an intention on the part of either or both of the parties that there should be a contractual liability in respect of the accuracy of the statement. It is a representation as to a specific thing and nothing more. The Judge, therefore, ought not to have left the question of warranty to the jury, and if as a matter of prudence he did so in order to obtain their opinion in case of appeal he ought then to have entered judgment for the defendants notwithstanding the verdict.

It will, of course, be evident that I have only been dealing with warranty or representation relating to a specific thing. This is wholly distinct from the question which arises when goods are sold by description, and their answering to that description becomes a condition of the contract. It is, in my opinion, a failure to recognise that in the present case the parties were referring (as is evident by the written contracts) to one specific thing only, which led Farwell, L.J., to come to a different conclusion from that to which your Lordships ought, in my opinion, to come in this appeal.

Judgment appealed from reversed. Judgment entered for the appellants. Respondent to pay to the appellants their costs in this House and in the Courts below.

Counsel for the Appellants—Buckmaster, K.C. — Greer, K.C. — A. H. Chaytor. Agents — Coward, Hawksley, Sons, & Chance, Solicitors.

Counsel for the Respondent — F. E. Smith, K.C.—A. R. Kennedy—Harold Smith. Agents—Pritchard, Englefield, & Company, for Simpson, North, Harley, & Company, Liverpool, Solicitors.

HOUSE OF LORDS.

Monday, November 18, 1912.

(Before the Lord Chancellor (Viscount Haldane), Lords Macnaghten, Atkinson, Shaw, and Moulton.)

VACHER & SONS, LTD. *v.* LONDON SOCIETY OF COMPOSITORS.

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

Trade Union—Trade Disputes Act 1906 (6 *Edw. VII, cap.* 47), *sec.* 4 (1)—*Action of Tort—Competency.*

The Trades Disputes Act 1906, enacts —"Section 4 (1)—An action against a trade union . . . in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any Court." *Held* that the immunity conferred thereby is not confined to acts done in contemplation or furtherance of a trade dispute, but is absolute.

This was an appeal from an order of the Court of Appeal (Vaughan-Williams and Kennedy, L.J., Farwell, L.J., *dissenting*) *reversing* an order of Channell, J., in chambers.

The appellants, who were a limited company carrying on business as printers in London, brought an action of damages for conspiracy and libel against the respondents who were a trade union, to which the Trade Disputes Act 1906 (6 Edw. VII, c. 47) applied, on the ground that the respondents had conspired to represent, and had untruly represented, the appellants as a firm which dealt unfairly by their workmen. The defendants took out a summons to have their name struck out of the action on the ground that no reasonable cause of action was disclosed against them. Master Wilberforce made an order allowing this application, which order was reversed by Channell, J., on the ground that the point was not one for summary decision but should be decided at the trial.

Their Lordships' considered judgment was delivered as follows:—

Lord Chancellor (Haldane) — This appeal raises the question of the true construction to be put on section 4 of the Trade Disputes Act 1906. That Act was passed five years after the decision of this House in the case of *Taff Vale Railway Company* v. *Amalgamated Society of Railway Servants*, [1901] A.C. 426. It had been there decided that a trade union, registered under the Trade Union Acts, could be sued in its registered name, and also that a trade union, whether registered or not, could, since the Judicature Acts, be sued in a common law action if the persons selected as defendants were persons who from their position might fairly be taken to represent the union. It was pointed out by Lord Lindley that if a judgment so obtained was for the payment of damages, it could be enforced only against the property of the union, and that to reach such property it might be necessary to make the trustees parties to any proceedings.

It is common knowledge that this decision gave rise to keen controversy as to whether the law required amendment. On the one hand, it was contended that the principle laid down ought to remain undisturbed, because it simply imposed on the trade unions the legal liability for their actions which ought to accompany the immense powers which the Trade Union Acts had set them free to exercise. On the other side, it was maintained that to impose such liability was to subject their funds, which were held for benevolent purposes as well as for those of industrial battles, to undue risk. It was said that by reason of the nature of their organisation and their responsibilitity in law for the action of a multitude of individuals who would be held in law to be their agents, but over whom it was not possible for them to exercise adequate control, they were by the decision of this House exposed to perils which must cripple their usefulness.

We have heard in the course of this case suggestions as to the merits of the conflicting points of view and as to the reasonableness, in interpreting the language of Parliament in the Trade Disputes Act of 1906, of presuming that the

Legislature was acting with one or other of these points of view in its mind. For my own part I do not propose to speculate on what the motive of Parliament was. The topic is one on which judges cannot profitably or properly enter. Their province is the very different one of construing the language in which the Legislature has finally expressed its conclusions, and if they undertake the other province which belongs to those who in making the laws have to endeavour to interpret the desire of the country, they are in danger of going astray in a labyrinth to the character of which they have no sufficient guide.

In endeavouring to place the proper interpretation on the sections of the statute which are before this House, sitting in its judicial capacity, I propose, therefore, to exclude the consideration of everything excepting the state of the law as it was when the statute was passed, and the light to be got by reading it as a whole before attempting to construe any particular section. Subject to this, I think that the only safe course is to read the language of the statute in what seems to be its natural sense.

The first question before your Lordships is whether a trade union, if it has committed a tortious act, such as a libel, can be sued for damages at all, even if the act was not committed in contemplation or in furtherance of a trade dispute. Before the Trade Disputes Act was passed it undoubtedly could have been so sued, and the question is whether Parliament has put an end to this liability. The Act is confined to trade unions within the definition of the Trade Union Acts of 1871 and 1876. The title is "An Act to provide for the regulation of Trades Unions and Trade Disputes." This appears to me to indicate that the scope of the statute was not confined to the regulation of trade disputes merely. Section 1 is confined to cases of trade disputes, and amends the law of conspiracy in such cases by precluding legal remedy unless the act done would have been actionable apart from the circumstances of agreement or combination to do it. Section 2 is also confined to cases of trade disputes. It legalises what is popularly called "peaceful picketing." Section 3 takes away the actionable character of any act done by a person in contemplation or furtherance of a trade dispute if the ground of action is only that what was done induced another person to break a contract of employment, or was an interference with the trade, business, or employment of another person, or with his right to dispose of his capital or his labour as he pleases. It will be observed that all these sections relate to trade disputes, but that none of them relates exclusively to the case of a trade union. Section 4 (1), the section which has to be construed in the present appeal, does, however, relate exclusively to the case of a trade union. It enacts that an action against such a union, whether of workmen or masters, or against any members or officials of the union on behalf of themselves and all the other members, in respect of any tortious act alleged to have been committed by or on behalf of the union shall not be entertained by any Court. I draw attention to the fact that this section differs from the three preceding sections not only in relating exclusively to the case of a trade union, but in that subsection 1 omits to mention any restriction which would confine the tortious act to one in contemplation or in furtherance of a trade dispute. Upon this point it has been contended by the counsel for the appellants that such a restriction ought to be implied. It is said that section 5, which provides that the Act may be cited as the Trade Disputes Act 1906, and the scheme of the first three sections which deal only with trade disputes, show that the Act is to be interpreted as so confined, and that it cannot be supposed that the Legislature intended to free trade unions from liability to the extent which a literal reading of section 4 (1) would indicate.

With that contention I am unable to agree. It is true that it is provided that the Act may be cited by the short title of the "Trade Disputes Act, 1906." But the governing title is that which introduces the statute as an Act to provide for the regulation of trade unions and trade disputes. The first three sections regulate trade disputes. The fourth section appears to carry out the other intention indicated by the initial title by laying down new law as to trade unions. I can find no context in the Act read as a whole which indicates an intention to cut down the literal meaning of the wide language of section 4 (1). For reasons which I have already assigned, I think that it would not only be beyond the functions of a court of justice to presume that the Legislature could not, when it passed the Act, have intended to go as far as the plain words used say, but that if judges could speculate as to its intentions they would probably speculate wrongly. I pass, therefore, to the next point which was made for the appellants, and it turned on the effect of sub-section 2 of section 4, a sub-section which, it was said, ought to be read as a proviso to sub-section 1 restricting its operation. Section 4 (2) is in these terms — "Nothing in this section shall affect the liability of the trustees of a trade union to be sued in the events provided for by the Trades Union Act 1871 (34 & 35 Vict. cap. 31), s. 9, except in respect of any tortious act committed by or on behalf of the union in contemplation or furtherance of a trade dispute."

The Act of 1871 enabled trade unions to register, and provided by section 9 that the trustees of a registered trade union might sue or be sued as such in cases concerning the property of the trade union. The Legislature appears to have desired to draw a distinction between the union and its trustees and to preserve the liability of the trustees under this section, even in the case of tortious acts committed by the union, damages arising out of which might, as pointed out by Lord Lindley in his judgment in the *Taff Vale* case, have been made effective against property in the

hands of the trustees. But a restriction is put on the liability of the trustees by excepting from it liability in respect of a tortious act committed by or on behalf of the union in contemplation or in furtherance of a trade dispute. Having regard to the distinction drawn in the wording of the statute between the liability of the trade union and the liability of its trustees I can see no justification for importing the provision restricting liability enacted in the latter sub-section into the words of sub-section 1, and I think that on the second point made the argument which was addressed to the House, to the effect that the words of exception in the second sub-section must be read as qualifying the whole section, cannot succeed.

I now turn to the facts out of which the questions of law which I have considered arose.

This action was one for damages for conspiracy and libel, brought by the appellants, whose business was that of printers, against the respondents, who were a trade union to which the Act of 1906 applied. It does not appear whether there were trustees of the union or whether there was property vested in them which could have been made liable, assuming that the cause of action did not arise out of a trade dispute. If there were trustees they were not made defendants, and indeed, if the advisers of the plaintiffs were apprehensive that the trial might disclose a trade dispute, there were good reasons for not joining the trustees. A statement of claim was delivered which set out particulars of the conspiracy and libel, the gist of which was that the respondents had conspired to represent and had untruly represented the appellants as a firm which dealt unfairly by their workmen. Without delivering a statement of defence the respondents applied to strike the name of the respondent society from the action on the ground that, in the first place, a trade union could not be sued at all in such an action, and that, in the second place, even if section 4 (1) of the Trade Disputes Act of 1906 was to be read as applying only if there was a trade dispute, it appeared on the face of the proceedings that the acts complained of had arisen out of such a trade dispute.

Master Wilberforce made an order allowing the application. Channell, J., on appeal discharged this order, and directed that the point should not be disposed of summarily, but should stand to the trial. The Court of Appeal by a majority reversed the order of Channell, J., and restored the order of Master Wilberforce. Vaughan Williams, L.J., thought that the libel, even according to the bare description in the statement of claim, was, on the face of it, an act done in contemplation or furtherance of a trade dispute.

I entertain so much doubt on this point that if it were the only one raised I should be of the opinion of Channell, J., that the application ought to stand over to the trial, in order that facts might be ascertained which would enable the Court to decide whether it had jurisdiction to entertain the action, but Vaughan Williams, L.J., decided in favour of the appeal before him on the other point. He took the view that sub-section 2 of section 4 could not be read as qualifying the prohibition of the courts contained in sub-section 1. Farwell, L.J., took a different view and dissented, and Kennedy, L.J., held that the plain language of sub-section 1 could not be cut down excepting by indulgence in illegitimate speculation as to what the Legislature must have intended. On the other point he found himself unable to agree with Vaughan Williams, L.J. I am in complete agreement with the judgment delivered by Kennedy, L.J. The reasons which I have stated in examining the Act and its various sections have led me to the same conclusions as he has reached, and I therefore move that the appeal be dismissed with costs.

LORD MACNAGHTEN—The point raised by this appeal is a very short one, and, in my opinion, absolutely clear. If I had not had the pleasure of listening to a most ingenious argument on the part of the appellants, I should not have thought the question arguable here, or anywhere else in the world.

The Trade Disputes Act, 1906, declares that "an action against a trade union . . . in respect of any tortious act alleged to have been committed by or on behalf of the trade union shall not be entertained by any court." The language of the enactment is precise and unambiguous. No one can doubt what the words mean.

It is "the universal rule," as Lord Wensleydale observed in *Grey* v. *Pearson* (1857, 6 H.L.C. 61, at p. 106), that in construing statutes, as well as in construing all other written instruments, "the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency but no farther."

Acts of Parliament are, of course, to be construed "according to the intent of the Parliament" which passes them. That is "the only rule" said Tindal, C.J., delivering the opinion of the Judges who advised this House in the *Sussex Peerage* case (1844, 11 Cl. & F. 85, at p. 143). But his Lordship was careful to add this note of warning—"If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such case best declare the intent of the lawgiver." Nowadays, when it is a rare thing to find a preamble in any public general statute, the field of inquiry is even narrower than it was in former times. In the absence of a preamble there can, I think, be only two cases in which it is permissible to depart from the ordinary and natural sense of the words of an enactment. It must be shown

either that the words taken in their natural sense lead to some absurdity, or that there is some other clause in the body of the Act inconsistent with or repugnant to the enactment in question construed in the ordinary sense of the language in which it is expressed.

There is nothing absurd in the notion of an association or body enjoying immunity from actions at law. Some people may think the policy of the Act unwise, and even dangerous to the community. Some may think it at variance with principles which have long been held sacred. But a judicial tribunal has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. The duty of the Court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction. It is, I apprehend, as unwise as it is unprofitable to cavil at the policy of an Act of Parliament or to pass a covert censure on the Legislature.

It was not contended that there is any inconsistency in the Trade Disputes Act, or any conflict between any of its clauses. On the contrary, the argument rather was that it was consistent throughout, so consistent, and so clear that the omission of words, otherwise perhaps material, made no difference. No words, it was said, were to be supplied; there was no room even for implication. Section 4 was merely consequential on the sections which preceded it. Throughout the statute from first to last the only case which Parliament was contemplating was the case where the tortious act complained of is done in furtherance or in contemplation of a trade dispute. It was said that this was plain from the preceding sections, and that subsection 2 of section 4 made it plainer still.

There is some difficulty in grasping an argument so ingenious and so subtle. I agree with the learned counsel for the respondents, who put his case very well. The appellants must fail unless the words "in contemplation or in furtherance of a trade dispute" are introduced into subsection 1 of section 4 by construction or implication, or by some process of thought reading which I confess that I am unable to follow.

Section 4 is not, I think, consequential on the preceding sections in the sense in which the learned counsel for the appellants used the word "consequential." Section 4 seems to me to deal with a different subject and a different Act of Parliament. The first three sections are concerned with the Conspiracy and Protection of Property Act, 1875. The first two sections refer in terms to that Act. Section 3, though not mentioning the Act in terms, affects it, and amends it by making the act of "a person" in inducing a breach of contract, or in doing certain other things undoubtedly actionable before the Trade Disputes Act, 1906, actionable no longer, if done in contemplation or furtherance of a trade dispute. Section 4 is not directed to the Conspiracy and Protection of Property Act, 1875. In both its sub-sections it is directed to the Trade Union Act, 1871. Everyone knows that sub-section 1 was introduced in order to neutralise the effect of the decision in *Taff Vale Railway Company* v. *Amalgamated Society of Railway Servants* ([1901] A.C. 426), by an extension of the Trade Union Act, 1871.

It is not easy to see the object of subsection 2 of section 4, or to understand its precise meaning. It seems to me, therefore, that it will be better to leave the construction of that sub-section to be determined when it comes directly in question, if ever that occasion should occur. However it may be construed, it cannot, I think, affect the plain meaning of sub-section 1 or assist the appellants in any way.

I am of opinion that the action, as against the trade union, was incompetent, and that the appeal should be dismissed with costs.

LORD ATKINSON—The sole question for decision in this case is, in my view, the proper construction of sub-section 1 of section 4 of the Trade Disputes Act 1906. It has been quoted already. The law upon the subject of the liability of a trade union to be sued in tort at the time when this statute was passed was, I think, this—Under the decisions in the cases of *Duke of Bedford* v. *Ellis* ([1901] A.C. 1), and *Taff Vale Railway Company* v. *Amalgamated Society of Railway Servants* (*ubi sup.*), it must, I think, be taken (1) that a trade union, registered or unregistered, could be sued in respect of torts committed by its agents in a representative action, provided that the selected defendants were fairly representative of it; (2) that a registered society might be sued in its registered name; and (3) that if the trustees were made defendants in such an action, an order could be made by the court for the payment by them of the damages and costs recovered out of the funds of the society in their hands. Lord Lindley lays down this last proposition in so many words in the *Taff Vale* case, so that it was not at all necessary that, if judgment had been recovered against the union in either of such actions, a second action founded on such judgment should be brought against the trustees to recover the amount of the damages and costs, which the judgment had converted into a specialty debt. Equitable execution against the property of the union held by the trustees could be obtained in the original suit if they were made parties to it.

In section 4 (1) of the Act of 1906 the representative form of action is expressly named in so many words, and it is enacted that an action of that kind brought in respect of any tort alleged to have been committed by or on behalf of a trade union shall not be entertained. The sub-section further provides that any action for a similar tort shall not be brought against a trade union. Thus both these modes of proceeding to obtain redress for the tortious act mentioned are in plain and unambiguous language prohibited.

Such actions, it says, "shall not be entertained by any court." Now the counsel for the appellants in his able argument insisted that this wide and positive prohibition must be cut down and limited in its scope to cases in which the action is brought in respect of a tort committed by or on behalf of a trade union "in contemplation or furtherance of a trade dispute," and that a trade union should be held to remain as liable as it was before this statute was passed for all torts committed by it or on its behalf which were not committed "in contemplation or in furtherance of a trade dispute." He based his argument, as I understood him, upon two grounds—first, upon the consideration of the evil results which would follow from the wider construction, since it would, he said, raise trade unions above the law and enable them to commit torts of all kinds with impunity; and secondly, upon the ground that section 4 (1) is merely consequential upon sections 1, 2, and 3, and that when taken in connection with these latter, together with sub-section 2 of the same section, it is necessary to limit subsection 1 to the extent for which he contended in order to bring it into harmony with the provisions of those earlier sections, as well as with those of section 4, subsection 2. It is, no doubt, well established that in construing the words of a statute susceptible of more than one meaning, it is legitimate to consider the consequences which would result from any particular construction, for as there are many things which the Legislature is presumed not to have intended to bring about, a construction which would not lead to any one of those things should be preferred to one which would lead to one or more of them. But, as Lord Halsbury, L.C., laid down in *Cooke* v. *C. A. Vogeler Company* ([1901] A. C. 102), a court of law has nothing to do with the reasonableness or unreasonableness of a provision of a statute, except so far as it may help it in interpreting what the Legislature has said. If the language of a statute be plain, admitting of only one meaning, the Legislature must be taken to have meant and intended what it has plainly expressed, and whatever it has in clear terms enacted must be enforced, though it should lead to absurd or mischievous results. If the language of this sub-section is not overruled by some of the other provisions of the statute, it must, since its language is plain and unambiguous, be enforced, and your Lordships House, sitting judicially, is not concerned as to whether the policy which it embodies is wise or unwise, or whether its consequences are just or unjust, beneficial or mischievous.

Lord Esher, M.R., in *Reg.* v. *Judge of the City of London Court* ([1892] 1 Q.B. 273, at p. 290), states the principle thus—"If the words of an Act are clear, you must follow them, though they lead to a manifest absurdity. The Court has nothing to do with the question whether the Legislature has committed an absurdity. In my opinion the rule has always been this—If the words of an Act admit of two interpretations, then they are not clear, and if one interpretation leads to an absurdity, and the other does not, the Court will conclude that the Legislature did not intend to lead to an absurdity, and will adopt the other interpretation." So that if in this case the words of this section are plain and are not controlled by any other portions of the statute, the contention that to interpret them according to their natural and ordinary meaning would result in placing trade unions above the law is, for the purposes of the judicial decision of this case, entirely irrelevant. We have nothing to do with it. I think that the language is plain, and therefore I abstain from expressing any opinion on the character or the results of the enactment.

Next, as to the contention that section 4 (1) is only consequential on the three preceding sections, the first section simply aims at assimilating the civil and criminal law in respect of the particular kind of conspiracy mentioned in the section. Section 3 of the Act of 1875 provided that an agreement or combination of two or more persons to do, or procure to be done, any act in contemplation or furtherance of a trade dispute between employer and workmen should not be indictable as a criminal conspiracy, if the act when committed by one person alone would not be a crime. It thus struck, in the particular instance mentioned, at the principle of the criminal law of conspiracy, to the effect that it is the agreement or combination which is the essence of the crime, and that therefore a combination or agreement to do or procure to be done something not in its own nature criminal if done by one person, might still be a crime.

In order to establish civil liability for a conspiracy, agreement or combination *per se* is not enough. It must be followed by damage. Damage can only be caused by some act, including in the word "act," of course, the use of threatening words and the writing and publishing, or speaking and publishing, defamatory words or such like. Therefore it was only necessary, in order to protect from civil liability in this kind of case, to provide as has been provided in section 1 of the Act of 1906, that "an act done in pursuance of an agreement or combination by two or more persons, in contemplation or furtherance of a trade dispute, shall, if done in contemplation or furtherance of a trade dispute, not be actionable, unless the act if done without any such agreement or combination would be actionable." The words apply to all persons, whether members of trade unions and to combinations between such persons.

As to section 2 of the Act of 1906, the Act of 1875 by section 7 made "watching and besetting" of the kind therein described criminal, but in its last paragraph limited the scope of the section by enacting that the action which would amount under its words to the crime of watching and besetting was not to be so treated if it was done merely to obtain or communicate information. Section 2 of the Act of 1906 deals

with civil as well as with criminal responsibility. It makes the acts which it describes lawful acts, and secures immunity not only for the attending to obtain or communicate information, but also for the attending for the purpose of persuading any person to work or to abstain from working, provided always that these things are done, first peaceably, and secondly in contemplation or furtherance of a trade dispute. But this section like the preceding one is not confined to trade unions or to the members of trade unions. It applies to one or more persons acting on his or their own behalf, or on behalf of a trade union or of an individual employer or firm.

The members of trade unions who watch or beset in a manner which deprives them of the protection of this section are of course liable criminally or civilly, according to the nature of the act done.

Section 3 of the Act of 1906 applies to all individuals. It is intended to encroach upon the law as laid down in *Quinn v. Leathem* ([1901] A.C. 495) and the cases which preceded it, but, like the earlier provisions, it applies to all persons, whether members of a trade union or not. It is quite true that in each of these sections the necessary condition, or one of the necessary conditions, to secure immunity is that the act should be done in contemplation or furtherance of a trade dispute. It is from that circumstance that the saving grace apparently flows, and I can fully appreciate the force of the argument from analogy which was pressed upon us, that trade unionists should not escape liability unless they bring themselves within its absolving influence. That argument would have more force if any consistent scheme or plan underlay this statute, but it is not so. Sections 1 and 2 merely introduce qualifying provisions into two sections of an existing statute, and section 3 is designed merely to modify by the same qualification the law laid down in several cases. No reason can, I think, be suggested why the Legislature should not have expressly qualified the immunity conferred upon trade unions by section 4 (1) in the manner suggested if they desired or intended so to do. They have used plain, clear, and unambiguous language to confer this immunity, and I do not at all think that it is necessary to qualify that language to bring the provisions of the sub-section into harmony with the provisions of the sections which have preceded it.

There remains for consideration the second sub-section of section 4. Counsel for the appellants relied strongly upon this sub-section in support of his contention. The qualification common to sections 1, 2, and 3 is introduced here to qualify to that extent the statutory liability imposed upon the trustees, who may not be members of the union at all, by section 9 of the Act of 1871, and he urged that the use of the words "nothing in this section," with which the sub-section commences, shows that the Legislature thought and intended that the words "in contemplation or furtherance of a trade dispute" should be taken as by implication introduced into sub-section 1. I think, however, that it is clear what the meaning and object of the sub-section really is. A proceeding against the trustees under section 9 of the Act of 1871 is in fact, if not in form, a proceeding *in rem* against the property of the trade union. In that sense it is an action against the union itself. Judgments for damages against a trade union for torts committed by its agents, in whatever form the action may be brought, can only be satisfied out of the property vested in the trustees, and it was, I think, apprehended by the Legislature that the wide and positive provisions of sub-section 1 might be taken as practically repealing in part section 9 of the Act of 1871, and conferring an immunity on the trustees as absolute as that conferred upon the union. This sub-section, while qualifying their liability to some extent by the introduction of the provisions common to sections 1, 2, and 3, was, I think, passed *ex abundanti cautelâ* to meet this possible danger and, save as to that qualification, to preserve unimpaired the liability imposed on the trustees by section 9 of the Act of 1871.

In the view which I take of the provisions of section 4, sub-section 1, it is not necessary to determine whether any evidence of the existence of a trade dispute is disclosed in the statement of claim or any evidence that the alleged libel was published in contemplation or furtherance of such a dispute. I wish, however, to point out that in a proceeding such as that adopted in this case, which is in truth somewhat of the nature of a demurrer to the statement of claim, the only facts which can be taken as admitted are those which are expressly or impliedly averred in the statement of claim itself. Inferences of fact must be drawn by the jury, and no court can for the purpose of such a proceeding take as admitted a fact not averred, but one which is in truth an inference from facts which are averred in the pleading.

In this statement of claim it is not averred, expressly or impliedly, that a trade dispute existed or was in contemplation. Neither is it averred that the act complained of was done in furtherance or contemplation of such a dispute. In my opinion, therefore, this case must be disposed of on the assumption that no trade dispute existed or was in contemplation, and that this libel was not published in contemplation or furtherance of such a dispute. On the whole, I am of opinion that the appeal fails and should be dismissed with costs.

LORD SHAW—By section 4 (1) of the Trade Disputes Act, 1906, it is provided that "an action against a trade union, whether of workmen or masters, or against any members or officials thereof, on behalf of themselves and all other members of the trade union, in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court."

It is conceded that this action, which is

against a trade union in respect of a tort, is within the class of actions there set forth, if the words of the sub-section mean what they say. I think that the sub-section is neither self-contradictory nor repugnant to the other provisions of the Act, and that as regards the words themselves they are unambiguous, comprehensive, and imperative.

Were they ambiguous other sections or sub-sections might have to be invoked to clear up their meaning, but being unambiguous such a reference might distort that meaning and so produce error; and of course this is *a fortiori* the case if a reference is suggested, not to something within, but to considerations extraneous to the Act itself. If, for instance, it be argued that the mind of Parliament, looking before and after, having in view the past history of a question and the future consequences of its language, must have meant something different from what it has said, then it must be answered that all this essay in psychological dexterity may be interesting, may help to whittle language down or even to vaporise it, but is a most dangerous exercise for any interpreter like a court of law, whose duty is to accept loyally and to expound plainly the simple words employed. I therefore agree entirely with Lord Macnaghten in his view of this case.

The comprehensiveness is plain: the action against a trade union which no court is to entertain is "in respect of any tortious act," &c. To limit this to tortious acts of a particular character, or in respect of particular things, such as trade disputes, is to imply an addition to the language and to import a limit to the comprehensiveness of the section, and so *pro tanto* to defeat the statute.

Nor is the imperative doubtful: no court is to entertain such an action. Apart altogether from the pleadings it is *pars judicis* to stop the case whenever its true nature is revealed. To entertain the action would be to disobey the Legislature, and constitute a usurpation on the part of the judiciary. I content myself with these propositions, and do not enter into the details. I refrain for this reason, that these details, together with what are, in my humble opinion, the proper conclusions to be derived therefrom, have been marshalled by Kennedy, L.J., in a judgment to which I do not feel that I could usefully add anything.

LORD MOULTON—I concur. The only question raised by this appeal is, in my opinion, the proper construction of section 4 (1) of the Trade Disputes Act, 1906. If it be construed in the manner contended for by the respondents, it amounts to a statutory prohibition to all courts against entertaining an action of tort against a trade union. This renders it obligatory upon the court to stay such an action so soon as it is made aware of its existence. To allow it to come to trial would, in my opinion, be "entertaining" it. The statute so interpreted gives protection to trade unions against actions of tort, not by furnishing them with a defence, but by giving them complete immunity against legal proceedings.

The words of the enactment are as follows —[*His Lordship read the words of the sub-section as set out above, and continued*]— These words appear to me to be free from any ambiguity when taken apart from their context in the Act. At the date when the Act was passed it had been settled that trade unions could be sued in a representative action, or if they were registered trade unions, under their registered name, and the plain meaning of the enactment is, that however the trade union be sued, the court shall not entertain the action if it is in respect of a tortious act alleged to have been committed by or on behalf of the trade union. But the appellants say that when the whole Act is considered it will appear that this is not the right construction, and that, on the contrary, the general language of the section must be limited by implication from other parts of the Act. It is, of course, a well-recognised principle in the interpretation of the statutes that a statute must be looked at as a whole, and I shall therefore, as the matter is of great importance, proceed to consider in detail the arguments urged on behalf of the appellants for thus restricting the meaning of the enactment.

The Act is entitled "An Act to provide for the regulation of Trades Unions and Trade Disputes." It consists substantially of four enacting sections. The first section amends the law as to combination, the second permits peaceful picketing, the third amends the law by which it was actionable to persuade servants or workmen to break contracts of employment. There is a similarity in the objects of the three sections inasmuch as they all operate to increase the immunity of the individual in respect of acts such as usually occur in connection with trade disputes, but the sections have nothing else in common. They are not parts of any integral scheme of legislation, but only amendments of specific points in the law as it then stood, partly by reason of the common law, and partly by reason of specific Acts of Parliament. I am satisfied that these sections do not, either individually or collectively, throw any light on the interpretation of section 4, which relates to a wholly different subject.

Counsel for the appellants would have us limit the generality of the words "any tortious acts" by reading in or implying the limitation "in contemplation or furtherance of a trade dispute." He based his contention on three grounds—(1) The title of the Act, (2) the presence of the words in sub-section 2 of section 4, and (3) the argument *ab inconvenienti*. He further urged us to treat the clause as consequential upon the first three sections of the Act, but with that contention I have already dealt.

The title of an Act is undoubtedly part of the Act itself, and it is legitimate to use it for the purpose of interpreting the Act as a whole and ascertaining its scope.

This is not the case with the short title, which in this case is "The Trade Disputes Act 1906." That is a title given to the Act solely for the purpose of facility of reference. If I may use the phrase, it is a statutory nickname to obviate the necessity of always referring to the Act under its full and descriptive title. It is not legitimate, in my opinion, to use it for the purpose of ascertaining the scope of the Act. Its object is identification and not description.

The full title of the Act is, as I have said, "An Act to provide for the regulation of Trade Unions and Trade Disputes," The appellants ask us to read this as if it were "for the regulation of trade unions as to trade disputes," and to treat the Act as though it related solely to trade disputes, so that section 4 (1) must be read with that limitation. I can see nothing to justify such an extraordinary mode of construing the Act. The title as it stands is not only intelligible but describes admirably the purposes of the Act. Sections 1, 2, and 3, relate to trade disputes without any special reference to trade unions, and section 4 relates to trade unions, whichever of the two rival interpretations of the sections be adopted. It is evident, therefore, that the title of the Act is amply accounted for, whatever be the view which the House takes of the matter in dispute, and therefore it cannot assist us in deciding between the two proposed constructions. The point next urged on behalf of the appellants was that section 4 should be read as a whole, and the limitation "in contemplation or furtherance of a trade dispute" should be treated as implied in sub-section 1, because it is present in sub-section 2. This contention appears to me to be directly contrary to the most elementary principles of the construction of statutes. To my mind, as a matter of construction, the fact that sub-section 1 speaks of tortious acts generally, and sub-section 2 speaks of a certain class of tortious acts, creates a contrast between the two sub-sections which emphasises the generality of the one and the limited character of the other. If there were any difficulty of grammatical construction or interpretation of the language of sub-section 1, it might be necessary to consider whether, taking the section as a whole, there was not some interdependence of one sub-section on the other. But inasmuch as the language of sub-section 1 is clear and unambiguous, this is not open to us. There are, no doubt, difficulties arising from the drafting of the section, and I shall consider them presently, but they arise exclusively in connection with sub-section 2, and afford no aid to the contention of the appellants.

Finally, the argument *ab inconvenienti* is pressed upon us. It is urged that it is impossible to suppose that the Legislature could have intended to give so wide an immunity to trade unions as that which follows from taking the words of sub-section 1 in their natural sense. The argument *ab inconvenienti* is one which requires to be used with great caution. There is a danger that it may degenerate into a mere judicial criticism of the propriety of the acts of the Legislature. We have to interpret statutes according to the language used therein, and though occasionally the respective consequences of two rival interpretations may guide us in our choice between them, it can only be where, taking the Act as a whole, and viewing it in connection with the existing state of the law at the time of the passing of the Act, we can satisfy ourselves that the words can have been used in the sense in which the argument points. There is nothing of the kind here. At the time of the passing of the Act the recognised state of the law was that a trade union could be sued in the same way as any other association by the procedure of a representative action or, in case it was a registered trade union, under its registered name. That this was the state of the law had, no doubt, come as a surprise to large sections of the community. Even in the courts themselves there had been a difference of opinion on the point, as is shown by the history of the *Taff Vale* litigation. Under these circumstances the Trade Disputes Act, 1906, was passed, and we find in it a plain provision that no action shall be entertained against a trade union by either of the two methods of procedure by which at that time such an action could be brought in case the action is in respect of a tortious act. Under such circumstances a court is not justified in allowing itself to be influenced by the argument *ab inconvenienti*. The Legislature has expressed its decision plainly that such should be the law.

I am further of opinion that too much has been made of the supposed gravity of the consequences of the enactment. It will be seen that it does not affect the personal liability of any individual. Trade unions, like other associations, must act through agents, and it is a fundamental principle of the English law that no tort-feasor can excuse himself from the consequences of his acts by setting up that he was acting only as the agent of another. All that the section takes away is the power of proceeding against the association or making its corporate funds liable. The association therefore is in a position in some respects analogous to, though by no means identical with, the position of a statutory corporation with regard to contractual acts which are *ultra vires*. No matter how completely the act may be in form an act of the corporation, it cannot be made liable under the contract, because it must act through agents, and it could give no authority to anyone to do on its behalf an act which was *ultra vires*. Nor is such a provision of a wholly novel type in connection with trade unions. In section 4 of the Trade Union Act 1871 we find a list of legal proceedings which, although the association had by that Act been made legal, the courts were not on that account permitted to entertain. It is true that the Trade Disputes Act 1906 makes an addition to the list which is of enormous

importance, and does so in very peremptory language, but it cannot be said that, interpreted according to its plain language, it is of a type wholly without precedent in past trade legislation.

The real difficulty in the interpretation of section 4 is found in sub-section 2, which reads as follows:—"Nothing in this section shall affect the liability of the trustees of a trade union to be sued in the events provided for by the Trades Union Act 1871, section 9, except in respect of any tortious act committed by or on behalf of the union in contemplation or in furtherance of a trade dispute."

The difficulty is caused by the fact that there is nothing in sub-section 1 of section 4 which relates to suing the trustees of a trade union. It only refers to suing the officials of a trade union when they are sued in a representative action, and that is not what is referred to in sub-section 2. One would be inclined to avoid the difficulty by saying that the sub-section was put in *ex abundanti cautela* only were it not for the exception which it contains, which would seem to indicate that sub-section 1 would have granted immunity to the trustees in respect of actions of tort coming under section 9 of the Act of 1871, and that it was the intention of the Legislature to limit that immunity to cases where the tort was committed by or on behalf of the union in contemplation or in furtherance of a trade dispute. Whether this is or is not the true interpretation of the section as a whole is not before us in the present appeal, but I have thought it right to indicate the real difficulty which exists in its interpretation, which I think points either to imperfect drafting or to some intermediate provision having been struck out without the proper consequential amendments being made in the language of sub-section 2. But the difficulty, however great, has no bearing on the point which is before the House. The language of the section, so far as it relates to the present case, is clear and unambiguous, and, in my opinion, we must follow it.

I am therefore of opinion that the decision of the Court of Appeal was right, on the lines adopted by Kennedy, L.J., in his judgment, and that this appeal should be dismissed with costs.

Judgment appealed from affirmed and appeal dismissed with costs.

Counsel for the Appellants—Danckwerts, K.C., and Hugh Fraser. Agent—Scatliffs, Solicitor.

Counsel for the Respondents—Holman Gregory, K.C.—Harold Morris. Agents—Shaw, Roscoe, Massey, & Co., Solicitors.

PRIVY COUNCIL.

Tuesday, November 26, 1912.

(*Present*—The Right Hons. Lords Macnaghten and Moulton, Sir John Edge, and Mr Ameer Ali.)

AHMEDBHOY HABBIBHOY *v.* BOMBAY FIRE AND MARINE INSURANCE COMPANY.

(On Appeal from the High Court of Judicature at Bombay.)

Arbitration—Scope of Reference—Damage by Fire—Damage Subsequent to Fire.

Fire Insurance—Property Damaged by Fire in Possession of Insurance Company—Damage by Water Subsequent to Fire.

Under the terms of a fire policy an insurance company took possession of a cotton mill damaged by fire in order to conduct salvage operations. During its occupation of the premises further damage was incurred by reason of water which had been used to extinguish the fire being allowed to lie on certain machinery in the mill. The amount of the damage from the fire having been referred to arbitration, *held* that the loss ascertainable by the arbiters fell to be determined at the time when the company reinstated the owner in possession, and that as the supervening damage was a direct and natural consequence of the fire it was included within the scope of the reference.

This was an appeal from a judgment of the High Court of Judicature at Bombay (Chandavarker and Batchelor, JJ.), who had reversed a decision of Davar, J., upon a petition to revoke a submission to arbitration on the ground that the arbitrators had exceeded their jurisdiction.

The *facts* and proceedings in the Court below appear sufficiently from the judgment of their Lordships delivered by

Lord Moulton—This appeal relates to certain arbitration proceedings instituted for the purpose of ascertaining the amount due to the appellant under fire policies taken out by him with the respondent company and eighteen other companies upon a cotton mill in Bombay known as Victory Mill.

The facts of the case are very simple and may be briefly stated as follows:—A fire broke out in the Victory Mill on the 14th October 1906, and did very extensive damage. Immediately after the fire the appellant gave notice of his claim to the insurance companies, and they took possession of the premises under powers reserved to them in that behalf and retained possession for a considerable period for salvage purposes during which time they sold and realised certain salvaged property. Possession of the premises was ultimately given back to the appellant, who thereupon made out the amount of his claim under the