A SUPPLEMENT TO THE LAW RELATING TO TRADE UNIONS

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TO

THE LAW RELATING TO TRADE UNIONS

INCLUDING

THE TRADE UNION ACT, 1913

BY

JOHN HENRY GREENWOOD, B.Sc.

OF THE INNER TEMPLE, BARRISTER-AT-LAW

AUTHOR OF "THE LAW RELATING TO TRADE UNIONS," "THE THEORY AND PRACTICE OF TRADE UNIONISM," "AMOUNT OF COMPENSATION AND REVIEW OF WEEKLY PAYMENTS UNDER THE WORKMEN'S COMPENSATION ACT, 1906"

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PREFACE.

As the case law relating to Trade Unions has, during the last two years, undergone considerable development in the House of Lords, the English Court of Appeal, and the Scottish Court of Session, the author has deemed it advisable to supplement his former work on "The Law Relating to Trade Unions" by an analysis of all the Trade Union cases decided since its publication. A chapter on the Trade Union Act, 1913, has been added, thus bringing the law on the subject down to date.

JOHN H. GREENWOOD.

3, King's Bench Walk, North,
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A SUPPLEMENT

TO THE

LAW RELATING TO TRADE UNIONS

CHAPTER I.

REGISTRATION.

Advantages of Registration.

IN the Scottish case of *Mackendrick* v. *The National Union of Dock Labourers in Great Britain and Ireland* (a), the Lord Ordinary discussed the question of registration at some length, and the following dictum as to the effect of registration appears to be worthy of attention:— *Mackendrick v. National Union of Dock Labourers.*

"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 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 finances being conducted with some claim to regularity and soundness."

Registration: Jurisdiction.

A trade union consisted of combinations of dock labourers which were enrolled by the executive of the Jurisdiction of Courts over

(a) 48 Sc. L. R. 17; [1911] S. C. 83. *Infra*, p. 59.

trade unions as affected by registration.

union as local branches. The union had its registered office in Liverpool, but there were branches in Scotland at Glasgow, Bo'ness, and Aberdeen, and a copy of its rules had been recorded in Scotland. In an action brought in Scotland against the union, the plea of "no jurisdiction" was raised, but it was held that the union was within the jurisdiction of the Scottish Courts.

When the case was before the Outer House, the Lord Ordinary (Lord Johnston) 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 objects, is general, or at least, national, and there is nothing to subject it to the jurisdiction of 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 also 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. It may be that it may then plead that though it must recognize the Courts of Scotland, they are not the convenient forum in which to determine the *de quo queritur*. But that point cannot be taken in the present case." *Mackendrick* v. *The National Union of Dock Labourers in Great Britain and Ireland* (b).

Trustees of unregistered trade union may be sued in a representative action.

In *Parr* v. *Lancashire and Cheshire Miners' Federation and others* (c), a case in which an injunction was sought to restrain certain associated trade unions from devoting their funds to political purposes, one of the defendant unions, being unregistered, was sued in the name of three of its trustees as representatives of the union. In the defence it was argued that the union was wrongly sued and ought to have been sued through its executive committee. *Held*, that the trustees were rightly sued as fairly representing the union.

Neville, J., pointed out that the objection that had been raised was met by the observation of Lord Macnaghten in the *Taff Vale Railway Case* (d), where he said that there would be no difficulty in suing a trade union in a proper case if it were sued in a representative action by persons who fairly and properly represented it. "That observation," said his Lordship, "applies here, and in my opinion the officials of the Miners' Federation, who have been made defendants, fairly represent that body."

(b) 48 Sc. L. R. 17; [1911] S. C. 83.
(c) 29 T. L. R. 235.
(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.

CHAPTER II.

POWERS OF TRADE UNIONS.

Application of the Doctrine of ULTRA VIRES *to Unregistered Trade Unions.*

Unregistered trade unions as affected by the Osborne judgment.
Wilson v. *Scottish Typographical Association.*

In the Scottish case of *Wilson* v. *The Scottish Typographical Association* (*a*) it has been held that the decision of the House of Lords in *Amalgamated Society of Railway Servants* v. *Osborne* (*b*) applies equally whether the trade union is registered or unregistered, and that a rule which purports to confer on an unregistered trade union power to levy contributions from members for the purpose of promoting parliamentary representation is *ultra vires* and illegal.

In the Second Division, the Lord Ordinary (Lord Skerrington) referred to the grounds of the judgment of the majority in the House of Lords in *Osborne's Case* (*b*), viz. that the society having placed itself by registration under the Trade Union Acts, 1871 and 1876, its constitution and powers fell to be determined according to the same principles as if it had originally been established or even incorporated by Act of Parliament, and that the new political purposes of the society were matters outside the purview of the Trade Union Acts, and therefore *ultra vires* of the society. This ground of judgment Lord Skerrington considered had no application to a merely voluntary

(*a*) [1912] S. C. 534; 49 Sc. L. R. 397; *infra*, p. 10.
(*b*) [1910] A. C. 87; 101 L. T. 787; [1910] W. N. 8; 79 L. J. Ch. 87; 54 S. J. 215; 47 Sc. L. R. 613.

association without statutory constitution, such as an unregistered trade union.

But in the First Division Lord Dundas dissented from this view. "I am unable," said he, "to hold . . . that this difference [namely, that in *Osborne's Case* the union was registered, while in *Wilson's Case* it was unregistered] in fact constitutes a material distinction, or that the *Osborne Case* would have been differently decided if the trade union there under consideration had not been so registered. . . . To my mind this interpretation of the judgment is narrow and inadequate. I am of opinion that the decision, both in the Court of Appeal and in the House of Lords, involved much wider grounds which are applicable to unregistered as well as to registered trade unions. . . . I find nothing at all to indicate that any one of the learned judges intended his opinion to be limited to trade unions registered under the Acts; on the contrary, their reasoning (with which I entirely agree) seems to be equally applicable to both classes of trade unions which are legalised and defined by Acts of Parliament."

Political Purposes; Trade Union Representation on Local Governing Bodies.

By a decision in the Chancery Division in *Wilson* v. *The Amalgamated Society of Engineers* (c) the principle laid down in *Osborne* v. *Amalgamated Society of Railway Servants* (d) has been extended. While in *Osborne's Case* the House of Lords declared that provisions in trade union rules for securing parliamentary representation were *ultra vires*, in *Wilson's Case* Mr. Justice Parker decided that the principle extends to representation on

Trade union representation on municipal bodies. *Wilson* v. *Amalgamated Society of Engineers.*

(c) [1911] 2 Ch. 324; 80 L. J. Ch. 469; 104 L. T. 715; 27 T. L. R. 418; 55 S. J. 498.

(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.

municipal and other local government authorities, Boards of Guardians excepted.

Rules III. (3) and XIV. (8), (13) of the Amalgamated Society of Engineers provided for the making of levies for the election and support of labour representatives on local public bodies and in Parliament. After the Osborne judgment, the members were notified that if any one objected to pay the levies he must protest in writing to his branch secretary. Branch secretaries were to send details to the Executive Council, and the levies were to be charged against all members who did not protest.

"It appears to me," said Parker, J., "that every argument in the *Osborne Case* which related to parliamentary representation is really applicable to municipal representation on local government authorities also, and I think having regard to that, and lest a declaration that the rules, so far as they relate to the parliamentary fund, are invalid, may raise a kind of presumption that in my opinion they were valid with regard to the fund for municipal representation, I must also declare them invalid so far as they relate to securing municipal representation or representations on other local government bodies. With reference to what was said in regard to the position of boards of guardians, these may be expressly excluded by saying, 'not including boards of guardians.'"

Voluntary Subscriptions for ULTRA VIRES *Purposes.*

Voluntary levies for political purposes. *Wilson v. Amalgamated Society of Engineers.*

The decision of Parker, J., in the above case does not, in terms, declare that voluntary levies for *ultra vires* purposes are illegal. His Lordship appears to have considered that the levies in question were not in fact voluntary, for he said: "The way they (the society) levied those subscriptions, in fact, made their levies of a compulsory rather than of a voluntary nature; for instead of asking for subscriptions they notified the members that the subscriptions would be charged to them except they dissented, and dissented in a particular form which negatived collective action between the various members of the society. Unless they objected in a particular way they were charged in their books with the parliamentary levy, although they in fact objected, and the levy was said to be voluntary, and the parliamentary levy so charged was set off against the benefits to which they were entitled under other rules, so that in fact unless they chose to object in a particular manner they were charged with the levy without further or in fact any consent on their behalf. In my opinion that is really a compulsory levy, whatever may be said to the contrary."

A further question of some importance in this case was the question of costs. The society, after the action was brought, offered a perpetual undertaking not to spend the funds of the union on the collection of voluntary subscriptions for purposes outside the union's powers; to make it clear that all such subscriptions were voluntary; and not to charge as arrears against any member any sum in respect of them, and to pay plaintiff's costs up to defence.

Held, that notwithstanding this offer, the plaintiff was entitled to his other costs of the action. Dealing with this matter, Parker, J., said: "The plaintiff was entitled, I think, to the declaration which he asked for, and he was entitled to the injunction in the form which was settled by the Court of Appeal in the *Osborne Case;* and though in one way or another, directly or indirectly, he may have obtained an equivalent under the undertaking offered, I do not think an offer of that sort, which denies liability on points on which it is material for him and the persons he represents to have a declaration of the court, is sufficient to deprive him of his right to costs."

Power of Trade Union to pay Secretary's Costs in Private Litigation: Maintenance.

Trade union may only conduct litigation on official's behalf where there is a common interest. *Oram* v. *Hutt.*

The decisions in *Greig* v. *The National Amalgamated Union of Shop Assistants* (*e*), and *Alfin* v. *Hewlett* (*f*), were followed in *Oram* v. *Hutt* (*g*). The facts in this case were as follows:—M, a member of a trade union, had made attacks upon the union officials at the meetings, accusing them of misconduct in relation to the affairs of the union. By a resolution of the union it was decided that the general secretary, the committee, and the lodges should, on behalf of the union, or in their own names, take legal proceedings against him. The trade union did not take proceedings, but J, the general secretary, sued M for slander and obtained a verdict for £1000 and costs. Subsequently D, another official, sued M, who submitted to judgment being given against him. M was unable to pay the damages or the costs, and the trade union, out of its funds, paid to the solicitors £949 7*s.*, the costs incurred by J and D. Such payment was not, in terms, authorised by any rule of the trade union, and another member of the union brought an action against the executive committee and the trustees, asking (1) For a declaration that the payments made by the association to the solicitor were *ultra vires.* (2) For repayment.

It was argued for the association that the slanders constituted, in effect, an attack upon the executive committee and the responsible officers of the association.

Held, that the trade union had no legal interest in the result of the slander action, that the payment to the general secretary in respect of his solicitor's costs was *ultra vires*, and that the general secretary was liable to repay to the trade union the money thus spent, with interest at 4 per cent.

(*e*) 22 T. L. R. 274. (*f*) 18 T. L. R. 664.
(*g*) 29 T. L. R. 98.

Swinfen-Eady, J., said: "According to the tenor of the rules in this case, the whole of the monies had to be applied for carrying out the objects of the association. It was not contended that these costs, although the action was brought by officers, were within any of the rules, but it was said that the actions were for the benefit of the association, and it would be taking too narrow a view to say that it would not be a proper application.

"It would be within the provisions of the law against maintenance for one person to assist another in the conduct of legal proceedings, unless such person had a common interest or unless the case were brought within the established exceptions, which was not contended here."

His Lordship quoted Lord Justice Lopes in *Alabaster* v. *Harness* (*h*) as follows:—"All our cases of maintenance and champerty are founded on the principle that no encouragement should be given to litigation by the introduction of parties to enforce those rights which others are not disposed to enforce. . . . In order to justify such interference on the grounds of common interest I think there must be some interest recognized by the law in what is called by Hawkins, in his Pleas of the Crown, the thing in variance, by which I understand an interest in the subject-matter of the action at issue between the parties. In my opinion there must be some legal, as distinguished from a sentimental interest, in the result of the action about to be tried or in some question at issue between the parties in the action."

"Every word of that," said his Lordship, "is applicable to these two actions. The association had no legal, as distinguished from a sentimental interest, in the result of the actions. If any damages were recovered, they would be recovered personally or for the benefit of the plaintiffs, who would not be trustees thereof on behalf of the association. . . . It was urged that really the action was

(*h*) [1895] 1 Q. B. 339; 64 L. J. Q. B. 76; 71 L. T. 740; 43 W. R. 196; 14 R. 54.

brought for the benefit of the association. So long as M's statements were spread broadcast, the miners were either leaving or omitting to pay subscriptions, and the union would have come to an end. Although it might be that the result of the action really was in a way to rid the neighbourhood of him, that is not a matter which I am entitled to take into account in considering whether they could pay the costs of the actions."

Effect of ULTRA VIRES *Rules on the Status of a Trade Union.*

Ultra vires rules do not destroy status of trade union.

In the Scottish case of *Wilson* v. *The Scottish Typographical Association* (*i*), it was said by Lord Skerrington (the Lord Ordinary) that if a trade union has rules which are *ultra vires*, not only does it forfeit the advantages conferred upon trade unions by the Trade Union Acts of 1871 and 1876, but it forfeits the special privileges conferred by The Trade Disputes Act, 1906. But this view did not obtain the support of Lord Dundas and Lord Guthrie, when the case came before the First Division of the Court of Session; and the Court of Appeal in England has distinctly negatived such an assumption. Thus in *Gaskell* v. *The Lancashire and Cheshire Miners' Federation* (*k*) (for facts in which see pages 77 and 78, *infra*) the judgment of the Master of the Rolls contained the following words:—"It was said that because the rules of the federation included a rule which, under the decision in the *Osborne Case* (*l*), was *ultra vires* the union, the union was not a union within the meaning of The Trade Disputes Act. That proposition was one which only needed to be stated to be rejected. The fact that the application of union funds for the payment of members of Parliament was held

(*i*) [1912] S. C. 534; 49 Sc. L. R. 397, *supra*, p. 4.
(*k*) 28 T. L. R. 518; 56 S. J. 719.
(*l*) [1910] A. C. 87; 101 L. T. 787; [1910] W. N. 8; 79 L. J. Ch. 87; 54 S. J. 215; 47 Sc. L. R. 613.

to be *ultra vires* the union, in the *Osborne Case*, showed that there was, in that case, a union which was held to be governed by the laws affecting unions."

In *Parr* v. *Lancashire and Cheshire Miners' Federation and others* (*m*), it was held by Neville, J., that a registered trade union remains a registered society until the certificate of registration has been cancelled by the registrar, and that although a registered trade union has applied its funds for unlawful purposes, it has not thereby ceased to be a registered trade union and may rightly be sued in its registered name.

Power to alter Rules.

In the judgment of Lord Skerrington, the Lord Ordinary, in *Wilson* v. *The Scottish Typographical Association* (*n*), there are certain instructive observations as to the power of an unregistered trade union to alter its rules in the absence of an express power to do so contained in the rules themselves. *Wilson v. Scottish Typographical Association.*

The rules of the association were adopted in 1903, and Rules 39 and 102 were as follows:—

Rule 39: Delegate meetings.—A meeting of association delegates extending over six days, if necessary, shall be held every four years.

Rule 102: Rules and Decisions of Delegate Meetings. —The foregoing rules, together with the decisions of the delegate meeting issued therewith, shall be considered the governing rules of The Scottish Typographical Association, and binding on all its members and branches.

At the end of the rules was a docquet in the following terms:—The foregoing rules amended by the delegate meeting assembled at Perth on the 8th, 9th, 10th, 11th, 12th and 13th June, 1903, drawn up and revised by the revision committee on 10th October, 1903, are hereby

(*m*) 29 T. L. R. 235.
(*n*) [1912] S. C. 534; 49 Sc. L. R. 397, *supra*, p. 4.

confirmed and will, on and after 1st January, 1904, be the governing rules of the Scottish Typographical Association.

There did not appear to be any rule directly empowering the association to amend its rules. Nevertheless, in 1907 the rules were modified so as to make provision for the levy of contributions for the purpose of promoting parliamentary representation.

Referring to Rules 39 and 102 and the docquet, Lord Skerrington said: "The rules are not very distinct upon this point, but I think it sufficiently appears that the rules of this association are not unchangeable, and that any changes fall to be made by the delegates. . . . I do not think that the rules of a voluntary association ought to be construed in the same manner as if they were the constitution of a statutory body, or as if they formed the contract of co-partnery of a mercantile firm. Voluntary associations for charitable or other objects usually begin in a small way, and under a reserved power to amend their rules. They, from time to time, enlarge their objects in a manner which, in the language of Company Law, might be described as 'altering the Memorandum of Association,' and that without obtaining the consent of every individual member. To hold that this familiar practice is illegal would lead to great inconvenience and injustice because in many cases nothing short of a private Act of Parliament would in that view entitle a voluntary association to enlarge its objects. Accordingly, had it not been for one consideration which applies only to certain unregistered trade unions, including, as I think, the particular association now in question, I should have decided that the association acting by its delegates did not infringe the plaintiff's contractual rights when it altered its rules so as to enable it to adopt political action for the furtherance of its ends."

But in the First Division Lord Dundas said: "If it were necessary to decide the question, I entertain, as at present advised, more difficulty than the Lord Ordinary appears to have felt about the validity, as a question of machinery and powers, of the alterations alleged to have been effected by the delegates upon the rules of the association. These rules appear to me to be very loosely drawn up and very obscure in their meaning and effect. But it is unnecessary, in the view I take, to say more upon this topic."

And Lord Guthrie expressed the opinion that in the case of a voluntary association with a detailed constitution involving pecuniary interests in its members, but not containing any express power to alter its rules, no alteration in the rules would be valid if it made the society a thing different from a society formed for the purpose and in the manner defined by its constitution (*o*).

Security for costs.

Where a member of a trade union brought an action against the union to restrain it from using its funds for *ultra vires* purposes, the union applied to the Court for an order that the plaintiff should give security for costs, as he was merely a nominal plaintiff, who had no real interest in the matter, but was urged on by persons outside, who were finding the money for the action.

Held, that as the plaintiff was a member of the union, he was personally interested in the application of the funds, and was not merely a nominal plaintiff: there was therefore no ground for asking for security for costs (*Thurloway* v. *Amalgamated Union of Shop Assistants, Warehousemen, and Clerks*) (*p*).

Disposal of fund created for *ultra vires* purposes.

A trade union was restrained by injunction from devoting any of its funds to political purposes, but there remained in the hands of the trustees a fund of £14,000,

(*o*) See also the judgment of Bailhache, J., in *Amalgamated Society of Engineers* v. *Jones*, *The Times*, April 24th, 1913.

(*p*) Board of Trade Labour Gazette, January, 1911.

which had been accumulated for political purposes. An action was brought by a member of the union, asking for the administration of this fund, and for its distribution amongst the members of the union, who numbered 140,000.

This action was not brought to trial, a compromise being arrived at by which it was settled that the fund should be retained by the union for the purpose of providing a weekly allowance "for the support of members who may be victimised, locked out, or on strike, and to resist any unjust regulation connected with their employment, and to prevent illegal stoppages of wages at the pay office" (*Jones* v. *South Wales Miners' Federation*) (*q*).

(*q*) Board of Trade Labour Gazette, February, 1911.

CHAPTER III.

LEGALITY OF TRADE UNION RULES—RESTRAINT OF TRADE.

Restraint of Trade.

Osborne v. *Amalgamated Society of Railway Servants (No. 2).*

IN the case of *Osborne* v. *The Amalgamated Society of Railway Servants* (*No.* 2) (*a*), the question of the lawfulness at Common Law of the rules of the Amalgamated Society of Railway Servants was considered by the Court of Appeal, and the following rules of the society were reviewed by the Court:—

Rule 1, sub-rule 2: The objects of the society are to improve the condition and protect the interests of its members; to obtain and maintain reasonable hours of duty and fair rates of wages; to promote a good understanding between employers and employed, the better regulation of their relations and the settlement of disputes between them by arbitration, or, failing arbitration, by other lawful means; to provide temporary assistance to members when out of employment through causes over which they have no control, or through unjust treatment; to provide legal assistance when necessary in matters pertaining to the employment of members, or for securing compensation for members who suffer injury by accidents in their employment; to aid the young orphan children of all members in scale A; to provide a grant of money to members in scale A permanently disabled or killed by accident, or when by reason of old age they cannot follow

(*a*) [1911] 1 Ch. 540; 80 L. J. Ch. 315; 104 L. T. 267; 27 T. L. R. 289. See *infra*, p. 52.

their regular employment; also to use every effort to provide for the safety of railway work and of railway travelling; also to provide donations to any charitable institution from which the members may derive benefit; and to have power to render as occasion may arise assistance to other trade unions, and other lawful purposes. Also to enable such members as voluntarily desire it to provide funds for their relief in sickness or temporary disablement and for their interment. The objects of the society shall be pursued and the benefits provided in accordance with the following rules and not otherwise.

Rule 13, section 3, dealt with "protection of the rights and labour of bodies and members," and provided: (1) The executive committee is authorised 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) The authority of the executive committee to give sanction to such trade movements is subject to the following conditions: (*a*) Before any step in connection 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. . . .

The sub-sections (*b*) to (*g*) contained steps towards a pacific settlement.

(*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 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 shall be withdrawn from the said movement and no further expenses shall be defrayed from the society's funds in connection 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 claim on the funds and benefits of the society. But he or they shall have the right to appeal to the annual general meeting.

Rule 2 (4) (*f*) 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.

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 observed that there was nothing in the objects of the society as stated in Rule 1, sub-rule 2, which suggested illegality. "But," said his Lordship, "though the objects are free from the taint of illegality, there may be provisions in the rules which seek to advance the objects by unlawful means. It is remarkable that there is no provision, such as is very often found in the rules of trade unions, for calling out members in the event of a strike. It is, however, urged that Rule 13, section 3, indirectly amounts to such a provision and is in restraint of trade, but I am unable to assent to this view. The executive committee can only sanction a strike as distinguished from ordering a strike; and there are careful provisions to secure legality. . . . Now, it seems to me reasonably plain that the signing of the notice 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: that is all. Nor can I find any trace of an intention to call out or to put pressure upon those members in the minority who have not voluntarily signed. Mr. Justice Warrington thought he found it in Rule 9, sub-rule 14. . . . I am not prepared to hold that a member who declines to join with the majority of his fellow-workmen in signing and handing in notices can be said to be guilty of an attempt to hinder the society. . . . The society is a lawful association at Common Law."

Fletcher Moulton, L.J., 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 movement or proceedings there referred to."

Thomas v. Portsmouth A. Branch of Ship Constructive and Shipwrights' Association.

The following rules of the Ship Constructive and Shipwrights' Association were considered by the Divisional Court in *Thomas* v. *The Portsmouth A. Branch of the Ship Constructive and Shipwrights' Association* (b):—

Rule 34. This made the executive committee the body to decide whether a strike was to take place and strike pay was to be paid, and provided that if a member took up work at a yard where a strike was in progress, he should be first subject to a fine, and if he persisted should be subject to expulsion and loss of benefits. The rule further provided for the fining or expulsion of any member who, after being made acquainted with the fact that a dispute was in progress at a job or yard connected with the trade or association, should call at such job or yard.

Rule 19 provided for the expulsion of any member who, by his conduct, had brought the association into discredit, or had wilfully violated the trade bye-laws of the port he was working in.

Rule 24 gave power to expel or otherwise deal with any member who signed an agreement with a firm without its first being sanctioned by the executive committee.

Rule 49 provided that all monies of the society were to be paid into one common fund.

Held, that the rules were so much in restraint of trade as to make the union, apart from the Trade Union Act, 1871, an illegal association.

Pickford, J., referring to Rule 19, said that he had no knowledge of these port bye-laws, but a similar rule had been held to be in restraint of trade as limiting the free will of the employee. Commenting on Rules 24 and 34, his Lordship observed that the former imposed a restriction

(b) 28 T. L. R. 372.

on the employment of members, while the latter meant that members must keep away entirely from a job or yard where a dispute was in progress; so there again there was a restriction on the liberty of the workman. Looking at the rules generally, his Lordship considered that, in principle, they were similar to those in *Russell's Case* (c), so they were in restraint of trade and made the appellants an illegal association. There were many rules, no doubt, which only dealt with benefits, and if they could have been read apart from the others, there might have been ground for saying that the association was not illegal; but as by the breach of a rule in restraint of trade a member was liable to expulsion and loss of benefits, the rules were all so connected together that they could not be divided.

Avory, J., said the action was brought to recover a benefit: so, according to the judgment of the Lord Chancellor in *Russell's Case* (c), the claim was barred under section 4 of the Act. His Lordship distinguished the present case from *Osborne* v. *The Amalgamated Society of Railway Servants* (*No.* 2) (*d*), observing that in that case there was no rule preventing a man from going back to work after being on strike, while in this case, Rule 34 provided that no member was to go near a yard where there had been a dispute in progress.

Unlawful Societies Act and Seditious Meetings Act.

Luby v. Warwickshire Miners' Association.

In *Luby* v. *Warwickshire Miners' Association* (*e*) (see p. 57, *infra*), an action brought by a member of a trade union against the union to protect himself against expulsion from the society, the defendant society set up the

(*c*) [1912] A. C. 421; 81 L. J. K. B. 619; 106 L. T. 433; 28 T. L. R. 276; 56 S. J. 342; 49 Sc. L. R. 1026. See pp. 22 and 33, *infra*.

(*d*) [1911] 1 Ch. 540; 80 L. J. Ch. 315; 104 L. T. 267; 27 T. L. R. 289; *supra*, p. 15.

(*e*) [1912] 2 Ch. 371; [1912] W. N. 194; 28 T. L. R. 509; 56 S. J. 670; 81 L. J. Ch. 741.

defence that it was an illegal society, and so outside the jurisdiction of the courts. The society relied on the Unlawful Societies Act, 1799, and the Seditious Meetings Act, 1817 (*f*).

Held, that in view of the recognition of trade unions by numerous Acts of Parliament and by the Courts, they cannot, even where their organization embraces affiliated branches and delegates, be considered "unlawful combinations" or "criminal associations" within the meaning of the Unlawful Societies Act, 1799, or the Seditious Meetings Act, 1817. The applicability to them of these statutes is impliedly repealed by the later Acts of the Legislature. Neville, J., said: "I find it difficult to put a reasonable interpretation upon either Act which would not have brought within its prohibition, at the time of the passing of the Act, the branches and the delegates of the modern trade unions. It has been argued that these Acts are to be deemed obsolete, inasmuch as their enforcement to-day would, as it is alleged, lead to manifest injustice and absurdity. Inasmuch, however, as both the Acts

(*f*) The provisions of these statutes are as follows:—

Every society which shall be composed of different Divisions or Branches, or of different Parts, acting in any manner separately or distinct from each other, or of which any Part shall have any separate or distinct President, Secretary, Treasurer, Delegate, or any other Officer, elected or appointed by or for such Part, or to act as an Officer for such Part, shall be deemed and taken to be unlawful Combinations and Confederacies (Unlawful Societies Act, 1799, 39 Geo. III. c. 79, s. 2).

Every Society or Club that shall elect, appoint, nominate, or employ any Committee, Delegate or Delegates, Representative or Representatives, Missionary or Missionaries, to meet, confer, or communicate with any other Society or Club, or with any Committee, Delegate or Delegates, Representative or Representatives, Missionary or Missionaries, of such other Society or Club, or to induce or persuade any person or persons to become members thereof, shall be deemed and taken to be unlawful Combinations and Confederacies within the meaning of an Act passed in the thirty-ninth year of the Reign of his present Majesty, and intituled "An Act for the more effectual Suppression of Societies established for seditious and treasonable Purposes, and for better preventing treasonable and seditious Practices" (Seditious Meetings Act, 1817, 57 Geo. III. c. 19, s. 25).

have received comparatively recent recognition and application, while injustice has been guarded against by limiting the right to prosecute for offences under them to the Attorney-General, I find it difficult to say that such of their provisions as have not already been repealed are not still available for the protection of the community against the evils at which they were aimed. . . . The conclusion, therefore, that trade unions are not criminal associations, and consequently that the Acts of George III. do not apply, assuming as I do that the words of the Acts are sufficiently wide to cover trade unions with branches and delegates, seems inevitable. If this be so, it must be on one of two grounds: either that the statutes in question have become obsolete, or that trade unions have been exonerated from their provisions by the Legislature. In my opinion, the latter is the true explanation. There is no express provision in the Acts dealing with trade unions that the statutes of George III. shall not apply, but inasmuch as the manner in which Parliament has dealt with them is quite inconsistent with their criminality, I think such a provision must, of necessity, be implied."

See also *Parr* v. *The Lancashire and Cheshire Miners' Federation and Others* (*g*).

Rules in Part Legal and in Part Illegal.

Russell v. *The Amalgamated Society of Carpenters and Joiners.*

The following rules of the Amalgamated Society of Carpenters and Joiners were considered by the Court of Appeal and the House of Lords in *Russell* v. *The Amalgamated Society of Carpenters and Joiners* (*h*).

Rules of the Amalgamated Society of Carpenters and Joiners.

Rule 1 (2) declared the objects of the association to be "to raise funds for the advancement, protection, and organisation of the trade; to render legal assistance to members for the recovery of wages; for the mutual

(*g*) 29 T. L. R. 235.
(*h*) [1912] A. C. 421; 81 L. J. K. B. 619; 106 L. T. 433; 28 T. L. R. 276; 56 S. J. 342; 49 Sc. L. R. 1026. See *infra*, p. 83.

support of its members in cases of sickness, accident, and superannuation; for the burial of members and their wives; for the loss of tools by fire, water, or theft; for assistance to members out of work, and to assist (to a reasonable extent) any branch or district desirous of joining with other branches of trade with which our members are identified, either in the ship or house building industries, with a view to advancing the general conditions of labour; also, as directed in the following rules, to form a contingent fund, which shall be used for the purpose of granting assistance in cases of distress not otherwise provided for by these rules; to aid our own or any other organised trade; to take legal proceedings under the Employers' Liability Act and the Workmen's Compensation Act on behalf of members who may have been injured or met their death by accident in the United Kingdom."

Rule 1 (3) provided that the society was to be divided into branches, each branch to appoint its own officers and conduct its own business.

Rule 1 (4). It shall be competent for any branch, where no managing committee exists, at a special or quarterly meeting to fine (the amount not to exceed £2), suspend, or expel any member from the society upon satisfactory proof being given that such member has acted contrary to the provisions of rule 48, clause 1.

Rule 8 (1). Members of this society shall be entitled to all benefits by paying 1*d.* per week contribution, 4*d.* per quarter to the contingent fund, and 6*d.* per year to the special fund for trade movements.

Rule 8 (8). All moneys subscribed by the members of this society shall be the property of the society generally, and not of the branches to which the members respectively belong, and shall be held for and devoted to the payments of the society specified in these rules; and any branch leaving the society shall forfeit all the money it has accumulated.

Rule 9 (5). In the event of any great struggle between capital and labour in our own or any other trade, with no immediate prospect of a settlement, the executive council shall, when requested by ten branches outside the area affected, at once take a vote of the whole of the members in the United Kingdom on the question of a levy (which must not exceed *3d.* per week per member) for the purpose of supplying the men affected with pecuniary support at the earliest opportunity.

Rule 11. *Election of Officers for the Management of Trade Movements.*

Rule 11 (1). Whenever it may be decided by the majority present at a summoned meeting of the members of the society in any locality that a change in the existing code of working rules or in the trade regulations and customs of the district is desirable, or for the better carrying out of the local working rules and customs of the trade, a committee for the management of the movement, to be called the "managing committee," may be appointed by the aforesaid summoned meeting, such committee to remain in office twelve months.

Rule 11 (6). In all towns or districts where more than one Carpenters' and Joiners' Society is established, a "united trade committee" may be formed composed of representatives of the various societies.

Rule 27. *Duties and Powers of Officers conducting Trade Movements; Managing or United Trade Committees.*

Rule 27 (1). Whenever notice has been given to or received from the employers proposing an alteration of working rules, the managing committee or united trade committee shall have power to suspend the working of overtime in the district until a settlement has been arrived at. They shall undertake the general management of the movement, and shall endeavour, if possible, to obtain an amicable settlement, and shall have power to fine (the amount not to exceed £2), suspend, or expel any member who has refused to comply with the committee's decision, or has violated any of the conditions laid down in rule 48, clause 1. This power shall not apply to united trade committees, but shall be vested in the members of this society connected with united trade committees who may form themselves (if necessary) into a managing committee for the purpose of conducting matters relating to our society only.

Rule 29 (10). A branch or district shall not be allowed to strike without first obtaining the sanction of the executive council, and the executive council shall have full power to declare the strike closed.

Rule 36. *Trade Privileges.*

Rule 36 (2) fixed the amounts allowed to members leaving their employment under circumstances satisfactory to the branch, branch committee, managing committee, district committee, or executive council.

Rule 36 (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 members should refuse to work with non-union men, they shall be entitled to trade privileges.

Rule 36 (6). Any member or 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 for any period not exceeding six weeks.

Rules 37–43 provided for various payments to members in the nature of friendly society benefits—"unemployed benefit," "tool benefit," "sick benefit," "accident benefit," "superannuation benefit," and "funeral benefit."

Rule 48. *Misconduct of Members.*

Rule 48 (1). It shall be competent for any managing committee, branch committee, or branch at a special or quarterly meeting, to fine (the amount not to exceed £2), suspend, or expel any member from the society upon satisfactory proof being given that such member has refused to comply with their decision, or by his conduct brought the society into discredit, wilfully violated the recognised trade rules of the district in which he is working, taking a sub-contract or piecework, or working for either of those classes of employers (sub-contractor or pieceworker being defined as a person taking the labour of a job only, and not supplying the material), or fixing, using, or finishing work which has been made under unfair conditions, either in the United Kingdom or abroad, or contrary to the recognised trade rules of the district in which it has been prepared, or has fraudulently received or misapplied the funds of the society, or the moneys of any member or candidate entrusted to him for payment to the society, or belonging to any labour bureau or similar institution, or holding any official capacity in the same. (This condition shall not apply to the Labour Department of the Board of Trade or a similar department in the United States or the Colonies.)

Question as to legality of the society's rules.

In the House of Lords (*i*) Earl Loreburn, the Lord Chancellor, refused to express an opinion as to the legality or otherwise of the rules. "I should desire this point to be argued," said his Lordship, "before expressing my opinion upon it; but I do not think it necessary to enter upon it at all for the decision of this case. It is undesirable to decide such a point in this case where counsel upon both sides unite in condemnation of the rules and in an

(*i*) [1912] A. C. at p. 428.

adverse interpretation of their effect. Counsel on both sides laboured to show that the rules were oppressively in restraint of trade and that therefore the action would not lie." See also judgment of Lord Shaw at page 36 *infra*. Lord Macnaghten said: "It is not every restraint of trade that is unlawful, but I cannot doubt that restraint of trade which is unreasonably oppressive and destructive of individual liberty is unlawful." And Lord Shaw of Dunfermline said: "Under the organisation . . . it is apparent that the workman, considered as the free disposer of his own labour, is thus confronted with a situation of great seriousness should his freedom conflict with the decisions of any of the committees referred to. He is further exposed to liability to fine, suspension, and expulsion if he has 'wilfully violated the recognised trade rules of the district in which he is working' or takes 'a sub-contract or piece-work' or is working for those classes of employers, or fixing, using, or finishing work made under unfair conditions either at home or abroad—the judgment upon this subject being apparently the judgment of the governing bodies referred to. So far as the individual liberty of the worker is concerned, it is accordingly fairly plain that trade in respect of him is restrained; but that would not be sufficient to satisfy the conditions of unlawfulness unless these were also such as to affect the trade in general or the public at large. Upon this subject it however appears that provisions are made for granting assistance to other trades, and for levying 3*d*. per member 'in the event of a great struggle between capital and labour in our own or any other trade.' . . . They [the rules] mean and appear to provide the materials and machinery under which according to the decision, and at the direction of the officials of the association, a particular trade may not merely be restrained, but, by concerted action with other branches of industry, that trade and the trade of the country at large may be actually paralysed."

Distinction between restraint on individual worker and restraint on trade in general.

Strikes not an illegal restraint of trade.

When the case was before the Court of Appeal (*k*) Vaughan Williams, L.J., speaking of strikes, 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 Kennedy, L.J., quoting Hannen, J., in *Farrer* v. *Close* (*l*), 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*; 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 employer and employed, or any other lawful purpose."

The following dictum of Lord Shaw (*m*) supports these dicta of Lords Justices Vaughan Williams and Kennedy: "Strikes," said Lord Shaw, "may be perfectly legal or they may be illegal. It depends on the nature and mode of the concerted cessation of labour. If this concerted cessation of labour is in breach of a contract, then it could not be said to be within the law any more than could a breach of contract by a single workman. If, on the other

(*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.

(*l*) 38 L. J. M. C. 132; 10 B. & S. 533; L. R. 4 Q. B. 602; 20 L. T. 802; 17 W. R. 1129.

(*m*) [1912] A. C. at p. 428.

hand, a strike be a cessation of labour on the expiry of a contract, there is no necessary illegality there, any more than in the case of an individual workman completing his current bargain and then choosing to remain idle; but, of course, in this latter case, the concert for the cessation of labour may be for the sole, or deliberate, or obvious purpose of restraining trade, in which case different legal consequences might ensue, and to this I have referred. All of these principles (excluding the exceptional case last mentioned) are now well settled by authority, and they are no longer questioned."

The question of the separability of lawful and unlawful purposes was also referred to in this case. In the Court of Appeal (*n*) Vaughan Williams, L.J., 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

Separability of legal and illegal rules.

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

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."

And Farwell, L.J., said: "If there were two distinct sets of rules constituting two distinct contracts, with separate funds applicable respectively to militant and beneficent purposes, exclusively of each 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 benefit advantages, by reason of some breach of a militant rule."

In the House of Lords (*o*), Lord Shaw said: "It must stand admitted that many of the associations' objects are of a purely friendly society character, and that the highly valued provisions for sick, unemployed, accident, superannuation, and funeral benefits are familiar and entirely within the law; nor can it be denied, in the general case, that the occurrence here and there of certain passages in the rules of such societies, which would point to action outside of the law, may not be of itself sufficient, so to speak, to taint the objects of the society as a whole. Further, the reference to the occurrence of strikes in the rules, or in the provision for the support of members during a strike, does not, *per se*, make the association illegal. . . . The two outstanding obstacles to the separability of the objects of this society appear to be those of finance on the one hand, and of coercive discipline and expulsion upon the other. The massing of

Tests of separability of legal and illegal rules.

(*o*) [1912] A. C. 421; 81 L. J. K. B. 619; 106 L. T. 483; 28 T. L. R. 276; 56 S. J. 342; 49 Sc. L. R. 1026.

funds has been considered by trade unions to be of vital importance to conduce to their effectiveness in action, and to be justified by sound general policy. Such massing occurs here, and the segregation of funds into those for the promotion of objects which, upon the one hand, are within and on the other outside of the law, is thereby prevented. But . . . the power of free suspension and expulsion from the society is of a character so effective and drastic as to take no stock of distinctions between one object of a society and another, and to have a cumulative and complete effect with regard to the contributions of the members as a whole. If expulsion takes place by reason of a workman pursuing his avocations alongside of a non-union member, it is equally effective with expulsion which takes place by reason of his having failed, for a stipulated period, to make his contributions to the society; or, if again the judgment of the individual workman, or even a body of workmen, should differ from the decision of the committee with reference to a dispute in another industry with which it is averred that his own trade has not sympathy or is not concerned, then equally he forfeits by expulsion all his contributions made to the society, including the provisions for sickness, accident, or unemployment, for which the rules provide. . . . Upon the construction of the rules as they have been presented I cannot see my way to give effect to the separability claimed. I think . . . that its [the society's] objects thus taken together, and as a whole, stand open to the objection of being in restraint of trade."

Agreements relating to provident purposes and trade purposes rest upon the same consideration.

It had been contended on behalf of the plaintiffs in the action that claims for sickness and superannuation benefits are unaffected by the character of the general purposes of the union, because those benefits are separable from the rest of the agreement, and rest upon an independent consideration. "That," said Lord Robson (p),

(p) [1912] A. C. 421; 81 L. J. K. B. 619; 106 L. T. 483; 28 T. L. R. 276; 56 S. J. 342; 49 Sc. L. R. 1026.

"was not the view of the framers of the statute. They put trade union agreements for what one may call friendly society benefits on the same footing as any other trade union agreements which were in restraint of trade. The reasons for this are obvious. Trade unions generally (including the defendant society) make no separation or distinction of funds between the two classes of benefit. The contributions which a member has to make under Rule 8 of the defendant society cover all benefits. There is nothing to show what proportion should be, or in fact is, allocated to sickness and superannuation benefits, and how much to what one may call 'the militant purposes' of the society. In face of the rules, it could not be suggested that the defendant society would or could, in the course of its ordinary working, allow such a severance of the defendant's part of the agreement as here demanded. The solidarity of its objects is shown by the fact that under Rule 48 a member who commits a breach of the trade regulations of the society, or refuses to comply with any decision of the executive committee, however much it is in restraint of trade, may be expelled, and thereby forfeit the sickness and superannuation benefits to which he may have contributed for a lifetime."

In *Donkin* v. *Amalgamated Society of Engineers* (*q*), an action brought to enforce the right to sick benefit, it was held, on a consideration of the rules, that the society was an illegal one as being in restraint of trade, and that the action was barred by section 4 of the Trade Union Act, 1871.

The object of the society was "to protect and regulate the conditions of labour," and provision was made in the rules for the procedure to be followed in case of a "strike or withdrawal of members entered into with the previous sanction of the council."

(*q*) Heard at the Manchester Assizes, November, 1911. See Board of Trade Labour Gazette, December, 1911.

CHAPTER IV.

RIGHTS AND LIABILITIES OF TRADE UNIONS IN CONTRACT.

Action to Enforce Right to Benefit.

Russell v. Amalgamated Society of Carpenters and Joiners.

THE case of *Russell* v. *The Amalgamated Society of Carpenters and Joiners*, which is discussed in "The Law Relating to Trade Unions," pages 72–73, has recently come before the House of Lords (*a*), which has confirmed the decision of the Court of Appeal (*b*). 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 pages 22–26, *supra*. On a consideration of these rules the Court of Appeal 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, and that therefore the action could not be maintained. The House of Lords confirmed this. In the King's Bench Division, some other questions were discussed in

(*a*) [1912] A. C. 421; 81 L. J. K. B. 619; 106 L. T. 433; 28 T. L. R. 276; 56 S. J. 342; 49 Sc. L. R. 1026. See *supra*, p. 22.
(*b*) 79 L. J. K. B. 507; [1910] 1 K. B. 506; 102 L. T. 119; 26 T. L. R. 228; 54 S. J. 213.

Russell v. Amalgamated Society of Carpenters and Joiners.

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*."

Section 4 of the Trade Union Act, 1871, not affected by Section 7 of the Provident Nominations, etc., Act, 1883.

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 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. *Russell v. Amalgamated Society of Carpenters and Joiners.*

In the House of Lords Lord Robson referred to this last-named contention as a hopeless contention.

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."

In the House of Lords Lord Atkinson said: "This is an action based upon an agreement 'to provide benefits to members,' and is instituted directly to enforce that agreement or to recover damages for the breach of it. The statute gives no support to such an action. Whether it can be instituted in its present form or not must depend upon the Common Law."

Lord Shaw of Dunfermline said: "The Act (section 3) steps in to declare that they [the purposes of a trade union] shall not, for that reason [restraint of trade] be unlawful; but (section 4) that nothing in the Act shall enable a court of law to enforce the agreement which it cites. Quoad this, things remain as they were; that is to say, if the association be illegal on account of its purposes being in restraint of trade, it remains the case just as it was before, that the law cannot be invoked to support it, to regulate it, or to control in the particular matters set out in section 4 of the Act, these matters including the present claim. Accordingly the argument stated to the House was very simple, namely: If the association's

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purposes were in restraint of trade, then the action is excluded by the statute just as, but for the statute, it would have been excluded by the Common Law. The whole of this argument appears to me to be unassailable.

"So that the real question would appear to be one determinable by a survey and construction of the rules of this society, namely, whether under these rules its purposes are in restraint of trade. This is how the case was treated, and in my humble opinion most appropriately treated, in the Court of Appeal. Upon this question I regret that we were not favoured with two sides of the argument. Both sides of the bar concurred in presenting one side of the case, and both agreed in expounding their views upon the footing that some of these rules were in restraint of trade. Such a state of the discussion causes a certain uneasiness as to whether all the materials for determination have been made fully available."

Lord Robson on Section 4 of the Trade Union Act, 1871.

The following passage from the judgment of Lord Robson is probably the most illuminating of all the judicial expositions of the reasons underlying the immunity of the trade unions from actions to enforce payments of benefits: "The primary object of the Act of 1871 was to safeguard the right of industrial combination, whether for the purpose of improving the wages and conditions of labour, or of increasing the profits of capital. It was framed explicitly on the assumption that, as the law then stood, trade unions were very generally, though not perhaps universally, acting in restraint of trade. This is clear from the definition clause of the Act itself. . . . It is to be observed that the Act did not go the length of abrogating or altering the general law against restraint of trade. It grafted an exception on it in favour of certain classes of persons, but by section 4 it maintained the principle of the old law even against those persons to the extent of refusing the assistance of the Courts in the direct enforcement of contracts between members of a trade union, when the purposes of the

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union were in restraint of trade. Had it gone further and altogether excluded the application of the common law doctrine in this connection, the Courts would have been compelled to give full effect by decree or by injunction to contracts whereby workmen had bound themselves not to undertake certain legitimate kinds of work and to refrain, under certain circumstances, from working at their trade at all, except by leave of their union, no matter what their immediate necessities might be. Such contracts would then be as legal as any other by which a man limits his freedom of action for a definite time or purpose, and the prospect of the burden which would thus be cast upon the executive of actively enforcing great numbers of such contracts in periods of industrial hardship or disturbance was one from which Parliament might well shrink.

"But the operation of section 4 of the Act of 1871 is not confined merely to contracts in restraint of trade. It enacts also 'that 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 (*inter alia*): (3) any agreement for the application of the funds of a trade union (*a*) to provide benefits to members.'

"*Primâ facie*, the agreements thus excluded from the benefits of the Act are legal and meritorious, and their exclusion can only be due to the fact that they rest, in some degree, upon a consideration involving restraint of trade which the law tolerates but will not assist. This circumstance has a significant and important bearing on the plaintiff's contention that claims for sickness and superannuation benefits are unaffected by the character of the general purposes of the union, because those benefits are separable from the rest of the agreement and rest upon an independent consideration. That was not the view of the framers of the statute. They put trade union agreements for what one may call friendly society benefits on

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the same footing as any other trade union agreements which were in restraint of trade. The reasons for this are obvious. Trade unions generally (including the defendant society) make no separation or distinction of funds between the two classes of benefit. The contributions which a member has to make under Rule 8 of the defendant society cover all benefits. There is nothing to show what proportion should be or in fact is allocated to sickness and superannuation benefits, and how much to what one may call the militant purposes of the society. In face of the rules it could not be suggested that the defendant society would or could, in the course of its ordinary working, allow such a severance of the different parts of the agreement as here demanded. The solidarity of its objects is shown by the fact that under Rule 48 a member who commits a breach of the trade regulations of the society or refuses to comply with any decision of the executive committee, however much it is in restraint of trade, may be expelled and thereby forfeit the sickness and superannuation benefits to which he may have contributed for a lifetime."

Semble: that trade unions being unincorporated before 1871, cannot be sued in their registered names on the contracts enumerated in the Trade Union Act, 1871, s. 4.

In this case the Court of Appeal (*c*), and, in the House of Lords (*d*), Lords Macnaghten, Shaw, Mersey, and Robson held that the action did not lie against the union because at common law it was an illegal society; but Earl Loreburn (Lord Chancellor) and Lord Atkinson gave their decision not on this ground, but on the broad ground that under no circumstances will an action lie against a trade union to enforce a claim for benefit. The result of their Lordships' judgment is thus summarised by Pickford, J., in the case of *Thomas* v. *The Portsmouth A. Branch of the Ship Constructive and Shipwrights' Association* (*e*): "In the House of Lords in *Russell's Case* the Lord Chancellor

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

(*d*) [1912] A. C. 421; 81 L. J. K. B. 619; 106 L. T. 436; 28 T. L. R. 276; 56 S. J. 342; 49 Sc. L. R. 1026. See *supra*, p. 33.

(*e*) 28 T. L. R. 372.

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and Lord Atkinson, in judgments which were submitted to be *obiter*, but which I cannot regard as such, held that whether a trade union were of a legal or illegal nature, whether it were in restraint of trade or not, no action would lie against it in respect of benefit.

"Before the Trade Union Act, 1871, no action could have been brought against the union, because it was not an incorporated body, and when that Act incorporated unions it expressly, by section 4, prohibited their being sued in matters of benefit."

The words in Lord Atkinson's judgment, to which Mr. Justice Pickford referred, are as follows: "In the *Taff Vale Case* (*f*) it was held that a trade union might be sued in its trade name for wrongs committed by its agents; but when the judgments delivered in that case are examined . . . it will be seen that that decision was based entirely upon the provisions of the Trade Union Act, 1871, as amended by the Act of 1876. The conclusion which, it appears to me, must necessarily be drawn from these judgments is this, that if the Act of 1871 had contained a provision to the effect that nothing in it should enable the Court to entertain any legal proceedings founded upon any tort committed by a trade union through its agents, the decision of this House in the *Taff Vale Case* would have been precisely the opposite of what it was, and that it would have been held that the trade union could not, in that case, have been sued *eo nomine*. But the provisions of section 4 as regards the present action, are in effect similar to the hypothetical provisions above mentioned in their relation to such torts. All the reasoning based upon those provisions of the Act of 1871, upon which the judgments in the *Taff Vale Case* were founded, is therefore inapplicable to this action. This is an action based upon an agreement 'to provide benefits to members,' and is instituted directly to enforce that agreement or to recover

(*f*) [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.

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damages for the breach of it. The statute gives no support to such an action. Whether it can be instituted in its present form or not must depend upon the Common Law. It is not a representative action such as is frequently instituted in a Court of Equity. It is a Common Law action, and I am clearly of opinion that the defendant society cannot be sued in such an action in its registered name, nor can the trustees be sued in it in their character of trustees. Partners may no doubt be sued in the name of their firm, but that is under legislation in the form of Rules and Orders. . . . This is no doubt a somewhat technical point, but I fully concur with the Lord Chancellor in thinking that it is most undesirable, having regard to the way in which the case was presented by counsel to your Lordships, to decide the important issues raised, as I understand, for the first time in the Court of Appeal. I accordingly express no opinion upon them."

It would seem, however, that these dicta refer not so much to the ultimate liability in contract of the union, as to the form in which the action was framed in the case then before the Court. In the *Taff Vale Case* (*g*) it was said by Lord Lindley that even 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; and that the question was not a question of substance but of form; and it may be that even though the Common Law would not have entertained an action of contract against a trade union, nevertheless, the Courts of Equity would have done so, if it had been brought against the executive committee in their representative capacity.

In *Russell's Case*, Lord Robson said: "A further question has arisen, or was incidentally mentioned during the course of the arguments before your Lordships, as to whether the action has been properly framed. The

(*g*) [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.

plaintiff has sued the defendant society in its registered name together with its trustees who are sued as 'trustees and representatives of the said society.' It does not appear whether the trustees are or are not 'representative' of the society in the sense that would make them proper to be defendants in a representative action. We do not know whether they are even members of the society or not, and I think it must be taken that the action as framed is bad, unless it can be shown that such an action may be properly brought against an association like the defendant society in its registered name. That point was discussed in the *Taff Vale Case*, where it was decided by your Lordships' House that the action, which was one of tort, was properly brought against the trade union in its registered name. But the ground of that decision, as stated by Farwell, J., in the Court of first instance, and by some of your Lordships on appeal, was that the trade union had been made liable to such an action by the operation of the Trade Union Act, 1871, which admittedly excludes from its scope a contract of the kind now sued on. Lord Macnaghten adopted a broader ground, and thought that a trade union might be sued in its own name, apart altogether from the Trade Union Acts. Lord Lindley appears to have agreed with him, though he was content to affirm the liability of the union to be sued apart from the Act, in a representative action; while the other noble and learned Lords at least said nothing directly inconsistent with Lord Macnaghten's view. No objection, however, was taken to the form of the present action by the defendants' counsel, so the point has not been argued before your Lordships, and, as there may be some doubt about it, perhaps it is desirable that we should deal with the substance of the case."

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And it will be noticed that Lord Atkinson observed that the action in *Russell's Case* was not a representative action, such as is frequently instituted in a Court of Equity. See p. 40, *supra*.

Right of Dependant of Member to Sue for Benefit.

Love v. Amalgamated Society of Lithographic Printers.

In *Love* v. *The Amalgamated Society of Lithographic Printers* (*h*), the wife of an insane member of a trade union brought an action against the union to recover sick and superannuation benefits. Rule 30 of the society relating to insane members was as follows:—

1. If any member through loss of reason be unable to follow his employment the case shall be referred to the Executive Council, who shall deal with it at their discretion. Should the member recover sufficiently to receive a doctor's certificate certifying that he is able to work, he shall be eligible to receive unemployed benefit.

2. Should the afflicted member have dependent upon him either wife, family, or parent, they shall be eligible to receive sick benefit for a period of one year, and should the mental affliction continue, the member may (if eligible as per rule) be placed upon superannuation benefit.

Rules 20 and 24 were as follows:—

Rule 20.—*Sick Benefit.*

1. Any member having been in this Society twelve months and entitled to benefit, when visited by sickness or lameness (not occasioned by drunkenness, disorderly conduct, or any disease improperly contracted) shall give notice in writing, in accordance with the form contained in these rules, to the secretary of the branch to which he belongs, and send, within three days, a doctor's certificate stating the nature of his complaint, such certificate to be renewed at the discretion of his branch.

2. Payment for sick benefit commences from the date of declaring on.

Scale of Benefits.

3. 10*s.* per week for 6 weeks; 5*s.* per week for 12 weeks; 2*s.* 6*d.* per week for 12 weeks.

(*h*) [1912] S. C. 1078; 49 Sc. L. R. 788.

6. Any member having drawn all his sick benefit for one year cannot claim again until the expiration of twelve months, dating from first payment.

Rule 24.—Superannuation.

1. Any member who has been twenty years successively in the Society, and who, through old age, infirmity, or incurable disease, is unable to obtain employment at the trade, and applies for superannuation benefit, shall state his claims to a special meeting of the branch of which he is a member. He shall also present a doctor's certificate, stating that he is permanently disabled from following his employment.

2. Should the meeting be satisfied with the validity of his claim, they shall furnish all evidence to the Executive Committee, who shall have power to grant the sum of six shillings per week until his death, provided the applicant is in all cases entitled to benefit according to rule.

3. The number of members in receipt of superannuation shall be at the rate of 4 per cent. of the total membership of the Society.

Dependant's claim to benefit not excluded by Trade Union Act, 1871, s. 4.

It was held by the Scottish Court of Session that the plaintiff's claim, *qua* sick benefit, being founded on an agreement to provide benefits, not to members, but to dependants of members, was not excluded by section 4 of the Trade Union Act, 1871, and that she was accordingly entitled to sick benefit, but not to superannuation benefit.

Lord Salvesen said: "If this had been an action at the instance of the plaintiff's husband or his representative it could not be entertained by a court of law; but the plaintiff does not here sue as the plaintiff did in the case of Burke (*i*). As the administratrix of her husband she is suing in her own right. Even this would not avail her if the agreement on which she founded was one which could

(*i*) [1906] 2 K. B. 583; 75 L. J. K. B. 583.

be described as 'providing a benefit to a member.' If the section of the Statute had been intended to strike at all agreements to provide benefits, it is difficult to understand why the words 'to members' should have been added, and it is plain that it was not the intention of the Statute to exclude the jurisdiction of a Court in the case of a claim made by a third party against a trade union. For such an action was competent at Common Law, even if the trade union were an unlawful combination, the third party not being tainted with the illegality which disabled a member from invoking the jurisdiction of the ordinary courts."

And Lord Guthrie said: "The dispute turns on whether the sick benefit and the superannuation allowance in question in this case, which are admittedly of the nature of benefits, are or are not benefits to members in the sense of the Statute. Are they one or both primarily benefits to dependants, like the appellants, or are they one or both primarily benefits to the dependants, and secondarily, if at all, to the members themselves?

"In my opinion, taking Rules 20, 24 and 30 together, the two classes of allowances and benefits are sharply contrasted in the case of insane persons like the appellant's husband, who have wife, family, or parent dependent upon them; first, in the form of words by which they are conferred; second, in the persons to whom they are payable; and third, in the purposes to which they are applicable. The sick benefit is payable directly to the dependant, and those alimenting the insane person can have no claim on it, while the superannuation allowance would be payable to the legal representative of the insane person, and the whole of it would be available for his support."

Interpretation of trade union rules.

Another question which arose in the case was as to the meaning of the term "eligible to receive sick benefit." It was held that on a construction of the rules as a whole, the word "eligible" was equivalent to "entitled to benefit."

Lord Salvesen said: "The words 'shall be eligible,' on which the sheriff relies at first sight, suggest some power of election vested in a body or person different from the claimant, but these words occur frequently throughout the rules; and I think in the rule in question and elsewhere they must be treated as meaning 'shall be entitled to if qualified.' . . . The defendants appealed to the first part of Section 1, Rule 30, which provides 'that if any member through loss of reason be unable to follow his employment, the case shall be referred to the executive committee who shall deal with it at their discretion'; but I think that this clause is in contrast with the one on which the plaintiff founds, and cannot be held to govern an entirely independent section. I accordingly agree with the Sheriff-Substitute that the qualification of the pursuer being admitted, she is entitled, under the clause to which she refers, to receive sick benefit."

A further question was, whether the period of duration of sick benefit stated as one year in Rule 30 (2) was fifty-two weeks. The scale of benefits only dealt with a period of thirty weeks, the rate diminishing after six weeks, and again after the lapse of another twelve weeks. Moreover, no member could, after receiving benefit for the period of thirty weeks, claim again until the expiration of twelve months from first payment.

"That clause," said Lord Salvesen, "would be meaningless if 'sick benefit for one year' was not to be construed as synonymous with sick benefit according to the scale for thirty weeks. Now, it is difficult to suppose that a dependant should have a higher right to sick benefit than the member himself, and, therefore, I am constrained to hold that the words 'for one year' must be construed in the same way in Rule 30 as they are in Rule 20, and that the plaintiff's claim is limited to thirty weeks."

Dealing with the wife's claim for superannuation benefit, Lord Salvesen said: "There are various difficulties which the plaintiff must overcome in order to entitle her to demand superannuation benefit. In the first place, the word 'may' requires to be construed as 'must,' and in the second place, the payment which a member is entitled to by his being placed on superannuation benefit must be impliedly held as due to his wife as his dependant, and not to himself or his representative. I cannot so construe this clause. I think fairly read it means that the executive committee are empowered to put a member who has become insane on superannuation benefit, and it may also pay the benefit to his wife or other dependant, but I cannot hold that it entitles the dependant as a matter of right to receive such payment."

Alteration of Rule under which Benefit is Payable.

Power to alter rules does not *per se* deprive them of binding force.

In *Love* v. *Amalgamated Society of Lithographic Printers* (k) it was contended for the Society that inasmuch as it had power under Rule 58 to amend the rules, rules relating to payment of benefit were not binding.

Rule 58 was headed: General Council, and provided as follows: 1. The general council shall meet once in three years. 2. They shall decide on all questions of importance to the trade that may be brought before them. They shall make new rules, amend existing ones, and transact any business in the interests of the Society; and they shall determine anything upon which these rules are silent.

Held, that a right of action having emerged and a claim vested without any alteration having been made in the rules, the plaintiff had acquired a *jus quaesitum* (l).

(k) [1912] S. C. 1078; 49 Sc. L. R. 788. See p. 42, *supra*,

(l) *Jus quaesitum tertio*.—When a contract containing a stipulation in favour of a third party (who is named or clearly indicated) becomes irrevocable, the right so stated in the third party vests in him, and on it he can found an action and sue.

"The question we have to decide," said Lord Salvesen, "is whether the plaintiff has a *jus quaesitum* under the contract between her husband and the defendants, and the main ground upon which it is maintained that she has none and therefore no title to sue, is that the rules which constitute the contract are alterable at a general delegate meeting, and that they might have been altered at any time so as to deprive dependants of any rights which they might have under Rule 30 (2) of the existing rules. . . . According to Lord Stair it is only where there is in a contract some 'article in favour of a third party' which cannot be recalled by one or both of the contractors, that there is *jus quaesitum tertio*, and this doctrine is specially recognised and approved of by Lord Cranworth and Lord Wensleydale. . . . Even if not named, the third party may be entitled to adopt the agreement and enforce it by action. But in such a case, it must be clear that both the contracting parties intend so to secure him, and that they could not separately or together revoke the stipulation. . . . The contract between the plaintiff's husband and the Society embodied in their rules might have been revoked by both, or modified by the defendants alone by way of alteration of the rules so as to have taken away any right of action from the plaintiff, but such revocation must have taken effect, as I understand the law, before a right of action emerged (if that right was to be defeated entirely) or before the period in respect of which the claim was made had expired (if it were to be partially defeated). I cannot imagine that if a claim is vested in a third party under a contract, the vested interest can be discharged by any act of the contracting parties, and still less by the act of one of them who is the debtor in the obligation."

Recovery by a Trade Union of Money paid to Member as Benefit.

Agreement by member to refund disablement grant in event of recovery. *Baker* v. *Ingall.*

In *Baker* v. *Ingall* (*m*) a moulder who was a member of a trade union, was injured by accident while at work, and was apparently totally and permanently incapacitated from following his employment. Under one of the rules of the union he received £100, and under another rule he signed an agreement by which he undertook to refund the money in the event of his returning to work. Two and a half years afterwards he was able to resume work, not as a moulder, but as a core-maker, and at a lower wage. The Society brought an action to enforce repayment of the £100.

The Court of Appeal held that the action was brought to directly enforce an agreement for the application of the funds of a trade union to provide a benefit to a member within the meaning of Section 4 of the Trade Union Act, 1871, and was therefore not maintainable.

The following rules of the Society were considered by the Court.

Rule 25 (1). Any twelvemonths' member owing not more than twelve weeks' contribution meeting with an accident, and thereby losing or disabling a limb, or suffering from bodily ailment . . . not caused by old age, but the result of an accident to a previously healthy organ, and who in consequence is totally incapacitated from following his employment as a metal-founder or general core-maker for the remainder of his life, shall, if not disentitled according to rule, receive the sum of £100.

Rule 25 (6). All members receiving the accident benefit must sign an agreement that in the event of their returning to the trade they shall refund to the Society the amount of accident benefit received.

(*m*) [1912] 3 K. B. 106; 105 L. T. 984; 81 L. J. K. B. 553; 28 T. L. R. 104; 56 S. J. 122; [1911] W. N. 252.

"I cannot agree," said Vaughan Williams, L.J., "that the agreement of August 29th, 1907, which the member has signed in pursuance of his promise contained in Rule 25, sub-rule 6, is a separate and independent agreement. It is, I think, merely a part or a term of the original agreement contained in Rule 25. . . . The agreement is entirely one agreement, every recital must be taken into consideration, and if an action is brought to enforce any part of it, it is an action brought to enforce an agreement for the application of the funds of the trade union, and in particular an agreement for the application of trade union funds to provide benefits for members in pursuance of Rule 25. That rule is headed 'Accident Benefit.' I think it is impossible to divide the agreement into two parts and to treat the action as brought on the agreement to refund." And Buckley, L.J., said: "If any agreement be entered into between two parties containing, let us say, four terms, the first two binding on the one party, and the other two binding on the other party, and if three of those terms are performed and the fourth is not, an action directly to enforce the fourth term is, in my opinion, an action directly to enforce that agreement. . . . The man became incapacitated, two events took place simultaneously, first the handing over of the money, and secondly the signing of the agreement. I get that fact from the agreement itself. The agreement, after reciting the rules and the obligation to sign the agreement to refund, and then stating that the man had represented himself to be incapacitated, says that whereas the £100 has, on the signing of this agreement, been paid to Ingall, he acknowledges that he has received it in full for all benefits which he is claiming under the rules, and that it is expressed to be done in pursuance of Rule 25. The consideration for the agreement is expressed thus: 'Now these presents witness that in further pursuance of the said rules, and in consideration of the premises'—that is to say, in order to give effect to the bargain contained in the rules which is to be effectuated by the signing of an agreement, and in consideration of his having had the money, circumstances having happened in which he became entitled to it, he bound himself to pay a certain sum in an event. In my opinion, the whole of that agreement was an agreement for the application of the funds of the union to provide a benefit to a member upon terms which included that in an event the member should be responsible for the return of the sum of money paid to him."

Wilkie v. *King* dissented from.

The Court considered *Wilkie* v. *King* (*n*), but refused to follow it. Buckley, L.J., moreover, thought that the cases could not be distinguished. "It is true," he said, "that in that case [*Wilkie* v. *King*] the rules contained not merely such a rule as Rule 25 (6), but contained another to the effect that members resuming work should be required to refund, so that you have there in express words what I find by implication in the rules before me. But to my mind it is far too narrow to say that a case such as this can be differentiated by the fact that Rule 25 (6) which requires the signature of an agreement to do the things, is not followed or preceded by another rule which says that the member shall do the thing as to which he is to sign an agreement providing that he will do it."

Wilkie v. *King*.

The facts in the Scottish case of *Wilkie* v. *King* (*n*) were similar to those in *Baker* v. *Ingall*.

A member of a trade union received a disablement allowance of £100, and, in accordance with the rules of his union, signed a Memorandum of Agreement undertaking to refund the sum if he should resume work. He afterwards resumed work, but refused to repay the money, and was sued by the union.

Rule 45 of the union contained the following provision: Any member receiving an injury by accident which permanently disables him from following his employment, shall receive the sum of £100.

(*n*) 48 Sc. L. R. 1057; [1911] S. C. 1310.

Members resuming work at their trade as foremen or workmen shall be required to refund the amount received, and if necessary proceedings shall be taken to recover the same. Members at the time of receiving this benefit must sign an agreement that if they at any time resume work at the trade, they will return the money thus received.

Held, that the action was competent in respect that the agreement sued on was not one of the agreements specified in Section 4 of the Trade Union Act, 1871, and in particular was not an agreement for the application of the funds of the union to provide benefits to members within the meaning of sub-section 3 (2) of that section.

The Lord President dismissing sub-sections 1, 2, 4 and 5 of Section 4 of the Trade Union Act, 1871, and also heads (b) and (c) of sub-section 3, as obviously not applicable, considered head (a) of sub-section 3, viz. an agreement to provide benefits for members. "Now," said his Lordship, "I cannot myself come to the conclusion that by any ordinary method of construction we can hold that this is an action under an agreement to provide benefits for members. I think it is nothing of the sort. It is merely the recovery of a debt which, upon the terms of the agreement made, this man owes, assuming of course, for the moment, the facts are against him. . . . If this were not a trade union there is no question that if money was paid to a man and he at the same time had bound himself to return it in a certain event, he might be sued for the return of the money, if that event happened. Why, then, should a trade union not have that remedy here, when it can sue an ordinary debtor, a tradesman or any one of that sort? All I think one needs to look at is not the action which is raised, but the agreement which is being enforced. Does it fall within the expression of any one of those sub-sections of Section 4? I think it clearly does not, and accordingly I am of opinion that the action lies."

Lord Kinnear said: "I should agree with the learned

Sheriff-Substitute that if the defendant cannot have an action to enforce payment, the same enactment strikes at an action upon the agreement by which the trade union will endeavour to enforce the counter obligations in its own favour, because a contract is mutual, and if an Act of Parliament says that it is not to be enforced by action, the disability must attach to both parties. Neither is to have the right to enforce the contract against the other, but then I think the conclusive answer is that this is not an action upon the agreement constituted by Rule 45 of the trade union regulation at all. It is, according to the terms of the demand, an action for repayment of £100 'under and by virtue of a Memorandum of Agreement between the parties subscribed on or about September 6th.' Now that is not an agreement for the application of the union funds. . . . It was suggested that this new agreement of necessity related back to the original contract which was struck at by the Act, and that accordingly it was in some way vitiated, as being a consequence of an agreement which was not enforced by that law. I am unable to follow that reasoning. The original agreement was perfectly lawful; that is provided by the express terms of the statute. Only, it was to be in this very anomalous position, that being lawful it yet could not be enforced at law. The second agreement was a lawful agreement following upon an execution of a previous lawful agreement, and if it is not struck out by the terms of the prohibitory clause there is no ground in law why it should not receive effect."

Protection of Member against Unfair Expulsion.

Osborne v. *Amalgamated Society of Railway Servants (No. 2).*

In the decision in the second *Osborne Case*—*Osborne* v. *The Amalgamated Society of Railway Servants* (*No.* 2) (*o*) —the law laid down in *Aitken* v. *Associated Carpenters*

(*o*) [1911] 1 Ch. 540; 80 L. J. Ch. 315; 104 L. T. 267; 27 T. L. R. 289. See *supra*, p. 15.

and Joiners of Scotland (*p*), and *Rigby* v. *Connol* (*q*), as to the power of the Courts to protect a member of a trade union against expulsion underwent a further important development. The case arose out of the first *Osborne Case* (*Amalgamated Society of Railway Servants* v. *Osborne*) (*r*) in which Osborne, a member of the Amalgamated Society of Railway Servants, had taken proceedings against that Society. These proceedings had proved successful, and had resulted in what was known as the Osborne Judgment. He now alleged that as a punishment for taking the proceedings in the first action, he had been unjustly expelled from the Society 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.

The case before the Court of Appeal was not 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 a lawful association? (2) Is this action a legal proceeding which the Court, having regard to Section 4 of the Trade Union Act, 1871, can entertain (*s*)?

Held, that the action was not a legal proceeding struck at by Section 4 of the Trade Union Act, 1871.

"The real question," said the Master of the Rolls, "is whether the present action is a legal proceeding 'instituted with the object of directly enforcing or recovering damages for the breach of an agreement for the application of the

(*p*) 12 R. (4th Series) 1206.

(*q*) 14 Ch. D. 482; 49 L. J. Ch. 328; 42 L. T. 139; 28 W. R. 650.

(*r*) [1910] A. C. 87; 101 L. T. 787; [1910] W. N. 8; 79 L. J. Ch. 87; 54 S. J. 215; 47 Sc. L. R. 613.

(*s*) The consideration of the first question is dealt with on p. 15 *et seq.*

funds of the Trade Union to provide benefits for the plaintiff.' Now, apart from authority, I should answer this question in the negative. The statement of claim asks a declaration in several forms to the effect that the resolution purporting to expel the plaintiff is *ultra vires* and void, and an injunction to restrain the Society from acting upon and enforcing the resolution. It does not claim the payment of any sum of money out of the funds of the union. If the plaintiff obtain the relief he seeks, he will be entitled, not as a matter of legally enforcible right, but as a matter of reasonable expectation, to certain benefits to which he has subscribed. If a member is threatened with expulsion on grounds not justified by the rules, there is nothing in Section 4 which prevents him from maintaining an action to restrain the contemplated wrong. And I see no reason why the mere passing of the resolution should preclude the Court from giving relief.

His Lordship further based his decision on the distinction between "directly enforcing" and "indirectly enforcing" an agreement, recognised in *Wolfe* v. *Matthews* (*t*), *Yorkshire Miners' Association* v. *Howden* (*u*), and *Osborne* v. *The Amalgamated Society of Railway Servants* (*No.* 1) (*x*).

According to Fletcher Moulton, L.J., the proper test was to assume that the relief was granted, and that the plaintiff was declared a member of the trade union. Would the effect of that be to enforce an agreement for the application of the funds of the trade union to provide benefits for him? The only possible answer to this question was, Certainly not. By the statute that was the very thing which his membership did not entitle a man to do, and therefore declaring him a member *simpliciter* not only did not directly enforce the application of funds

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

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

(*x*) [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. 618.

for his benefit, but did not even help him in any future proceeding to enforce any such agreement. It seemed to be a logical contradiction to say that to put a man in a position where he could not enforce a particular agreement was enforcing it.

All that the Court was asked to do here was to declare that the plaintiff was entitled to the performance of the agreement to accept and to keep him as a member, and inasmuch as this was not in itself an application of the funds of the trade union to provide benefits for a member, and did not even enable the plaintiff by subsequent proceedings to enforce any agreement so to apply them, the subject-matter of this action appeared to be entirely outside the accepted classes enumerated in Section 4. . . . A suit to defend the property of the Society could certainly be brought by the Society itself, since the Act of 1871. To enable this to be done was one of the main objects of that Act. In such a suit the Courts must of necessity decide whether the plaintiff had the right to call itself a Society. This might well depend on decisions as to membership. Schisms were not confined to religious bodies. They might also exist in voluntary associations of other kinds, and it required no stretch of imagination to conceive that a dispute might arise in a trade union in which the one side or the other, by illegal expulsions or admissions, or by other violations of its rules, might wrongfully claim to have a majority in the Executive Committee or at the Annual Meeting, and thus would be entitled to act in the name of the Society. . . . Since the Judicature Act, the Courts had jurisdiction to make declarations without granting consequential relief, and even when consequential relief was not asked. Section 4 only limited the jurisdiction to give relief of certain types in certain cases. It afforded no bar to any party who claimed to be interested in contracts which were legally valid coming to the Court to obtain a pronouncement as to his right thereunder. Such a pronouncement would leave those rights enforcible or not according as they did not or did come within the exceptions of Section 4. It was such a pronouncement that plaintiff sought in the present action, and nothing more. The injunction asked for was only the necessary consequence of the declaration to which the plaintiff was entitled, and was in no wise affected by Section 4.

Right to membership a right of property.

Dealing with the question of the existence of a right of property which was held to be vital to the plaintiff's claim in *Aitken's* and *Rigby's Cases*, the Master of the Rolls said: "The plaintiff has an interest in the funds of the Society, an interest which, in the event of a dissolution of the union, may be asserted in a Court of Justice. See *re The Printers' and Transferrers' Amalgamated Trades Protection Society* (y). He has rights of voting under Rule 9, sub-rule 11, and the right of voting is a property right."

Rigby v. *Connol* distinguished.

Fletcher Moulton, L.J., pointed out that in *Rigby* v. *Connol* (z) the plaintiff had claimed more than a mere restoration to membership; for he had attempted to obtain an order of the Court giving him a share in the assets of the union. He referred to the 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. He thought that 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

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

(z) 14 Ch. D. 482; 49 L. J. Ch. 328; 42 L. T. 139; 28 W. R. 650.

of agreements and trusts which are valid in law, appropriated for 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 Court to prevent 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.

Luby v. Warwickshire Miners' Association.

In *Luby* v. *The Warwickshire Miners' Association* (a) a check weighman named Luby applied in October, 1910, to be admitted a member of the Warwickshire Miners' Association. This association was a registered trade union, and under its rules membership was open to all persons employed in or about mines in Warwickshire.

The application for membership was made to the secretary of a local lodge, who received the entrance fee and four weeks' subscriptions, and on October 29th gave the man a card of membership. On November 16th Luby was expelled from the association by a resolution of the executive committee, the secretary returning to him the entrance fee and subscriptions.

Luby now brought an action against the Society claiming a declaration that he was a member, and that the resolution of expulsion was *ultra vires* and void as being unauthorised by the constitution of the association or its rules, or by any of the provisions of the Trade Union Acts. He further asked for an injunction restraining the association and its officers from acting on or attempting to enforce the resolution.

Held, that a person whose entrance fee and contributions to a trade union have been acknowledged by a

(a) [1912] 2 Ch. 371; 28 T. L. R. 509; 81 L. J. Ch. 741; 56 S. J. 670; [1912] W. N. 194.

responsible official, and who has received a card of membership, is entitled to be a member of the union and cannot, in the absence of express rules, be expelled by an arbitrary resolution of the executive.

"It appears to me," said Neville, J., "that Mr. Spooner, the secretary of the lodge, had authority to admit to membership, and I find that the payments made by Smith on account of and by the direction of the plaintiff were received without condition. . . . In my opinion, the association was without power to expel a member. There was no rule purporting to give them such power, and even had they possessed it, the attempt to expel the plaintiff without giving him an opportunity of obtaining a hearing would have been in my opinion illegal. Having regard to the circumstances and the absence of any record of such a resolution in the minute book and the naturally indifferent recollection of the witnesses, I am not satisfied that any resolution purporting to expel the plaintiff was ever passed."

Parr v. *Lancashire and Cheshire Miners' Federation* (b) is another case of this class. A member of a trade union became the secretary of a branch of a "Trades Unionist Defence League," the objects of which were inimical to the interests of his trade union, and he was, in consequence, expelled from the union. There was no power of expulsion under the rules, and the resolution of expulsion was passed without notice to the member and behind his back. An injunction was granted restraining the union from expelling the member.

Neville, J., said that the union had no power to expel the member, and even if it had the power it had been exercised in such a way as to deprive it of all validity. No notice had been given to the plaintiff of the intention to expel him, and the resolution purporting to expel him was passed behind his back.

It was urged on behalf of the union that the member

(b) 29 T. L. R. 235. See also *supra*, p. 8.

had acted as a "traitor" because he had made use of the balance-sheets and resolutions of the union for the purposes of the litigation, and that the Court ought not to grant an injunction to restrain the expulsion of a member where the circumstances were such that the parties would not be able to work together amicably. But Neville, J., refused to follow this argument. "Every member of the union," said his Lordship, "has a right to see that the funds to which he contributes are not improperly applied, and a duty to see that the body to which he belongs is not engaged in unlawful transactions. Why the plaintiff should be called a "traitor" for showing the accounts, balance-sheets, and other documents of the union to those persons who were assisting him in this litigation it is difficult to understand."

An action brought by a member of a trade union to obtain an injunction restraining the union from expelling him is maintainable notwithstanding the provisions of Section 4 of the Trade Disputes Act, 1906. See *Parr* v. *Lancashire and Cheshire Miners' Federation* (b).

Power of a Branch of a Trade Union to bind the Trade Union.

Relationship between trade union and its branches. *Mackendrick* v. *National Union of Dock Labourers, etc.*

In *Mackendrick* v. *The National Union of Dock Labourers of Great Britain and Ireland* (c), the question arose as to the power of a branch of a trade union to bind the union in respect of expenditure incurred in the appointment of a law agent to take legal proceedings on behalf of a member who had been injured in the course of his employment.

By Rule XVI. (1) of the union the funds of all the branches of the union were to be the common property of the union and were to be administered by the Executive according to rule. Branches seceding from the union or being dissolved were to forfeit all claims to the funds of

(c) [1911] S. C. 83; 48 Sc. L. R. 17.

the union. Members of such seceding or dissolving branches wishing to remain in the union might be transferred to the most convenient branch.

Rule XII. (10) was as follows: 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) was as follows: 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 the branch committee.

The Secretary of one of the branches of the union instructed M, a solicitor, to take up the case of B, a member of the branch who had been injured while at work. M conducted the case, but the action was unsuccessful, and B was mulcted in costs. B was, however, without means, and M claimed from the union his costs, amounting to over £425.

The letter by which M was appointed as law agent contained 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."

It was held that under the guarantee contained in the letter M was entitled to sue the union, and that the guarantee covered not only his actual outlays, but also his professional charges, including an account incurred by his Edinburgh agent in connection with the action.

Referring to the terms of the Secretary's letter to M, the Lord Justice-Clerk said: "It is true that the appointment stipulated that the injured member was to be the client of the pursuer. This, it is not doubtful, was to save the 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; it was they who gave him a free hand as their employee in the conduct of cases for the branch."

It was argued on behalf of the union that the effect of Rule XIV. (3) was that a financial responsibility undertaken by a branch charged only the fund in the hands of the particular branch which undertook it, but Lord Cullen, when the case was before him in the Second Division of the Court of Session, pointed out that Rule XVI. (1) excluded the view that a creditor, under an obligation duly undertaken by a branch, was limited in his recourse to that part of the common funds, if any, which happened to be in the hands of the branch in question. The branches were the constituent items of the union with independent powers of contracting obligations, but the moneys in the hands of the branches were the common property of the union.

It was further urged for the union that under Rule XII. (10) the branch could not make advances to a member for the purposes of an action unless first all available evidence had been obtained and the copy of the evidence supplied to the union, as those who had executive power in the union might refuse to sanction the proposed action of the branch. Dealing with this argument the Lord Justice-Clerk said: "The question is whether, where this has not been done and a case has been proceeded with without advances having been asked for by the member or made to him by the branch under the above condition, the union is protected, under this rule which I have referred to, against a claim by a solicitor for payment of expenses of a litigated case, he being the appointed law agent of a branch. Now it is quite certain that the branch had power from the union to appoint a law agent, and the conferring of that power could have no meaning unless they had power to employ him in work. If this must be held, can there be ground for holding that that did not necessarily mean—unless there was a stipulation to the contrary—that as an employee he was not to be a loser for work done in fulfilment of his agency work in regard to which it cannot be maintained that he has failed in any way in his duty as an agent? In considering this question the position of the funds collected from the members of the union must be taken into account. The fact is that all moneys collected by the branches are common property of the union, and the union has control, and can order transfer of money for union purposes from any branch to any other branch as they may see fit for the proper carrying out of the union's purposes in the branches. In short, all money, except a percentage sent to headquarters for the general Executive expenses, lies in the coffers of each branch which has collected it, subject to the right of the union to order transfer, as they may deem right, of money from one branch to another to meet proper claims on that branch. I can see no ground for holding that where a branch acts in accordance with powers conferred, by appointing an agent for litigious work, the person so employed has not a basis for claim against the union for his remuneration. Any business that a branch carries on is business of the union, subject to the control and direction of the Executive of the union. Thus the question here turns upon the point whether the piece of business done by this branch was a piece of union business properly undertaken and carried out in consistence with the rules of the union. I have no doubt in answering that question in the affirmative. . . . That part of the rule [Rule XII. (10)] relates to advances of money, and I agree with the opinion expressed in the Outer House that it does not apply in the present case, where no advances were asked for or made. . . . I am not moved by the suggestion of the possibility, if the union is held liable, that a branch might make the union responsible for any expenditure it might incur however unwise. I see no such danger in the future, but if the union are advised that it exists, they can have it remedied by obtaining an alteration of the rules. It is further not to be left out of view 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 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."

And 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 26th February, 1907. The liability of the defenders depends, in my opinion, (1) on the admitted power which the branch has 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 obligation 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 *primâ facie* impossible to limit the financial responsibility of the union for obligations incurred by the branches in promoting its objects, either by a reference to the extent of the obligation, or the business of the person by whom it is incurred. The rules and the evidence which have been laid in this case, show that the branches are just 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 object of the union, in so far as these are not contrary to its rules."

CHAPTER V.

LIABILITY OF TRADE UNIONS AND THEIR OFFICIALS IN TORT.

Immunity of Trade Unions from Actions of Tort—Scope of the Trade Disputes Act, 1906.

IN the case of *Vacher* v. *London Society of Compositors* (*a*) the House of Lords, besides considering in particular the question of the liability in tort of a trade union, surveyed the scope of the Trade Disputes Act as a whole. *Vacher* v. *London Society of Compositors.*

A firm of parliamentary and general printers brought an action against a trade union and its officials for libel and conspiracy to publish libels of and concerning the firm, and to induce persons not to deal with the firm.

A Statement of Claim was delivered which set out particulars of the conspiracy and libel, the gist of which was that the respondents had conspired to represent and had untruly represented the appellants as a firm that dealt unfairly by their workmen. Without delivering a Statement of Defence the respondents applied to strike the name of the respondent Society from the action, on the ground that, in the first place, a trade union could not be sued at all in such an action, and that, in the second place, even if Section 4 (1) of the Trade Disputes Act, 1906, was to be read as applying only if there was a trade dispute, it appeared on the face of the proceedings that the acts complained of had arisen out of such a trade dispute.

Held, that by virtue of Section 4, sub-section 1, of the

(*a*) 29 T. L. R. 73; 57 S. J. 75; [1912] W. N. 268.

Trade Disputes Act, 1906, such an action was not maintainable.

"The first question," said the Lord Chancellor, "is whether the trade union, if it had committed a tortious act, such as a libel, could be sued for damages at all, even if the act was not committed in contemplation or in furtherance of a trade dispute. . . . The Act is confined to trade unions within the definition of the Trade Union Acts, 1871 and 1876. Its title is 'An Act to provide for the Regulation of Trade Unions and Trade Disputes.' This appears to indicate that the scope of the Statute is not confined to the regulation of trade disputes merely." His Lordship observed that the first three sections of the Act all related to trade disputes, but that none of them related exclusively to the case of a trade union. Section 4 (1) related exclusively to the case of a trade union.

Section 4. Trade Disputes Act, 1906.

This section also differed from the three preceding sections in that it omitted mention of any restriction which would confine the tortious act to one in contemplation or in furtherance of a trade dispute. The Lord Chancellor further based himself on the title of the Act, pointing out that though the short title of it is "The Trade Disputes Act," the full title and the governing title is "An Act to provide for the Regulation of Trade Union and Trade Disputes." The first three sections regulated trade disputes; the fourth section appeared to carry out the other intention indicated by the initial title by laying down a new law as to trade unions. He could find no context in the Act read as a whole, which indicated an intention to cut down the literal meaning of the wide language of Section 4 (1). . . . It would not only be beyond the functions of a Court of Justice to presume that the Legislature could not, when it passed the Act, have intended to go as far as the plain words used said, but if judges could speculate as to its intentions they would probably speculate wrongly.

Lord Macnaghten said that Section 4 seemed to deal with a different subject and a different Act of Parliament. The first three sections were concerned with the Conspiracy and Protection of Property Act, 1875. . . . Everybody knew that sub-section 1 of section 4 was introduced in order to neutralise the effect of the decision in the *Taff Vale Case* by a further extension of the Trade Union Act, 1871.

Semble, that trade unions may indirectly be made liable in tort. Sec. 4 (2), Trade Disputes Act, 1906, and Sec. 9, Trade Union Act, 1871.

There are dicta in this case, both from the Court of Appeal and the House of Lords, which suggest that though a trade union is not liable to be sued in tort, yet its funds may indirectly be liable to make good damages inflicted by the trade union or its agents by tortious acts not committed in contemplation of a trade dispute. Thus in the Court of Appeal (*b*) Vaughan Williams, L.J., said: "I did not understand that Mr. Danckwerts in his argument differed at all from the conclusion I have just arrived at. I understood him to agree that the exception contained in sub-section 2 of section 4 recognised that in some instances trade unions might be sued through their trustees, who must in some way or other have a remedy over against the trade unions, not indeed in an action for tort, but in an action for an indemnity or for money paid on behalf of the union." And in the House of Lords (*c*) Lord Haldane, the Lord Chancellor, discussing the effect of sub-section 2 of section 4, said that section 9 of the Trade Union Act, 1871, provided that the trustees of a registered trade union might sue or be sued as such in cases concerning the property of the trade union. The Legislature appeared to have desired to draw a distinction between the union and its trustees and to preserve the liability of the trustees under this section, even in the case of tortious acts committed by the union, damages arising out of which might, as pointed out by Lord Lindley in his judgment in the *Taff Vale Case*, have been made

(*b*) 106 L. T. 778; 28 T. L. R. 366; 56 S. J. 442; 81 L. J. K. B. 1014.

(*c*) 29 T. L. R. 73; 57 S. J. 75; [1912] W. N. 268.

effective against property in the hands of the trustees. But a restriction was put on the liability of the trustees by excepting it from liability in respect of a tortious act committed by or on behalf of the union in contemplation or furtherance of a trade dispute.

Referring to the present action, his Lordship observed that it was against the trade union and that it did not appear whether there were trustees of the union or whether there was property vested in them which could have been made liable, assuming the cause of action did not arise out of a trade dispute. If there were trustees they were not made defendants, and indeed if the advisers of the plaintiff were apprehensive that the trial might disclose a trade dispute there were good reasons for not joining the trustees.

Lord Moulton said (*d*): "Too much has been made of the supposed gravity of the consequences of the enactment. It will be seen that it does not affect the personal liability of any individual. Trade unions, like other associations, must act through agents, and it is a fundamental principle of the English law that no tort-feasor can excuse himself from the consequences of his acts by setting up that he was acting only as the agent of another. All that the section takes away is the power of proceeding against the association, or making its corporate funds liable. The association, therefore, is in a position in some respects analogous to, though by no means identical with, the position of a statutory corporation with regard to contractual acts which are *ultra vires*. No matter how completely the act may be in form an act of the corporation, it cannot be made liable under the contract because it must act through agents, and it could give no authority to any one to do on its behalf an act which was *ultra vires*. . . . The real difficulty in the interpretation of section 4 is found in sub-section 2. . . . The difficulty is caused by the fact that there is nothing in

(*d*) 107 L. T. at p. 729.

sub-section 1 of section 4 which relates to suing the trustees of a trade union. It only refers to suing the officials of a trade union when they are sued in a representative action, and that is not what is referred to in sub-section 2. One would be inclined to avoid the difficulty by saying that the sub-section was put in *ex abundanti cautela* only, were it not for the exception which it contains, which would seem to indicate that sub-section 1 would have granted immunity to the trustees in respect of actions of tort coming under Section 9 of the Act of 1871, and that it was the intention of the Legislature to limit that immunity to cases where the tort was committed by, or on behalf of, the union, in contemplation or in furtherance of a trade dispute. Whether this is or is not the true interpretation of the section as a whole is not before us in the present appeal, but I have thought it right to indicate the real difficulty which exists in its interpretation, which, I think, points either to imperfect drafting, or to some intermediate provision having been struck out without the proper consequential amendments being made in the language of sub-section 2."

Lord Atkinson (*e*) referring to sub-section 2 of section 4 said: "I think . . . that it is clear what the meaning and object of the sub-section really is. A proceeding against the trustees under Section 9 of the Act of 1871 is, in fact, if not in form, a proceeding *in rem* against the property of the trade union. In that sense it is an action against the union itself. Judgments for damages against a trade union for torts committed by its agents, in whatever form the action may be brought, can only be satisfied out of the property vested in the trustees, and it was, I think, apprehended by the Legislature that the wide and positive provisions of sub-section 1 might be taken as practically repealing in part Section 9 of the Act of 1871, and conferring an immunity on the trustees as absolute as that conferred upon the union. This sub-section, while

(*e*) 107 L. T. at p. 727.

qualifying their liability to some extent by the introduction of the provision common to sections 1, 2, and 3, was, I think, passed *ex abundanti cautela* to meet this possible danger, and, save as to that qualification, to preserve unimpaired the liability imposed on the trustees by Section 9 of the Act of 1871."

Lord Macnaghten refrained from expressing an opinion on this point. "It is not easy," said he, "to see the object of sub-section 2 of section 4, or to understand its precise meaning. It seems to me, therefore, that it would be better to leave the construction of that sub-section to be determined when it comes directly in question, if ever that occasion should occur. However it may be construed, it cannot affect the plain meaning of sub-section 1 or assist the appellants in any way."

On the question of the existence of a trade dispute Lord Justice Vaughan Williams in the Court of Appeal (*f*) thought that the libel, even according to the bare description in the statement of claim, was, on the face of it, an act done in contemplation or furtherance of a trade dispute. But in the House of Lords Lord Haldane (*g*) said that he entertained so much doubt on this point that if it were the only one that arose he should be of the opinion of Mr. Justice Channell, that the application ought to stand over to the trial, in order that facts might be ascertained which would enable the Court to decide whether it had jurisdiction to entertain the action.

Interference with a Person's Trade, Business, etc. Inducement to dismiss Workman: Black Lists.

Justifiable interference. Free competition.

In the Scottish case of *Mackenzie* v. *Iron Trades Employers' Insurance Association* (*h*), an injured workman had

(*f*) 106 L. T. 778; 28 T. L. R. 366; 56 S. J. 442; 81 L. J. K. B. 1014.
(*g*) 107 L. T. at p. 725.
(*h*) [1910] S. C. 79; 47 Sc. L. R. 103.

received compensation under the Workmen's Compensation Act and the employers had recovered the same from an Insurance Association. The Insurance Association sent to firms of employers insuring with them lists of workmen whom they insisted the employers should not employ by reason of their having been injured. In consequence of the issue of such lists the workman was dismissed from two situations, and was refused employment at a third after having been engaged. He therefore brought an action against the Insurance Association, but it was held that the conduct of the Association was not actionable.

Mackenzie v. Iron Trades Employers' Insurance Association.

"The fallacy at the root of the pursuer's case," said the Lord Ordinary, "lies in the contention that any interference with what was termed a man's right to work constitutes an actionable wrong. That is not the law. If it were it is difficult to see how there could be free competition in business. There is no actionable wrong unless the interference is unjustifiable.

"The pursuers maintain that it is for the defenders to justify what they have done. The conclusive answer to this is contained in Lord Herschell's opinion in *Allen* v. *Flood* (i), 'A man cannot be called upon to justify either act or word merely because it interferes with another's trade or calling, any more than he is bound to justify or excuse his act or word under any other circumstances, unless it be shown to be in its nature wrongful and thus to require justification.'

"How can it be said that it is wrongful interference for an insurance company to say they will not undertake a particular risk at a particular figure? And how can the Court inquire into and decide whether the insurance company were justified in what they did, which would involve fixing the rates at which the company are to transact their business? The pursuer has the right to

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

earn his own living in his own way, and the correlative of this is the general duty of every one not to prevent the free exercise of this liberty, subject always to this important exception, which the pursuer's argument in the present case overlooks, that any one may interfere in so far as his own liberty of action may justify him in so doing."

Mogul Case, Allen v. *Flood*, and *Quinn* v. *Leatham* compared.

The Lord President summarised the judgments in the *Mogul Case* (*k*), *Allen* v. *Flood* (*l*), and *Quinn* v. *Leatham* (*m*) in the following words: "In the first place, every one has a right to conduct his own business upon his own lines, and as suits himself best, even although the result may be that he interferes with other people's business in so doing. That general proposition, I think, may be gathered from the *Mogul Case.* Secondly, an act that is legal in itself will not be made illegal because the motive of the act may be bad. That is the result, I think, of *Allen* v. *Flood.* Thirdly, even although the dominating motive in a certain course of action may be the furtherance of your own business or your own interests, as you conceive those interests to lie, you are not entitled to interfere with another man's method of gaining his living by illegal means, and illegal means may either be means that are illegal in themselves or that may become illegal because of conspiracy, where they would not have been illegal if done by a single individual. I think that is the result of *Quinn* v. *Leatham.*"

Giblan's Case distinguished.

His Lordship, referring to *Giblan* v. *National Amalgamated Labourers' Union of Great Britain and Ireland* (*n*), distinguished it from the present case by the fact that

(*k*) [1892] A. C. 25; 61 L. J. Q. B. 295; 66 L. T. 1; 8 T. L. R. 182; 40 W. R. 337; 65 J. P. 708.

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

(*m*) [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.

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

there was combination and conspiracy. He also commented upon certain words used by Lord Justice Romer in delivering judgment in *Giblan's Case.* According to Lord Justice Romer, if one man prevents another from obtaining or holding employment by means of threats to or a special influence upon that person's employers or would-be employers, and the design is to carry out some spite against the person, or has for its object the compelling him to pay a debt or any similar object not justifying the acts against the person, then the person so acting is liable to the other person for the damage consequentially suffered. "I think," said the Lord President, "that is too widely put—'by reason of threats to or special influence upon the man's employers.' Threats I quite agree; but special influence seems to me to put the matter too broadly, because special influence may be of a perfectly proper character. If the learned Lord Justice had used the words 'undue influence,' then I could have assented to the doctrine; but I think when he said special influence he went too far, because *Allen* v. *Flood* prevents us from colouring an act otherwise innocuous by the motive with which it is done." Dictum of Romer, L.J., dissented from.

And Lord Johnston said that even if the Insurance Company's action were capricious he did not think that any particular subject of insurance had a right to complain.

Inducement to break Contracts.

Dallimore v. *Williams and others* (o). The facts in this case were as follows: D was a bandmaster and the proprietor and conductor of the British ex-Guards' Band. W and J were officials of the Amalgamated Musicians' Union.

D arranged to give a concert at the Alhambra Theatre on Sunday, Oct. 1st, 1911, for the National Sunday

(o) 29 T. L. R. 67.

League, and engaged 58 performers at rates varying from 8*s.* to 10*s.* 6*d.* for the performance. About 40 of these belonged to the Amalgamated Musicians' Union.

It was alleged that W and J induced some of the men to break their contracts to perform at the agreed rates. This was, it was alleged, effected (1) by means of a circular, by oral statements, and by threats that if the musicians took part in the performance they would be expelled from or otherwise penalised by the union; (2) by telling them falsely that their rates of pay were less than those fixed by the union; (3) by placing pickets round the entrances to the Alhambra on October 1st, and causing a crowd to assemble and interfere with access to the entrance.

It was further alleged that D was only able to perform his contract by promising increased payments to the men if they wished them.

Subsequently, when interviewed by a Press representative, J was reported to have said: "We have no quarrel with the Alhambra Management or the National Sunday League. Our quarrel is with Mr. Holmes Dallimore and others, who take out bands below our recognised minimum rate of 10*s.* 6*d.* for Sunday nights. The position we take up is this—that in the arbitration clauses set up in the music-hall award, after the music-hall artists' strike, the managers agreed to pay the orchestra double rates for Sunday night rehearsals when no money is taken at all. We are going to follow this matter up all round. Mr. Dallimore happens to be the first and the others will follow. Next Sunday night we shall tackle somebody else. We have compromised to-night by Mr. Dallimore paying the union men in his band the union rate. Next time, however, we shall ask him to pay that rate to all his men, and if he declines we shall call the union men out."

The above report of this interview appeared in various newspapers during the next few days.

D then brought an action against W and J, (1) for inducing certain persons to break their contracts with him, (2) for a series of libels and slanders, and (3) for a conspiracy to injure him by preventing him from obtaining fit persons to enter into his employment.

It was ruled in the King's Bench Division by Ridley, J., that there was no case so far as slander was concerned, but, in respect of conspiracy, inducement to break contracts, and interference with D's business, damages to the extent of £400 were given against W and J, and in respect of the libel £100 damages were awarded against J.

The following questions were put to the jury by Ridley, J.:—

(1) Did the defendants without justification and with intent to injure the plaintiff (*a*) procure and induce the plaintiff's employees to break their contracts? Yes. (*b*) Interfere with the plaintiff's business? Yes. (2) Did they conspire to commit the acts set out in question (1)? Yes. (3) Did J publish libellous statements of the plaintiff, and, if so, were they true? J published libellous statements which were untrue. (4) Was there a trade dispute? No. (5) Were the defendants' acts (*a*) in contemplation or furtherance of a trade dispute? No. (*b*) Done out of spite? Yes.

On appeal the Court of Appeal granted a new trial of the action so far as it related to the conspiracy, inducement to break contracts, and interference with the plaintiff's business.

In the consideration of the appeal three questions of general importance were decided:

Meaning of "trade dispute."

1. The term "trade dispute," as used in the Trade Disputes Act, 1906, is not confined to a dispute between an employer and his workmen, or between the workmen themselves. It appeared that Mr. Justice Ridley had directed the jury that in order that there should have been a trade dispute within the meaning of the Act, there must have been a dispute between the plaintiff and his men or

between the men themselves. Sub-section 3 of Section 5 of the Act had been read by the Judge to the jury, but owing to its technical nature the jury could scarcely have appreciated that it was not in accordance with the Judge's direction.

The Master of the Rolls said it was necessary to consider what was a trade dispute, and to consider it not simply by knowledge of the English language, but whether it was a trade dispute within the definition in the Act. The learned Judge who tried the case had repeatedly expressed the view that a trade dispute meant a dispute between an employer and his men or between the men, and he considered that there was something in *Conway* v. *Wade* (*p*) which justified this construction. That view was inconsistent with the definition of trade dispute in Section 5 (3) of the Act. Questions were put to the jury of which number 4 was: Was there a trade dispute? and the answer was: No. But his Lordship said that the answer to this question could not be severed from the definition of what was a trade dispute, which the learned Judge had given more than once. If that definition could not be supported the finding of the jury that there was no trade dispute within the learned Judge's definition could not stand. So, too, in the answer to question 5, the jury could not say that the defendants' acts were not done in contemplation or furtherance of a trade dispute unless they knew what a trade dispute was. With regard to *Conway* v. *Wade*, the House of Lords really decided that case on the facts as found by the jury, and said that the Trade Disputes Act did not apply. No doubt there were observations by the Lord Chancellor, by Lord Atkinson, and by Lord Shaw which might some day require careful consideration as to whether the view of the meaning of trade dispute taken by the Court of Appeal in that case was qualified or not.

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

2. That a person may be entitled to the protection of the Trade Disputes Act, 1906, notwithstanding that the act complained of was not done in contemplation or furtherance of a trade dispute.

The element of malice in trade disputes.

3. That in doing the act complained of the mind of the doer was not altogether free from malice.

Dealing with these questions the Master of the Rolls said he thought there was abundant evidence to support the finding of spite. Then came this question: If there was a trade dispute, was the case taken outside the protection of the Trade Disputes Act if there was a finding that though the act complained of was done in furtherance of a trade dispute, the defendant was also influenced by malice? His Lordship could not think it necessary for any person in order to get the protection of the Trade Disputes Act to say that the act done was entirely in furtherance of a trade dispute and that his mind was altogether free from malice. He could not find that in the Act.

Inducement to break contract of service.

A delegate of a trade union went on board a ship while some dock labourers were discharging cargo into a barge and told the men that the master of the barge had not got a union ticket. The men thereupon ceased work. The employers brought an action against the delegate for damages for wrongfully and maliciously inducing their workmen to break their contracts and cease work.

Held, that the delegate's communication to the men that the master of the barge was not a union man did not of itself amount to inducement or persuasion to cease work. *Scrutton's, Ltd.* v. *Lewis* (q).

Trade Dispute.

Dispute as to employment of non-union men.

The question as to the existence of a trade dispute arose in the case of *Gaskell and others* v. *The Lancashire and Cheshire Miners' Federation and others* (r).

(q) Board of Trade Labour Gazette, June, 1912.
(r) 28 T. L. R. 518; 56 S. J. 719. See *infra*, p. 82.

Gaskell v. Lancashire and Cheshire Miners' Federation.

The facts in this case were as follows: G and two others were members of the Constitutional Labour Union established at St. Helens, and they were employed in the Bamfurlong collieries. All the workmen of these collieries, with the exception of about forty, were members of the Lancashire and Cheshire Miners' Federation whose secretary was T. The Federation were of opinion that there ought to be only one miners' union in Lancashire and Cheshire, and issued notices calling on miners to join the Federation and condemning the rival association. Ultimately the Federation gave fourteen days' notice to the employers to terminate the contracts of service of all members of the Federation. The effect of this notice would, if acted on, have been to close the mines, as all except forty of the miners were members of the Federation. As a result the employers suspended G and the others from further work, and subsequently discharged them.

It was alleged that the Federation, by T or their agents, verbally informed and threatened G and others that if they did not resign from the Constitutional Labour Union and voluntarily join the Federation, they would compel them to join, or would fetch out all the men from the Bamfurlong mines, and compel the employers to close them in order to make G and the others join the Federation. It was further alleged that the agents of the Federation informed the employers' manager that if they continued to employ G and the others the Executive Council of the Federation had decided to call the men out. The Deputy of the Chancellor of the County Palatine dismissed the action on the ground that there was a trade dispute, and that the Federation was protected by Section 4 of the Trade Disputes Act, 1906, and that T was protected by Section 3. The Court of Appeal upheld this decision.

The evidence in the Chancellor's Court included extracts from the minutes of the Federation which showed that on October 29th, 1910, it was proposed that a ballot be taken of all members, to see if they were in favour of ceasing work until all the non-members had joined the Federation. Referring to this the Deputy-Chancellor said it was a resolution put on the agenda by the Bamfurlong branch to obtain the approval of the Federation to their action, and the resolution was carried on November 26th. That resolution showed that there was a trade dispute going on at the Bamfurlong collieries between union and non-union men.

The Master of the Rolls said: "A ballot was taken and there was a large majority in favour of a strike unless the non-union men either came into the union or were got rid of. The first point that had been taken was that there was no trade dispute. No trade dispute when the whole substance of the thing was whether non-union men should be employed at the collieries! This comes as plainly as possible within the definition of a trade dispute contained in the Trade Disputes Act, 1906, and I feel not the slightest doubt that there was in this case a trade dispute and that the Act applies."

A delegate of a trade union informed a number of dock labourers who were unloading a ship into a barge that the master of the barge had not got a union ticket, and the men thereupon ceased work. In an action brought by the employers against the delegate for inducing their servants to break their contracts, it was held that there was a trade dispute between the dockers and the bargemen and that the action was not maintainable. *Scrutton's, Ltd.* v. *Lewis* (*s*).

Two workmen employed by a master tailor gave notice and left the employment and two new hands were engaged in their place. The following day a committee of the workers' union demanded that the employer should take back into his service a man whom he had dismissed. He refused to do this. Two days later a joint committee of the masters' and workers' unions declared the employer

(*s*) Board of Trade Labour Gazette, June, 1912.

and his men to be "scabs and blacklegs." Subsequently the masters' union declared that the employer was justified in engaging the two new men, but that he must be fined for not engaging them through his union. The employer was prepared to pay the fine, but at another joint committee of the masters' and workers' unions he was told that the workers' union had no grievance against him, but only against the two new men because they had refused to come out when called upon. He was further told that unless he dismissed these men or they paid a fine he would be expelled from the masters' union. As the fine was not paid, nor the men dismissed, the employer was expelled from the masters' union.

Certain officials of the two unions now threatened the employer that unless he dismissed the men or paid the fine they would ruin him. Other officials called upon firms who dealt with the employer and threatened to ruin them if they gave him more work.

In an action brought by the employer against the officials of the two unions, the latter attempted to rely on the Trade Disputes Act, but it was held that there was no trade dispute to bring the case within the Act.

The Judge pointed out that before any protection was afforded by the Act there must be a real and *bona-fide* trade dispute. Here there was no trade dispute of any sort or kind, although the defendants had attempted to establish that there was. If any dispute existed here, it was merely created as a step in the attempt to injure the plaintiff, and in such a case the Act gave no protection (*t*).

(*t*) *Swerdlow* v. *Frankston and others*; *Swerdlow* v. *Gold and others*, heard at the Liverpool Assizes, November 14th and 23rd, 1911, and reported in the Board of Trade Labour Gazette for December, 1911.

Libel by Trade Union Officials.

It will be noticed that in the case of *Dallimore* v. *Williams and Jesson* (*u*) the order for a new trial made by the Court of Appeal did not extend to the alleged libel.

Action of libel; sec. 1 and 3, Trade Disputes Act, 1906.

The Master of the Rolls observed that the question whether or not there was a trade dispute would not affect the verdict as to libel, while Hamilton, L.J., said that it could not be contended that the defendants had allowed themselves to be interviewed by a Press representative in furtherance of a trade dispute.

Black List: Libel.

Referring to the issue of lists in the case of *Mackenzie* v. *Iron Trades Employers' Insurance Association* (*x*) the Lord President of the Court of Session said that there might be an action of libel for including the name of a person in a list if the list were headed by a statement —or by long practice practically included the statement— that the names in the list were of persons in some way unworthy of trust.

Lawfulness of black lists.

And the following dictum of Lord Johnston regarding "black lists" of names of workmen with whom those presenting the list will not work, is of importance. "Any workman or collection of workmen is entitled to decline employment or a continuance of employment so long as other workmen, whom they may place upon a list if they please, continue in the employer's service, and these listed workmen have no redress either by damages or otherwise against them. What is law for the workman or a

(*u*) 29 T. L. R. 67. See *supra*, pp. 73–77.
(*x*) [1910] S. C. 79; 47 Sc. L. R. 108. See *supra*, p. 70.

collection of workmen in that case, is, as it seems to me, law for the Insurance Company in this."

Threat or Warning.

Distinction between Threat and Warning. *Gaskell* v. *Lancashire and Cheshire Miners' Federation.*

The distinction between a threat and a warning was considered in the case of *Gaskell and others* v. *The Lancashire and Cheshire Miners' Federation and others* (*y*). The facts in this case appear at p. 77, *supra.*

The Deputy Chancellor of the County Palatine thought that the evidence showed that it was made clear to the manager of the colliery that it was the men who were insisting and had to be restrained, and that Mr. Twist was afraid of being overruled. The attitude of Mr. Twist throughout was to obviate a stoppage, and there were no threats.

The Master of the Rolls said: "Were any threats used, as distinct from information or warning, as to what might be the consequences in the temper of the men, if the non-union men continued to work. The threats were said to have been uttered at a particular interview on February 24th, 1911. Several people had been present at that interview and they had all given evidence at the trial. The learned Deputy Judge, who had heard the witnesses, had come to the conclusion that the words were not said in the form stated by Mr. Linton, but as stated by the other side. These were the critical words: 'It was a choice of two evils; we were to give them an opportunity to get the names or they would stop the pits.' It was not, 'we will stop the pits,' but, having regard to the state of feeling among the men who had balloted in favour of a strike by a large majority, the employers were informed that things had got to such a pass that unless the employers enabled the union agents to approach the non-union men at their own houses the

(*y*) 28 T. L. R. 518; 56 S. J. 719.

pits would be stopped, which did not mean more than that they would leave work after having given due notice. The learned Deputy Judge had found that there were no threats, and that what was done was done in furtherance of a trade dispute and was therefore not actionable. Sections 1 and 3 of the Trade Disputes Act, 1906, both had a bearing on the case."

Santen v. Busnach.

In the case of *Santen* v. *Busnach and another* (z), S and B were two women cigar makers employed by the same employer, P. S was a member of the Independent Cigar Makers' Association, while B and the other employees belonged to the Cigar Makers' Mutual Association. On the engagement of S, B asked her if she belonged to the Association, and said, "You'll have to join next week or we won't work with you." A week later B repeated the question and said, "You can't work here." S replied, "You can't sack me. Mr. P took me on, he alone can sack me." Whereupon B said, "Then we'll strike." Subsequently B, along with a workman D, interviewed P, and after the interview P said to S, "My work-people refuse to work with you, and will go on strike if you don't join. You'll have to go." S would not join the Association, and as P did not wish his employees to go out he discharged her. S now sued B and D for damages, and an injunction to restrain them from inducing her employer to cease to employ her. The County Court Judge nonsuited her, holding that there was no evidence of a threat to go to the jury, and the Court of Appeal upheld the decision.

Vaughan Williams, L.J., said that he could find no evidence of threats or intimidation. He could really only find words which conveyed what had been called in *Allen* v. *Flood* a warning to the employer of the resolution which had been arrived at by the trade unionists, who with the exception of one person, namely the plaintiff, formed the whole of the employer's staff.

(z) 29 T. L. R. 214.

This resolution was one of the kind described by Lord Watson in *Allen* v. *Flood*, when he said that if men had passed a resolution to the effect that if a certain man was not discharged they would resign, it was *primâ facie* only an intimation which was beneficial to their master and which it was their duty to give. That description applied to the facts of the present case. It was not suggested that the defendants had done anything illegal in giving the notice determining the contract, and he (the Lord Justice) could not see the faintest evidence of any threat. It was simply a warning given by the defendants to their employer, without any violence or anger, of their resolution to leave his employ. Neither was there any evidence that the defendants had personally anything to do with the matter. They simply intimated to their employer that such a resolution had been passed, and that resolution imported a perfectly lawful act. Admittedly the mere giving of the notice to discontinue work and to withdraw from the employ was in no sense illegal. He wished, however, to make this perfectly plain. He was not saying that a person might not give a notice which was perfectly legal and against the wording of which nothing could be said, in such a manner and under such circumstances as to constitute a threat.

In the Divisional Court (*a*), Lush, J., discussing the question what constitutes a threat, said: "When one has to determine whether words constitute a threat or a warning, it is impossible to do so merely by looking at the form of words employed. People's minds were influenced by the meaning the words were intended to convey. It was important to see whether the person who communicated the words was in a position to bring about the result referred to. It might be that looking at all the words used both to the appellant and the employers, the words meant, 'If you do not do what we wish, we will

(*a*) 28 T. L. R. 515.

take care that the strike shall ensue.' That must be a question for the jury."

But in the Court of Appeal (*b*) Vaughan Williams, L.J., said that it was not good law to say that where there was only evidence of words such as those used here and nothing else, it must be left to the jury to say whether those words constituted a threat or not.

(*b*) 29 T. L. R. 214.

CHAPTER VI.

OFFENCES ARISING OUT OF STRIKES.

Conspiracy and Protection of Property Act, 1875. *Information under Section* 7; *Power of the Police to institute Proceedings.*

Young v. Peck.

Y AND others were charged, under an information preferred under the Conspiracy and Protection of Property Act, 1875, by the Superintendent of Police at Hitchin, with having "with a view to compel one A to abstain from working at the L motor works where A had a legal right to work, intimidated him by assembling in large numbers and throwing eggs at him when he was on his way from work." A did not authorise the Police Superintendent to lay an information on his behalf, but stated in his evidence that he would have proceeded if the police had not done so.

It was argued on behalf of Y and the others that the justices had no jurisdiction to determine the information at the instance of the respondent (the Superintendent of Police), that the statute contemplated a purely personal offence, and that the justices could only convict the persons who were actually proved to have thrown the eggs. But, on a case stated by the Hitchin Justices, it was held by the Divisional Court that the Police Superintendent was entitled to lay the information.

Avory, J., said that it was a general principle that any one may lay the information unless the statute expressly restricts the right. The Lord Chief Justice said that this was more than a personal grievance. The appellants' presence was proved and their connivance at the egg-throwing, and a disturbance of this sort might easily develop into a riot. It was right that any one should be able to prosecute. *Young and others* v. *Peck* (*a*).

Right of a Person charged under the Conspiracy and Protection of Property Act, 1875, *to be tried by Jury.*

A person charged under Section 7 of the Conspiracy and Protection of Property Act, 1875, before a court of summary jurisdiction objected to the jurisdiction of the Court and demanded to be tried by jury.

Held, that he was entitled to be so tried and that the words "may deal" contained in Section 9 of the Act are not discretionary but directory, and that the justices could not, in face of the man's objection, deal with the offence as one punishable on summary procedure, but were bound to treat it as indictable. *Rex* v. *Mitchell* (*b*).

Intimidation.

In the case of *Young* v. *Peck* (*a*) it was held that passive members of a crowd may have the guilt of active members imputed to them.

The facts in this case were as follows: A was going in a motor van with other workmen from the L works, when a number of workmen, each of whom was wearing a white ribbon and all of whom had recently been working at the same works, but were no longer in such employment, threw eggs, one of which struck A in the eye. Some of the workmen were not proved to have thrown eggs or to have struck A, but they were there with those who did so. There were shouts of "Blacklegs!" and "Dirty Scabs!"

The Justices found that all the persons charged were

(*a*) 29 T. L. R. 81; 107 L. T. 857.
(*b*) 108 L. T. 76; 29 T. L. R. 157.

conniving at and aiding and abetting by their presence and conduct, and were actually taking part in what was done, and were not there accidentally and without their own will, and they convicted the appellant.

Held, by the Divisional Court, that all those convicted were rightly convicted, notwithstanding that the evidence only showed that two of them had thrown eggs at A.

"It was contended," said the Lord Chief Justice, "that eleven out of thirteen ought not to have been convicted, because the case only said that the evidence only proved two to have been throwing eggs. I cannot agree with that contention, since all were part of a body of men who were calling out 'Blacklegs' and 'Dirty Scabs,' though it was not found that they were actually taking part in what was done in throwing eggs."

CHAPTER VII.

THE TRADE UNION ACT, 1913.

An Act to amend the Law with respect to the objects and powers of Trade Unions.

1.—(1) The fact that a combination has under its constitution objects or powers other than statutory objects within the meaning of this Act shall not prevent the combination being a trade union for the purposes of the Trade Union Acts, 1871 to 1906, so long as the combination is a trade union as defined by this Act, and, subject to the provisions of this Act as to the furtherance of political objects, any such trade union shall have power to apply the funds of the union for any lawful objects or purposes for the time being authorised under its constitution.

Amendment of law as to objects and powers of trade unions.

Section 6 of the Trade Union Act, 1871, provides that if any one of the purposes of a trade union be unlawful, registration shall be void, and there are certain dicta in the *Amalgamated Society of Railway Servants* v. *Osborne* (*a*), and in *Wilson* v. *The Scottish Typographical Association* (*b*), to the effect that where a trade union has objects other than statutory objects, its registration is thereby void, and it is relegated to the position that trade unions occupied before 1871 and ceases to enjoy the rights and immunities conferred on trade unions by the Trade Union Acts, 1871 to 1876. But this view is negatived by the Master of the Rolls in his judgment in *Gaskell* v. *Lancashire and Cheshire Miners' Federation* (*c*) (see p. 10, *supra*).

If a trade union is substantially a trade union within the meaning of section 1 it may now pursue objects other than purely trade

(*a*) *Per* Fletcher Moulton, L.J., 25 T. L. R. at p. 118.
(*b*) *Per* Lord Skerrington, [1912] S. C. at p. 543, and Lord Dundas at p. 550.
(*c*) 28 T. L. R. at p. 520.

union objects without impairing its legal status, provided that these objects and the powers necessary for their achievement are set forth in the constitution; and it may apply its funds to such objects, subject to the special provisions in section 3 relating to political objects.

It would appear that the words "unlawful purpose," as used in section 6 of the Act of 1871, must now be understood in the broad sense, and as equivalent to things specifically forbidden by law and not, as formerly, anything not specifically sanctioned by the Trade Union Acts.

So long as the combination is a trade union as defined by this Act.—For new definition of trade union see p. 93, *infra.*

Subject to the provisions of this Act as to political objects.—See ss. 3–6, pp. 99–109, *infra.*

Shall have power to apply its funds.—It is doubtful whether a trade union can spend its funds on the making of voluntary collections for objects outside the union's powers. In *Wilson* v. *The Amalgamated Society of Engineers* (cc), the levies complained of, though purporting to be voluntary, were found by the Court to be not really voluntary, and were disallowed.

Lawful objects or purposes, for the time being, authorised under its constitution.—The doctrine of *ultra vires* still applies to a trade union, and while the present Act greatly extends the number of the objects and purposes for which a trade union may lawfully provide in its rules, every trade union is still under the necessity of specifying in its rules what its objects and purposes are. An injunction will be granted at the instance of a member to restrain the union from engaging in any form of activity not expressly or impliedly sanctioned by the rules.

(2) For the purposes of this Act the expression "statutory objects" means the objects mentioned in section sixteen of the Trade Union Act Amendment Act, 1876, namely, the regulation of the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or the imposing of restrictive conditions on the conduct of any trade or business, and also the provision of benefits to members.

Regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or the imposing of restrictive conditions on the conduct of any

(cc) [1911] 2 Ch. 324; 80 L. J. Ch. 469: 104 L. T. 115; 27 T. L. R. 418; 55 S. J. 498.

trade or business.—This phrase is the same as that used in the Trade Union Acts of 1871 and 1876, and must be so construed as to cover a variety of activities which, before the passing of these Acts, were usually recognised as characteristic of 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—for instance, section 4 of the Act of 1871 and other parts of the Act show that the Legislature recognises that the provision of benefits to members was one of such purposes. Insurance is, within certain limits, similarly shown to be another. Reading the Acts as a whole, one has no difficulty therefore in arriving at the conclusion that the definition in section 16 is not intended to exclude collateral or ancillary purposes of such well-known types [as benefit and insurance purposes], and it appears to me immaterial whether we consider that their inclusion arises from their being, in the contemplation of the Legislature, means for regulating the relations specified in the definition, or whether we take it that they are implicitly brought in by the use of the well-known word 'trade union' with all its associations. But I cannot think that the Legislature intended that objects not at the 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." *Per* Fletcher Moulton, L.J., in *Osborne* v. *The Amalgamated Society of Railway Servants* (*d*).

Regulating the relations between workmen and masters.—See the author's Law Relating to Trade Unions, pp. 7–9.

Regulating the relations between workmen and workmen.—See the author's Law Relating to Trade Unions, pp. 4–7.

Regulating the relations between masters and masters.—See Law Relating to Trade Unions, pp. 9–12.

Imposing restrictive conditions on the conduct of any trade or business.—See *Hilton* v. *Eckersley* (*e*); *Urmston* v. *Whitelegg* (*f*); *Mineral Water Bottle Exchange, &c., Society* v. *Booth* (*g*); *Edinburgh and District Aerated Water Manufacturers' Defence Association, Ltd.* v. *Jenkinson* (*h*); *Aberdeen Master Masons' Incorporation, Ltd.* v. *Smith* (*i*); *Chamberlain's Wharf, Ltd.* v. *Smith* (*k*).

(*d*) 25 T. L. R. at p. 118.
(*e*) 25 L. J. Q. B. 199; 6 El. & Bl. 47; 12 Jur. (N.S.) 587; 4 W. R. 326.
(*f*) 63 L. T. N. S. 455; 55 J. P. 453.
(*g*) 3 T. L. R. 740; 36 Ch. D. 465; 57 L. T. 573; 36 W. R. 274.
(*h*) 5 F. 1159; 40 Sc. L. R. 825.
(*i*) [1908] S. C. 669.
(*k*) [1900] 2 Ch. 605; 69 L. J. Ch. 783; 83 L. T. 288; 49 W. R. 91.

The regulating of the relations mentioned in the section, and the imposing of restrictive conditions need not, to constitute the combination a trade union, be such as to amount to an unlawful restraint of trade. (See section 16, Trade Union Act, 1876.) "The regulation of the relations between masters and masters and the restrictive conditions on the conduct of 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." *Per* Lord Moncrieff in *Edinburgh and District Aerated Water Manufacturers' Defence Association, Ltd.* v. *Jenkinson* (*l*).

Provision of Benefits to Members.—There appears to be some doubt whether the phrase "provision of benefits" includes insurance. In *Osborne* v. *The Amalgamated Society of Railway Servants* (*m*), Fletcher Moulton, L.J., twice uses language which seems to denote that the provision of benefits to members and insurance are two separate things. Thus he says (*n*):—"Clause 4 of the Act of 1871 and other parts of the Acts show that the Legislature recognised that the provision of benefits to members was one of the purposes [of a trade union]. Insurance is, within certain limits, similarly shown to be another." And he further says (*n*): "In my opinion, a trade union for the purpose of these Acts must substantially be a trade union as defined, and nothing more, always bearing in mind that there are important collateral or ancillary purposes such as benefits to members, insurance, &c."

On a consideration of the trade union purpose which underlies the granting of benefits to members, it appears that the insurance business of a trade union and the provision of benefits are both directed to the same end, viz. the placing of the workman beyond the necessity of having to sell his labour at less than the standard rate by reason of pressure due to misfortune. Out-of-work pay, sick pay, tool insurance, funeral grants, accident benefit and superannuation allowances, are all indirect means of preventing the employers from taking advantage of the workman's necessities to lower the standard rate. According to Mr. and Mrs. Webb, provident benefits and insurance thus constitute, in effect, a system of Mutual Insurance under which each member of a trade union, by paying a small subscription, is insured against the necessity of being compelled to sell his labour on unfavourable terms (*o*).

In the Trade Union (Provident Funds) Act, 1893, section 3,

(*l*) 5 F. 1159; 40 Sc. L. R. 825.
(*m*) 25 T. L. R. 107.
(*n*) At p. 113.
(*o*) "Industrial Democracy," vol i. pp. 151-172.

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 by an accident or lost his tools by fire or theft; or a payment in discharge or in 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.

It may also be noticed that the recognised purposes of Friendly Societies include insurance as well as sick pay, superannuation allowances, out-of-work grants, etc., etc. See Friendly Societies Act, 1896, section 8 (1).

The Trade Union Act, 1876, section 2, also clearly recognises insurance as a trade union object.

Where the rules of a trade union provide that in the event of a member becoming insane his dependants should be entitled to receive benefits, it was held that the rule was not an agreement to provide benefits to members (*Love* v. *Amalgamated Society of Lithographic Printers* (*p*)).

In *Lees* v. *Lancashire and Cheshire Miners' Federation* (*q*) Mr. Justice Ridley held that the word "benefits" in section 4 of the Trade Union Act, 1871, was limited to such benefits as sick pay and strike pay, and did not include an undertaking by a trade union to pay the cost of legal proceedings instituted by the union to enforce a member's right to compensation against his employer.

2.—(1) The expression "trade union" for the purpose of the Trade Union Acts, 1871 to 1906, and this Act, means any combination, whether temporary or permanent, the principal objects of which are under its constitution statutory objects: Provided that any combination which is for the time being registered as a trade union shall be deemed to be a trade union as defined by this Act so long as it continues to be so registered. Definition of trade union.

New Definition of Trade Union.—By combining sub-section (2) of section 1 and sub-section (1) of section 2, the following seems now to be the definition of a trade union: The expression "Trade Union" for the purpose of the Trade Union Acts, 1871 to 1906, and this Act, means any combination, whether temporary or permanent, the principal objects of which under its constitution are the

(*p*) [1912] S. C. 1078; 49 Sc. L. R. 788.
(*q*) *The Times*, June 20th, 1906.

regulation of the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or the imposing of restrictive conditions on the conduct of any trade or business, and also the provision of benefits to members."

The changes thus made in the statutory definition, as contained in section 16 of the Trade Union Act Amendment Act, 1876, are as follows:—

1. The provision of benefits to members is specifically recognised as a principal object of a trade union in addition to the regulation of the relations between workmen and workmen, or between workmen and masters, or between masters and masters, or the imposing of restrictive conditions on the conduct of any trade or business. This amendment of the definition was probably inserted in order to settle certain doubts which had been created by the Osborne Judgment as to the legality of the friendly society purposes of trade unions. Such purposes were by implication sanctioned by the Trade Union Acts of 1871 and 1876. Thus section 4 (3) of the former Act refers to agreements "for the application of the funds of a trade union to provide benefits to members." In clause 2 of schedule 1 of the same Act there occurs the phrase "the conditions under which any member may be entitled to any benefit assured by a trade union." In particular the payment of death benefits by trade unions is recognised in the Act of 1876—see section 2, section 7 (now replaced by section 1 of the Assurance Companies Act, 1909) and section 10.

According to Lord Justice Fletcher Moulton 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 (see *Osborne* v. *Amalgamated Society of Railway Servants* (r). And Lord Justice Farwell has stated that the arrangements for benefit and insurance are means for regulating the relations between workmen and workmen (see *Osborne* v. *The Amalgamated Society of Railway Servants* (r). See further the dictum of Lord Macnaghten in the same case, which is quoted below at p. 95).

2. The following words contained in the definition of section 16 of the Act of 1876 are now omitted: "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."

It would appear from a strict reading of sub-section 2 of section 1, that the effect of the word "and" in the last line of the

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

sub-section is, that a body is not a trade union unless its principal objects are at least two in number, viz. (1) the regulation of the relations between workmen and masters or between workmen and workmen or between masters and masters; or the imposing of restrictive conditions on the conduct of any trade or business; (2) the provision of benefit to members.

Such a strict interpretation is not likely to affect the workmen's trade unions, for it is difficult to conceive of any such union which does not provide benefit to members, be it nothing more than strike pay. It is, however, submitted that many manufacturers' and traders' associations which have hitherto been regarded as trade unions, can no longer come within the scope of the Trade Union Acts, inasmuch as they do not provide benefit to members. But it is provided in sub-section 1 of section 2 that any combination which is, for the time being, registered as a trade union, shall be deemed to be a trade union as defined by this Act, so long as it continues to be so registered.

The principal objects of which are under its constitution statutory objects.—The regulation of the relations between workmen and masters, between workmen and workmen, and between masters and masters; and the imposing of restrictive conditions upon the conduct of any trade or business, are usually spoken of as the trade purposes. These trade purposes were formerly the principal purposes of a trade union, while its benefit purposes were considered to occupy a secondary and subordinate position (*s*). The benevolent purposes of trade unions are now removed from their secondary and subordinate position, and rank equally with the trade purposes as principal objects.

If the principal objects of an association are not statutory objects, the inclusion of statutory objects will not be sufficient to

(*s*) In the words of Lord Macnaghten (*t*), "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 the 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 a union, and the confidence of its members simply consisted in this, that it could, if so disposed, employ the whole of its funds in support of trade ends. Hence it comes, I think, that the benefit purposes of trade unions, though referred to in the Trade Union Acts, 1871, 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."

(*t*) In *Osborne* v. *Amalgamated Society of Railway Servants*, [1910] A. C. 87; 101 L. T. 787; [1910] W. N. 8; 79 L. J. Ch. 87; 54 S. J. 215; 47 Sc. L. R. 613.

make the association a trade union. In *Osborne* v. *The Amalgamated Society of Railway Servants* (u), Farwell, L.J., observed that "the contention that the 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."

The following argument, urged by Lord Justice Fletcher Moulton in the same case at a time when the "statutory objects" were the only objects of a trade union, would appear to be still valid and instructive as a guide in distinguishing statutory and principal objects from those subordinate and non-statutory objects which may now be pursued by a trade union: "I cannot agree with the view that any combination that has among its objects the regulation of any 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. . . . I cannot bring myself to believe that the Legislature will allow a combination whose [principal] (x) objects were to any extent trading or political propagandism or any other lawful purposes which one would mention, which have nothing to do with the relations of masters and workmen [and the provision of benefits to members] (x) to obtain for itself such a statutory immunity by including within its purposes some regulations such as those adopted by a genuine trade union. . . . 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' trades in a manner which would, before the Act of 1871, have been unlawful at Common Law by being in restraint of trade; nor would a combination, a substantial part of whose objects were political, be protected from actions of libel merely because it also sought to regulate the relations between masters and workmen."

(2) The Registrar of Friendly Societies shall not register any combination as a trade union unless in his opinion, having regard to the constitution of the combination, the principal objects of the combination are statutory objects, and may withdraw the certificate of registration of any such registered trade union if the constitution of the union has been altered in such a manner that, in his

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

(x) It is submitted that by inserting the words in brackets the argument becomes applicable to the law under the present Act.

opinion, the principal objects of the union are no longer statutory objects, or if in his opinion the principal objects for which the union is actually carried on are not statutory objects.

An association was incorporated under the Companies Acts, under the name of The Aberdeen Master Masons' Incorporation, Ltd., for the purpose, *inter alia,* of taking over the assets and liabilities of a trade union known as The Aberdeen Master Masons' Association, which had imposed restrictive conditions on the conduct of the building trade in the city of Aberdeen. It was, however, provided in the Memorandum of Association of the newly constituted body that it should not impose on its members, or support with its funds, any regulation which, if an object of the incorporation, would make it a trade union. The incorporation sued one of its members for payment of dues, but it was urged for the defence, that the incorporation was a trade union and was, *de facto,* acting as a trade union, and that the action was therefore barred by section 4 of the Trade Union Act, 1871. *Held,* that as any act which would make the incorporation a trade union would be null and void under the Memorandum of Association, the incorporation could not be a trade union. The Lord Ordinary, referring to the Memorandum of Association, said: "In face of these provisions, it seems to me that it is vain to argue that this is a combination for regulating the relations between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, because, if the contractors or members of the incorporation were to make any regulation or perform any act which would make the incorporation a trade union, such act would be wholly null and void under the above recited clause of the Memorandum of Association." *Aberdeen Master Masons' Incorporation, Ltd.* v. *Smith* (y).

Having regard to the constitution of the combination the principal objects of the combination are statutory objects. See *supra,* pp. 93 and 95.

And may withdraw the certificate of registration.—The grounds on which the certificate of registration may be withdrawn or cancelled are, under section 8 of the Trade Union Act, 1876, as follows:—

1. The request of the trade union.
2. That the certificate of registration has been obtained by fraud or mistake.
3. That the registration has become void under section 6 of the Trade Union Act, 1876. (See *supra,* p. 89.)

(y) [1908] S. C. 669.

4. That the trade union has ceased to exist.
5. That the trade union has wilfully, and after notice from the registrar, violated any of the provisions of the Trade Union Acts.

Under section 2 (2) of the present Act the certificate of registration may be withdrawn.

6. If the constitution has been altered so that the principal objects are no longer statutory objects.
7. If the principal objects for which the union is actually carried on are not statutory objects.

Two months' notice in writing specifying the proposed grounds of withdrawal or cancelling of the certificate must be given, except in cases 1 and 8 [see section 8, Trade Union Act, 1876].

From the time of the withdrawal or cancelling of its certificate of registration, a trade union ceases absolutely to enjoy as such the privileges of a registered trade union.

For registration regulations, forms, notices, etc., see Appendix to Law Relating to Trade Unions, pp. 214 to 236.

(3) Any unregistered trade union may, if they think fit, at any time without registering the union apply to the Registrar of Friendly Societies for a certificate that the union is a trade union within the meaning of this Act, and the Registrar, if satisfied, having regard to the constitution of the union and the mode in which the union is being carried on, that the principal objects of the union are statutory objects, and that the union is actually carried on for those objects, shall grant such a certificate, but the Registrar may, on an application made by any person to him for the purpose, withdraw any such certificate if satisfied, after giving the union an opportunity of being heard, that the certificate is no longer justified.

As the rights and immunities given by the Trade Union Acts are only available for *bonâ fide* trade unions, an unregistered trade union might, without some special provision, only be able to demonstrate that it was a trade union by costly litigation. Subsections 3 to 5 of section 2 make it possible for a trade union which does not desire to be registered to place its legal status beyond question by obtaining a certificate that it is a trade union.

(4) Any person aggrieved by any refusal of the Registrar to register a combination as a trade union, or

to give a certificate that an unregistered trade union is a trade union within the meaning of this Act, or by the withdrawal under this section of a certificate of registration, or of a certificate that an unregistered union is a trade union within the meaning of this Act, may appeal to the High Court, or in Scotland to the Court of Session, within the time and in the manner and on the conditions directed by rules of court.

(5) A certificate of the Registrar that a trade union is a trade union within the meaning of this Act shall, so long as it is in force, be conclusive for all purposes.

3.—(1) The funds of a trade union shall not be applied, either directly or in conjunction with any other trade union, association, or body, or otherwise indirectly, in the furtherance of the political objects to which this section applies (without prejudice to the furtherance of any other political objects), unless the furtherance of those objects has been approved as an object of the union by a resolution for the time being in force passed on a ballot of the members of the union taken in accordance with this Act for the purpose by a majority of the members voting; and where such a resolution is in force, unless rules, to be approved, whether the union is registered or not, by the Registrar of Friendly Societies, are in force providing—

Restriction on application of funds for certain political purposes.

(*a*) That any payments in the furtherance of those objects are to be made out of a separate fund (in this Act referred to as the political fund of the union), and for the exemption in accordance with this Act of any member of the union from any obligation to contribute to such a fund if he gives notice in accordance with this Act that he objects to contribute; and

(*b*) That a member who is exempt from the obligation to contribute to the political fund of the union shall not be excluded from any benefits of the union, or placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the union (except in relation to the control or management of the political fund) by reason of his being so exempt, and that contribution to the political fund of the union shall not be made a condition for admission to the union.

(2) If any member of a trade union alleges that he is aggrieved by a breach of any rule made in pursuance of this section, he may complain to the Registrar of Friendly Societies, and the Registrar of Friendly Societies, after giving the complainant and any representative of the union an opportunity of being heard, may, if he considers that such a breach has been committed, make such order for remedying the breach as he thinks just under the circumstances; and any such order of the Registrar shall be binding and conclusive on all parties without appeal and shall not be removable into any court of law or restrainable by injunction, and on being recorded in the county court, may be enforced as if it had been an order of the county court. In the application of this provision to Scotland the sheriff court shall be substituted for the county court, and "interdict" shall be substituted for "injunction."

(3) The political objects to which this section applies are the expenditure of money—

(*a*) on the payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election to Parliament or to any public office, before, during, or after the election in connection with his candidature or election; or

(*b*) on the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or

(*c*) on the maintenance of any person who is a member of Parliament or who holds a public office; or (*d*) in connection with the registration of electors or the selection of a candidate for Parliament or any public office; or

(*e*) on the holding of political meetings of any kind, or on the distribution of political literature or political documents of any kind, unless the main purpose of the meetings or of the distribution of the literature or documents is the furtherance of statutory objects within the meaning of this Act.

The expression "public office" in this section means the office of member of any county, county borough, district, or parish council, or board of guardians, or of any public body who have power to raise money, either directly or indirectly, by means of a rate.

(4) A resolution under this section approving political objects as an object of the union shall take effect as if it were a rule of the union and may be rescinded in the same manner and subject to the same provisions as such a rule.

(5) The provisions of this Act as to the application of the funds of a union for political purposes shall apply to a union which is in whole or in part an association or combination of other unions as if the individual members of the component unions were the members of that union and not the unions; but nothing in this Act shall prevent any such component union from collecting from any of their members who are not exempt on behalf of the association or combination any contributions to the political fund of the association or combination.

In conjunction with any other trade union, association or body.—Not only is a trade union disabled from taking political action on its own behalf, or in conjunction with another trade union, except under restrictions imposed by the Act, but it cannot undertake such action through the instrumentality of some other association or body such as the Labour Party—a body which is not a trade union but a federation of trade unions, trades councils, Socialist societies, and local labour associations—co-operative societies also being eligible.

Or otherwise indirectly.—The effect of these words seems to be that the funds of a trade union cannot be spent in the collecting of voluntary subscriptions for purposes outside the union's powers, even though the union makes it quite clear that all subscriptions are voluntary and that arrears will not be charged against members in respect of them.

Political Objects.—The political objects of a trade union are now divisible into two classes:—

1. Political objects specified in section 3 (3).
2. Political objects other than those specified in section 3 (3).

The Political Objects specified in section 3 (3) are as follows:—

1. Expenditure of money in payment of election expenses.
2. Expenditure of money on the holding of election meetings, or on the distribution of election literature, etc.
3. Expenditure of money on the maintenance of a member of Parliament or any person holding a public office.
4. Expenditure of money in connection with the registration of electors or the selection of candidates for Parliament or public offices.
5. Expenditure of money on the holding of political meetings of any kind, unless the main purpose of the meeting is the furtherance of statutory objects.
6. Expenditure of money on the distribution of political literature or political documents, unless the main purpose of such distribution is the furtherance of statutory objects (*z*).

In order that a trade union may, with propriety, spend money on these objects, it must make the following provisions in its rules:—

(*a*) The funds are not to be spent on any of these political objects unless a resolution has been passed approving of the furtherance of the objects.

(*b*) A separate fund must be kept called The Political Fund, and all payments in respect of political objects must be made out of this fund.

(*c*) Members who give notice that they are unwilling to contribute to the political fund are to be exempt from liability to contribute. For form of notice see p. 110, *infra*.

(*d*) Members obtaining any such exemption are not to be subjected to any disability other than exclusion from the control or management of the political fund.

(*z*) It will be noticed that all the political objects specified involve the expenditure of money. It would seem that any political object not involving the expenditure of money, either directly or indirectly, falls outside the section.

(e) Contribution to the political fund is not to be a condition of admission to membership.

Unregistered as well as registered trade unions must make suitable provision in their rules for the above-mentioned matters, and must submit the rules thus made to the Registrar of Friendly Societies for his approval. It would also appear that the jurisdiction of the Registrar under sub-section 2 to deal with breaches of these rules extends to unregistered societies.

Resolution approving political objects.—It is not necessary that the rules of the trade union should contain a rule expressly sanctioning the political objects specified in section 3 (3). The resolution, when passed, is to have the effect of a rule. It should be noticed that the resolution once passed, can only be rescinded by the procedure by which an ordinary rule of the society is rescinded. Section 3 (4).

As to the notice to be given to members on the adoption of the resolution, see section 5.

Federations and Amalgamations of Trade Unions.—Sub-section 5 of section 3 brings federations and amalgamations, etc., of trade unions within the Act. In the case of any such organisation individual members are, so far as concerns the application of funds for political purposes, to be regarded as members of the federation or amalgamation, etc., and not of the constituent union. The constituent union may, however, perform the task of collecting political contributions on behalf of the federation or amalgamation, etc.

Public body who have power to raise money either directly or indirectly by means of a rate.

The phrase "public body" is thus defined in the Public Bodies Corrupt Practices Act, 1889, section 7:—The expression "public body" means any council of a county or county of a city or town, any council of a municipal borough, also any board, commissioners, select vestry, or other body which has power to act under and for the purpose of any Act relating to local government or the public health, or to poor law, or otherwise to administer money raised by rates in pursuance of any public general Act, but does not include any public body as above defined existing elsewhere than in the United Kingdom. The expression "public office" means any office or employment of a person as member, officer, or servant of such public body.

Directly or indirectly by means of a rate.—In England and Wales the principal kinds of rates are the following:—

1. Borough Rate. 2. County Rate. 3. County Police Rate. 4. County Lunatic Asylum Rate. 5. Poor Rate. 6. Highways Rate. 7. Rates levied by Sanitary Authority.

There are also various rates under local Acts, such as improvement rates, and sewers and drainage rates levied by improvement commissioners and other bodies.

The Drainage Boards formed under the Land Drainage Act, 1861, and the various Commissioners of Sewers are local bodies raising expenses independently of the poor rate or poor rate valuations.

Rate.—The word "rate" has received definition in the following (*inter alia*) Acts of Parliament:—

Agricultural Rates Act, 1896, *section* 9.—In this Act the expression rate means a rate . . . the proceeds of which are applicable to public local purposes, and which is leviable on the basis of an assessment of the yearly value of property and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer is or can be ultimately raised out of a rate as before defined.

The *Local Authorities (Loans) Act*, 1875, *section* 34, and the *Public Works Loans Act*, 1875, *section* 51, contain definitions of a rate almost identical with the above.

The Local Authorities (Loans) Scotland Act, 1891, *section* 4 (1).—In this Act . . . the expression rate means an assessment or rate the proceeds of which are applicable to public local purposes and which is leviable on lands and heritages, and includes any sum which though obtained in the first instance by a precept or certificate or other document requiring payment from some authority or officer, is, or can be, ultimately raised out of a rate, and the levy of a rate includes the issue and enforcement of any such precept, certificate, or document as aforesaid, and the expressions relating to the levy and the assessment of a rate shall be construed accordingly. The expression rate also includes water rates or rents, gas rates or rents, and charges for the supply of water or gas or the hire of meters or fittings connected therewith.

Approval of rules.

4.—(1) A ballot for the purposes of this Act shall be taken in accordance with rules of the union to be approved for the purpose, whether the union is registered or not, by the Registrar of Friendly Societies, but the Registrar of Friendly Societies shall not approve any such rules unless he is satisfied that every member has an equal right, and, if reasonably possible, a fair opportunity of voting, and that the secrecy of the ballot is properly secured.

(2) If the Registrar of Friendly Societies is satisfied, and certifies, that rules for the purpose of a ballot under this Act or rules made for other purposes of this Act

which require approval by the Registrar, have been approved by a majority of members of a trade union, whether registered or not, voting for the purpose, or by a majority of delegates of such a trade union voting at a meeting called for the purpose, those rules shall have effect as rules of the union, notwithstanding that the provisions of the rules of the union as to the alteration of rules or the making of new rules have not been complied with.

It does not appear that the summoning of a general meeting is necessary for the passing of the resolution required by section 3 (1). The resolution is to be passed on a ballot of the members of the union (section 3 (1)), and this ballot is to be taken in accordance with any rules made by the union for the purpose. These rules must secure to the satisfaction of the Registrar of Friendly Societies: 1. An equal right, and, if reasonably possible, a fair opportunity of voting to every member. 2. The secrecy of the ballot. It is probable that within these limits trade unions may make such arrangements for the passing of the resolution required by section 3 (1) as appear most convenient to themselves.

Ballot.—The word "ballot," for the purpose of Election Law, signifies the system of secret voting introduced by the Ballot Act of 1872. See Encyclopædia of the Laws of England (Sweet & Maxwell, 1906).

It is, of course, impossible to prescribe the methods which trade unions should adopt in order to secure that secrecy of voting which the Trade Union Act, 1913, requires. The author is, however, of opinion that the Ballot Act will serve as a useful guide to trade union executives in the drafting of rules relating to this matter. How far the methods of the Ballot Act can be carried out by a trade union must depend on the particular circumstances of the trade union, and the nature of its organisation. In many cases where the adoption of Ballot Act precautions in their entirety is impracticable, they may perhaps be modified to suit the particular circumstances of the union, without losing their real effectiveness.

The following are the principal provisions of section 2 of the Ballot Act, 1872, designed to secure secrecy, and to prevent fraudulent voting:—

1. On the back of each ballot paper a number must be printed and the same number must appear on the face of the counterfoil.
2. At the time of voting the ballot paper must be marked on

both sides with an official mark and delivered to the voter in the polling station.

3. The number of the voter on the register of voters is to be marked on the counterfoil when the voter receives his ballot paper.

4. When the voter has marked the paper he must fold it up, show the presiding officer the official mark at the back, and place the paper in the ballot box.

[The aim of the above-mentioned precautions is obviously to prevent the same person from voting more than once and to prevent voting by persons not entitled to vote.]

5. The ballot boxes are sealed up at the close of the poll, and taken charge of by the returning officer, who, in the presence of such agents of the candidate as may be in attendance, counts the total number of ballot papers and ascertains the result of the poll.

[The purpose of this provision is to secure that the votes shall be counted correctly and faithfully and the result declared truly. In the conduct of the ballot under section 4 of the Trade Union Act, 1913, this purpose may be served by providing that the counting shall be controlled by some person of unquestioned impartiality, and that it shall take place in the presence of persons representing both the advocates and the opponents of political action.]

6. Polling stations must be furnished with a number of compartments in which voters can mark their papers screened from observation. There must be one compartment for every 150 electors.

7. No person to be admitted to vote at any polling station except the one allotted to him.

8. The returning officer must provide ballot boxes, stamping instruments, and copies of registers of voters.

9. Every ballot box must be so constructed that papers can be introduced but not withdrawn without unlocking the box. And before the commencement of the poll the presiding officer must show the box empty to the persons present and then lock and seal it.

10. The presiding officer must transmit to the returning officer the ballot box, all unused and spoilt papers, all tendered ballot papers, the marked copies of the registers of voters, counterfoils, and list of tendered votes. These must be accompanied by a statement showing the number of ballot papers entrusted to the presiding officer, and accounting for them on a form named the Ballot Paper Account under the following heads :—

Number in box.
,, spoiled.
,, unused.
,, tendered.

11. Absolute secrecy must be observed on the part of the presiding officer and his assistants.

It is submitted that where a trade union has branches the ballot might be taken under some such conditions as the following:—

1. Votes should be taken at branch meetings.
2. Printed ballot papers should be provided.
3. In the room where voting takes place there should be a compartment in which the ballot papers may be marked screened from observation.
4. A ballot box should be provided, and before voting commences the person presiding should show that the box is empty.
5. The box may then be locked.

Where the society is without branches and has a membership scattered over a wide area, the following method may prove suitable:—

1. An envelope having on its face a printed form to be signed by the member, as security that the proper person has voted, should be sent to each member with a ballot paper enclosed.
2. The member, after filling up the ballot paper, will place it in the envelope, seal the envelope, and enclose it in another envelope addressed to the secretary of the union.
3. The inner envelopes should be opened by some independent and impartial person previously selected, who will, after counting the votes, declare the result and return the ballot papers and envelopes in two separate parcels.

The making of rules for the purposes of the Act.—Subsection 2 of section 4 empowers a trade union to dispense with its ordinary rules as to the alteration, &c., of rules so far as concerns the making of rules for the purposes of the Act. These rules may either be submitted directly to the vote of the members or to delegates at a special meeting. It is not necessary to wait until the time specified in the ordinary rules for the alteration, &c., of rules; the vote may be taken at once.

Notice of objection to contribute towards political objects.

5.—(1) A member of a trade union may at any time give notice, in the form set out in the Schedule to this Act or in a form to the like effect, that he objects to contribute to the political fund of the union, and, on the adoption of a resolution of the union approving the furtherance of political objects as an object of the union, notice shall be given to the members of the union acquainting them that each member has a right to be exempt from contributing to the political fund of the union, and that a form of exemption notice can be obtained by or on behalf of a member either by application at or by post from the head office or any branch office of the union or the office of the Registrar of Friendly Societies.

Any such notice to members of the union shall be given in accordance with rules of the union approved for the purpose by the Registrar of Friendly Societies, having regard in each case to the existing practice and to the character of the union.

(2) On giving notice in accordance with this Act of his objection to contribute, a member of the union shall be exempt, so long as his notice is not withdrawn, from contributing to the political fund of the union as from the first day of January next after the notice is given, or, in the case of a notice given within one month after the notice given to members under this section on the adoption of a resolution approving the furtherance of political objects, as from the date on which the member's notice is given.

Under ordinary circumstances the notice of objection to contribute towards political objects will run from the first of January following the day on which it is given. But where a trade union has adopted a resolution approving political objects, and notice has been given to the members under section 5 (1) informing them of their right to exemption, the notice of objection, if given within one month, runs from the date on which it was given.

Mode of giving effect to exemption from contributions to political fund.

6. Effect may be given to the exemption of members to contribute to the political fund of a union either by a separate levy of contributions to that fund from the members of the union who are not exempt, and in that case the rules shall provide that no moneys of the union

other than the amount raised by such separate levy shall be carried to that fund, or by relieving any members who are exempt from the payment of the whole or any part of any periodical contributions required from the members of the union towards the expenses of the union, and in that case the rules shall provide that the relief shall be given as far as possible to all members who are exempt on the occasion of the same periodical payment and for enabling each member of the union to know as respects any such periodical contribution, what portion, if any, of the sum payable by him is a contribution to the political fund of the union.

The contributions to the political fund may be levied in either of the following ways:—

1. A separate levy for political purposes may be made on the members who are not exempt. Such contributions must be carried to the political fund, and the rules must provide that no other money is to be carried to that fund.
2. A general levy may be made for all the purposes of the union, including political purposes, but the amount levied on members who are exempt will be less than that levied on the other members. This may be secured either by requiring from the exempted members a slightly diminished weekly, fortnightly or monthly contribution as the case may be, or by excusing payment of the whole contribution for certain weeks or months of each year, the full ordinary contribution being paid on other occasions. Thus if the contribution to the political fund be 2*s*. per member per year, and the full contribution for all purposes be 2*s*. per calendar month, the exempted member might pay 1*s*. 10*d*. per calendar month all the year round, or he might be excused all payments for January and pay 2*s*. for each of the other months. Where this course is followed the rules must provide
   (*a*) That all exempted members shall, as far as possible, be relieved at the same time.
   (*b*) That each non-exempted member shall be informed what portion of the periodical contribution is for political purposes.

7. The Registrar of Friendly Societies means in relation to a registered trade union whose registered office, or

Definition of Registrar of Friendly Societies.

an unregistered trade union whose principal office, is situated in England or Wales, the Chief Registrar of Friendly Societies, and in relation to a registered trade union whose registered office, or an unregistered trade union whose principal office, is situated in Scotland or Ireland, the Assistant Registrar of Friendly Societies for Scotland or Ireland respectively.

Short title and construction.

8. This Act may be cited as the Trade Union Act, 1913, and shall be construed as one with the Trade Union Acts, 1871 and 1876; and this Act and the Trade Union Acts, 1871 to 1906, may be cited together as the Trade Union Acts, 1871 to 1913.

SCHEDULE.

Section 5.

FORM OF EXEMPTION NOTICE.

Name of Trade Union

POLITICAL FUND (EXEMPTION NOTICE).

I hereby give notice that I object to contribute to the Political Fund of the Union, and am in consequence exempt, in manner provided by the Trade Union Act, 1913, from contributing to that fund.

A.B.

Address

day of 19

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THE END.

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