ments of the Act. But in consequence of the passing of the Summary Jurisdiction (Scotland) Act 1908, and particularly in consequence of the provisions of section 75, it is apparent that it will be of little avail in the future—as it is of little avail in the present case—for an accused person rightly convicted to appeal to this Court upon what is a mere technicality.

LORD CULLEN—I agree. I think it must be taken that the sentence was pronounced in respect of the conviction on both heads of the complaint. On that footing it appears to me that the sentence is not legal, because the power given by section 53 of the Summary Jurisdiction (Scotland) Act 1908 to pronounce a *cumulo* sentence does not warrant adding together a sentence of imprisonment and a statutory sentence of a fine, with an alternative of imprisonment, so as to produce a sentence of imprisonment only.

I agree with the mode in which your Lordship proposes to deal with the sentence.

The Court passed the bill to the effect of recalling the sentence pronounced in the Inferior Court, and in substitution thereof sentenced the complainer George M'Lauchlan in respect of the conviction under the first charge to be imprisoned for thirty days, said thirty days to include any number of days during which said complainer has already been imprisoned under the sentence hereby recalled, and in respect of the conviction under the second charge to pay a fine of five shillings, and failing payment thereof to the Clerk of the Inferior Court within three days, to be imprisoned for five days, said last-mentioned imprisonment if incurred to run concurrently with that first above imposed; and sentenced the complainer James M'Givern in respect of the conviction on the first charge to pay a fine of three pounds, three shillings sterling, and in respect of the conviction on the second charge to pay a fine of five shillings sterling—in all a fine of three pounds, eight shillings sterling—and failing payment thereof to the Clerk of the Inferior Court within three days sentenced the said complainer James M'Givern to be imprisoned for a period of thirty days, said period to include any number of days during which this complainer has already been imprisoned under the sentence hereby recalled. *Quoad ultra* refused the bill and decerned.

Counsel for the Complainers—Watt, K.C. —Ingram. Agents—W. G. Leechman & Company, Solicitors.

Counsel for the Respondent—Wark, K.C. —Crawford. Agents—Campbell & Smith, S.S.C.

COURT OF SESSION.

Thursday, November 25.

SECOND DIVISION.

[Lord Sands, Ordinary.

DRENNAN AND OTHERS *v.* THE ASSOCIATED IRONMOULDERS OF SCOTLAND.

Trade Union — Jurisdiction — Resolution Fining Members — Reduction of Resolution and Interdict against its Enforcement—No Averment of Patrimonial Loss —Relevancy — Trade Union Act 1871 (34 *and* 35 *Vict. cap.* 31), *sec.* 4.

A trade union passed a resolution imposing fines upon some of its members employed in an engineering shop for working on a certain day contrary to the decision of a majority of the members of the union employed therein. The members fined brought an action against the union for declarator that there was no authority in the rules of the union, and no agreement between the pursuers and defenders, under which the decision of a majority of a shop either to work or not to work on any day was binding on the minority, and for reduction of the resolution as *ultra vires*. Interdict against its enforcement was also asked. The defenders did not aver that there was any such rule or agreement, and the pursuers did not set forth on record that the fine had been or could in any way be enforced, or that the resolution would involve the pursuers in patrimonial loss or any consequences, *e.g.*, expulsion or the like, which might follow upon its non-payment. The Court (*diss.* Lord Salvesen) *dismissed* the action as irrelevant, on the ground that the declaratory conclusion was non-controversial, and that the pursuers had no patrimonial interest to obtain the reduction concluded for.

Opinions reserved as to whether the jurisdiction of the Court was excluded by section 4 of the Trade Union Act 1871.

Arbitration — Trade Union — Disputes between Members and the Society—Applicability of Arbitration Clause.

The rules of a trade union provided that should any differences arise between members and the executive such differences must be submitted to the decision of an arbitration committee on the following condition—that both parties bind themselves in writing to agree to the decision of the arbitration committee. *Held* that as the parties had not agreed in writing to abide by the decision of the committee the arbitration clause was inapplicable.

Observations per the Lord Ordinary (Sands) as to the applicability of arbitration clauses to disputes between members and the society.

John Drennan, Ellangowan Road, Shawlands, Glasgow, and others, *pursuers*,

brought an action against The Associated Ironmoulders of Scotland, registered pursuant to the Trades Union Acts 1871 to 1913, and also against the President, Vice-President, Secretary, and Treasurer of the Executive Council of the Association, and as such representing the Association, *defenders*. The conclusions of the summons were as follows—"(*First*) it ought and should be found and declared . . . that there is no warrant or authority in the rules of the Association and no agreement between the pursuers and defenders under or by virtue of which the decision of a majority of a shop either to work or not to work on any day is binding or obligatory on the minority of the shop; (*second*) (*a*) it ought and should be found and declared . . . that the resolution or pretended resolution made and passed by the South-Western Glasgow District Committee of the defenders' Association at a meeting held in Coat's Club Room, Cornwall Street, Glasgow, S.S., on or about May 12th, 1919, and bearing to be confirmed at a general meeting of the South-Western District of the defender's Association held in Neptune Rooms, Weir Street, Kingston, Glasgow, S.S., on or about 5th June 1919, and at a meeting of the executive council of said Association held in the society's rooms, 221 West George Street, Glasgow, on or about 18th June 1919, whereby it was resolved that the pursuers should each be fined in the sum of fifteen shillings, was *ultra vires* of the defenders' Association, and was and is now in all time coming null and void and of no avail; (*b*) the defenders ought and should be decerned and ordained . . . to exhibit and produce . . . the minutes or other writings containing said resolution and the confirmation thereof by said general meeting and executive council, and the said resolution and all that has followed thereon ought and should be reduced . . . and the pursuers reponed and restored there-against *in integrum;* and (*c*) the defenders ought and should be interdicted . . . from carrying into effect or acting upon or enforcing the said resolution; (*third*) it ought and should be found and declared . . . that the secretary of the defenders' association is, in terms of rule 39, bound, in cases of appeal against the decision of a general meeting to the executive council, to prepare the case of appeal setting forth the grounds of decision of the general meeting, and to submit both that case and the appellants' case, lodged in terms of said rule, to the next general meeting; and (*fourth*) it ought and should be found and declared . . . that where the question of imposing a fine on any member of the Association is to be considered by a district committee of said Association notice must be given to such member and an opportunity given to him of appearing and being heard in his defence, and that in respect that no notice was given to the pursuers of the proposal of said district committee to fine them, and that no opportunity was given to them of being heard in their defence, the resolution specified in the second conclusion hereof was and is now and in all time coming null and void and of no avail."

The pursuers averred—". . . (Cond. 2) In or about April 1918 the question as to whether the 1st of May of that and subsequent years should be observed as a general public holiday in the trade was considered. Under rule 43 the question was put to a vote of the trade, which is a vote of all members of the Association. By a majority it was decided that said day should not be observed as a holiday. In 1919 the same question arose, but no vote of the members was taken. Instead, a recommendation was made by the executive council that 1st May should be observed as a general holiday. (Cond. 3) Some of the shops in the Glasgow district took no action with regard to said recommendation and worked as usual on 1st May. Other shops took a vote on the subject. In most of the shops where a vote was taken it resulted by majorities in a decision to work. (Cond. 4) A vote was taken on 30th April 1919 in the shop of James Howden & Company, Limited. Of 128 members of the Association working in said shop 90 were present at the shop meeting. The result of the vote was that 50 voted for observing said day as a holiday and 40 voted against. The pursuers were amongst those who voted against observing the holiday. They were informed that the works would be open on 1st May as usual, and they accordingly all worked on that day. . . . (Cond. 5) In terms of the decision of a shop meeting held early in May the pursuers were reported to the district committee of the Association for acting against the shop vote, while others in the same district who acted in like manner were not reported. Without giving any notice to the pursuers, or allowing them an opportunity of being heard in their defence, the committee by the casting vote of the chairman at a meeting held in Coats Club Room, Cornwall Street, Glasgow, S.S., on 12th May 1919, passed a resolution fining the pursuers 15s. each for working on said day. The said resolution was *ultra vires* of the Association and of the district committee. . . . (Cond. 6) The pursuers being aggrieved at the arbitrary and illegal action of the district committee appealed to the first general meeting of the members of the south-western district with the object of having the decision reversed and the fine cancelled. The general meeting held in Neptune Rooms, Weir Street, Kingston, Glasgow, S.S., on 5th June 1919, however, most wrongously and illegally confirmed the decision of the district committee. The pursuers were not allowed to vote on the question, but those members of the shop who had voted at the shop meeting for observing the holiday were allowed to vote. Had the pursuers been allowed to vote, or had the other members of the shop been prevented from voting, as they should have been, the decision of the district committee would have been reversed. Had the votes of all those who had taken part in the shop vote been excluded the decision of the district committee would have been reversed. (Cond. 7) The pursuers appealed to the executive council, and in so appealing conformed to the provisions of rule 39 under which it was provided that they should

specify the ground of their appeal in writing. In the same rule it is provided that the secretary shall prepare a case showing the grounds of decision of the general meeting. This he failed to do. Further, in terms of said rule the question at issue fell to be laid before the next general meeting and reconsidered by them. This was not done. (Cond. 8) The appeal was considered by the executive council, although in view of the failure of the secretary to prepare a case as aforesaid it was incompetent for the executive council to consider the appeal. They refused most wrongously and illegally to interfere with the decision of the district committee and confirmed the same. . . . (Cond. 9) There is no rule of the Association to the effect that the majority of members in a shop are entitled to dictate to the minority. Nor is there any agreement between the pursuers and defenders to that effect. The pursuers were accordingly under no agreement to conform to the decision of the majority of those voting at the shop meeting. In other shops the minority did not conform to the decision of the majority, but no proceedings were taken nor fine imposed in these cases. . . . (Cond. 10) the pursuers are aggrieved by the illegal and unfair manner in which they have been treated. They have repeatedly requested the Association to cancel the resolution fining them, but the executive council have refused to do so. The pursuers are satisfied that the majority of the members of the Association would approve of the concellation of said resolution, but no method of testing the views of the members is open to the pursuers. Further, the pursuers have complained to the defenders of the irregularities which took place in considering their case, in particular with regard to the failure of the district committee to give the pursuers notice of the proposal to fine them, and with regard to the failure of the secretary to conform to the provisions of rule 39. The defenders dispute that irregularities have taken place, and maintain that everything was done in accordance with the rules. In these circumstances the pursuers have reluctantly been forced to raise the present proceedings against the Association to vindicate their rights."

In their answers the defenders, *inter alia*, stated—"By rule 8 of the Association it is provided that should 'any difference arise in this Association . . . between any member and the executive, such difference must be submitted to the decision of an arbitration committee on the following condition that both parties bind themselves in writing to agree to the decision of the arbitration committee.' The said rules also provide for the constitution of the said arbitration committee and for the summoning of the members thereof. By rule 3, section 7, it is provided that the council shall have power in any cases that arise whereon the rules are silent of deciding every such case on its own merits, subject to the right of appeal to the arbitration committee. The pursuers have taken no steps to submit the difference between them and the executive to such an arbitration committee."

The pursuers *pleaded*—"1. The resolution fining the pursuers having been illegal, oppressive, and *ultra vires*, decree should be pronounced in terms of the first and second conclusions of the summons. 2. The rules of the Association, and in particular rule 39, having provided the manner in which an appeal should be taken from the first decision of the general meeting, and the defenders and their officials having refused or failed to conform thereto, and maintained their right to do so, the pursuers are entitled to decree in terms of the third conclusion of the summons. 3. The defenders and their various committees being bound both under the rules and at common law to give notice to any member whom it is proposed to fine of the place and time where and when his case is to be considered, and to allow such member an opportunity of being heard in his defence, having refused or failed to give the pursuers notice of the proposal to fine them or allow them to be heard in their defence, and having nevertheless passed the resolution fining the pursuers, of which complaint is made, and having maintained their right to do so, decree should be pronounced in terms of the fourth conclusion of the summons. 4. The defences being irrelevant should be repelled."

The defenders pleaded—"1. The action being incompetent should be dismissed. 2. The defenders being a trade union under the Trade Union Acts 1871 to 1913, the jurisdiction of the Court is excluded by (*a*) section 4 of the Trade Union Act 1871, and (*b*) section 4 of the Trade Disputes Act 1906, and accordingly the action should be dismissed. 3. *Separatim*—The action being excluded by the arbitration clause referred to in answer 8 should be dismissed. 4. The pursuers' averments being irrelevant and insufficient to support the conclusions of the summons, the action should be dismissed. 5. The pursuers' averments, so far as material, being unfounded in fact, the defenders should be assoilzied. 6. The pursuer having been fined by the trade committee of the defenders' Association in accordance with the rules, the defenders are entitled to absolvitor."

On 18th March 1920 the Lord Ordinary (SANDS) pronounced an interlocutor in which he sustained the third and fourth pleas-in-law for the defenders and dismissed the action.

Opinion.—"The object of this action is to have reduced a minute containing a resolution by a district committee of defenders' association whereby the pursuers were each fined fifteen shillings, and the minutes of a general meeting and of the executive council whereby the local committee's resolution was confirmed.

"It appears that the pursuers had worked upon 1st May 1919, which was not a general holiday in the trade, but upon which day the majority in the shop in which they were employed had resolved to take a holiday. The minute of the committee which imposed the fine has now been produced. It appears

that at a meeting of the committee a complaint was made in absence against the pursuers, and the statements of the complainers were received and recorded. Thereafter it was moved and seconded that the parties complained against should be summoned to next meeting. A counter motion was moved to fine them at once. Upon this, for some unexplained reasons, four out of six members of the committee present withdrew from the meeting, and another gentleman was impressed to make a quorum of committee. Thereupon the resolution to fine the pursuers was passed.

"Next, the case of one of the pursuers, Robert Cuthill, who apparently was deemed an arch offender, was considered, and it was resolved to fine him £1, a motion to allow him a hearing being negatived by the casting vote of the chairman. Thereupon the minute naively proceeds—'Parties were recalled'—the only parties being the complainers—'and decision given.'

"An appeal against the resolutions arrived at by these extraordinary proceedings was taken to a general district meeting, when apparently, after the pursuers had been heard, the resolutions were confirmed. A like fate befel an appeal to the executive council.

"The question which the Court is called upon to consider in the first instance is not the regularity or the justice of the proceedings, but whether the matter is one in which the Court can interfere.

"Under section 4 of the Trade Union Act 1874 the fine complained of is not enforceable. So far as legal enforcement goes the resolution is a nullity. The committee might as well have sentenced the pursuers to be banished or to be decapitated, the Court will take no account of the determination by way of enforcing it. The pursuers set forth no patrimonial injury other than this unenforceable fine. It may be that consequences may follow, or have followed its infliction or its non-payment, but these are not set forth, and it is not for the Court to hunt through the rules to find them, or to judge of their applicability in the circumstances. In these circumstances I am of opinion that an action to try the validity or regularity of the resolution cannot be sustained.

"I am further of opinion that the action is excluded by rule 8, as the present case has developed into a dispute between the executive council and the pursuers as members, which falls to be determined by arbitration. The only case to which I was referred on this branch of the argument was *M'Ellistrim* v. *Ballymacalligott Co-operative Agricultural and Dairy Society Limited*, 1919 A.C. 548. That case is not, however, in point, for there, as pointed out by the Lord Chancellor, the question was involved of whether the Association was legally constituted. That case seems in harmony with Lord Skerrington's judgment in *Johnston* v. *The Associated Ironmoulders of Scotland*, 1911, 2 S.L.T. 478, and with *M'Gowan* v. *City of Glasgow Friendly Society*, 1913 S.C. 991. Other cases are—*Heard* v. *Parkthorn*, 1913, 3 K.B. 299; *Andrews* v. *Mitchell*,. 1905 A.C. 78; *Catt* v. *Wood*, 1910 A.C. 404; *Cox* v. *Hutchison*, 1910, 1 Ch. 513. *Heard* and *Andrews* are cases favourable to judicial interference. But in the case of *Heard*, Lord Justice Vaughan Williams, who gave the leading judgment, said—'There was the suggestion made that even if the particular thing complained of was *ultra vires* and beyond the powers of the friendly society, yet if it was with reference to domestic matters and the internal administration of the business of the society, there could not be an injunction issued, even though it was asked for on the ground that it was *ultra vires*. I quite agree there. There are such matters—matters of internal administration—in respect to which there ought not to be an injunction granted. These things are properly left to be decided by arbitration.' In this view I respectfully concur. I am unable to accede to the opposite contention, viz., that whenever the question at issue is whether certain actions were *ultra vires*, or whether certain procedure was regular and in accordance with the rules, the arbitration clause is excluded. The case of *Andrews* is different. There a member against whom some minor charge was being investigated was expelled without hearing upon a serious charge of which he had no notice. The House of Lords held that the arbitration provision did not apply to such a case and that the courts of law could give redress. The case is referred to by Mr Justice Warrington in *Cox* v. *Hutchison*, and by the Lord Chancellor (Loreburn) in *Catt* v. *Wood*. The ground upon which the decision is deemed to have proceeded is that the proceedings were contrary to 'natural justice.' In that respect, no doubt, *Andrews* has resemblance to the present case in one of its aspects. But when we get into the region of 'natural justice' regard must be had to the size of the matter. In the case of *Andrews* it was a question of the expulsion of a member for an alleged odious offence. I cannot think that the plea of 'contrary to natural justice' can be invoked as a ground of judicial interposition in disregard of an arbitration clause in relation to proceedings about small fines and other matters of administration not of capital importance. Further, in the present case, though denied the natural justice of a hearing by the committee, the pursuers before coming to the Court had recourse to two of the domestic tribunals—the general district meeting and the executive council—and apparently they stated their views of the matter to the former and made a written representation to the latter.

"I shall accordingly sustain the third and fourth pleas-in-law for the defenders and dismiss the action, with expenses. I need not say that in doing so I proceed upon the statutory rules, and that my judgment is not incompatible with repugnance against such procedure as is disclosed in the minute complained of."

The pursuers reclaimed, and argued—There was nothing in the rules of the Association to enable a majority in a shop to dictate to a minority, and the defenders'

actings were *ultra vires*. The action was relevant. The Court had jurisdiction to determine whether the particular actings of an association were within the rules of the association. Section 4 of the Trade Union Act 1871 (34 and 35 Vict. cap. 31) was inapplicable—*Yorkshire Miners' Association* v. *Howden*, [1905] A.C. 256, *per* Lord Macnaghten at pp. 262, 263, and 266, and Lord Chancellor (Halsbury) at p. 260. The question in the present case was the same as in that case. The pursuers had both title and interest to sue—*Nordenfelt* v. *Maxim Nordenfelt Guns and Ammunition Company*, [1894] A.C. 535, *per* Lord Macnaghten at p. 565. An action to enforce an agreement was competent provided that it did not fall within one of the five statutory exceptions, and it was immaterial that indirectly one of the exceptions might be affected—*Osborne* v. *Amalgamated Society of Railway Servants*, [1911] 1 Ch. 540, *per* Fletcher Moulton, L.J., at pp. 557 and 558; *Kelly* v. *National Society of Operative Printers' Assistants*, (1915) 84 L.J., 2236, 31 T.L.R. 632; *Burn* v. *National Amalgamated Labourers' Union*, [1920] 2 Ch. 364. With regard to the first conclusion of the summons, the pursuers had a patrimonial interest to obtain it because the decision of the majority of the shop deprived the pursuers of their right to work, and moreover it prevented them from fulfilling their contract with their employer. A declarator asserting a negative was competent—*North British Railway Company* v. *Birrell's Trustees*, 1918 S.C. (H.L.) 33, 55 S.L.R. 102, *per* Lord Dunedin at 1918 S.C. 47, 55 S.L.R. 104; *Edinburgh and Glasgow Railway Company* v. *Meek*, 1849, 12 D. 153, *per* Lord Jeffrey at p. 162. With regard to the second conclusion of the summons, the mere fact that the resolution related to a fine did not matter, because the pursuers had come under no agreement to pay it—*Wilkie* v. *King*, 1911 S.C. 1310, 48 S.L.R. 1057, *per* Lord President (Dunedin) at 1911 S.C. 1314, 48 S.L.R. 1059, and Lord Kinnear at 1911 S.C. 1316, 48 S.L.R. 1060. The third conclusion of the summons was founded on rule 39 of the Association and the fourth conclusion on "natural justice." Rule 3, section 7, of the Association had no application. The council of the Association could not decide a case between parties to the effect of altering the constitution or rules of the Association, and could not impose a fine under that rule. The action was not excluded by rule 8 of the Association. The arbitration clause was only conditional on both parties binding themselves in writing to agree to the decision of the arbitration committee, which the pursuers had refused to do. Moreover, the rule referred to a dispute between any member and the executive, whereas the present dispute was between members and the Association, and accordingly did not fall under the rule—*M'Gowan* v. *City of Glasgow Friendly Society*, 1913 S.C. 991, 50 S.L.R. 783, *per* Lord Salvesen at 1913 S.C. 996 and 997, 50 S.L.R. 786; *Johnstone* v. *The Associated Ironmoulders of Scotland and Others*, 1911, 2 S.L.T. 478, *per* Lord Skerrington (Ordinary) at p. 479; *M'Ellistrim* v. *Ballymacelligott Co-operative Agricultural and Dairy Society*, [1919] A.C. 548, *per* Lord Chancellor (Birkenhead) at p. 561 and Lord Atkinson at p. 585; *Heard* v. *Parkthorn*, [1913] 3 K.B. 299, *per* Vaughan Williams, L.J., at p. 306, and Hamilton, L.J., at p. 312; *Andrews* v. *Mitchell*, [1905] A.C. 78.

Argued for the respondents—The action was irrelevant. The Trades Union Act 1871, section 4, struck at an attempt to enforce an agreement. The agreement which the pursuers were seeking to enforce was the general agreement which comprised the rules so far as bearing on the topic under consideration. It made no difference that the declarator was in the negative form. The pursuers could only ask the Court to declare the existence of an agreement as to restraint of trade, and the Court could not give them any remedy. The fine was purely voluntary and did not involve patrimonial rights which the Court could take cognisance of—*Magistrates of Edinburgh* v. *Warrender*, 1863, 1 Macph. 887, *per* Lord Neaves at 896; *Aitken* v. *Associated Carpenters and Joiners of Scotland*, 1885, 12 R. 1206, 22 S.L.R. 796, *per* Lord President (Inglis) at 12 R. 1212, 22 S.L.R. 800, and Lord Lee (Ordinary) at 12 R. 1208, 22 S.L.R. 797; *Skerrat* v. *Oliver*, 1896, 23 R. 468, 33 S.L.R. 323, *per* Lord President (Robertson) at 23 R. 490, 33 S.L.R. 336; *Smith* v. *Scottish Typographical Association*, 1919 S.C. 43, 56 S.L.R. 46, *per* Lord Mackenzie at 1919 S.C. 53, 56 S.L.R. 51; *G. & J. Rae* v. *Plate Glass Merchants' Association*, 1919 S.C. 426, 56 S.L.R. 315, *per* Lord Justice-Clerk (Scott Dickson) at 1919 S.C. 430, 56 S.L.R. 318; *Yorkshire Miners' Association* v. *Howden* (*cit.*), *per* Lord Macnaghten at 262; *Cope* v. *Crossingham*, [1909] 2 Ch. 148; *Osborne* v. *Amalgamated Society of Railway Servants*, [1911] 1 Ch. 540 (*cit.*), *per* Moulton, L.J., at 560, and Buckley, L.J., at 565, 569, and 570. In *Kelly* v. *National Society of Operative Printers' Assistants* the expulsion of the members involved property rights, and property rights were not struck at by the Trades Union Act 1871, sec. 4. The action was excluded by rule 8 of the Association. Consent in writing was not a condition-precedent to arbitration. It was simply a mode of setting the arbitration machinery to work. The rule required matters in dispute to be submitted to the arbitration committee, but to get redress the parties must bind themselves in writing. Where, as in the present case, there was a domestic scheme for settling disputes, the domestic tribunals must be exhausted before resort could be had to the Court—*Andrews* v. *Mitchell*; *Cox* v. *Hutchinson*, [1910] 1 Ch. 513; *Amalgamated Society of Railway Servants* v. *Osborne*, [1910] A.C. 87, *per* Lord Macnaghten at 97; *Catt* v. *Wood*, [1910] A.C. 404; *M'Gowan* v. *City of Glasgow Friendly Society*.

On 25th November 1920 counsel for the defenders and respondents lodged a minute stating that the said Associated Ironmoulders of Scotland had in June 1920, along with other two societies, formed themselves into the National Union of

Foundry Workers of Great Britain and Ireland, with their registered general office in Manchester and a branch office in Glasgow, and he craved the Court to sist the said National Union as defenders and respondents in room and place of the said Associated Ironmoulders of Scotland. The Court sisted the National Union of Foundry Workers of Great Britain and Ireland as craved.

At advising—

LORD JUSTICE-CLERK — The pursuers in this action are members of the defending trade union. The trade union has passed a resolution imposing fines on the pursuers in respect of certain actings or conduct on their part as members of the union. The pursuers challenge the defenders' right to impose the fines, and contend that the defenders have acted *ultra vires*, and that the procedure adopted by the defenders has been in certain respects illegal. It is not stated on record that the defenders have sought in any way to enforce payment of the fines, or that they can be enforced; or that the defenders propose to take any ulterior steps in respect of the resolutions imposing the fines; or that it is competent to the defenders to take any such steps, nor are any rules to this effect set out or referred to on record. The defenders plead that, in respect of the provisions of the Trades Union Act 1871, and particularly section 4 thereof, the action cannot be maintained. The defenders in their plea also founded on the Trade Disputes Act 1906. The Lord Ordinary has not dealt with this later statute, and no argument was addressed to us on this subject. I do not, therefore, find it necessary to deal with the plea founded on the 1906 Statute.

The first two conclusions of the action are supported by one plea, which is in these terms:—"The resolution fining the pursuers having been illegal, oppressive, and *ultra vires*, decree should be pronounced in terms of the first and second conclusions of the summons." The plea is directed entirely against the resolution imposing the fine. The first conclusion, so far as this plea is concerned, is treated as merely ancillary to the second. It is very difficult to follow the pleadings with regard to the first conclusion. Reference is made in condescendence and answer 4 to an agreement between the majority and minority of the shop that in any decision come to the minority should support the majority. But that is not the agreement referred to in the first conclusion, which is between the pursuers and the defenders. Condescendence 9 as originally framed seems to have been in these terms:—"There is no rule of the Association to the effect that the majority of members in a shop are entitled to dictate to the minority. Nor is there any agreement between the pursuers and defenders to that effect. The pursuers were accordingly under no agreement to conform to the decision of the majority of those voting at the shop meeting. In other shops the minority did not conform to the decision of the majority but no proceedings were taken nor fine imposed in these cases." All that is said in answer 9 relative to these averments is that the rules are referred to, beyond which no admission is made. In the course of the argument before us we were not referred by either party to any rule or agreement on the point, nor was it maintained by the defenders that there was any such rule or agreement. If there had been any such rule I think it should have been specifically referred to on the record and brought under our notice in the argument. We were not so referred, and therefore I hold there is no such rule. There is no reference on the record by the defenders to any such agreement, nor was any argument addressed to us as to the existence of any such agreement. This declaratory conclusion has in terms no reference to the fines in question. It is, on the pleadings and arguments addressed to us, non-controversial, and in my opinion it is not a conclusion in terms of which, according to our law and practice, we can pronounce decree —*Gifford*, 7 S. 854; *Lyle*, 9 S. 22.

That result, however, does not, in my opinion, in any way affect the second conclusion, which is composite in its character. First it asks a declarator that a resolution of the district committee, confirmed by a general meeting and by the executive council, whereby it was resolved to fine the pursuers, was null and void. Second, that the minutes containing said resolution and the confirmation thereof should be reduced; and third, that the defenders should be interdicted from carrying into effect or acting on said resolution.

The Lord Ordinary dealt with the action as being substantially one to reduce the resolution fining the pursuers, and in so doing I think he was right. The whole purpose of the action is to get rid of the resolution imposing fines on the pursuers. In his note the Lord Ordinary says—"The question which the Court is called on to consider in the first instance is not the regularity or justice of the proceedings, but whether the matter is one in which the Court can interfere. Under section 4 of the Trades Union Act 1871 the fine complained of is not enforceable. So far as legal enforcement goes the fine is a nullity. The pursuers set forth no patrimonial injury other than the non-enforceable fine. It may be that consequences may follow or have followed its infliction or its non-payment, but these are not set forth, and it is not for the Court to hunt through the rules to find them, or to judge of their applicability in the circumstances. In these circumstances I am of opinion that an action to try the validity or regularity of the resolutions cannot be entertained."

The pursuers have not asked leave to amend their record, and in their argument they did not refer us to any rules such as those desiderated by the Lord Ordinary, even if such a reference would have been effectual, without its being put on record. In my opinion the pursuers have neither set out on record nor advanced in argument (though the latter alternative without the former would not, I think, avail them) any

patrimonial interest which would support this action or entitle the courts of law to entertain it. The sole ground of action is that the pursuers have been subjected to a resolution imposing a fine or penalty payable to their trade union. If there is an agreement making the pursuers liable to such a penalty or fine the Court cannot entertain proceedings to enforce the agreement. If there is no agreement to that effect the Court cannct be appealed to to enforce payment of the fine, and the pursuers do not aver that the defenders can, or propose to, take any steps or procedure outwith the courts of law to make the imposition of the fine in any way effective, nor do they indicate the nature of such proceedings, even in their conclusion for interdict. I am of opinion that the pursuer's averments in support of the second conclusion are irrelevant.

If there is any separate case for the third or fourth conclusion, it was not indicated to us in the argument. Neither of them has any substance in itself apart from the second conclusion. At best they would only afford grounds for bolstering up that conclusion. The third conclusion asks an abstract declarator on which nothing is to follow, and the fourth conclusion is only designed to establish a further plea in support of the second conclusion.

If I am right in the above views it follows that the action must be dismissed. The Lord Ordinary has, however, also proceeded on the arbitration clause contained in rule 8. I do not think that would in any event, according to our practice, have resulted in the action being dismissed, but only in its being sisted. But there is no averment that the condition necessary to bring the arbitration clause in rule 8 into operation has been complied with, and indeed it was admitted that no such obligation had been granted. I would not have been prepared therefore to dismiss the action on the ground of the arbitration clause in rule 8. No argument was addressed to us on the arbitration clause in rule 3 (7), which rule, indeed, though referred to in the condescendence, is excluded from the defenders' third plea.

We had a full argument and a large citation of authorities on the general bearing of section 4 of the 1871 Statute. I do not, however, feel that I could satisfactorily deal with the case from that point of view without proof, though I see great difficulty in the pursuers succeeding even after a proof, having regard to the terms of section 4 of the statute. The defenders, no doubt, make important admissions, but there are still left serious disputes on matters of fact on which I think we would require to make up our minds. Questions also arise as to the import and effect of some of the rules, *e.g.*, rule 3 (7), as to which also I think we ought to have the fuller knowledge which a proof would give before I should feel warranted in granting decree even to a limited extent in favour of the pursuers. I am of opinion that the reclaiming note should be refused.

LORD DUNDAS—The defenders plead, and the Lord Ordinary has affirmed, that the action is irrelevant. I agree with his Lordship. The operative conclusions of the summons are for reduction of a resolution by which the pursuers were (as they allege, unjustly and illegally) fined, and for interdict against it being carried into effect, acted on, or enforced. The pursuers urged that the object of the action was, quite apart from this matter of fining, to raise a wide general question as to men's right to work free from any dictation by a majority to a minority in any shop. But a scrutiny of the pursuers' summons, condescendence, and pleas-in-law makes it apparent that the first declaratory conclusion, upon which so much reliance was placed, is truly introductory to the second, and is inseparable therefrom. Their first plea-in-law is that —"the resolution fining the pursuers having been illegal, oppressive, and *ultra vires*, decree should be pronounced in terms of the first and second conclusions of the summons." Stripped of the conclusions for reduction and interdict the first declaratory conclusion could not stand. The fine is the substance and root of the whole matter. Now there is good authority (*e.g.*, *Forbes* v. *Eden* (1867) 5 Macph. (H.L.) 36), to the effect that courts of law cannot entertain questions between members of a voluntary association, and that association anent alleged violation of the latter's rules, unless in so far as may be necessary for determining questions of civil right involving patrimonial interest. The Lord Ordinary points out, I think justly, that the pursuers have set forth on record no patrimonial interest other than the fine, which is admittedly unenforceable; and that although it may be that consequences—*e.g.*, expulsion, or the like—might follow upon its infliction and non-payment, these are not set forth, "and it is not for the Court to hunt through the rules to find them or to judge of their applicability in the circumstances." The criticism is I think, just, but notwithstanding the Lord Ordinary's pointed and suggestive observations, no motion was made by the pursuers at our bar to amend their record, nor were we referred to any rule as forming an answer to his Lordship's criticism. From this one might not unfairly infer that the pursuers are not in a position to make such averments as the Lord Ordinary desiderated; it is enough to point out that none such have been tendered. I agree with the Lord Ordinary that the action as it stands is irrelevant.

If I am right so far, there is an end of the matter—the action must be dismissed. We heard argument to the effect that in respect of the 4th section of the Act of 1871 the Court has no jurisdiction to entertain the case. It was urged that the summons, though framed in a negative and not in a positive form, was none the less in substance an action to directly enforce an agreement within the meaning of one or other of the sub-sections of section 4—(*cf. Smith*, 1919 S.C. 43, *Rae*, *ib.*

426). These matters, however, are not dealt with by the Lord Ordinary, and they could not in my judgment be satisfactorily disposed of without some inquiry into the facts. I therefore express no opinion in regard to them. I observe that the defenders, in branch (*b*) of their second plea-in-law, found also on section 4 of the Trade Disputes Act 1906 as excluding the jurisdiction of the Court, but as the Lord Ordinary has not dealt with that point, nor did we hear any argument upon it, I express no opinion upon the matter.

The Lord Ordinary has sustained the defenders' third plea-in-law. If their 4th plea was, as I think, properly sustained, this point is of little or no importance; but it is perhaps right to say that I do not agree with the Lord Ordinary in regard to it. In the first place the plea is badly framed; we should, I apprehend, at the most have sisted and not dismissed the action. But further, as I read rule 8, which appears to me to have been bungled, it is made a condition-precedent of submitting a "difference" to an arbitration committee that both parties bind themselves in writing to agree to its decision; and if this condition be not purified by both parties the "difference" cannot be so submitted. The pursuers decline to bind themselves in writing as required. No sanction is prescribed by the rules to compel such signatures, or to enforce the provision that arbitration "must" be resorted to. The result indicated was probably not intended by those who framed the rule—in which case I suppose it can be altered without much difficulty — but it seems to me to be the inevitable consequence of the clause as framed. This view was not presented to the Lord Ordinary, and indeed was not observed by the pursuers' counsel until it was suggested from the Bench during the discussion at our bar. But it is in my judgment fatal to the defenders' third plea-in-law.

For the reasons stated I think we ought to recal the Lord Ordinary's interlocutor in so far is it sustains the defenders' third plea-in-law, and *quoad ultra* adhere.

LORD SALVESEN—In this case both parties asked us to decide the question in dispute on the pleadings. Neither party asked a proof, although, on the other hand, neither would renounce probation. So far as there are differences as to the facts they do not seem to me to be material, or such as to render it expedient that they should be ascertained before the questions of law are disposed of.

Parties are agreed that in 1919 a question arose as to whether the 1st of May should be observed as a general holiday. No vote of the members of the association was taken, but the executive council published in the association's monthly report for April 1919 a recommendation by them that it should be so observed. In the Glasgow district in which the pursuers worked some of the shops took no action with regard to this recommendation, and worked as usual on 1st May. Other shops took a vote on the subject, and in certain shops majorities voted that work should be carried on on that date. In the shop of James Howden & Company, in which the pursuers were employed, there were 128 members of the association. A shop meeting took place, and at that meeting a vote was taken as to whether the members should observe the 1st of May as a holiday. 50 voted in the affirmative and 40 against, amongst the latter being the pursuers. The shop was kept open and the pursuers all worked as usual on the 1st of May. Their view was that it was a condition of their employment, as well as that of the other members of their trade, that they should give their employers one week's notice of their intention to leave work, and that they would have been in breach of this contract if they had acted on the recommendation of the executive council.

A shop meeting was thereafter held early in May at which it was decided that the pursuers should be reported to the district committee of the association for acting against the shop vote. This report having been made the district committee passed a resolution fining the pursuers 15s. each for working on said day. The pursuers thereupon appealed to the first general meeting of the members of the South-Western District with the object of having the decision reversed and the fine cancelled. The general meeting, however, affirmed the decision of the district committee. The pursuers thereupon appealed to the executive council, who refused to interfere with the district committee and confirmed the same. All these facts are made matter of admission, for I have eliminated from the pursuers' narrative the subsidiary points on which parties are not agreed. The pursuers have accordingly brought this action in order to have it declared that there is no warrant or authority in the rules of the association under which the decision of the majority of a shop either to work or not to work on any day is binding on the minority, and for reduction of the resolution by which they were fined. The rules of the association are produced and admitted.

We were referred to a great number of decisions which have been given by the law courts with reference to analogous disputes. I find it difficult to reconcile all these decisions, but I think the following propositions may be held as established. (1) The mere fact that the dispute is one between a member of a trade union and the trade union itself does not *per se* exclude the jurisdiction of the ordinary law courts. (2) An application of a member of a trade union to restrain the union from misapplying part of the funds by payments of strike money in cases not authorised by the rules is maintainable—*Yorkshire Miners' Association*, 1905 A.C. 256, in which an injunction was granted against the union. (3) Where the rules of a trade union are *ultra vires* and a member has been penalised for the breach of such a rule the Courts will give redress—*Amalgamated Society of Railway Servants*, 1910 A.C. 87. (4) A member of a trade union who has been expelled from membership for failure to comply with a rule of the trade

union which the Court regards as *ultra vires* may be restored against the resolution of the trade union so expelling him—*Osborne*, 1911, 1 Ch. 541. On the other hand (5) any legal proceeding at the instance of a member of the trade union which the Court may consider to be instituted with the object of enforcing an agreement for payment of a penalty to a trade union, and which is therefore excluded from the jurisdiction of the courts of law by section 4 of the Act of 1871, will not be entertained even where the dispute relates to the construction of a rule—*Rae*, 1919 S.C. 426. The ratio on which that decision proceeds is that the interpretation of the rules of a trade union, where these rules are reasonably capable of two interpretations, is a matter which the parties have agreed to submit, and as to which the tribunal which they have constituted is final.

In the present case the pursuers do not ask us to construe any of the rules of the association. They say there is no rule which subjects them to a fine or any other penalty because they have acted contrary to the vote of a majority of a meeting of members of a particular shop in which they happened to be engaged. They claim the right to fulfil their contract with their employer without being subject to the dictation of a majority of their fellow members in the shop in which they were employed. There is, admittedly, no express rule which deals with the case that has actually occurred. If there were, we might have to consider whether such a rule would be *ultra vires* of the particular union, with regard to which it is not necessary to pronounce any opinion. The defenders plead that such a rule is to be implied from the terms of rule 47, which provides "that the trade committee in each district has the right to fine or exclude any member whom they may consider working against the interests of the trade, or failing to act as they may instruct." I cannot think that such a matter as a man's freedom of action in matters that concern primarily himself can be left to implication. If this rule be taken literally it would seem to imply that the failure to obey any instruction by the trade committee, whether connected or not with the objects of the union, might be made the ground of fine or exclusion from membership, in which case the rule would be *ultra vires* and illegal, but this rule has no application to the powers that are claimed by a majority of the members of any trade shop to control the actings of a minority, and yet it was for this, and this alone, that the pursuers were fined. The case would have been precisely the same as if it had been decided by a majority in the shop that the whole members should attend or should not attend a particular public meeting, and some of them had acted contrary to the views of the majority. It might be otherwise if the rules had prescribed that in all matters upon which the members of a shop took different views the minority should be bound by the vote of the majority present at a shop meeting, for then the pursuers would have submitted themselves to the jurisdiction claimed, and could only have challenged the proceedings on the ground that they were *ultra vires* and illegal. No such question arises where there is no rule of the trade union on the subject.

I am not moved by the consideration on which the Lord Ordinary founds his judgment, namely, that the fine imposed on the pursuers cannot be enforced in a court of law. It does not follow that it is not enforceable by the trade union as against them by the retention of benefits to which they would otherwise have been entitled or by excluding them from membership. If such considerations should prevail I cannot see how the House of Lords could have entertained an action to have it declared that a levy for political purposes was illegal, or could have restored to membership a member of a trade union who had been illegally expelled. The levy itself could not have been enforced by the courts of law, and the method of enforcing by expulsion from membership on the ground of failure to pay the levy would, on the reasoning of the Lord Ordinary, not have been challengeable in a court of law. The House of Lords, however, has sustained the contrary view. I am therefore of opinion that the pursuers are entitled to decree in terms of the 1st and 2nd conclusions of the action.

In the view I have taken it is not necessary to consider the remaining conclusions. The arbitration clause, such as it is, is only a part of the contract between a member and the trade union, and compels the member only to submit to arbitration such matters as may reasonably come within the rules by which the contract is defined. The alleged failure of the trade union through their committees to comply with their rules, which are made the subject of the remaining conclusions, opens up a different chapter in this difficult department of law, which I do not think it is necessary to enter upon.

The only sharp dispute as to the facts which appears in the pleadings, namely, whether there was an agreement before the vote was taken at the shop meeting that the minority should fall in with the decision of the majority, is in my opinion not relevant to be admitted to probation. If there was such an agreement it was one entirely outside of the rules, and whatever remedies the other parties to that agreement, to wit the majority, may have are entirely open to them. The individual persons who formed the majority are not parties to the present action.

LORD ORMIDALE—The Lord Ordinary has held that the present action cannot be sustained, on the ground that the pursuers have set forth no patrimonial injury arising from the proceedings taken against them by the defenders other than an unenforceable fine. Under the Trades Union Act of 1871, section 4, as he points out, no action will lie for the enforcement of a penalty. The imposition of the fine in question is therefore, so far as a court of law is concerned, a *brutum fulmen*. It may be that the Society has ways and means of its own of indirectly exacting payment. It may be that its rules

make provision for further proceedings, by way of suspension or expulsion, being taken against recalcitrant members, and that such proceedings might result in such an invasion of the members' civil or patrimonial interests as the Courts would take cognisance of, but the pursuers do not aver that this is so, or that such proceedings must necessarily follow upon the refusal of a member to pay a fine. They state that they are aggrieved by the illegal and unfair manner in which they have been treated, and that they have been forced to raise the present proceedings to vindicate their rights; but the fine is the only thing they refer to on record of the nature of a pecuniary loss. In that state of the pleadings I agree with the conclusion arrived at by the Lord Ordinary, and think that the action must be dismissed.

That is enough for the disposal of the case, but the interlocutor of the Lord Ordinary sustains not only the defenders' fourth plea-in-law—their plea to the relevancy of the action—but also their third plea-in-law to the effect that the action is excluded by the arbitration clause, being rule 8 of the defenders' Society.

I am not prepared to sustain that plea.

1. I agree with your Lordship that the provision in rule 8 for the submission of differences to arbitration is subject to, and can only come into operation on the implement of what is plainly a condition precedent in these terms:—"That both parties bind themselves in writing to agree to the decision of the Arbitration Committee." That condition is not safeguarded by any sanction or compulsitor. It is left apparently to the option of the parties whether they will or will not so bind themselves in writing, and it is nowhere stated on record that either party—much less that both parties—have in the present case come under any such obligation. There can therefore be no arbitration under rule 8.

2. If the arbitration clause did apply, then the proper course would be to sist the present action until the determination of the reference, and not to dismiss it.

3. I am not prepared, as at present advised, to hold that, on what I may call the merits, the rule applies to the present dispute.

I should like to add that, on the assumption that the pursuers were entitled to raise the present action, and if the argument submitted by the parties on the question whether the Court's jurisdiction was excluded by the Trades Union Act 1871, section 4, fell to be considered, I should be unable to decide that question without inquiry into the facts about which the parties are still in dispute. I do not detail them, but I specially refer to the question whether there was any agreement come to by the members in the shop, prior to the vote being taken on the question of working or not working on 1st May, that the minority should be bound by the decision of the majority. The minutes also, while they are admitted by the parties, are by no means self-explanatory, and their bearing and effect would be rendered much more intelligible and certain by evidence.

I agree that our judgment should be in the form proposed by your Lordship.

The Court recalled the interlocutor of the Lord Ordinary in so far as it sustained the third plea-in-law for the defenders. *Quoad ultra* adhered to the interlocutor.

Counsel for the Reclaimers (Pursuers)—MacRobert, K.C.—A. R. Brown. Agents—Fyfe, Ireland, & Company, W.S., Edinburgh.

Counsel for the Respondents (Defenders)—Roberton Christie, K.C.—Duffes. Agent—James G. Bryson, Solicitor, Edinburgh.

Tuesday, December 14.

FIRST DIVISION.

(SINGLE BILLS.)

ANDERSON, PETITIONER.

Administration of Justice—Law Agent—Woman—Apprenticeship under Indenture Begun before the Passing of the Sex Disqualification (Removal) Act 1919—*Law Agents (Scotland) Act* 1873 (36 *and* 37 *Vict. cap.* 63), *secs.* 5 (2) *and* 7—*Sex Disqualification (Removal) Act* 1919 (9 *and* 10 *Geo. V, cap.* 71), *secs.* 1 *and* 2.

In a petition by a woman for admission as a law agent, *held* that her apprenticeship was not invalidated by the fact that it was begun prior to the passing of the Sex Disqualification (Removal) Act 1919.

Miss Madge Easton Anderson, M.A., LL.B., Glasgow, *petitioner*, presented a petition to the Court under the Law Agents (Scotland) Act 1873 and the Law Agents and Notaries Public (Scotland) Act 1891 to be admitted as a law agent. The facts and relative statutory enactments are fully set forth in the opinion (*infra*) of the Lord Ordinary (ASHMORE), who reported the petition to the First Division.

Opinion—"This is the first application of its kind under the Sex Disqualification (Removal) Act 1919 (9 and 10 Geo. V, cap. 71).

"The petitioner, a woman, is applying for admission as a law agent in Scotland on the ground that she possesses all the necessary qualifications.

"There is no opposition, and the only doubt which arises has reference to the statutory requirement as to service under indenture.

"In point of fact the petitioner has served an apprenticeship for the appropriate time, viz., three years, under indenture. The indenture, however, was entered into and the service under it was begun on 12th May 1917, whereas the Sex Disqualification (Removal) Act was passed only on 23rd December 1919. In 1917 no woman could qualify for admission as a law agent, and the Act of 1919 is not expressly made retrospective.

"In the case of *Hall* v. *The Incorporated Society of Law Agents*, 1901, 3 F. 1059, 38 S.L.R. 776, the petitioner Miss Hall, who had no degree in arts or law, was desirous