meaning and without any presumption that it was intended to do no more than restate the existing law".[13] And yet references[14] are to be found in the arguments and judgements to principals in the second degree and abettors, neither of which terms is used in the Code; and every book and case cited is on the common law. True it is that the dictum just quoted lays emphasis on having regard to the precise words of the statute; but this approach can be misleading unless due regard be had to the part those words play *in the scheme of the code.* It is submitted that so far as s. 7 of the Queensland Criminal Code is concerned, the law is to be found in *Solomon* and not in *Brennan v. The King.*

An order was made for a new trial of Solomon for manslaughter only, he having been already acquitted of murder by the verdict in the first trial.

COLIN HOWARD*

INDUSTRIAL LAW

Trade Union: Validity of political levy: Liability for Torts

For reasons of limitation of space it is proposed to notice only two aspects of the many-sided decision of the High Court in *Williams v. Hursey*,[1] viz. (*a*) the validity of the political levy, a matter which involves some consideration of the legal status of an "organization" registered under the Conciliation and Arbitration Act (Commonwealth) and (*b*) the tort liability of the union for acts which were *ultra vires* because illegal.

The Hobart branch of the Waterside Workers Federation purported to impose a levy to aid the Australian Labour Party in a Tasmanian State election and the respondents, members of a breakaway political party, refused to pay it. The Branch and Federation claimed that as a result the respondents had ceased to be members of the union and that the Stevedoring Industry Authority should not have continued to roster them for employment on the waterfront. The Federation was registered as an "organization" under the Federal Arbitration Statute but neither it nor its Branch was otherwise registered. Burbury C.J. of the Supreme Court of Tasmania before whom the proceedings first came and from whose judgment appeal was brought to the High Court, held that it was competent for the union to provide in its rules for such a levy but that as a matter of interpretation of the union rules no such power was given by the rules.

13. 55 C.L.R. 263.
14. 55 C.L.R. 256, 259, 265, 266, 269.
1. (1959) 33 A.L.J.R. 269.

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The High Court held that there was nothing to preclude the union from giving itself such a power. The justices were unanimous that the decision of the House of Lords in *Amalgamated Society of Railway Servants v. Osborne*[2] that it was *ultra vires* for a trade union to provide in its rules for such a matter depended upon a particular restrictive definition of "trade union" in the English Trade Union Act and had no application to a body which drew its corporate life as an "organization" from the Federal statutory arbitration law. It was pointed out that the arguments seeking to limit the power of the union in this respect were all drawn from State law, viz. the Tasmanian Trade Union Act, but it was incompetent for State law to crib and confine the powers of the "organization" which was constituted a corporation by Federal statute. Taylor and Menzies JJ. were of the view that the *Osborne* decision would be applicable to unions which were registered under a State statute. Fullagar J. was non-committal on this point but all agreed that the capacities conferred by registration under the Federal Act were not to be restricted by the fact that the "organization" which was registered also answered to the description of a "trade union" under a State Trade Union Act.

The Federal Act in terms confers corporate status on associations registered thereunder "for the purposes of this Act". Fullagar J., who was the only justice to deal specifically with this point, was of the view that this provision was enough to give to the registered organization the full character of a corporation. The words "for the purposes of this Act" could not be given any effect by way of qualification of the personification. The notion of qualified legal capacity, he said, was intelligible but not that of qualified legal personality.[3] He regarded the status of the Federation as entirely a matter of construction of the Federal Act and in no way dependent on the *Taff Vale* case[4] (or, one might add, the decision in *Bonsor v. Musicians Union*[5]).

The judgments point out that there is nothing in the Federal Act suggesting any limitation on the power to apply funds to political objects. It was provided in the Regulations made pursuant to the Federal Act that the rules of an organization may provide for any matter "not contrary to law". If this could be regarded as meaning "not contrary to State law" then the position was that it was never contrary to State law to provide for a political levy. At the most it would be unenforceable and the expression "contrary to law" was not synonymous with "not enforceable at law".

2. [1910] A.C. 87.
3. 33 A.L.J.R. at 273.
4. *Taff Vale Railway Co. v. Amalgamated Society of Railway Servants* [1901] A.C. 426.
5. [1956] A.C. 104.

On the question whether the union rules authorised the making of the levy, it was clear that there was no specific authorisation in the rules, but the High Court, disagreeing with Burbury C.J. on this point, held that the general object (stated in the rules of the Federation) to protect the interests of members, raise their status and improve their conditions would cover any action which could fairly and reasonably be regarded as likely to further the interests of the organization and its members; in view of the historical connection between trade unionism and the Labour Party both in Britain and Australia, it was impossible to contend that the general statement of objects in the rules of the appellant Federation did not authorise the body to support by propaganda and financial assistance another body whose professed ultimate aims were identical in essential character to its own.

In relation to the question of the liability of the union for *ultra vires* and in fact illegal activities, the judgments are not very illuminating. The union was held civilly liable in conspiracy on the basis of acts which were held to amount to assaults and to involve offences under the *Stevedoring Industry Act.* Accepting the view of Fullagar J. that one cannot have a body with a qualified legal personality, yet it is possible that a body which is given personality by the law may have qualified capacities and it would seem impossible to contend that a union which resorted to illegalities in the course of direct action was acting "for the purposes of" an Act which is devoted to the settlement of industrial disputes by means of conciliation and arbitration. However, it seems that nothing can be drawn from such considerations as the trend of the decisions and of text-book authority is to hold commercial companies and other corporations tortiously liable for acts committed in the course of *ultra vires* activities.[6] There is little discussion of the point in the High Court judgments. Reliance is placed on the *Taff Vale* decision[7] but with respect this is not very convincing because whatever juristic status the English Trade Union Act gives to a trade union registered thereunder, there is no limitation of capacity by reference to the purposes of that Act.

EDWARD I. SYKES*

LAND LAW

Lease or Licence

In *Raidich v. Smith*[1] the respondent by deed granted rights to the appellant which in substance gave to the appellant the

6. See Salmond, *Law of Torts* 12th Ed. p. 67; *Campbell v. Paddington Corporation* [1911] 1 K.B. 869.
7. *Supra* n. 4.
1. (1959) 33 A.L.J.R. 214.

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