

have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade."

It is not disputed that this is a Trade Union, and therefore falls within that definition, and would have been unlawful before the Act. That being so, what is the object of the Statute? The object is, to give relief to associations of this kind, to give them certain rights, to save them from liability to criminal prosecution. So the 2d section of the Act provides:—"The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise."

And the 3d section says:—"The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement of trust." That is to say, that agreements made by or trusts made for the benefit of trade associations may be enforced in a Court of Law. Then the immediately following provision in the Statute comes in really as a proviso to the 2d and 3d sections. It is as follows:—"Nothing in this Act shall enable any Court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely:—

"1. Any agreement between members of a trade union as such, concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ, or be employed:

"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; or

"(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 or resolutions of such trade union; or

"(c) To discharge any fine imposed upon any person by sentence of a Court of Justice; or

"4. Any agreement made between one trade union and another; or

"5. Any bond to secure the performance of any of the above-mentioned agreements.

"But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful."

Thus the agreements specified here are not absolutely unlawful, but a Court of Law cannot entertain legal proceedings in regard to them. Of the expediency of these provisions in regard to some of the agreements specified there can be no doubt, as, for example, an agreement to discharge the sentence of a Court of Justice; and this agreement and one for the application of the funds of the trade union to provide benefits to a member, are placed in the same category.

This action concludes for £80, which it is averred the union agreed to provide to the pursuer in the event which has, he avers, happened, of his being disabled for life by an accident in the pursuance of his employment. Now, it is obvious that that was an agreement to provide benefits to a member of a trade union, and is excluded both by Statute

and at Common Law. So this action must be dismissed.

LORD DEAS concurred.

LORD ARDMILLAN—I concur in the opinion of your Lordship, and I also agree with the judgment of the Second Division as explained in the opinion of the Lord Justice-Clerk.

It is unnecessary for me to add anything, but I may suggest, as an additional ground of judgment, that the pursuer suing the Society founds on the the laws—especially law 8th—of the Society. These laws on which the pursuer is founding declare the decision of the Society final, and they expressly exclude the Courts of Civil Law. The laws also provide for settlement of disputes by arbitration. If there be a wrong here, it is not a wrong without a remedy; for the remedy of arbitration is provided by the laws of the Society. These laws form the contract, and I think that the remedy which the contract gives must be preferred to the remedy which the contract excludes.

LORD PRESIDENT—I may add that I rather think that the Statute did contemplate that there might be a breach of agreement without a remedy.

LORD JERVISWOODE concurred.

Counsel for the Pursuer—Brand and McKechnie. Agent—Tho. Lawson, S.S.C.

Counsel for Defender—Balfour and Pearson. Agents—Rhind & Lindsay, W.S.

Tuesday, March 17.

## FIRST DIVISION.

DUNCAN AND OTHERS, v. SALMOND AND OTHERS.

(Ante, p. 169.)

Expenses—Fees of Counsel and Agent.

Where there were a number of defenders to an action whose interest was identical with reference to the conclusions of that action:—*Held* that from the date of the case being heard in the procedure roll, at which date the identity of their interest was ascertained, the defenders were entitled to the expense of only one set of counsel and agent. *Opinion* as to the stage at which such a question ought to be raised.

In an action of multiplepinding certain of the claimants were found entitled to the fund *in medio* in preference to the present pursuers. Thereupon the latter raised an action of reduction of the judgment of the Lord Ordinary (which had been allowed to become final) against the present defenders, who were the successful claimants, and the judicial factor, the holder of the fund—in which action the pursuers were unsuccessful, and the defenders found entitled to expenses.

The present question arose on the motion of the defenders to approve of the Auditor's report.

The pursuers objected to the report in so far as it allowed fees of counsel and agent to each of four different sets of defenders, and argued that the interest of all the defenders in the present

action being identical, they could all have been sufficiently represented by, and were therefore only entitled to the expense of, one set of counsel and agent. Argued for one of the parties (defenders)—(1) The objection came too late. It ought to have been taken at the time when expenses were moved for. (2) Charges of fraud had been made against the present defender, who was therefore not bound to trust her defence to other parties. (3) The present defender did not admit that the claims of the other defenders ought to have been admitted; and they might dispute that question again.

At advising—

LORD PRESIDENT—The first question which arises here is, whether or not the objection comes too late. No authority has been given to that effect, and I can see no good ground for holding that it does. At the same time, a question of this kind ought as an ordinary rule to be raised at the time when the finding on the merits is pronounced, because at that time the Court are more fully and practically acquainted with the case. As to the merits of this objection, it seems to me that a distinction must be drawn between the expenses at different stages of the case. The manner in which the pursuer stated his case on record justified the defenders in stating separate defences. The discussion in the procedure roll might have ended very differently to what it did; and though it ended in the Lord Ordinary assailing all the defenders, still that was not an inevitable result; and so it is impossible to say that up to that stage all the defenders had only one interest, which could have been represented by one set of counsel and agent. But the Lord Ordinary held that the reasons of reduction were irrelevant, and he came to that conclusion on the pursuer's own statement, so that afterwards one defender would have been sufficient; and I think we can only allow the expense of one set of counsel and agent in the discussion of the reclaiming note.

The other Judges concurred.

The Court pronounced the following interlocutor:—

“The Lords having heard counsel on the Note of Objections, No. 31 of process, for the pursuers, to the Auditor's reports on the accounts of expenses of the several defenders other than the judicial factor. Find that the defenders, other than the judicial factor, are not entitled to the expenses of separate appearances as respondents in the Reclaiming Note of 28th August 1873, but ought to have all appeared by one set of counsel and agent to defend the interlocutor reclaimed against, and remit to the Auditor to give effect to this finding.”

Counsel for Pursuers—Campbell Smith and Reid. Agent—A. Clark, S.S.C.

Counsel for Defenders—Rhind, W. A. Brown, R. V. Campbell, and Asher. Agents—A. K. Morrison, S.S.C., A. Morrison, S.S.C., D. Cook, S.S.C., Millar, Allardice, & Robson, W.S., and Leburn, Henderson, & Wilson, S.S.C.

Wednesday, March 18.

## FIRST DIVISION.

[Lord Shand, Ordinary.]

THE PHOSPHATE SEWAGE CO. v. MOLLESON.

*Sequestration—Claim—Depending Action—Sist.*

A company lodged a claim in a sequestration, and a month thereafter raised a suit against the trustee and various other defenders in the Court of Chancery in England. The company sought to have the process sisted until the issue of the English suit should have been determined, but the trustee refused to rank them as creditors on the estate for their claim—*Held* that no sufficient ground for sisting the process had been alleged, and proof allowed to both parties of their respective averments.

This was an appeal at the instance of the Phosphate Sewage Company (Limited), London, in the sequestration of Peter Lawson & Son, London and Edinburgh, against a deliverance of the respondent, as trustee on the bankrupt estate, refusing to rank the appellants as creditors on the estate for a claim amounting to £70,529, 9s. The appellants asked that the present process should be sisted until the issue of a Chancery suit at their instance against a number of different parties, including the respondent, as trustee on the bankrupt estate, in which suit they seek to have it declared that the defendants to that suit, other than the respondent, and the several members of the firm of Peter Lawson & Son, acted fraudulently as therein stated, and as stated in the present record. In that suit, also, the appellants ask that they “may be at liberty to proceed against the estate of Messrs Peter Lawson & Sons” for the sums here claimed, they (the appellants) “being willing and hereby offering to account in such manner as this Court may direct for the profit (if any) made by them from the working of the Island of Alto Vela since its transfer to the Company;” and the bill of complaint in other branches of its prayer asks for decree for various different sums against the other defendants to the suit. In his answer to that suit the respondent pleads, *inter alia*, that the Court of Chancery has no jurisdiction so far as he is concerned, and that the matters in dispute ought to be settled in the sequestration, and, if necessary, in the Supreme Courts of Scotland. The appellants urged that the sisting of this appeal until the issue of the Chancery suit, in which the case would be presented with greater advantage and less expense against all the defendants, at one time, would save considerable expense. The respondent, however, stated that until the present appeal shall have been disposed of, a sum of about £8000, belonging to the bankrupt estate, must be retained by the trustee to meet the appellants' claim; and the trustee and the general body of creditors, it was further stated, are desirous to have the claim disposed of without any delay that can be avoided, and the proceedings in the sequestration wound up. The respondent contended that an action such as the appellants' suit in the English Court of Chancery would be incompetent in this Court, and that even if the English Court were to sustain its jurisdiction any decree that might be pronounced there would be ineffectual as against him in his administration as trustee of the estate under the Bankruptcy Statute; and that even if this were otherwise the appellants had