

tions which constituted what is called a strike. Were these subscribers liable to an action? It seems to me that they were not—even if the workmen had broken their contracts. Some other grounds of liability were alleged, but may be briefly dealt with. It was urged that the money of the union was unlawfully expended when applied to the strike pay granted. That may be so as between the members of the union and those who made the grant, so that an injunction could be obtained to restrain such payments. But this faulty application does not confer any cause of action upon the plaintiffs who have no interest in the money misapplied. If the subscribing to a so-called strike fund is legal, the source from which the money subscribed is derived, however tainted, cannot create illegality. I concur also in the judgment given in the Court of Appeal that no acts of molestation were brought home to the union, and also that there was no legal ratification of the acts of the branch officials by the central body. In relation to the liability of Parrot, Wadsworth, and Hall, I think it follows that of the union. Those men were not guilty of independent tortious acts. Nolan and Humphries did not appear, and must be held to be liable, but probably that liability is of no importance to the plaintiffs. For these reasons I think that the judgments of the majority of the Court of Appeal must be affirmed.

LORD DAVEY—I had prepared a judgment, but I find myself in such complete agreement with my noble and learned friends who have already addressed the House that it is not necessary for me to say anything more.

LORD ROBERTSON—I agree that this appeal should be dismissed, and I shall add a few words on that part of the case on which the Court of Appeal was not unanimous. From the first part of the case, however, I carry forward this, which is my ground of judgment upon it, that the branch officials were not, as such, officers or agents of the respondent association; and this must be kept steadily in view on the question of maintenance, and indeed directly affects it. We start, then, with this—that the respondents were not responsible for the original breach of contract or for those who caused it; and, in fact, although on a somewhat narrow ground, they disapproved of what was done on the 29th June. Now, I do not propose to decide, and have no occasion to decide, more in favour of the respondents than that on the specific questions to which the findings of the jury on maintenance relate the appellants have not established liability. Those findings are in answer to the sixth question and are lettered A, B, and C, and I shall consider C first as it charges the only act which the association is said to have done directly by itself, viz., the grant of strike pay. Now this grant was never made except to men whose contracts were at an end; and the payment was therefore not to induce men to break contracts, but to induce them not to enter into new con-

tracts. So far there is no illegality. Nor do I see how the fact that the payment of this strike pay was held to be a violation of the internal constitution of the association turns it into an invasion of any right of third parties like the appellants. The answer to the charge lettered B (inducing or attempting to induce men who were willing to enter into contracts of service with the appellants, or to work for them, to refrain from so doing) is that it is not a legal wrong. The question lettered A charges the respondents with molesting or intimidating men who were working for the appellants with a view of inducing them to cease from so working. The theory upon which this charge is made can only be that by giving financial support to the strike the respondents made themselves liable for all that was done during the strike by the officers of the branches. I am unable to adopt that view, and I do not find any other valid ground for attaching such liability. The ninth query raises substantially the same question under the form of conspiracy, for the *media concludendi* are in substance the same. The answers to the seventh and eighth queries are hopelessly ineffective for the reason given by my noble and learned friend the Lord Chancellor.

LORD ATKINSON—The law and the facts have already been so fully dealt with by my noble and learned friends that I will only say that I fully concur with the judgment of Cozens-Hardy, L.J., in the Court of Appeal.

Judgment of the Court of Appeal affirmed, and appeal dismissed.

Counsel for the Appellants—Eldon Bankes, K.C.—Lush, K.C.—H. T. Waddy. Agents—Johnson, Weatherall, & Sturt, Solicitors.

Counsel for the Respondent Association—R. Isaacs, K.C.—Danckwerts, K.C.—Clement Edwards. For the other Respondents—Atherly Jones, K.C.—S. T. Evans, K.C.—Compston. Agents—Corbin, Greener, & Cook, Solicitors.

HOUSE OF LORDS.

Tuesday, June 19.

(Before the Lord Chancellor (Loreburn), Lords Davey, James of Hereford, Robertson, and Atkinson.)

BADISCHE ANILIN UND SODA
FABRIK v. HICKSON.

(ON APPEAL FROM THE COURT OF APPEAL
IN ENGLAND.)

*Patent — Infringement — Construction —
“Exercise and Vend” — English Sale —
Delivery Abroad.*

Where letters-patent in ordinary form conferred on a patentee the right to make, use, exercise, and vend an invention within the United Kingdom,

held that a sale by a person resident in Great Britain to a purchaser also resident in Great Britain of an article made abroad in accordance with the patent and to be delivered abroad, was not a vending of the invention within the meaning of the patent and was not therefore an infringement of it.

Appeal from a judgment of the Court of Appeal (VAUGHAN WILLIAMS, STIRLING, and COZENS - HARDY, L.J.J.), who had affirmed a judgment of BUCKLEY, J., in an action in which the appellants were plaintiffs and the respondent was a defendant.

The facts appear sufficiently from the judgments of their Lordships *infra*.

LORD CHANCELLOR (LOREBURN)—I agree with the Court of Appeal that the judgment of Buckley, J., ought to be affirmed. This is an action for infringement of a patent relating to certain dyestuffs. The facts are not in dispute. The defendant entered into a contract with another person in England to sell him a quantity of the patented article, delivery to be made at Basle in Switzerland. The defendant then procured the goods, had them forwarded to Basle, where they were at his disposal, and transferred them by order to his agents in Basle to await his purchaser's disposal. After that his purchaser, having assented to this appropriation, was alone interested in these goods, and we were told, and I assume, sent them to England to be used in manufacture. On these facts Mr Cripps says that the defendant infringed the plaintiffs' patent. He points to the terms of the patent, which grants to the patentees the sole right to "make, use, exercise, and vend the said invention" within the United Kingdom, and commands all others that they shall not "either directly or indirectly make use of, or put in practice, the said invention, or any part of the same, nor in anywise imitate the same." As I understood him, Mr Cripps argued that the defendant had "vended" these goods in England within the terms of the patent. He admitted that merely to make a contract of sale would not be "vending," or, to use a word in sense equivalent and in use more familiar, selling. But he maintained that if the contract to sell was made in England, and in pursuance of it goods were by the consent of buyer and seller appropriated to meet the contract, then the transaction became a sale completed in England, and that it did not signify whether the goods were at the time of such appropriation in England or abroad. I cannot accept that view. A contract to sell unascertained goods is not a complete sale, but a promise to sell. There must be added to it some act which completes the sale, such as delivery or the appropriation of specific goods to the contract by the assent, express or implied, of both buyer and seller. Such appropriation will convert the executory agreement into a complete sale. What actually happens need not involve any change either in the condition of the goods or in their location. They were the property of the seller before the appropriation ;

they become the property of the buyer as soon as they are appropriated; and that is all. But if the goods are abroad when the property so passes, it seems to me that you cannot say that the sale wholly took place in England. In my opinion, if you must decide in what country an appropriation of goods by consent takes place, it takes place not where the consent is given, but where the goods are at the time situate. This is sufficient in my view to dispose of the grounds put forward by the appellant, but I desire to add that I entirely agree with the opinions expressed by my noble and learned friend Lord Davey, which I have had an opportunity to see in print; it is unnecessary for me to repeat them.

LORD DAVEY—The sole question in this case is whether a sale by a person in this country to a purchaser, also resident here, of an article made abroad in accordance with an invention protected by a British patent and to be delivered abroad, is a vending of the patent. I am of opinion that it is not. All letters-patent for inventions are granted under the power reserved to the Crown by the well-known proviso in the Statute of Monopolies (21 Jac. I, c. 3, s. 6). The words are "letters-patent and grant of privilege of the sole working or making of new manufactures within the realm," and nothing is said about vending. But for a long time before the Act of 1883 it had been usual to grant the right "to make, use, exercise, and vend the said invention" in letters-patent, and that form has now been sanctioned by the Act of 1883. It has also been decided in a number of cases that to sell and deliver in this country the product of the invention was an infringement of the monopoly granted, whether such product was made in this country or abroad. James, L.J., says, in *Elmslie v. Boursier* (L. Rep. 9 Eq. 217) "I am of opinion in this case that the obtaining from abroad and selling in this country an article manufactured according to the specification of a patent is a violation of the privileges granted by the letters-patent." And the cases of *Wright v. Hitchcock* (L. Rep. 5 Ex. 37), and *Von Heyden v. Neustadt* (42 L.T. Rep. 300, 14 Ch. Div. 230) were to the same effect. But I am not aware of any case where a person was held to have infringed by selling foreign made goods not to be delivered to the purchaser in this country. I am of opinion that the exclusive right of "vending the invention" in the statutory form of patent must be construed consistently with the language of the Statute of Monopolies, and with regard to the general purpose of the patent to give the inventor the full benefit of his invention in this country. It must be such a vending as will be in a sense a working or use and exercise of the invention in this country or an appropriation by the vendor of some advantage which the patentee can derive from such use and exercise. A contract to deliver the goods abroad does not in any way interfere with the patentee's rights to work and utilise his invention in this country. It is

a contract to do a perfectly lawful act, and whether the contract be made in this country or abroad does not in itself affect the patentee's monopoly of working his invention, and a different question will then arise. The goods may or may not be afterwards brought into this country. Nor is it material to consider where or when the property in the goods passes to the purchaser. It is lawful to be the owner of the goods if made and situate abroad, and neither the vendor nor the purchaser, in my opinion, thereby infringes the patent. But that is no concern of the vendor after he has parted with them. I am of opinion that "vending the invention" in the common form of patent is confined to selling goods made or brought into this country, and that the respondent in this case has not, directly or indirectly, made, used, or put in practice the appellants' invention within the meaning of the prohibition contained in the patent. In all essential particulars I think the case is covered by the decision of this House in *Badische Anilin und Soda Fabrik v. Basle Chemical Works* (77 L. T. Rep. 573; (1898) A.C. 200). I am therefore of opinion that the appeal fails and should be dismissed.

LORD JAMES OF HEREFORD—In this case the appellants have brought an action to recover damages from the respondent in consequence of an alleged breach of letters-patent owned by the appellants, dated 1887. Such letters-patent referred to certain dyes, and conferred upon the patentee the sole privilege of making, using, and vending the said invention within the United Kingdom. Proof was given at the trial that the defendant had in this country contracted with another person, also in this country, to sell a certain quantity of the patented dye. But this contract stipulated that the delivery of the article sold should take place not within the United Kingdom but in Switzerland. The defendant then procured the article abroad, directing it to be delivered to his orders at Basle. He ordered the holder of the goods abroad to hold them to the order of the purchaser in England, and then the defendant communicated to such purchaser that the goods awaited his order at Basle. Subsequently the goods were brought by the purchaser into the United Kingdom. But when this was done they had passed out of the control of the defender. The whole question is whether, on the above facts, the patent was infringed through a vending of the goods within the United Kingdom. I think not. So far as the defendant is involved the goods never were within this country. Having regard to the intention and effect of the Statute of Monopolies, in which the word "vend" does not occur, it seems to me that the entering into a contract here to transfer goods abroad, coupled with no delivery by the defendant here, does not constitute a vending in respect of which a cause of action arises. The manufacturer of the dye at Basle did not infringe the British patent. If by bought-and-sold notes made here it had been contracted that such goods at

Basle should be transferred for use there it would be somewhat difficult to contend that an action would lie here, and yet no more actionable element exists in this case. The appellant sustains no actionable injury until the goods arrive in this country, when an action will lie against anyone who "uses or exercises" the said invention. As the defendant has not so done I am of opinion that the defendant is free from liability. So far as authority exists on the subject it supports this view.

LORD ROBERTSON—I agree with the judgment which has been delivered by Lord Davey, and I have nothing to add to it.

LORD ATKINSON—Under the English law as distinct from the civil law, and those laws which are founded upon the civil law, the property in a specific and ascertained chattel may be passed on a contract of sale for valuable consideration without delivery. Whether it does so pass the property or not will in each instance depend on the intention of the parties as ascertained by the terms of the contract, their conduct, and the circumstances of the case (see *Dixon v. Pates*, 5 B. & Ad. 313; *Seath v. Moore*, 54 L. T. Rep. 690; 11 App. Cas. 350). It is therefore possible for a vendor and vendee of such a chattel situated abroad to enter into a contract of sale in England by which the property in that chattel is passed from one to the other, though the chattel itself was never intended to be delivered in any part of the three kingdoms, and was never in fact delivered there. Mr Cripps insisted that, in addition to the contract of sale, an appropriation was necessary to pass the property; but in the case of the sale of a specific and ascertained article this appropriation need only be a mental act of the contracting parties performed by them in England, so that the broad principle contended for in this case is, as I understand it, in reality this, that if the specific and ascertained article, the subject of such a sale, happened to be an article of a kind protected by a patent granted in England giving the patentee the sole right to "make, use, exercise, and vend" his invention within the realm, in Form D, Sched. 1, to the Patents, Designs, and Trade Marks Act 1883 (46 and 47 Vict. c. 57), the sale would, where nothing remains to be done outside the realm to pass the property, be an infringement of the patentee's right, inasmuch as it would amount to a vending of his invention within the realm. The article sold in this case was, no doubt, imported into this country by the vendee, but he was sued for this infringement, as all persons can be sued who thus "use and exercise" the invention within the realm, and, having no defence, he submitted; but delivery in England was no part of the contract of sale, and the argument in support of the vendor's liability in this case was not confined to cases where delivery was made, or was intended to be made, within the United Kingdom. If it be sound at all it must apply equally to cases where such a delivery was neither made nor contemplated. The statute of 1883 above mentioned does not

repeat the Statute of Monopolies (21 Jac. I, c. 3) nor confer upon the Crown power to grant patents which would be void under the earlier enactment. The mischief at which this later statute was aimed, and the object which it was designed to effect, appear clearly on the face of secs. 1 and 6 of the earlier statute. Section 1, after reciting the King's declaration that "all grants of . . . monopolies are contrary to law," proceeds to enact, amongst other things, that "all . . . licences, charters, and letters-patent heretofore made or granted, or hereafter to be made or granted . . . for the sole buying, selling, making, working, or using of anything within this realm or the dominion of Wales, or of any other monopolies," should be void and of none effect. The two most serious grievances or inconveniences which it was considered, apparently, that the granting of monopolies would inflict upon His Majesty's subjects were, first, the exclusion of all those subjects, other than the grantees and their licensees, from the manufacture of or the trade in the commodities the subject-matter of the monopoly; and, secondly, by the prohibition of all competition, the raising or keeping up of the price of the patented articles upon the consumers within the realm. Section 6 was passed in the interest of invention, at the cost of prolonging those grievances for periods of fourteen years, to be created. It takes the form of a proviso to section 1, and enacts that the "declaration" mentioned in section 1 "shall not extend to any letters-patent . . . of the sole working or making of any manner of new manufactures within this realm to the true and first inventor and inventors of such manufactures, which other at the times of making such letters-patent and grant shall not use, so as also they be not contrary to the law nor mischievous to the State by raising prices of commodities at home, or hurt of trade, or generally inconvenient." This section does not contain the word "vend" or any equivalent word. It is in its terms confined to two operations, the working and making of new manufactures, both of which must, under those terms, take place within the realm; and on its face it apparently restricts the power of the Crown to the granting of the sole right or privilege of conducting those two operations. But inasmuch as it is legitimate and proper in the construction of statutes to have regard to the mischief which required to be cured, the nature of the remedy provided, and the object aimed at by the Legislature, and to interpret them, as far as possible, so as to further and effect those objects (see Lord Blackburn's judgment in *River Wear Commissioners v. Adamson*, 37 L. T. Rep. 543; 2 App. Cas. 743), it was decided by the Court of Appeal in *Von Heyden v. Neustadt* (42 L. T. Rep. 300, 14 Ch. Div. 230), in conformity with some earlier authorities, that, as the Crown's power of granting the sole privilege of "working or making the new manufacture within the realm" was saved, there was saved with it, as ancillary to it, the power of making that privilege effectually profit-

able to the true inventor by conferring upon him also the exclusive right of selling the commodity so manufactured. The exclusive right or privilege of sale conferred upon a patentee by the Crown in exercise of this implied power is not the exclusive right of selling within this realm articles made by others and situated elsewhere, though produced by a process precisely similar to that described in his patent; but, on the contrary, is, as it appears to me, the exclusive right of selling within this realm the commodity produced here by him by that process of manufacture which he alone is authorised to carry on within the realm. And, moreover, it is quite obvious that a contract entered into in England for the sale of a specific ascertained chattel situated abroad, of a kind and nature protected here by patent, but never imported into this country, can no more deprive the patentee of his profits, raise the price of the article at home, hurt trade here, or cause general inconvenience to the community in these kingdoms, which are the very evils struck at by the Statute of Monopolies, than would the same contract if entered into abroad. The two transactions, indeed, are equally outside the purview of that statute. Numerous cases are collected in Maxwell on the Interpretation of Statutes, 4th ed. pp. 130-146, in which the general words of statutes were held to be restricted to the specific object aimed at where it is evident that a literal interpretation of the language used would have carried the operation of the Act beyond the intention of the Legislature in passing it. It will be sufficient to take one case as an example. In *Phillpotts v. Phillipotts* (10 C. B. 85) it was held that a conveyance of property knowingly made for the purpose of giving a vote, contrary to the provisions of 7 and 8 Will. III, c. 25, sec. 7, which declares such conveyances void and of none effect, is void so far as the right of voting is concerned, but in other respects valid as between the parties so as to pass the property. I think that the language of the Act of 1883 and of this patent must be construed on this principle—that is to say, their general words must in their operation be restricted to those matters which come within the purview of that earlier legislation by virtue of which alone the power of making these patent grants is still preserved to the Crown, and if that be so, in my opinion the sale which took place in this case cannot be held to be a "vending" within the meaning of the patent of the patentee's invention within the section, nor by consequence an infringement of his rights. I think therefore that the judgment of the Court of Appeal was right, and that this appeal should be dismissed with costs.

Appeal dismissed.

Counsel for the Appellants—Cripps, K.C.
—J. C. Graham—Colefax. Agents—J. H. &
J. Y. Johnson, Solicitors.

Counsel for the Respondent—Walter.
Agents—Emmet & Company, Solicitors.