

Thursday, May 24.

SECOND DIVISION.

[Sheriff-Substitute of  
Lanarkshire.

TRUSTEES OF GENERAL RAILWAY  
WORKERS' UNION v. MACDONALD.

*Title to Sue—Trade Union—Statutory  
Title and Special Rule—Trustees or Secretary—Trade Union Act 1871 (34 and 35  
Vict. cap. 31), sec. 9.*

The Trade Union Act 1871 empowers "the trustees" of any registered trade union, or "any other officer of such trade union who may be authorised so to do by the rules thereof," to bring or defend any action in any court. The rules of a trade union provided that the general secretary for the time being should be "the person appointed to sue and be sued on behalf of the union." *Held* that the title given by the statute to the trustees was not superseded by the special rule, and that the trustees of the trade union in question had a title to sue an action on behalf of the union against the secretary of one of its branches.

*Expenses—Action by Trustees of Trade Union against Secretary of Branch—Expenses as between Agent and Client—Trade Union Act 1871 (34 and 35 Vict. cap. 31), sec. 11—“Treasurer or other Officer”—Secretary of Branch.*

The Trade Union Act 1871, section 11, enacts that "every treasurer or other officer" of a registered trade union shall render accounts, and if required shall hand over any balance due by him to the trustees, and also any books or papers in his hands; that if he fails to do so the trustees may sue him; and that in such action the trustees shall be entitled to recover their full costs of suit, to be taxed as between attorney and client. *Held* that this enactment as to costs applied to the case of an action by the trustees of a trade union against the secretary of a branch for payment of money and delivery of books in his hands, and was not confined to the case of actions against the treasurer or other officer of the trade union itself.

This was an action brought in the Sheriff Court at Glasgow by the Trustees of the General Railway Workers' Union, registered under the Trade Union Acts 1871 and 1876, and having its registered office at 42 Oxford Street, Manchester, against Angus Macdonald, formerly the secretary of the Glasgow Central Branch of the pursuers' Union. The pursuers craved decree ordaining the defender (1) to pay to them the sum of £20, 19s. 3d., subsequently restricted to £17, 19s. 7d., being a balance in his hands which they claimed as belonging to them, and (2) to deliver certain books in his possession which they claimed as their property.

The defender pleaded, *inter alia*, "(1) The pursuers have neither right nor title to sue."

The Trade Union Act 1871 (34 and 35 Vict. cap. 31) enacts as follows:—Section 8—"All real and personal estate whatever belonging to any trade union registered under this Act shall be vested in the trustees for the time being of the trade union appointed as provided by this Act, for the use and benefit of such trade union and the members thereof, and the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch, and be under the control of such trustees, their respective executors or administrators, according to their respective claims and interests, . . . and in all actions, or suits, or indictments, or summary proceedings before any court of summary jurisdiction, touching or concerning any such property, the same shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in their proper names, as trustees of such trade union, without any further description."

Section 9—"The trustees of any trade union registered under this Act, or any other officer of such trade union who may be authorised so to do by the rules thereof, are hereby empowered to bring or defend, or cause to be brought or defended, any action, suit, prosecution, or complaint in any court of law or equity, touching or concerning the property, right, or claim to property of the trade union; and shall and may in all cases concerning the real or personal property of such trade union, sue and be sued, plead and be impleaded, in any court of law or equity, in their proper names, without other description than the title of their office." . . .

Section 11—"Every treasurer or other officer of a trade union registered under this Act, at such times as by the rules of such trade union he should render such account as hereinafter mentioned, or upon being required so to do, shall render to the trustees of the trade union, or to the members of such trade union, at a meeting of the trade union, a just and true account of all moneys received and paid by him since he last rendered the like account, and of the balance then remaining in his hands, and of all bonds or securities of such trade union, which account the said trustees shall cause to be audited by some fit and proper person or persons by them to be appointed; and such treasurer, if thereunto required, upon the said account being audited, shall forthwith hand over to the said trustees the balance which on such audit appears to be due from him, and shall also, if required, hand over to such trustees all securities and effects, books, papers, and property of the said trade union in his hands or custody; and if he fail to do so the trustees of the said trade union may sue such treasurer in any competent court for the balance appearing to have been due from him upon the account last rendered by him, and for all the moneys since received by him on account of the said trade union, and for the securities and effects,

books, papers, and property in his hands or custody, leaving him to set off in such action the sum, if any, which he may have since paid on account of the said trade union; and in such action the said trustees shall be entitled to recover their full costs of suit, to be taxed as between attorney and client."

Section 16—"A general statement of the receipts, funds, effects, and expenditure of every trade union registered under this Act shall be transmitted to the registrar before the first day of June in every year. . . . Together with such general statement there shall be sent to the registrar a copy of all alterations of rules and new rules, and changes of officers made by the trade union during the year preceding the date up to which the general statement is made out, and a copy of the rules of the trade union as they exist at that date."

The rules of the General Railway Workers' Union provided as follows:—Rule XIV. (7) "The general secretary for the time being shall be the person appointed to sue and be sued on behalf of the Union."

Rule XI. concerning "trustees" contained no provision as to their suing or being sued.

By interlocutor dated 26th June 1899 the Sheriff-Substitute (SPENS) allowed a proof before answer, adding the following note:—

Note. . . . —"As to pursuers' title to sue under Rule XIV., section 7, of the amended rules of this society, the general secretary for the time being is the person appointed to sue and be sued on behalf of the Union; but by the 8th section of the 1871 Act the proper persons to sue, it is expressly provided under sections 8 and 9, shall be the trustees of the trades union. And I consider that the Act of Parliament supersedes the rule of the Union, and that it would have been a fatal objection to the title to sue if brought in the name of the general secretary, that the only persons entitled to sue for the trades union were expressly provided by Act of Parliament to be the trustees." . . .

Proof having been led the Sheriff-Substitute on 18th December 1899 issued an interlocutor, whereby, after sundry findings in fact and law, he decerned against the defender for the sum of £17, 19s. 7d. with interest as craved, ordained him to deliver the books in his possession to the pursuers, and found him liable in expenses.

The defender appealed to the Court of Session, and argued, *inter alia*—The pursuers had no title to sue. By the rules the proper person to sue was the general secretary and not the trustees. It was only when there was no special rule as to who was to sue for the Union that the trustees had a good title. What the statute enacted was that "the trustees" or "any other officer," "who may be authorised," should be empowered to bring or defend actions. No statutory title was conferred on the trustees when there was a special rule. Here there was a special rule directing that the general secretary was to be the person entitled to sue. It might be that a person outside of the Union could not have

questioned the title of the trustees, but persons inside the Union had a contract with it under the rules to the effect that they could only be sued by the general secretary.

Counsel for the pursuers were not called upon.

LORD JUSTICE-CLERK—I cannot see that there is any stateable case here. As to title, I think the special title to sue given to the secretary by the rules does not supersede the right of the trustees under the statute. —[*His Lordship then dealt with another point in the case.*]

LORD YOUNG, LORD TRAYNER, and LORD MONCREIFF concurred.

The judgment of the Court being in favour of the pursuers, counsel for them moved for expenses as between agent and client, and referred to the Trade Union Act 1871, section 11.

Argued for the defender—Section 11 only applied to actions against the treasurer or other officer of the trade union itself, and not to actions against the officers of branches. This clearly appeared from the terms of section 11, and was confirmed by a consideration of section 16. It could not have been intended that all changes of officers in branches were to be sent to the registrar every year. There was no definition of the word "officer," but from the context it appeared that by "officer" was meant an "officer" having securities and investments under his control—that is to say, an officer of the trade union itself, and not an officer of a branch.

LORD JUSTICE-CLERK—Expenses as between agent and client.

The Court pronounced this interlocutor—

"Dismiss the appeal: Find in fact and in law in terms of the findings in fact and in law in the said interlocutor appealed against: Therefore of new ordain the defender to deliver over the books in his possession to the pursuers, and decern against the defender to make payment of the sum of £17, 19s. 7d. with interest thereon from 31st December 1898 at the rate of five per centum per annum until payment: Find the defender liable in expenses in this and in the Inferior Court as between agent and client (to which extent vary the said interlocutor appealed against), and remit," &c.

Counsel for the Pursuer—A. S. D. Thomson—Munro. Agents—St Clair Swanson & Manson, W.S.

Counsel for the Defender—Salvesen, Q.C.—T. B. Morison. Agents—Auld, Stewart, & Anderson, W.S.