posed building; and that as regards air and ventilation he is of opinion that the proposed building will not injuriously affect the objectors' property. The objectors did not move for inquiry to show that the Dean of Guild was wrong upon these points; if they had, the nature of this case shows that the Court would not have been disposed to grant it. Very specific averments would be required before the Court would inquire into matters that the Dean of Guild, who is an expert, had dealt with. In these circumstances I am of opinion that the objectors are not entitled to plead section, 38, and that their objection should be repelled. Taking this view it is unnecessary to consider what might be a difficulty in the way of the objectors' case, viz.— whether the ground upon which it is proposed to erect the school is properly speaking back ground within the meaning of the statute. The judgment of the Dean of Guild should in my opinion be affirmed.

LORD JOHNSTON did not hear the case.

The Court pronounced this interlocutor—

"Refuse the appeal; remit to the Dean of Guild of new to grant the lining craved and proceed as accords, and decern."

Counsel for Appellants—Horne, K.C.—Moncrieff. Agents—Cumming & Duff, S.S.C.

Counsel for Respondent — Solicitor-General (Hunter, K.C.)—Hon. W. Watson —Carmont. Agent—Charles George, S.S.C.

Thursday, February 8.

SECOND DIVISION.

[Lord Skerrington, Ordinary.

WILSON *v.* SCOTTISH TYPOGRAPHICAL ASSOCIATION.

Trade Union—Unregistered Trade Union —Objects—Promotion of Parliamentary Representation—Legality—Trade Union Act 1871 (34 *and* 35 *Vict. cap.* 31), *secs.* 3, 23—*Trade Union Act Amendment Act* 1876 (39 *and* 40 *Vict. cap.* 22), *sec.* 16.

Held, applying *Amalgamated Society of Railway Servants* v. *Osborne*, [1910] A.C. 87, that the definition of a trade union contained in section 16 of the Trade Union Act Amendment Act 1876, amending section 23 of the Trade Union Act 1871, so limits and restricts the purposes of a trade union, even though it is not registered, as to make it illegal and invalid for such union to include among its objects the promotion of parliamentary representation, or to apply its funds in pursuance of that object.

Question whether the promotion of parliamentary representation by a trade union is illegal as being unconstitutional and against public policy.

Association (Voluntary)—Contract—Unregistered Trade Union—Alteration of Rules —Absence from Constitution of Express Power to Alter—Promotion of Parliamentary Representation.

Question whether the alteration of its rules by an unregistered trade union empowering it to devote part of its funds to the promotion of parliamentary representation involved a breach of contract in a question with members opposed to the alteration.

Observations (*per* Lord Guthrie and Lord Skerrington, Ordinary) on the power of a voluntary association whose written constitution contained no express power to alter its rules, to make alterations in opposition to the wishes of a minority.

Trade Union—Title to Sue—Jurisdiction —Alteration of Rules Involving, and Application of Funds towards, Illegal Object — Reduction — Interdict — Trade Union Act 1871 (34 *and* 35 *Vict. cap.* 31), *sec.* 4 (3) (*a*).

The Trade Union Act 1871 enacts—Section 4 (3) (*a*)—"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 . . . (3) Any agreement for the application of the funds of a trade union (*a*) to provide benefits for members."

Held (following *Amalgamated Society of Railway Servants for Scotland* v. *Motherwell Branch*, June 4, 1880, 7 R. 867, 17 S.L.R. 607, and *Yorkshire Miners' Association* v. *Howden*, 1905, A.C. 256) that the above enactment did not comprehend an action against a trade union at the instance of a member concluding for (1) declarator that certain alterations on the rules of the union were *ultra vires* and illegal; (2) reduction of the alterations; and (3) interdict against application of the funds of the union in pursuance of the alleged rules.

The Trade Union Act 1871 (34 and 35 Vict. cap. 31) enacts—Section 3—"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 or trust."

Section 4 (3) (*a*) is quoted in the third rubric *supra*. The other agreements therein mentioned are (1) between members of a trade union concerning the conditions on which they shall or shall not sell their goods, transact business, or be employed; (2) for the payment of any subscription or penalty to a trade union; (3) for the application of the funds of a trade union (*a*), *v. sup.* . . .; (*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; (*c*) to discharge any fine imposed upon any person by sentence of a court of justice; (4) any agreement between one trade union and

another; (5) any bond to secure the performance of any of the above-mentioned agreements. . . .

The Act makes provision for the registry of any trade union, which is optional, and contains clauses applicable to registered unions.

The Trade Union Act Amendment Act 1876 (39 and 40 Vict. cap. 22), section 16, repeals the definition of trade union in section 23 of the Trade Union Act 1871 (the principal Act), and in lieu thereof enacts—"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 some one or more of its purposes being in restraint of trade."

Thomas Wilson, *pursuer*, raised an action against the Scottish Typographical Association concluding for (1) declarator "(*First*) that that part of rule 2 of the rules of said Association which provides that one of the objects of the Association shall be 'to promote Labour representation in Parliament' is *ultra vires* and illegal and invalid, and is not binding upon the pursuer or any other member of the said Association; (*second*) that that part of rule 53 of the rules of the said Association which provides that the Association shall be represented annually at the Labour Party conferences by two delegates, and that delegates to such meetings shall receive 14s. per day and third-class return railway fare, and that delegates to such meetings losing time through travelling shall be paid at the same rate, is *ultra vires* and illegal and invalid, and is not binding upon the pursuer or any other members of the said Association; (*third*) that the five rules in the appendix to the rules of the said Association, called 'Association Labour Representation Rules,' are *ultra vires* and illegal and invalid, and are not binding upon the pursuer or any other members of the said Association; and (*fourth*) that the said Association is not entitled to make payments out of its funds, or out of the moneys already contributed by or levied from, or to be contributed by or levied from, its members or branches to the Labour Party, or for the payment of parliamentary election expenses, or for any purpose whatever connected with or in furtherance of securing or maintaining parliamentary representation, and that such payments are *ultra vires* of the said Association and are illegal"; (2) reduction of the said rules or such parts thereof as should be declared to be *ultra vires*, illegal, and invalid; and (3) interdict against the defenders themselves, or by their officers, agents, servants, or other persons acting by their authority or on their behalf, making payments out of the funds of the Scottish Typographical Association, or out of the moneys already contributed by or levied from, or to be contributed by or levied from, its members or branches to the Labour Party, or for parliamentary election expenses, or for any purposes whatever connected with or in furtherance of securing or maintaining parliamentary representation.

The Scottish Typographical Association, of which the pursuer had been a member since 1877, was a federation of printers' societies, but was not registered as a trade union. Its objects, as set forth in No. 2 of the rules adopted in June 1903, were—"To unite and protect the members of the printing trade in Scotland; to regulate and maintain the rates of wages and hours of labour; to restrict the number of apprentices; to render assistance to members removing or emigrating; and to provide sick, permanent disablement, out-of-work, superannuation, and funeral allowances. It shall also endeavour to adjust differences (by conference, arbitration, or otherwise), promote the cause of trades unionism by encouraging the establishment of branches, and generally exercise a supervision of all matters affecting the printing trade. The Protective Fund of the Association shall consist of the minimum sum of £5000, to enable the Executive Council to carry out the rules." Rule No. 53 made provision for representation of the Association by two delegates at Trades Union Congresses and Printing and Kindred Trades Federation meetings, and for payment of 14s. per day and railway fares to such delegates. The rules contained no express provision for alteration.

At a delegate meeting of the Association at Kilmarnock in June 1907 the following alterations on and additions to the rules were adopted—"(*a*) Rule 2 of said rules was amended so as to include in the objects of the Association the following—'To promote Labour representation in Parliament.' (*b*) Rule 53 of said rules was amended so as to provide that the 'Association shall be represented annually at the Labour Party Conference by two delegates . Delegates (except general secretary) to all meetings under this rule shall receive 14s. per day and third-class return railway fare. Delegates losing time through travelling shall be paid at the same rate;' and (*c*) the following five rules, called 'Association Labour Representation Rules,' were added—'1. The Association shall pay one shilling and sixpence per year per member towards a Parliamentary Representation Fund. 2. The objects of the fund shall be: To pay the necessary expenses incurred in running one candidate for the House of Commons; to pay such parliamentary representative (if elected) a sufficient sum for maintenance and travelling expenses as may be hereafter decided by the members of the Association. 3. Each branch shall have the right to nominate one candidate as a parliamentary representative; all such nominations to be put to the vote of the members of the Association, as provided by rule 39. The principle of second ballot to be followed in such case, the successful

candidate being declared the nominee of the Association for the position of parliamentary representative. 4. Any person nominated as parliamentary candidate must sign an agreement to the effect that he will stand as an independent Labour candidate, and shall not be allowed to be nominated by either the Liberal or Conservative Party. He shall hold himself entirely free from both of these political parties, and refrain from offering any support to any other candidate who is the nominee of said political parties. 5. The duties of the parliamentary representative shall be to watch over the interest of the trade and all labour and other legislation affecting the interest of the worker. During the parliamentary recess his services shall be at the disposal of the Executive Council for the purpose of organising and other work.'"

The pursuer averred that the delegate meeting at Kilmarnock in June 1907 had no power to make the alterations, and that they were not made in accordance with the then existing rules of the Association. The pursuer further averred—"(Cond. 5) In pursuance of the purposes of the pretended rules and parts of rules complained of the Association has affiliated itself to the Labour Party, which is a federation of trade unions, trades councils, Socialist societies, and local Labour associations, and has accepted its constitution. The objects of the Labour Party as set forth in the said constitution are 'to secure the election of candidates to Parliament and organise and maintain a Parliamentary Labour Party, with its own Whips and policy.' The Labour Party by its said constitution imposes the following conditions upon its parliamentary candidates and members:—'III—1. Candidates and members must accept this constitution; agree to abide by the decisions of the Parliamentary Party in carrying out the aims of this constitution; appear before their constituencies under the title of Labour candidates only; abstain strictly from identifying themselves with or promoting the interests of any parliamentary party not affiliated or its candidates; and they must not oppose any candidate recognised by the National Executive Committee of the Party. 2. Candidates must undertake to join the Parliamentary Labour Party if elected.' . . . (Cond. 6) In furtherance of said pretended rules and parts of rules complained of, the Association has been making payments out of its funds to the Labour Party and to other bodies for political purposes, and has commenced to accumulate the Parliamentary Representation Fund referred to in said 'Labour Representation Rules.' [*The pursuer specified the payments made for these purposes during the years* 1908 *and* 1909 *to the Labour Party and to Parliamentary Committees.*] Further, in the year 1908 the sum of £323, 17s. (being at the rate of 1s. 6d. per member), and in the year 1909 the sum of £319, 8s. 6d., making together £643, 5s. 6d., was transferred from the Protective Fund of said Association to said Parliamentary Representation Fund, to be expended for political purposes. . . . With reference to the statements in answer hereto, admitted that the moneys have been taken from the Protective Fund, and that no additional levies have been made for political purposes."

The defenders averred that the alterations on the rules of the Association were duly and validly adopted in accordance with the constitution, and further averred—"(Ans. 5) Admitted that the Association has been affiliated to the Labour Party, and has thereby accepted its constitution. Admitted also that the objects of the Labour Party are as stated, and that it imposes the conditions stated on its parliamentary candidates and parliamentary members. . . . (Ans. 6) Admitted that payments have been made and sums transferred as therein stated. Admitted that the payments to the Labour Party are for political purposes, and that the purpose of the Parliamentary Representation Fund is political. *Quoad ultra* denied. The payments to Parliamentary Committees are not made to or in the interests of the Labour Party, nor need the Parliamentary Representation Fund be expended for or in the interests of the Labour Party. The Labour Party have no control over or interest in the Parliamentary Representation Fund. The payments entered as made as to 'Parliamentary Committees' are made to the Trades Union Congress, and are not for political purposes. As the pursuer is aware, similar payments have been made annually to the Trades Union Congress since 1878, and . . . payments similar to those specified have been made to the Labour Party annually since 1906. No levies have been made on members of the Association to provide funds for these payments or for the Parliamentary Representation Fund. The moneys have been taken from the Protective Fund."

The pursuer pleaded, *inter alia*—"(1) The pretended rules and parts of rules complained of being *ultra vires*, illegal, and invalid in respect that they are outwith the objects of a trade union, decree of declarator and reduction should be granted as craved. (2) The pretended rules and parts of rules complained of being *ultra vires*, illegal, and invalid in respect that they are unconstitutional and against public policy, decree of declarator and reduction should be granted as craved. (3) The application and expenditure of the funds of the Scottish Typographical Association for parliamentary or political purposes as condescended on being illegal, interdict should be granted as craved."

The defenders pleaded, *inter alia*—"(2) In respect that the defenders' Association is a voluntary one, and that accordingly the only interest competent to the pursuer to raise the present proceedings is in respect of the agreement between him and the Association for benefits, in view of the provisions of section 4 (3) (*a*) of the Trades Union Act 1871, the action should be dismissed. (3) The rules sought to be reduced

being *intra vires* of the Association and duly adopted in terms of its constitution, and the payments complained of being made in accordance therewith, the defenders should be assoilzied. (4) The rules and payments complained of being neither unconstitutional nor contrary to public policy, the defenders should be assoilzied."

On 20th January 1911 the Lord Ordinary (SKERRINGTON) pronounced the following interlocutor — "Finds it unnecessary to decide whether the rules and parts of rules referred to in the first three declaratory conclusions of the summons are or are not unconstitutional and contrary to public policy, and as such *ultra vires* of the Scottish Typographical Association and illegal: Finds, declares, and decerns that the adoption of said rules and parts of rules by the said Association in the year 1907 was a violation of pursuer's contract with the said Association, and was prejudicial to his patrimonial rights as a member of the said Association: Finds, declares, and decerns in terms of said conclusions that the said rules and parts of rules are invalid and are not binding upon the pursuer or any other members of the said Association: Finds, declares, and decerns in terms of the fourth conclusion that the said Association is not entitled to make payments out of its funds or out of the moneys already contributed by or levied from, or to be contributed by or levied from, its members or branches to the Labour Party or for the payment of parliamentary election expenses: Holds the production satisfied, and reduces the said rules and parts of rules before mentioned, and decerns: Interdicts, prohibits, and discharges the defenders by themselves, or by their officers, agents, servants, or other persons acting by their authority or on their behalf from making payments out of the funds of the said Association, or out of the moneys already contributed by or levied from, or to be contributed by or levied from, its members or branches to the Labour Party or for parliamentary election expenses, and decerns: *Quoad ultra* dismisses the action and decerns."

Opinion.—"The pursuer is a compositor, and he has been since the year 1877 a member of an unregistered trade union called the Scottish Typographical Association. This body, along with its officials and trustees, is the defender in the present action. At a delegates' meeting of the Association held in 1907 the Association amended its rules by adding as one of its objects the promotion of 'Labour Representation in Parliament.' In pursuance of this new object the rules were at the same time amended so as to provide for the Association being represented annually at the Labour Party Conferences by two delegates, who are to receive certain payments out of the funds of the Association; and rules were also adopted establishing a Parliamentary Representation Fund to which the Association was to pay 1s. 6d. per year per member, the object of the fund being to pay the expenses of running one candidate for the House of Commons and to pay for his maintenance (if elected). The pursuer asks for a declarator to the effect that these new rules are *ultra vires*, illegal, invalid, and not binding upon him, and that the Association is not entitled to make payments out of its funds either to the Labour Party or for parliamentary election expenses. The Labour Party, to which the defending Association is now affiliated, is a federation of trade unions and other bodies. Its constitution was considered and discussed by Lord Shaw in his opinion in the case of *Amalgamated Society of Railway Servants* v. *Osborne*, 1910 A.C. p. 87. The House of Lords there approved of the judgment of the Court of Appeal in England, which is reported in 1909 Ch. p. 163.

"The question in the present case is whether the remedy which the House of Lords gave to Mr Osborne as a member of a registered trade union is equally available to the pursuer as a member of a similar but unregistered trade union. Obviously this question must be answered in favour of the pursuer if the view stated by Lord Shaw as his ground of judgment in the *Osborne* case is held to be law, and if (as seems probable) there is no substantial difference between the rules which Mr Osborne's trade union attempted to adopt and the rules adopted by the defending Association in 1907. The pursuer is plainly entitled to prevent an association otherwise lawful, of which he is a member, from adopting rules which are 'unconstitutional and contrary to public policy,' and it is irrelevant in that view to inquire whether the union has or has not been registered under the Act of 1871.

"Of the five noble Lords who gave judgment in the *Osborne* case, the majority (Lord Halsbury, Lord Macnaghten, and Lord Atkinson) expressed no opinion upon the 'constitutional question' which Lord Shaw adopted as his ground of judgment. They held that the Society having placed itself by registration under the Trade Union Acts 1871 and 1876 (33 and 44 Vict. cap. 31, amended by 39 and 40 Vict. cap. 22), its constitution and powers fell to be determined according to the same principles as if it had originally been established or even incorporated by Act of Parliament. Lord Halsbury said—'The Act' (of 1871) 'is, as it were, a charter of incorporation,' and he referred to *Ashbury Railway Company* v. *Riche*, L.R., 7 E. & I. App. p. 653, as having settled the law in a manner which disposed of the case under consideration. Lord Macnaghten and Lord Atkinson proceeded on the same lines, and cited other decisions from the same chapter of law. Lord Macnaghten quoted and founded on the following passage from the opinion of Lord Watson in *Baroness Wenlock* v. *River Dee Company*, 10 A.C. 354—'Whenever a corporation is created by Act of Parliament with reference to the purposes of the Act, and solely with a view of 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.' Applying these principles, Lord Halsbury, Lord Macnaghten, and Lord Atkinson held that the new political purposes of the Society were matters outside the purview of the Trade Union Acts, and therefore *ultra vires* of the Society. It is apparent that this ground of judgment has no application to a society which has no statutory constitution, and which is merely a voluntary association, such as an unregistered trade union. It follows that the pursuer is not entitled to a declaration that the rules to which he objects are *ultra vires* and illegal. If he has a remedy it must be on the ground that the new rules constitute a violation of his contract with the Association and prejudice his patrimonial rights as one of its members.

"The constitution of the defenders' Association is contained in its printed rules, which are the basis of the contract between it and its members and between the members themselves. The last edition of these rules prior to the changes of 1907 is authenticated with the following docquet signed by the Revision Committee—'The foregoing rules, amended by the Delegate Meeting assembled at Perth on 8th, 9th, 10th, 11th, 12th and 13th June 1903, and drawn up and revised by the Revision Committee on the 10th October 1903, are hereby confirmed, and will, on and after 1st January 1904, be the governing rules of the Scottish Typographical Association.' The defenders' counsel founded on rules 39 and 102 and upon the docquet as evidence that the delegates had power at their meetings to amend the rules of the Association. The rules are not very distinct upon this point, but I think it sufficiently appears that the rules of this Association are not unchangeable, and that any changes fall to be made by the delegates. The defenders' counsel argued that if that was so the power to alter and amend the rules was absolute and unqualified, and that the delegates might by exercising it not merely alter and enlarge the objects of the Association in furtherance of its main purpose (the benefit of the members of the printing trade in Scotland), but that they might competently divert the funds to any conceivable purpose that was not in itself contrary to law. This contention seems to me extravagant. On the other hand, I do not think that the rules of a voluntary association ought to be construed in the same manner as if they were the constitution of a statutory body, or as if they formed the contract of copartnery of a mercantile firm. Voluntary associations for charitable or other objects usually begin in a small way and under a reserved power to amend their rules. They from time to time enlarge their objects in a manner which in the language of company law might be described as 'altering the memorandum of association,' and that without obtaining the consent of every individual member. To hold that this familiar practice is illegal would lead to great inconvenience and injustice, because in many cases nothing short of a Private Act of Parliament would in that view entitle a voluntary association to enlarge its objects. Accordingly, had it not been for one consideration which applies only to certain unregistered trade unions, including, as I think, the particular Association now in question, I should have decided that the Association acting by its delegates did not infringe the pursuer's contractual rights when it altered its rules so as to enable it to adopt political action for the furtherance of its ends. The judgment which ought to be pronounced in the present case depends, in my opinion, upon the answer which ought to be given to a question which was not argued before me, viz.—Are the defenders an unlawful association according to the common law of Scotland? If the defenders' Association is illegal at common law, and if its legality depends entirely upon the Acts of 1871 and 1876, then, according to my understanding of the *Osborne* judgment, the change in the rules adopted at the delegates' meeting in 1907, if binding and effectual, would deprive the Association of all benefit from these Acts, and would relegate it once more to the position which it occupied before 1871 as a society which could receive no recognition or help from a civil court. Such a change in the status of the Association would, of course, materially affect the patrimonial rights of its members. On the other hand, if the defenders' Association is and has always been a legal Association at common law, and independently of the statutes, then the loss of any benefit to be derived from registration under the Act of 1871, or from the legislation of 1906, does not seem to me to be so material as to make the adoption of the new rules an infringement of the pursuer's rights. All trade unions are not illegal at common law—See *Russell* v. *Amalgamated Society of Carpenters and Joiners*, 1910, 1 K.B. 506. After reading the printed rules of the defenders' Association as it existed prior to 1903, I am of opinion that one of its objects was to interfere with freedom of contract between masters and men in the printing trade, and that it is therefore similar to the union which was decided by the Court of Session to be illegal at common law in the case of *Aitken* v. *Associated Carpenters and Joiners of Scotland*, (1885) 12 R. 1206. According to the common law, therefore, the defenders' Association is unlawful as being in restraint of trade, and a civil court will not recognise it or enforce its contracts or protect it in the enjoyment of its property. But the Trade Union Acts of 1871 and 1876, and the Trade Disputes Act 1906, placed such trade unions as fell within their purview in a peculiarly favourable position. Such associations, whether legal or illegal at common law, are not only declared by section 3 of the 1871 Act to be no longer unlawful by reason merely that they are in restraint

of trade, but as regards certain matters of a more or less domestic character they are, by the operation of section 4 of the same Act, left to manage their own affairs without interference by any court of law. Moreover, special privileges have been conferred by the 1906 Act upon trade unions of the kind contemplated by the Acts of 1871 and 1876. If my interpretation of the *Osborne* judgment is correct, all these advantages came to an end as the result of the change in the rules of the Association made by the delegates at their meeting in 1907, assuming, of course, that change to be binding upon the Association and all its members. The defenders' Association can no longer take any benefit from the legislation referred to, and it must content itself with such rights, if any, as it possesses at common law. Three consequences follow:—(1) Prior to 1907 the pursuer was entitled to restrain the Association by legal process from misapplying its funds. So long ago as 1880 the Court of Session granted an interdict in such a case —*Amalgamated Society of Railway Servants for Scotland* v. *Motherwell Branch*, 1880, 7 R. 867, and there is a decision in the House of Lords to the same effect—*Yorkshire Miners' Association* v. *Howden*, 1905, A.C. 256. The change in the rules effected in 1907 disentitles the pursuer from founding upon section 3 of the 1871 Act, and leaves him without any legal remedy in such a case. (2) Prior to 1907 the defenders' Association could ask the Courts to enforce its agreements and trusts except in the cases falling under section 4 of the Act of 1871. Since 1907 the Association can take no benefit from section 3 of that Act, and it has therefore no longer any civil remedy against an embezzler or a fraudulent trustee. Lastly (3) the funds of the Association to which the pursuer has subscribed for more than twenty years are no longer protected by the Act of 1906 from being made available for payment of damages in respect of tortious acts committed by or on behalf of the Association. It seems impossible to hold on any fair construction of the contract between the pursuer and the Association that the latter was entitled by a resolution of its delegates, and without the consent of each individual member, to alter the patrimonial rights of its members in the wholesale fashion above described. Seeing that the defenders' Association undoubtedly possesses property in which the pursuer as a member has an interest, it would probably have been sufficient to say that the Association cannot, without violating its contract with the pursuer, adopt rules which place itself and its property outside of the protection of the civil law.

"It now only remains to consider whether the *Osborne* judgment has the effect which I have attributed to it. In the first place, it should be noticed that the decision did not rest in any way upon the specialty that political action was a new departure in the case of the particular society to which Mr Osborne belonged. Lord Macnaghten stated in so many words that a rule empowering a registered trade union to collect and administer funds for political purposes was *ultra vires* and illegal whether it was an original rule of the union or a rule subsequently introduced by amendment. Unless that had been so the House of Lords could not possibly have pronounced the judgment which it delivered. The society had a rule empowering it to amend, alter, or rescind its rules, and, as Lord Selborne pointed out in *Murray* v. *Scott*, 9 A.C. 538, 'The only real and true limit' of such a power is that 'the power cannot be so exercised as to make the society a thing different from . . . a society formed for the purposes and in the manner defined by the Act.' He was there speaking of a building society enrolled under the Act 6 and 7 William IV, cap. 32, but Lord Macnaghten quoted the saying as equally applicable to a trade union registered under the Act of 1871. Accordingly, the *Osborne* case decides that a trade union which provides in its rules for political action is not a trade union within the meaning and scope of the Act of 1871. Of course it may be said that such a trade union, though excluded from the benefit of registration in terms of section 6 of the 1871 Act, is none the less a trade union within the meaning of sections 2 and 3 and entitled to the benefit of those sections. I can find no trace of such a distinction in the opinions delivered in the *Osborne* case, which proceeded upon the broad ground that the expression 'trade union' as used in the Acts meant not merely a combination which fell within the original or the amended statutory definitions, but was confined to societies which were trade unions in the ordinary sense of that term as used in 1871. In short, as Lord Macnaghten said, when Parliament used what was at the time a common expression it did not mean a trade union 'and anything else in the world not itself illegal which may be tacked on to it.' To suggest that the expression 'trade union' means two entirely different things in the legislation of 1871, 1876, and 1906 is to my mind wholly unwarrantable and unreasonable. I can imagine no reason why Parliament should have desired to confine the comparatively trifling advantage of registration to trade unions in the narrower sense of the term, while conferring immeasurably greater benefits wholesale upon all and sundry societies which had something or other to do with the regulation of trade. As I have already pointed out, societies constituted for the purpose of restraining trade are in a very sorry position under the common law, and the benefits of section 3 of the 1871 Act are of a vital character and quite overshadow any advantage to be got from registration. The same is equally true as regards section 2, which enacts that the purposes of a trade union shall not be deemed to be criminal by reason merely that they are in restraint of trade. Though I do not suppose that the fear of a criminal prosecution had any real foundation in Scotland for

many years before 1871, Parliament undoubtedly intended to confer a benefit of a signal character upon a certain class of associations — presumably the same which it invited to accept the advantages of registration. Lastly, the Trade Disputes Act 1906, section 5 (2), gives no countenance to the suggestion that the expression 'trade union' has two different statutory meanings.

"For the foregoing reasons, I am of opinion that the pursuer is entitled to a remedy substantially in terms of what he claims, and that it is unnecessary for me to decide, or even to state, an opinion upon the delicate and difficult question whether the new rules are unconstitutional and contrary to public policy. The defenders' counsel did not maintain that an unregistered trade union could not sue or be sued, or that the defenders' association had not been properly brought into Court. Such a contention would have been hopeless in view of the authorities, both Scottish and English, cited by Lord Salvesen in *Bridge* v. *South Pultard Street Synagogue*, 1907 S.C. 1351."

The defenders reclaimed. During the debate on the reclaiming note the defenders obtained leave to amend the record by deleting the second sentence in answer 5 and substituting therefor the following— "Admitted also that at the date when this action was raised the objects of the Labour Party were as stated, and that at that date it imposed the conditions stated on its parliamentary candidates and parliamentary members. Explained, that at the annual conference of the Labour Party, held at Leicester on 1st February 1911 and two following days, the constitution of the party was revised and altered. The clause defining the objects of the party, and quoted by the pursuer and respondent, was wholly deleted, and in its place the following clause was inserted—'2. Object. To organise and maintain in Parliament and the country a political Labour Party.' Further, the clause defining the duties of candidates and members and quoted by the pursuer and respondent was wholly deleted, and in its place the following clause was inserted — 'Candidates and members must maintain this constitution; appear before their constituencies under the title of labour candidates only; abstain strictly from identifying themselves with or prompting the interests of any other party; and accept the responsibilities established by parliamentary practice.' The report of said conference of the Labour Party held in 1911, and of the rules of the defenders and reclaimers' Association for 1912, are produced herewith and referred to."

The pursuer answered this amendment as follows: — "With reference to the defenders' explanations in answer, the report of said conference of the Labour Party and the rules of the defenders' Association for 1912 are referred to for their terms, beyond which no admission is made. Explained that under its constitution as amended one of the objects of the Labour Party is to provide a Parliamentary Fund to assist in paying the election expenses of candidates adopted in accordance with this constitution, in maintaining them when elected, and to provide the official expenses of the parliamentary party together with the salary and expenses of the national agents' (Parliamentary Fund I., Object), and the said constitution also provides that all members of the party shall be paid from the Fund equal sums not to exceed £200 per annum, provided that this payment shall only be made to members whose candidatures have been promoted by one or more societies which have contributed to this Fund (Parliamentary Fund IV., Maintenance)."

Argued for the defenders (reclaimers)— (1) The decision in *Amalgamated Society of Railway Servants* v. *Osborne*, [1909] 1 Ch. 163, [1910] A.C. 87, had no application to an unregistered trade union. The ratio of the decision there was that the effect of (*a*) registration under the Acts, (*b*) the definition in section 16 of the Trade Union Act Amendment Act 1876 (39 and 40 Vict. cap. 22), amending section 23 of the Trade Union Act 1871 (34 and 35 Vict. cap. 31), and (*c*) the First Schedule to the last-mentioned Act (which was applied to registered unions by section 14), was to give a registered trade union a statutory constitution which made it incompetent for such a union to include among its objects anything so wholly distinct from the objects contemplated by the Acts as a provision to secure parliamentary representation. That clearly could not apply to unregistered unions, as to which the sole effect of the Acts was to make them lawful voluntary associations and their purposes legal, but not to prevent the inclusion of other objects not in themselves unlawful, *e.g.*, those of a bottle exchange— *Edinburgh and District Aerated Water Manufacturers' Defence Association* v. *Jenkinson & Company*, July 15, 1903, 5 F. 1159, 40 S.L.R. 825. An unregistered union was therefore a common law corporation, and as such had every power which was not expressly prohibited, and that placed it in a totally different position from the registered union, which was held to be a statutory corporation and therefore restricted in its powers to those contemplated by the statute — *Ashbury Railway Carriage and Iron Company* v. *Riche*, 1875, L.R., 7 E. and I. Ap. 653; *Baroness Wenlock* v. *River Dee Company*, 1885, 10 A.C. 354, *per* Lord Watson at 362. (2) There was nothing illegal in the provision to secure parliamentary representation. Nor was it against public policy or unconstitutional. This question was not matter of decision in *Amalgamated Society of Railway Servants* v. *Osborne* (*cit.*), and the judgments of Lord Shaw, L.JJ. Fletcher Moulton and Farwell, on that ground were, in any event, obviated by the alteration in the Labour Party Pledge, to which the amendment gave effect. (3) The present action was really to enforce an agreement to provide benefits to members, and was therefore excluded by the Trade Union

Act 1871, section 4 (3) (*a*)—*M'Kernan* v. *United Operative Masons' Association*, February 6, 1874, 1 R. 453, 11 S.L.R. 219; *Shanks* v. *United Operative Masons' Association*, March 11, 1874, 1 R. 823, 11 S.L.R. 356; *Aitken* v. *Associated Carpenters and Joiners of Scotland*, July 4, 1885, 12 R. 1206, 22 S.L.R. 796; *Russell* v. *Amalgamated Society of Carpenters and Joiners*, 1910, 1 K.B. 506; *Rigby* v. *Connol*, 1880, L.R., 14 Ch. Div. 482. It was doubtless true that an interdict against misapplication of the funds would be struck at—*Amalgamated Society of Railway Servants* v. *Motherwell Branch*, June 4, 1880, 7 R. 867, 17 S.L.R. 607; *Yorkshire Miners' Association* v. *Howden*, [1905] A.C. 256. But here the conclusion for interdict was not the substantive conclusion but merely ancillary. (4) There was no breach of contract with the pursuer. The rules as they were in 1903 formed part of the contract with the pursuer, and they impliedly if not expressly sanctioned alteration. The alteration in question had been duly and validly made in accordance with the existing rules. The objects were contained in one of the rules, and were thus subject to alteration, so that the question whether the alteration involved something so different from the objects of the Association that it could not be carried against the wishes of a minority did not arise—*Pickering* v. *Stephenson*, 1872, L.R., 14 Eq. 322, at p. 339. In any case, promotion of parliamentary representation might very well be in pursuance of the other objects of the Association.

Argued for the pursuer (respondent)—(1) There was no warrant for the distinction sought to be drawn by the defenders between registered and unregistered trade unions. On examination of the Acts it appeared that the sole difference was that registration, which was optional, gave certain additional benefits. The definition in the Act applied to both registered and unregistered trade unions. The judgment in *Amalgamated Society of Railway Servants* v. *Osborne* (*cit.*) therefore applied; and further, it was clear from the opinions therein that no distinction was taken between registered and unregistered unions and nothing founded on the fact of registration. The alterations complained of were therefore *ultra vires*. (2) Further, the object aimed at by the alteration was unconstitutional and contrary to public policy. The alteration in the Labour Party pledge did not elide the effect of the opinions on this ground in *Amalgamated Society of Railway Servants* v. *Osborne* (*cit.*). The alteration was one of form, not of substance, and the pledge still contained subjection to the Labour Party, which was the unconstitutional feature. (3) Section 4 (3) (*a*) of the Act of 1871 had no application. The pursuer was simply asking what was granted in *Amalgamated Society of Railway Servants* v. *Osborne* (*cit.*). In any case the object of the present action was to prevent misapplication of the funds of the Association, and that took it outwith the scope of the section—*Yorkshire Miners' Association* v. *Howden* (*cit.*); *Amalgamated Society of Railway Servants for Scotland* v. *Motherwell Branch* (*cit.*); *Wolfe* v. *Matthews*, 1882, L.R., 21 Ch. Div. 194; *Baker* v. *Ingall*, [1911] 2 K.B. 132; *Wilkie* v. *King*, 1911 S.C. 1310; *Osborne* v. *Amalgamated Society of Railway Servants* (2nd case), 1911, 1 Ch. 540. (4) There was in any case a breach of the contract involved in the pursuer's membership of the Association. The effect of the alterations in 1907 was to make an association till then possessing a statutory legality not merely a voluntary association but an illegal combination, and that involved prejudice to the pursuer's rights, for which the Court would give a remedy. Even if the association were a voluntary association, then its objects could be altered only by the consent of all the members, and in virtue of a provision for alteration contained in the rules when the pursuer joined—*Harrington* v. *Sendall*, [1903] 1 Ch. 921. There was no such provision, and even if there could be implied power to alter, the alteration had not been duly and properly made.

At advising—

LORD DUNDAS—I have considered this case with all the attention due to its interest and importance, as well as to the able arguments which were delivered at our Bar. In the result I agree with the Lord Ordinary that the decision must be adverse to the defenders; but I prefer to rest my judgment upon a simpler and (to my own mind) more satisfactory ground than that on which his Lordship has proceeded.

It seems to me that the matter is really concluded by the judicial reasoning upon which the *Osborne* case was decided. The decision if applicable, as I think it is, is binding upon this Court. It is true that the defenders here are not, and that the defenders in that case were, a trade union registered under the Acts of 1871 and 1876. But I am unable to hold, as the Lord Ordinary seems to do, that this difference in fact constitutes a material distinction, or that the *Osborne* case would have been differently decided if the trade union there under consideration had not been so registered. The Lord Ordinary says that the majority of the noble and learned Lords who gave judgment in the *Osborne* case "held that the Society having placed itself by registration under the Trade Union Acts . . . its constitution and powers fell to be determined according to the same principles as if it had orginally been established or even incorporated by Act of Parment;" and that "it is apparent that this ground of judgment has no application to a society which has no statutory constitution, and which is merely a voluntary association, such as an unregistered trade union." To my mind this interpretation of the judgment is narrow and inadequate. I am of opinion that the decision both in the Court of Appeal and in the House of Lords involved much wider grounds, which are applicable to unregistered as

well as to registered trade unions. The rubric of the report of the *Osborne* case in the Court of Appeal, [1909] 1 Ch. 163, bears that "the definition of a trade union contained in the Trade Union Act 1871, sec. 23, or the amended definition in the Trade Union Act Amendment Act 1876, sec. 16, is a limiting and restrictive definition, and it is not competent to a trade union either originally to insert in its objects, or by amendment to add to its objects, something so wholly distinct from the objects contemplated by the Trade Union Acts as a provision to secure or maintain parliamentary representation." The decision of a Divisional Court in *Steele*, [1907] 1 K.B. 361, which held, in the words of Phillimore, J., "that section 16 is not a limiting section at all," was overruled on this point. The language of the rubric is taken almost verbatim from and forms the gist of the opinion of the Master of the Rolls. That opinion proceeds upon a wide and general consideration of the nature of trade unions with reference to the Acts of 1871, 1876, and 1906, having regard particularly to the definitions of "trade union" in the first and second of these Acts, which have application equally to trade unions registered under them and to those not so registered. The same observation may be made upon the opinions of Fletcher Moulton, L.J., and Farwell, L.J., which further dealt with the "constitutional" aspects of the matter. I find nothing at all to indicate that anyone of the learned Judges intended his opinion to be limited to trade unions registered under the Acts. On the contrary, their reasoning (with which I entirely agree) seems to me to be equally applicable to both classes of trade unions which are legalised and defined by the Acts of Parliament. The House of Lords unanimously affirmed the decision of the Court of Appeal, [1910] A.C. 87. Three out of the five noble and learned Lords who took part in the judgment—viz., Lord Halsbury, Lord Macnaghten, and Lord Atkinson—followed the lines indicated in the rubric already quoted, and as it seems to me upon the same broad and general grounds as those adopted by the learned Master of the Rolls and his colleagues. Lord James of Hereford based his judgment upon a special ground. Lord Shaw's attitude towards the position taken up by the majority was expressed in the words, "I do not dissent, and I do not decide;" but he preferred to rest his opinion upon a consideration of what has been called the "constitutional question." Lord Halsbury's judgment starts by citing the definitions of "trade union" in the Acts of 1871 and 1876, and making reference to sections 2, 3, and 4 of the earlier Act—all of which apply to unregistered as well as registered trade unions. His Lordship calls the Act of 1871 "as it were, the charter of incorporation;" and while indicating a "close resemblance" between its enactments and those relating to statutory trading companies, points out that "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. . . . 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 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 a trade union exists." Lord Macnaghten's opinion proceeds upon the same unrestricted lines. Its essence is, I think, contained in the passage where he comes to consider the definition of "trade union" in the Acts of 1871 and 1876, and says—"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 it does mean, but means that and anything else in the world not in itself illegal which may be tacked on to it." And his Lordship goes on to say—"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." Lord Atkinson's opinion is in effect a concurrence with those of Lord Halsbury and Lord Macnaghten. It is, therefore, in my judgment plain enough that the judicial reasoning underlying the decision in the *Osborne* case is directly applicable to the present case though the defenders are not a registered trade union; and, if applicable, it is binding upon this Court. It follows that the "rules" to which the pursuer takes exception, and the payments to which he objects, are *ultra vires* of the defenders' Association and invalid. This is, to my mind, a sufficient and satisfactory ground for the decision of the case adversely to the defenders.

If I am right in this view, it is unnecessary to discuss the other grounds upon which it was argued that the same conclusion could be reached, and I do not propose to say much about them. The Lord Ordinary, while he considered that the *Osborne* case did not directly apply here, decided against the defenders because he held that the change in their "rules" was such as in effect to relegate the Association to the position it occupied before 1871, as a society which could receive no recognition or help from a civil court, and was therefore a violation of the pursuer's contract, to the material prejudice of his patrimonial rights. I am not prepared to say that I should differ from the Lord Ordinary's view upon the assumptions I understand him to postulate, but I am not sure that I agree with,

or indeed fully appreciate, all the somewhat subtle reasoning upon which it is based, and the ground I have indicated seems to me to afford a more solid and a safer basis of decision. I should, perhaps, say that—if it were necessary to decide the question—I entertain, as at present advised, more difficulty than the Lord Ordinary appears to have felt about the validity, as a question of machinery and powers, of the alterations alleged to have been effected by the delegates upon the "rules" of the Association. These "rules" appear to me to be very loosely drawn up, and very obscure in their meaning and effect, but it is unnecessary, in the view I take, to say more upon this topic.

A great deal of argument was addressed to what has been called the "constitutional question," which was also discussed in the *Osborne* case. I recognise the force and importance of the opinions expressed on this aspect of the matter by Fletcher Moulton, L.J., and Farwell, L.J., and by Lord Shaw. But the question, if it had to be decided in this case—which, in my view, it has not—would require to be considered under somewhat different circumstances, owing to the alterations which have quite recently (since the date of the Lord Ordinary's interlocutor) been made on the constitution of the Labour Party, as shown in the amendments of the pleadings allowed at our bar, admittedly with the object, and, as the defenders' counsel urged, with the result, of eliding the adverse effect of the opinions I have referred to. Upon all this I desire to offer no opinion, and indeed have formed none. My position is aptly expressed in Lord Macnaghten's words—"I do not think it is necessary, and I doubt whether it is expedient or profitable, to discuss the so-called constitutional question."

The defenders maintained an argument in support of their second plea-in-law which, if well founded, would exclude the action from the jurisdiction of this Court. I think the argument fails, because the matter seems to be concluded by adverse authority (*M'Laren and Others (Amalgated Society of Railway Servants for Scotland)*, 1880, 7 R. 867; *Howden*, [1905] A.C. 256).

For the reasons stated, we ought, in my judgment, to recal the interlocutor reclaimed against and to pronounce decree in the pursuer's favour in the terms concluded for, or in such modified terms as the parties may agree on, with expenses in the Outer House and in this Court.

Lord Guthrie—I agree with your Lordships in thinking that the pursuer and respondent is entitled to decree of declarator and to reduction and interdict as craved.

The respondent challenges the reclaimers' right to make the alterations in question on the rules of the Scottish Typographical Association on four grounds—first, as *ultra vires*; second, as involving breach of contract; third, as contrary to public policy, and fourth, because the alterations were not duly passed. The record discloses only the first and third of these grounds. The Lord Ordinary has negatived the first, and found it unnecessary to decide the third; and he does not refer to the fourth. He has decided the case in the respondent's favour on the second ground.

I agree with your Lordships that the respondents are entitled to decree on the first ground, namely, that the alterations made by the reclaimers were *ultra vires*, and would have been invalid as rules of a trade union, registered or unregistered, whether forming part of its original constitution or subsequently inserted, and whether passed unanimously or by a majority. I concur in holding that the grounds of the *Osborne* judgment do not depend on the element of registration, and are equally applicable to the case of an unregistered trade union like the Scottish Typographical Association now before us.

In regard to the Lord Ordinary's ground of judgment, namely that of breach of contract, altering the patrimonial rights of the respondent, I do not follow his reasoning. He holds that the grounds of judgment of the majority in the House of Lords in the *Osborne* case have no application to the case of an unregistered society like the trade union in question, and at the same time he holds as the effect of the *Osborne* judgment that the reclaimers' alterations took the Association out of the category of trade unions recognised by statute and relegated them to the position of voluntary societies illegal at common law. Such action on the reclaimers' part would obviously imply breach of contract involving patrimonialloss as between the Association and any objecting member, but I am not satisfied that there was any breach of contract on the reclaimers' part of the nature affirmed by the Lord Ordinary which is separable from the *ultra vires* action already affirmed.

Breach of contract was, however, maintained by the respondent on another ground. He argued that even if the case of *Osborne* did not apply (and whether the reclaimers were to be dealt with on the footing of an unregistered trade union under the Acts or of a voluntary association untrammelled by statutory restriction but possessing a constitution which involved patrimonial interests in the members) while a majority, proceeding in accordance with the rules, might possess certain powers of alteration in regard to non-essential matters, the alterations in question were beyond any powers inherent in the majority of the members of any voluntary association with a detailed constitution which did not contain any express powers to alter. He did not dispute that, so far as mere matters of regulation were concerned, such as increasing or decreasing the amount of sick benefits, a majority might be able to bind a minority, but he argued that the reclaimers' contention in favour of absolute power to make any alteration on the rules they liked was manifestly untenable, and, in particular, that the introduction of an object which could only have a remote and indirect bearing on the objects

which the Association was designed to promote could not be passed against the opposition of a minority, at all events so as to affect their patrimonial rights. It is not necessary to decide this point, but I am inclined to agree with the respondent's argument. I incline to think that the effect of such an alteration would be—in Lord Selborne's words in *Murray* v. *Scott*, 9 A.C. 538 (quoted by the Lord Ordinary)—"to make the society a thing different from . . . a society formed for the purpose and in the manner defined" by its constitution. That observation seems to me as applicable to a voluntary association with a detailed constitution involving pecuniary interests in its members but not containing any express power to alter as it is to a statutory society. In addition, it must be observed that the Association was not founded to promote the interests of Labour as a whole, but—to quote the words both of the present and former rules—to "exercise a supervision of all matters affecting the printing trade." Yet the reclaimers' alterations compel every member of this Typographical Association to pay money in connection with the return and support of Labour members, whose duty in relation to Labour as a whole might compel them, as for instance in a question between Free Trade and Protection, to promote or support legislation which, although favourable to Labour interests generally, happened to be detrimental to the interests of the printing trade.

I was at first inclined to doubt whether the alteration of rule 53 was open to the same objections as the other alterations, either as *ultra vires* or as involving breach of contract. But the averments in condescendence and answer 6, as explained at the bar, satisfy me that no distinction can be drawn. The respondent's counsel explained in regard to the payments to "Parliamentary Committees," challenged in condescendence 6, that he does not object to them if the reclaimers' explanation is correct, namely, that they apply to payments to the Trades Union Congress, and are not for political purposes, and do not apply (as the name of "Parliamentary Committees" would suggest) to Labour Party conferences which are for political purposes. On the footing of this explanation, it thus appears that the alteration on rule 53 must stand or fall with the other alterations, because the Labour Party conferences therein referred to are primarily, if not entirely, for political purposes.

In regard to the other grounds which were argued, namely the constitutional question, as the amended record now presents that question, and the question whether, assuming the Association was entitled to make the alterations, they did so in proper form, it is unnecessary to decide either of them. But in regard to the first question I may say that my impression is in favour of the reclaimers.

The LORD JUSTICE-CLERK concurred in the opinion of Lord Dundas.

The LORD JUSTICE-CLERK intimated that LORD SALVESEN, who was present at the hearing but absent at the advising, also concurred in the opinion of Lord Dundas.

The Court pronounced an interlocutor sustaining the reclaiming note; recalling the Lord Ordinary's interlocutor; finding and declaring that the rules and parts of rules referred to in the first declaratory conclusions of the summons were *ultra vires*, illegal, and invalid, and were not binding on the pursuer or any other members of the Association; and granting declarator under the fourth conclusion with reduction and interdict; and *quoad ultra* dismissing the action in the same terms as in the Lord Ordinary's interlocutor.

Counsel for Pursuer and Respondent—Chree—J. Macdonald. Agents—Rainy & Cameron, W.S.

Counsel for Defenders and Reclaimers—Sol.-Gen. Anderson, K.C.—Hon. W. Watson—J. H. Henderson. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Thursday, February 8.

SECOND DIVISION.

[Sheriff Court at Glasgow.

THE MOOR LINE, LIMITED *v.* DISTILLERS COMPANY, LIMITED.

Ship—Charter-Party—Demurrage—Claim for Damages.

In a charter-party twenty-two running days were allowed for loading and unloading a steamer, "and ten days on demurrage over and above the said lay-days at twenty-five pounds per running day." It was provided that the days for discharging should not count during the continuance of a strike or lock-out, and further, that "in case of any delay by reason of the before-mentioned causes no claim for damages shall be made by the receivers of the cargo, the owners of the ship, or by any other party under this charter." The vessel was not discharged within the lay-days, but was detained for four days thereafter. This delay was caused by the congestion of shipping in one of the ports of discharge after the termination of a strike. The owners thereupon claimed four days' demurrage.

Held that the claim for demurrage was a claim for damages within the meaning of the charter-party, and was therefore excluded by its terms.

The Moor Line, Limited, Newcastle, *pursuers*, brought an action in the Sheriff Court at Glasgow against the Distillers Company, Limited, *defenders*, for payment of £100 sterling, being demurrage incurred in the discharge of the s.s. "Zurichmoor" belonging to the pursuers, for which the defenders were alleged to be liable as endorsees of the bills of lading for the cargo in the vessel.