HOUSE OF LORDS.

Thursday, December 16, 1909.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, James of Hereford, Atkinson, Collins, and Shaw.)

GREAT WESTERN RAILWAY COMPANY *v.* CARPALLA UNITED CHINA CLAY COMPANY, LIMITED.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Railway — Mines and Minerals — China Clay — Railways Clauses Consolidation Act 1845 (8 *Vict. cap.* 20), *sec.* 77.

In a district where china clay was no part of the ordinary composition of the soil, and was only rarely and exceptionally present, a railway company had acquired lands by statutory procedure.

Held that the china clay was included in the reservation to the landowner of "mines or other minerals" under the Railways Clauses Consolidation Act 1845, section 77 (*cf.* Railways Clauses Consolidation (Scotland) Act 1845 (8 Vict. cap. 33), sec. 70).

The Railway Company (appellants) claimed injunction against the excavating of china clay under or adjacent to their railway, and raised an action against the successor in title of the landowner from whom they had compulsorily acquired the land and against the mining lessees (respondents). The result of the evidence is summarised in the opinion of Lord Macnaghten. The action was dismissed by EVE, J., whose judgment was affirmed by the Court of Appeal (COZENS-HARDY, M.R., MOULTON and FARWELL, L.JJ.).

Their Lordships gave considered judgment as follows:—

LORD MACNAGHTEN—It must, I think, be taken as settled beyond the possibility of doubt or question that the expression "mines of coal, ironstone, slate, or other minerals," which occurs in section 77 of the Railways Clauses Consolidation Act 1845 is equivalent to the expression "mines and minerals" in common use with conveyancers, and that "such mines," or, in other words, all mines and minerals, not expressly purchased by a railway company which purchases lands within or under which minerals may be found, may, in case the company has not agreed to pay compensation, be worked by the owner, lessee, or occupier thereof, complying with the statutory provisions applicable to the case, even though such working may interfere with the use of the railway and absolutely destroy the surface. The only condition to which the working is made subject is that it must "be done in a manner proper and necessary for the beneficial working" of the mines, "and according to the usual manner of working such mines in the district where the same are situate." Such being the law as explained in this House, the only question open on this appeal is a question of fact. It is not disputed that adjacent to and within the lands which the Great Western Railway Company or their predecessors in title purchased from Lord Clifden's predecessor in title there are deposits of a substance known as china clay. China clay is of considerable value commercially. It is common ground that the usual manner of getting it in the district is by open working, which is destructive of the surface, and it is conceded that that manner of working is proper and necessary for the beneficial working of china clay. The only question for consideration appears to be this—Is china clay a mineral? On this point a large body of evidence was adduced at the trial, which occupied eight days, before Eve, J. The learned Judge reviewed the evidence with great care and came to the conclusion that china clay was not part of the ordinary composition of the soil in the district; its presence was rare and exceptional. He held on the evidence, and held, I think, rightly, that it was a mineral, and therefore, in accordance with the provisions of the Act, excepted from the lands conveyed to the Railway Company. The learned Judges of the Court of Appeal discussed the evidence at some length and came to the same conclusion. It would serve no useful purpose to go through the evidence again. It is enough to say that having listened attentively to the able arguments of the learned counsel for the appellants, and to such portions of the evidence as were read to the House, I am satisfied that the decision of Eve, J., affirmed by the Court of Appeal, is correct, and that this appeal must be dismissed, with costs.

The LORD CHANCELLOR (LOREBURN), and LORDS JAMES OF HEREFORD, ATKINSON, COLLINS, and SHAW concurred.

Judgment appealed from affirmed.

Counsel for Appellants—Sir A. Cripps, K.C.—Lawrence, K.C.—Howard Wright—Colefax. Agent—R. R. Nelson, Solicitor.

Counsel for Respondents — Sir R. B. Finlay, K.C. — Upjohn, K.C. — C. James. Agents — Coode, Kingdon, & Company, Solicitors; Walker, Martineau, & Company, Solicitors.

HOUSE OF LORDS.

Tuesday, December 21, 1909.

(Before the Earl of Halsbury, Lords Macnaghten, James of Hereford, Atkinson, and Shaw.)

AMALGAMATED SOCIETY OF RAILWAY SERVANTS *v.* OSBORNE.

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

Trade Union—Rules—Ultra Vires—Parliamentary Representation—Compulsory Payments to Representatives — Trade Union Acts 1871 (34 *and* 35 *Vict. cap.* 31), *and* 1876 (39 *and* 40 *Vict. cap.* 22).

A trade union altered its rules by adding as an object "to secure parliamentary representation." The new rules also established for this purpose a money levy compulsory upon the members of the trade union, and provided that all parliamentary candidates "shall sign and accept the conditions of the Labour Party."

Held that the rules imposing the levy were invalid and unenforceable, because such objects were *ultra vires* of the trade union, or (*per* Lord Shaw) illegal as contrary to public policy.

The respondent claimed against the trade union (appellants) of which he was a member a declaration that certain levies resolved upon by the trade union were illegal and unenforceable, and also sought for an injunction. Judgment in the respondents' favour was pronounced by the Court of Appeal (Cozens-Hardy, M.R., Moulton and Farwell, L.JJ.), reversing a judgment of Eve, J. The purposes for which the levy was demanded are discussed at length in their Lordships' opinions, which were delivered, after consideration, as follows:—

Earl of Halsbury—I think that the decision of this case must depend upon the construction which your Lordships will place upon the Statute 34 and 35 Vict. cap. 31. In the definition clause of that Act it is enacted that the term "trade union" means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business as would, if this Act had not passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade. This was amended in the 16th section of the Act 39 and 40 Vict. cap. 22, as follows:—"The term trade union means any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the principal Act had not been passed, have been deemed to have been an unlawful combination by reason of one or more of its purposes being in restraint of trade." The first section of the earlier Act protects any purposes of a trade union from being held to be unlawful merely because they are in restraint of trade, with the consequence that no agreement is to be rendered void or voidable. By the 4th section it is provided that nothing in the Act shall enable any court to entertain any legal proceeding for enforcing or recovering damages for the breach of any agreement between members of the union—(1) Concerning the conditions on which they shall or shall not sell their goods, transact business, employ or be employed. (2) Any agreement for the payment by any person of any subscription or penalty to a trade union. (3) Any agreement for the application of the funds of a trade union—(*a*) to provide benefits to members; (*b*) to furnish contributions to any employer or workman not a member of such trade union in consideration of such employer or workman acting in conformity with the rules and resolutions of such trade union; (*c*) to discharge any fine imposed upon any person by sentence of a court of justice. The Act is, as it were, a charter of incorporation, and it undoubtedly renders some things lawful which but for the enactment would be unlawful, and with a degree of minuteness gives a specific authority to certain contracts and to certain applications of funds that appear to me to be absolutely exhaustive. The question of how far and to what extent trading corporations were limited by their memoranda of association, which bear a close resemblance to what is here enacted as applicable to trade unions, was very amply discussed in *Ashbury Railway Company* v. *Riche* (L.R., 7 H.L. 653). The House of Lords in that case—consisting of Lord Cairns, L.C., Lord Chelmsford, Lord Hatherley, Lord O'Hagan, and Lord Selborne—have settled the law in a manner which seems to me to dispose of this case. It is true that the Act does not make the trade union a corporation; but taking the only distinctive word used, a "combination," it can hardly be suggested that it legalises a combination for anything, and if some limit must be placed on its powers, one can only apply the same rules as were agreed to by the noble and learned Lords in that case, and it certainly would not be easy to find a more supreme authority than the judgment in that case. This statute I think gives the charter for all such "combinations," and what is not within the ambit of that statute is, I think, prohibited both to a corporation and a combination; it only exists as a legalised combination having power to act as a person and to enforce its rules within the limits of the statute, whatever those limits are; and in the matter most relevant to the present question it has with great care protected from inter-