JACQUES PERRAULT (PLAINTIFF).....APPELLANT ; 1897

AND *Oct. 9, 11.

ALPHONSE GAUTHIER AND OTHERS (DEFENDANTS)..... } RESPONDENTS. 1898 *Feb. 16.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA (APPEAL SIDE.)

Action, cause of—Trade Union—Combination in restraint of trade—Strikes—Social pressure.

Workmen who in carrying out the regulations of a trade union forbidding them to work at a trade in company with non-union workmen, without threats, violence, intimidation or other illegal means take such measures as result in preventing a non-union workman from obtaining employment at his trade in establishments where union-workmen are engaged, do not thereby incur liability to an action for damages.

Judgment of the Court of Queen's Bench (Q, R. 6 Q. B. 65) affirmed.

*PRESENT:—Taschereau, Gwynne, Sedgewick, King and Girouard JJ.

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APPEAL from the judgment of the Court of Queen's Bench for Lower Canada (appeal side) (1) reversing the decision of the Court of Review (2) and restoring the judgment of the Superior Court, District of Montreal, (3) by which the plaintiff's action had been dismissed with costs.

The plaintiff brought his action for damages against the officers of a workingmen's union, known as "l'Union Ouvrière des Tailleurs de Pierre," alleging that these persons and the members of the Union had illegally combined and conspired together to injure the plaintiff and had maintained in existence a permanent plot against him in the form of an association amongst tradesmen in the City of Montreal following the same trade as himself, and thereby had completely deprived him of the free exercise of his trade and prevented him from obtaining employment as a stone-cutter, and thus reduced him to misery and rendered it difficult and almost impossible for him to provide for the wants of his family. The declaration set up three incidents in support of the plaintiff's claim, as follows:—First, that the defendants caused strikes at a stone-yard on account of plaintiff's employment, which however had been successfully resisted and plaintiff's employment there continued for some time: Secondly, that afterwards when he had established a stone-yard of his own where the work was done by non-union workmen the defendants approached his workmen with a request that they should raise their rate of wages, and being refused, they and their union illegally combined to make the sale of stone by him unprofitable, and brought about such a reduction, or "cut" in the prices of building stone that he was obliged to close his stone-yard and

(1) Q. R. 6 Q. B. 65. (2) Q. R. 10 S. C. 224.
(3) Q. R. 6 S. C. 83.

abandon the business; and Thirdly, that on a later occasion, when he had obtained employment in Perrault & Riopel's stone-yard, the union men employed there on being told that he belonged to an opposition union left work "without saying a word" or giving any reason; that this "strike" was maliciously instigated by the defendants and their union who had posted him as a "scab" on account of his having left their union and he was in consequence compelled to quit work there in order to avoid causing loss to his employers, (one of whom was his brother) and that as a result of such combination and conspiracies he was deprived of the means of earning a living at his trade in any stone-yard in Canada or in the United States.

The judgment of the Superior Court dismissed the action, but on appeal to the Court of Review this decision was reversed and a verdict entered in favour of the plaintiff. The Court of Queen's Bench, however, allowed an appeal from the judgment in Review and restored the first judgment, dismissing the action. From this latter judgment the plaintiff has taken the present appeal.

Lafleur and *Lanctot* for the appellant cited arts. 1053, 1106 C. C.; 20 Laurent, nos. 405, 408, 410-412; *Joost* v. *Syndicat de Jallieu* (1); 8 Huc, nos. 402-406; *Perrault* v. *Bertrand* (2); *Valin* v. *Lebrun* (3); Cooley on Torts 281; and referred to the remarks of Esher M. R. at pages 604, 607 dissenting, in *The Mogul Steamship Co.* v. *McGregor* (4); and to the language of Bower L. J. in the same case at pages 614, 617-619. Also 27 Dal. Rep. Jur. "Industrie et Commerce," n. 406, p. 785; Crankshaw, Criminal Code, pp. 457, 458, notes.

Geoffrion Q.C. for the respondent. As no violence or threats were used the defendants' conduct did not

(1) S. V. '93, 1, 41.
(2) 5 R. L. 152.
(3) 2 Stevens Dig. (Que.) 726.
(4) [1892] A. C. 25; 23 Q. B. D. 598.

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constitute an illegal act. Nothing unlawful has been done by them. We refer to *The Mogul Steamship Co.* v. *McGregor* (1); *Temperton* v. *Russell* (2); *Wood* v. *Bowron* (3); *Reg.* v. *Druitt* (4); 20 Lambert, no. 404.

TASCHEREAU J.—Je renverrais cet appel sans hésitation. Il m'est impossible de voir la moindre illégalité dans la conduite des intimés le 9 novembre, 1892, au chantier Perrault-Riopel. Le maxime "*sic utere tuo ut alienum non lædas*" que l'appelant invoque est sans doute un principe incontestable, mais il n'est pas moins incontestable que "*qui jure suo utitur neminem lædit.*" Or, les intimés dans l'occasion en question, n'ont fait qu'user d'un droit qu'ils partagent avec leurs concitoyens de toutes classes. Et ce droit, ils pouvaient s'entendre pour l'exercer tous ensemble, tout comme chacun d'eux pouvait le faire seul. Je ne vois pas que l'on puisse douter qu'un ouvrier ait le droit de stipuler avec son patron qu'il aura droit de se retirer, si un autre tel ou tel, est employé; ou qu'un procureur ait le droit de dire à son client que si tel ou tel lui est adjoint ou continué comme conseil, il se retirera de la cause; ou que les serviteurs d'un hôtel aient le droit de notifier leur maître qu'ils quitteront à la fin de leur terme d'engagement, si une telle ou telle classe, des nègres, des Chinois ou des Juifs, par example, est employée. L'appelant invoque la liberté du travail, mais il oublie que les intimés ne lui doivent rien, ne lui sont obligés à rien, et qu'ils ont eux droit à la liberté de ne pas travailler sans être tenus d'en donner leurs motifs à qui que ce soit, si leurs patrons ne s'y opposent pas, qu'ils en ait le droit ou non.

Depuis que j'ai écrit ces quelques mots le lendemain de l'audition de la cause, mon savant collègue le juge

(1) [1892] A.C. 25; 23 Q.B.D. 598.
(2) [1893] 1 Q. B. 715.
(3) L. R. 2 Q. B. 21.
(4) 16 L. T. 855.

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Girouard, a bien voulu me communiquer ses notes. Je suis heureux de voir qu'il en soit aussi venu à la conclusion de renvoyer l'appel. Tant qu'à la cause *d'Allen* v. *Flood* (1), il me semble que même si la décision de la Chambre des Lords eût été en sens contraire, nous avons, dans l'espèce un état de choses si différent, que le résultat n'en aurait pas été plus favorable à l'appelant. Et pour ma part, mon opinion était bien et dûment formée avant la décision de la Chambre des Lords, comme je n'ai pas hésité de le faire voir à l'audition.

GWYNNE, SEDGEWICK and KING JJ. agreed that the appeal should be dismissed with costs.

GIROUARD J.—Cases involving civil responsibility, especially those affecting personal liberty, whether of trade, labour, speech or the press, are always perplexing; and the present one, which is the result of an alleged illegal and malicious interference of a trade union with the employment of a fellow workman, not a member, proves no exception to the general rule. Plaintiff's action was dismissed by the Superior Court in Montreal (Davidson J.), but was maintained in Review by Jetté and Tellier, JJ., Mathieu, J. dissenting; and in appeal the judgment of the Superior Court was restored by Sir A. Lacoste, C.J., Würtele and Ouimet, JJ.; contra, Bossé and Blanchet, JJ. Thus far, the pretensions of the appellant were upheld by four judges out of a total of nine. A recent decision by the House of Lords in a similar case, *Allen* v. *Flood* (1) still more strikingly illustrates the glorious uncertainty of the law. The trial before Mr. Justice Kennedy resulted in a verdict for the plaintiffs, which was maintained unanimously by the three judges sitting

(1) [1898] A. C. 1; 14 T. L. R. 125.

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in appeal. The case was taken to the House of Lords, but as there was a diversity of opinion among the noble and learned Lords, seven in number, a re-hearing was ordered, and this time judges of other courts were summoned to be present and tender their advice as assessors, according to an ancient practice. The re-hearing took place before nine Lords and eight assessor judges. The latter gave their opinion in June last, six being in favour of the plaintiffs, and two against. The decision of the Lords was, however, the other way, and the appeal of the trade union was allowed on the 14th December, 1897, by a majority of six to three. The reporter of the Times Law Reports (1). states that probably no precedent exists in which their Lordships have overruled such a preponderance of judicial opinion. Four judges below had unanimously been in favour of the plaintiffs, and thus, on this side, with the six assessor judges and the dissentient minority of the Lords, there were thirteen; and on the other side eight, six Law Lords and two judges. This decision is, however, the final expression of the highest tribunal in the British Empire, and must govern the present appeal if the circumstances of the case warrant its application.

The facts in the two cases are very similar in many respects, although in some *Allen* v. *Flood* (2) is much stronger for the non-union men. We dismiss two of the three incidents which at the argument before us and before every court were urged as causes of the action, although not set set forth in the declaration; they were rejected unanimously by the three courts, and we entirely concur in their finding. Therefore, the following remarks apply only to the third incident alleged in the declaration, which happened on the 9th November, 1892, at Perrault and Riopel's stone-yard,

(1) 14 T. L. R., at p. 126. (2) [1898] A. C. 1.

in the City of Montreal, and was alone the occasion of a conflict of opinion among the learned judges.

In the two cases, the contest was between union men and fellow workmen (in *Allen* v. *Flood* (1), two in number, Flood and Taylor, plaintiffs, respondents, and in this case one, the plaintiff, appellant), not members of the union, called "scabs" on this continent; the members were bound by regulations not to work with outsiders; there was no violence, nor threat of violence; the non-union men, in both cases, were working by the day.

It has been alleged that Perrault had been engaged for two months but the evidence discloses only a mere hope of employment for that length of time, and not an engagement or contract for any specific term. Clovis Perrault, one of the employers and a brother of the plaintiff, after stating that the latter was engaged by his foreman, Napoléon Goulet, says:—

Q. Votre frère avait-il de l'ouvrage pour longtemps chez vous? R. Pour une couple de mois, je pense bien. Q. Combien lui donniez-vous par jour? R. Il n'y avait pas de prix fixés.

The foreman, Napoléon Goulet, who engaged plaintiff, does not mention any contract; he merely states that plaintiff applied for work and got it.

The facts in the two cases vary in these important particulars: In *Allen* v. *Flood* (1) the non-union men, although employed by the same concern, were not doing the same kind of work; they were shipwrights doing wood-work on a vessel, whereas the union men, much larger in number, were doing iron-work on the same vessel. In the present case all the men belonged to the same trade and were employed in the same kind of work, that of cutting stone. In *Allen* v. *Flood* (1), the union men entertained a strong feeling against the non-union men, on the ground that on a previous occasion they, being shipwrights, had done iron-work

(1) [1898] A. C. 1.

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for another firm; and hence the element of malice so strongly urged by the plaintiffs. In this case there was no ill feeling whatever, beyond the reasonable regret that plaintiff had left the union to join a rival one, the "Progressive." One of the union men, Joseph Homier, who was also the "*surveillant*" of the union, approached him *en ami*, to use his own words, and asked him whether he intended to return to the union, and upon his answer

que non, qu'il appartenait à une société, qu'il n'était pas pour appartenir à deux,

Homier merely replied:

Ça c'est ton affaire, ça ne nous regarde pas.

In *Allen* v. *Flood* (1), a representative of the union called upon the employers and informed them that, if the shipwrights were continued on the job, the ironmen would leave work or be called out. In this case, the union men, numbering twenty or twenty-five, made no communication to the *patrons;* they merely withdrew in silence without, however, leaving the yard. Plaintiff says that one of them, Charles Latour, used intimidation to Clovis Perrault, and he quotes the following passage of his evidence:

Latour m'a dit que mon frère faisait bien mal de ne pas rejoindre la société, qu'il s'en repentirait plus tard.

But plaintiff has omitted the balance of the sentence: "*quand bien même il gagnerait son procès; qu'il s'en repentirait.*" These vague words can hardly amount to intimidation; but even if they did, they evidently were not used on the day of the strike, for according to plaintiff's own evidence, he had then no *procès* with the union, or the union men. In *Allen* v. *Flood* (1), the non-union men were dismissed at once in consequence of the request of the unionists. In this case the plaintiff was not dismissed; he was even

(1) [1898] A. C. 1.

pressed to remain, and told by foreman Goulet, although a member of the union, that other stone-cutters would be obtained; but he insisted upon leaving, and left at once, of his own free will, remarking to Goulet that he could not alone do the work of his brother.

The reasons why we should be guided by the English jurisprudence are plain. In 1872, the Parliament of Canada, which has jurisdiction over a matter of this nature, introduced into Canada the Imperial legislation of 1871, legalizing trade unions. The Canada Trade Unions Act (1) provides as follows:

Sec. 2. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.

Sec. 3. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust.

Sec. 22. In this Act, the term "Trade Union" means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or for imposing restrictive conditions on the conduct of any trade or business, as would, if this Act had not been passed, have been deemed to be an unlawful combination by reason of some one or more of its purposes being in restraint of trade.

The Criminal Code of 1892 has re-affirmed the legality of trade unions. See sections 517, 518, 519, 524.

These enactments are far from the royal privileges granted in old France to the "*Corps et Communautés des Arts et Métiers*" which denied all outsiders the right to exercise any trade or occupation, although perhaps the practical results may be the same, if not worse, under the *régime* of trade unions. The privileged classes existed more or less in New France, in so far as they were suitable to the condition of a

(1) 35 Vict. ch. 30 ss. 2, 22; R. S. C. c. 131, ss. 2, 3, 22.

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new settlement (1); but they disappeared with the cession of the country to Great Britain in 1763, as being inconsistent with the public rights of British subjects, which, at that time and since, until modified by Parliament, secured to them liberty of trade and commerce, and avoided all contracts, and prohibited combinations in restraint of trade.

In France, the revolution put an end to all privileged classes and proclaimed the British principle of freedom of trade and commerce; and in 1810, the Penal Code, arts 414, 415 and 416, were adopted to punish coalitions in restraint of trade and labour. These articles were modified in 1834, 1849, and again in 1864, but it was not till the year 1884 that trade unions were allowed to exist. This law, by its first article, repeals article 416 of the Penal Code, and enacts:—

Art. 2. Les syndicats ou associations professionnelles, même de plus de vingt personnes, exercant la même profession, des métiers similaires ou des professions connexes concourant, à l'établissement de produits déterminés, pourront se constituer librement sans l'autorisation du gouvernement.

Art. 7. Tout membre d'un syndicat professionnel peut se retirer à tout instant de l'association, nonobstant toute clause contraire, mais sans préjudice du droit pour le syndicat de réclamer la cotisation pour l'année courante.

It must also be borne in mind that the great principles of the Declaration of Rights of 26th August, 1789, have been emphasized in all the subsequent constitutional charters of France, and are still in force, namely: "*L'égalité civile des citoyens; la liberté de l'industrie*" (2). Articles 414 and 415 of the Penal Code are still in force, and, like sections 523 and 524 of our Criminal Code, punish intimidation, violence and threats which may be used to prevent any one from

(1) 2 Ed. et Ord. 68; 3 Ibid. 83.

(2) Gilbert sur Sirey, Codes Annotés, ed 1875, p. 1, n. 1.

working at any trade. If no violence or threat be resorted to, the offenders, whether members of a trade union or not, will not be liable to a criminal prosecution ; but in France their civil responsibility continues to attach, under the constitutional charters, as recently held by the Cour de Paris (1).

Spécialement, le syndicat professionnel qui, par des agissements abusifs, porte atteinte à la liberté du travail garantie par les lois et à l'indépendance des citoyens, commet une faute lourde engageant sa responsabilité.

The appellant relies upon a recent decision of the Cour de Cassation, *Joost* v. *Syndicat de Jallieu*, (2), decided the 22nd June, 1892, and quoted by the minority judge as an authority in his favour :—

Vu les art. 7 de la loi du 21 mars, 1884, et 1382 C. civ ; Attendu que l'art. 7, susvisé, donne à tout membre d'un syndicat professionnel le droit absolu de se retirer de l'association, quand bon lui semble ; que si, depuis l'abrogation de l'art. 416 C. pén., les menaces de grève adressées, sans violence ni manœuvres frauduleuses, par un syndicat à un patron, à la suite d'un concert entre ses membres, sont licites quand elles ont pour objet la défense des intérêts professionnels, elles ne le sont pas, lorsqu'elles ont pour but d'imposer au patron le renvoi d'un ouvrier, parce qu'il s'est retiré de l'association et qu'il refuse d'y rentrer ; que, dans ce cas il y a une atteinte au droit d'autrui, qui, si ces menaces sont suivies d'effet, rend le syndicat passible de dommages-intérêts envers l'ouvrier congédié * * * (3)

This *arrêt* has already been severely critised by eminent jurists and the remarks of Mr. Raoul Jay in a foot note (2) to the report of the same case in Sirey shew that the French jurisprudence is yet unsettled. He says :—

Admettons que l'ouvrier demandeur ait subi un dommage. L'existence de ce dommage ne peut suffire à faire naître une action en dommage-intérêts. Il faut, pour que l'action soit possible, une faute commise par les auteurs du dommage.

Cette faute, on ne la trouve pas dans notre espèce. Les membres du syndicat ne nous paraissent avoir fait qu'un usage licite d'un

(1) Dal. 96, 2, 184.
(2) S. V. 93, 1, 41.
(3) At p. 48.

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droit aujourd'hui formellement reconnu aux ouvriers, après leur avoir été longtemps dénié. Et c'est peut-être même parce que la véritable reconnaissance du droit de coalition est si récente qu'une partie de la jurisprudence a tant de peine à accepter franchement les corollaires logiques du droit nouveau.

Mr. Huc, in his *Commentaire du Code Civil* (1) although approving the *arrêt* under the special circumstances of the case, adds that it must be accepted with reserve :—

> Mais il ne faudrait pas généraliser la solution de la Cour de Cassation, car on peut concevoir une semblable menace d'interdit adressée à un patron dans un intérêt professionnel.

There is a great deal of force in the argument of Mr. Jay which covers several pages of Sirey, and although I am not prepared to go the whole length of it, I agree with him that the Cour de Cassation has greatly exaggerated the meaning of article 7 of the law of 1884. Whatever may be said for or against this decision, it is certain that the British and Canadian statutes vary in many respects from the French laws, and more particularly that article 7 of the law of 1884, upon which it is based, is not to be found in the Imperial or the Canadian statutes, and finally, as observed by Chief Justice Lacoste, there was no threat, coercion or intimidation in this case either to the *patrons* or the plaintiff; and for these reasons, that decision and others which followed in 1894, 1895 and 1896, all reported in Dalloz (2) cannot be accepted as safe guides in the interpretation of those statutes.

The Imperial Trade Unions Act (3) has been in force since 1871 and even before, in 1855, 1858, 1859 and especially 1869, laws had been enacted to remove partly the restrictions and disabilities of the common law against trade coalitions and promote trade unions. The present legislation of Great Britain, rightly or

(1) Vol. 8, n. 405, p. 538.
(2) Dal. 94, 2, 305 ; 95, 2, 312 ; 96, 2, 184.
(3) 34 & 35 Vict. ch. 31 [Imp.]

wrongly, for we have nothing to do with the policy of the law, was conquered by degrees by and through the increasing political influence of the workingmen. The English courts have had, therefore, several occasions to consider these statutes, which have been reproduced in our Canadian statute book; and finally the House of Lords has pronounced on them not only once, but twice; in 1897, in *Allen* v. *Flood* (1), and in 1892 in *The Mogul Steamship Co.* v. *McGregor* (2), and we have no hesitation in saying that its jurisprudence is binding upon us in a case like the present one.

It is contended that these statutes have merely legalized trade unions, and that, as such legal associations, they enjoy no greater rights than individuals, and that, in violation of article 1053 of the Civil Code, they cannot, with impunity, commit legal wrongs, *délits* or *quasi-délits*. Undoubtedly, such is the law; but all the commentators and the French jurisprudence unanimously hold that one who acts within the limits of his rights commits no fault, that is legal fault, and is not liable in damages. A recent writer, Baudry-Lacantinerie, and a high authority not only in France but also in Quebec, has summed up the French jurisprudence in these few words:

Tout délit civil et tout quasi-délit engendre à la charge de son auteur l'obligation d'en réparer les conséquences. La réparation consistera dans une somme d'argent, suffisante pour compenser le préjudice causé et dont les tribunaux sont appelés à déterminer le montant en cas de contestation. Cette responsabilité est édictée par l'art. 1382, ainsi concu : "Tout fait quelconque de l'homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé à le réparer." On travestit souvent cet article au palais, en disant qu'il oblige chacun à réparer le préjudice dont il est l'auteur. Ainsi formulée, la règle est beaucoup trop générale. Il peut se faire que je cause préjudice à autrui en usant d'un droit qui m'appartient ; devrai-je alors la réparation de ce préjudice ? Certainement non. Ainsi, en construisant un mur sur mon terrain qui est libre de toute

(1) [1898] A. C. 1. (2) [1892] A. C. 25.

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servitude, je bouche la vue que la maison voisine avait sur la compagne ; ou bien, en creusant un puits dans ma propriété, je tombe sur la veine d'eau qui alimente le puits voisin, et je le taris ; je ne devrai aucune indemnité de l'un ou de l'autre chef, parce que je n'ai fait qu'user de mon droit. *Neminem lædit qui suo jure utitur.* Pour que l'obligation de réparer le préjudice causé à autrui prenne naissance, il faut que l'auteur de ce préjudice soit en faute. En un mot, le préjudice dont l'art. 1382 oblige à fournir la réparation, c'est le *damnum injuria datum*, qui faisait en droit romain l'objet des prévisions de la loi Aquilia. Cass., 28 juillet 1887, S. 93, 1. 198, D. 93, 1. 585, et 15 avril 1889, S. 91, 1. 292, D. 90, 1. 136 (1).

We therefore entirely concur in the following remarks of Chief Justice Lacoste (2), speaking for the majority of the Court of Appeal :

Puisque l'union ouvrière des tailleurs de pierre de Montréal est une association autorisée par la loi, et puisqu'aucun acte illégal n'a été commis par les ouvriers, il s'en suit qu'il n'y a pas lieu d'appliquer l'art. 1053 C. C. Il manque un des éléments nécessaires à l'action en responsabilité, c'est la faute.

And elsewhere, (3)

En outre, l'intimé confond l'intention malicieuse avec la conséquence de l'acte. Les ouvriers pouvaient croire que leur acte aurait pour résultat le départ de l'intimé, mais il ne suit pas de là que leur intention était de lui nuire. Le motif de leur conduite pouvait être uniquement d'obéir aux règlements et de sauvegarder les intérêts de l'union ouvrière. Auraient-ils eu, d'ailleurs, l'intention de lui nuire, ce n'est pas tout acte fait avec cette intention qui peut être attaqué, il faut de plus qu'il soit malicieux, et l'exercise d'un droit implique absence de malice.

That is the very argument of the Law Lords in *Allen* v. *Flood* (4) ; and it would be a grave mistake to suppose that art. 1053 of the Civil Code is peculiar to the countries governed by the French or the Roman law ; it simply enunciates an elementary maxim of universal or natural law adopted by all civilized nations :

Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill.

(1) 5 ed. vol. 2, n. 1349.
(2) Q. R. 6 Q. B. 93.
(3) At page 89.
(4) [1898] A. C. 1.

Lord Watson said :

Although the rule may be otherwise with regard to crimes, the law of England does not, according to my apprehension, take into account motive as constituting an element of civil wrong. Any invasion of the civil rights of another person is in itself a legal wrong, carrying with it liability to repair its necessary or natural consequences, in so far as these are injurious to the person whose right is infringed, whether the motive which prompted it be good, bad or indifferent. But the existence of a bad motive, in the case of an act which is not in itself illegal, will not convert that act into a civil wrong, for which reparation is due. A wrongful act, done knowingly, and with a view to its injurious consequences, may, in the sense of law, be malicious ; but such malice derives its essential character from the circumstance that the act done constitutes a violation of the law (1).

Lord Herschell, at page 118, said :

It is to be observed, in the first place, that the company in declining to employ the plaintiffs were violating no contract ; they were doing nothing wrongful in the eye of the law. The course which they took was dictated by self interest ; they were anxious to avoid the inconvenience to their business which would ensue from a cessation of work on behalf of the ironworkers. It was not contended at the Bar that merely to induce them to take this course would constitute a legal wrong, but it was said to do so because the person inducing them acted maliciously. * * * (2) I understood it to be admitted at the Bar, and it was indeed stated by one of the learned judges in the Court of Appeal, that it would have been perfectly lawful for all the ironworkers to leave their employment and not to accept a subsequent engagement to work in the company of the plaintiffs. At all events, I cannot doubt that this would have been so. I cannot doubt either that the appellant or the authorities of the union would equally have acted within his or their rights if he or they had "called the men out." They were members of the union. It was for them to determine whether they would become so or not, and whether they would follow or not follow the instructions of its authorities, though no doubt if they had refused to obey any instructions which under the rules of the union it was competent for the authorities to give, they might have lost the benefits they derived from membership. It is not for your Lordships to express any opinion on the policy of trade unions, membership of which may undoubtedly influence the action of those who have joined them. They are now recognised by law ; there are combinations of employers as well as of employed. The

(1) [1898] A. C. 92. (2) At page 129.

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members of these unions, of whichever class they are composed, act in the interest of their class. If they resort to unlawful acts they may be indicted or sued. If they do not resort to unlawful acts, they are entitled to further their interests in the manner which seems to them best and most likely to be effectual.

I now proceed (1) to consider on principle the proposition advanced by the respondents, the alleged authorities for which I have been discussing. I do not doubt that every one has a right to pursue his trade or employment without "molestation" or "obstruction" if those terms are used to imply some act in itself wrongful. This is only a branch of a much wider proposition, namely, that every one has a right to do any lawful act he pleases without molestation or obstruction. If it be intended to assert that an act not otherwise wrongful always becomes so if it interfere with another's trade or employment, and needs to be excused or justified, I say that such a proposition in my opinion has no solid foundation in reason to rest upon. A man's right not to work or not to pursue a particular trade or calling, or to determine when or where or with whom he will work, is in law a right of precisely the same nature and entitled to just the same protection as a man's right to trade or work. They are but examples of that wider right of which I have already spoken. That wider right embraces also the right of free speech. A man has a right to say what he pleases, to induce, to advise, to exhort, to command, provided he does not slander or deceive, or commit any other of the wrongs known to the law of which speech may be the medium. Unless he is thus shewn to have abused his right, why is he to be called upon to excuse or justify himself because his words may interfere with some one else in his calling? In the course of argument one of your Lordships asked the learned counsel for the respondents whether, if a butler on account of a quarrel with the cook, told his master that he would quit his service if the cook remained in it, and the master preferring to keep the butler terminated his contract with the cook, the latter could maintain an action against the butler. One of the learned judges answers this question without hesitation in the affirmative. As in his opinion the present action would lie, I think he was logical in giving this answer. But why, I ask, was not the butler in the supposed case entitled to make his continuing in the employment conditional on the cook ceasing to be employed? And if so, why was he not entitled to state the terms on which alone he would remain, and thus give the employer his choice? Suppose after the quarrel each of the servants made the termination of the contract with the other a condition of remaining

(1) At page 138.

in the master's service, and he choose to retain one of them, would this choice of his give the one parted with a good cause of action against the other? In my opinion a man cannot be called upon to justify either act or word merely because it interferes with another's trade or calling, any more than he is bound to justify or excuse his act or word under any other circumstances, unless it be shewn to be in its nature wrongful, and thus to require justification.

We have been invited to examine the American jurisprudence but, under the circumstances, we consider that such an inquiry would be a mere waste of time. The simple perusal of a very recent book published by Mr Albert Stickney, on "State Control of Trade and Commerce," will suffice to convince any one that the American jurisprudence is far from being settled, or that it is satisfactory even to the American Bar and public.

For these reasons we are unanimously of opinion that the appeal must be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *P. Lanctot.*

Solicitors for the respondents: *Geoffrion, Dorion & Allan.*