James v. *Allen* (3 Mer. 17), "might consistently with the will be applied to other than strictly charitable purposes, the trust is too indefinite for the Court to execute."

It was said—This is a gift for religious purposes, and the Court has held over and over again that a gift for religious purposes is a good charitable gift. That is true. But the answer is—This is not in terms a gift for religious purposes, nor are the words synonymous with that expression. Their Lordships agree with the opinion of the Chief-Justice that the expression used by this testator is wider and more indefinite. On this part of the case *re White* (1893, 2 Ch. 41) was referred to. There the gift was "to the following religious societies, viz." Then there was a blank. The intended societies were not specified. Kekewich, J., held that there was an intestacy. The Court of Appeal held that the gift was in substance a gift to "religious societies for religious purposes," and so holding they considered themselves bound by a long stream of authority to determine that the bequest was a good charitable gift. Whether they were right in so construing the unfinished sentence before them may perhaps be doubted, but it is perfectly clear that they did not mean to lay down any new law, or to extend the law as laid down in former decisions. All that they did was to hold, as had often been held before, that a bequest for religious purposes was a good charitable gift. It was too late in their opinion to depart from long-established decisions, although Lindley, L.J., did observe that "a religious society may or not be a charitable society in the sense in which that expression is used."

In the present case their Lordships think that they are not bound to treat the expression used by the testator as identical with the expression "for religious purposes," and therefore, not without reluctance, they are compelled to concur in the conclusion at which the High Court arrived.

Their Lordships will humbly advise His Majesty that the appeal ought to be dismissed. But having regard to the great divergence of judicial opinion in this case, and the fact that the difficulty was occasioned by the testator himself, they think that the costs of both parties as between solicitor and client ought to be paid out of the estate.

Appeal dismissed, and decision of Court below affirmed.

Counsel for the Appellants—Buckmaster, K.C. — J. F. W. Galbraith. Agents — Whites & Co., Solicitors.

Counsel for the Respondent — Danckwerts, K.C.—P. F. Wheeler—T. P. Power (of the Colonial Bar). Agents—Trinder, Capron, & Co., Solicitors.

HOUSE OF LORDS.

Monday, February 26, 1912.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, Atkinson, Shaw, Mersey, and Robson.)

RUSSELL *v.* AMALGAMATED SOCIETY OF CARPENTERS AND JOINERS AND OTHERS.

(On Appeal from the Court of Appeal in England.)

Trade Union—Action to Recover Benefits—Trade Union Act 1871 (34 *and* 35 *Vict. cap.* 31), *sec.* 4—*Effect of Rules in Restraint of Trade.*

Widow of deceased member of trade union brought action against a trade union to recover sums due to her husband under rules of the association.

Held that section 4 of Trade Union Act 1871 excluded action except at common law, and that at common law action was barred by the fact that this trade union was at common law an illegal association owing to its rules being in restraint of trade.

Appeal from a judgment of the Court of Appeal (Vaughan Williams, Farwell, and Kennedy, L.JJ.), who had affirmed a judgment of Phillimore, J. ([1910], 1 K.B. 506).

The facts of the case sufficiently appear from Lord Shaw's judgment.

Their Lordships' judgment was given, after consideration, as follows:—

Lord Chancellor (Loreburn)—This is in effect a demurrer, and we know nothing of the real merits of the dispute. All that we have to settle is the law as raised upon the pleadings. The question argued before Phillimore, J., has not been raised either in the Court of Appeal or in this House, and the question argued and decided in the Court of Appeal is not that upon which I think that the case should now be determined. It was held by the Court of Appeal that some of the rules were illegal, being in restraint of trade in the sense that they are oppressive and against public policy, and that they are so associated with the rules upon which this action is founded as to make the latter unenforceable. I should desire this point to be argued before expressing my opinion on it, but I do not think that it is necessary to enter upon it at all for the decision of this case. It is undesirable to decide such a point in this case, where counsel on both sides unite in condemnation of the rules, and in adverse interpretation of their effect. Counsel on both sides laboured to show that the rules were oppressively in restraint of trade. I am of opinion that this appeal should be dismissed for the following reason—The action is against a trade union directly to enforce or recover damages for breach of an agreement to provide benefits for members.

LORD MACNAGHTEN—The defendants are a registered trade union and certain officers of the union. The plaintiff is the widow of a deceased member of the society. As representative of her late husband she claims a sum of money to which he appears to have been entitled at the time of his death under the terms and conditions of his agreement with the society contained in its certified rules. The defence, and the only defence which we have to consider at this stage of the proceedings, is that the society was and is at common law an unlawful association by reason of its purposes being in restraint of trade, and that, although those purposes are, according to the Trade Union Act of 1871, not lawful so as to avoid the agreement and trust in respect of which she is now suing, the Court is prohibited or prevented by sec. 4 of the Act from entertaining her application.

If the defendants can make good the position on which their defence is founded, they are undoubtedly entitled to the protection of the statute, and so the action must fail.

A trade union is merely an unincorporated society of individuals. The designation itself does not import illegality. There have been many, and probably there may still be some, trade unions lawful in every point of view, and not depending for their legality on the Act of 1871. This proposition is recognised plainly in the definition of a trade union contained in the Act of 1876.

In the case of a trade union not dependent on the Trade Union Acts for its legality or immunity, the law is open to members of the society, just as it is in the case of other voluntary societies, for the purpose of enforcing contractual rights and trusts against the association. The only question therefore seems to be this—Is this trade union, apart from the Act of 1871, a lawful association? The answer must depend on a consideration of its purposes as manifested in its rules. It is not every restraint of trade that is unlawful. But I cannot doubt that restraint of trade which is unreasonable, oppressive, and destructive of individual liberty is unlawful, and I cannot help agreeing with the learned Judges of the Court of Appeal that such is the character of some of the rules of this society, and further, that having regard to the constitution of the society, the powers vested in its executive officers, and the blending of its funds for all purposes, it is impossible to separate what is legal from what is not legal. I am, therefore, of opinion that the appeal fails, and must be dismissed with costs. Lord Mersey desires me to say that he has read this judgment and entirely agrees with it.

LORD ATKINSON—The trade union in this case is sued in its registered name. It is true that in *Taff Vale Railway Company* v. *Amalgamated Society of Railway Servants*, 1901 A.C. 426, it was held that a trade union might be sued in its trade name for wrongs committed by its agents, but when the judgments delivered in that case are examined, and especially the judgment of Farwell, J., which was unanimously approved of and adopted in this House, it will be seen that the decision was based entirely on the provisions of the Trade Unions Act of 1871 as amended by the Act of 1876. The conclusion which, as it appears to me, must be necessarily drawn from these judgments is this—that if the Act of 1871 had contained a provision to the effect that nothing in it should enable any Court to entertain any legal proceedings founded upon any tort committed by a trade union through its agents, the decision of this House in that case would have been precisely the opposite of what it was, and that it would have been held that the trade union could not in that case have been sued *eo nomine*. But the provisions of sec. 4 as regards the present action are in effect similar to the hypothetical provision above mentioned in its relation to such torts. All the reasoning based upon those provisions of the Act of 1871 upon which those judgments were founded is therefore inapplicable to this action. This is an action based upon an agreement "to provide benefits to members," and is instituted directly to enforce that agreement, or to recover damages for the breach of it. The statute gives no support to such an action. Whether it can be instituted in its present form or not must depend upon the common law. It is not a representative action such as is frequently instituted in a court of equity. It is a common law action, and I am clearly of opinion that the defendant society cannot be sued in such an action in its registered name, neither can the trustees be sued in it in their character of trustees. Partners may no doubt be sued in the name of their firm, but that is under legislation by the rules and orders of 1883. For these reasons, I think that the action must fail. I do not think that the cases of *Simpson* v. *Westminster Palace Company* (1860, 8 H. L. Cas. 712) and *Russell* v. *Wakefield Water-works Company* (L.R. 20 Eq. 474) apply on this point. This is, no doubt, a somewhat technical point, but I fully concur with the Lord Chancellor in thinking that it is most undesirable, having regard to the way in which the case was presented by counsel to your Lordships, to decide the important issues raised, as I understand, for the first time in the Court of Appeal. I accordingly express no opinion on them. The appeal should, I think, be dismissed with costs, but I base my judgment on the point which I have already indicated.

LORD SHAW—This is an action by the widow of James Russell, a former member of the Amalgamated Society of Carpenters and Joiners. This society is a duly registered trade union. Russell had been a full member, having paid his contributions regularly for about forty years. In the later years of his life he fell into ill-health, and was paid sick benefits until his removal by the guardians of the poor to St Pancras Infirmary, and thence to a lunatic asylum.

He remained in the latter confinement until his death. The object of the action is to obtain payment of "a sum of money representing accumulated superannuation benefit" alleged to be due to Russell during the period of his incapacity. There are other conclusions in the claim, for declarations, an injunction, and alternatives, but these need not be referred to; they do not add to nor in substance vary what is the real object of the action as above described, except the alternative claim for the repayment of all Russell's contributions to the society during his lifetime. They were not referred to in argument, and they are met by the same defence. The main defence is that a court of law has no jurisdiction to entertain the claims by reason of the provisions of the Trade Union Acts of 1871 and 1876. The reference is substantially to sec. 4 of the Act of 1871, under which it is provided that "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 agreement for the application of the funds of a trade union or to provide benefits to members." Neither party has entered upon the question whether the points in dispute are excluded from determination by a court of law in consequence of their having been contractually remitted for final settlement within the association and by its officers. But both parties have apparently determined to base their case on the other and broader ground, namely, of what their rights are at common law and by statute.

By section 3 of the Act of 1871 "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 avoidable any agreement or trust." Were it not for the elaboration of the appellant's argument, it would be unnecessary to say that if the purposes of this association be in restraint of trade, the union is treated by the statute as one which would be unlawful at common law. Then the Act (section 3) steps in to declare that it shall not for that reason be unlawful, but (section 4) that nothing in the Act shall enable a court of law to entertain legal proceedings to enforce the agreements which it cites. *Quoad* these things remain as they were. That is to say, if the association be illegal on account of its purposes being in restraint of trade, it remains the case, as it was before, that the law cannot be invoked to support it, to regulate it, or to control it in the particular matters set out in section 4 of the Act, these matters including the present claim. Accordingly the argument stated to the House was very simple, namely, if the association's purposes were in restraint of trade, then the action is excluded by the statute, just as, but for the statute, it would have been excluded by the common law. The whole of this argument appears to me to be unassailable.

So the real question would appear to be one determinable by a survey and construction of the rules of this society, namely, whether under these rules its purposes are in restraint of trade. This is how the case was treated, and, in my opinion, most appropriately treated, in the Court of Appeal. Upon this question I regret that we were not favoured with two sides of an argument. Counsel on both sides concurred in presenting one side of the case, and both agreed in expounding their views upon the footing that some of these rules were in restraint of trade. Such a state of the discussion causes a certain uneasiness as to whether all the material for the determination of the case has been made fully available.

The learned Judges of the Court of Appeal have made a most careful analysis of the rules. In view of the importance of the question, and out of respect for those learned Judges, I have thought it right to make an independent examination of the rules on my own behalf. Having done so, I cannot say that I feel any surprise that the counsel for the association should have admitted frankly that they were in restraint of trade, and should have grounded upon that his argument for the exclusion of this action from cognisance or determination of a court of law. The rules contain careful provisions for the internal government of the society, and there are conferred upon the managing committee, the united trade committee, and the branch committees, powers of command, control, and government which are of the most far-reaching and effective character. Under rule 36, where they, at a summoned meeting of the branch, consider it to be to their best interest that members should refuse to work with non-union men, they—the members—"shall be entitled to trade privileges." The meaning of that, as interpreted by other sections of the rule, is that, for instance, where members have been six months in the society and leave their employment "under circumstances satisfactory to the branch, branch committee, managing committee," &c., they shall be entitled to the sum of 15s. a-week; and under a further section of the same rule provision is made for the case of "any member or members who may be withdrawn from their employment on the instruction of the managing committee, united trade committee, or branch committee."

Under various rules provision is made for expulsion from the society, and frequent reference is made to rule 48; rule 4 for instance, providing for fine, suspension, or expulsion "upon satisfactory proof being given that such member has acted contrary to the provisions of rule 48, clause 1." By rule 27, which affects the duties and powers of officers conducting trade movements, power is given to those committees to fine, suspend, or expel any member who has refused to comply with the committee's decision, or has violated any conditions of the same rule, that is, rule 48. The last-mentioned rule provides in most comprehensive terms for fine, suspension, or expulsion of any member upon satisfactory proof being given that such member has

refused to comply with the decision of a managing committee, branch committee, or branch. Under the organisation, accordingly, it is apparent that the workman, considered as a free disposer of his own labour, is thus confronted with a situation of great seriousness should his freedom conflict with the decisions of any of the committees referred to. He is further exposed to liability to fine, suspension, or expulsion if he has "wilfully violated the recognised trade rules of the district in which he is working," or takes "a sub-contract or piecework," or is working for these classes of employers, or fixes, uses, or finishes work made under unfair conditions either at home or abroad, the judgment upon this subject being apparently the judgment of the governing bodies referred to. So far as the individual liberty of the worker is concerned, it is accordingly fairly plain that trade in respect of him is restrained, but that would not be sufficient to satisfy the conditions of unlawfulness unless there were also restrictions such as to affect trade in general or the public at large. Upon this subject it appears, however, that provisions are made for granting assistance to other trades, and for levies of 3d. per week per member "in the event of any great struggle between capital and labour in our own or any other trade."

I have only indicated these points from the rules for the purpose of saying that the course adopted by the counsel for the association was the perfectly natural and proper course—of a frank admission that these rules are in fact in restraint of trade. They mean, and appear to provide the materials and machinery under which, according to the decision and at the direction of the officials of the association, a particular trade may not merely be restrained, but, by concerted action with other branches of industry, that trade, and the trade of the country at large, may be actually paralysed. The contest in argument was, however, as I understood it, that while some of the rules might be and were in restraint of trade, these were separable from the others all of which were legitimate, and that the objects of the association were, upon a correct survey of the rules as a whole, not tainted by unlawfulness. It must be admitted that many of the objects of the association are of a purely friendly society character, and that the highly valued provisions for sick, unemployed, accident, superannuation, and funeral benefits are familiar, and entirely within the law. Nor can it be denied in the general case that the occurrence here and there of certain passages in the rules of such societies which would point to action outside the law, would not be of itself sufficient, so to speak, to taint the objects of the society as a whole. Further, the reference to the occurrence of strikes in the rules, or the provisions for the support of members during a strike, does not *per se* make the association illegal. Strikes may be perfectly legal, or they may be illegal. It depends upon the nature and mode of the concerted cessation of labour. If the concerted cessation is in breach of contract, then it cannot be said to be within the law, any more than can a breach of contract by a single workman. If, on the other hand, a strike be a cessation of labour on the expiration of a contract, there is no necessary illegality there, any more than in the case of an individual workman completing his current bargain and then choosing to remain idle. But, of course, in this latter case the concert for the cessation of labour may be for the sole or deliberate or obvious purpose of restraining trade, in which case different legal consequences might ensue, and to this I have referred. All these principles, excluding the exceptional case last mentioned, are now well settled by authority, and they are no longer questioned.

But the two outstanding obstacles to the separability of the objects of this society appear to be those of finance on the one hand and of coercive discipline and expulsion on the other. The massing of funds has been considered by trade unions to be of vital importance in conducing to their effectiveness in action, and to be justified by sound general policy. Such massing occurs here, and the segregation of funds into those for the promotion on the one hand of objects which are within and on the other of objects which are outside the law is thereby prevented. In the next place the power of fine, suspension, and expulsion from the society is of a character so effective and drastic as to take no account of distinctions between one object of the society and another, and to have a cumulative and complete effect with regard to the contributions of a member as a whole. If expulsion takes place by reason of a workman pursuing his avocations alongside of a non-union man, it is equally effective with expulsion which takes place by reason of his having failed for a stipulated period to make his contributions to the society; or if, again, the judgment of the individual workman, or even of a body of workmen, should differ from the decision of the committee with reference to a dispute in another industry with which it is averred that his own trade has no sympathy, or is not concerned, then equally he forfeits by expulsion all his contributions made to the society, including the provisions for sickness, accident, or unemployment, for which the rules provide.

In these circumstances, and upon the construction of the rules as they have been presented, I cannot see my way to give effect to the separability contended for. I think, upon this point, that the arguments presented on behalf of the society are also sound, and that its objects, thus taken together and as a whole, stand open to the objection of being in restraint of trade and to the plea founded thereon. I am of opinion that the plea should be sustained, and that this appeal fails.

LORD ROBSON—The argument in support of the plaintiff's claim appears to have

been based on different grounds in the various tribunals to which it has been submitted, and there is still some obscurity as to what precisely are the propositions of law which her counsel invites your Lordships to affirm. Before Phillimore, J., the main contention was that although the plaintiff's deceased husband could not have maintained this claim, yet she, as his nominee or representative under section 10 of the Trade Union Act 1871, Amendment Act 1876, and section 7 of the Provident Nominations and Small Intestacies Act 1883, was entitled to do so. That hopeless contention was not raised in the Court of Appeal. There the plaintiff's counsel contended that the first question was whether the objects of this society were so much in restraint of trade as to be illegal at common law, and so affect the rules of the society as a whole that they are not capable of being severed for the purpose of enforcement in a court of law.

Before your Lordships he went a little further, and admitted explicitly that at least one important rule, No. 48, was in unreasonable restraint of trade. He could scarcely do otherwise. His argument was then narrowed to the point that though some of the objects of the society were illegal, yet they were distinct and severable from the other objects, such as sickness and superannuation benefits, and therefore as the contract between the plaintiff's deceased husband and the society related to those latter objects only, it was enforceable at law. Of course the plaintiff could get no help from the Trade Union Statutes, for while, on the one hand, modifying the doctrine of restraint of trade in favour of trade unions, those statutes were careful, on the other hand, to enact that their provisions should not be used in the enforcement of contracts between trade unions and their members like that now in question.

A question has arisen, or was incidentally mentioned during the course of the arguments, as to whether the action has been properly framed. The plaintiff has sued the defendant society in its registered name, together with its trustees, who are sued as "trustees and representatives of the said society." It does not appear whether the trustees are or are not "representative" of the society in the sense which would make them proper to be defendants in a representative action. We do not even know if they are members of the society or not, and I think that it must be taken that the action as framed is bad unless it can be shown that such an action may be properly brought against an association like the defendant society in its registered name. That point was discussed in the *Taff Vale* case, where it was decided by your Lordships' House that the action, which was one of tort, was properly brought against the trade union in its registered name. But the ground of that decision, as stated by Farwell, J., in the court of first instance, and by some of your Lordships on appeal, was that the trade union had been made liable to such an action by the operation of the Trade Union Act 1871, which admittedly excluded from its scope a contract of the kind now sued on. Lord Macnaghten adopted a broader ground, and thought that a trade union might be sued in its own name apart altogether from the Trade Union Acts. Lord Lindley appears to have agreed with him, though he was content to affirm the liability of the union to be sued, apart from the Act, in a representative action, while the other noble and learned Lords at least said nothing directly inconsistent with Lord Macnaghten's view. No objection, however, was taken to the form of the present action by the defendants' counsel, so the point has not been argued before your Lordships, and as there may be some doubt about it, perhaps it is desirable that the substance of the case should be dealt with. The first question which is raised is whether the agreement between the defendants and the plaintiff's husband, as embodied in the rules of the defendant society, is in contravention of the common law doctrine as to unlawful restraint of trade. If so, then the agreement is void, unless what is legal in it can be treated as wholly independent of its illegal objects. For the purpose of dealing with this question it is enough to refer to rule 48. That rule constrains a member by fine, or suspension and threat of expulsion, to comply with the decision of the executive committee as to strikes, and to obey the recognised trade union rules of the district, whatever they may be, as to the conditions of his work. It also prohibits him from "taking a sub-contract or piecework, or working for either of those classes of employers (sub-contractor or piece-worker being defined as a person taking the labour of a job only and not supplying the material), or fixing, using, or finishing work which has been made under unfair conditions, either in the United Kingdom or abroad, or contrary to the recognised trade rules of the district in which it has been prepared." There can be no doubt that before the Trade Union Act 1871 provisions of this sort were held to be in restraint of trade. The cases of *Hilton* v. *Eckersley* (6 E. & B. 47) and *Hornby* v. *Close* (L.R., 2 Q.B. 153), without mentioning others to the same effect, are conclusive in support of that proposition. Indeed, had the law been otherwise the Trade Union Act 1871 would have been unnecessary.

It was passed after the two decisions which I have just referred to. *Hilton* v. *Eckersley* was decided in 1856 with reference to a trade combination of employers. The facts in that case were that certain millowners in Lancashire had bound themselves "to carry on, or wholly or partially to suspend the carrying on, of their works in conformity with the will of the majority . . . present at a meeting." This was held to be in restraint of trade because, in the language of Alderson, B., who delivered the judgment of the Exchequer Chamber, "the bond was framed to enforce a contract by which the obligors

agree to carry on this trade, not freely, as they ought to do, but in conformity with the will of others, and this, not being for a good consideration, is contrary to public policy." *Hornby* v. *Close* was decided in 1867, and applied the same principle to similar contracts between workmen.

These decisions have never, so far as I know, been disapproved or doubted by the courts, and they may be said indeed to have been acted on by the Legislature, for it is obvious that the Trade Union Act of 1871 was passed in order to protect trade unions from some of the consequences of the law as declared in those and similar cases. It is therefore rather late in the day to contest their authority. The primary object of the Act of 1871 was to protect the right of industrial combination, whether for the purpose of improving the wages and conditions of labour or of increasing the profits of capital. It was framed explicitly on the assumption that, as the law then stood, trade unions were very generally (though perhaps not universally) acting in restraint of trade. This is clear from the definition clause of the Act itself. This definition gave rise to the anomalous situation that before a trade union could take advantage of the benefits of the Act with regard to registration, &c., it had to prove that its rules were in restraint of trade, for it was only to such combinations that the Act applied. This was remedied by the amending Act passed in 1876, whereby the definition was made to include trade unions whether they were in restraint of trade or not, but this amendment does not substantially detract from the force of the foregoing observations as to the assumed state of the law prior to the passing of the principal Act.

It is to be observed that the Act did not go the length of abrogating or altering the general law against restraint of trade. It grafted an exception on it in favour of certain classes of persons, but by section 4 it maintained the principle of the old law even against those persons to the extent of refusing the assistance of the Courts in the direct enforcement of contracts between members of a trade union when the purposes of the union were in restraint of trade. Had it gone further and altogether excluded the application of the common law doctrine in this connection, the Courts would have been compelled to give full effect by decree or injunction to contracts whereby workmen had bound themselves not to undertake certain legitimate kinds of work, and to refrain under certain circumstances from working at their trade at all except by leave of their union, no matter what their immediate necessities might be. Such contracts would then be as legal as any other by which a man limits his freedom of action for a definite time or purpose, and the prospect of the burden which would thus be cast upon the executive of actively enforcing great numbers of such contracts in periods of industrial hardship or disturbance was one from which Parliament might well shrink. But the operation of section 4 of the Act of 1871 is not confined merely to contracts in restraint of trade. *Prima facie* the agreements thus excluded from the benefits of the Act are legal and meritorious, and their exclusion can only be due to the fact that they rest in some degree upon a consideration involving a restraint of trade which the law tolerates but will not directly assist. This circumstance has a significant and important bearing on the plaintiff's contention that claims for sickness and superannuation benefits are unaffected by the character of the general purposes of the union, because those benefits are inseparable from the rest of the agreement and rest upon an independent consideration. That was not the view of the framers of the statute. They put trade union agreements for what one may call friendly society benefits on the same footing as any other trade union agreements which were in restraint of trade. The reasons for this are obvious. Trade unions generally (including this defendant society) make no separation or distinction of funds between the two classes of benefit.

The contributions which a member has to make under rule 8 of the defendant society cover all benefits. There is nothing to show what proportion should be or in fact is allocated to sickness and superannuation benefits and how much to what one may call the militant purposes of the society. In face of the rules it could not be suggested that the defendant society would or could in the course of its ordinary working allow such a severance of the different parts of the agreement as is here demanded. The solidarity of its objects is shown by the fact that under rule 48 a member who commits a breach of the trade regulations of the society or refuses to comply with any decision of the executive committee, however much it is in restraint of trade, may be expelled and thereby forfeit the sickness and superannuation benefits to which he may have contributed for a lifetime. Obedience to the provisions of this rule, which is admittedly obnoxious to the common law doctrine in restraint of trade, is therefore in the case of this union an essential part of the consideration for sickness and superannuation benefits, and the contention that those benefits rest upon a distinct and severable part of the consideration for the whole agreement cannot be sustained. I am therefore of opinion that this appeal should be dismissed.

Judgment appealed from affirmed and appeal dismissed with costs.

Counsel for the Appellant—Chalmers Hunt—C. P. Hawkes. Agent—Osborne C. Kent, Solicitor.

Counsel for the Respondents—Sir R. Finlay, K.C. — A. Clement Edwards. Agents—Corbin, Greener, & Cook, Solicitors.