

trade union, whereby he agreed, that in the event of being able to return to his trade he would refund £100 received from the union on the supposition that he was permanently disabled. If a member failed in such circumstances to refund, the society, by its rules, was empowered to institute legal proceedings for the recovery of the amount. A Divisional Court (Phillimore, and Bankes, JJ.), had held (1911) 2 K.B. 132 (noted ante, vol. 47, p. 455), that the action was maintainable, but the majority of the Court of Appeal (Williams, and Buckley, L.JJ.), hold that the action is one within the meaning of s. 4 of the Trade Union Act, 1871, (see R.S.C. c. 125, s. 4), and, therefore, is not maintainable. Kennedy, L.J., however, dissented from this conclusion. The majority of the Court thought that the agreement to pay the £100 and the agreement to refund constituted but one bargain, and as the agreement to pay could not have been enforced by action so neither could the agreement to refund. Kennedy, L.J., thought the agreement to pay and the agreement to refund were distinct, and while the former could not be enforced by action, yet the agreement to refund was not an agreement within the meaning of the statute and was enforceable by action.

BREACH OF CONTRACT—DAMAGES—ACT DONE BY PLAINTIFF IN MITIGATION OF DAMAGES—SPECIAL CASE STATED BY ARBITRATORS—OPINION OF COURT THEREON—OPINION OF COURT FOLLOWED BY ARBITRATOR IN AWARD—APPEAL—ERROR ON FACE OF AWARD.

*British Westinghouse Co. v. Underground Electric Railway* (1912) 3 K.B. 128. This was an appeal from an award in which two interesting questions were raised, first whether the advice which the court gives to an arbitrator on a stated case, which advice he follows subsequently in the award he makes, is appealable; and secondly, whether a plaintiff, who in order to mitigate the damages resulting from a defective machine being delivered under a contract, purchases another and superior machine whereby the damages are in fact lessened, can recover the price of such other machine, the purchase of such other machines being a pecuniary advantage to the plaintiff even though the machine supplied by the defendant had been in accordance with his contract. On the first point, the Court of Appeal was divided in opinion, Buckley, and Kennedy, L.JJ., deciding that although the consultative opinion of the court was not appeal-