Wilson, Sons, & Company (*ubi sup.*) shipowners were held liable for injury to a workman (*i.e.*, a landsman) employed by them to unload their ship at a wharf in a dock. In *Owens* v. *Campbell, Limited* (*ubi sup.*) owners of a steamship were held not liable for an accident to a fireman when attending to the boilers. The ship was moored to a pontoon outside a dock, and was taking passengers on board previous to starting on her voyage. This is the most recent case on the subject, and was decided by the Court of Appeal after it had decided the case now before the House. I confess that I have great difficulty in reconciling the two decisions. Taking section 1 and section 7 together, both locality and nature of employment are important. To bring the present case within the Act, the plaintiff must prove (1) employment by the defendant, (2) that the defendant is an undertaker, *i.e.*, that the employment was on, in, or about a factory (in the statutory sense) of the defendant. The defendant here was not an undertaker; he was not employing the plaintiff in a factory of which he was the occupier within the meaning of the Act. In my opinion the appeal ought to be allowed.

Judgment appealed from reversed.

Counsel for the Appellants—Carver, K.C. —Dawson Miller. Agents—W. A. Crump & Son, Solicitors.

Counsel for the Respondent—Robson, K.C.—G. A. Scott. Agents—Burn & Berridge, Solicitors.

HOUSE OF LORDS.

Friday, April 14.

(Before the Lord Chancellor (Halsbury), Lords Macnaghten, Davey, James of Hereford, Robertson, and Lindley.)

YORKSHIRE MINERS' ASSOCIATION AND OTHERS *v.* HOWDEN AND OTHERS.

(On Appeal from the Court of Appeal in England.)

Trade Union—Misapplication of Funds—Action for Injunction by Individual Member of Union—Trade Union Act 1871 (34 *and* 35 *Vict. c.* 31), *sec.* 4, *sub-sec.* 3.

A miners' association, registered under the Trade Union Act 1871, made certain payments from its funds to its members, who were out of employment, in circumstances which involved a direct contravention of the rules of the association. *Held* (Lords Davey and James of Hereford *diss.*) that an action was maintainable by an individual member of the association against the association and its officers for an injunction to restrain such a misapplication of the funds, inasmuch as the action was not a legal proceeding instituted with the object of directly enforcing an agreement for the application of the funds of a trade union to provide benefits to members, within the meaning of the Trade Union Act 1871, section 4, sub-section 3.

The Trade Union Act 1871 provides as follows:—Section 4—"Nothing in this Act shall enable any Court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely— . . . (sub-section 3) any agreement for the application of the funds of a trade union (*a*) to provide benefits to members."

Disputes having arisen between the miners employed in the Denaby and Cadeby Collieries Company's pits and their employers, which resulted in a strike or lock out, the Yorkshire Miners' Association, registered under the Trade Union Act of 1871, made certain payments of "strike pay" to those of its members who had been thrown out of employment. Howden, a member of the Yorkshire Miners' Association, brought an action against the association and their general treasurer and branch treasurers for an injunction to restrain the defendants from misapplying the funds of the association or dealing with them in a manner contrary to the rules of the association and the provisions contained therein. While the case was before the Court of Appeal, the trustees of the association were added as defendants. It was clear from a consideration of the rules of the association and the special facts and circumstances in which the strike had occurred that the payment of strike pay was a direct violation of the rules of the association, and the real point at issue in the case was whether the action was excluded by section 4, sub-section 3, of the Trade Union Act of 1871.

The Court of Appeal (Williams, Stirling, and Mathew, L.JJ.), upon an application by the Yorkshire Miners' Association for a judgment or for a new trial in an action tried by Grantham, J., with a jury, held that the action was not excluded and granted an injunction, and the Yorkshire Miners' Association appealed to the House of Lords.

At delivering judgment—

Lord Chancellor (Halsbury)—In this case the plaintiff, a member of the Yorkshire Miners' Association, a trade union registered under the Act of 1871, complains that the funds of that society are being diverted from their proper object, and seeks by injunction to prevent that misapplication. It appears to me that the sole question in this case is whether the plaintiff is at liberty to bring the action, or whether the action is one which is prohibited by the provision in the Act of 1871, which provides that nothing in the Act shall enable any court to entertain any legal proceedings with the object of directly enforcing or recovering damages for the breach of any of the following agreements,

and then the agreements are inserted which the court are in effect prohibited from directly enforcing. But for the differences of judicial opinion which have arisen upon the construction of this provision, it would have been, to my mind, enough to say that this action does not seek directly to enforce any one of the agreements referred to in the statute or to seek damages for their breach; but inasmuch as the question has been raised and argued at great length, I do not feel at liberty to dispose of it in so summary a manner. The question is not a new one. It was raised twenty-three years ago before Fry, J., in *Wolfe* v. *Matthews* (47 L.T. Rep. 158; 21 Ch. Div. 194), and in my judgment rightly decided. Fry, J., says upon the exact question which is here in debate—"An order that the defendant should pay money to the plaintiff would be a direct enforcement of the agreement for the application of the funds, but all that is sought here is to prevent the payment of the money to somebody else. Either that is no enforcement of an agreement at all or it is an indirect enforcement." I cannot escape from this reasoning, nor do I see any inconsistency between that decision and the case before Jessel, M.R. (*Rigby* v. *Connol*, 42 L.T. Rep. 139; 14 Ch. Div. 482); and a long line of judicial decisions has recognised the distinction which the learned judge himself pointed out between that case and the decision given by Jessel, M.R. I am bound, however, to say if that decision ever came up for review I think that it would have to be considered whether it does not strike the word "direct" out of the statute. I do not think that if this provision is out of the way the plaintiff's claim can be seriously contested. That the proposed use of the funds which he seeks to restrain is a flagrant violation of their own rules seems to me to be proved, and the language and object of the 4th section of the Act seems to me not at all what the argument on the other side assumes it to be. That argument seems to assume that the object of the enactment was to keep the trade unions out of the jurisdiction of the court altogether. I do not think that it does anything of the kind. It recites with great care what the courts are not to interfere with, and that exemption from their jurisdiction is very precisely limited. It seems to me that it would have been a very colourable concession to the trade unions if the Legislature had left their funds, which under the arrangement made constituted a trust for particular purposes, without any protection against those entrusted with the distribution of their funds. That the court should not interfere with their distribution according to their own rules when such distribution was within the purposes of the trust is one thing, but that there should be no recourse to the courts where it is threatened to divert them is another matter. What can be the object of registering, as is required by the 3rd section, the purposes for which the funds are available? The trustees are the persons in whom the property is vested. What is there to prevent the operation of the ordinary law which protects trust property from being diverted from its proper objects? Of course, there is nothing except the section to which I have referred; and surely that section cannot mean that because the preservation of the property in trust is one that indirectly will benefit the beneficiaries, therefore it is a suit for enforcing one of the recited agreements which certainly in their terms are inapplicable. I therefore move your Lordships that the appeal be dismissed with costs.

LORD MACNAGHTEN—I cannot help thinking that if the plaintiff had only taken the trouble to indicate in his writ or in a statement of claim the ground of his complaint, and if, instead of laying his case before a jury, he had resorted to a tribunal more familiar with the subject, and perhaps better fitted to deal with it, some confusion and a good deal of delay and expense would have been avoided. The case in itself when understood is, I think, simple enough. Was the matter of which the plaintiff, as a member of the Yorkshire Miners' Association, complains, beyond the powers of the association? Was the plaintiff in his isolated position—one member of the association standing alone—entitled to sue? Is the fact that the association is a registered trade union a bar to relief in such an action? These, I think, are the only questions to be considered, and there is only one of them, as it seems to me, that gives rise to any difficulty. The Trade Union Act 1871 requires that the rules of every registered trade union shall contain provisions in respect of the several matters mentioned in the 1st schedule to the Act. Among those matters are included "the whole of the objects for which the trade union is established," and "the purposes for which the funds thereof shall be applicable." Now, the rules of the Yorkshire Miners Association as registered set forth in plain and distinct language the objects of the association and the purposes for which its funds may be applied. Clause 3, sub-section (*j*), declares that the whole of the moneys received by the association shall be applied in carrying out the objects specified in the preceding sub-sections in accordance with the rules. In an earlier clause (clause 1) there is an express direction that the funds of the association shall not be appropriated to any other use. It is therefore beyond the powers of the association to apply its funds or any part of them to any purpose not authorised by its rules. Was, then, the payment of strike money in the present case authorised by the rules of the association? On this point your Lordships did not think it necessary to call upon the respondent. The question is fully discussed and completely disposed of by the opinions of the learned Lords Justices in the Court of Appeal, and I have nothing to add to what they said. Then if the action of the association, which was challenged by the plaintiff, was beyond the powers of the association, it seems clear, apart, of course, from any objection arising under the Act of 1871, that in an unincorporated society

like this any single member suing alone would have a right to resist it and to call upon the Court to interpose by injunction. That was established in this House in the case of *Simpson* v. *Westminster Palace Hotel Company* (2 L.T. Rep. 707, 8 H.L.C. 712), and is, I apprehend, beyond question. So far it is all plain sailing. The difficulty, such as it is, is found in the Act of 1871. But the difficulty, if I may presume to say so, is, I think, not so much in the language of the Act as in the language of the learned Judges who have expounded it. The commentaries are in fault rather than the text. The Act of 1871 relieves trade unions from consequences which would otherwise result from the purposes of the union being in restraint of trade. That circumstance by itself is not to render void or voidable any agreement or trust. But, on the other hand, this concession to modern ideas is not to make all trade union contracts enforceable at law. Nothing in the Act is to "enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of" any of the several agreements which the enactment goes on to specify. Now, the first question that arises on this part of the enactment is, What is the meaning of the expression "directly enforcing"? I cannot think that the Legislature intended to strike at proceedings for directly enforcing certain agreements, leaving untouched and unaffected all proceedings (other than actions for damages) designed to enforce those particular agreements indirectly. To forbid direct action in language that suggests that the object of the action so forbidden may be attained by a side wind, seems to me somewhat of a novelty in legislation. I venture to think that the word "directly" is only put in to give point to the antithesis between proceedings to enforce agreements directly and proceedings to recover damages for breach of contract, which tend, though indirectly, to give force and strength to the agreement for breach of which an action may be brought. However, I need not dwell on this point, for it seems to me that for the present purpose the result must be the same whatever meaning or effect may be attached to the expression "directly." The agreements which the Court is not at liberty to deal with are arranged under five headings or classes. The first class comprises a set of agreements with which it would be obviously inexpedient or impossible for the Court to deal. In the second class is included "any agreement for the payment by any person of any subscription or penalty to a trade union." One would expect to find next some such clause as this—"any agreement for the payment to any member of any benefit assured by the rules of the trade union"—following the language of the 2nd clause of the 1st schedule to the Act. If that had been the language we should have had a clause pointing to a personal benefit conferred on a member, which is what Vaughan Williams, L.J., takes sub-sect. 3 (*a*) to be. It no doubt includes that, but I think it goes much further. The words are—"3 Any agreement for the application of the funds of a trade union—(*a*) to provide benefits to members." At first sight it is not very easy to see why the clause took this shape. I cannot help thinking that it comes from the apprehension which the leaders then felt of the extreme danger to their combinations which might result from any attempt to separate the funds of the union, distinguishing between those collected or intended for benevolent purposes and those collected or intended for ordinary trade purposes. Then I come to the question, What was the "object" of the present litigation? Was it to enforce an agreement for the application of the funds of the union to provide benefits to members? I should say certainly not. The object of the litigation was to obtain an authoritative decision that the action of the union which was challenged by the plaintiff was not authorised by the rules of the union. The decision might take the form of a declaration or the form of an injunction, or both combined. But the decision, whatever form it might take, would be the end of the litigation. No administration or application of the funds of the union was sought or desired. The object of the litigation was simply to prevent misapplication of the funds of the union, not to administer those funds, or to apply them for the purpose of providing benefits to members. I am aware that in expressing this view I am dissenting from the opinion of Jessel, M.R., in the case of *Rigby* v. *Connol* (*ubi sup.*) In that case, after referring to sec. 4, sub-sec. 3 (*a*), of the Act of 1871, which is quoted inaccurately by the learned judge, or it may be by the reporter, his Lordship makes the following observation:—"I am satisfied that the agreement contained in the rules is an agreement to provide benefits for members, and that if I decide in favour of the plaintiff I directly enforce that agreement, because I declare him entitled to particpate in the property of the union, and the only property they have is their subscriptions and fines, and I restrain the society from preventing that participation. It seems to me that is directly enforcing that agreement; in fact, it is in substance directing and enforcing the specific performance of it, nothing more or less." There, I think, the learned judge departs rather widely from the language of the enactment. If the Act had said that no court should enforce an agreement to provide benefits for members, there would have been an end of the matter. But the Act does not say that, nor, I think, anything like it. It is not every trade union agreement that the Court is forbidden to enforce. The effect of Jessel, M.R.'s observations in conjunction with the cases of unenforceable contracts specified in the Act make trade union agreements one and all alike unenforceable. There is really nothing left. The Act, however, proposes only to strike at certain agreements, leaving, at least apparently, the jurisdiction of the Court untouched as to everything else. In making these remarks I do not wish to be understood as

expressing any doubt as to the correctness of the actual decision in *Rigby* v. *Connol.* The proceedings which the plaintiff has instituted do not, I think, involve the administration of the funds of the Yorkshire Miners' Association collected for benevolent purposes or the application of those funds to provide benefits to members. Nor was the litigation, as it seems to me, instituted with that object. It was simply an application to the Court to determine the true construction of certain rules which had been, as the plaintiff contended, misconstrued by the executive of the association. I need hardly point out how disastrous it might be to the funds of this union, and to trade unions generally, if there were no means of preventing the managers and masters of the union from diverting its funds from their legitimate and authorised purposes. One word as to the form of the order under appeal. I think it is most objectionable, and I trust that it will not form a precedent. I would suggest that the order might go in the following terms:—"Declare that the payment of strike pay to the financial members of the Yorkshire Miners' Association in pursuance of the resolution of the council of the said association passed on the 24th July and confirmed on the 11th August 1902 was in contravention of the rules of the association, and that the said resolution purporting to authorise such payment was *ultra vires* and illegal." I think, and I may add that the Lord Chancellor agrees with me in thinking, that the order should be varied by prohibiting directly and in terms the diversion of the funds of the union to the particular purpose which the Court holds to be unauthorised. This proposed variation, if your Lordships should accept it, would, of course, make no difference in the costs of the action, which I think should be borne by the appellants both here and below.

LORD DAVEY—The plaintiff in this action is an individual member of a trade union registered under the provisions of the Trade Union Act 1871, and he sued the association, the general treasurer, and the two treasurers of the branches concerned, for an injunction to restrain them from misapplying the funds of the union and dealing with the same contrary to the rules of the said association and the provisions contained therein. The misapplication complained of is the payment of strike pay to certain members of the union who were on strike under circumstances which did not entitle them, according to the rules of the union, to the receipt of that benefit. I have come to the opinion that this action cannot be maintained by the plaintiff. The question turns on the proper construction to be put on the language of section 4 of the Act of 1871. By section 3 of that Act it is enacted that the purposes of any trade union shall not by reason merely that they are in restraint of trade be unlawful so as to render void or voidable any agreement or trust. The language is not quite accurate, but I think that the meaning and effect is to enable such actions to be brought on any agreement or trust affecting the union, or the rights of the members *inter se*, as might have been brought if the purposes of the union were free from the objection that they are in restraint of trade. By section 4, however, it is enacted 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 any of the following agreements, namely (*inter alia*), (3) any agreement for the application of the funds of a trade union (*a*) to provide benefits to members, subject to a proviso that nothing in the section is to be deemed to constitute any of the before-mentioned agreements unlawful. By section 8 all the real and personal property of the trade union is vested in trustees, and (9) the trustees or any other officer of the trade union who may be authorised to do so by the rules thereof are empowered to bring or defend any action, suit, prosecution, or complaint in any court of law or equity touching or concerning the property, right, or claim to property of the trade union. It is not denied that this action could not be maintained under the common law. The question therefore comes to be, whether it is "authorised by the provisions of section 3 of the Act," as qualified by the provisions of section 4. I assent to the very just observation made by Mr Lush in the course of his able argument, that one should endeavour to give a meaning to every word in a statutory enactment. And I will endeavour to do so in construing the words of the section in question. I am of opinion that "an agreement for the application of the funds of a trade union to provide benefits to members" means an agreement to the benefit of which the members as such are entitled, and not merely a particular agreement with the individual who sues. Such an agreement is to be found in the rules by which the association is governed. These rules, in fact, form the social contract between the members, and every person on becoming a member accedes to them and is bound by them, and, on the other hand, is entitled to whatever benefits are thereby secured for members. The particular rules in this case are those numbered 64 and 65, which prescribe the conditions under which a member may become entitled to what I have called "strike pay." Rule 3 (*j*) prescribes that "the whole of the moneys received by this association shall be applied to carrying out the foregoing objects according to rules." But, even if there were not this rule, I should be of opinion that rules 64 and 65 are exclusive, or (in other words) that according to their true construction they mean that strike pay shall not be given except under the prescribed conditions, as well as that it may be given under those conditions. And I think that the negative stipulation is just as truly and as much part of the agreement for application of the funds to provide benefit to members as the affirmative stipulation. The next question is, What is "the object" of this

proceeding? I am of opinion that this must be discovered from a consideration of the relief sought, the grounds upon which it is sought, and the right of action of the plaintiff which entitles him to that relief. I do not think that any court is entitled to look outside the proceedings themselves, as Mr Lush invited us to do, and consider what were the motives of the plaintiff, or those who are promoting the action, or the ulterior purposes or consequences which they hope to attain by means of the action. Such an inquiry would, in my opinion, be wholly inadmissible in applying this section. I cannot doubt that the object of this action is to enforce what I have called the negative stipulation in the agreement, and that it is in fact and in truth for specific performance of the agreement. In *Lumley* v. *Wagner* (1 De G. M. & G. 604) Lord St Leonards, L.C., could not compel Miss Wagner to sing for Mr Lumley, but he could prevent her from singing elsewhere in breach of her agreement. Is it doubtful that the Court was thereby directly enforcing the performance of the agreement in the only manner in which it could be enforced by a court of equity. The words are not, I will observe, "to enforce the application or distribution," but to enforce an agreement for those purposes. This is an action for compelling the council and other officers of the union to observe and govern themselves by the terms of the agreement contained in the rules, and I am at a loss to understand what right of action the plaintiff had except on the allegation that the payments sought to be restrained were contrary to the rules. This writ, in fact, is properly framed on that hypothesis. It is, of course, easy to say that the action is in one aspect for the execution of a trust and not for enforcing the agreement. The association not being an incorporated body the appointment of trustees and the powers given to them are the machinery provided by the Act for carrying out its purposes. The trustees, however, have no powers of management. No complaint is made against them, and they were not even originally defendants to the action. They were only added in the Court of Appeal with the intention of getting over a technical defect, whether effectually or not I will discuss presently. The real defendants are the association itself and its executive officers representing the majority of the members opposed to the views of the plaintiff, and the only injunction asked for by the writ was against them. I cannot regard the trustees when added to the record otherwise than as merely formal and passive defendants, and I do not think that the addition of the names of the trustees to the record has had the effect of converting the action into a trust action, which it clearly was not as the action was originally framed. The trust is but the machinery devised for securing the performance of the agreement and the other purposes of the association, and if you are entitled to treat an action like the present one as one for the execution of a trust and not for the direct enforcement of the agreement, there is no conceivable case (at least I cannot think of one) coming within the description in section 4 (3) (*a*) of which you might not say the same, and the enactment would become quite inoperative. The form of the action would not affect the substance of it, but in this case the form expresses the substance. It will be clear from what I have said that, in my opinion the object of this action is that of directly enforcing the agreement in the rules. I wish to give full force and effect to that word "directly," and I think that it means this—Where the primary object of the action is to enforce the agreement, and the right of the plaintiff to maintain the action is founded on his right to have the rules observed, I think that the action must be deemed to be one for directly enforcing the agreement. But where the right of action is of a different character, and the construction and effect of the rules (if it comes in at all) only comes in as evidence in support of the particular relief claimed, I think that the action would not be one for "directly" enforcing the agreement. I will illustrate my meaning thus—I am disposed to think that the trustees might have maintained this action against the original defendants under the powers given to them by section 9 of the Act, and this is an answer to an argument of counsel that, if the appellants were right, the members of the association were without remedy to prevent a diversion of their funds. In this union the trustees must be members, but it is not necessary under the Act that they should be so. They would sue as owners of the property of which they are the statutory owners and guardians. In an action to recover or protect the property of the union the construction or effect of the rules might not come into question at all, as for instance, where the action was against a treasurer or other executive officer who set up a claim to the ownership of the property or money in question, or threatened to deal with it as his own. But in other cases the rules might be material, but only as evidence in support of the claim. In such cases I think the object of the action might properly be described as only indirectly for enforcing the agreement. It is a satisfaction to me to know that the opinion which I have come to has the support of Jessel, M.R., in *Rigby* v. *Connol* (*ubi sup.*) and Denman, J., in *Duke* v. *Littleboy* (43 L.T. Rep. 217). In *Rigby* v. *Connol* the plaintiff alleged that he had been wrongfully expelled from a trade union, and claimed a declaration that he was entitled to participate in the enjoyment of the property and effects of the trade union and in its rights, privileges, and benefits, and for an injunction to restrain the defendants from excluding him. Jessel, M.R., dismissed the action. In his judgment the learned judge said—"I am satisfied that the agreement contained in the rules is an agreement to provide benefits for members, and that if I decide in favour of the plaintiff I directly enforce that agreement because I declare him entitled to participate in the property of the union, and the only property they

have is their fines and subscriptions, and I restrain the society from preventing that participation. It seems to me that it is directly enforcing that agreement—in fact, it is in substance directing and enforcing the specific performance of it, nothing more or less." And after pointing out that the rules contained stipulations in restraint of trade, he added—"If nothing in the Act, therefore, will assist the plaintiff, he must still be in the position of a member of an illegal association coming to a court of justice to assist him to enforce his rights under that illegal association. If that is so, it is impossible for me, and I do not think it ever was intended by the Legislature, looking to the terms of the Act of Parliament, to enable the courts to interfere on behalf of the members of these societies for the purpose of getting relief *inter se* with respect to rights and liabilities contrary to the Act." I cannot myself see any distinction in principle between an injunction to restrain the exclusion of the plaintiff from a right to participation in the property, and one to restrain the removal or diversion of the property in which he claims a right to participate. *Rigby* v. *Connol* has been followed by the Court of Appeal in *Chamberlain's Wharf Limited* v. *Smith* (83 L.T. Rep. 238, (1900) 2 Ch. 605). In *Duke* v. *Littleboy* the action was by the executive council of a trade union association against the executive officers and trustees of a branch of the society for an injunction to restrain the defendants from dividing funds belonging to the central society amongst members of the branch contrary to the rules. The central executive had refused to sanction a strike by members of the branch. It was attempted to distinguish the case from *Rigby* v. *Connol* on the same grounds as have been argued before your Lordships. Denman, J., held that it was too great a refinement when you looked at the true object and the words of the Act, and he concluded his judgment in these words—"*Rigby* v. *Connol* was an application to restore a member. This is to prevent funds being dealt with in any other manner except according to the rules, and I think it would be frittering away the meaning of this clause if I were to put any other construction upon it than that this is a proceeding to directly enforce an agreement for the application of the funds of a trade union to provide benefits for members." On the other hand, *Wolfe* v. *Matthews* (*ubi sup.*) is relied on by the respondents and has been followed in the courts below. In that case the plaintiffs sued on behalf of themselves and other members of a trade society to restrain the defendants from carrying out an amalgamation with another society, and pleaded that the defendants intended, unless restrained by injunction, to pay money out of the funds to the amalgamating society. Fry, J., held that the judgment of Jessel, M.R., did not apply to the case. He said—"An order that the defendants should pay money to the plaintiffs would be a direct enforcement of an agreement for the application of the funds, but all that is sought here is to prevent the payment of the moneys to somebody else. Either that is no enforcement of an agreement at all or it is an indirect enforcement. To take a simple case, if there is a contract by A to B to pay £100 to B, that contract is directly enforced by a judgment of the court directing A to pay B, and the contract is only indirectly enforced, if at all, by a judgment restraining A from paying the money to someone else. It is only by a stretch of language that such an order can be said to enforce A's contract; the utmost that can be said is that it is then more than likely that A will pay to B." I never differ from Fry, J., without great hesitation, but in this case I must frankly say that I do not follow his reasoning. Of course a creditor cannot restrain his debtor from disposing of his money until he has recovered judgment and issued execution. But if the learned judge means by his illustration an earmarked bag of sovereigns which A has contracted to deliver to B and no one else, I take the liberty of saying that an action to restrain A from delivering it to a third person would clearly be one for directly enforcing the agreement, and that seems to me to be the only way of making the illustration relevant to the case then before the Court. The learned judge cannot have meant that an order for payment to the plaintiffs was the only mode of directly enforcing the agreement, and he appears to me to ignore the existence of the agreement that benefits should be given to members according to the rules and not otherwise. It is not, however, stated in the report that the amalgamation complained of was alleged to be *ultra vires*, and it may be that the action was founded only on the allegation that the amalgamation would be prejudicial to the plaintiffs by diminishing the funds applicable for their benefit. If so the learned Judge's reasoning is intelligible, and his illustration would be relevant. But in that case the decision would be wholly irrelevant to the question now before your Lordships. In the Scotch case of *Amalgamated Railway Servants* v. *Motherwell Branch* (7 R. 867) it appears from the statement of the case to have been on a closed record, but one of the learned Judges speaks as if the interdict granted was only to keep things *in statu quo* until the rights of the parties should be ascertained. It was, however, an action by trustees under section 9, to which, I think, different considerations may apply. If and so far as it is a decision against the opinion which I have already expressed on the construction of the Act, I think that it was wrongly decided. I gather from Stirling, L.J.'s judgment that he also felt some difficulty as to the respondent's right to maintain this action. But he thought that the analogy of the procedure in the Chancery Division, by which a shareholder is allowed to sue for his individual interest where the company refuses to sue to restrain the commission of an act which is *ultra vires* the company, ought to be applied to trade unions. I have some doubt whether, having regard

to the wide language in which the objects of the society are stated in rule 3, and the power of the members to alter the rules, the acts complained of were *ultra vires* the association or more than a breach of the regulations which the majority of the members might condone. But I will assume the former view to be the correct one. The suggestion of the learned Lord Justice might in that case get over an objection that the trustees were the proper plaintiffs, but it does not touch the present point, and you are brought back to the point from which I started, whether an action by an individual shareholder to restrain a breach of the agreement contained in the rules respecting benefits to members is not such an action as is described in section 4 (3) (*a*) of the Act. I must apologise for having troubled you at such great length, but as I have the misfortune to differ from the unanimous judgment of the Court below and from the majority of your Lordships, I thought it my duty to state the reasons for the opinion which I have formed, fully, even at the risk of trespassing on the patience of your Lordships. In my opinion the appeal should be allowed and the action dismissed with costs here and below.

Lord James of Hereford — I have entertained considerable doubt as to the decision that should be arrived at in this case, but in the result I have come to the conclusion that the appellants are entitled to succeed in their appeal. The circumstances under which this action has been instituted have already been fully stated to your Lordships, and I shall only briefly refer to them. The first question to be determined is whether the 4th section of the Trade Union Act 1871 prevented the action under discussion from being brought. That Act amounted to a very charter of legal existence. Before the passing of it trade unions had no legal recognition. The Act effected it, but at the same time did not afford access to the public legal tribunals for all purposes. For some purposes the trade unions were left to determine their own differences, and so section 4 provided "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 any of the following agreements:— . . . (3) An agreement for the application of the funds of a trade union (*a*) to provide benefits to members, or (*b*) to furnish contributions." Mathew, L.J., in his judgment, terms this section "a remarkable relic of prejudice." It was rather the result of great legislative timidity. If the legalisation of trade unions could no longer be resisted, a modified legalisation only, the Legislature said, should be conferred upon them. The courts of law should not be called upon to enforce certain rights of members amongst each other. Trade unionists must manage their own internal affairs as best they could amongst themselves. Now, your Lordships have to determine whether the plaintiff's action was duly brought before the Court, or whether it comes within the prohibition contained in section 4 of the Act of 1871. We must first ascertain the purposes for which the action was instituted. The record affords us but little assistance. Save the writ there are no pleadings. But from the writ we gather that the action was brought by the plaintiff as a member of a registered trade union against that union and its officers for the purpose of restraining them by injunction from misapplying the funds of the association contrary to its rules and the provisions contained therein. But the plaintiff, on his evidence given at the trial before Grantham, J., stated that he had brought the action because, being entitled to the benefit of the funds of the trade union, he desired to protect them and have them used in a right way and according to the rules of the association. The plaintiff also based his claim for an injunction on the ground that the defendants wrongly applied the funds of the association and intended to apply them in making payments to members of the union who had struck work, and that such strike was contrary to the rules of the association. In order to sustain the case the plaintiff had to rely upon the rules of the union. These rules form the constitution of the association, and by these terms all the members of it are bound. Both the member's contributions and the benefits which he is to receive are contributed by and dealt with under these rules—of which Nos. 2, 3, 62 and 64 are the principal in relation to this case. Rule 2 states — "These rules shall be for the government of the association and the protection of the members." Rule 3 sets out the objects for which the union was established—(*a*) To raise funds for mutual help; (*c*) to secure the fines and wages bargained for by the members, and to protect members when unjustly dealt with by the masters or managers; (*g*) to provide a weekly allowance for the support of members and their families who may be locked out or on strike; (*h*) an allowance to all full members, half members, and members' wives at death who are financially on the books; (*j*) the whole of the moneys received by the association shall be applied to carrying out the foregoing objects, subject to the rules. Then rules 64 and 65 provide for the conditions under which a strike may be constituted and carried on. Now these rules appear to me to constitute an agreement between the members of the union to the effect that it shall be carried on in accordance with the terms and conditions set out in such rules. It now remains to be determined whether the suit is a legal proceeding instituted with the object of directly enforcing an agreement for the application of the funds of a trade union to provide benefits to members. In substance the plaintiff is seeking to prevent the defendants from breaking the rules of the union—that is, from breaking the agreement created by those rules. He bases his

right to interfere upon the fact that he is entitled to participate in the distribution of the funds according to the rules. Vaughan Williams, L.J., says:—"The plaintiff does not claim a right to participate in the funds. There is no question as to his right to participate. He claims only a right to restrain misapplication of the funds." I do not think that this is correct. It is true that the plaintiff does not claim any immediate payment of money to him. But he does claim a right to participate in the union funds under circumstances that may arise, and it is to protect such right of full participation that he has brought this action. His whole contention is that if the defendants continue improperly to expend the funds for strike purposes he (the plaintiff) might be prevented from fully participating in them according to his right under the agreement contained in the rules. In order to secure the maintenance of the fund the plaintiff has no other weapon than the enforcement of the agreement. If he were to say Give me so much money under the rules, it is admitted that that would be an enforcement of the agreement; equally so, I think, if he says, Put so much money by to protect my rights within the rules. Then, if he says, Stop spending money in breach of the rules so that you may not deprive me of my rights, is he not equally enforcing the agreement? It cannot, I think, be said that in order to bring the action within section 4 the claim must necessarily be for money to be at once paid to the plaintiff, and if this be not the extent of the limitation I think that the present action comes within the true and correct reading of the section. I do not forget that the word "directly" is to be found in section 4 of the Act, and that effect has to be given to it. But this action appears to me to seek "directly" to enforce an agreement. The assertions on which the action is based are certainly direct. "I the plaintiff and you the defendants have entered into an agreement. You are about to break that agreement, I seek to prevent you, and I do so by asking the Court to enforce it." Your Lordships' attention has already been called to the authorities bearing upon this case. On the one hand, the judgments of Jessel, M.R., in *Rigby* v. *Connol* (when the plaintiff sought to restrain the trade union from expelling him), followed by that of Denman, J., in *Duke* v. *Littleboy*, are cited in support of the defendants' contention, whilst the plaintiff can rely upon the judgment of Fry, J., in *Wolfe* v. *Matthews*, and upon the judgment in the Scotch case of *Amalgamated Society of Railway Servants* v. *Motherwell Branch*. In my opinion the judgment of Jessel, M.R., which has been recognised by the Court of Appeal in *Chamberlain's Wharf* v. *Smith*, bears directly upon the question now before your Lordships. That learned Judge said—"I am satisfied that the agreement contained in the rules is an agreement to provide benefits for members, and that if I decide in favour of the plaintiff I directly enforce that agreement, because I declare him entitled to participate in the property of the union, and the only property they have is their fines and subscriptions, and I restrain the society from preventing that participation. It seems to me that it is directly enforcing the agreement; in fact, it is in substance directing and enforcing the specific performance of it, nothing more or less." In my opinion there is no valid distinction between a suit to prevent the plaintiff from being deprived of participation in the funds by excluding him from membership and a suit to prevent his being deprived of such participation by virtue of the funds being wrongly taken away and wrongfully applied to other purposes. For these reasons I have arrived at the conclusion that this action comes within section 4 of the Act of 1871, and cannot be maintained. This view renders it unnecessary that I should deal with other points raised in the case. My judgment is thus in favour of the allowance of the appeal.

LORD ROBERTSON—I am of opinion that the judgment appealed against is right. My construction of the statute is that adopted by the Court of Appeal, and I cannot usefully add to what has been said by the learned Judges there and in this House in support of that view.

LORD LINDLEY—Before the Trade Union Act 1871 was passed trade unions were unincorporated societies, not recognised as legal, and in that sense at least they were held to be illegal, on the ground that their objects were to restrain freedom of trade, and were against public policy. Neither courts of law nor courts of equity would recognise or enforce the rules of such societies, or the trusts on which their funds were held. By the Act in question trade unions were freed from the illegality which was the consequence of being regarded as against public policy (section 2). Their rules and trusts can no longer be treated as invalid by reason of their being in restraint of trade (section 3). They may be illegal, or unenforceable on some other ground, and if they are, the Act of 1871 does not in any way legalise them or affect them. But the Act of 1871 does more for trade unions than remove the consequences of being regarded as illegal societies; it allows them to a great extent to manage their own affairs free from the control of the ordinary courts of the country (section 4), and enables them to register themselves under a name (sections 13 and 14, and schedule 1), and to obtain summary redress against their officials in case of misconduct (section 12). Further, it enables them to hold property by trustees (section 8), and enables the trustees to sue and be sued in respect of such property (section 9). One thing, however, the Act of 1871 did not do. It did not incorporate trade unions even when registered under the Act with a name. A trade union holds property by trustees but, as it is not incorporated, there is no one legal person or entity in whom the beneficial interest in the property of a trade union is vested. The beneficiaries are its members collectively and severally. This is plain from section 8, which vests

the property of every registered trade union in trustees for the use and benefit of such trade union and the members thereof. A trade union is, and its name is only a convenient designation for, an unincorporated society of individuals, and this observation must not be lost sight of on the present occasion. Prior to the decision of this House in *Taff Vale Railway Company* v. *Amalgamated Society of Railway Servants* (*ubi sup.*) it was doubtful whether a registered trade union could sue or be sued in its registered name. The House decided that it could be so sued in an action for damages committed by its agents. But care was taken in that case to point out that a trade union is not an incorporated society, although it may be sued in its registered name. The Trade Union Act 1871 contains a carefully framed scheme to enable trade unions to acquire and to hold, through the medium of trustees, funds for the benefit of their members, who, as already observed, are expressly mentioned in section 8. Unless something can be found in the Act to the contrary, the natural legal inference would be that the ordinary equitable machinery for preserving the trust property, and for executing the trusts on which it is held, would be available for the members. Upon this point there is a valuable recent decision by Farwell, J.—*Stevens* v. *Chown* (*ubi sup.*)—where the older authorities will be found. But it is said that section 4 of the Act of 1871 expressly excludes the jurisdiction of the courts from interfering in this case. I confess that I cannot adopt that conclusion. Before turning to the section, let me remind your Lordships of what the object of this action really is, and what the judgment appealed from really does. The action is not to enforce a contract between the plaintiff and the defendants; its object is to vindicate a right of property. All trusts, except those created by statute or by will, may be said to be created by a contract between the parties to the instrument creating them. But those trusts can be enforced in equity by any person entitled to the benefit of them. A suit by a *cestui que trust* against his trustee is not what is usually understood as a proceeding to enforce an agreement; if it were, the suit could only be maintained by some person who was a party to the agreement creating the trust. But, further, the object of this action is not to distribute funds held in trust for the members of the trade union, nor to obtain payment of any money out of them, nor in any way to administer those funds. The plaintiff, who is a member of the trade union, and is beneficially interested in its funds, complains that those who have control of them threaten and intend to apply them to purposes not authorised by the rules of the association; and the whole object of the action is to obtain an injunction to restrain that intended misapplication of the funds. The order appealed from does this and, when properly understood, does no more. Owing to the absence of pleadings, and to the fact that the order was drawn up by someone not accustomed to the forms used in the Chancery Division, the order is not in terms directed to the specific misapplication which it is sought to restrain, but is in quite general terms. But this is of no real importance when once the true object of the action is understood. The order is not a first step to ulterior proceedings with a view to administration. The action is at an end, except as regards this appeal and any breach of the injunction granted. Such being the object of the action, and the effect of the order appealed from, let us see what there is in section 4 of the Act which excludes the jurisdiction of the Court to entertain the action. The words are—"Nothing in this Act shall enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements." Pausing here for a moment, the words just quoted suggest the following observations. The section extends not only to courts of law, but also to courts of equity; secondly, the section does not prohibit any court from exercising in any case any jurisdiction which it could have exercised before the Act passed; the section simply prevents any court from extending its jurisdiction and interfering in cases in which the Act would authorise interference if it were not for the direct prohibition contained in the section; and thirdly, no legal proceeding which might be taken if the section did not prohibit, is prohibited, except a legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of the specified agreements. The word "directly" is important, and limits the application of the section. Legal proceedings for other purposes than those specified are not prohibited, although they may indirectly affect agreements on which no action can be brought. Passing now to the agreements specified, those numbered 1, 2, 4, and 5 may be disregarded as clearly inapplicable to the present case. The third is the only one which has to be considered. The words are—"An agreement for the application of the funds of a trade union (*a*) to provide benefits to members, or (*b*) to provide contributions . . . or (*c*) to discharge any fine. . . ." I am myself quite unable to see that these words include such an action as that which has been brought in this case. The object of this action is not directly to enforce any agreement for the application of the funds of the trade union in any of the ways specified under the third head. The object of the action is —not to apply the funds—but to preserve them for future application; and to my mind this action is no more struck at by section 4 than is an action brought by the trustees for the recovery of the funds of the trade union from some person wrongfully in possession of them. The question for decision is not new. It came before Fry, J., in 1882 in *Wolfe* v. *Matthews* (*ubi sup.*), and was decided in accordance with the above view, and so far as I know that case has never been questioned, and has

always been considered right. A similar view was taken of the Act in Scotland in *Amalgamated Society of Railway Servants* v. *Motherwell Branch* (*ubi sup.*) It is not in conflict with any other decision unless it be *Duke* v. *Littleboy* (*ubi sup.*), decided by Denman, J., in 1880, but the object of the action in that case was wider than it was in *Wolfe* v. *Matthews* (*ubi sup.*), and wider than it is in this case. The cases in which the Court has refused to restore expelled members—namely, *Rigby* v. *Connol* (*ubi sup.*) and *Chamberlain's Wharf* v. *Smith* (*ubi sup.*)—are also distinguishable. The object of the action in each of those cases was directly to establish and enforce the plaintiff's rights as a member of the trade union to the benefits conferred on the members by the rules. Considering the object of the action, it appears to me to be competent for any member who has a beneficial interest in the funds of the union to sue to prevent their application to purposes not warranted by the rules as they stand. It is true that the rules may be altered, but it does not follow that the Court ought not to enforce the trust created by them as they stand. Stirling, L.J., has dealt fully with this point, and I agree with him. Upon the question whether the application of the funds of the society which has been restrained was authorised by the rules, I do not think it necessary to add anything. The strikers from the first were legally in the wrong, and they never got right. They cannot bring themselves within the rules. The appeal fails on all points, and ought to be dismissed with costs. I agree to the suggested form of the order.

Appeal dismissed.

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Counsel for the Trustees—Atherley Jones, K.C.—R. E. L. Vaughan Williams. Agents—Marsh, Sherwood, & Hart, Solicitors.

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HOUSE OF LORDS.

Friday, April 14.

(Before the Lord Chancellor (Halsbury), Lords Macnaghten, James of Hereford, and Lindley.)

SOUTH WALES MINERS' FEDERATION AND OTHERS *v.* GLAMORGAN COAL COMPANY AND OTHERS.

Contract—Breach—Damages—Contract of Service—Procuring and Inducing Breach—Action for Damages—Whether Absence of Malice a Defence.

Held that the fact that a federation of miners in inducing its members to break their contracts of service with their employers acted without malice and in the *bona fide* belief that the breach of contract would benefit both the miners and their employers, formed no defence to an action brought by the latter against the federation for damages for wrongfully procuring and inducing their workmen to break their contracts of service.

The Glamorgan Coal Company and the miners employed in their pits worked under an agreement known as the sliding scale, which made it in the interest of both employers and employees to keep up the price of coal in the market as against the middlemen. With this object in view the executive council of the South Wales Miners' Federation, in November 1900, acting under powers conferred on it by a general conference of the Federation, ordered certain "stop-days" or non-working days, upon which the miners refused to work in the company's pits, thereby directly violating the contracts of service under which they were employed.

The Glamorgan Coal Company, which disapproved of the policy of the "stop-days," thereafter brought an action of damages against the Federation and its officials upon the following grounds set out in their statement of claim "that the defendants, well knowing the terms and conditions of the contracts of service under which the workmen employed at the collieries of the plaintiffs were working, wrongfully and maliciously, by causing notice to be given to the workmen employed at the plaintiff's collieries, procured and induced the said workmen to break their contracts of service with the plaintiffs, and in breach thereof to abstain, without giving due notice, from working at the said collieries on certain days . . . and the workmen employed at the said collieries did, by reason of such procurement and inducement, and in breach of their contracts of service with their employers, abstain without due notice from working at the said collieries."

Bigham, J., decided that the Federation were not liable in damages on the ground that although they had in fact induced the miners to break their contract they had been actuated by an honest desire to forward the interests of the men without any prospect of personal gain to themselves, and without any intention, malicious or otherwise, of injuring the employers.

The Court of Appeal (ROMER and STIRLING, L.JJ., WILLIAMS, L.J., dissenting) reversed his judgment, and the Federation appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR (HALSBURY)—I cannot think that in this case there is anything to be determined except the question of fact. I say so because the questions of law discussed are well settled by authority, and authority in this House. To combine to procure a number of persons to break