It is impossible to do justice here to the elaborate consideration given to this matter by the two judges; however, the main thread in the reasoning in each judgment is sufficiently clear to be stated shortly. An answer to the difficulty just mentioned, found by Atkinson J. in *Receiver for Metropolitan Police District v. Tatum*,[20] and suggested in argument in the present cases, was that the ultimate responsibility for the loss occasioned by the accident should rest on the defendant because the Receiver had been compelled by the defendant's negligence to pay out from the fund entrusted to him a sum of money for no return. Slade J., in the Receiver's case, in effect accepted this answer; but in the Monmouthshire case, Lynskey J. rejected it because: "If that means that the negligence has compelled him to pay, that, of course, is not so. He paid because he was under a legal obligation to pay under the *Metropolitan Police Act*. If he means by that that he has been compelled to pay and in respect of that payment has received no return of service, then that is a claim for loss of service".[21] Slade J., on the other hand, thought that the fact that no services were rendered in return for the Receiver's payment, and the fact that the defendant *would* have been liable to the policeman for loss of wages if the Receiver had not been statutorily obliged to pay them, had to be considered together, with the result that the true basis of the Receiver's claim could be seen to be, not the loss of service, but the unjust benefit enjoyed by the defendant at the Receiver's expense. When these cases are considered by the Court of Appeal, as they are certain to be before long, the Court must decide not only whether or not Slade J. was correct in seeing the unjust benefit as the true basis of the Receiver's claim, but also whether the quasi-contractual principle relied on can in any case extend to cover such a situation.

J. K. ARMITAGE*

INDUSTRIAL LAW

Status of Trade Unions

The House of Lords in *Bonsor v. Musicians Union*[1] settled the practical point that a member of a trade union who is expelled in breach of the rules can sue for damages, but on the question whether a trade union is a juristic entity at law it is anything but clear. It had been accepted for some length of time that in the case of an expulsion which was unauthorised by the rules the injured member could obtain

20. [1948] 2 K.B. 68, at 72.
21. [1956] 1 W.L.R. at 1146.

* B.A. (Syd.), LL.B. (Qld.); Barrister-at-Law; Lecturer in Law, University of Queensland.

1. [1956] A.C. 104.

a declaration and an injunction but in *Kelly v. National Society of Operative Printers*[2] it was held that there was no right to damages, firstly because the trade union was not a legal personality like a corporation which could be sued as such in its registered name and secondly because, regarding the trade union as merely an association of individuals, the plaintiff could not treat the expulsion as being the act of the whole body performed through the expelling officials as agents so as to make the community funds liable because the expelling officials would on that basis be also agents for himself. It would follow that the plaintiff would be suing himself among others.[3] In the *Bonsor* case a set of facts very similar to those arising in *Kelly* occurred save that the invalid purported expulsion was the act of the secretary instead of the committee and save that the injury sustained by the plaintiff probably induced more notoriety because of the fact that the Musicians Union, from which he had been expelled, operated a "closed shop" and Bonsor was unable to find employment at a commensurate wage.

The Court of Appeal, with the dissent of Denning L.J., considered themselves bound by *Kelly's* case in both its aspects though it is not certain from the remarks, for instance, of Lord Evershed M.R.[4] that, had the path been otherwise open, the majority would have decided in favour of Bonsor.

In the House of Lords the appeal was allowed. Two members, *viz.* Lords Morton and Porter, basing themselves on the decision in the *Taff Vale*[5] case, held that a trade union, by virtue of registration under the *Trade Union Act*, became a legal entity, though it did not have the full status of an incorporated body. It therefore could be sued as such.

Lord MacDermott (with whom Lord Somervill was in substantial concurrence) on the other hand, adopted, so far as phraseology is concerned, the view that the trade union, even though registered, remained a mere collection of individuals. In the view of both law lords the decision in the *Taff Vale* case was of procedural import only. The action against the trade union in its registered name was akin to an action against an unincorporated association of individuals through

2. (1915) 84 L.J.K.B. 2236.
3. It is uncertain whether this point regarding the plaintiff seeking to sue himself was intended by the Court in *Kelly's* case as a separate ground or is merely something that is bound up with the other ground *viz.* the agency point. In the *Bonsor* case Lord MacDermott treats it as a separate point of a procedural nature; Lord Keith does not.
4. See [1954] Ch. at 505.
5. *Taff Vale Railway Co. v. Amalgamated Society of Railway Servants* [1901] A.C. 426.

the use of the representative party procedure. In both cases you secured a judgment which was enforceable against the common fund and not against the private funds of the individuals but the use of the registered name had this advantage, namely that you did not have to worry about the state of the membership *e.g.* whether there had been changes in membership between the time of the wrongful act and the time of action brought or whether some of the members were infants or had voted against the expulsion.

Lord Keith, whilst appearing at times to be attempting the seemingly impossible feat of adopting both of the two views, seems eventually to say that the trade union is not a legal entity so that on the opinions presented the "Noes" seem to have it.

None of the three law lords who rejected the theory of juristic personality, however, were at all inclined to accept the other ground in *Kelly's* case on which the plaintiff failed in that case. Even if the trade union was only an aggregation of individuals there was still a contract of membership which had been broken. Whether the ground in *Kelly* was the simple one that the plaintiff was endeavouring to sue himself among others or the more subtle one that the act of the expelling agents was the act of people who were also agents for the plaintiff or whether it was a combination of both, they treated it with equal disapproval. It was pointed out that whilst a trade union official might be regarded as acting as agent for a member in some matters it was highly unreal to say that the act of thrusting a party to the association out of the association could in any sense be regarded as an act done on behalf of the person so thrust out.[6]

Much play was made in the *Bonsor* case with phrases such as "juristic personality", "legal entity", "quasi-corporation", "near-corporation" and the like. It is doubtful however whether this sound and fury of nomenclature means much and whether much hangs on a fine analysis of juridical personality. If Lord MacDermott accepts, as accept he does, the position that the action against the registered name may proceed irrespective of changes in the composition of the trade union membership and that judgment is enforceable against the common fund and not the individual, then it seems that he concedes that the trade union *has* some sort of legal existence distinct from its members and the fact that it still lacks a common seal and cannot call itself a corporation does not seem to matter much. In any practical situation the difference btween the view of Lord Morton and that of Lord MacDermott would seem to be of little importance. The important thing is that the trade union can be sued as a trade union.

6. See [1956] A.C. at 147-149 (Lord MacDermott).

Situations which might call for a decisive choice between the two views are hard to imagine and, it is submitted, not likely to occur as matters of practical politics.

It should perhaps be added that the reasoning of the *Bonsor* decision is applicable only to the registered union. Moreover in Australia it is applicable primarily only to the union which is registered under the various State Trade Unions Acts. Very many unions are also registered under the Federal and State statutes which deal with the process of compulsory conciliation and arbitration. Under these statutes the union is given a limited corporate status. Where these provisions become inapplicable then the *Bonsor* decision becomes relevant, though of course it is not technically binding on our Courts, to a union which is also registered under the Trade Union Acts. How far the incorporation provisions of the arbitration statutes apply however is a matter of great doubt, especially in the Commonwealth sphere.

EDWARD I. SYKES*

LAND LAW

Proof of Title in Ejectment

In *Allen v. Roughley* (94 C.L.R. 98) the High Court came within view of a fundamental problem of real property law, but gave a decision only on a subsidiary question within the general problem. The main question, which has been the subject of controversy amongst text writers in recent years, is whether the plaintiff in an action of ejectment must show a title good against the whole world, or whether it is sufficient for him in this action (as it was in the old real actions) to show a title better than the defendant's. The subsidiary question, on which the Court gave a decision, is whether a plaintiff relying on evidence of possession can recover against a defendant not shown to be a trespasser, where the prior possession on which he relies has not continued for twenty years.

Under the old law, if A was rightfully seised of land in fee simple, and B disseised him, B thereby acquired an estate in fee simple by wrong. According to *Leach v. Jay* (9 Ch.D. 42) this is still the law. This estate gave B rights which he could enforce by the real actions against anyone but A. Thus if C in turn disseised B, B could by novel disseisin, writ of entry, or writ of right recover the land from C. If A's title became time-barred, B's title became the best title, and so on with subsequent titles. For the purposes of these actions it was irrelevant to inquire who was the owner of the land. Even in an action by writ of right, it was not absolute right that was in ques-

* B.A. (Qld.); LL.D. (Melb.); Senior Lecturer in Law in the University of Queensland.