excluding preference shareholders from participating in the surplus, he held them entitled to share therein with the ordinary shareholders.

RESTRAINT OF TRADE—CO-OPERATIVE SOCIETY—RULES RESTRICTING TRADE BY MEMBERS OF SOCIETY—ULTRA VIRES—MEMBERS DISPUTING VALIDITY OF RULES—ARBITRATION CLAUSE—ACTION IMPEACHING RULES.

McEllistrim v. *Ballymacelligott Co-operative Society* (1919) A.C. 548. This was an appeal to the House of Lords from the Irish Court of Appeal. The action was brought by a member of an incorporated co-operative society impeaching certain rules of the society as being in restraint of trade. The society was formed for carrying on the manufacture of butter and cheese from milk to be supplied by its members. The objectionable rules provided that no number should, without the consent of the society, sell milk or cream within a considerable area, extending to eighty townships, to any other company, person, or society. They also provided that a member could not withdraw from the society without its consent. The rules also contained an arbitration clause in cases of disputes between the society and its members. The defendants sought to stay the action on the ground that it was a dispute between a member and the society, and therefore within the arbitration clause, but this motion was refused in the Court below and as the House of Lords (Lord Birkenhead, L.C., and Lords Finlay, Atkinson, Shaw and Parmoor) held rightly so, on the ground that a contention that the rules of the society were *ultra vires* was not a dispute between a member and the society within the meaning of the arbitration clause. At the trial Barton, J., held that the rules were in undue restraint of trade and gave judgment in favour of the plaintiff, but this was subsequently reversed by the Irish Court of Appeal (Sir I. J. O'Brien, L.C., and Ronan and Maloney, L.JJ.). The House of Lords have now reversed the latter judgment and restored that of Barton, J., because for an indefinite time members were restrained from selling cream or milk except to the society; because they were restrained from withdrawing from the society without its consent: and although it was conceded that the society was entitled to impose some restraint on sales by its members, yet it was considered that the combined effect of the rules above referred to were in excess of what was reasonably necessary, and were therefore *ultra vires* of the society.