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TRADE UNIONS AND PARLIAMENTARY REPRESENTATION.

THE decision in *Osborne v. Amalgamated Society of Railway Servants*,¹ followed as it has been by numerous actions in which members of Trade Unions have obtained injunctions against their societies to restrain the application of Union funds for the payment of election expenses and salaries of Members of Parliament, is not merely of great importance in its immediate effect on the political fortunes of Trade Unions and the Labour Party, but the principles involved are so far-reaching that a short statement of the case and some analysis of the different *rationes decidendi* may be useful at the present time.

The Society had been established in 1872, and was registered under the Trade Union Acts, 1871 and 1876. The first of these Acts had established the immunity of members of Trade Unions from criminal prosecution for conspiracy or otherwise on the ground that the purposes of a Trade Union are in restraint of trade. It also, without incorporating Trade Unions, conferred certain privileges and powers on duly registered Unions, notably the power of holding property vested in trustees, and these privileges and powers cannot be obtained without registration, though in other respects registration is not made compulsory. The term "Trade Union" is defined by the amending Act of 1876 (with certain savings) as "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 reasons of some one or more of its purposes being in restraint of trade."

The objects of the Society, as stated in the rules, were, shortly, the improvement of the condition and protection of the interests of the members, the promotion of a good understanding between employers and employed, the regulation of their relations, and the settlement of disputes by arbitration, or failing arbitration by other lawful means, and the provision of benefits and of legal assistance to the members and their families. The original rules contained no reference to Parliamentary representation, but in the year 1903 the words "to provide Parliamentary representation" were added to the list of objects. Under the rules as they

¹ Judgment of the Court of Appeal, 28 November 1908, *see* [1909] 1 Chancery 163; affirmed by the House of Lords, 21 December 1909, *see* [1910] Appeal Cases, 87.

stood at the beginning of 1906 a Parliamentary representation fund was established for the purposes of providing for the representation of railwaymen in the House of Commons, and making contributions to the Labour Representation Committee so long as the Society should remain affiliated to it. To this fund an annual subscription of 1s. 1d. per member was to be paid. Later in the same year additions were made and duly registered, of which the most important was to the effect that "all candidates must sign and accept the conditions of the Labour Party, and be subject to their Whip," but these additions were held by the Courts to be invalid on the ground that the formalities required by the rules for the making of new rules had not been complied with.

The action was brought in 1907 against the Union and its trustees by Mr. Osborne, who was secretary of the Walthamstow branch, and had been a member of the Union for sixteen years. He asked for a declaration to the effect that the rule relating to Parliamentary representation, the raising of moneys by compulsory subscription, and the distribution of such moneys in pursuance of the rule were beyond the legal powers of the Society, and for an injunction restraining the defendants from acting under that rule, or so distributing moneys.

The Court of first instance, following a case decided shortly before, dismissed the action. On appeal the Court of Appeal unanimously reversed this decision, and gave judgment for Mr. Osborne, and this judgment was unanimously affirmed by the House of Lords. The reasons on which these judgments were based are as follows :—

In the first place, the three judgments in the Court of Appeal all rely to some extent on the informality attending the making of the alterations in the rules at the end of 1906, a defect which, as the Court held, was not cured by the fact that the alterations had subsequently been registered, and a certificate of registration given by the Registrar. The point was not dealt with in the judgments given in the House of Lords, and is not one of general importance : for the mere informality could have been cured at the next annual general meeting of the Society.

The next point is one of much greater general interest. Trade Unions, though not created by statute, have been, at any rate as regards a large part of their activities, legalised by statute, which has recognised them as having a quasi-corporate status and has conferred special powers and immunities. They thus resemble the numerous statutory bodies of which joint-stock companies form

the most familiar example. The question then arises, does the law in giving its recognition at the same time impose limits on their lawful activities? and, if so, does the provision of a fund for Parliamentary representation fall outside these limits? These questions were answered in the affirmative, unanimously, by the Court of Appeal and by three out of five of the Lords who gave judgment in the House of Lords. The definition in Section 16 of the Act of 1876 (quoted above) was held to be not a mere statement of the objects which must be present in order that a body should be recognised as a Trade Union, but a clause of limitation which prevents a Trade Union from pursuing any objects not incident or auxiliary to the objects stated in the definition. It is true that the provision of benefits to members, which is indisputably among the lawful purposes of Trade Unions, is not mentioned in that section, but whether on the ground that the provision of such benefits falls within the words "regulating the relations between workmen and workmen" (as held by Lord Justice Farwell) or is collateral or auxiliary to the purposes mentioned in the Section (as held by Lord Atkinson), or is recognised and sanctioned by Parliament in other sections of the Act of 1871 (as pointed out by the Master of the Rolls), the argument based on this omission from the definition clause was held insufficient to extend the powers of Trade Unions to the purposes of Parliamentary representation. Lord James of Hereford, on the other hand, held that the clause in question was "not a clause of limitation or exhaustive definition," and that "the Legislature only intended to require certain qualifications to exist before an entity could become a Trade Union, but the objects and limits of action of a properly qualified Trade Union are not dealt with by the section." Lord Shaw, without dissenting, hesitated to accept the view of the majority on this point. "I have some hesitation," he said, "in so construing language of statutory recognition as a definition imposing such hard and fast restrictive limits as could cramp the development and energies and destroy the natural movements of the living organism."

In the third place, quite apart from the question of statutory limitation, the doctrine of public policy was invoked, to show the illegality of the rules and proposed expenditure in question. The view of Lord Justice Fletcher Moulton seems to have been based, mainly at any rate, on the additions made to the rules in 1906. According to his view, these additions showed that: "The objects of the Parliamentary fund is to procure Members of Parliament

who shall be bound to vote in a prescribed manner, and that it is in consideration of their undertaking so to vote that the funds of the Society are to be expended in procuring their election and in supporting them in Parliament." Such an arrangement must be treated as equivalent in legal effect to a contract between A and B that A will pay the election expenses of B and support him while in Parliament, provided that B will engage to vote as A directs. The duty of an elected representative towards the electors and the public is one in the discharge of which he must not have contractually fettered himself. Lord Justice Farwell carried the same line of reasoning further. While holding that the effect of the Union's scheme was that "certain constituencies are to be disfranchised by substituting for a member representing them a paid delegate bound to put the interests of those who pay him before all other considerations," he later lays stress rather on the Member's duty to the country as a whole than on that to his own constituents. But the reasoning of an earlier part of his judgment would seem to be clearly independent of the additions of 1906 to the rules. He there lays down that it is "illegal for a Trade Union to compel their members to allow their funds to be applied and themselves to subscribe," as being inconsistent with the political freedom of each member of the Union. "It is not enough to say that a man's vote has not been influenced. It is also necessary for his freedom that he shall not have been coerced into supporting by money or otherwise the candidate whom he wishes to oppose." In the House of Lords Lord Shaw's elaborate judgment, which went entirely on the ground of public policy, seems to be based on the additions of 1906. He carefully guards against a sweeping condemnation of payment of Members as such. "Granted, however, that no conditions are imposed subversive of or imperilling their freedom, it will be observed that nothing that has been said attaches a taint or shadow of illegality to the payment of Members of Parliament. Such a payment may be a tribute to character, or a recognition of talent coupled with a desire that these should be secured for the service of the State, or it may spring from a legitimate wish that the views, the needs, the perils of particular, and it may be large, classes of His Majesty's subjects should be expressed in Parliament by those who speak with the authority of practical experience."

On this question of public policy the Master of the Rolls, and the other Members of the House of Lords, abstained from expressing any opinion, contenting themselves with the argument based

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on the Act of 1876. Lord James of Hereford, while differing from the majority on the construction of the definition clause in the Act of 1876, and holding it "unnecessary that any opinion should be expressed on the very broad constitutional question raised for the first time in the Court of Appeal affecting the general support of Members," came to the conclusion that the application of money to the maintenance of a Member whose action is controlled by the rules as amended in October, 1906, is not within the powers of a Trade Union, on the ground that the vote of such a member "would have to be given in respect of all matters, including those of a most general character, such as confidence in a Ministry or the policy of a Budget—matters unconnected, directly at least, with the interests of Labour."

W. M. GELDART

Report of the Vice-Regal Commission on Irish Railways, including Light Railways. (Cd. 5,247. 1s. 7d.)

ALMOST exactly four years after its appointment, the Commission on Irish Railways has issued its report. The inquiry has been of a most thorough nature. No less than 293 witnesses have been examined, the number including representatives of 103 public bodies.

It is much to be regretted that the Commissioners have not been able to arrive at an unanimous conclusion. The report is signed by four members only, whilst a minority report is submitted signed by the remaining three members. Further, whilst the Commission contained two gentlemen with long railway experience, one of their signatures is attached to each report. The balance of opinion is thus as evenly balanced as it can well be.

Whilst certain grave irregularities have come to light in the course of the inquiry, it cannot be said that the Irish railway companies have come out of the investigation badly. Two of the principal companies have been guilty of giving rebates irregularly on a considerable scale. Rate books have not always been properly entered up. The Commission is, however, unanimously of the opinion that no serious injustice has accrued from these malpractices. The rebates were a matter of common knowledge, and it would appear that few traders failed to get the advantages they gave. As regards management, too, the Commissioners are again unanimously of the opinion that no serious fault can be found with its efficiency. Of the light railways this is not so true, but the opinion is expressed that the