgently required in the interests of the society, in which case it shall be brought before the next annual general meeting).

RULE XIII. SECTION IV.

Parliamentary Representation.

1. For the maintenance of Parliamentary representation a fund shall be established by the society. The subscription to be 1*s.* 1*d.* per year per member, to be paid quarterly, and forwarded to the head office with the quarter's dues. 2. The objects of the fund shall be (*a*) to provide for representation of railwaymen in the House of Commons as the annual general meeting may from time to time determine. *All candidates shall sign and accept the conditions of the Labour Party and be subject to their whip.* (*b*) To contribute to the Labour Representation Committee such sums as the executive committee or the annual general meeting may from time to time

(*a*) [1910] A. C. 87; 101 L. T. 787; [1910] W. N. 3; 79 L. J. Ch. 87; 54 S. J. 215; 47 Sc. L. R. 613.

direct so long as the society remains affiliated to such committee. 3. A separate account shall be kept of this fund, and the money invested in the names of the trustees of the society. . . . Such funds shall be used for the objects herein stated. 4. Candidates adopted in accordance with object (*a*) must be and remain *bonâ fide* members of the society. . . . 5. In the event of a candidate being selected for a constituency his election expenses shall be defrayed. . . . 6. Should a candidate be elected he shall be paid a salary of £250 a year and third-class return fare to his constituency so long as he remains a member of Parliament. . . . 7. *The executive committee shall make suitable provision for the registration of a constituency represented by a member or members who may be candidates responsible to and paid by this society.*

RULE XVIII.

1. No new rule shall be made, nor shall any of the rules herein contained be amended, altered, or rescinded, except by the annual general meeting every third year.

The following are the material portions of the Constitution of the Labour Party:—

Organisation.

I. *Affiliation.*—(1) The Labour Party is a federation consisting of trade unions, trade councils, socialist societies, and local labour associations.

II. *Objects.*—(1) To organise and maintain a Parliamentary Labour Party with its own Whips and policy; (2) to secure the election of candidates for whose candidature an affiliated society has made itself financially responsible, and who have been selected by a regularly convened conference in the constituency.

III. *Candidates and Members.*—(1) Candidates and members must accept this constitution; agree to abide by the decisions of the Parliamentary party in carrying out the aims of this constitution; appear before their constituencies under the title of Labour candidates only; abstain strictly from identifying themselves with or promoting the interests of any party not eligible for affiliation; and they must not oppose any candidate recognised by the executive committee of the party. (2) Candidates must undertake to join the Parliamentary Labour Party if elected.

IV.—The executive shall consist of thirteen members, nine representing the trade unions, one the trade councils and local labour associations, and three the Socialists.

The constitution further provided for (1) affiliation fees and delegates to the annual conferences, (2) voting at the annual conference, and (3) a Parliamentary fund to be raised by contributions from the affiliated societies for the purpose of paying the election expenses of Labour candidates and maintaining members of the Parliamentary Labour Party.

The plaintiff alleged that Rule XIII. Section IV. above stated, or,

alternatively, so much thereof as partially altered in italics, and the raising by the society by compulsory subscription from the plaintiff and other members of the society, and the distribution of moneys for the purposes and in manner in the said rule appearing were not within the objects or purposes of the society or within the purposes mentioned in section 16 of the Trade Union Act, 1876, and were *ultra vires* the society. He further alleged that the partial alteration in italics was invalid, having regard to Rule XVIII., and to the fact that the rules had been last altered or amended at the annual general meeting held in October, 1905, and he claimed a declaration accordingly, and an injunction to restrain the society and its trustees from distributing moneys for any objects other than those mentioned in section 16 of the Trade Union Act, 1876, and in particular from acting under or distributing money for the purposes of Rule XIII., Section IV., as above stated.

The defendants did not admit that any part of Rule XIII., Section IV., was *ultra vires*, and they contended that under Rule II., 4 (*a*) and Rule XVIII., the alteration in italics to Rule XIII., Section IV., had been duly submitted to the annual general meeting held in October, 1906, and was carried by large majorities. The Rules of 1906 and the partial alteration in italics had been registered under the Trade Union Acts.

From the judgments pronounced in this case in the House of Lords, the following principles emerge:—

1. There is nothing illegal *per se* in paying a member of Parliament. Thus the Earl of Halsbury said, "Pecuniary assistance might be given to a person who, without such assistance, might not be able to support the burden of being elected a Member of Parliament. It may be difficult to express in sufficiently definite language how far individual freedom of judgment can be preserved consistently with acceptance of pecuniary support." And Lord Shaw of Dunfermline said, "Granted, however, that no conditions are imposed subversive of or imperilling their freedom, it will be observed that nothing that has been said attaches a taint or shadow of illegality to the payment of Members of Parliament. Such payment may be a tribute to character, or a recognition of talent, coupled with a desire that these should be secured for the service of the State, or it may spring from a legitimate wish that the views, the needs, the perils of particular, and it may be large, classes of His Majesty's subjects should be expressed in Parliament by those who speak with the authority of practical experience." In the Court of Appeal, Farwell, LJ., could see no reason why the electors who desire a particular candidate, who may be a poor man, to be their member should not subscribe for his expenses and his maintenance in Parliament, provided they do not attempt to buy his votes.

Lord James of Hereford based his judgment on the ground that one of the rules of the Labour Party requires that "All candidates shall sign and accept the conditions of the Labour Party and be subject to their Whip." A member of the Labour Party thus bound would have to give his vote in Parliament in respect of matters such as

confidence in a Ministry or the policy of a Budget—matters unconnected, directly at least, with the interests of labour. Thus the application of money to the maintenance of a member whose action was so regulated was not within the powers of a trade union."

2. A political organisation is a thing very different from a combination for trade purposes. There is nothing in any of the Trade Union Acts from which it can be reasonably inferred that trade unions, as defined by Parliament, were ever meant to have the power of collecting and administering funds for political purposes. And it cannot even be said that such a power is "incidental," "ancillary," or "conducive" to the purposes of a trade union. Per Lord Macnaghten. His Lordship thought that at the date of the passing of the Act of 1871, trade unions were by no means ambitious of Parliamentary representation or political power; that some of the most respected leaders of trade unionism held the view that the less trade unions had to do with politics the better; and that it was not until two or three years after the passing of the Act of 1871 (as appears from Mr. and Mrs. Webb's able and exhaustive history of trade unionism) that the scheme for securing Parliamentary representation, and obtaining political power, first took shape and met with acceptance among trade unionists (*b*).

In the opinion of Lord Atkinson, trade unions have no more right to spend their money in procuring the return of members to Parliament and maintaining them there than municipal corporations, limited liability companies, or other commercial corporations would have; the necessity for such expenditure is as great, and no

(*b*) Lord Macnaghten does not appear to have read Mr. and Mrs. Webb quite correctly, for at p. 257 of their history we find these words:—"The Junta, under the convenient cloak of the Conference of Amalgamated Trades, issued in July, 1868, a circular urging upon trade unionists the importance of registering their names as electors, and of pressing upon every candidate the question in which they were primarily interested. The Trades Councils throughout the country followed suit, and we find the Junta's electoral tactics adopted even by societies which were traditionally opposed to all political action. The Central Committee of the Stonemasons strongly urged their members to vote at the ensuing elections only for candidates who would support trade union demands."

At p. 271 occurs the following passage: "The Labour Representation League, composed mainly of prominent trade unionists, had for some years [previous to 1874] been endeavouring to secure the election of working men to the House of Commons, and the independent candidatures of George Odger, during 1869 and 1870, had provoked considerable feeling. At a bye-election at Greenwich in 1873, a third candidate was run with working class support."

The passage which Lord Macnaghten had in his mind was probably the one on p. 273, which reads thus: "The movement for direct electoral action remained without official support from trade unions as such until, at the 1874 Congress, Mr. Broadhurst was able to report that the miners, ironworkers, and some other societies had actually voted money for Parliamentary purposes. At the General Election which ensued, no fewer than thirteen 'Labour Candidates 'went to the poll."

greater, in the one case as in the other. "These bodies," said his Lordship, "may, by legislation, be helped or hindered in carrying out the objects which they were formed to carry out. Their most vital interest may be seriously prejudiced by taxation which the Legislature may impose, or enabling statutes, general in character, may be introduced calculated to enlarge their powers, increase their privileges, or remove restraints upon their action, or again, some of them may be under the necessity of promoting private Bills to meet their own special needs. If, despite all this, the intention never has been and cannot be, imputed to the Legislature to confer upon such Corporations as these, power or authority to devote their funds to the procurement of Parliamentary representation in the manner in this case contended for, how can such an intention be imputed to it in the case of *quasi* Corporations, such as registered trade unions? . . . During the argument I asked to be informed on what principle the case of registered trade unions was to be differentiated from that of other Corporations such as I have named, and why the power was to be permitted, by an alteration of their rules, to convert themselves into political organisations, while a similar privilege was to be denied to the latter."

Lord Atkinson also alludes to the unfairness of requiring men to contribute to the promotion of a political policy of which they might possibly disapprove. And in the Court of Appeal, Farwell, L.J., said, "A political club may, of course, by its rules, make its membership conditional on adherence to a particular party, but it is otherwise with a non-political club."

3. Another issue raised in the case was whether the exercise of the power claimed by the Society was not contrary to public policy. This question, which may be conveniently called the constitutional question, was thus stated by Lord Atkinson. "It is the question whether the Members of Parliament who receive salaries or maintenance allowances, and sign the pledge to accept the conditions contained in the constitution of the Labour Party, referred to in the Rules of 1906, and to be subject to their Whip, have not thereby entered into an agreement which involves such a sacrifice of their independence and liberty of thought and action, that it is illegal and void as against public policy."

In the Court of Appeal, Fletcher Moulton, L.J., said, "By our Constitution, a representative is chosen by vote, and, however little the political views of the elected member coincide with those of the minority, they cannot complain. But that election is the election of a representative, and whoever be chosen, their right remains that he shall be a representative, and not one who has contractually fettered himself in discharge of the duty of representative which he has accepted as regards the public, and not only as regards his own supporters. . . . I do not, of course, suggest that a member may not bind himself by promises to his constituents to support a particular party or particular measures, but his primary duty is to his country, and he cannot bind himself at law by any promise in abnegation of such duty." Neville, J., in the Chancery Division, spoke to the same effect. "I take it that a member of Parliament cannot bind himself either legally or morally by any

pledge with regard to his action as to future matters. He may, no doubt, properly declare himself a member of, or a supporter of a particular party, and, having done so, no doubt the general opinion would be that he is bound to give a fair and reasonable support to that party, and in minor matters to subordinate his own particular views to those of the majority with whom he has elected to act."

The following passages from the judgment of Lord Shaw, who based his decision on the ground that the society's action was contrary to public policy, describe the nature of the danger in which the constitution would be placed if trade union members were returned to Parliament bound by pledges to the societies which financed them.

* * * * *

"The position of a Member of Parliament supported by the contributions of the Society is accordingly this. As stated (1) He is by the Society's rules 'responsible to' as well as paid by the Society; (2) He must have as a candidate signed and accepted the conditions of the Labour Party; (3) While that party has its own policy he must accept its contributions and 'agree to abide' by the decisions of the Parliamentary Party in carrying out the aims of the constitution. Under these aims the first object of the constitution must be included, namely, maintaining the Parliamentary Labour Party's own policy. Unless a member becomes bound to the Society and to the Labour Party by these conditions, and shapes his Parliamentary action in conformity therewith and with the decisions of the Parliamentary Party, he has broken his bargain. Take the testing instance: should his view as to right and wrong on a public issue, as to the true line of service to the realm, as to the real interests of the constituency which has elected him, or even of the Society which pays him, differ from the decision of the Parliamentary Party and the maintenance by it of its policy, he has come under a contract to place his vote and action into subjection not to his own convictions, but to their decisions. My Lords, I do not think that such a subjection is compatible, either with the spirit of our Parliamentary constitution or with that independence and freedom which have hitherto been held to lie at the basis of representative Government in the United Kingdom.

"It is no doubt true that a member although party to such a contract of subjection would in point of law enter Parliament a free man, because the law would treat as non-enforceable and void the contract which purported to bind him. And it is no doubt true that parties remaining outside of and making no appeal to the law —this subjection may arise in practice through the operation upon certain natures of various motives, including notably those of sycophancy or fear. But when the law is appealed to to lend its authority to the recognition and enforcement of a contract to procure subjection of the character described, with the concurrents of money payments and the sanctions of fines or forfeitures, the law will decline such recognition or enforcement because the contract appealed to is contrary to sound public policy.

"I should be sorry to think that these considerations are not quite elementary. And they apply with equal force not to labour

organisations alone, which operate by administering—under it may be careful supervision—the subscriptions of its members, but with even greater force to individual men, or organisations or trusts of men using capital funds to procure the subjection of Members of Parliament to their commands. In this latter case, indeed, adhesion to the principle is of a value all the greater because its violation might be conducted in secret. It needs little imagination to figure the peril in which the Parliamentary Government would stand if, either by the purchase of single votes or by subsidies for regular support, the public well being were liable to betrayal at the command and for the advantage of particular individuals or classes.

* * * * *

"It is no doubt true, my Lords, that the public records and the statute book show that the protections which were thrown around freedom were largely in the shape of securing the safety of electors and constituencies in the exercise, without interruption, constraint, or corruption, of the franchises they enjoyed. But all this would have been a mockery if, after purity and freedom had been enjoined amongst electors and constituencies, the representative so elected was not himself to be in the possession of his freedom in vote, advice and action—not to be free, but to be bound; bound under a contract to submit these, for salary, and at peril of loss, to the judgment of others.

* * * * *

"The proposed additional rule of the Society that 'all candidates shall sign and respect the conditions of the Labour Party, and be subject to their "Whip"'; the rule that candidates are to be 'responsible to and paid by the Society'; and, in particular, the provision in the Constitution of the Labour Party that 'candidates and members must accept this Constitution, and agree to abide by the decision of the Parliamentary Party in carrying out the aims of this Constitution,' are all fundamentally illegal, because they are in violation of that sound public policy which is essential to the working of representative Government.

"Parliament is summoned by the Sovereign to advise His Majesty freely. By the nature of the case it is implied that coercion, constraint, or a money payment, which is the price of voting at the bidding of others, destroys or imperils that function of freedom of advice which is fundamental in the very constitution of Parliament. *Inter alia*, the Labour Party pledge is such a price with its accompaniments of unconstitutional and illegal constraint or temptation.

"Further, the pledge is an unconstitutional and unwarrantable interference with the rights of the constituencies of the United Kingdom. The Corrupt Practices Acts, and the proceedings of Parliament before such Acts were passed, were but machinery to make effective the fundamental rule that the electors, in the exercise of their franchise, are to be free from coercion, constraint, or corrupt influence, and it is they, acting through their majority, and not any outside body having money power, that are charged with the election of a representative, and with the judgment on the question of his continuance as such.

"Still further, in regard to the Member of Parliament himself, he too is to be free; he is not to be the paid mandatory of any man, or organisation of men, nor is he entitled to bind himself to subordinate his opinions on public questions to others, for wages, or at the peril of pecuniary loss, and any contract of this character would not be recognised by a Court of Law, either for its enforcement or in respect of its breach. Accordingly, as it is put in the words of Lord Justice Fletcher Moulton: 'Any other view of the fundamental principles of our law in this respect would, to my mind, leave it open to any body of men of sufficient wealth or influence to acquire contractually the power to exercise that authority to govern the nation which the law compels individuals to surrender only to representatives—that is, to men who accept the obligations and the responsibility of the trust towards the public implied by that position.'"

APPENDIX B.

Statute 6 Geo. 4, c. 129.

An Act to repeal the Laws relating to the Combination of Workmen, and to make other Provisions in lieu thereof.

[*Repealed by* 34 & 35 *Vict. c.* 32.]

3. If any person shall by violence to the person or property, or by threats or intimidation, or 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 prevent or endeavour to prevent any journeyman, manufacturer, workman, or other person not being hired or employed from hiring himself to, or from accepting work or employment from any person or persons; or if any person shall use or employ violence to the person or property of another, or threats or intimidation, or shall molest or in any way obstruct another for the purpose of forcing or inducing such person to belong to any club or association, or to contribute to any common fund, or to pay any fine or penalty, or on account of his not belonging to any particular club or association, or not having contributed or having refused to contribute to any common fund, or to pay any fine or penalty, or on account of his not having complied or of his refusing to comply with any rules, orders, resolutions

or regulations made to obtain an advance or to reduce the rate of wages; or to lessen or alter the hours of working, or to decrease or alter the quantity of work, or to regulate the mode of carrying on any manufacture, trade, or business, or the management thereof; or if any person shall by violence to the person or property of another, or by threats or intimidation, or by molesting or in any way obstructing another, 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 such manufacture, trade, or business, or to limit the number of his apprentices, or the number or description of his journeymen, workmen, servants, every person so offending, or aiding, abetting, or assisting therein, being convicted thereof in manner hereinafter mentioned, shall be imprisoned only, or shall and may be imprisoned and kept to hard labour, for any time not exceeding three calendar months.

For analysis of this section, see Erle on Trade Unions, pp. 58–62.

APPENDIX C.

STATUTE 22 VICT. C. 34. 1859

An Act to amend and explain an Act of the Sixth Year of the Reign of King George the Fourth, to repeal the Laws relating to the Combination of Workmen, and to make other provisions in lieu thereof.

[*Repealed by* 34 & 35 *Vict. c.* 32.]

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 [6 Geo. 4 c. 129], 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.

APPENDIX D.

STATUTE 34 & 35 VICT. C. 32.

THE CRIMINAL LAW AMENDMENT ACT, 1871.

[*Repealed by the Conspiracy and Protection of Property Act*, 1875.]

1. Every person who shall do any one or more of the following acts, that is to say,

(1) Use violence to any person or property,

(2) Threaten or intimidate any person in such manner as would justify a justice of the peace, on complaint made to him, to bind over the person so threatening or intimidating to keep the peace,

(3) Molest or obstruct any person in manner defined by this section, with a view to coerce such person,—

(1) Being a master to dismiss or cease to employ any workman, or being a workman to quit any employment or to return work before it is finished;

(2) Being a master not to offer or being a workman not to accept any employment or work;

(3) Being a master or workman to belong to or not to belong to any temporary or permanent association or combination;

(4) Being a master or workman to pay any fine or penalty imposed by any temporary or permanent association or combination;

(5) Being a master to alter the mode of carrying on his business, or the number or description of any persons employed by him,

shall be liable to imprisonment, with or without hard labour for a term not exceeding three months.

A person shall, for the purposes of this Act, be deemed to

molest or obstruct another person in any of the following cases; that is to say,

(1) If he persistently follows such person about from place to place:

(2) If he hide any tools, clothes, or other property owned or used by such person, or deprive him of or hinder him in the use thereof:

(3) If he watch or beset the house or other place where such person resides or works, or carries on business, or happens to be, or the approach to such house or place, or if with two or more other persons he follows such person in a disorderly manner in or through any street or road.

* * * * * * *

Provided that no person shall 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, unless such act is one of the acts herein-before specified in this section, and is done with the object of coercing as herein-before mentioned.

APPENDIX E.

STATUTE 34 & 35 VICT. C. 31.

THE TRADE UNION ACT, 1871.

Preliminary.

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

Criminal Provisions.

2. 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. Trade union not criminal.

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. Trade union not unlawful for civil purposes.

4. Nothing in this Act shall enable any court to entertain any legal proceedings instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely, Trade union contracts when not enforceable.

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.

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, 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.

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.

Buildings for trade unions

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, 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. may be purchased or leased.

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, 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 subject 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. Property of the trade unions vested in trustees.

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 the 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 Actions, etc., by or against trustees, etc.

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.

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.

Treasurers, etc., to account.

11. Every treasurer or other officer of a trade union registered under this Act, at such times as by the rules of such trade union he should render such account as herein-after 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.

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

(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

(*a*) See section 5 of the Act of 1876 for amendment of this part of the section.

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 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 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.

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:

(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.

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.

Annual returns to be prepared as registrar may direct.

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 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.

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.

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, 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 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 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.

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 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 recognisance 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 recognisance 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.

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 High Court of Justiciary, 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.

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.

Definitions.

Definitions.

23. 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 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 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—

Definition of "trade union" amended by section 16, Trade Union Act, 1876.

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 good-will of a business or of instruction in any profession, trade, or handicraft.

24. Repealed by Statute Law Revision Act, 1883.

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. See 18 & 19 Vict. c. 63, s. 25.

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 of 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

APPENDIX F.

STATUTE 39 & 40 VICT. c. 22.

THE TRADE UNION ACT (1871) AMENDMENT ACT, 1876.

ARRANGEMENT OF CLAUSES.

Clause.

Clause.
5. Jurisdiction in offences.
6. Registry of unions doing business in more than one country.
7. Life Assurance Companies Acts not to apply to registered unions.
8. Withdrawal or cancelling of certificate.
9. Membership of minors.
10. Nomination.
11. Change of name.
12. Amalgamation.
13. Registration of changes of names and amalgamations.
14. Dissolution.
15. Penalty for failure to give notice.
16. Definition of "trade union" altered.

Construction and short title.

1. This Act and the Trade Union Act, 1871, herein-after 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."

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 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.

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 herein-before recited words there were inserted the words "or of the trustees of the trade union, if the rules of the trade union so provide."

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 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.

Jurisdiction in offences.

5. 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.

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.

In this section "country" means England, Scotland, or Ireland.

Life Assurance Companies Acts 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.

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 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.

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.

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 pounds (*a*) shall be paid at his 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 trade union shall pay to the nominee the amount due to the deceased member not exceeding the sum aforesaid.

(*a*) Originally fifty pounds; one hundred has been substituted by section 3 of the Provident Nominations and Small Intestacies Act, 1883.

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 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.

Amalgamation.

12. 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.

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 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.

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 herein-before 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.

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.

Definition of "trade union" altered.

16. [First paragraph repealed by the Statute Law Revision Act, 1883.]

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.

APPENDIX G.

Regulation as to Registration of Trade Unions, Revised to December 31, 1903.

Regulations dated November 1, 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 29, 1890, and by the Secretary for Scotland, May 8, 1890 (*a*).

Trade Union Acts, 1871 (*b*) & 1876 (*c*).

In pursuance of the powers vested in me by the above-mentioned statutes, I, the Right Honourable Richard Assheton Cross, one of

(*a*) The amending Regulations which were made under the Acts of 1871 and 1876 and the Secretary for Scotland Act, 1887, are printed at length in Statutory Rules and Orders, 1890, p. 1015.
(*b*) 34 & 35 Vict. c. 31.
(*c*) 39 & 40 Vict. c. 22.

Her Majesty's Principal Secretaries of State, hereby revoke the regulations made by the Right Honourable H. A. Bruce on the 8th December, 1871, and the Right Honourable R. Lowe on the 18th August, 1873, and make the following Regulations in lieu thereof:—

(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.

(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 hereto, 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 hereto, 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.

(15B) All matters requiring registry shall be registered in and returns and notices sent to the registrar of the country 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 fact 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.

(24) The following fees shall be payable 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 the certificate of registry of a change of name .	0	10	0
For a direction to transfer stock	1	0	0
For registry of notice of a dissolution . . .	0	2	6
For registry of amalgamation	0	10	0
For every document required to be authenticated by the registrar, not chargeable with any other fee .	0	2	6
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	1	0
For every copy or extract of any document in the custody of the registrar, not exceeding 216 words 1*s.*, and if exceeding that number 4*d.* per folio of 72 words, in addition to the fee for authentication.			

No fee is payable for the recording of rules or documents already registered in another country, or for the registry or recording of—

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.

Any document in respect of which a fee is already chargeable under or by virtue of the Act and of any other statute.

The chief registrar may also dispense with the fee for inspection of documents in cases where he may consider it for 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.

APPENDIX H.

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. .

* Name of trade union.

* Name of trade union.

* Name of trade union.

(*d*) 34 & 35 Vict. c. 31. (*e*) 39 & 40 Vict. c. 22.

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 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 date up 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.

FORM B.—Reg. 5.

Trade Union Acts, 1871 and 1876.

Certificate of Registry of Trade Union.

It is hereby 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 19 .

* Here insert the date, or if there was no such resolution, state in what other way the authorisation was given.

† Here insert the date.

To the Registrar of Friendly Societies,
Abingdon Street, Westminster.

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, 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. .

* Name of trade union.

* Name of trade union.

* Name of trade union.

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.

* Here insert the date, or, if there was no such resolution, state in what other way authorisation was given.

day of 19 .

The Registrar of Friendly Societies,
28, Abingdon Street,
Westminster, S.W.

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 carries [*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

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 carries 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 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

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 Assistant 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.

} Trustees.

Registered Office .

Date day of 19 .

* 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.

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.

This part to be detached by the registrar when the notice is registered, and returned to the trade union.

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.]

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.

Secretary.
Registered Office .
Date day of 19 .

1.
2.
3.
4.
5.
6.
7.
} Members.

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, having been 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 .

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.

This form applies (with the necessary

modifications) to a branch of a 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 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*]:—

[This clause will not be necessary where the application is in consequence of the mere removal of a trustee.]

3. The said is absent from Great Britain [*or* Ireland] [*or* became bankrupt on the day , *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 trustees appointed in the place of the one removed*] 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.*]

6. This application to the Registrar is made pursuant to 39 & 40 Vict. 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 be 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.

This form applies (with the necessary modifications) to a branch of a trade union.

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 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 .

This form applies (with the necessary modifications) to a branch of a trade union.

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 .

* The paragraphs marked (*a*) or (*b*) will be used as the case requires.

*(*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 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 .

(*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 .

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 .

APPENDIX I.

Register No._____
County_____

ANNUAL RETURN.

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, 1909.

[*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.

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			

[1] Specify their nature.

[2] Specify them.

Signatures of Trustees _____ Residing at _____
_____ Residing at _____
_____ Residing at _____

The undersigned, having had access to all the books and accounts of the verified the same with the accounts and vouchers [3] relating thereto, now sign

Signature of 1st Auditor _____
Address _____
Calling or Profession _____

If in any respect these accounts are incorrect, unvouched, or not in Union, of which a copy is to be sent to the Registrar with this Statement.

[3] In certifying the Trade Union's Investments as shown in the Balance-sheet, the Auditors Assets of the Trade Union, and also inspect the Bank Pass Book and the Post Office Savings

[4] The Annual Return of a Trade Union having Branches should include the Income and Branches have not been submitted to the Auditors signing this Return, the fact should be

of the _____ TRADE UNION, from 1st January to 31st December, 1909.

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)						
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						

* Carry the total of inner column into outer column.

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[3]				
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[4]				
Cash in the Post Office Savings Bank				
Cash in hand[5]				
Other assets (if any)[6]				
Deficiency (if Liabilities exceed Assets)				
Total	..			

[3] State amount and description of stock.

[4] If on other securities state them separately.

[5] State in whose hands.

[6] Specify them.

Signature of Secretary_____

Residing at[7]_____

[7] Give postal address.

Trade Union, and having examined the foregoing General Statement and the same as found to be correct, duly vouched, and in accordance with law.[8]

Signature of 2nd Auditor_____

Address_____

Calling or Profession_____

*Date*_____ 1910.

accordance with law, the *Auditors* are to make a Special Report to the Trade

should in all cases actually inspect the Mortgage deeds and other securities representing the Bank Book and ascertain that they have been duly made up and Balanced to the 31st December. Expenditure, Funds and Effects of all the Branches. If the Books and the Accounts of the stated.

Reg. No._____ T.U. No. 2.

Name of Trade Union_____

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.*

APPENDIX J.

STATUTE 38 & 39 VICT. C. 86.

THE CONSPIRACY, AND PROTECTION OF PROPERTY ACT, 1875.

ARRANGEMENT OF CLAUSES.

Application of Act to Scotland.

Application of Act to Ireland.

An Act for amending the Law relating to Conspiracy, and to the Protection of Property, and for other purposes.

[13th August, 1875.]

Short title.

1. This Act may be cited as the Conspiracy, and Protection of Property Act, 1875.

2. [Repealed by Statute Law Revision Act, 1893.]

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 shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.

[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.]

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

This paragraph was inserted by the Trade Disputes Act, 1906. See p. 245.

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.

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 herein-after 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.

Breach of contract involving injury to persons or property.

5. 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 jurisdiction, or on indictment as herein-after 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.

Penalty for neglect 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 pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding six months, with or without hard labour.

Penalty for intimidation or annoyance by violence or otherwise.

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,—

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 herein-after 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. (Repealed by section 2, Trade Disputes Act, 1906.)]

Reduction of penalties.

8. 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.

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.

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.

Regulations as to evidence.

11. 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.

Appeal to quarter sessions.

12. 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,

[The rest of the section is repealed, as regards England, by 47 & 48 Vict. c. 43, s. 4.]

Definitions.

General definitions:

13. 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 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.

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 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.

"Maliciously" in

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. this Act construed as in Malicious Injuries to Property Act.

Saving Clause.

16. Nothing in this Act shall apply to seamen or to apprentices to the sea service. Saving as to sea service.

17. [The greater part of this section is repealed by the Statute Law Revision Act, 1883. Only the first proviso remains in force.]

(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.

Application of Act to Scotland.

18. This Act shall extend to Scotland, with the modifications following; that is to say, Application to Scotland.

(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: Definitions.

(2) [Repealed by the Statute Law Revision (No. 2) Act, 1893.]

(3) The expression "the court of summary jurisdiction" means the sheriff of the county or any one of his substitutes.

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: Recovery of penalties, etc., in Scotland.

(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 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 High Court of Justiciary, 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.

Application to Ireland.

21. This Act shall extend to Ireland, with the modifications following; that is to say,

[Two paragraphs are repealed by the Statute Law Revision (No. 2) Act, 1893.]

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, intituled "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.

APPENDIX K.

STATUTE 6 EDW. 7, C. 47.

THE TRADE DISPUTES ACT, 1906.

An Act to provide for the regulation of Trades Unions and Trade Disputes. [21st December, 1906.]

Amendment of law of conspiracy in the case of trade disputes. 38 & 39 Vict. c. 86.

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."

Peaceful picketing.

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 futherance 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.

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 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.

Prohibition of actions of tort against trade unions. 34 & 35 Vict. c. 31.

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.

Short title and construction.

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 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.

APPENDIX L.

STATUTE 31 & 32 VICT. c. 116.

THE LARCENY ACT, 1868.

[Russell Gurney's Act.]

An Act to amend the Law relating to Larceny and Embezzlement. [31st July, 1868.]

Member of co-partnership guilty of converting to his own use, etc., property of co-partnership liable to be tried as if not such member.

1. If any person, being a member of any co-partnership, or being one of two or more beneficial owners of any money, goods, or effects, bills, notes, securities, or other property, shall steal or embezzle any such money, goods, or effects, bills, notes, securities, or other property of or belonging to any such co-partnership or to such joint beneficial owners, every such person shall be liable to be dealt with, tried, convicted, and punished for the same as if such person had not been or was not a member of such co-partnership or one of such beneficial owners.

Provisions of 18 & 19 Vict. c. 126, extended to

2. All the provisions of the Act passed in the session of parliament held in the eighteenth and nineteenth years of Her present Majesty's reign, intituled "An Act for diminishing

expense and delay in the administration of criminal justice in certain cases," shall extend and be applicable to the offence of embezzlement by clerks or servants, or persons employed for the purpose or in the capacity of clerks or servants, and the said Act shall henceforth be read as if the said offence of embezzlement had been included therein. [Repealed, so far as it relates to England, by the Summary Jurisdiction Act, 1879, s. 55.] embezzlement by clerks or servants.

3. This Act shall not extend to *Scotland*. Extent of Act.

APPENDIX M.

STATUTE 1 EDW. 7, C. 10.

THE LARCENY ACT, 1901.

An Act to amend the Larceny Act, 1861.

[9th August, 1901.]

1.—(1) Whosoever— Fraudulent misappropriation of property.

(*a*) being entrusted, either solely or jointly with any other person, with any property, in order that he may retain in safe custody, or apply, pay, or deliver, for any purpose or to any person, the property, or any part thereof, or any proceeds thereof; or

(*b*) having, either solely or jointly with any other person, received any property for or on account of any other person,

fraudulently converts to his own use or benefit, or the use or benefit of any other person, the property, or any part thereof, or any proceeds thereof, shall be guilty of a misdemeanor, and be liable on conviction to penal servitude for a term not exceeding seven years, or to imprisonment, with or without hard labour, for a term not exceeding two years.

(2) Nothing in this section shall apply to or affect any trustee on any express trust created by a deed or will, or any mortgagee of any property, real or personal, in respect of any act done by the trustee or mortgagee in relation to the property comprised in or affected by any such trust or mortgage.

2.—(1) Sections seventy-five and seventy-six of the Larceny Act, 1861, are hereby repealed. Repeal, construction, commencement, short title.

(2) This Act shall have effect as part of the Larceny Act, 1861, and section one of this Act shall be deemed to be substituted for sections seventy-five and seventy-six of that Act,

and references in any enactment to those sections shall be construed as references to section one of this Act.

(3) This Act shall come into operation on the first day of January nineteen hundred and two.

24 & 25 Vict. c. 96. 31 & 32 Vict. c. 116. 59 & 60 Vict. c. 5.

(4) This Act may be cited as the Larceny Act, 1901, and the Larceny Act, 1861, the Larceny Act, 1868, the Larceny Act, 1896, and this Act may be cited together as the Larceny Acts, 1861 to 1901.

APPENDIX N.

STATUTE 38 & 39 VICT. C. 24.

THE FALSIFICATION OF ACCOUNTS ACT, 1875.

An Act to amend the Law with reference to the Falsification of Accounts. [29th June, 1875.]

Punishment for falsification of accounts, etc.

1. If any clerk, officer, or servant, or any person employed or acting in the capacity of a clerk, officer, or servant, shall wilfully and with intent to defraud destroy, alter, mutilate, or falsify any book, paper, writing, valuable security, or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or shall wilfully and with intent to defraud make or concur in making any false entry in, or omit or alter, or concur in omitting or altering, any material particular from or in any such book, or any document or account, then in every such case the person so offending shall be guilty of a misdemeanor, and be liable to be kept in penal servitude for a term not exceeding seven years.

Intention to defraud sufficient indictment.

2. It shall be sufficient in any indictment under this Act to allege a general intent to defraud, without naming any particular person intended to be defrauded.

Act to be read with 24 & 25 Vict. c. 96.

3. This Act shall be read as one with the Act of the twenty-fourth and twenty-fifth of Her Majesty, chapter ninety-six.

Short title.

4. This Act may be cited as the Falsification of Accounts Act, 1875.

APPENDIX O.

STATUTE 56 VICT. C. 22.

THE TRADE UNION (PROVIDENT FUNDS) ACT, 1893.

An Act to exempt from Income Tax the Invested Funds of Trade Unions applied in payment of Provident Benefits.

[28th March, 1893.]

Provident funds of trade unions to be exempt from income tax.

1. A trade union duly registered under the Trade Union Acts, 1871 and 1876, shall be entitled to exemption from income tax chargeable under Schedules A, C, and D of any Acts for granting duties of income tax in respect of the interest and dividends of the trade union applicable and applied solely for the purpose of provident benefits.

34 & 35 Vict. c. 31.
39 & 40 Vict. c. 22.

Provided always that the exemption shall not extend to any trade union by the rules of which the amount assured to any member, or person nominated by or claiming under him, shall exceed the total sum of two hundred pounds, or the amount of any annuity granted to any member, or person nominated by him, shall exceed the sum of thirty pounds per annum.

Mode of claiming exemption.

2. The exemption shall be claimed and allowed in the same manner as is prescribed by law in the case of income applicable, and applied to charitable purposes.

Definition of "provident benefits."

3. In this Act the expression "provident benefits" means and includes any payment 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, or 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 the deceased member, where the payment in respect whereof exemption is claimed is a payment expressly authorised by the registered rules of the trade union claiming the exemption.

Short title.

4. This Act may be cited as the Trade Union (Provident Funds) Act, 1893.

APPENDIX P.

STATUTE 59 & 60 VICT. c. 30.

THE CONCILIATION ACT, 1896.

An Act to make better Provision for the Prevention and Settlement of Trade Disputes. [7th August, 1896.]

Registration and powers of conciliation boards.

1.—(1) Any board established either before or after the passing of this Act, which is constituted for the purpose of settling disputes between employers and workmen by conciliation or arbitration, or any association or body authorised by an agreement in writing made between employers and workmen to deal with such disputes (in this Act referred to as a conciliation board), may apply to the Board of Trade for registration under this Act.

(2) The application must be accompanied by copies of the constitution, bye-laws, and regulations of the conciliation board, with such other information as the Board of Trade may reasonably require.

(3) The Board of Trade shall keep a register of conciliation boards, and enter therein with respect to each registered board its name and principal office, and such other particulars as the Board of Trade may think expedient, and any registered conciliation board shall be entitled to have its name removed from the register on sending to the Board of Trade a written application to that effect.

(4) Every registered conciliation board shall furnish such returns, reports of its proceedings, and other documents as the Board of Trade may reasonably require.

(5) The Board of Trade may, on being satisfied that a registered conciliation board has ceased to exist or to act, remove its name from the register.

(6) Subject to any agreement to the contrary, proceedings for conciliation before a registered conciliation board shall be conducted in accordance with the regulations of the board in that behalf.

Powers of Board of Trade as to trade disputes.

2.—(1) Where a difference exists or is apprehended between an employer, or any class of employers, and workmen, or between different classes of workmen, the Board of Trade may, if they think fit, exercise all or any of the following powers, namely,—

(*a*) inquire into the causes and circumstances of the difference;

(*b*) take such steps as to the Board 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 Board of Trade 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.

(2) If any person is so appointed to act as conciliator, he shall inquire into the causes and circumstances of the difference by communication with the parties, and otherwise shall endeavour to bring about a settlement of the difference, and shall report his proceedings to the Board of Trade.

(3) If a settlement of the difference is effected either by conciliation or by arbitration, a memorandum of the terms thereof shall be drawn up and signed by the parties or their representatives, and a copy thereof shall be delivered to and kept by the Board of Trade.

Exclusion of 52 & 53 Vict. c. 49.

3. The Arbitration Act, 1889, shall not apply to the settlement by arbitration of any difference or dispute to which this Act applies, but any such arbitration proceedings shall be conducted in accordance with such of the provisions of the said Act, or such of the regulations of any conciliation board, or under such other rules or regulations, as may be mutually agreed upon by the parties to the difference or dispute.

Power for Board of Trade to aid in establishing conciliation boards.

4. If it appears to the Board of Trade that in any district or trade adequate means do not exist for having disputes submitted to a conciliation board for the district or trade, they may appoint any person or persons to inquire into the conditions of the district or trade, and to confer with employers and employed, and, if the Board of Trade think fit, with any local authority or body, as to the expediency of establishing a conciliation board for the district or trade.

Report to Parliament.

5. The Board of Trade shall from time to time present to Parliament a report of their proceedings under this Act.

Expenses.

6. The expenses incurred by the Board of Trade in the execution of this Act shall be defrayed out of moneys provided by Parliament.

Repeal 5 Geo. 4, c. 96.

7. The Masters and Workmen Arbitration Act, 1824, and

30 & 31 Vict. c. 105. 35 & 36 Vict. c. 46. the Councils of Conciliation Act, 1867, and the Arbitration (Masters and Workmen) Act, 1872, are hereby repealed.

Short title. **8.** This Act may be cited as the Conciliation Act, 1896.

APPENDIX Q.

Statute 24 & 25 Vict. c. 97.

Malicious Injuries to Property Act, 1861.

58. Every punishment and forfeiture by this Act imposed on any person maliciously committing any offence, whether the same be punishable upon indictment or upon summary conviction, shall equally apply and be enforced, whether the offence shall be committed from malice conceived against the owner of the property in respect of which it shall be committed, or otherwise.

APPENDIX R.

Statute 59 & 60 Vict. c. 25.

The Friendly Societies Act, 1896.

Accounts of officers. **55.**—(1) Every officer of a registered society or branch having receipt or charge of money shall, at such times as by the rules of the society or branch he should render account, or upon demand made, or notice in writing given or left at his last or usual place of residence, give in his account as may be required by the society or branch, or by the trustees or committee thereof, to be examined and allowed or disallowed by them, and shall, on the like demand or notice, pay over all sums of money and deliver all property in his hands or custody to such person as the society or branch, or the committee or the trustees, appoint.

(2) In case of any neglect or refusal to deliver the account, or to pay over the sums of money or to deliver the property in manner aforesaid, the trustees or authorised officers of the society or branch may sue upon the bond or security before

mentioned, or may apply to the county court or to a court of summary jurisdiction, and the order of either such court shall be final and conclusive.

Disputes.

Decision of disputes.

68.—(1) Every dispute between—

(*a*) a member or person claiming through a member or under the rules of a registered society or branch, and the society or branch or an officer thereof; or

(*b*) any person aggrieved who has ceased to be a member of a registered society or branch, or any person claiming through such person aggrieved, and the society or branch, or an officer thereof; or

(*c*) any registered branch of any society or branch and the society or branch of which it is a branch; or

(*d*) an officer of any such registered branch and the society or branch of which that registered branch is a branch; or

(*e*) any two or more registered branches of any society or branch, or any officers thereof respectively,

shall be decided in manner directed by the rules of the society or branch, and the decision so given 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 application for the enforcement thereof may be made to the county court.

(2) The parties to a dispute in a registered society or branch may, by consent (unless the rules of the society or branch expressly forbid it), refer the dispute to the chief registrar, or in Scotland or Ireland to the assistant registrar.

(3) The chief or other registrar to whom a dispute is referred shall, with the consent of the Treasury, either by himself or by any other registrar, hear and determine the dispute, and shall have power to order the expenses of determining the dispute to be paid either out of the funds of the society or branch, or by such parties to the dispute as he may think fit, and his determination and order shall have the same effect and be enforceable in like manner as a decision made in the manner directed by the rules of the society or branch.

(4) The chief or other registrar to whom a dispute is referred may administer oaths, and may require the attendance of all parties concerned, and of witnesses, and the production of all books and documents relating to the matter in question.

(5) Where the rules of a registered society or branch direct that disputes shall be referred to justices, the dispute shall be

determined by a court of summary jurisdiction, or, if the parties thereto consent, by the county court.

(6) Where the rules contain no direction as to disputes, or where no decision is made on a dispute within forty days after application to the society or branch for a reference under its rules, the member or person aggrieved may apply either to the county court, or to a court of summary jurisdiction, and the court to which application is so made may hear and determine the matter in dispute; but in the case of a society with branches the said forty days shall not begin to run until application has been made in succession to all the bodies entitled to determine the dispute under the rules of the society or branch, so however that no rules shall require a greater delay than three months between each successive determination.

52 & 53 Vict. c. 49. (7) Notwithstanding anything contained in the Arbitration Act, 1889, or in any other Act, the court and the chief or other registrar or any arbitrator or umpire to whom a dispute is referred under the rules of a registered society or branch shall not be compelled to state a special case on any question of law arising in the case, but the court, or chief or other registrar, may, at the request of either party, state a case for the opinion in England or Ireland of the Supreme Court, and in Scotland of either division of the Inner House of the Court of Session, on any question of law, and may also grant to either party such discovery as to documents and otherwise, or such inspection of documents, and in Scotland may grant warrant for the recovery of documents and examination of havers, as might be granted by any court of law or equity, and the discovery shall be made on behalf of the society or branch by such officer thereof as the court or registrar may determine.

(8) In this section the expression "dispute" includes any dispute arising on the question whether a member or person aggrieved is entitled to be or to continue to be a member or to be reinstated as a member, but, save as aforesaid, in the case of a person who has ceased to be a member, does not include any dispute other than a dispute on a question between him and the society or branch or an officer thereof which arose whilst he was a member, or arises out of his previous relation as a member to that society or branch.

87. * * * * * * *

(3) If any person obtains possession by false representation or imposition of any property of a registered society or branch, or withholds or misapplies any such property in his possession, or wilfully applies any part thereof to purposes other than those expressed or directed in the rules of the society or branch and authorised by this Act, he shall, on such complaint as is in

this section mentioned, be liable on summary conviction to a fine not exceeding twenty pounds, and costs, and to be ordered to deliver up all such property, or to repay all sums of money applied improperly, and in default of such delivery or repayment, or of the payment of such fine and costs as aforesaid, to be imprisoned, with or without hard labour, for any time not exceeding three months.

Provided that where on such a complaint against a person of withholding or misapplying property, or applying it for unauthorised purposes, it is not proved that that person acted with any fraudulent intent, he may be ordered to deliver up all such property or to repay any sum of money applied improperly, with costs, but shall not be liable to conviction, and any such order shall be enforceable as an order for the payment of a civil debt recoverable summarily before a court of summary jurisdiction.

APPENDIX S.

STATUTE 56 & 57 VICT. C. 53.

THE TRUSTEE ACT, 1893.

Appointment of New Trustees.

Power of appointing new trustees.

10.—(1) Where a trustee, either original or substituted, and whether appointed by a court or otherwise, is dead, or remains out of the United Kingdom for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may, by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of the United Kingdom, desiring to be discharged, refusing, or being unfit or being incapable, as aforesaid.

Appointment of New Trustees and Vesting Orders.

Power of the Court to appoint new trustees.

25.—(1) The High Court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult, or impracticable so to do without the assistance of the Court, make an order for the appointment of a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee. In particular and without prejudice to the generality of the foregoing provision, the Court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of felony, or is a bankrupt.

(2) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

APPENDIX T.

MACKENDRICK *v.* NATIONAL UNION OF DOCK LABOURERS IN GREAT BRITAIN AND IRELAND (*a*).

Two questions came up for settlement in this case :—

(1) The jurisdiction of the Scottish Courts over a trade union registered in England ;

(2) The liability of the National Union under a contract entered into by a branch.

(1) The Question of Jurisdiction.—The National Union of Dock Labourers consists of dock labourers who are enrolled by the Executive of the Union as local branches. The Union has its registered office in England, but has branches in Scotland, and a copy of its rules has been recorded in Scotland. Held, that the Union was subject to the jurisdiction of the Court of Session.

The Lord Ordinary (Johnston), in the Outer House, said, " The body is not the Union of Dock Labourers in England, but the National Union of Dock Labourers in Great Britain and Ireland. The whole purview of its business as disclosed by Rule III., defining its

(*a*) 48 Sc. L. R. 17.

objects, is general, or at least, national, and there is nothing to subject it to the jurisdiction of the English Courts, any more than to those of Scotland and Ireland, except it be that it has a registered office in Liverpool. . . . The Act, section 15, also provides that every registered trade union shall have a registered office to which all communications and notices may be addressed. I do not find that this provision necessarily confines the union to the jurisdiction of the courts within whose jurisdiction such office is domiciled. But I think it may otherwise be so confined. The Act clearly contemplates separate registration in England, Scotland, and Ireland, for separate registers are created in each country (section 17), and the general provisions for registration (section 13 *et seq.*) imply that there may be registration in one or more of these countries, or in all. And this is quite intelligible, for many trade unions may be, and are, entirely local in their sphere of operations. Others may have a sphere of operations extending over the whole of Great Britain and Ireland. Where then a trade union is registered in England only, it is not subject to the jurisdiction of the Courts of Scotland, except in the same way, and to the same effect that any alien is so subject. But I am relieved from considering such exceptions because, *de facto*, this union is registered under the statute in Scotland, as might be reasonably expected from the nature of its objects and the scope of its operations. It must then answer in the Courts of Scotland."

The following dictum of Lord Johnston on the effect of registration is important and should be considered in connection with certain dicta in *Taff Vale Railway Co.* v. *Amalgamated Society of Railway Servants* and *Amalgamated Society of Railway Servants* v. *Osborne*:—"The Act of 1871, section 6, provides for the registration of trade unions, but the registration is voluntary. I do not find that this registration confers any privileges on the union. What it does is rather to place it under certain regulations, intended mainly for the protection of its own members. If it imposes any restrictions, they are incidental merely. It certainly does not incorporate the union or give it the status of a registered company, or even of a friendly society. As I read it, its object and effect was to secure to the workman that if he does join a

registered trade union, he may rely on its affairs, and in particular, its finance, being conducted with some claim to regularity and soundness."

(2) The Question of Agency.—The rules of the Union relevant to the case were as follows :—

Rule XII. (10). Branches may advance money to assist any member to enforce his legal claims for compensation in cases of accident, arising through the negligence of employers, while pursuing his ordinary occupation. . . . No money shall be advanced under this rule until all the available evidence bearing on the case has been laid before the Branch Committee, and a copy supplied to the Executive. The Executive may veto any decision of branches to expend money in cases of such claims.

Rule XIV. (3). No person shall have power to incur financial responsibility or transact any business in the name of a Branch of the Union unless with the special authority of the Branch or of the Branch Committee.

Rule XVI. (1). The funds of all branches of the Union shall be the common property of the Union, and shall be administered by the Executive according to rule. Branches seceding from the Union, or being dissolved, shall forfeit all claims to the funds of the Union. . . . Members of such seceding or dissolved branches wishing to remain in the Union may be transferred to the most convenient Branch.

One of the branches appointed A. B., a legal practitioner, its law agent. The letter appointing him contained, *inter alia*, the following words: "While the direct relation of agent and client shall subsist between you and each injured party for whom you act, we guarantee the costs incurred by you in the event of your fighting a case unsuccessfully. Of course, in all successful cases we will not be responsible for your costs, which you must recover in the usual way."

A. B., with the sanction of the Branch Committee, brought an action at the instance of a member of the Branch against the member's employers. This action was unsuccessful, and A. B. sued the National Union for his professional charges and outlays.

Held (1), that A. B. was entitled under the guarantee to sue the Trade Union; (2) that the guarantee covered his professional charges as well as outlays; (3) that the guarantee covered an account incurred by A. B.'s

Edinburgh correspondents in connection with the action.

"It is true," said the Lord Justice Clerk, "that the appointment stipulated that the injured member was to be the client of the pursuer. This, it is not doubtful, was to save risk of the Branch being attacked for costs in the event of an unsuccessful litigation. But, plainly, while the member was the client, the pursuer was the law agent of the Branch; and it was they who gave him a free hand as their employee in the conduct of cases for the Branch."

It was urged, on behalf of the Union, that Rule XII. (10), which prohibited the branches from making advances of money except certain conditions were complied with, by implication also prohibited branches from entering into such agreements as the agreement in dispute, save under the same conditions. Dealing with this argument Lord Salvesen said: "I am quite clear that . . . Rule XII. (10) has not, and could not have, any application to the employment of the pursuer under the letter of 25th February, 1907. The liability of the defenders depends, in my opinion, (1) on the admitted power which the Branch had of appointing and employing law agents, for I think employment is implied in the right of appointing; (2) on the implied power, deducible from Rule XIV., of the Branch Committee to incur financial responsibility in matters connected with the business of the Branch; and (3) on the circumstance that, by Rule XVI., the funds of all the branches are the common property of the Union. The liability of the Union for the obligations properly incurred by a Branch to its law agent is in no different position from other liabilities which such a branch may incur; and it appears to me to be *prima facie* impossible to limit the financial responsibility of the Union for obligations incurred by the branches in promoting its objects, either by reference to the extent of the obligation or the business of the person to whom it is incurred. The rules and the evidence which have been led in this case show that the branches are just the constituent members of the Union and carry on its sole business subject only to a general control by the Executive, and I entertain no doubt that the Union is answerable for all obligations properly undertaken by the branches in connection with the objects of the Union in so far as these are not contrary to its rules."

"It is further not to be left out of view," said the Lord Justice Clerk, "that, in this particular case, the evidence discloses that the Executive, if they thought that they had the power to stop or interfere with Bowden's case, could have intervened. For it is, as I think, established that their general secretary was perfectly well aware of the pursuer's appointment to be Branch law agent, and also of the proceedings which were being taken in Bowden's case, and that no exception was taken, either on grounds connected with the rules or any other ground, to what was being done."

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