Thursday, November 7.

FIRST DIVISION.

[Sheriff Court at Glasgow.

SMITH *v.* SCOTTISH TYPOGRAPHICAL ASSOCIATION.

Trade Union—Jurisdiction—Agreement—Enforcement — Conditions of Employment—Provision of Benefits to Members—Trade Union Act 1871 (34 *and* 35 *Vict. cap.* 31), *sec.* 4 (1) *and* (3) (*a*).

The Trade Union Act 1871 (34 and 35 Vict. cap. 31) enacts—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 any breach of the following agreements, namely, (1) any agreement between members of a trade union as such concerning the conditions on which any members for the time being of such trade union shall or shall not . . . employ or be employed. . . . (3) Any agreement for the application of the funds of a trade union (*a*) to provide benefits to members."

The rules of a trade union provided that no member should leave a regular situation without giving a full fortnight's notice. A lock-out notice, excepting foremen, was given by certain employers. A member of the union of many years' standing, who was a foreman, received a circular from the union intimating that the notice must apply to all members irrespective of position, but he nevertheless gave a fortnight's notice before leaving work in terms of the rule. He was thereafter expelled from the union for so continuing to work. He was subsequently re-admitted on payment of a penalty of £1, but subject to the loss of all benefit to which he was entitled in respect of his former membership. In an action at his instance against the union for declarator that the resolution expelling him was *ultra vires*, and for interdict against the union carrying it into effect, *held* that the action was incompetent, in virtue of the Trade Union Act 1871, section 4, in respect that it was a legal proceeding instituted with the object of directly enforcing an agreement between members of a trade union as such concerning the conditions on which a member of the trade union should be employed.

Chamberlain's Wharf, Limited v. *Smith*, [1900] 2 Ch. 605, *approved* and *followed*.

Opinion per Lord Mackenzie that the action was also incompetent by virtue of the Trade Union Act 1871, section 4 (3) (*a*), in respect that as the pursuer's sole interest to sue consisted in his loss of benefit, the action had as its object the direct enforcement of an agreement for the application of the funds of a trade union to provide benefits to a member.

Opinion reserved per Lord Skerrington.

The Trade Union Act 1871 (34 and 35 Vict. cap. 31), section 4, is quoted *supra in rubric*.

John Smith, *pursuer*, brought an action against the Scottish Typographical Association and others, *defenders*, concluding for decree as follows:—"(First) To find and declare that a resolution or pretended resolution made by the Glasgow branch of the defenders' Association at a meeting of said branch on or about the 19th day of April 1916, and confirmed at a meeting of the Executive Council of the defenders the Scottish Typographical Association held in or about the 2nd day of September 1916, whereby it was resolved, *inter alia*, that the pursuer be expelled from the Association and deprived of membership, was *ultra vires* of the defenders, the said Scottish Typographical Association, and that the same was and is now and in all time coming null and void and of no avail, and that the pursuer was unlawfully and without just cause expelled from and deprived of membership of the said Association, and (second) to interdict the defenders, their officers, agents, or servants from carrying into effect or acting upon or enforcing the said resolution."

The pursuer *averred* that he was a compositor in regular employment, and had been for twenty-five years a member of the defenders' Scottish Typographical Association, and that the rules of the Association provided, *inter alia*—"No member shall leave a regular situation without giving or receiving a full fortnight's notice, such notice to be given only at the end of the financial week." He averred further—"(Cond. 5) On or about the 18th day of March 1916, in consequence of a dispute between the Scottish Alliance of Masters in the Printing and Kindred Trades on the one hand, and the Printing and Kindred Trades Federation on the other, and with which latter the defenders the Scottish Typographical Association is affiliated, a lock-out notice was issued by the said Scottish Alliance of Masters to its members and posted in the workroom of the pursuer's said employers. . . . (Cond. 6) The pursuer being a foreman was excepted from said notice and was not affected thereby, but notwithstanding this he, on or about 28th March, received a letter or circular from the said Society, dated 27th March, which, *inter alia*, provided that 'the lock-out notice must apply to all members irrespective of position.' The last-mentioned circular also provided that members must claim a full fortnight's notice from the end of the financial week in terms of the rule referred to in condescendence 4. The Society sought by means of this circular to induce the pursuer to break his contract of employment, and it is averred that the Association had therefore no power to issue such letter or circular, and that they acted illegally and wrongfully in issuing same. . . . (Cond. 7) At the end of the financial week, after receiving said letter or circular, and in order to conform to the rules of the Society, and at the same time implement his contract with his employers, the pursuer

gave his employers notice on 1st April, being the end of the then current financial week, that his engagement with them would terminate on the 15th day of April following. Had the pursuer acted in accordance with his Society's instructions he would have involved himself in a double breach, namely, a breach of contract with his said employers, and a breach of the Society's rules. . . . (Cond. 9) On or about the 19th day of April 1916 a meeting or pretended meeting of the members of said Glasgow Branch was held in the St Mungo Halls, Glasgow, at which meeting a resolution or pretended resolution was passed expelling the pursuer from membership of the Association. The pursuer being a member of the Association should have received notice of said pretended meeting, but no notice was sent him nor had he any knowledge that a meeting for the purpose of considering his expulsion from membership was being held. The defenders in failing to send pursuer notice of said meeting at which his expulsion was to be dealt with, acted illegally and wrongfully, and it was *ultra vires* of the defenders to pass said resolution, and it is believed and averred that the Secretary illegally and wrongfully failed to send him notice of the meeting in order that the said resolution might be passed, and it was passed behind his back. . . . (Cond. 10) The first intimation the pursuer received that such a resolution was passed was by letter he received from the Branch Secretary, dated 21st April 1916, intimating that as he remained at work when the other members were locked out, it was decided at a mass meeting of the Society that he be expelled the Association. Said letter also intimated that the resolution was confirmed by the Board, that pursuer's re-entrance fee was fixed at £5, and that this sum would require to be paid in full to the Secretary the same night, viz., 21st April. Upon receipt of said letter the pursuer called at the Branch Office and lodged a verbal protest against his expulsion and the procedure at said alleged mass meeting. . . . (Cond. 12) As the result of a meeting which was held between representatives of the Association and the Association of the Master Printers of Glasgow, which is an Association affiliated to the Scottish Alliance of Masters, it was agreed that certain members who were expelled as aforesaid, including the pursuer, be re-admitted on payment of a reduced penalty of £1, and that upon payment of said last-mentioned sum all the members would return to work, but subject to loss of all benefit to which the pursuer was entitled in respect of his former membership. . . . (Cond. 15) On or about 29th May 1916 the pursuer received a circular calling a meeting of the Society for 9th June. Part of the business to be transacted at said meeting was 'appeals against expulsion from membership.' The pursuer on receipt of said notice wrote the Committee of Management of the said Branch appealing against the said resolution of the Branch expelling him from membership, on the ground that he did not receive notice of said meeting of 19th April 1916, nor the slip which the members of the Society are entitled to for admission to the meeting; that he was not informed of the intention of the Board to bring his case up at said meeting, and that he tendered notice to his employers in terms of the said rules. He also protested against said meeting of 19th April dealing with the matter prior to the Board of Management having considered same in accordance with the rules. . . . (Cond. 16) In reply to said appeal the pursuer received a letter from the Secretary of the Society referring him to the rule which deals with appeals. Said last-mentioned rule provides that any member aggrieved at the decision of a Branch Committee shall be entitled to appeal to the first meeting of the Branch, and a final appeal on lodging 2s. 6d. may be made to the Executive Council through the Branch Secretary. . . . (Cond. 17) Said appeal was refused and the expulsion referred to adhered to. The pursuer thereupon, in terms of the rule referred to in the immediately preceding article, appealed to the defenders' Executive Council. He did not receive any intimation although he was entitled to, and should have received intimation that the said Executive Council was to consider his appeal, and said appeal should not have been dealt with until the pursuer received notice, but on or about 12th September he got notice from the Branch Secretary that the Executive Council unanimously dismissed his 'appeal against expulsion from membership.' . . ."

At the hearing in the Court of Session counsel for the pursuer admitted that the defenders' Association was an illegal combination at common law.

The defenders *pleaded, inter alia*—"2. The action is incompetent. 3. No jurisdiction."

On 27th November 1917 the Sheriff-Substitute (FYFE) repelled the second and third pleas-in-law for the defenders, and appointed the case to be enrolled in the debate roll.]

The defenders appealed to the Sheriff (A. O. M. MACKENZIE), who on 15th March 1918 recalled the interlocutor of the Sheriff-Substitute and sustained the second and third pleas-in-law for the defenders, and dismissed the action.

Note.—"This is an action at the instance of a foreman printer against the Scottish Typographical Association, of which he is a member, for declarator that a resolution expelling him from membership is *ultra vires* and is of no effect, and for interdict against the defenders carrying into effect or acting upon the said resolution. The resolution complained of was carried by a mass meeting of the pursuer's branch of the Association on 19th April, and confirmed by the Executive Council on 2nd September 1916. The pursuer was re-admitted into the Society in May 1916.

"The defenders plead that the action is incompetent, and that the Court has no jurisdiction to entertain it, both of these pleas being based on the ground that the defenders but for the provisions of section 3 of the Trade Union Act 1871 would be an illegal Association, whose contracts the Court would not enforce, and that the action is a legal proceeding which the Court

is precluded from entertaining by section 4 of the same Act.

"The pursuer's agent did not admit that the defenders were an illegal combination at common law, and the first question is whether they are an association of that character. On this question I respectfully express my concurrence in the opinion expressed by Lord Skerrington in regard to the same society in *Wilson* v. *The Scottish Typographical Association*, 1912 S.C. 534, at pp. 542-3, 49 S.L.R. 397, to the effect that the defenders are an illegal combination at common law. It follows accordingly that the question whether the Court has jurisdiction depends upon whether or not the action is one which the Court is precluded from entertaining by section 4 of the Act of 1871.

"Now section 4 enacts, *inter alia*, 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—(1) Any agreement between members of a trade union as such concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ, or be employed. . . . (3) Any agreement for the application of the funds of a trade union (*a*) to provide benefits to members. . . .' The contention of the defenders is that the present action is instituted with the object of directly enforcing an agreement between the members as such as to the conditions on which they should be employed, and also with the object of directly enforcing an agreement for the application of the funds to provide benefits to members.

"In order to determine whether the first branch of the defenders' contention is well founded it is necessary to look at the Record in order to ascertain why the pursuer was expelled from the Association, and the nature of the dispute between the parties. Now the pursuer's statement is that he was expelled for continuing to work in a shop from which other members of the Union had been locked out, and he avers that in continuing to work in that shop he was acting in accordance with Rule 29 of the Association, which provides that members shall not leave their employment until the expiry of the period for which they are required to give notice. He avers that in his case this period had not expired, and complains that as he had committed no breach of the rules of the Association in remaining at work, the resolution expelling him was unjust, and was *ultra vires* of the mass meeting which passed it and the Executive Council which confirmed it. He also complains that he was given no opportunity of being heard before either body. The answer of the defenders is that the pursuer's expulsion was justified because he had violated a well-known rule or usage of the trade by continuing to work in a shop from which other members of the Association had been locked out, and they found upon Rule 53 of the Association, which provides, *inter alia*, that any member who violates any of the 'rules of the trade' shall be immediately expelled.

"Now, I assume, as I must at this stage of the proceedings, that the pursuer's averments are true in fact, that he had committed no breach of the rules, and that his expulsion from the Society was not justified under the rules; but, making these assumptions, I am of opinion that the defenders' contention that the action is not one which the Court can entertain, is well founded. The rules upon which the parties respectively found are part of the agreement between the members of the Association as to the conditions on which they shall be employed, and in my opinion the object of the action is nothing else than to enforce that agreement. I am of opinion, accordingly, that the jurisdiction of the Court is excluded by the first part of section 4 of the Act of 1871, and in support of this view I refer to the case of *Chamberlain's Wharf, Limited*, [1900] 2 Ch. 605. In that case a member of a Trade Union of employers who had been expelled for an alleged violation of a rule of the Association as to the conditions on which the members should sell their goods, brought an action to have the Union restrained from acting on the resolution expelling him. He complained that he had not been heard in his defence, but his case necessarily was, although that is not stated in the report, that he had not violated the rules of the society. It was held that the action could not be entertained, in respect that it was a legal proceeding instituted with the object of directly enforcing the agreement between the members as to the conditions on which they should sell their goods. The decision in the case referred to was approved by Buckley, L.J., in the second *Osborne* case—*Osborne* v. *Amalgamated Society of Railway Servants*, [1911] 1 Ch. 540.

"I am also of opinion that the Court is precluded from entertaining the action on the ground that the action is a legal proceeding instituted with the object of directly enforcing an agreement for the application of the funds of the Association to provide benefits to members. The only, or at least the most obvious, patrimonial loss which the pursuer has sustained as a result of his expulsion from the Society is, that he is now on a lower scale of benefit under some of the schemes of the Association than he would otherwise have been, and I cannot distinguish the case from that of *Aitken* v. *Associated Carpenters and Joiners of Scotland*, 12 R. 1206, 22 S.L.R. 796, in which the First Division refused to entertain an action at the instance of a person who had been expelled from membership in the defending Society, and in which reduction of the resolution expelling him was sought on the ground that it was brought for the purpose of directly enforcing an agreement for the application of the funds of the Union to provide benefits to members. The pursuer founded upon the case of *Osborne* v. *The Amalgamated Society of Railway Servants* (*cit.*). I am unable to reconcile that case

with that of *Aitken*, but *Aitken's* case is binding upon me and I must follow it.

"For these reasons I am of opinion that the second and third pleas for the defenders must be sustained."

The pursuer appealed, and argued—The Sheriff was wrong on both grounds. The present action was an action of declarator of membership of a trade union, and not of the rights of membership—*Osborne* v. *Amalgamated Society of Railway Servants*, [1911] 1 Ch. 540, *per* Buckley, L.J., at p. 548. Membership carried with it many rights and privileges, patrimonial and otherwise, in addition to those rights, *e.g.*, to benefits which were not enforceable. The present action was competent—*Yorkshire Miners' Association* v. *Howden*, [1903] 1 K.B. 308, [1905] A.C. 256, which had been followed in *Wilson* v. *Scottish Typographical Association*, 1912 S.C. 534, 49 S.L.R. 397; *Wilkie* v. *King*, 1911 S.C. 1310, *per* L.-P. Dunedin, 48 S.L.R. 1057; *Farr* v. *Lancashire and Cheshire Miners' Federation*, [1913] 1 Ch. 366; *Luby* v. *Warwickshire Miners' Association*, [1912] 2 Ch. 371; *Kelly* v. *National Society of Operative Printers' Assistants*, 1915, 84 L.J., K.B. 2236, 113 L.T., N.S. 1055, 31 T.L.R. 632; *Osborne* v. *Amalgamated Society of Railway Servants* (*cit.*) was also in favour of the pursuer. *Aitken* v. *Associated Carpenters and Joiners of Scotland*, 1885, 12 R. 1206, 22 S.L.R. 796, was distinguishable, for that action concluded for declarator that the pursuer had been unlawfully deprived of benefits, and for damages, and the only patrimonial loss alleged was the loss of the right to participate in benefits (*per* Lord President Inglis at p. 1212). Further, the reasoning of Lord President Inglis in that case had been overruled in the House of Lords in *Howden's* case (*cit.*). Further, if *Aitken's* case (*cit.*) was not good law, neither was the decision in *Rigby* v. *Connol*, [1880] 14 Ch.D. 482, for it proceeded upon the same reasoning as the decision in *Aitken's* case, and it was inconsistent with *Osborne's* case (*cit.*) and *Howden's* case (*cit.*). *Chamberlain's Wharf, Limited* v. *Smith*, [1900] 2 Ch. 605, was also distinguishable, for in that case the whole of the Union's rules dealt with the conduct of their trade by the members. Further, it was not consistent with *Howden's* case (*cit.*) and *Osborne's* case (*cit.*). The Court might quite well have to construe the rules of a trade union in so far as that might be necessary to enable it to expiscate its jurisdiction in such actions as it had been held competent for the Court to entertain. Gloag on Contract, p. 161, and Greenwood's Supplement relating to Trade Unions, p. 52, were referred to. The reinstatement of the pursuer as a member of the Union made no difference, for if he was wrongly expelled he was entitled to be restored to his original position—mere readmission did not operate complete restoration. That gave the pursuer a sufficient patrimonial right to sue. Even at the worst for him he had a sufficient interest in the fine of £1 which he averred he had been wrongly compelled to pay. The form of the action was competent. In that matter there was no difference between the law of England and the law of Scotland—Brodie Innes, Comparative Principles of the Laws of England and Scotland, p. 208. Actions similar in form to the present had been held competent — *Stirling County Council* v. *Magistrates of Falkirk*, 1912 S.C. 1281, 49 S.L.R. 968; *Edinburgh and Glasgow Railway Company* v. *Meek*, 1849, 12 D. 153; *Scottish North-Eastern Railway Company* v. *Gardiner*, 1864, 2 Macph. 537.

Argued for the defenders (respondents)—The object of the present action as disclosed in the pleadings was (1) to get rid of the expulsion of the pursuer by forcing the Union to accept the pursuer's construction of rule 29, which was a rule regulating the conduct of the pursuer in his trade, and (2) to have him reinstated not as a new member but as a member of twenty-five years' standing, with a consequent right to benefits to which such a member was entitled. Both objects involved the Court in doing what was strictly forbidden by the Act of 1871. *Howden's* case (*cit.*) was distinguishable. The object of the action was to prevent an abuse. In *Osborne's* case (*cit.*) no question of the construction of any rule was raised. In *Wilson's* case (*cit.*) it was proposed to do something that was outside the rules altogether. *Wilkie's* case (*cit.*) was very special. The present action was incompetent—*Aitken's* case (*cit.*); *Chamberlain's Wharf* case (*cit.*); *Rigby's* case (*cit.*); *M'Kernan* v. *United Operative Masons' Association*, 1874, 1 R. 453, 11 S.L.R. 219; *Shanks* v. *United Operative Masons' Association*, 1874, 1 R. 823, 11 S.L.R. 356; *Mullett and Others* v. *The United French Polishers London Society*, 1904, 20 T.L.R. 595, 91 L.T. 133. The Court could entertain an action to prevent misapplication of the trust funds of a Union but not to decide the rights of individual members in those funds. *Wolfe* v. *Matthews*, 1882, 21 Ch.D. 194, and *Amalgamated Society of Railway Servants* v. *Motherwell Branch of the Society*, 1880, 7 R. 867, 17 S.L.R. 607, were referred to. Further, the present action was a declarator without executory conclusions and as such was incompetent—*Gifford* v. *Trail*, 1829, 7 S. 854; *Lyle* v. *Balfour*, 1830, 9 S. 22; *Stewart & Company* v. *Sillars*, 1906, 13 S.L.T. 800.

At advising—

LORD PRESIDENT—I agree with the conclusion reached by the learned Sheriff in this case on the main ground set out in the note to his interlocutor. The question we have to decide may be stated thus—Is this an action instituted with the object of directly enforcing an agreement between the members of a trade union relative to the conditions on which a member shall be employed? I am of opinion that it is. There is a rule of the defenders' Association (No. 29) which runs as follows, viz.—"No member shall leave a regular situation without giving or receiving a full fortnight's notice, such notice to be given only at the end of the financial week. . . ." In compliance with this rule the pursuer gave his employers notice on 1st April 1916 that his engagement with them would terminate on 15th April 1916. Four days later a meeting

of members of the Glasgow Branch of the Association was held at which a resolution was passed expelling the pursuer from membership of the Association. On 21st April 1916 intimation was made to the pursuer that he was expelled from the Association because he remained at work when the other members were locked out. In other words he gave and duly observed the notice prescribed by rule 29. And the effect of his expulsion was to deprive him of all benefit to which he was entitled in respect of membership. The pursuer says that his expulsion was an act *ultra vires* of the defenders, because the reason for his expulsion was "that he did give the notice prescribed by the rules, and acted in every respect in accordance with the rules." In this action he asks the Court to find that the resolution expelling him was *ultra vires* and is null and void. He further asks that the defenders should be interdicted from enforcing it. His purpose and aim, no doubt, is his restoration to membership. But that purpose can only be achieved by enforcing rule 29, which he says the defenders have wholly disregarded. It is not disputed that rule 29 relates to the conditions of his employment. This action is therefore brought with the object of directly enforcing an agreement among the members of the Association concerning the conditions on which they shall be employed; and if so we cannot entertain it.

I agree with the Sheriff in thinking that the case of *Chamberlain's Wharf, Limited*, [1900] 2 Ch. 605, is directly in point. It is not binding on us, no doubt, but it has not been questioned in subsequent cases, and in my opinion it is right. Senior counsel for the pursuer, I think, conceded its applicability but challenged its soundness. I have examined the case with care, and I am unable to detect any flaw in the reasoning of the learned Judges of the Court of Appeal. I observe that the decision was referred to with approval by the House of Lords in the *Yorkshire Miners' Association* v. *Howden*, [1903] 1 K.B. 308, [1905] A.C. 256, and in the second *Osborne* case, [1911] 1 Ch. 540, it was commented on by all the Judges of the Court of Appeal, and its authority was not questioned by any of them. I refer to the judgment of Fletcher Moulton, L.J., for a full and clear statement of the meaning and import of *Chamberlain's Wharf, Limited*. He did not, it is true, express either agreement or disagreement with the decision, but Buckley, L.J., did. He considered the decision right. He expressly says so; and the reasoning which led him to that conclusion is thus stated (p. 569), viz.—"The point in *Chamberlain's Wharf, Limited* v. *Smith*, [1900] 2 Ch. 605, was as follows:—There was a rule in that case which fell within the words of section 4—'agreement concerning the conditions on which any members . . . shall sell their goods.' For a breach of the rule the plaintiffs were expelled in exercise of a power of expulsion in the rules. They asked for an injunction to restrain the defendants from acting on the resolution, alleging that they had not had a fair opportunity of being heard in their own defence. Their case therefore was that they had not broken the rule. To adjudicate in the action would have involved an investigation whether they had broken it or not. This the Court could not entertain. The action was to enforce an agreement falling within section 4, subsection 1, not affirmatively, it is true, by restraining members from breaking it, but negatively, by restraining the society from expelling them for a breach of it, which the society alleged and they denied. Had the breach been established in the action the Court would have been called upon to decide that the expulsion was valid because the members had broken a rule which could be enforced against them. This the Court could not do."

But the decision in the second *Osborne* case [1911] 1 Ch. 540, was pressed on us by the pursuer's counsel as a direct authority in his favour although not binding on us. I cannot think it is, for there confessedly the subject-matter of the action lay entirely outside the excepted classes enumerated in section 4. The plaintiff alleged that he had been unjustly expelled from the defendant society, that his expulsion was not authorised by the rules of the society, and that he was expelled as a punishment for having successfully invoked the aid of the Courts to prevent the application of the funds of the society to illegal purposes. All he asked of the Court was restoration to membership, and the question in the case was this—Was the action of the plaintiff a legal proceeding struck at by section 4 (3)? It was held that it was not, and that if a member was expelled on grounds not justified by the rules at all there was nothing in section 4 to prevent him maintaining an action to have the wrong done him righted. As Fletcher Moulton, L.J., observed (p. 560)—"Section 4 only limits the jurisdiction to give relief of certain types in certain cases. It affords no bar to any party who claims to be interested in contracts which are legally valid coming to the courts to obtain a pronouncement as to his rights thereunder. Such a pronouncement will leave those rights enforceable or not according as they do not or do come within the exceptions of section 4. It is such a pronouncement that the plaintiff seeks in the present action and nothing more. The injunction asked for is only the necessary consequence of the declaration to which the plaintiff is entitled and is in no wise affected by section 4." The decision of that case did not involve the construction or the enforcing of any rule or agreement falling within section 4. An order to restore the plaintiff to membership with unenforceable rights is no order to enforce these rights. But in the case before us we are asked to consider as the only way by which we can reach a judgment for the pursuer whether rule 29, which is directly concerned with the conditions on which he was employed, was broken or not. If we decide that it was broken by the defenders' association, and that consequently the pursuer's expulsion was illegal, then we are enforcing rule 29. If so, we should then be entertaining a legal proceeding instituted with the object of directly enforcing an agreement

concerning the conditions on which the pursuer was employed, and this the statute in express terms forbids.

If this view be sound it is sufficient for the decision of the case, and it is unnecessary for me to offer any opinion on the other topics discussed by the learned Sheriff. I am for affirming his interlocutor.

LORD MACKENZIE — The object of this action is to get a court of law to adjudicate in a dispute between a trade union and one of its members. This appears from the pursuer's statements on record. He was expelled from his union because he remained at work when other members had been locked out by their employers. The pursuer's case is that the rules of the union provide that "No member shall leave a regular situation without giving or receiving a full fortnight's notice." This is rule 29. He got a lock-out notice expressly excepting foremen. He was a foreman. He says he gave the notice required by rule 29, and was bound to remain until the fortnight expired. The defenders say that if one unionist is locked out all must be locked out. The pursuer disagreed with this view, so his union expelled him.

It is quite plain that the dispute is, to use the language of the Act of 1871, section 4 (1), about an "agreement between members of a trade union as such concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ or be employed." The question is whether this is a "legal proceeding instituted with the object of directly enforcing" the agreement. If it is, then it cannot be entertained in a court of law. It was conceded by the pursuer that this union would not apart from the Act be lawful at common law because of its rules in restraint of trade, *e.g.*, the rule about the employment of apprentices.

It appears to me that when the conclusions of the action are read the case falls within section 4 (1), and therefore cannot be entertained.

The pursuer seeks a declarator that the resolution expelling him was *ultra vires*, and asks interdict against the defenders carrying into effect or acting upon or enforcing the resolution. No more direct method of enforcing the pursuer's view of the agreement between him and the union concerning the conditions upon which he was employed could have been adopted.

In my opinion no authority is needed in order to reach the same conclusion as the Sheriff upon this point. To quote Lord Macnaghten in *Howden's* case, [1905] A.C. 256, at p. 263—"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 learned Sheriff cites *Chamberlain's Wharf, Limited*, [1900] 2 Ch. 605, as an authority on the point, and I agree that it is. To show that it is reference may be made to the passage read by your Lordship in the chair from the opinion of Buckley, L.J., in the second *Osborne* case, [1911] 1 Ch. 540, at p. 569. Now every word of the passage I have just quoted is directly applicable to the present case. Buckley, L.J., expressly approved of the decision in *Chamberlain's Wharf*. The case of *Howden* does not conflict with *Chamberlain's* case. Lord Macnaghten in the following passage gives the grounds of judgment in *Howden's* case—"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." With the judgment in *Howden* may be compared the judgment in *M'Laren*, 1880, 7 R. 867, 17 S.L.R. 607. Both cases were merely actions to preserve the *status quo*.

This action is in my opinion excluded by section 4 (1).

The Sheriff also expresses his opinion upon the point which bulked largely in the argument, viz., whether the action is excluded by the provisions of section 4 (3) (*a*). The defenders say that the object of the action is to reinstate the pursuer as a member of the union with all his original rights. He has been reinstated, but minus his rights as a twenty-five year old member. The union contends that the action is therefore a legal proceeding instituted with the object of enforcing an agreement for the application of its funds to provide a benefit to members. The Sheriff has sustained this view on the authority of *Aitken's* case, 1885, 12 R. 1206, 22 S.L.R. 796. I agree that *Aitken's* case does rule the present upon this point. Upon the question whether the second case of *Osborne* can stand alongside *Aitken*, I may point out that Buckley, L.J., on p. 569, says—"Osborne [the plaintiff] was not expelled for breach of any rule covered by any of the provisions in section 4." The Court found themselves able to take the view that they were not called on to adjudicate upon whether a rule of the union had been broken or not. The view of the Lord President (Inglis) in *Aitken's* case was that the action could not be entertained because it did involve the direct enforcement of a rule of the society conferring a pecuniary benefit upon a member, and that therefore section 4 (3) (*a*) applied. In this view the two cases are not necessarily inconsistent. The Lord President no doubt puts the wider instead of the narrower construction on the words "directly enforcing," and reads them as contrasted with an

action of damages, and therefore equivalent to enforcing implement of. This is the view of the section taken by Lord Macnaghten in *Howden's* case, at p. 264—"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." It humbly appears to me that this is the only workable meaning to attach to the words.

The above are the general grounds upon which, in my opinion, this action is excluded. There is further the special ground which distinguishes this from the case of *Osborne*, on which the pursuer founds, and that is this—the pursuer has been reinstated, and has his vote. The only interest he can qualify to insist is the patrimonial one of loss of benefit, and this brings the case within section 4 (3) (*a*).

In the view I take the pursuer would not be entitled to a bare declarator even if there had been no conclusion for interdict.

LORD SKERRINGTON—The learned Sheriff has decided this case in favour of the defenders upon two grounds which are perfectly distinct. For some reason which I do not understand, the argument of counsel on both sides was directed almost exclusively to the second ground of judgment, and it was not until the speech of the senior counsel for the defenders that our attention was pointedly directed to the validity of the first ground of judgment. I speak with hesitation on a question which was not fully argued, bnt after giving the matter the best attention in my power I have been unable to discover any flaw in the reasoning of the Sheriff in support of his first ground of judgment

Accordingly I agree with your Lordships that the action must be dismissed as incompetent on the first ground. But I reserve my opinion upon the question which was principally discussed before us, viz., whether this action is or is not objectionable upon the ground that it can be correctly described as an action which is brought for the purpose of directly enforcing the pursuer's right to a benefit.

LORD CULLEN—The resolution of which the pursuer complains and against which he seeks to be restored by judicial decree proceeded on rule 29, which he was said to have broken, and another rule which authorised his expulsion in respect of such a breach.

Rule 29 is, admittedly, a rule within the scope of section 4, sub-section 1, of the Act of 1871. The parties differ as to the due operation of it in relation to the employment which the pursuer had and his conduct in connection therewith out of which his expulsion arose. The defenders' view was and is that the due enforcement of the rule called for his expulsion. The pursuer maintains the contrary, and asks the Court to enforce his view of the rule by the decree of declarator and interdict craved. Thus, if the Court were to entertain the action, it would be put to it to decide the due meaning and effect of the rule in its bearing on the case of the pursuer, and to enforce it either by upholding the defenders' course of action on the one hand, or by compelling them to restore the pursuer thereagainst on the other hand. I am of opinion that the Court cannot under the Act entertain such an action.

The present case appears to me to be similar in character to that of *Chamberlain's Wharf, Limited*, v. *Smith*, [1900] 2 Ch. 605, the decision in which I see no reason to doubt. Its authority does not seem to me to be in any way impaired either by the decision in *Yorkshire Miners' Association* v. *Howden*, [1905] A.C. 256, or by that in the second *Osborne* case, [1911] 1 Ch. 540. I accordingly concur in the judgment proposed.

The Court dismissed the appeal.

Counsel for the Pursuer (Appellant)—Constable, K.C.—Scott. Agent—Alexander Ross, S.S.C.

Counsel for the Defenders (Respondents)—Sandeman, K.C.—Gentles. Agents—Dove, Lockhart, & Smart, S.S.C.

Saturday, November 16.

FIRST DIVISION.

[Sheriff Court at Glasgow.

KEMP *v.* GLASGOW CORPORATION.

Burgh—Burgh Accounts—Common Good—Elector Objecting to Accounts as Containing Illegal Payments from Common Good—Glasgow Corporation Act 1909 (9 *Edw. VII, cap. cxxxvii*), *sec.* 14—*Glasgow Boundaries Act* 1912 (2 *and* 3 *Geo. V, cap. xcv*), *sec.* 80.

The City and Royal Burgh of Glasgow, in promoting a private bill for the extension of its boundaries so as to incorporate adjoining burghs, made payments out of the Common Good in respect of the election expenses of candidates for the councils of the adjoining burghs who were in favour of the annexation proposed. The Act which was subsequently passed incorporated the adjoining burghs, and authorised the payment of the expenses of and incidental to the passing of that