But on the whole I think they have established the statutory defence in view of (1) the reason which led to the change of practice; (2) the appellants' written instructions to their shop managers and inspectors, and their verbal instructions to their salesmen; (3) the terms of the label on the wrappers, unsatisfactory as they are; and (4) the fact that the butter was sold at the wholesale price of prime fresh butter at the time.

The Court answered the first question in the case in the affirmative, and the second, third, and fourth questions in the negative; sustained the appeal, and quashed the conviction.

Counsel for the Appellant—Morison, K.C.—Kemp. Agents—Lister Shand & Lindsay, S.S.C.

Counsel for the Respondent — Clyde, K.C. — Russell. Agents — Campbell & Smith, S.S.C.

COURT OF SESSION.

Tuesday, June 25.

SECOND DIVISION.

[Sheriff Court at Edinburgh.

LOVE *v.* AMALGAMATED SOCIETY OF LITHOGRAPHIC PRINTERS.

Trade Union—Trade Union Act 1871 (34 *and* 35 *Vict. cap.* 31), *sec.* 4 (3) (*a*) — *Agreement to Pay Benefits to Dependants of Members—Enforcement.*

The rules of a trade union provided that should an insane member "have dependent upon him either wife, family, or parent, they shall be eligible to receive sick benefit . . ., and should the mental affliction continue the member may (if eligible as *per* rule) be placed on superannuation benefit." In an action at the instance of the wife of an insane member against the union to recover sick and superannuation benefit, *held* that the pursuer's claim *qua* sick benefit, being founded on an agreement to provide benefits not to members but to dependants of members, was not excluded by section 4 of the Trade Union Act 1871, and that she was accordingly entitled to sick benefit but not to superannuation benefit.

Contract — Jus quæsitum tertio — Trade Union Rules — Revocable Agreement — Enforcement.

The rules of a trade union which provided that the wife of an insane member who was dependent on him should be eligible for sick benefit, provided also that the rules should be alterable at a general delegates' meeting. In an action at the instance of the wife of an insane member against the union to recover sick benefit, *held* that, a right of action having emerged and a claim vested without any alteration having been made in the rules, the pursuer had acquired a *jus quæsitum.*

Trade Union — Rules — Construction — "Eligible"—Absolute Right to Benefit.

The rules of a trade union provided that the dependants of an insane member should be "eligible to receive sick benefit." *Held*, on a construction of the rules, that "eligible" was equivalent to "entitled to if qualified."

The Trade Union Act 1871 (34 and 35 Vict. cap. 17), 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—"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 to members."

Mrs Margaret Martin or Love, East Arthur Place, Edinburgh, wife of James Love, printer's lithographer, then an inmate of the Perth General Prison Lunatic Asylum, *pursuer*, brought an action in the Sheriff Court at Edinburgh against the Amalgamated Society of Lithographic Printers of Great Britain and Ireland, registered under the Trades Union Acts 1871 and 1876, and having its registered general office at Deansgate, Manchester, and its Edinburgh office at 2 Canonmills, Edinburgh, and the trustees and secretary thereof, *defenders*, for payment of £10, 5s., being aliment from 17th August 1909 to 17th August 1910, at the rate of 10s. per week for the first six weeks, 5s. per week for the twelve weeks following thereon, and 2s. 6d. per week for the remaining thirty-four weeks, all in name of sickness benefit, and 6s. per week from 17th August 1910 till the death of her husband, in name of superannuation benefit.

The material rules of the defenders' Society upon which the pursuer founded her claim were as follows:—

"Rule 18.—*Contributions and Arrears.*

"(7) Members over forty-five years of age . . . shall pay as contributions the sum of one shilling per week, and if entitled as *per* rule shall be eligible to receive the following benefits — . . . Sick, 10s. per week for six weeks, 5s. per week for twelve weeks, 2s. 6d. per week for twelve weeks. . . .

Rule 19.—*Unemployed Benefit.*

"(7) Any member entitled to unemployed benefit . . . shall be entitled to receive unemployed benefit . . . as he may be eligible according to rule.

"Rule 20.—*Sick Benefit.*

"(1) Any member having been in this Society twelve months and entitled to benefit, when visited by sickness or lameness (not occasioned by drunkenness, disorderly conduct, or any disease improperly contracted) shall give notice, in writing, in accordance with the form contained in these rules, to the secretary of the branch

to which he belongs, and send, within three days, a doctor's certificate stating the nature of his complaint, such certificate to be renewed at the discretion of his branch.

"(2) Payment for sick benefit commences from the date of declaring on.

Scale of Benefits.

"(3) 10s. per week for six weeks; 5s. per week for twelve weeks; 2s. 6d. per week for twelve weeks.

"(6) Any member having drawn all his sick benefit for one year cannot claim again until the expiration of twelve months, dating from first payment. . . . . .

"Rule 24.—*Superannuation.*

"(1) Any member who has been twenty years successively in the Society, and who through old age, infirmity, or incurable disease is unable to obtain employment at the trade, and applies for superannuation benefit, shall state his claims to a special meeting of the branch of which he is a member. He shall also present a doctor's certificate, stating that he is permanently disabled from following his employment.

"(2) Should the meeting be satisfied with the validity of his claim they shall furnish all evidence to the Executive Committee, who shall have power to grant the sum of six shillings per week until his death, provided the applicant is in all cases entitled to benefit according to rule. . . .

"(3) The number of members in receipt of superannuation shall be at the rate of 4 per cent. of the total membership of the Society.

"Rule 30.—*Insane Members.*

"(1) If any member through loss of reason be unable to follow his employment the case shall be referred to the E.C., who shall deal with it at their discretion. Should the member recover sufficiently to receive a doctor's certificate certifying that he is able to work, he shall be eligible to receive unemployed benefit.

"(2) Should the afflicted member have dependent upon him either wife, family, or parent, they shall be eligible to receive sick benefit for a period of one year, and should the mental affliction continue the member may (if eligible as *per* rule) be placed on superannuation benefit.

"Rule 58.—*General Council.*

"(1) The general council shall meet once in three years. . . .

"(2) They shall decide upon all questions of importance to the trade that may be brought before them; they shall make new rules, amend existing ones, and transact any business in the interest of the Society; and they shall determine anything upon which these rules are silent."

The defenders pleaded, *inter alia*—"(2) The present action being an action to enforce a claim to benefits under the rules of a Society which is directed to enforce strikes and act otherwise in restraint of trade and is illegal at common law, is incompetent and should be dismissed, with expenses. (3) The payment of benefits under section 30 of the rules of the Society being a matter left to the discretion of the Executive Committee, the present action should be dismissed as incompetent. (4) No title to sue."

On 24th July 1911 the Sheriff-Substitute (ORR) pronounced the following interlocutor—"Finds it is admitted (1) that the pursuer is the wife of James Love, who became insane on or about 17th August 1909, and has continued insane since then up till the present time; (2) that the said James Love was on 17th August 1909 a member of the Amalgamated Society of Lithographic Printers of Great Britain and Ireland, having its registered general office at Campfield Chambers, 312 Deansgate, Manchester, and its Edinburgh office at 2 Canonmills, Edinburgh, and at said date had been a member of said Society for over twenty years; (3) that when the said James Love became insane his contributions to said Society had all been duly paid in terms of the rules of said Society: Finds it is admitted by counsel at the bar that at said date the pursuer was dependent upon the said James Love: Finds that in terms of said rules the pursuer is entitled to receive sick benefit for a period of one year as from 17th August 1909: Therefore repels the defences and decerns against the defenders for payment to the pursuer of the sum of £7, 10s."

The defenders appealed to the Sheriff (MACONOCHIE), who on 16th October 1911 recalled the interlocutor of the Sheriff-Substitute, and dismissed the action.

The pursuer appealed, and argued—The pursuer had a *jus quæsitum* under rule 30 (2), under which the society contracted with her husband to pay aliment to his dependants in the circumstances of the present case. That contract had not been revoked by the alteration of the rule, and it was not the law that there was no *jus quæsitum* if the contract was revocable. Further, the Trade Union Act 1871 (34 and 35 Vict. cap. 31), section 4 (3) (*a*), did not bar the pursuer from enforcing her claim, because that section dealt only with contracts to pay benefits to members, and the pursuer was not a member, but the dependant of a member—*Wilkie* v. *King*, 1911 S.C. 1310, 48 S.L.R. 1057; *Baker* v. *Ingall*, [1911] 2 K.B. 132. To make the clause include dependants would be to enlarge the meaning of a restrictive clause which was contrary to the rules adopted for the construction of statutes. Further, the whole pleadings were on the footing that this was a duly registered trade union, as in fact it was, and there was no case on record that as a result of political purposes it had lost its rights under the Act. The case of *Amalgamated Society of Railway Servants* v. *Osborne*, [1910] A.C. 87, did not decide that such rules deprived the union of the protection of the Act, but merely that they were to be held as *pro non scripto*.

Argued for the defenders—The pursuer had not acquired a *jus quæsitum* entitling her as a third party to sue under the rules. These rules were revocable at the will of the Society, and there could be no *jus quæsitum tertio* when the agreement on

which it rested was revocable at the will of one or other of the contracting parties—*Finnie* v. *Glasgow and South-Western Railway Company*, 1857, 3 Macq. 75, *per* Lord Wensleydale, at p. 90; *Blumer & Company* v. *Scott & Sons*, January 16, 1874, 1 R. 379, 11 S.L.R. 192, *per* Lord Ardmillan; *Burke* v. *Amalgamated Society of Dyers*, [1906] 2 K.B. 583. The insanity of pursuer's husband did not prevent the defenders from altering the rules so as to deprive him of benefit—*Burke* v. *Amalgamated Society of Dyers* (*cit. sup.*); *Allen* v. *Gold Reefs of West Africa, Limited*, [1900] 1 Ch. 656. Further, pursuer's claim was barred under the Trade Union Act 1871, section 4 (3) (*a*), in that she was seeking to enforce an agreement for the payment of benefits to members. The superannuation benefit was in terms payable to members, and the sick benefit, although receivable by dependants, was really a benefit to members. Further, in the original rules there were political clauses which were *ultra vires*—*Amalgamated Society of Railway Servants* v. *Osborne* (*cit. sup.*). The contract was therefore void, and an action even at the instance of a third party could not be entertained—*Wilson* v. *Scottish Typographical Association*, February 8, 1912, 49 S.L.R. 397.

At advising—

LORD SALVESEN—This case involves a comparatively small sum of money, but the questions raised are of general importance and present so much difficulty that I am not surprised that the Sheriffs have differed. The pursuer sues for certain benefits which she maintains are payable to herself under rule 30, section 2, of the rules of the defenders' society, of which her husband at the date of his insanity was a member. She claims, in the first place, sick benefit for a period of one year, and in the second place that her husband's name should be placed on superannuation benefit and that the amount due should be paid to her in her own right. The Sheriff-Substitute has allowed the first claim to the extent of £7, 10s., and disallowed the second claim *in toto*; but the Sheriff has assoilzied the defenders from the whole conclusions of the action.

The first question we have to decide is whether the pursuer has any *jus quæsitum* under the contract between her husband and the defenders; and the main ground upon which it is maintained that she has none, and therefore no title to sue, is that the rules which constitute the contract are alterable at a general delegate meeting, and that they might have been altered at any time so as to deprive dependants of any rights which they might otherwise have under rule 30 (2) of the existing rules. It is not said, however, that any alteration has in fact been made; and, so far as the pursuer's first claim is concerned, the period in respect of which it is made has long since expired. We were referred to two authorities on this matter—the case of *Finnie* (3 Macq. 90) and *Blumer* v. *Scott* 1 R. 379). These cases have no direct application, but were cited for certain dicta of Lord Chancellor Cranworth and Lord Wensleydale in the former, and of Lord Ardmillan in the latter, on the legal doctrine known as *jus quæsitum tertio*. Lord Ardmillan says:—"According to Lord Stair it is only where there is in a contract some 'article in favour of a third party' which cannot be recalled by one or both of the contractors that there is *jus quæsitum tertio*, and this doctrine is specially recognised and approved of by Lord Cranworth and Lord Wensleydale . . . . Even if not named, the third party may be entitled to adopt the agreement and enforce it by action. But in such a case it must be clear that both the contracting parties intended so to secure him, and that they could not, separately or together, revoke the stipulation." Now I do not doubt that as a general statement of the law these propositions are perfectly sound. The contract between the pursuer's husband and the Society, embodied in their rules, might have been revoked by both, or modified by the defenders alone by way of alteration of the rules, so as to have taken away any right of action from the pursuer; but such revocation must have taken effect, as I understand the law, before a right of action emerged, if that right was to be defeated entirely, or before the period in respect of which the claim was made had expired, if it were to be partially defeated. I cannot imagine that if a claim has vested in a third party under a contract the vested interest can be discharged by any act of the contracting parties, and still less by the act of one of them who is the debtor in the obligation. The only analogous case cited was that of *Burke* ([1906] 2 K.B. 853), where it was held that the alteration by a trade union during the insanity of a member of the rule as to sick benefit to the prejudice of that member was binding on him if made in accordance with the rule authorising and regulating alteration of the rules of the union. But in that case it was not contended that the rule took effect except with regard to the period after it was passed. I am therefore of opinion that the Sheriff-Substitute reached a sound conclusion in holding that the agreement had become irrevocable when the pursuer became entitled to found upon it, and at all events until, pending the running of the sick benefit claimed, an alteration of the rules had in fact been made.

The pursuer now admits that the defenders' society must be regarded at common law as an unlawful combination, in respect that some of its objects are in restraint of trade. Such societies are, however, legalised by the Trades Union Acts 1871 and 1876. By section 3 of the former Act it is provided:—" . . . [*Quotes*, v. *sup.*] . . . Had there been no further provision in the Act, trades unions might have sued or been sued in respect of any agreement entered into between them and their members; but section 4 contains an important limitation, and so far as applicable to the present case,

provides that [. . . *quotes*, v. *sup.* . . .] If, therefore, this had been an action at the instance of the pursuer's husband or his representative, it could not be entertained by a court of law; but the pursuer does not here sue, as the plaintiff did in the case of *Burke*, as the administratrix of her husband. She is suing in her own right. Even this would not avail her if the agreement on which she founded was one which could be described as "providing a benefit to a member." If the section of the statute had intended to strike at all agreements to provide benefits, it is difficult to understand why the words "to members" should have been added; and it is plain that it was not the intention of the statute to exclude the jurisdiction of a court in the case of a claim made by a third party against a trade union, for such an action was competent at common law, even if the trade union were an unlawful combination—the third party not being tainted with the illegality which disabled a member from invoking the jurisdiction of the ordinary courts.

The question, however, remains, whether the pursuer as a dependant of her insane husband has any absolute right at all, or whether her demand for sick benefit is in the discretion of the executive committee. It is true that the words "shall be eligible," on which the Sheriff relies, at first sight suggest some power of election, vested in a body or person different from the claimant, but these words occur frequently throughout the rules; and I think in the rule in question and elsewhere they must be treated as meaning "shall be entitled to if qualified." In the second paragraph of the first section of rule 30 these same words occur, and when one turns back to rule 19, one finds that the member who is declared to be eligible to receive unemployed benefit has an absolute right to such benefit at a stipulated rate, provided his being thrown out of employment was not the result of misconduct. We were referred to other passages in the rules in which the same words occur, where they must be construed as equivalent to "shall be entitled." Thus in rule 18, section 7, there is a provision that members shall pay certain contributions, "and if entitled as per rule, shall be eligible to receive the following benefits." I think this clause must be construed as meaning "if eligible or qualified as per rule, shall be entitled to receive." The defenders appealed to the first part of section 1 of rule 30, which provides "that if any member, through loss of reason, be unable to follow his employment, the case shall be referred to the E.C., who shall deal with it at their discretion;" but I think that this clause is in contrast with the one on which the pursuer founds, and cannot be held to govern an entirely independent section. I accordingly agree with the Sheriff-Substitute that, the qualification of the pursuer being admitted, she is entitled under the clause to which she refers to receive sick benefit.

The next question is, Is she entitled to that benefit for fifty-two weeks—being literally the period of one year? The difficulty in so holding arises from the fact that the scale of benefits to which perforce the pursuer must appeal only deals with a period of thirty weeks, the rate diminishing after six weeks, and again after the lapse of other twelve weeks. It appears that a member who claims sick benefit can never obtain benefit for more than thirty weeks in any one year, and that he cannot again claim until the expiration of twelve months from the first payment. That clause would be meaningless if "sick benefit for one year" was not to be construed as synonymous with sick benefit according to the scale for thirty weeks. Now it is difficult to suppose that a dependant should have a higher right to sick benefit than the member himself; and therefore I am constrained to hold that the words "for one year" must be construed in the same way in rule 30 as they are in rule 20, and that the pursuer's claim is limited, as the Sheriff-Substitute holds, to thirty weeks, or £7, 10s. in all.

The pursuer's second claim is based on the words occurring in section 2, rule 30, "Should the mental affliction continue, the member may (if eligible as per rule) be placed on superannuation benefit." There are various difficulties which the pursuer must overcome in order to entitle her to demand superannuation benefit. In the first place, the word "may" requires to be construed as "must;" and, in the second place, the payment which a member is entitled to by his being placed on superannuation benefit must be impliedly held as due to his wife as his dependant, and not to himself or his representative. I cannot so construe this clause. I think, fairly read, it means that the executive committee are empowered to put a member who has become insane on superannuation benefit, and it may be also to pay the benefit to his wife or other dependant; but I cannot hold that it entitles the dependant as matter of right to receive such payment. On this point therefore I agree with both Sheriffs.

A further argument was submitted to us based on the statement that the rules as existing at the date when the pursuer's husband became insane contained certain provisions for making a levy on members for political purposes, and that these provisions placed the Society, although duly registered under the Trade Union Acts, outwith their protection. It was pointed out to counsel for the defenders that there is no record on which such an argument can be maintained, but they declined to amend their record. In these circumstances we cannot give any effect to this argument, which, *prima facie*, goes beyond anything that was decided in the *Osborne* case. I am therefore of opinion that we should recal the interlocutor of the Sheriff and revert to that of the Sheriff-Substitute.

LORD GUTHRIE—I think the Sheriff-Substitute has rightly decided that the appellant is entitled to receive sick benefit from the respondents for a period of thirty

weeks, and not for fifty-two weeks as she claims, and that she is not entitled to receive superannuation allowance.

The effect of section 4 of the Trade Union Act of 1871 is that what are called "benefits to members," conferred by the constitution of a trade union like the respondents, are rendered unenforceable at law. The dispute turns on whether the sick benefit and the superannuation allowance in question in this case, which are admittedly of the nature of benefits, are or are not benefits to members in the sense of the statute. Are they, one or both, primarily benefits to the members of the trade union themselves, and only secondarily, if at all, benefits to dependants like the appellant; or are they, one or both, primarily benefits to the dependants, and only secondarily, if at all, to the members themselves?

In my opinion, taking rules 20, 24, and 30 together, the two classes of allowances and benefits are sharply contrasted in the case of insane members like the appellant's husband, who have wife, family, or parent dependent on them—*first*, in the form of words by which they are conferred, *second*, in the persons to whom they are payable, and, *third*, in the purposes to which they are applicable. The sick benefit is payable directly to the dependant, and those alimenting the insane person can have no claim on it; while the superannuation allowance would be payable to the legal representative of the insane person, and the whole of it would be available for his support. An apparent difficulty is caused by the expression in rule 30, "they shall be eligible to receive sick benefit," but a consideration of the terms of rules 20, 24, and 30 leads me to the conclusion that the word "eligible" is equivalent in this clause to "entitled to if qualified."

The respondents founded strongly on the case of *Burke*, 1906, 2 K.B. 583, in support of their proposition that the appellant could have no *jus quæsitum* under an agreement between a member and the Society constituted by rules which are revocable by the Society. But this case in no way conflicts with the appellant's right to vindicate a right which had vested in her under the rules when she made her claim.

LORD JUSTICE-CLERK—I concur in the opinion of Lord Salvesen, which I have had an opportunity of reading.

LORD DUNDAS was absent.

The Court sustained the appeal, recalled the interlocutor of the Sheriff, found in fact and in law in terms of the findings in fact and in law in the interlocutor of the Sheriff-Substitute, dated 24th July 1911, and decerned against the defenders for payment to the pursuer of the sum of £7, 10s. sterling.

Counsel for the Pursuer and Appellant—Moncrieff, K.C.—Smith Clark. Agent—Charles Garrow, Solicitor.

Counsel for the Defenders and Respondents—Constable, K.C.—Keith. Agents—Simpson & Marwick, W.S.

Thursday, June 27.

FIRST DIVISION.

(COURT OF EXCHEQUER.)

SCOTTISH SHIRE LINE, LIMITED, GLASGOW *v.* INLAND REVENUE.

Revenue—Income Tax—Deductions—Wear and Tear—New Company Purchasing Business of Old Company — Deduction Allowable to Old Company, but not Given Effect to—Finance Act 1907 (7 *Edw. VII, cap.* 13), *sec.* 26, *sub-sec.* 3.

The Finance Act 1907, sec. 26, sub.-sec. 3, enacts—"Where as respects any trade, manufacture, adventure, or concern, full effect cannot be given to the deduction for wear and tear in any year owing to there being no profits or gains chargeable with income tax in that year, or owing to the profits or gains so chargeable being less than the deduction, the deduction or part of the deduction to which effect has not been given as the case may be, shall, for the purpose of making the assessment for the following year, be added to the amount of the deduction for wear and tear for that year and deemed to be part of that deduction, or if there is no such deduction for that year, be deemed to be the deduction for that year, and so on for succeeding years."

A new company succeeded to the business of an old company. During the preceding three years certain deductions for wear and tear were allowable to the old company from its assessable income, but were not given effect to in full, in respect that they exceeded in amount the taxable income of the old company during each of these years. The new company was assessed for income tax on the average profits of the old company during these three years, and the new company claimed the right, in terms of section 26 of the Finance Act 1907, to deduct from its taxable income the balance of the deductions which were allowable to the old company but had not been given effect to.

Held that the new company was entitled to the deductions.

The Income Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 100, by the fourth rule applying to both the first and second cases of Schedule D, enacts — "If amongst any persons engaged in any trade, manufacture, adventure, or concern, or in any profession, in partnership together, any change shall take place in any such partnership, either by death, or dissolution of partnership as to all or any of the partners, or by admitting any other partner therein, before the time of making the assessment, or within the period for which the assessment ought to be made under this Act, or if any person shall have succeeded to any trade, manufacture, adventure, or concern, or any profession, within such respective periods