HOUSE OF LORDS.

Tuesday, December 21, 1909.

(Before the Earl of Halsbury, Lords Macnaghten, James of Hereford, Atkinson, and Shaw.)

AMALGAMATED SOCIETY OF RAILWAY SERVANTS *v.* OSBORNE.

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

Trade Union—Rules—Ultra Vires—Parliamentary Representation—Compulsory Payments to Representatives — Trade Union Acts 1871 (34 *and* 35 *Vict. cap.* 31), *and* 1876 (39 *and* 40 *Vict. cap.* 22).

A trade union altered its rules by adding as an object "to secure parliamentary representation." The new rules also established for this purpose a money levy compulsory upon the members of the trade union, and provided that all parliamentary candidates "shall sign and accept the conditions of the Labour Party."

Held that the rules imposing the levy were invalid and unenforceable, because such objects were *ultra vires* of the trade union, or (*per* Lord Shaw) illegal as contrary to public policy.

The respondent claimed against the trade union (appellants) of which he was a member a declaration that certain levies resolved upon by the trade union were illegal and unenforceable, and also sought for an injunction. Judgment in the respondents' favour was pronounced by the Court of Appeal (Cozens-Hardy, M.R., Moulton and Farwell, L.JJ.), reversing a judgment of Eve, J. The purposes for which the levy was demanded are discussed at length in their Lordships' opinions, which were delivered, after consideration, as follows:—

Earl of Halsbury—I think that the decision of this case must depend upon the construction which your Lordships will place upon the Statute 34 and 35 Vict. cap. 31. In the definition clause of that Act it is enacted that the term "trade union" means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business as would, if this Act had not passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade. This was amended in the 16th section of the Act 39 and 40 Vict. cap. 22, as follows:—"The term trade union means any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the principal Act had not been passed, have been deemed to have been an unlawful combination by reason of one or more of its purposes being in restraint of trade." The first section of the earlier Act protects any purposes of a trade union from being held to be unlawful merely because they are in restraint of trade, with the consequence that no agreement is to be rendered void or voidable. By the 4th section it is provided that nothing in the Act shall enable any court to entertain any legal proceeding for enforcing or recovering damages for the breach of any agreement between members of the union—(1) Concerning the conditions on which they shall or shall not sell their goods, transact business, employ or be employed. (2) Any agreement for the payment by any person of any subscription or penalty to a trade union. (3) Any agreement for the application of the funds of a trade union—(*a*) to provide benefits to members; (*b*) to furnish contributions to any employer or workman not a member of such trade union in consideration of such employer or workman acting in conformity with the rules and resolutions of such trade union; (*c*) to discharge any fine imposed upon any person by sentence of a court of justice. The Act is, as it were, a charter of incorporation, and it undoubtedly renders some things lawful which but for the enactment would be unlawful, and with a degree of minuteness gives a specific authority to certain contracts and to certain applications of funds that appear to me to be absolutely exhaustive. The question of how far and to what extent trading corporations were limited by their memoranda of association, which bear a close resemblance to what is here enacted as applicable to trade unions, was very amply discussed in *Ashbury Railway Company* v. *Riche* (L.R., 7 H.L. 653). The House of Lords in that case—consisting of Lord Cairns, L.C., Lord Chelmsford, Lord Hatherley, Lord O'Hagan, and Lord Selborne—have settled the law in a manner which seems to me to dispose of this case. It is true that the Act does not make the trade union a corporation; but taking the only distinctive word used, a "combination," it can hardly be suggested that it legalises a combination for anything, and if some limit must be placed on its powers, one can only apply the same rules as were agreed to by the noble and learned Lords in that case, and it certainly would not be easy to find a more supreme authority than the judgment in that case. This statute I think gives the charter for all such "combinations," and what is not within the ambit of that statute is, I think, prohibited both to a corporation and a combination; it only exists as a legalised combination having power to act as a person and to enforce its rules within the limits of the statute, whatever those limits are; and in the matter most relevant to the present question it has with great care protected from inter-

ference three applications of its funds, among which it is too obvious for argument that the object now in question is not one. It is manifest therefore that if confined to the three purposes protected by the 4th section nothing else is within the purposes of a trade union as defined by the 23rd or 16th sections of the two Acts, and it is impossible to uphold this power of taxing the members beyond the purposes for which the trade union exists. Your Lordships have heard a very learned and interesting argument, itself a commentary upon very learned arguments by the Court of Appeal, and I do not desire to be understood as expressing dissent from the views therein expressed. I only hesitate to give my opinion because I think that the views which I have expressed upon the construction of the statute are enough to dispose of this case, and I do not desire to go beyond what is necessary for the decision of this case. Many questions might be raised here; for pecuniary assistance might be given to a person who without such assistance might not be able to support the burden of being elected a member of Parliament. It may be difficult to express in sufficiently definite language how far individual freedom of judgment can be preserved consistently with acceptance of pecuniary support I can foresee questions of this sort, and I do not desire to be called upon to decide them until they are raised, and I therefore content myself by saying that this levy is to my mind manifestly beyond the powers possessed by a trade union.

LORD MACNAGHTEN—The question which your Lordships are called upon to decide is one of great importance and much interest, but I cannot think that there is any difficulty about it. It seems to me that no conclusion is possible but that which commended itself to the Court of Appeal. It is a broad and general principle that companies incorporated by statute for special purposes, and societies, whether incorporated or not, which owe their constitution and their status to an Act of Parliament, having their objects and powers defined thereby, cannot apply their funds to any purpose foreign to the purposes for which they were established, or embark on any undertaking in which they were not intended by Parliament to be concerned. The principle, I think, is nowhere stated more clearly than it is by Lord Watson in *Baroness Wenlock* v. *River Dee Company* (10 App. Ca. 354) in the following passage—"Whenever a corporation is created by Act of Parliament with reference to the purposes of the Act, and solely with a view to carrying these purposes into execution, I am of opinion not only that the objects which the corporation may legitimately pursue must be ascertained from the Act itself, but that the powers which the corporation may lawfully use in furtherance of these objects must either be expressly conferred or derived by reasonable implication from its provisions." "That," adds his Lordship, "appears to me to be the principle recognised by this House in *Ashbury Company* v. *Riche* (*cit.*) and in *Attorney-General* v. *Great Eastern Railway Company* (5 App. Ca. 473). This principle is not confined to corporations created by special Acts of Parliament. It applies, I think, with equal force in every case where a society or association formed for purposes recognised and defined by an Act of Parliament places itself under the Act, and by so doing obtains some statutory immunity or privilege. The law laid down in *Ashbury Company* v. *Riche* 'applies,' says Lord Blackburn, 'to all companies created,' I may add or established 'by any statute for a particular purpose.'" The society with which this case is concerned is a trade union registered under the Act of 1871. That Act defines, in language amended by the Act of 1876, the purposes of trade unions, and purports to confer certain privileges on unions registered under its provisions. Whatever may have been the origin of trade unions, it is a matter of common knowledge that many such societies were in existence long before the Act of 1871. Generally speaking, they had two main objects. They were combinations for trade purposes and for benevolent purposes as well. But when the struggle began which led to the Act of 1871, those who managed the case on the part of trade unions insisted that the benevolent purposes of a union were to be regarded as secondary and subordinate to its trade purposes. They urged (as I ventured to point out in *Taff Vale Railway Company* v. *Amalgamated Society*, [1901] A.C. 426) that the strength of the union and the confidence of its members simply consisted in this, that it could, if so disposed, employ the whole of its funds in support of trade ends. They objected to any separation of funds as being calculated to paralyse the efficacy of the institution, and tantamount to a proposal to suppress unionism by statute. Hence it comes, I think, that the benevolent purposes of trade unions, though referred to in the Trade Union Acts 1871 and 1876, are not mentioned either in the original or in the amended definition of the term "trade union." They are relegated to an inferior and subordinate position. The original definition is, no doubt, open to objection. But the amended definition is, I think, a true definition. When Parliament adopts an expression in common use at the time and assigns to it a particular meaning, it is difficult to see how it can be argued that the expression as used in the Act and for the purposes of the Act does not mean simply that which the Act says that it does mean, but means that and anything else in the world not in itself illegal which may be tacked on to it. As, however, these benevolent purposes are expressly recognised in the Trade Union Acts 1871 and 1876 as objects within the scope and province of trade unions, the absence of any reference to such purposes in the definition of the term "trade union" is only noteworthy because it seems to have misled the Divisional Court, and was,

perhaps, in some way accountable for the erroneous decision which Neville, J., thought himself bound to follow. There is, I think, an analogy not to be overlooked between the scheme of legislation under which friendly societies and benefit building societies were established and the legislation which contains the charter of trade unionism. Trade unions desirous of being registered under the Act of 1871 are required to send to the registrar printed copies of their rules. The rules of every such trade union must contain provisions in respect of the several matters mentioned in the first schedule to the Act. This schedule, it may be observed, refers in the margin to the Friendly Societies Act of 1855 (18 and 19 Vict. c. 63), which, like the Act of 1871, specified the purposes of institutions and societies to which protection was meant to be afforded, and required persons intending to establish a friendly society to agree upon and frame a set of rules "for the regulation, government, and management" thereof, and, like the Act of 1871, specified the matters to be provided for by the rules. The first five matters specified in the schedule to the Act of 1871 are word for word the same as the matters to be provided for in the first five rules of the Friendly Societies Act of 1855, merely substituting the word "union" for the word "society." In both cases the rules were to specify "the whole of the objects" of the society or union. But, of course, the objects to be specified were not, as the Divisional Court thought, any objects not in themselves illegal. They must be objects strictly within the scope of the Act. And the powers to be used in furtherance of these objects, to repeat Lord Watson's words, must be "either expressly conferred or derived by reasonable implication from the provisions of the Act." A power, as Lord Selborne intimates in *Murray* v. *Scott*, 9 App. Ca. 519, may be "not only consistent with, but reasonably conducive to, the proper objects" of a society, and yet not so necessary as to be implied if it be not expressly given. As Giffard, L.J., pointed out in *Laing* v. *Reed*, L.R., 5 Ch. 4, in a judgment approved by this House in *Murray* v. *Scott*, in a case like this—the case of a society owing its constitution and its status to an Act of Parliament and registered under the Act with rules purporting to be in conformity therewith—if a controversy is raised as to whether a particular rule is or is not *ultra vires*, the question must be—Does the rule merely provide a method of conducting business, or is it a rule making the society "a thing different from that which is specified in the Act and meant by the Act?" It can hardly be contended that a political organisation is not a thing very different from a combination for trade purposes. There is nothing in any of the Trade Union Acts from which it can be reasonably inferred that trade unions as defined by Parliament were ever meant to have the power of collecting and administering funds for political purposes. The learned counsel for the appellants did not, as I understood their argument, venture to contend that the power which they claimed could be derived by reasonable implication from the language of the Legislature. They said it was a power "incidental," "ancillary," or "conducive," to the purposes of trade unions. If these rather loose expressions are meant to cover something beyond what may be found in the language which the Legislature has used, all I can say is that, so far as I know, there is no foundation in principle or authority for the proposition involved in their use. Lord Selborne no doubt did use the term "incidental" in a well-known passage in his judgment in *Attorney-General* v. *Great Eastern Railway Company, cit.* But Lord Watson certainly understood him to use it as equivalent to what might be derived by reasonable implication from the language of the Act to which the company owed its constitution, and Lord Selborne himself, to judge from his language in *Murray* v. *Scott, cit.*, could have meant nothing more. I am therefore of opinion that a rule which purports to confer such a power as that now in question on any trade union registered under the Act of 1871, whether it be an original rule of the union or a rule subsequently introduced by amendment, must be *ultra vires* and illegal. This view, which is, I think, in accordance with the opinion of all the learned Judges in the Court of Appeal, disposes of the whole case. I do not think it necessary, and I doubt whether it is expedient or profitable, to discuss the so-called constitutional question which was introduced, rather unfortunately I think, into the case in the Court of Appeal. I may, however, perhaps be forgiven for referring to an historical fact which is (to borrow a phrase from a Lord Chancellor of former times) "more matter of curiosity than use." It seems pretty clear that at the date of the passing of the Act of 1871 trade unions were by no means ambitious of Parliamentary representation or political power. Some of the most respected leaders of trade unionism held the view that the less trade unions had to do with politics the better. It was not until two or three years after the passing of the Act of 1871 (as appears from Mr and Mrs Webb's able and exhaustive History of Trade Unionism) that the scheme for securing Parliamentary representation and obtaining political power first took shape and met with general acceptance among trade unionists. I think that the decision of the Court of Appeal must be maintained, and the appeal be dismissed, with costs.

LORD JAMES OF HEREFORD—After much consideration I have come to the conclusion that your Lordships' judgment should be given in favour of the respondent. But I desire to explain that the opinion which I thus express is founded upon one particular fact existing in the case. With much of the argument adopted by counsel at the bar on behalf of the appellants I agree. For instance, I think that it may well be in the interests of trade unionism and labour that the funds of a trade union

should be devoted to the payment of the expenses of a Member of Parliament who should represent such interests. I also concur in the view presented to your Lordships by Sir Robert Finlay, that section 16 of the Act of 1876 is not a clause of limitation or exhaustive definition. It seems to me that the Legislature only intended to require certain qualifications to exist before an entity could become a trade union, but the objects or limits of action of a properly qualified trade union are not dealt with by the section. So far I am in agreement with the case presented by the appellants. But my difficulty in the way of complete concurrence arises in consequence of the terms of Rule XIII, section 4, as amended in October 1906—"All candidates shall sign and accept the conditions of the Labour Party and be subject to their Whip." The effect of this rule and others which exist is that a member of the trade union is compelled to contribute to the support of a Member of Parliament, who is compelled "to answer the Whip of the Labour Party." I construe this condition as meaning that the member undertakes to forego his own judgment, and to vote in Parliament in accordance with the opinions of some person or persons acting on behalf of the Labour Party. And such vote would have to be given in respect of all matters, including those of a most general character—such as confidence in a Ministry or the policy of a Budget—matters unconnected directly at least with the interests of labour. Therefore I am of opinion that the application of money to the maintenance of a member whose action is so regulated is not within the power of a trade union. If your Lordships decide on this branch of the case that the respondent is entitled to judgment, it is unnecessary that any opinion should be expressed upon the very broad constitutional question raised for the first time in the Court of Appeal affecting the general support of members, upon which the Master of the Rolls has given no judgment. However, I desire to add that my silence upon this question of the judgment of the two Lords Justices must not be regarded as denoting agreement with it.

LORD ATKINSON—In this case the plaintiff sues a trade union society duly registered, of which he has been continuously a member since the year 1892, to have it declared that rule 13, section 4, of its current rules, which provides, amongst other things, for Parliamentary representation and the enforced levy of contributions from the plaintiff and other members of the society towards the payment of salaries or maintenance allowance to Members of Parliament pledged to observe and fulfil the conditions imposed by the constitution of the Labour Party therein referred to, is *ultra vires* and void, and that the society may be restrained from enforcing it. And, in the alternative, that it may be declared that a certain amendment or addition made to the rules in 1906 may be declared to be illegal and void, and for other relief. The registered rules of 1900 were, for the purpose of the hearing, taken as the original rules of the society, though it had in fact been established in 1871. Under the provisions of the 14th section of the Trades Union Act of 1871, and the schedule therein referred to, those rules must have provided for the "whole of the objects" for which the union was established, "the purposes for which the funds were to be applicable," "the conditions under which any member might become entitled to the benefit assured thereby," and "the fines and forfeitures to be imposed on any member." It was conceded that these rules of 1900 did not contain any reference whatever to Parliamentary representation, or to compulsory levies in respect of it; that in 1903, for the first time, there were introduced into the rules by amendment the words "to secure Parliamentary representation" to designate a purpose to which funds might thereafter be applied, and that in 1906 an amendment was, for the first time, introduced requiring candidates for Parliament to sign and "accept the conditions of the Labour Party and be subject to their Whip." As the plaintiff had become a member of the society long before these amendments were made it is conceded that if they are illegal or void, as being *ultra vires*, he has not contracted to be bound by them, as he might possibly be held to have done had they been made before he became a member, and that therefore, if his objection to the amendments be well founded, he is within his rights in bringing this action, and is entitled to the main relief which he seeks. One question, called for convenience "the constitutional question," which was argued before your Lordships, was not argued before Neville, J. It is not specifically raised on the pleadings, nor, as far as appears from the record, was it ever, until the hearing of the appeal, thought of by the parties to the suit. It is the question whether the Members of Parliament who receive salaries or maintenance allowances and sign the pledge to accept the conditions contained in the constitution of the Labour Party, referred to in the rules of 1906, and to be subject to their Whip, have not thereby entered into an agreement which involves such a sacrifice of their independence and liberty of thought and action that it is illegal and void as against public policy. On the other hand, some questions were argued before the Court of Appeal which were not argued, or not pressed, before your Lordships. First, it was not contended here, as it was there, that the amended rules, whatever their imperfections in law, were validated by registration. Second, the alleged incompetency of the general meeting which adopted the amendment of 1906, due to the conditions under which it was convened, was not pressed on the respondent's behalf. The questions argued before your Lordships are thus reduced to two—first, whether or not the rule complained of was *ultra vires*, and second, the so-called "constitutional question." Holding the views which I am about to express upon the

first question, it is entirely unnecessary for me to express any opinion whatever upon the second, and I abstain from doing so. The contentions upon which the appellants rely to establish the validity of the impeached rule are, as I understand it, first, that the definition contained in clause 16 of the Trades Union Amendment Act of 1876 is not, as it is said, exhaustive, and that therefore a trade union, though registered, may have amongst its objects, in addition to one or more of the objects named in the section, any object whatever not in itself illegal; and accordingly, that provided it be created to effect one or more of the objects named, it is in other respects in the same position as any individual or voluntary association of individuals, and is therefore at liberty to spend its funds to procure the return of Members to Parliament and to maintain them there as freely as an individual or such an association of individuals is to devote his or its moneys to a like purpose. And second, that even if such a union be not free to aim at all legal objects not named in the section, Parliamentary representation on the conditions prescribed in the rule is the most effective means of attaining the objects which are named, and may therefore be lawfully provided for in the mode prescribed. The ground upon which it is insisted that the definition is not exhaustive is this. The definition, it is said, contains no reference to the providing of benefits for members, &c., though it is obvious from the provision of section 4 of the Act of 1871 and of the first schedule referred to in that statute, that this was one of the well-known purposes for which trade unions were formed. Farwell, L.J., was apparently of opinion that the provision of such benefits is covered by the words in the definition "Regulating the relations between workmen and workmen"; but whether that be so or not, the providing of benefits was a well-known and well-recognised purpose of trade unions long before any legislation dealing with them was passed. It is undoubtedly a purpose collateral or ancillary to the purposes with which the section is conversant, and to argue that because of the omission from this section of a well-known object of this kind, therefore all objects not named, however foreign they may be to those objects at which the history of these bodies shows that they aimed, may legitimately be promoted, is the most obvious *non sequitur*. Jessel, M.R., in *Rigby* v. *Connol* (14 Ch. Div. 482), analysed the legislation passed to deal with trade unions, and described its purpose and effect. Farwell, L.J., in his judgment in this case, described with accuracy and fulness their present position, their rights and privileges. From these judgments it is clear, in my view, that they are, when registered, *quasi*-corporations, resembling much more closely railway companies incorporated by statute than voluntary associations of individuals merely bound together by contract or agreement, express or implied; and it is plain that as soon as this character was given to them, and the rights and privileges which they now enjoy were conferred upon them, it became a matter of necessity to define the purposes and objects to which they were at liberty to devote the funds raised from their members by enforced contributions. A definition which permitted them to do the particular things named, and in addition all things not in themselves illegal, would be no definition at all, and would serve no purpose at all. There must be some limit. The question for decision therefore is whether Parliamentary representation falls within or without that limit, or, in other words, whether the Legislature, expressly or by fair implication, has conferred upon registered trade unions power and authority to subsidise in the manner provided by the impeached rule a scheme of Parliamentary representation. I use the expression "by fair implication," as that was the expression used by Lord Watson in *Attorney-General* v. *Great Eastern Railway Company*, 5 App. Cas. 473, in applying the *ultra vires* rule to railway companies incorporated by an Act of Parliament. He expresses himself thus—"I cannot doubt that the principle by which this House in the case of the *Ashbury Railway Company* v. *Riche* tested the power of a joint stock company (with limited liability) under the Companies Act of 1862 applies with equal force to the case of a railway company incorporated by an Act of Parliament. That principle in its application to the present case appears to me to be this, that when a railway company has been created for public purposes the Legislature must be held to have prohibited every act of the company which its incorporation statute did not warrant either expressly or by fair implication." And Blackburn, J., in dealing with corporations having the powers of common law corporations to contract under seal, lays down the rule by which their action in that respect is to be limited on somewhat the same lines. In his judgment in *Riche* v. *Ashbury Railway Company*, L.R., 9 Ex. 224, he expressed himself thus—"I do not entertain a doubt that, if on the true construction of a statute creating a corporation it appears to be the intention of the Legislature, express or implied, that the corporation should not enter into a particular contract, every court, whether of law or equity, is bound to treat a contract entered into contrary to the enactment as illegal, and therefore wholly void." Lord Cairns, L.C., in his judgment in that case in the House of Lords (*cit.*) approves apparently of the statement of the rule. In an earlier portion of his judgment he pointed out that limited liability companies created under the Companies Act of 1862 had not the powers of common law corporations, and gave the reasons why their operations must be restricted to those subjects expressly or impliedly mentioned in their memoranda of association. It is not suggested that registered trade unions have the powers of common law corporations, and the rule to be applied to them must, I think, be that laid down as applic-

able to railway companies in the above-quoted passage from Lord Watson's judgment. Now it is not contended that it is a matter of necessity for registered trade unions to secure Parliamentary representation on the lines indicated in this rule, or on any other lines. Their whole history refutes such a suggestion. But it is contended that it is only fair to imply that they have this power, because such a representation would afford the most effective means of accomplishing the objects mentioned in section 16; inasmuch as legislation might be introduced to help or hinder them in the prosecution of these objects, and that it is vital to their interests to have in Parliament members in sympathy with their views to support the one form of legislation and to oppose the other; and further, that they cannot procure the return of such members unless they pay out of their funds the election expenses of chosen candidates, and by the same means maintain them if returned to Parliament. The answer to that argument is, I think, this. Trade unions are in this respect in precisely the same position as all corporations, municipal or commercial, including in the latter all limited liability companies created under the Act of 1862. These bodies, like the trade unions, may by legislation be helped or hindered in carrying out the objects which they were formed to carry out. Their most vital interest may be seriously prejudiced by taxation which the Legislature may impose, or enabling statutes, general in character, may be introduced calculated to enlarge their powers, increase their privileges, or remove restraints upon their action, or, again, some of them may be under the necessity of promoting private Bills to meet their own special needs. If, despite all this, the intention never has been and cannot be imputed to the Legislature to confer upon such corporations as these power or authority to devote their funds to the procurement of Parliamentary representation in the manner contended for in this case, how can such an intention be imputed to it in the case of *quasi*-corporations such as registered trade unions? And if this intention cannot be imputed to the Legislature in the case of registered trade unions, as in my view it cannot be, there can be no such thing as an implied grant of the desired powers, because an addition to a grant is only introduced by implication in order to carry out the presumed intention of the grantor. During the argument I asked to be informed on what principle the case of registered trade unions was to be differentiated from that of other corporations such as I have named, and why the former were to be permitted by an alteration of their rules to convert themselves into political organisations, while a similar privilege was to be denied to the latter. No satisfactory reply was given to me, because none could, I believe, be given. I know of no such principle myself. It is not disputed that up to 1903, at all events, members of trade unions were not on joining required to subscribe to any political creed or submit to any political test any more than are persons who become shareholders in a railway company, and, for all that appears, there may be as great a diversity of political views amongst the members of the one class as of the other. Freedom of opinion was probably permitted amongst the members of both classes because it was not the business of either of the bodies to which they respectively belonged to support particular political parties or to promote a particular political policy. It would be as unjust and oppressive as, in my view, it is illegal, to compel, by passing rules such as that impeached, a member of a trade union who, like the respondent, joined in the days when freedom of action was permitted, either to contribute to the promotion of a political policy of which he might possibly disapprove, or be expelled from the union to which he belonged for many years and forfeit all benefit from the money which he had subscribed. I am therefore of opinion that power and authority such as are claimed for the appellants in this case have not been conferred upon them, expressly or by implication; that the impeached rule is *ultra vires;* that the decision appealed from was on this point right and should be upheld, and the appeal dismissed, with costs. For the reasons already given, I express no opinion on the other question so elaborately argued before your Lordships.

LORD SHAW—I agree with the narrative which appears in the judgments of your Lordships who have preceded me as to the statutes and the rules of the appellant society which bear upon the points open for decision in this case, and as to the relations and actings of the society and the respondents. I think it unnecessary to make any restatement on those subjects. The respondent became a member of the appellant society sixteen years ago. Its rules were amended from time to time. During those years he had on the one hand made his contributions, and on the other was entitled to the benefits provided by the union. His rights and contributions, however, were liable to forfeiture if he should fail in making payment of such contributions or levies as were duly and regularly imposed. It is conceded that the object for which such contributions or levies are imposed must be (1) within the terms of the contract, that is to say, within the scope, express or implied, of the rules and objects of the union; and (2) within the law, that is to say, for purposes which are not in themselves illegal, unconstitutional, or contrary to public policy. These propositions are not confined to trade unions, benefit societies, or the like, but would similarly extend to unions or federations of employers, and, indeed, in principle, to all bodies or companies acting in terms and for objects set forth in a voluntary code or in a statutory enactment. This is, of course, subject to the express or implied powers of development and adaptation *deducible*

from the code. What the latter are is a question in each individual case. In the present it has been argued to us with great force that the union, one of whose objects, for instance, is "to improve the condition and protect the interests of its members," &c., must have (since the action of Parliament may have the greatest influence in achieving those objects) an implied power to include the payment of Members of Parliament within the scope of its powers of expenditure and levy—fortified as those powers are by the sanction of forfeiture of rights. My doubt has reference to the scope of and the point selected for decision in this case; and it arises in this way. There were two arguments presented:—(1) The expenditure of the society's members' contributions in paying Members of Parliament, whether the payments be part of an illegal or unconstitutional compact or not—is not in fact authorised by the terms of association. (2) The payment in respect of which the contributions are enforced, whether such payment be authorised by the terms of the association or not, is part of a compact which in its nature is illegal or unconstitutional. Under the first argument, if the contravention of the terms of association be affirmed, the constitutional question is superseded. Under the second argument, if essential illegality be affirmed, the consideration of the terms of association is unnecessary. In the Court of Appeal the learned Master of the Rolls decided only the first, and the learned Lord Justices decided both of those questions. I should have been very glad if your Lordships had also seen your way to adopt the latter course. But I quite agree that, strictly considered, the one question saves the other. As so often happens with propositions so related, the selection between them is not governed by any canon of logic, but is optional. Your Lordships' choice has fallen on the point as to the rules and objects of the society, which I gather that you hold did not embrace the payment of Members of Parliament. I cannot say that I am entirely clear in my own mind upon that topic. I do not dissent, but I do not decide. Long before the statutes of 1871 and 1876 were enacted trade unions were things in being, the general features of which were familiar to the public mind. They were associations of men bound together by common interests for common ends. Statute did not set them up, and, speaking for myself, I have some hesitation in so construing language of statutory recognition as a definition imposing such hard-and-fast restrictive limits as would cramp the development and energies and destroy the natural movements of the living organism. It is in that region that my doubts lie. I fully recognise that the introduction of matter, either foreign to or subversive of the society's objects, is not permissible; but I am not clear that the payment of members of Parliament by associations whose objects embrace the regulation of hours and conditions of labour, and of the relations of the employers and workmen, is such foreign or subversive matter; and, speaking for myself, I do not think that the problem is solved by designating the new matter political, and holding that for that reason it is differentiated from the old. It is in these circumstances that I find myself compelled to consider this appeal upon the other ground taken, involving an examination of the conditions which accompany the payment under the constitution of the Labour Party, viz., the ground that the contributions are to be devoted to the payment of Members of Parliament who accept the same under obligations inconsistent with our Parliamentary constitution and contrary to public policy. As, however, I stand alone in this course, and as accordingly my view would not be considered as entering into the ratio of the judgment of your Lordships' House as a whole, I shall content myself with a brief statement. This is the more justified on account of the fulness and learning and power with which the point has been treated by Moulton and Farwell, L.JJ., in the Court of Appeal. I do not accordingly think it necessary to deal with the whole chain of authorities cited in the able and instructive argument of Mr Spencer Bower, but I may be allowed to put on record what I conceive to be the substance of the case submitted upon the constitutional point, and I do so for the further reason that I incline to the opinion that that portion of the case is of general and permanent, while the other now decided may for reasons which need not be entered upon be of particular and relatively transient, importance. On the 1st October 1906 the annual general meeting of the appellant society adopted a "partial alteration of rules" as follows:—To Rule XIII, section 4, clause 2, paragraph (*a*), add "All candidates shall sign and accept the conditions of the Labour Party and be subject to their Whip." "New clause 7. The executive committee shall make suitable provision for the registration of a constituency represented by a member or members who may be candidates responsible to and paid by this society." Stripped of extraneous matter, it is the competency and legality of these additions which are the questions at issue in this suit. "The Conditions of the Labour Party" are to be found (along with its composition) in the document entitled "Constitution of the Labour Party (as revised under the authority of the London Conference, 1906)." The body is a federation of trade unions, trade councils, Socialist societies, and local labour associations, who may become affiliated on application. Co-operative societies are also eligible. Its first object is "to organise and maintain a Parliamentary Labour Party with its own Whips and policy." That policy is presumably formulated and controlled by the annual conference of delegates. It should here be explained that the Labour Party appears to be the lineal successor of the Labour Representation Committee, whose constitution as revised in January 1905 is also printed. The constitution of the Labour

Party differs in some respects from that of the Labour Representation Committee, and the difference is especially notable in regard to the delegates and the annual conference. By the constitution of the Labour Party trade unions and Socialist societies pay 15s. per annum for every 1000 members, and receive one voting card for each 1000 or fraction thereof paid for. On the other hand, trade councils and local labour associations pay £1, 10s. per annum, irrespective of membership, and are entitled to send one delegate to the annual conference. "But they may send one additional delegate for every additional 10s. paid as affiliation fee," and they are entitled to receive one voting card, not for each 1000 members, but for each delegate they are entitled to send. How this works in practice is not stated, but it appears to be possible that the annual conference, which constitutes the ultimate governing body, may be composed according to money contributions by trade councils and local labour associations in such a way as to swamp the larger component organisations, including the Amalgamated Society of Railway Servants, whose representation is confined to one voting card per 1000 members. The case therefore is not simply that of contributions for payment of Members of Parliament to be selected and supported by the appellant society itself, but one in which, while the duty of supporting is laid on the society, the securing of the election of a member and the Parliamentary policy which he is bound to pursue is by another body, a federation of societies, to which the appellant society has consented to delegate these important functions, in which federation the opinions of the appellant society may be merged or submerged as the case may be. While a delegation of this kind is undoubtedly of a most serious character, no separate point on that subject was taken in argument, and for myself I decide the case apart from it. An executive committee of the Labour Party is appointed, among whose duties it is to "issue a list of its candidates" and recommend them for the support of the electors, and to report to the affiliated organisations "any labour member, candidate, or chief official who opposes a candidate of the party or acts contrary to the spirit of the constitution." As to candidates and Members of Parliament themselves, the constitution is in these terms—"(1) Candidates and Members must accept the constitution; agree to abide by the decisions of the Parliamentary party in carrying out the aims of this constitution; appear before their constituents under the title of Labour candidates only; abstain strictly from identifying themselves with or promoting the interests of any party not eligible for affiliation, and they must not oppose any candidate recognised by the executive committee of the party." The position of a Member of Parliament supported by the contributions of the society is accordingly this—as stated (1) he is by the society's rules "responsible to" as well as paid by the society; (2) he must as a candidate have signed and accepted the conditions of the Labour Party; (3) while that party has its own policy he must accept its constitution and "agree to abide" by the decisions of the Parliamentary party in carrying out the aims of the constitution. Under these aims the first object of the constitution must be included, namely, maintaining the Parliamentary Labour Party's own policy. Unless a member becomes bound to the society and to the Labour Party by these conditions, and shapes his Parliamentary action in conformity therewith and with the decisions of the Parliamentary party, he has broken his bargain. Take the testing instance—Should his view as to right or wrong on a public issue as to the true line of service to the realm, as to the real interests of the constituency which has elected him, or even of the society which pays him, differ from the decision of the Parliamentary party, and the maintenance by it of its policy, he has come under a contract to place his vote and action into subjection not to his own convictions but to their decisions. I do not think that such a subjection is compatible either with the spirit of our Parliamentary constitution or with that independence and freedom which have hitherto been held to lie at the basis of representative government in the United Kingdom. It is no doubt true that a member, although party to such a contract of subjection, would in point of law enter Parliament a free man, because the law would treat as non-enforceable and void the contract which purported to bind him; and it is no doubt true that—parties remaining outside of and making no appeal to the law—this subjection may arise in practice through the operation upon certain natures of various motives, including notably those of sycophancy or fear. But when the law is appealed to to lend its authority to the recognition and enforcement of a contract to procure subjection of the character described, with the concurrence of money payments and the sanctions of fines or forfeiture, the law will decline such recognition or enforcement, because the contract appealed to is contrary to sound public policy. I should be sorry to think that these considerations are not quite elementary, and they apply with equal force not to labour organisations alone which operate by administering—under, it may be, careful supervision—the subscriptions of its members, but even with greater force to individual men or organisations or trusts of men using capital funds to procure the subjection of Members of Parliament to their commands. In this latter case, indeed, adhesion to the principle is of a value all the greater because its violation might be conducted in secret. It needs little imagination to figure the peril in which Parliamentary government would stand if either by the purchase of single votes or by subsidies for regular support the public wellbeing were liable to betrayal at the command and for the advantage of particular individuals or classes. It would be superfluous

to note in detail how deeply embedded this principle is in the law of England on the subject of Parliamentary government. On the subject of the predominating consideration Coke remarks (iv, 14)—"And it is to be observed, though one be chosen for one particular county or borough, yet when he is returned and sits in Parliament he serveth for the whole realm." Blackstone in the passage cited in the Court below, adopts the same language, and Locke's well-known view in his second essay on Civil Government is stamped with the authority of the great commentator. For my part I look upon the whole of this doctrine as necessarily flowing from the fundamental idea that Parliament—originally conceived as a body of advisers to the King—Parliament is free—free in its election and free also in its advice. This fundamental idea of freedom has stood upon the statute book for many centuries. By 3 Edw. I, c. 5, it was enacted—"And because elections ought to be free, the King commandeth upon great forfeitures that no man by force of arms, nor by malice or menacing, shall disturb any to make free election." Of this statute, which Coke describes as "excellently penned," he comments—"Now that electors might make free and due elections without displeasure or fear thereof, by Act of Parliament, as a sure defence, the King commandeth the same, upon grievous forfeiture." Another early and most cogent illustration is that of 7 Hen. IV, c. 15, whereby it was provided that Knights of shires for the Parliament were to be chosen *libere et indifferenter sine prece aut precepto.* It is no doubt true that the public records and the statute book show that the protections which were thrown around freedom were largely in the shape of securing the safety of electors and constituencies in the exercise, without interruption, constraint, or corruption, of the franchises which they enjoyed. But all this would have been a mockery if, after purity and freedom had been enjoined amongst electors and constituencies, the representative so elected was not himself to be in the possession of his freedom in vote, advice, and action, not to be free, but to be bound—bound under a contract to submit these for salary and at peril of loss to the judgment of others. Locke discerned clearly the inter-relation of these two things. The latter as well as the former is ranked among those breaches of trust which would amount to the very dissolution of Government. The former is dealt with in the phrases as to the action of the magistrate, "if he employs the force, treasure, and offices of the society to corrupt the society or openly to pre-engage the electors and prescribe what manner of persons shall be chosen. For thus to regulate candidates and electors and new-model the ways of election, what is it but to cut up the Government by the roots, and poison the very fountain of public security?" The latter is dealt with in the remainder of the same sentence as follows:—"For the people having reserved to themselves the choice of their representatives, as the fence to their properties, could do it for no other end but that they might always be freely chosen, and so chosen freely act and advise, as the necessity of the commonwealth and the public good should upon examination and mature debate be judged to require." These principles have been frequently subject to evasion and attack—sometimes open and sometimes secret—but they have never been overthrown, and they apply to labourists' men, to capitalists' men, or, as in former times, to King's men. Whether they form one of the chief glories of the Constitution making this island "the envy of less happier lands," may be treated by the constitutional historian; with that I have not here to do, but in my opinion they do form part of the very body of our public law. Granted, however, that no conditions are imposed subversive of or imperilling their freedom, it will be observed that nothing that has been said attaches a taint or shadow of illegality to the payment of members of Parliament. Such payment may be a tribute to character or a recognition of talent, coupled with a desire that these should be secured for the service of the State, or it may spring from a legitimate wish that the views, the needs, the perils of particular, and it may be large, classes of His Majesty's subjects should be expressed in Parliament by those who speak with the authority of practical experience. Thus far I accede to the powerful argument for the appellants. But when that argument was pushed further, and especially to the two steps now to be noted, I must decline my assent. (1) It was said that experience shows that men of high honour have felt themselves free to accept obligations similar to those contained in the constitution of the Labour Party, and that those obligations have not in practical life proved restraints upon their independence or manacles upon their judgment. It may be that this is so, and its accord with one's experience of such men makes the argument strong, and it may also be that in such individual cases men deservedly stand so high in the councils of the controlling party that no dissonance between their views and its views will in practice arise. All this within the voluntary sphere is powerful. But in my opinion such instances should not be allowed as an argument for legalising the obligations of subjection to which I have referred, or for imperilling the broad constitutional guarantees of freedom. (2) It was argued that if individual classes were not to be allowed on their own terms to make payment of Members of Parliament, their security from the possible dangers of such operations could only be obtained at too high a price, viz., the payment of members as of right and from the public Treasury. I do not think that such considerations clarify the legal solution or should weigh with a Court of law. In brief, my opinion accordingly is—The proposed additional rule of the society that "all candidates shall sign and respect

the conditions of the Labour Party, and be subject to their 'Whip,'" the rule that candidates are to be "responsible to and paid by the society," and, in particular, the provision in the constitution of the Labour Party that "candidates and members must accept this constitution, and agree to abide by the decision of the Parliamentary Party in carrying out the aims of this constitution," are all fundamentally illegal, because they are in violation of that sound public policy which is essential to the working of representative government. Parliament is summoned by the Sovereign to advise His Majesty freely. By the nature of the case it is implied that coercion, constraint, or a money payment, which is the price of voting at the bidding of others, destroys or imperils that function of freedom of advice which is fundamental in the very constitution of Parliament. *Inter alia*, the Labour Party pledge is such a price, with its accompaniments of unconstitutional and illegal constraint or temptation. Further, the pledge is an unconstitutional and unwarrantable interference with the rights of the constituencies of the United Kingdom. The Corrupt Practices Acts, and the proceedings of Parliament before such Acts were passed, were but machinery to make effective the fundamental rule that the electors in the exercise of their franchise are to be free from coercion, constraint or corrupt influence, and it is they, acting through their majority, and not any outside body having money power, that are charged with the election of a representative, and with the judgment on the question of his continuance as such. Still further, in regard to the member of Parliament himself, he too is to be free, he is not to be the paid mandatory of any man or organisation of men, nor is he entitled to bind himself to subordinate his opinions on public questions to others, for wages, or at the peril of pecuniary loss, and any contract of this character would not be recognised by a court of law, either for its enforcement or in respect of its breach. Accordingly, as it is put in the words of Fletcher Moulton, L.J., "Any other view of the fundamental principles of our law in this respect would, to my mind, leave it open to any body of men of sufficient wealth or influence to acquire contractually the power to exercise that authority to govern the nation which the law compels individuals to surrender only to representatives—that is, to men who accept the obligations and the responsibility of the trust towards the public implied by that position." For these reasons I am of opinion that the appeal should be refused.

Appeal dismissed.

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HOUSE OF LORDS.

Wednesday, January 26, 1910.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, Atkinson, Collins, and Shaw.)

HOPKINS *v.* LINOTYPE AND MACHINERY LIMITED.

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

Patent — Improvement — Original Patent Rendered more Useful or Valuable — Ambiguous Specifications.

Any addition to a patented article which renders it cheaper or more effective, valuable, easy, or useful, or preferable as an article of commerce, is an "improvement" even although such improvement might be used without an infringement of the original patent.

Observed (*per* the Lord Chancellor)—if the specification of a patent is framed so as to be ambiguous the Courts may declare the patent void.

The appellant was bound under contract to communicate to the respondents any improvements to a patented machine manufactured by them, which might come to his knowledge. He afterwards took out letters-patent for mechanical inventions of the nature of improvements to this class of machine, but refused to communicate them to the respondents. The respondents sued upon the contract, and judgment in their favour was affirmed by the Court of Appeal (Cozens-Hardy, M.R., Buckley and Kennedy, L.JJ.).

At the conclusion of the arguments their Lordships gave judgment as follows:—

Lord Chancellor (Loreburn)—I wish to say a few words preliminary to the advice which I shall offer to your Lordships as to the decision of this particular case. The appellant has filed a specification which resembles a treatise in its length, and contains no less than sixty claims. There is infinite redundancy and repetition and constant references to illustrations which are not easy to follow. Altogether it is a document which needs a most prolonged and penetrating study in order that anyone who wishes to work out problems of invention in this class of industry may know where he stands and how he may be free from the danger of infringing former patents. The point whether this patent is good or not is not raised in this case, but I think that it is my duty to state explicitly that those who file and secure specifications must take the risk of having the whole thing declared void for ambiguity. I have had occasion to observe that there is a tendency to frame specifications and claims so as to puzzle a student, and to frighten men of business into taking out a licence for fear that their interpretation may be held erroneous and they be found guilty of infringement. That is an abuse of the