

Friday, July 19.

SECOND DIVISION.

[Sheriff Court at Leith.

M'LAREN v. NATIONAL UNION OF DOCK LABOURERS AND RIVERSIDE WORKERS IN GREAT BRITAIN AND IRELAND.

Trade Union—Trade Union Act 1871 (34 and 35 Vict. cap. 31), sec. 4. (3) (a)—“Benefits to Members”—Burial Benefits—Enforcement.

The rules of a trade union included among the objects of the association “To provide a burial fund for deceased members” and regulated the “burial benefits.”

The widow and family of a deceased member of the trade union, who had been killed in war, raised an action to recover payment of the allowance due by way of burial benefit. *Held* that the “burial benefit” was a benefit to a member, and consequently that the action was excluded by the provisions of the Trade Union Act 1871, section 4 (3) (a).

The Trade Union Act 1871 (34 and 35 Vict. cap. 31), section 4, enacts—“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 Ross or M'Laren, widow of the deceased Robert M'Laren, for herself and as representing her four pupil children, *pursuer*, raised an action in the Small Debt Court at Leith against the National Union of Dock Labourers and Riverside Workers in Great Britain and Ireland, registered under the Trade Union Acts, *defenders*, whereby she sought to recover the sum of £8, as representing the amount of burial benefit due to her and her children by the defenders on the death of her husband, a member of the defenders' Trade Union, who had been killed in action.

The defenders pleaded—“The present action is barred by section 4 of the Trade Union Act 1871.”

On 15th March 1918 the Sheriff-Substitute (GUY) repelled the first plea-in-law for the defenders, and allowed a proof.

The defenders appealed to the Sheriff (CROLE), who on 21st June 1918 recalled the interlocutor of the Sheriff-Substitute and dismissed the action.

The pursuer appealed, and argued—The pursuer ought according to No. 18 of the rules of the Union to receive payment of the allowance made in respect of burial benefit. There was no doubt that the parties could only have contemplated the payment of that allowance to the relations or friends of the deceased, who could assuredly not receive payment himself. The defenders being accordingly in the position of

debtors to the pursuer, she was entitled to raise the present action—*Love v. Amalgamated Society of Lithographic Printers of Great Britain and Ireland*, 1912 S.C. 1078, 49 S.L.R. 788. A trade union could be sued—*Yorkshire Miners' Association v. Howden*, [1905] A.C. 256. The case of *Russell v. The Amalgamated Society of Carpenters and Joiners*, [1912] A.C. 421, [1910] 1 K.B. 506, was distinguishable from the present one, the plaintiff there having sued as an administratrix, whilst here the pursuer was acting in her own right.

Argued for the respondents—The allowance in question was a benefit which a member of the Union who had stipulated for decent burial could claim. It was a benefit to the member only, as the rules of the Union throughout demonstrated, and that being so an action to enforce payment could not be entertained by the Court—Trade Union Act 1871 (34 and 35 Vict. cap. 31), sec. 4 (3) (a). The agreement was, moreover, regarded by both parties as providing a benefit to the member. An agreement concerning the internal management of a society or union could not be enforced by means of an action in a court of law—*Russell v. The Amalgamated Society of Carpenters and Joiners (cit.)*. That case, although decided after consideration of section 4 of the Act, whereas the present case fell to be considered under sub-section 3 (a) of section 4, was directly in point.

At advising—

LORD JUSTICE-CLERK—In this case the pursuer raised an action in the Small Debt Court for payment of certain moneys which she claimed as being due to her in respect that her husband had been a member of the defenders' Union, and that he having died, there became due by the Union the sum allowed for the burial of a deceased member. He was killed in the war, and his widow applied to the Trade Union for payment of the amount of the burial benefit—a sum of £8 or £9. The Union defended the action on the ground, so far as this appeal is concerned, that the action is barred by section 4 of the Trade Union Act 1871. The case was transferred from the Small Debt Court to the Ordinary Roll. A record was made up, and after hearing parties the Sheriff-Substitute repelled the plea of bar and allowed a proof. On appeal the Sheriff recalled the Sheriff-Substitute's interlocutor, sustained the plea of bar, and dismissed the action. The present appeal was taken against that judgment.

I do not think that in determining the question before us we need to take cognisance, as having any effect upon the judgment we require to pronounce, either of the English case of *Russell v. Amalgamated Society of Carpenters and Joiners*, [1912] A.C. 421, or of the Scottish case of *Love v. Amalgamated Society of Lithographic Printers of Great Britain and Ireland*, 1912 S.C. 1078, because I think the circumstances in these cases differ so much from the circumstances we have here to consider that neither of them can be invoked as authorities upon the present question, the point here being whether

the money in question was a benefit to a member.

Section 4 of the Act, which is founded on by the defenders, provides—"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, and one of the agreements is—"Any agreement for the application of the funds of a trade union (a) to provide benefits to members." The question is, whether the money here in dispute falls within the words "benefit to members."

The rules of the association provide, in the first place by rule iii—which deals with the objects of the Union—that one of the objects, 7, is "To provide a burial fund for deceased members." I think it is quite plain, so far as that rule is concerned, that the provision is one under which it is intended to apply the money in order that a deceased member may get a decent burial. The next rule which requires to be considered is rule xviii, which is headed "Burial Benefits." Sub-section 1 provides that "No member shall be entitled to burial benefit until six calendar months from the date of admission." Then sub-section 2 provides that "Members of twelve months' standing, and who shall have paid twelve months' contributions, and who joined after 1st October 1901, shall be entitled to funeral benefit." Sub-section 7 provides that "A receipt must be given by the party receiving the burial allowance"; sub-section 8 that "Each member may nominate, in writing, the relative or representative to whom the burial allowance is to be paid"; and sub-section 11 that "Should he fail to nominate, and there being no dependants, the branch committee shall see to the decent interment of his remains. Where there is neither wife nor children the branch committee shall decide to whom the balance is to be paid." It seems to me that it is a fair inference that in the event of a member dying and leaving a wife or children they would be the parties to whom the benefit money would fall to be paid.

In the forms appended to the rules the "Form of Application for Burial Allowance" reads—"This is to certify that . . . a member of your branch, died here on the . . . day of . . . 19 . . . and the burial allowance provided by the Union is now claimed on his behalf." The form of receipt bears to be a receipt for money due to the representatives of the deceased member; and the form of nomination is—"I . . . hereby nominate . . . to receive the burial allowance to which I may be entitled at my death."

It seems to me on a fair construction of these rules that the term "burial benefit" or "burial allowance" is really a benefit to a member. A provision for respectable burial made by anyone, and perhaps particularly by people in the class of life to which the members of the trade union belong, is one to which they attach very considerable importance. I think that the burial benefit in this case was really a benefit to a member, and that accordingly the

action is excluded by the terms of section 4 of the Act of 1871. I am therefore for affirming the Sheriff's interlocutor, sustaining the plea of bar, and dismissing the action.

LORD DUNDAS—I am of the same opinion. I think the learned Sheriff's interlocutor is right. He considers, and I agree with him, that the burial benefit sued for is a benefit to a member within the meaning of the Act of Parliament. Upon a construction of the defenders' rules the burial benefit seems clearly to be described and dealt with as a benefit to a member. Thus rule 18 prescribes (clause 1) that "no member shall be entitled to burial benefit until six calendar months from the date of admission," and (clause 2) that "members of twelve months' standing . . . shall be entitled to funeral benefit" according to a given scale. Clause 8 of the same rule authorises each member to nominate in writing the relative or representative to whom the burial allowance is to be paid, and by the form of such nomination the member appoints his nominee "to receive the burial allowance to which I may be entitled at my death." The very fact that a member may appoint—I presume for value received if he so chooses—a representative to whom the allowance is to be paid seems to me to indicate that it is a benefit to himself as a member. Plenty of other instances could be cited from the rules. Even apart from the construction of the rules, I think the benefit is in substance and fact a benefit to the member. It is a prudent and provident investment of his money, and apart from pecuniary advantage has surely a personal value as an increment to the comfort, happiness, and self-respect of the investor. If then the burial benefit is as I hold a benefit to the member, there is an end to the appellant's case. I agree with what your Lordship has said as to the decisions referred to.

In my judgment we should dismiss the appeal and affirm the interlocutor of the learned Sheriff.

LORD SALVENSEN—I agree with your Lordships that the question to be decided here is whether this funeral benefit, as it is called in the rules, can be described as a benefit to a member. If it can be so described, then the action is excluded by section 4 of the Act referred to.

I confess I have much more difficulty than any of your Lordships on this point, because I find it difficult to understand how the payment of a sum of money after a man's death, for the purpose, no doubt, of providing for his funeral expenses, can ever be described as a benefit to a member. It seems to me that it is a benefit to those who succeed to his estate if he has any, and who are relieved to the extent of the funeral allowance of the necessity of expending his estate in providing him with a decent burial.

It is true that the rules describe the benefit in a manner that is consistent with the view that the framers considered it a benefit to the member. I do not know that that would be conclusive, but at the same time my doubts are not sufficiently strong to induce

me to take a different view from your Lordships as to what the judgment should be.

LORD GUTHRIE—It seems to be that the rules are quite clear on this matter. By these rules it is evident that this was understood and intended to be a benefit to the member himself. No doubt, whatever the rules say, we must look to the essence of the matter. The sound construction of the statute must rule, and cannot be avoided by any rules, however expressed. The benefit in question results to the advantage both of the member himself and, as in this case, to the advantage of his wife and children. The member in entering into the contract has in view his own benefit, because he makes it certain that his remains shall escape what is universally looked upon as the disgrace of a pauper funeral. No doubt, secondarily, he has in view that at a specially straitened time his family shall not be burdened with the expense of his funeral. But that does not seem to me the primary benefit, which I think is a benefit to the member.

The Court affirmed the Sheriff's interlocutor.

Counsel for the Pursuer—Stevenson.
Agent—Thomas J. Connolly, Solicitor.

Counsel for the Defenders—Morton, K.C.
—J. A. Christie. Agent—Sterling Craig, S.S.C.

Saturday, July 20.

SECOND DIVISION.

[Lord Anderson, Ordinary.]

MAZURE v. STUBBS LIMITED.

Reparation—Slander—Innuendo—Newspaper—Black List.

The defenders in an action of damages for slander were the proprietors and publishers of a weekly gazette having a large trade circulation, which contained a column of names of persons against whom a decree in absence had been pronounced in the Small Debt Courts. The list was prefaced by an explanatory note to the effect that the mere publication of the decree in absence in the gazette did not imply inability to pay on the part of the person named in connection therewith, or anything more than that the entry published appeared in the court books. In a particular issue of the gazette there appeared in this column the name of the pursuer as a person against whom decree in absence had been pronounced, no such decree having in fact been pronounced. The pursuer recovered damages upon the innuendo that he "was given to or had begun to refuse or delay to make payment of his debts, and that he was not a person to whom credit should be given." Held that the innuendo was justifiable, and had in fact on a proof been substantiated.

Russell v. Stubbs Limited, 1913 S.C.

(H.L.) 14, 50 S.L.R. 676, commented on and distinguished.

Samuel David Mazure, licensed broker, 125 Allison Street, Glasgow, *pursuer*, brought an action of damages for slander against Stubbs Limited, *defenders*, based upon the following entry in the defenders' published list of "Extracts from the Court Book of Decrees in Absence in the Small Debt Courts":—

Court.	Date.	Pursuers.	Defenders.	Amount in Decree.
Dumbarton	1916 Oct. 3	E. Barrow, Glasgow	S. Mazure, rag, rope, paper and metal merchant, 96 Church Street, Dumbarton	£12 11/

The said list had prefixed to it this note—
"The following extracts from the Court books have been received since our last issue made up to the several dates given in the second column. It is probable that some of the decrees have been sisted, settled, or paid, and in no case does publication of the decree imply inability to pay on the part of anyone named, or anything more than the fact that the entry published appeared in the Court books."

The pursuer *averred*—" (Cond. 5) The said entry is of and concerning the pursuer, and is false and calumnious. It falsely represented that a decree in absence had been pronounced against the pursuer for the sum of £12, 11s., and that the pursuer was given to or had begun to refuse or delay to make payment of his debts, and that he was not a person to whom credit should be given. It was so understood by the public and in particular by the pursuer's creditors and customers. . . ."

The pursuer *pleaded, inter alia*—"1. The pursuer having been slandered by the defenders is entitled to reparation."

The defenders *pleaded, inter alia*—"1. The averments of the pursuer being irrelevant, and *separatim* lacking in specification, the action should be dismissed. 2. The defenders not having slandered the pursuer should be assolizied."

The facts are given in the opinions of the Lord Ordinary (ANDERSON), who on 31st May 1917 repelled the defenders' first plea and allowed a proof.

Opinion.—"In this action the pursuer, who is a licensed broker carrying on business at Dumbarton, sues the defenders for damages in respect of defamation. On 12th October 1916 the defenders published in their well-known Weekly Gazette an entry to the effect that decree in absence for £12, 11s. had been pronounced against the pursuer on 3rd October 1916 in the Small Debt Court at Dumbarton. That statement regarding the pursuer was false. No such decree was pronounced against the pursuer, and the books of Court never contained any entry to the effect that any such decree had been pronounced. The pursuer pleads that the said publication by the defenders was not only false but also calumnious, and he alleges that the innuendo which the entry bears is 'that the pursuer was given to or had begun to refuse or delay to make payment of his debts, and that he was not a person to whom credit should be given.' The pursuer further avers that he had always regularly