

## HERBERT KINGABY

### “Retain and Transfer” Test Case

Kingaby was playing for Clapton Orient when, in March 1906, he was transferred to Aston Villa for a fee of £300. Whilst at Clapton Orient, he was employed during the week by a wool company and so could only play football at the weekends and, when he transferred to Aston Villa, they were aware of this restriction on his availability. After his first few games, Aston Villa decided that they had made a mistake and offered him back to Clapton Orient for £350; i.e. the original fee plus £50 for the wages paid to him in the interim. However, Clapton Orient did not want him back at that price and no other club was interested in him with such a transfer fee required. Aston Villa offered to retain him at the maximum £4 per week wage, provided that he played in midweek matches which, because of his employment, he could not do.

Unable to move to another Football League club without a significant fee being paid, Kingaby instead joined Fulham in the Southern League. This course of action was possible because, at that time, the two leagues had no reciprocal agreement on transfers. Consequently, Aston Villa received no transfer fee from Fulham. Later he moved on to Leyton at a wage of only £2 per week, but at least he was playing football. However, in 1910, the Football League and the Southern League reached agreement on the recognition of transfers and Kingaby found that he was still on Aston Villa's transfer list at £350, a price which was now even more unrealistic than before. He placed an advertisement in a sports newspaper and, as a result, was approached by Croydon Common with an offer of £2 per week, but the Robins could not afford the transfer fee upon which Aston Villa were still insisting. As he could no longer play in the Southern League, he moved on to Peterborough City in the South Eastern League, at a weekly wage of only thirty shillings. Finally, the matter went to court when the Players' Union decided that it would make a good test case with which to challenge the Football League over the “retain and transfer” system and so offered to meet Kingaby's costs.

The Players' Union understandably wished to prove that the “retain and transfer” system was illegal. Under the system, which was introduced into the Football League's rules from the start of the 1893-94 season, once a player was registered with a Football League club, he could not be registered by another club, even in subsequent seasons, without the permission of the club with which he was registered. It applied even if the player's annual contract with the club holding his registration was not renewed after it expired. The club was not obliged to select him to play and, without a contract, the player was not entitled to receive a salary. Nevertheless, if the club refused to release his registration, the player could not play for any other Football League club. The system was introduced for a laudable reason, i.e. to prevent richer clubs luring away players from poorer ones, but the Players' Union considered that it was being used by some clubs in a manner which prevented some professional footballers from earning a living, as in the case of Kingaby.

Just before the case was due to go to court, Aston Villa reduced the required fee to £50, but the Players' Union decided to still proceed with the action. The case of Kingaby v. Aston Villa was heard before a special jury in the King's Bench Division of the High Court on 26 March 1912. Kingaby's claims were that (i) Aston Villa had prevented him from finding employment by their malicious action in placing an artificially high valuation upon him and (ii) that the “retain and transfer” system operated under the Football League's rules was illegal. Clearly, the second of these was put forward on behalf of the Players' Union, which is why it was meeting Kingaby's costs. However, after hearing the evidence put forward by Kingaby's Counsel, the Judge decreed that there was no case to put to the jury and threw out the claim without Aston Villa being required to offer any defence. When the Judge gave his pronouncement, Kingaby's Counsel said that consideration would be given to submitting an appeal to the Court of Appeal and this option was discussed by the Players' Union at its meeting in Bradford on 2 April, but a decision was adjourned to a later meeting. However, it does not appear that an appeal was ever made, possibly because the Players' Union did not wish to risk incurring further costs. The outcome of the case was a bitter blow for the Players' Union, which had to bear costs of £1,000. The Croydon newspapers made no mention of all this when Kingaby joined; they did not even state whether a transfer fee was paid, although it seems unlikely that the Common could have afforded a £50 fee, but it is possible that Aston Villa further reduced, or even waived, the fee having made their point.