

Tuesday, November 1.

SECOND DIVISION.

Lord Johnston, Ordinary.
Lord Cullen, Ordinary.

MACKENDRICK v. NATIONAL UNION OF DOCK LABOURERS IN GREAT BRITAIN AND IRELAND.

Jurisdiction—Trade Union—Trade Union having Registered Office in England but having a Branch in Scotland—Trade Union Registered in England but having Rules Recorded in Scotland.

The National Union of Dock Labourers consisted of combinations of dock labourers which were enrolled by the Executive of the Union as local branches. The Union had its registered office in England, but had a Branch in Glasgow. It was registered in England, but a copy of its rules was recorded in Scotland.

Held that the Union was subject to the jurisdiction of the Court of Session.

Trade Union—Relations of Central Executive and Local Branches—Power of Branch to Incur Liability Binding Funds of Union.

A Trade Union consisted of combinations of labourers which were enrolled by the Executive of the Union as local branches. The business of the Union was carried on by the branches subject to a general control by the Executive. The branches had no separate funds of their own, but the funds of all the branches were the common property of the Union. Under the rules of the Union no person had power to incur financial responsibility in name of a branch unless with the special authority of the branch or the branch committee. One of the branches of the Union, which had power to appoint its law agent, appointed A B its agent and guaranteed his costs in the event of his fighting a case unsuccessfully. A B, with the sanction of the Branch Committee, raised an action at the instance of a member of the Branch against his employers. This action was unsuccessful.

Held that under the guarantee A B was entitled to sue the Trade Union for his account.

Agent and Client—Guarantee for Costs—Construction—Meaning of Costs.

A Branch of a Trade Union appointed A B, a writer in Glasgow, their law agent. The letter of appointment bore—“We guarantee the costs incurred by you in the event of your fighting a case unsuccessfully.” A B, with the approval of the Branch, raised an action at the instance of a member of the Branch in the Court of Session. The action was unsuccessful.

Held (1) that the guarantee covered A B's professional charges as well as outlays; and (2) that the guarantee

covered an account incurred by A B's Edinburgh correspondents in connection with the action.

Alexander B. Mackendrick, writer, Glasgow, brought an action against the National Union of Dock Labourers in Great Britain and Ireland for payment of an account for professional services.

The rules of the Union provided, *inter alia*:—“Rule XII (10)—Branches may advance money to assist any member to enforce his legal claims for compensation in cases of accident, arising through the negligence of employers, while pursuing his ordinary occupation. . . . No money shall be advanced under this rule until all the available evidence bearing on the case has been laid before the Branch Committee and a copy supplied to the Executive. The Executive may veto any decision of branches to expend money in cases of such claims. Rule XIV (3)—No person shall have power to incur any financial responsibility, or transact any business in name of a Branch of the Union, unless with the special authority of the Branch or of the Branch Committee. Rule XVI (1)—The funds of all branches of the Union shall be the common property of the Union, and shall be administered by the Executive, according to rule. Branches seceding from the Union, or being dissolved, shall forfeit all claims to the funds of the Union. . . . Members of such seceding or dissolved branches wishing to remain in the Union may be transferred to the most convenient branch.”

The pursuer averred—“(Cond. 1) . . . The defenders are a registered Trade Union, having their registered office at 46 Hanover Street, Liverpool, and carrying on business in Scotland through their branches in Glasgow, Bo'ness, and Aberdeen. The defenders' Union consists of branches in Great Britain and Ireland, and derives the whole of its funds from said branches. The branches are authorised and empowered by the defenders to appoint their own law agents, and the branch committees are agents of the defenders, and are entitled to bind them to pay the costs incurred to such law agents. . . .”

The defenders averred—“(Ans. 1) . . . Admitted that the defenders have their registered office at 46 Hanover Street, Liverpool. Admitted also that local branches of the National Union of Dock Labourers are empowered to appoint their own law agents. *Quoad ultra* denied. It is explained that the defenders are a Trade Union existing for the purpose of organising and uniting dock labourers. It consists of combinations of dock labourers which are enrolled by the Executive of the Union as local branches. Such a Branch existed in Glasgow, and had an office at 8 Maclean Street, Govan, and it was numbered 12 amongst the branches of the Union. The said Branch, like other branches of the Union, had its own organisation, appointed its own staff, collected its own payments, disbursed its own moneys, and rented its own office. The said Branch was in no sense an agency of the defenders, who

have no office in Scotland, and do not carry on business there. The Scottish Courts have no jurisdiction over the defenders."

The pursuer further averred that on 25th February 1907 he had been appointed law agent of Branch No. 12. He produced the following letter, No. 6 of process, signed by the president and the secretary of the Branch:—

"Mr A. B. Mackendrick, solicitor,
141 Bath Street, Glasgow.

"Dear Sir,—As authorised and instructed by my Committee, I beg to put in writing the terms of your appointment as our law agent, as verbally agreed to on Monday evening last.

"(1) It is understood that there is no retaining fee to be paid by us, and, on the other hand, that we ask you to make no rebate or contribution to the Union.

"(2) You shall have a free hand to deal with all cases as you think best, and will receive all possible assistance in the preparation of evidence, &c., from the Branch office-bearers. You must, of course, do all in your power to bring all cases to a successful issue or a satisfactory compromise. You shall keep us regularly posted as to the progress of cases.

"(3) While the direct relation of agent and client shall subsist between you and each injured party for whom you act, we guarantee the costs incurred by you in the event of your fighting a case unsuccessfully. Of course in all successful cases we will not be responsible for your costs, which you must recover in the usual way. . . .

"Yours faithfully,

"W. R. GENTLES, President.
"JAMES M'ALPINE, Secy."

The pursuer also averred that he had accepted the appointment as law agent, that in October 1907 he was instructed by the secretary of Branch No. 12 to take up the case of Samuel Bowden, a member of the Branch, that the pursuer had instructed his Edinburgh correspondents, Messrs Paterson & Salmon, solicitors, to raise an action at Bowden's instance in the Court of Session, and that the action was unsuccessful. The pursuer produced an assignation by Messrs Paterson & Salmon of their business account in his favour.

It appeared that the defenders' Union was registered in England, but that a copy of its rules had been recorded in Scotland, in terms of the Trade Union Act Amendment Act 1876 (39 and 40 Vict., cap. 22), section 6.

The defenders pleaded, *inter alia*—“(1) No jurisdiction. (2) In so far as the account sued for includes Messrs Paterson & Salmon's account against Bowden, the pursuer has no title to sue. (4) The pursuer's averments being irrelevant and insufficient to support the conclusions of the summons, the action should be dismissed. (6) The defenders not having authorised, and not being in any way responsible for the actings of the said Glasgow Branch in relation to the pursuer, they are entitled to absolver. (7) *Separatim*—The agreement made between the said Glasgow Branch

and the pursuer being in the pursuer's knowledge in breach of the rules of the defenders' Union, the defenders are entitled to absolver. (8) The said Branch having, with pursuer's cognisance, failed to comply with the rules of the defenders' Union in dealing with Bowden's case, the defenders should be assolized."

On 5th October 1909 the Lord Ordinary (JOHNSTON) repelled the first and sustained the fourth plea-in-law for the defenders, and dismissed the action.

Opinion.—"The defenders here are a registered trade union, styled the National Union of Dock Labourers in Great Britain. Their registered office is in Liverpool. This Union is by its statutory rules declared to 'consist of such combinations of dock labourers as are or may be established in Great Britain and Ireland. All local combinations, after enrolment, to be called branches.' From this constating declaration it might be inferred that the membership unit of the Union was the local combination or branch, and further, that a combination howsoever formed would be eligible to such membership. A very cursory perusal, however, of the rules will show that this is not the intention or the effect of the constitution, as embodied in the rules. I do not think it is necessary to refer to these in detail. It is sufficient to say that the combination must be effected or the branch formed in accordance with the rules, and that the unit of membership of the Union is the individual and not the branch, though it is, *ipso facto*, as member of the branch that the individual becomes a member of the Union. The individual dock labourer is a member of the branch, and as a member of the branch a member of the Union.

"But there is, notwithstanding, another result of the rules or incident of the constitution, viz., that the local combination or branch, though under control of the Union, has a large administrative independence. The situation created is somewhat of an *imperium in imperio*.

"A branch of the Union, styled 'National Union of Dock Labourers, No. 12 Branch,' has its office or headquarters at 8 M'Lean Street, Govan, Glasgow. In February 1907 the pursuer, A. B. Mackendrick, solicitor, 141 Bath Street, Glasgow, was appointed law agent to this branch, and a written agreement was entered into by the president and secretary, and bearing as 'instructed by the Branch Committee,' with Mr Mackendrick, No. 6 of process. This agreement, although general in its preamble, was in fact meant only to provide for the prosecution of claims of damages for injury at the instance of members, and bore, *inter alia*, '(3) While the direct relation of agent and client shall subsist between you and each individual party for whom you act, we guarantee the costs incurred by you in the event of your fighting a case unsuccessfully.'

"In October 1907 the pursuer alleges that, standing this agreement, he was instructed by the Branch Secretary, on behalf of the Union, to take up the case of Samuel

Bowden, a member who had been injured in the course of his employment; that he conducted Bowden's case accordingly, raising an action at common law in the Court of Session and employing as his correspondents in Edinburgh Messrs Paterson & Salmon, solicitors there. This action was unsuccessful and the pursuer Bowden was mulcted in costs. As Bowden is impecunious, the pursuer has come against the Union for his account of expenses, and for some other small items of business, amounting altogether to £425, 5s. 1d. He includes the account due to his correspondents in Edinburgh, to which he says he has an assignation. Now he does not sue the Branch, but goes direct against the National Union of Dock Labourers itself, 'having their registered office at No. 46 Hanover Street, Liverpool, and having branch offices in Scotland at No. 8 M'Lean Street, Plantation, Glasgow, at Tunnel Street, Finneston, Glasgow, at Bo'ness, and at Aberdeen.'

"He is met by a number of preliminary pleas, which, as elaborated in argument, amount to the following:—

"*Second*, That the Court has no jurisdiction, the Union having no place of business in Scotland. The branches, it is maintained, are separate entities, and not agencies of the Union, and if so, the Union cannot be sued in Scotland, where it is not domiciled.

"On a review of the constitution of the Union it is impossible to sustain this objection. The body is not 'the Union of Dock Labourers in England,' but 'the National Union of Dock Labourers in Great Britain and Ireland.' The whole purview of its business as disclosed by Rule III, defining its objects, is general, or at least national, and there is nothing to subject it to the jurisdiction of the English Courts any more than to those of Scotland and Ireland, except it be that it has a registered office in Liverpool. The Act of 1871, section 6, provides for the registration of trade unions, but the registration is voluntary. I do not find that this registration confers any privileges on the Union. What it does is rather to place it under certain regulations, intended mainly for the protection of its own members. If it imposes any restrictions, these are incidental merely. It certainly does not incorporate the Union or give it the status of a registered company or even of a friendly society. As I read it, its object and effect was to secure to the workman that if he does join a registered trade union, he may rely on its affairs, and in particular its finance, being conducted with some claim to regularity and soundness. The Act, section 15, also provides that every registered trades union 'shall have a registered office to which all communications and notices may be addressed.' I do not find that this provision necessarily confines the Union to the jurisdiction of the courts within whose jurisdiction such office is domiciled. But I think that it may otherwise be so confined. The Act clearly contemplates separate registration in England, Scotland, and Ireland, for separate registries are created

in each country (section 17), and the general provisions for registration (section 13 *et seq.*) imply that there may be registration in one or more of these countries, or in all. And this is quite intelligible, for many trade unions may be and are entirely local in their sphere of operations. Others may have a sphere of operations extending over the whole of Great Britain and Ireland. Where, then, a trade union is registered in England only, it is not subject to the jurisdiction of the Courts of Scotland, except in the same way and to the same effect that any alien is so subject. But I am relieved from considering such exceptions, because *de facto* this Union is registered under the statute in Scotland, as might reasonably be expected from the nature of its objects and the scope of its operations. It must then answer in the Courts of Scotland. It may be that it may then plead that though it must recognise the Courts of Scotland, they are not the convenient *forum* in which to determine the *de quo queritur*. But that point cannot be taken in the present case.

"For the determination of this question it is not necessary that I consider the relations of the Union and its branches.

"*Third*, That the Branch and its officials are not agents of the Union, and that their action cannot bind it. In other words, assuming that the agreement sued on is good against the Branch, it involves a guarantee by the Branch which may bind it, but does not bind the Union.

"If I considered that the question arose in this way I should have determined it against the defenders. But I do not think that the question falls to be determined on such general considerations, but with regard to the special nature of the Branch's action in entering into this agreement or guarantee.

"If the act in question were a legitimate act of the Branch and its Executive, I should have held the Union bound, failing the Branch, to supply the funds necessary to meet the obligation undertaken, and I should have been of opinion that though the primary recourse may be against the funds of the Branch, even that recourse must properly be had through the Union.

"The Union is (Rule IV) governed by a congress of branch representatives, and the congress annually elects an Executive to manage the business of the Union. This Executive (Rule V) directs and controls the affairs of the Union.

"Now neither the Union nor the congress nor the Executive have any funds which are not derived from the branches. To carry out the objects of the Union a levy of 3d. per week is (Rule X) made on each member, and this contribution is allocated thus—'(a) One halfpenny per week shall be devoted to Executive purposes, and remitted weekly to registered office'; and '(b) the remainder, in addition to interest on accumulated capital, to be retained by branches for general fund and burial benefits subject to legal demands of the Executive.'

"But there is this important further proviso (Rule XVI)—'The funds of all

branches of the Union shall be the common property of the Union, and shall be administered by the Executive according to rule.'

"The apparently conflicting rights and powers of the Union and the branches over Branch's funds are reconciled thus—The Branch funds derived from its portion of its members' contributions (Rule XII, heads 8 and 11), are to remain to a limited extent in the hands of the secretary, *quoad ultra* to be lodged in bank or invested in name of branch trustees (see Act 1871, section 8). And these funds are primarily applicable to meet the Branch's liabilities, for Rule XIV implies that, with the authority of the Branch or the Branch Committee, financial responsibilities may be incurred in name of a branch of the Union.

"But then Rule V, head 5, provides—'The Executive shall have power to make an order upon any branch for money according to rule, to discharge any bills or debts contracted by or on behalf of the Union, and shall have power to cause one branch to remit to another branch, from time to time, whatever sums of money they may deem necessary to meet the expenditure of such branch.'

"Looking then to the fact, as already pointed out, that (Rule XVI) the funds of all branches of the Union are declared to be the common property of the Union, and to be administered by the Executive, even though there is this subordinate and partial independence of administration, I should be of opinion that to enforce an obligation duly undertaken by a branch, the proper course was that taken by the pursuer, viz., to go direct against the Union, in whom the Branch funds are thus vested with such powers of control and supplement as I have indicated, and that the pursuer, had he gone against the Branch and its committee, would have been met with more weighty pleas than he has been in the course which he has pursued.

"My view, while I admit that the question is surrounded with difficulty, from the anomalous position which trades unions have been allowed to assume, is that the obligation of the Branch, competently undertaken, is the obligation of the Union, and enforceable to the extent of the funds not merely of the Branch but of the Union, which can only be made forthcoming by proceeding against the Union in which they are vested and its Executive. If the Union has power to call on other branches to supplement the funds of the Branch in question, it can be compelled to do so.

"But then the obligation must be duly and competently undertaken. In the present case the guarantee sued on has not been competently undertaken. Rule XIV, head 3, declares—'No person shall have power to incur any financial responsibility or transact any business in name of a Branch of the Union unless with the special authority of the Branch or of the Branch Committee.' Assuming then that the Branch President and Secretary had the authority of the Branch or of the Branch Committee to enter into the agreement, No. 6 of process, was it *intra vires* of

the Branch to confer on them that authority; clearly it was not. Rule XII, head 10, provides that 'Branches may advance money to assist any member to enforce his legal claims for compensation in cases of accident arising through the negligence of employers while pursuing his ordinary occupation. . . . No money shall be advanced under this rule until all the available evidence bearing on the case has been laid before the Branch Committee and a copy supplied to the Executive. The Executive may veto any decision of Branches to expend money in case of such claims.' Now to advance money to assist a member to enforce his legal claims is a very different thing from undertaking his case, which is the practical result of supplying him with an agent and guaranteeing his agent's expenses in the event of an unsuccessful issue of his case. The one is the undertaking of a known and limited liability, discharged *unico contextu* with the undertaking out of funds in hand. The other is the undertaking an unknown and unlimited liability impeding the funds of the future. This was *ultra vires* of the Branch and of its Committee if the constitution of the Union means anything. The case appears to me to be ruled by the principle which underlies the judgments in *Shiell's Trustees*, 12 R. (H.L.) 14, and *Buchanan v. University of Glasgow*, S.C. 1909, p. 47. The action is based on contract, and the contract is not binding because it was *ultra vires* of those who assumed to enter into it.

"While, then, I do not sustain this objection as stated, I sustain it in such form as leads to the dismissal of the action as irrelevant.

"It was maintained, *fourth*, that in any view the guarantee in question did not cover the account of the pursuer's Edinburgh agents, but only his own. The plea is formidable, but I do not think that it could be disposed of without further information. And in the view I take it is unnecessary further to consider it.

"I shall therefore dismiss the action with expenses."

The pursuer reclaimed.

The following authorities were cited on the question of jurisdiction:—*Laidlaw v. Provident Plate Glass Insurance Company, Limited*, February 28, 1890, 17 R. 544, 27 S.L.R. 354; *Hughes v. J. & W. Stewart*, 1907 S.C. 791, 44 S.L.R. 549; *Hay's Trustees v. London and North-Western Railway Company*, 1909 S.C. 707, 46 S.L.R. 513.

On 21st January 1910 the Court recalled the interlocutor of the Lord Ordinary, of new repelled the first plea-in-law for the defenders, and remitted the cause to Lord Cullen to allow a proof before answer.

Proof was thereafter allowed and led. Its import appears from the opinion of LORD CULLEN (*infra*), who on 28th June 1910 remitted the account sued for to the Auditor to tax and to report.

Opinion.—"The general nature of this action, and some of the considerations affecting it, are set out and discussed in

Lord Johnston's opinion relative to his Lordship's interlocutor of 5th October 1909, to which I beg to refer.

"It is common ground that it is within the objects of the Union to aid individual members in suing their employers for damages or compensation in respect of injuries received in their service, and, in particular, to apply the funds of the Union in paying the costs of such litigation.

"The present question arises mainly out of an action raised in this Court by one Bowden, a member of Branch 12 of the Union, against his employers, stevedores in Glasgow, for damages in respect of personal injuries sustained by him while working at the unloading of a ship in Glasgow Docks. The proceedings in the action were conducted partly by the pursuer, Mr Mackendrick, a writer in Glasgow, and partly by his Edinburgh correspondents, Messrs Paterson & Salmon. The action was unsuccessful. The sum now concluded for consists of (1) the accounts of Mr Mackendrick and Messrs Paterson & Salmon in connection with Bowden's case, amounting together to £407, 6s. 3d.; and (2) certain small accounts for other law agency work performed by Mackendrick, amounting to £17, 18s. 10d. The pursuer holds an assignation from Messrs Paterson & Salmon to their claim.

"The defenders' plea of no jurisdiction has already been disposed of. Their plea (No. 3) to the competency of the action was not maintained in the argument addressed to me.

"The defence on the merits is that neither the pursuer nor Paterson & Salmon were employed by the defenders, and that the defenders are therefore not liable to them. It involves a distinction between the case of the pursuer and that of Paterson & Salmon, and I shall deal with the claim for the pursuer's own account in the first instance.

"The pursuer's services were given on an employment by Branch No. 12 of the Union. The conditions of his employment are contained in the document No. 6 of process. It is addressed from 'National Union of Dock Labourers, No. 12 Branch,' &c., and is signed by the president and secretary of the Branch. It appoints him to be 'our law agent,' and proceeds to define the conditions of his employment. He was to have a free hand to deal with all cases entrusted to him. As regards expenses, while the relation of agent and client was to subsist between him and the individual member whose claim was being prosecuted, the Branch, in the case of unsuccessful actions, guaranteed payment of 'the cost incurred by you,' while in the case of successful actions the pursuer was to obtain payment of his 'costs' in what was called 'the usual way,' by which it is no doubt meant that he was to obtain them either from the defenders in such actions or the successful pursuers.

"It is not disputed that it was within the objects of the Union, and part of its ordinary activities, to employ a solicitor to perform such work. The question raised is

as to the powers of a branch to do so, so as to give recourse against the funds of the Union.

"The constituent parts of the Union organisation are (1) the various local branches, embracing all the individual members, by whose contributions the funds of the Union are provided; and (2) a central 'Executive,' which receives a small portion of the contributions to defray Executive expenses.

"The rules of the Union provide for the constitution of the Executive and the conduct of its business. They also provide for the constitution of the managing bodies of branches, and, to some extent, for the conduct of branch business, while the aiding of individual members in suing their employers in cases of injury is an ordinary and an important part of the work of the Union, the rules do not directly assign this function either to the Executive or to the branches. It is, however, common ground that it lies with the branches, subject to a certain controlling power on the part of the Executive. The extent of this control is matter of controversy. The rule which was canvassed in the argument as directly dealing with the subject, more or less, is Rule XII (10), which runs as follows—'. . . (quotes, v. sup.) . . .'

"It will be noted that the defined subject-matter of this rule is advances of money made by a branch for the purpose of (1) aiding a member to conduct his action, or (2) helping him to subsist while it proceeds. If the defenders had assisted Bowden by making such advances while his action proceeded, such payments would have fallen under this rule. The rule, however, is not so framed as to apply in terms to the employment of a law agent to act for a member in the prosecution of his action, although such employment may involve ultimate liability for payment of money to him from the Union funds.

"The only other rule which seems to touch this matter is No XIV (3), which says—'. . . (quotes, v. sup.) . . .'. This contemplates the branch as having a general power to incur financial responsibility. The branch may, for example, take a lease of premises for carrying on their business. And if occasion for litigation should arise, say with the landlord of such premises, there is apparently nothing in the rules which restricts their freedom of independent action in carrying it on and incurring an indefinite liability for legal expenses. Rule XII (10) has no application in such a connection. The observation made by the defenders upon Rule XIV (3) is that such financial responsibilities undertaken by a branch charge only the funds in the hands of the particular branch which undertakes them. But then Rule XVI says—'The funds of all branches of the Union shall be the common property of the Union, and shall be administered by the Executive, according to rule.' This seems to exclude the view that a creditor under an obligation duly undertaken by a branch is limited in his recourse to that

part of the common funds, if any, which happens to be in the hands of the branch in question. The Branches are the constituent items of the Union with independent powers of contracting obligations, but the monies in the hands of the branches form common property of the Union.

"The position, so far, may be summed up as follows—(1) The active life of the Union is in the branches, each of which, in its particular area, carries on the business of the Union, subject to such central control by the Executive as the rules prescribe. (2) Part of the business of the Union, carried on by the respective branches, is assisting individual members in prosecuting claims against their employers in respect of personal injury received in their service. (3) Each branch has a general power of incurring financial responsibility incidental to its carrying on the local business of the Union. (4) The branches are (Cond. 1 and Answer 1) 'empowered to appoint their own law agents,' which, *prima facie*, means power to employ them. (5) The rules say nothing in terms as to the employment of law agents, and do not impose on the branches any control by the Executive in this connection apart from Rule XII (10). (6) Rule XII (10) only deals in terms with actual advances of money to assist members in enforcing their claims or to members who may be in distress while their cases are pending. It provides—'No money shall be advanced under this rule until all the available evidence bearing on the case has been laid before the Branch Committee and a copy supplied to the Executive. The Executive may veto any decision of branches to expend money in cases of such claims.'

"Now this is not a case of advancing money. What the Branch did was to employ a law agent incidentally to carrying on the proper business of the Union. This, no doubt, meant undertaking a contingent obligation for payment of money to him. And it might perhaps have been logical to provide by the rules that such employment should not be given and consequent contingent liability undertaken by the Branch without the same check on the part of the Executive as Rule XII (10) provides in the case of actual advances of money. The defenders contend that Rule XII (10) does inferentially apply to the employment of a law agent and consequent undertaking of liability to him. Their ground is that the apparent object of the rule requires this logically for its complete attainment. It is difficult to reach this view, because in all the cases to which the rule applies there is to be laid before the Executive 'all the available evidence bearing on the case' in order that the Executive may exercise its discretion. Now the available evidence in connection with an action of damages could hardly be procured except with the aid of a law agent who appreciated the legal bearings of the case; and the work of getting it together might be a very considerable task. And so the employment of the law agent and the undertaking of liability to him for his services would necessarily

take place before it was possible to seek sanction from the Executive in terms of the rule.

"It must be kept in view that the present question arises with one who is a stranger to the Union. Mr Mackendrick, in contracting with the Union through the Branch, must, no doubt, be held to have been affected with the notice of the rules of the Union. He states that in point of fact he did not know them. The case must, however, be dealt with on the footing that he had acquainted himself of them as he should have done. But on this footing I am not prepared to hold that Rule XII (10) would have apprised him that his employment by the Branch was not a valid employment by the Union unless the sanction of the Executive was given to it. The rule falls, I think, to be construed *contra proferentes*, and as it is limited in its expression to actual pecuniary advances I do not think that it falls to be stretched beyond this. It is no good answer to say that the rule so limited is illogical in not effectively protecting the Union against obligations undertaken by branches which may be more onerous than the pecuniary advances which it expressly contemplates. As already pointed out, the rules seem to permit of the branches incurring an indefinite extent of financial responsibility to law agents or otherwise in other matters connected with the carrying on of the business of the Union.

"Assuming that Rule XII (10) falls to be read in the wider sense maintained by the defenders, Mr Mackendrick was thereby affected with notice that the Branch had a power to employ him qualified by the requirement of obtaining the sanction of the Executive. This sanction was not in my opinion obtained in terms of the rule, although evidence has been led to show that some of the officials of the Executive had knowledge of the action. The question, however, arises whether, having received an employment from the Branch so empowered, Mr Mackendrick was bound before acting on it to certify himself by inquiry that the branch had done its duty towards the Union by obtaining the required sanction, or whether, on the other hand, he was not entitled to assume that the Branch was acting regularly, in accordance with the principle applied in *Royal British Bank v. Turquand* (5 E. & B. 248, and *ibid.*) 327). In that case a company's deed empowered the directors to borrow on bonds of the company such sums as by a general resolution of the company might be authorised to be borrowed. A bond for a loan was given without the authority of a resolution. It was challenged, and the question raised was whether the bondholders were bound to look beyond the deed of settlement and find out whether the resolution on which the directors' power of borrowing was conditioned had been passed. It was held that they were not, but were entitled to assume that the directors had acted regularly. There are many other cases in which the same principle has been given effect to. It appears

to me to apply to the present case. And there is nothing in the evidence, so far as I can see, to show that anything occurred to affect Mr Mackendrick with knowledge that the Branch had failed to obey the rule of their organisation by obtaining the sanction of the Executive. On the contrary, the secretary of the Executive was present at the meeting of the Branch Committee in Glasgow when it was arranged that Mr Mackendrick be appointed as the solicitor of the Branch, and in December 1907 Mr Mackendrick had a meeting with Mr Kelly, the vice-president of the Executive, at which various cases under his charge, including Bowden's, were spoken of.

"I am accordingly of opinion that the defenders are liable to the pursuer in accordance with the terms of the document No. 6 of process which regulated his employment.

"A question then arises as to the extent of this liability. According to No. 6 of process it is for 'the costs incurred by' the pursuer. The defenders say that this means only his outlays and not his professional charges. They point to the words 'incurred by.' This expression may not be quite accurate, but the ordinary use of the word 'costs' does not limit it to outlays. The next sentence of No. 6 of process says—'Of course in all successful cases we will not be responsible for your costs, which you must recover in the usual way.' In this sentence the word 'costs' has its ordinary meaning, and I am of opinion that it is used with the same meaning in both sentences.

"I turn now to the portion of the claim which consists of Messrs Paterson & Salmon's account. The defenders' case, if I understand it, is that the document No. 6 of process is an appointment in favour of Mr Mackendrick only. This is so. But on the evidence it is, I think, quite clear that when Mr Mackendrick devolved on Paterson & Salmon the conduct of Bowden's case in the Court of Session, the Branch approved of this, adopted Paterson & Salmon as their agents for the purposes of the case, and fully availed themselves of their professional services. I therefore see no ground for making a distinction between the accounts of the Glasgow and of the Edinburgh agents.

"A point was stated by the defenders' counsel at the close of his speech to the effect that it had not been proved that the work included in the accounts sued for was done, but I think this is not consistent with the fair import of the proof.

"In accordance with the views above expressed I shall now make a remit to the Auditor to tax the accounts sued for."

The defenders reclaimed, and argued—The letter of 27th February was not the appointment of a law agent but a guarantee for costs. As such it was *ultra vires* of the Branch. The Branch was not entitled to give a guarantee for costs which would bind the funds of the Union. A trade union was the creature of statute, and had no powers other than those which were conferred by its rules—Trade Union Act

1871 (34 & 35 Vict. cap. 31), secs. 6 and 14 and First Schedule; Trade Union Act Amendment Act 1876 (39 and 40 Vict. cap. 22), sec. 6; *Osborne v. Amalgamated Society of Railway Servants*, [1910] A.C. 87. There was no rule empowering a branch to give a guarantee for costs. Rule XII (10) was the only rule which entitled the branch to intervene in litigation. That rule would not avail the pursuer, because the procedure there laid down had not been followed. Accordingly the guarantee was not binding on the defenders—*Palmer's Company Law*, 8th ed., pp. 42 and 43; *Chapleo v. Brunswick Building Society*, 1881, 6 Q.B.D. 696; *Premier Industrial Bank v. Carlton Manufacturing Company*, [1909] 1 K.B. 106. *Royal British Bank v. Turquand*, 1855, 5 E. & B. 248, was distinguishable. It turned on a special rule of company law. (2) On a sound construction of the guarantee it was limited to outlays and did not cover a business account. (3) The guarantee applied only to costs incurred by the agent himself, and did not cover the account of the Edinburgh agents.

Argued for the pursuer—A branch admittedly had power to appoint a lawyer, and in the present case Branch No. 12 validly exercised this power by the letter of 27th February 1907. It was clear from Rule XIV (3) that a branch had power to incur financial responsibility, and therefore it was entitled to incur obligations to its law agent. That being so, the contract contained in the letter of 27th February 1907 was *intra vires* of the Branch, and was binding on the defenders. A branch was not a separate entity, and had no funds of its own, so that the only course open to the pursuer was to sue the Union. Rule XII (10) did not apply to the present case, but if it did the pursuer was entitled to assume that its requirements had been complied with—*Royal British Bank v. Turquand*, *cit.* (2) and (3) The pursuer was entitled to recover his business account as well as his outlays, and he was also entitled to recover the Edinburgh agent's account.

At advising—

LORD JUSTICE-CLERK—The facts in this case are that the pursuer, being a legal practitioner, was appointed by a Branch of the National Union of Dock Labourers in Glasgow to be their law agent, and was empowered by the Branch to conduct in the law courts cases of members suing for injuries incurred in course of their service, if unable to obtain suitable compromise. If successful he was to recover his costs from the opposite party, if unsuccessful it was agreed that he should receive his costs from the Branch which employed him.

It is true that the appointment stipulated that the injured member was to be the client of the pursuer. This, it is not doubtful, was to save risk of the Branch being attacked for costs in the event of an unsuccessful litigation. But, plainly, while the member was the client, the

pursuer was the law agent of the Branch, and it was they who gave him a free hand as their employee in the conduct of cases for the Branch.

The present case arises out of the failure of one Bowden, a member of the Union, to obtain a verdict from a jury, and Bowden being not good for the solicitors' costs, they are now claimed from the Trade Union. The pursuer takes this course because he holds that the Branch which gave him his appointment had no position which would make its members liable apart from the Union, and the question is whether he, having admittedly an appointment as law agent for the Branch, can sue the Union for an award of his costs in respect of that appointment.

The defenders maintain that under the Union Rules (Rule XII, sub-section 10) the branch cannot make advances to a member for purposes of an action unless, first, all available evidence has been obtained and a copy of the evidence supplied to the Union, as those who have executive power in the Union may refuse to sanction the proposed action of the branch. The question is whether, where this has not been done and a case has been proceeded with without advances having been asked for by the member or made to him by the branch under the above condition, the Union is protected, under this rule which I have referred to, against a claim by a solicitor for payment of expenses of a litigated case, he being the appointed law agent of a branch.

Now, it is quite certain that the Branch had power from the Union to appoint a law agent, and the conferring of that power could have no meaning unless they had power to employ him in work. If this must be held, can there be ground for holding that that did not necessarily mean—unless there was stipulation to the contrary—that as an employee he was not to be a loser for work done, in fulfilment of his agency, work in regard to which it cannot be maintained that he has failed in any way in his duty as an agent. In considering this question, the position of the funds collected from the members of the Union must be taken into account. The fact is that all moneys collected by the branches are common property of the Union, and the Union has control, and can order transfer of money for Union purposes from any branch to any other branch as they may see fit for the proper carrying out of the Union's purposes in the branches. In short, all money, except a percentage sent to headquarters for the general Executive expenses lies in the coffers of each branch which has collected it, subject to the right of the Union to order transfer, as they may deem right, of money from one branch to another to meet proper claims on that branch. I can see no ground for holding that where a branch acts in accordance with powers conferred, by appointing an agent for litigious work, the person so employed has not a basis for claim against the Union for his remuneration. Any business that a branch carries on is business

of the Union, subject to the control and direction of the Executive of the Union. Thus the question here turns upon the point whether the piece of business done by this Branch was a piece of Union business properly undertaken and carried out in consistence with the rules of the Union. I have no doubt in answering that question in the affirmative, and that is sufficient for the disposal of the case.

I am quite unable to agree with the contention of the Executive of the Union, that even if it could be held that the Branch erred in not carrying out sub-section 10 of Rule XII, which I have already referred to, that the pursuer's case must fail. That part of the rule relates to advances of money, and I agree with the opinion expressed in the Outer House that it does not apply in the present case where no advances were asked for or made. To me it therefore appears that the pursuer's claim is unanswerable. To hold otherwise would, I think, be grossly inequitable, and I cannot see any sound—even technical—ground for coming to such a conclusion. I am not moved by the suggestion of the possibility, if the Union is held liable, that a branch might make the Union responsible for any expenditure it might incur however unwise. I see no such danger in the future, but if the Union are advised that it exists, they can have it remedied by obtaining an alteration of the rules.

It is further not to be left out of view that in this particular case the evidence discloses that the Executive, if they thought that they had the power to stop or interfere with *Bowden's* case, could have intervened. For it is, as I think, established that their general secretary was perfectly well aware of pursuer's appointment to be Branch law agent, and also of the proceedings which were being taken in *Bowden's* case, and that no exception was taken either on grounds connected with the rules or any other ground to what was being done.

Lastly, I see no force in the contention that the pursuer is limited in any claim he can make to his outlays. His employment is employment to do work, and for the work he does he is entitled to remuneration on the proper scale as regards fees, and for all other charges which he can prove to be legitimately incurred and reasonably charged as judicial expenses. Nor do I see any ground for excluding the expenses he incurred in employing an Edinburgh agent for a case to be tried in the Jury Court there. Such employment is sanctioned under certain rules, to which an official auditor will have regard.

I am in favour on these grounds of an interlocutor being pronounced in accordance with what is the plain intent of the Lord Ordinary, but which he has not expressed in findings. Our interlocutor should contain proper findings in fact, and therefore it will be advisable to recal the Lord Ordinary's interlocutor, find facts proved, and find in law on these facts, and of new remit to the Auditor to ascertain the amount for which decree shall be given.

LORD DUNDAS—This interesting case has passed through varying vicissitudes. On 5th October 1909 the Lord Ordinary (Johnston) repelled the defenders' first plea-in-law, viz., "No jurisdiction," and dismissed the action. On 21st January 1910 this Division of the Court, while it of new repelled the defenders' first plea, remitted the case to the Outer House that a proof before answer might be taken. The proof has been led, and is now before us. Some of the pursuer's averments, in view of which an inquiry into the facts was ordered, have not been established. But I think there is a good deal in the evidence which enables us to understand the whole case and to appreciate the bearing of the rules better than we should otherwise have been able to do. The Lord Ordinary (Cullen) has now decided in favour of the pursuer, and I agree in this result.

The substance of the case is so fully discussed in the able opinions of both the Lords Ordinary that I am content to state rather by way of summary than of detailed exposition the grounds of my conclusion. It is worthy of note that a great portion of Lord Johnston's opinion was in the pursuer's favour. He was adverse to the defenders' argument that the Branch and its officials are not agents of the Union, and that their action cannot bind it, even assuming that the Branch and its officials might be bound. He was of opinion that, if the actings of the Branch were legitimate and *intra vires*, the Union would be bound to supply the funds necessary to meet the obligation undertaken by the Branch, and that action against the Union would be the proper mode of recourse for the pursuer to adopt. His Lordship proceeded to examine the rules and to support the views above expressed in a manner to my mind satisfactory and convincing. But he decided the case against the pursuer upon the short ground that it was *ultra vires* of the Branch to give the pursuer the guarantee for costs in the event of unsuccessful litigation which is contained in the letter No. 6 of process. The ratio of this conclusion seems to be the non-applicability of rule XII (10) to the matter in hand. I agree with Lord Johnston that a guarantee of this kind is a very different thing from an advance of money such as is contemplated by that rule. I further agree that Rule XII (10) deals solely with the case of advancing money, and that as the present is not such a case the rule does not apply to and cannot be held to warrant what was done between the Branch and the pursuer. But I am unable to hold, as Lord Johnston does, that assuming Rule XII (10) to be out of the case, it follows of necessity that "the contract is not binding because it was *ultra vires* of those who assumed to enter into it." On the contrary, upon the assumption just postulated it seems to me that the pursuer is entitled to succeed. It is matter of admission (Ans. 2) that "local branches . . . are empowered to appoint their own law agents;" and the minute of meeting of the Executive of the Union (13th August

1908) seems fairly to extend the power to the "engagement" of solicitors. There is, I think, no room for doubt that the pursuer was duly appointed the law agent of the branch, and that he received instructions from its officials to act in *Bowden's* case. If this be so, it will not in my opinion do for the defenders to maintain that, there being no express provision in the rules as to the employment of law agents, the branch—though it might appoint or engage the pursuer—could not validly employ him to the effect of rendering the Union's funds liable in payment of his proper charges. A branch, as the rules show, has no funds of its own in any proper sense; all the funds are the common property of the Union; and I think it follows in law that those funds must be liable to make good the proper charges of a law agent duly appointed by a branch. I do not agree with the argument of defenders' counsel that the rules must be read as defining, literally and absolutely, the whole and only powers and liabilities of the Union and its branches. That some margin of discretion exists is, to my mind, illustrated sufficiently by, *inter alia*, Rule V (11) and (20), and the necessary implication derivable from Rule XIV (3). What I have thus briefly stated is really the gist of Lord Cullen's more fully expressed opinion on this crucial point in the case; and I desire to intimate my general concurrence in that opinion. It appears to me that a decision of this case against the pursuer would be very harsh and unjust as well as illegal. It was urged for the defenders that a decision adverse to them would place their executive authorities at the mercy of the officials of any branch who might recklessly incur expenditure to an indefinite extent. It may be that the rules have not been drawn up with sufficient strictness to adequately protect the authorities in all such cases; and if that is so, their remedy must lie by way of some competent procedure for amending the rules. But as matters stand, it is, I apprehend, for the authorities to maintain a reasonable and proper supervision of the doings of all the branch officials; and in the present case there is a strong body of evidence to show that the terms of the pursuer's appointment were made known to the General Secretary at the time; and (though this is not so clear) that the initiation and progress of *Bowden's* case were also within the knowledge and cognisance of the Executive. For the reasons thus briefly summarised I think the defenders are liable to the pursuer under the terms of the document No. 6 of process.

Holding as I do that Rule XII (10) has no application to the case, I do not propose to consider (as Lord Cullen has done) how far the pursuer was bound to certiorate himself that the sanction of the Union had been in fact obtained as for an advance of money, or the consequences of his not having done so.

Upon the subordinate points in the case I agree with the Lord Ordinary (Cullen) and have nothing to add.

I confess I do not like the form of the

interlocutor reclaimed against. It contains no findings at all, either as to the grounds in fact and law upon which the defenders are liable in payment to the pursuer, nor even as to the existence of this liability. The pleas-in-law for the defenders are in no way dealt with. There is nothing but a remit to the Auditor to tax the pursuer's accounts. It will, I apprehend, be proper to recal the interlocutor; to make appropriate findings; to repel all the defenders' pleas-in-law other than the first (which has been already repelled), and the 9th (which raises the question of *quantum*); and of new to remit the accounts to taxation. The matter of expenses will also have to be considered and disposed of.

LORD SALVESEN—The main facts in this case are not in dispute, and have been so fully narrated by the Lord Ordinary that it is unnecessary to recapitulate them. There can be no doubt that the pursuer was employed, under instructions from the committee and office-bearers of No. 12 Branch of the defenders' Union, to conduct litigations raised by members of the Branch against their employers to recover compensation for personal injuries. The terms of his employment are contained in the letter of 25th February 1907, which sets forth that he was to prosecute any particular claim to a conclusion in the event of his not being able to obtain a satisfactory compromise; and if he did so successfully he was to have no claim against the Union for expenses. In the event, however, of the action being unsuccessful, he was guaranteed the costs which he might incur in contesting it. It is therefore plain that the contemplation of parties was that the pursuer was to make all the necessary disbursements and do the necessary work involved in the conduct of any particular case, and was not to ask advances to account during its dependence. Great stress was laid by the defenders on the third paragraph of the letter, which provides for the direct relation of agent and client subsisting between the pursuer and any injured party for whom he might act; and it was argued that there was no employment of him by the Branch, but only a guarantee of costs. It is obvious that this clause was inserted to guard against the possibility of the Union being sought to be made answerable, as the *dominus litis*, for the expenses incurred to the opposing litigant in an unsuccessful litigation by one of their members; but it is equally plain that it was assumed that any member would leave the enforcement of his claim for compensation to the lawyer appointed by the branch to which he belonged. While, therefore, technically the claimant in each case would be the pursuer's client, whose concurrence would be required for the institution of the action, it was assumed that the pursuer would confer with the branch officials as to the conduct of the case; and indeed, so far as they were concerned, he was given a free hand to deal with it as he might think best.

The pursuer acted on the mandate contained in this letter for about a year, in the course of which he recovered, on behalf of a large number of members of No. 12 Branch, compensation for injuries to an amount of £1068, 9s. 6d. As all these claims were successful to a greater or less extent, no question arose as to the liability of the defenders, the pursuer's law accounts being paid either by the defenders in the various litigations or by the injured men who received the compensation. The case at the instance of Bowden, out of which this action arises, resulted, after a three days' jury trial, in a verdict for Bowden's employers, and as he was impecunious the pursuer falls back on the guarantee for expenses contained in the letter already referred to.

Had Branch No. 12 been a separate entity capable of being sued and possessing funds enabling it to meet its obligations, no question, I think, could have arisen as to its liability to the pursuer, for the action at the instance of Bowden (who was a member of the Branch, and who was entitled under the rules of the Union to receive its assistance in prosecuting his claim) was raised with the consent of the Branch, and was throughout prosecuted with the knowledge and active co-operation of the Branch officials. It is, of course, however, consistent with this that the obligations undertaken by the Branch and its officials to the pursuer might not impose liability on the defenders; and this was the question mainly argued on their behalf. They pointed out that under Rule XII (10) a branch committee is not entitled to advance money to a member in connection with a pending law-suit until all the available evidence bearing on the case has been laid before them and a copy supplied to the Executive, and the Executive has the right to veto any decision of branches to expend money in case of such claims. They contended that this rule would be valueless for their protection if a branch could employ a solicitor on the footing that his bill at the end of the day should form a good charge against the funds of the Union. I think it would have been more prudent if the rules had contained a provision dealing with such a case; and it may be that the defenders, in view of the present litigation, may think it expedient to amend their rules; but I cannot see how we can imply such a rule from one which deals with an entirely different set of circumstances, for I am quite clear that, for the reason already stated, Rule XII (10) has not and could not have any application to the employment of the pursuer under the letter of 25th February 1907. The liability of the defenders depends, in my opinion, (1) on the admitted power which the Branch had of appointing and employing law agents, for I think employment is implied in the right of appointment; (2) on the implied power deducible from Rule XIV of the Branch Committee to incur financial responsibility in matters connected with the business of the Branch; and (3) on the circumstance that by Rule XVI the funds of all

the branches are the common property of the Union. The liability of the Union for the obligations properly incurred by a branch to its law agent is in no different position from other liabilities which such a branch may incur, e.g., for rent of the premises in which it carries on its functions, and it appears to me to be *prima facie* impossible to limit the financial responsibility of the Union for obligations incurred by the branches in promoting its objects, either by reference to the extent of the obligation or the business of the person to whom it is incurred. The rules and the evidence which have been led in this case show that the branches are just the constituent members of the Union, and carry on its sole business subject only to a general control by the Executive, and I entertain no doubt that the Union is answerable for all obligations properly undertaken by the branches in connection with the objects of the Union in so far as these are not contrary to its rules. I therefore reach the same conclusion as the Lord Ordinary, and substantially on the same grounds.

I would only add on this, the leading part of the case, that I am satisfied Mr Sexton, the General Secretary of the Union, knew and approved of the appointment of the pursuer as law agent of Branch No. 12, and had general knowledge of the terms of the letter of 25th February, whether or not he received a copy of it. It is further apparent that the funds of the Union were frequently expended by the Executive in paying law costs incurred by the branches, and I cannot accept Mr Sexton's unsupported statement as proving the fact he alleges, that the Executive were always consulted before such costs were incurred. His statement that he informed the pursuer that the practice of the branches was to pay the costs if the rule (by which, I suppose, he meant Rule XII (10)) was complied with, is unintelligible as it stands, and is, I think, entirely disproved by the other evidence.

With regard to the minor questions argued, (1) that the "guaranteed costs" must be construed as meaning outlays only, I agree with the Lord Ordinary that such a construction is untenable. I am further of opinion (2) that the pursuer had implied power under his employment as law agent to employ Edinburgh solicitors to conduct an action which, in the knowledge of the Branch officials and with their approval, was raised in the Court of Session, and that under the assignation by these agents in his favour he is entitled to recover their costs in the present action.

LORD ARDWALL was absent.

The Court pronounced this interlocutor—

"Recal the said interlocutor reclaimed against: Find in fact (1) that the document No. 6 of process was granted to the pursuer by authority of the officials of No. 12 Branch of the National Union of Dock Labourers of Great Britain and Ireland; (2) that in so granting it the said officials did not

act *ultra vires*; (3) that the pursuer was expressly instructed by the said officials to act in the case of *Bowden v. Spencer & Co.*, and in the cases to which the other accounts sued for refer; (4) that the pursuer was entitled to employ Paterson & Salmon as Edinburgh agents in this case of *Bowden v. Spencer & Co.*; and (5) that the funds of the said Union are liable in payment and satisfaction of the accounts sued for in so far as the same are properly charged: Therefore repel the 2nd, 4th, 6th, 7th, and 8th pleas-in-law for the defenders; remit the account sued for to the Auditor of Court to tax and to report; and decern," &c.

Counsel for the Pursuer—Moncrieff—Macdonald. Agents—Paterson & Salmon, Solicitors.

Counsel for the Defenders—Aitken, K.C.—C. H. Brown. Agents—J. & J. Ross, W.S.

Thursday, June 16.

OUTER HOUSE.

[Lord Skerrington.

MACADAM *v.* FINLAY.

Prescription—Vicennial Prescription—IOU—Proof of Debt—Receipt for Interest Granted within Prescriptive Period—Admissibility of IOU as Evidence of Debt—Statute 1669, cap. 9.

The Statute 1669, cap. 9, enacts—"Holograph missive letters and holograph bonds and subscriptions in compt books without witnesses, not being pursued within twenty years, shall prescribe in all time hereafter, except the pursuer offer to prove by the defender's oath the verity of said holograph bonds and letters and subscriptions in compt books..." In an action for the recovery of a debt, the pursuer produced and founded on an IOU for the sum sued for granted more than twenty years previously, together with four receipts for payment of interest on the same, the latest of which was dated less than twenty years before.

Held (per Lord Skerrington) that the IOU had prescribed and was not admissible as evidence of the debt unless it were first proved to be genuine by the oath of the defender.

This was an action at the instance of Alexander Macadam, pawnbroker, Glasgow, as an individual, and also as executor-nominate of the deceased Christina M'Kirdy, against Mrs Mary M'Kirdy or Findlay, which concluded, *inter alia*, for payment of £100 alleged to be due to the pursuer on an IOU granted in 1888.

The defender pleaded, *inter alia*—" (2) The pretended IOU founded on by the pursuer is prescribed under the Statute 1669, cap. 9."