always been considered right. A similar view was taken of the Act in Scotland in *Amalgamated Society of Railway Servants* v. *Motherwell Branch* (*ubi sup.*) It is not in conflict with any other decision unless it be *Duke* v. *Littleboy* (*ubi sup.*), decided by Denman, J., in 1880, but the object of the action in that case was wider than it was in *Wolfe* v. *Matthews* (*ubi sup.*), and wider than it is in this case. The cases in which the Court has refused to restore expelled members—namely, *Rigby* v. *Connol* (*ubi sup.*) and *Chamberlain's Wharf* v. *Smith* (*ubi sup.*)—are also distinguishable. The object of the action in each of those cases was directly to establish and enforce the plaintiff's rights as a member of the trade union to the benefits conferred on the members by the rules. Considering the object of the action, it appears to me to be competent for any member who has a beneficial interest in the funds of the union to sue to prevent their application to purposes not warranted by the rules as they stand. It is true that the rules may be altered, but it does not follow that the Court ought not to enforce the trust created by them as they stand. Stirling, L.J., has dealt fully with this point, and I agree with him. Upon the question whether the application of the funds of the society which has been restrained was authorised by the rules, I do not think it necessary to add anything. The strikers from the first were legally in the wrong, and they never got right. They cannot bring themselves within the rules. The appeal fails on all points, and ought to be dismissed with costs. I agree to the suggested form of the order.

Appeal dismissed.

Counsel for the Appellants—Rufus Isaacs, K.C. — Danckwerts, K.C. — Compston. Agents—Corbin, Greener, & Cook, Solicitors.

Counsel for the Trustees—Atherley Jones, K.C.—R. E. L. Vaughan Williams. Agents—Marsh, Sherwood, & Hart, Solicitors.

Counsel for the Respondents—Montague Lush, K.C.—Waddy—H. W. Wilberforce. Agents—Steadman, Van Praagh, & Gaylor, Solicitors.

HOUSE OF LORDS.

Friday, April 14.

(Before the Lord Chancellor (Halsbury), Lords Macnaghten, James of Hereford, and Lindley.)

SOUTH WALES MINERS' FEDERATION AND OTHERS *v.* GLAMORGAN COAL COMPANY AND OTHERS.

Contract—Breach—Damages—Contract of Service—Procuring and Inducing Breach—Action for Damages—Whether Absence of Malice a Defence.

Held that the fact that a federation of miners in inducing its members to break their contracts of service with their employers acted without malice and in the *bona fide* belief that the breach of contract would benefit both the miners and their employers, formed no defence to an action brought by the latter against the federation for damages for wrongfully procuring and inducing their workmen to break their contracts of service.

The Glamorgan Coal Company and the miners employed in their pits worked under an agreement known as the sliding scale, which made it in the interest of both employers and employees to keep up the price of coal in the market as against the middlemen. With this object in view the executive council of the South Wales Miners' Federation, in November 1900, acting under powers conferred on it by a general conference of the Federation, ordered certain "stop-days" or non-working days, upon which the miners refused to work in the company's pits, thereby directly violating the contracts of service under which they were employed.

The Glamorgan Coal Company, which disapproved of the policy of the "stop-days," thereafter brought an action of damages against the Federation and its officials upon the following grounds set out in their statement of claim "that the defendants, well knowing the terms and conditions of the contracts of service under which the workmen employed at the collieries of the plaintiffs were working, wrongfully and maliciously, by causing notice to be given to the workmen employed at the plaintiff's collieries, procured and induced the said workmen to break their contracts of service with the plaintiffs, and in breach thereof to abstain, without giving due notice, from working at the said collieries on certain days . . . and the workmen employed at the said collieries did, by reason of such procurement and inducement, and in breach of their contracts of service with their employers, abstain without due notice from working at the said collieries."

Bigham, J., decided that the Federation were not liable in damages on the ground that although they had in fact induced the miners to break their contract they had been actuated by an honest desire to forward the interests of the men without any prospect of personal gain to themselves, and without any intention, malicious or otherwise, of injuring the employers.

The Court of Appeal (ROMER and STIRLING, L.JJ., WILLIAMS, L.J., dissenting) reversed his judgment, and the Federation appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR (HALSBURY)—I cannot think that in this case there is anything to be determined except the question of fact. I say so because the questions of law discussed are well settled by authority, and authority in this House. To combine to procure a number of persons to break

contracts is manifestly unlawful. This is found as a fact to have been done here, and is also found to have caused serious damage to the persons who were entitled to have these contracts performed. It is, further, a principle of the law, applicable even to the criminal law, that people are presumed to intend the reasonable consequences of their acts. It is not, perhaps, necessary to have recourse to such a presumption where, as upon the facts stated, it is apparent that what they were doing must necessarily cause injury to the employers. We start, then, with the infliction of an unlawful injury upon the persons entitled to have the services of their workmen. It follows that this is an actionable wrong unless it can be justified. Now it is sought to justify it, first, because it is said that the men were acting in their own interest, and that they were sincerely under the belief that the employers would themselves benefit by their collieries being interrupted in their work; but what sort of excuse is this for breaking a contract when the co-contractor refuses to allow the breach? It seems to me to be absurd to suppose that a benefit which he refuses to accept justified an intentional breach of contractual rights. It may, indeed, be urged in proof of the allegation that there was no ill-will against the employers. I assume this to be true; but I have no conception what can be meant by an excuse for breaking a contract because you really think it will not harm your co-contractor. I absolutely refuse to discuss the cases, widely apart from the question of what pecuniary advantage may be reaped from breaking a contract, which have been suggested, where upon moral or religious grounds people may be justly advised to refuse to perform what they have agreed to do. Some cases may be suggested when higher and deeper considerations may, in a moral point of view, justify the refusal to do what has been agreed to be done. Such cases may give rise to the consideration whether, in a moral or religious point of view, you are not bound to indemnify the person whom your refusal injures, but a court of law has only to decide whether there is a legal justification. Again, I refuse to go into the discussion of the duty or the moral right to tender advice. The facts in this case show nothing in the nature of advice, even if the supposed duty could be created by people who made them their official advisers who were to advise them even to break the law. But, as I have said, these are peremptory orders given by the official superiors of the body, and it has been found by the learned judges who tried the case that the body sued was responsible for the interference with the workmen. I think that the appeal should be dismissed.

LORD MACNAGHTEN—I agree in the motion which the Lord Chancellor proposes, and I also agree with him in thinking that the question before your Lordships lies in a very narrow compass. It is not disputed that the union, known as the South Wales Miners' Federation, acting by its executive, induced and procured a vast body of workmen, members of the union, who were at the time in the employment of the plaintiffs, to break their contracts of service, and thus the Federation, acting by its executive, knowingly and intentionally inflicted pecuniary loss on the plaintiffs. It is not disputed that the Federation committed an actionable wrong. It is no defence to say that there was no malice or illwill against the masters on the part of the Federation, or on the part of the workmen at any of the collieries thrown out of work by the action of the Federation. It is settled now that malice, in the sense of spite or illwill, is not the gist of such an action as that which the plaintiffs have instituted. Still less is it a defence to say that if the masters had only known their own interest they would have welcomed the interference of the Federation. It was argued that, although the thing done was *prima facie* an actionable wrong, it was justifiable under the circumstances. That there may be a justification for that which in itself is an actionable wrong I do not for a moment doubt, and I do not think that it would be difficult to give instances, putting aside altogether cases complicated by the introduction of moral considerations. But what is the alleged justification in the present case? It was said that the council, the executive of the Federation, had a duty cast upon them to protect the interests of the members of the union, and that they could not be made legally responsible for the consequences of their action if they acted honestly in good faith and without any sinister or indirect motive. The case was argued with equal candour and ability. But it seems to me that the argument may be disposed of by two simple questions. How was the duty created? What, in fact, was the alleged duty? The alleged duty was created by the members of the union themselves, who elected or appointed the officials of the union to guide and direct their action, and then it was contended that the body to whom the members of the union have thus committed their individual freedom of action are not responsible for what they do if they act according to their honest judgment in furtherance of what they consider to be the interest of their constituents. It seems to me that if that plea were admitted there would be an end of all responsibility. It would be idle to sue the workmen, the individual wrongdoers, even if it were practicable to do so. Their counsellors and protectors, the real authors of the mischief, would be safe from legal proceedings. The only other question is, What is the alleged duty set up by the Federation? I do not think that it can be better described than it was by Mr Lush. It comes to this, it is the duty on all proper occasions, of which the Federation or their officials are to be the sole judges, to counsel and procure a breach of duty. I agree with Romer and Stirling, L.JJ., and I think that the appeal must be dismissed.

LORD JAMES OF HEREFORD—The nature of the issues raised in this case, and the

pecuniary consequences at stake, require that the fullest consideration should be given to your Lordships' judgment. At the same time, the facts to be dealt with are for the most part admitted, and, if not, are easily ascertainable, and in regard to the duty of applying principles of law to such ascertained facts your Lordships have received great assistance from the able arguments of counsel at the Bar of the House. As the facts and circumstances affecting the case have already been fully dealt with, I need do no more than refer to them very briefly. The action is brought by the plaintiffs as owners of collieries against the South Wales Miners' Federation and certain individual members of it, upon the following grounds set out in the statement of claim—[*His Lordship quoted the statement of claim as given supra*]. The defendants, in addition to denying the above allegations, amongst other arguments alleged that they acted in the *bona fide* belief that the course of action advised by them would greatly benefit both the plaintiffs and defendants, and that they, the defendants, had reasonable justification and excuse for the course pursued by them. The first question to be determined is, Did the defendants procure and induce the plaintiffs' workmen to break their contracts of service? I think it clear that this question must be answered in the affirmative. On the 5th November 1900 the following resolution was passed by the defendants' Federation:—"It was unanimously resolved to order a stop-day on Friday next, and that a conference be held on Monday next to decide upon our future action." On the same day a manifesto was issued by the Federation addressed to the workmen, in which it is stated that "we have unanimously resolved that a general holiday be taken throughout the coalfields by all colliery workmen on Friday the 9th November 1900." The colliers carried out the resolution of the Federation, and the stop-day took place. The employers protested, and warned the workmen that if such stoppage of work was repeated legal remedy would be sought. In October 1901 steps were taken by the Federation to cause the workmen again to stop work. But the case of *Taff Vale Railway Company* v. *Amalgamated Society of Railway Servants* (85 L.T. Rep. 147, [1901] A.C. 426) having been determined by your Lordships in July 1901, the danger of legal liability was apparent, and the Federation, therefore, slightly disguised themselves as being the workmen's members of the Sliding Scale Committee. But this disguise was scarcely maintained, and was not persisted in during the argument at the Bar. On the 15th October 1901 Mr W. Brace, as vice-president of the defendants' Federation, in a speech said that in certain events "the executive council of the Federation in whom power was vested by the whole body of workmen according to a conference resolution would unhesitatingly declare a series of stoppages with a view to regulate the supply according to the demand." On the 29th October 1901 the following resolution was passed by those who called themselves the workmen's representatives of the Sliding Scale Joint Committee. "It was unanimously resolved to issue instructions to the workmen to observe Thursday next as a general holiday at all the collieries throughout the South Wales coalfield." On the 23rd October, the 29th October, and the 4th November 1901, telegrams were sent on behalf of the executive council to the representatives of the different branches in the following form:—On October 23, "Sliding Scale Committee has decided that all collieries must observe Friday and Saturday next as a general holiday." October 29.—"Men must be idle Thursday next." November 4.—"Stop next Wednesday." In addition to these communications evidence was given which justifies the conclusion that the defendants did more than advise the workmen upon the subject of these stop-days. No doubt there was by the rules of the Federation a general duty cast upon it "to take into consideration the question of trade and wages, and to protect workmen generally, and to regulate the relation between them and employers," and these somewhat indefinite words might justify advice being given by the executive council to the workmen. Still there remains the question, Can it be lawful to advise the unlawful breaking of a contract of service? But be this as it may, I think it established that both in 1900 and 1901 responsible officers of the Federation did far more than give advice. They initiated, they directed, and they gave orders, so that it is correct to employ the legal term and say that they induced and procured the workmen to break their contracts. If it be that the defendants' acts amount to inducing and procuring, a great portion of the able arguments placed before your Lordships on behalf of the appellants becomes of no avail. It is true that great difficulty arises when hypothetical cases are suggested of advice given under a great moral sense of right, or where great good would result from a contract being broken, or where the claims of relationship or guardianship demand an interference amounting to protection. Each of such cases must be determined as it arises; but upon the facts as I think that they must be found in this case no such difficulties arise. In the action of the defendants, going as I have said to the extent of inducing and procuring the commission of an unlawful act, places them in a very different position from that occupied by a person whose duty it is to offer advice to one who needs to be guided or protected. If this view be correct, the allegation in the statement of claim that the defendants induced and procured the workmen to break their contracts is established. It is admitted that the workmen in so acting committed an unlawful act, that in consequence the employers sustained damage, and that the defendants had notice of such contracts and of the consequences of the breach. It yet remains to deal with the words "wrongfully and maliciously" as averred in the statement of claim. As to the word "wrong-

fully" I think that no difficulty arises. If the breach of the contract of service by the workmen was an unlawful act—any one who induces and procures the workmen without just cause and excuse to break such contract also acts unlawfully, and thus the allegation that the act done was wrongfully done is established. But the word "maliciously" has also to be dealt with. The judgment of Bigham, J., proceeds on the ground that "to support an action for procuring a breach of contract it is essential to prove actual malice." I cannot concur in this view of the law. The word "maliciously" is often employed in criminal and civil pleadings without proof of actual malice, apart from the commission of the act complained of, being required. If A utters a slander of B, even if he be a stranger to him, the averment that A maliciously spoke such words of B is established by simply proving the uttering of words taken to be false until the contrary be proved. In such an action the word "maliciously" may be treated either as an unnecessary averment or as being proved by inference drawn from the proof of the act being wrongfully committed. I think also that the learned judge's judgment is not supported by the authorities to which he refers. In *Bowen* v. *Hall* (44 L.T. Rep. 75; 6 Q.B. Div. 333) Brett, L.J., with the sanction of Lord Selborne, L.C., thus expressed his view:—"Wherever a man does an act which in law and in fact is a wrongful act, and such an act as may in the natural and probable consequence of it produce injury to another, and which in the particular case does produce such an injury, an action on the case will lie." In *Mogul Steamship Company* v. *M'Gregor* (61 L.T. Rep. 824; 23 Q.B. Div. 598) Bowen, L.J., also said—"Now intentionally to do that which is calculated in the ordinary course of events to damage, and which does in fact damage, another in that other person's property or trade, is actionable if done without just cause or excuse." And in *Quinn* v. *Leathem* (85 L.T. Rep. 289; (1901) A.C. 495) Lord Macnaghten thus defined the law on the subject:—"A violation of legal rights committed knowingly is a cause of action, and it is a violation of legal right to interfere with contractual relations recognised by law if there be no sufficient justification for the interference." It will be observed that none of these three very learned judges employ the word "maliciously" as being necessary in order to constitute a right of action. But a further question has to be disposed of. At the trial and at the Bar of your Lordships' House the counsel for the appellants contended that their clients had good cause and excuse for the alleged unlawful act they committed. That such justification—such "good cause and excuse"—may exist, is, I think, a sound proposition. The above words of Lord Macnaghten and of Bowen, L.J., so declare. The facts upon which this attempted justification in this case is based are fully before your Lordships and need not be recapitulated. I take the results of them to be that in one sense the defendants acted in good faith. They, I think, honestly believed that the stoppage of work upon which they resolved would increase the price of coal and so benefit both the workmen and the employers. Towards their employers the defendants entertained no malice. At the same time they knew that the employers had given notice of their objection to any such stoppage of work. And so the Federation not only advised but resolved and ordered that the workmen should break their contracts under conditions that would constitute an unlawful act in the men. As far as the defendants could exercise control the men were not allowed to make use of their own discretion. In order therefore to establish the existence of good cause and excuse, all that the defendants can say is, We, the Federation, had a duty cast upon us to advise the workmen. We did advise them to commit an unlawful act, but in giving that advice we honestly believed that they would be in a better financial position than if they acted lawfully and fulfilled their contracts. Even if it be assumed that such allegations are correct in fact, I think that no justification in law is established by them. The intention of the defendants was directly to procure the breach of contracts. The fact that their motives were good in the interests of those whom they moved to action does not form any answer to those who have suffered from the unlawful act. During the arguments that have been addressed to your Lordships I do not think that quite sufficient distinction was drawn between the intention and the motives of the defendants. Their intention clearly was that the workmen should break their contracts. Their motives, no doubt, were that by so doing wages should be raised. But if in carrying out the intention the defendants purposely procured an unlawful act to be committed, the wrong that is thereby inflicted cannot be obliterated by the existence of a motive to secure a money benefit to the wrongdoers. For these reasons I think that the judgment of the Court of Appeal should be affirmed.

LORD LINDLEY—I agree so entirely with the judgments of Romer and Stirling, L.JJ., that I should say no more were it not for the great importance of some of the arguments addressed to your Lordships on this appeal, which deserve notice. It is useless to try to conceal the fact that an organised body of men working together can produce results very different from those which can be produced by an individual without assistance. Moreover, laws adapted to individuals not acting in concert with others require modification and extension if they are to be applied with effect to large bodies of persons acting in concert. The English law of conspiracy is based upon and is justified by this undeniable truth. But the possession of great power, whether by one person or by many, is quite as consistent with its lawful as with its unlawful employment, and there is no legal presumption that it will be or has been unlawfully exercised in any particular case. Some illegal act must be proved to be

threatened or intended, or to have been committed, before any court of justice in the United Kingdom can properly make such conduct the basis of any decision. These remarks are as applicable to trade unions as to other less powerful organisations. Their power to intimidate and coerce is undoubted; its exercise is comparatively easy and probable; but it would be wrong on this account to treat their conduct as illegal in any particular case without proof of further facts which make it so. It is not incumbent on a trade union to rebut any presumption of illegality based only on their power to do wrong. Freedom necessarily involves such a power, but the mere fact of its existence does not justify any legal presumption that it will be abused. In the case before your Lordships there is proof that the members of the Mining Federation combined to break, and did break, their contracts with their employers by stopping work without proper notice and without proper leave. There is also proof that the officials of the Federation assisted the men to do this by ordering them to stop work on particular days named by the officials. To break a contract is an unlawful act, or, in the language of Lord Watson in *Allen* v. *Flood* (77 L.T. Rep. 717, [1898] A.C. 1), "A breach of contract is itself a legal wrong." The form of action for such a wrong is quite immaterial in considering the general question of the legality or illegality of a breach of contract. Any party to a contract can break it if he chooses, but in point of law he is not entitled to break it even on offering to pay damages. If he wants to entitle himself to do so he must stipulate for an option to that effect. Non-lawyers are apt to think that everything is lawful which is not criminally punishable, but this is an entire misconception. A breach of contract would not be actionable if nothing legally wrong was involved in the breach. The Federation by its officials are clearly proved in this case to have been engaged in intentionally assisting in the concerted breach of a number of contracts entered into by workmen belonging to the Federation. This is clearly unlawful according to *Lumley* v. *Gye* (2 E. & B. 216) and *Quinn* v. *Leathem* (*ubi sup.*), and the more recent case of *Read* v. *Friendly Society of Stonemasons* (87 L.T. Rep. 493, [1902] 2 K.B. 732). Nor is it opposed to *Allen* v. *Flood* (*ubi sup.*) or *Mogul Steamship Company* v. *M'Gregor* (66 L.T. Rep. 1, [1892] A.C. 25), where there was no unlawful act committed. The appellants' counsel did not deny that in his view of the case the defendants' conduct required justification, and it was contended (1) that all which the officials did was to advise the men, and (2) that the officials owed a duty to the men to advise and assist them as they did. As regards advice, it is not necessary to consider when, if ever, mere advice to do an unlawful act is actionable when the advice is not libellous or slanderous. Nor is it necessary to consider those cases in which a person, whose rights will be violated if a contract is performed, is justified in endeavouring to procure a breach of such contract. Nor is it necessary to consider what a parent or guardian may do to protect his child or ward. That there are cases in which it is not actionable to exhort a person to break a contract may be admitted; and it is very difficult to draw a sharp line separating all such cases from all others. But the so-called advice here was much more than counsel; it was accompanied by orders to stop, which could not be disobeyed with impunity. A refusal to stop work as ordered would have been regarded as disloyal to the Federation. This is plain from the speeches given in evidence on the trial, and in my opinion it is a very important element in the case which cannot be ignored. As regards duty, the question immediately arises—duty to do what? The defendants have to justify a particular line of conduct which is wrongful in aiding and abetting the men in doing what both the men and the officials knew was legally wrong. The constitution of the union may have rendered it the duty of the officials to advise the men what could be legally done to protect their own interests, but a legal duty to do what is illegal and known so to be is a contradiction in terms. A similar argument was urged without success in the case of *Read* v. *Friendly Society of Stonemasons* (*ubi sup.*) Then your Lordships were invited to say that there was a moral or social duty on the part of the officials to do what they did, and that, as they acted *bona fide* in the interests of the men and without any ill-will to the employers, their conduct was justifiable; and your Lordships were asked to treat this case as if it were like a case of libel or slander on a privileged occasion. This contention was not based on authority, and its only merits are its novelty and ingenuity. The analogy is, in my opinion, misleading; and to give effect to this contention would be to legislate and introduce an entirely new law and not to expound the law as it is at present. It would be to render many acts lawful which, as the law stands, are clearly unlawful. I have purposely abstained from using the word "malice." Bearing in mind that malice may or may not be used to denote ill-will, and that in legal language presumptive or implied malice is distinguished from express malice, it conduces to clearness in discussing such cases as these to drop the word "malice" altogether and to substitute for it the meaning which is really intended to be conveyed by it. Its use may be necessary in drawing indictments; but when all that is meant by malice is an intention to commit an unlawful act, and to exclude all spite or ill-feeling, it is better to drop the word and so avoid all misunderstanding. The appeal ought to be dismissed with costs.

Judgment affirmed and appeal dismissed.

Counsel for Appellants—Rufus Isaacs, K.C.—S. T. Evans, K.C.—Bailhache—Holman Gregory—Clement Edwards. Agents—Smith, Rundell, & Dods, Solicitors.

Counsel for Respondents—Upjohn, K.C.—M. Lush, K.C.—Trevor Lewis. Agents—Bell, Brodrick, & Gray, Solicitors.