WILLIAM NEWELL (PLAINTIFF).....APPELLANT; 1949

AND * Nov. 14, 15

H. BARKER and JOHN W. BRUCE (DEFENDANTS) ..... } RESPONDENTS. 1950

* Feb. 21

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Labour Law—Trade Unions—Union Officials told general contractor, that in event of sub-contractor employing non-union labour the union men would not work on the job, as a result sub-contract was cancelled—Whether act of Union Officials unlawful interference with sub-contractor's contractual relations.

A general contractor under an agreement with a Union, of which the respondents were officers, undertook to employ on its contracts only union labour for that class of work in which the Union engaged. Having secured a contract for a building project it assigned part of the work to a sub-contractor which also employed only union labour. The latter, in the belief that the appellant was also an employer of union labour, gave a contract for part of such work to the appellant and the general contractor sharing the same belief, approved. The respondents, on learning of the contract awarded the appellant, advised the general contractor that their Union under the circumstances would be unable to supply it with union labour for other work of the same general nature as that awarded the appellant. The general contractor then told its sub-contractor that non-union men

PRESENT:—Kerwin, Taschereau, Rand, Estey and Locke JJ.

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could not work on the job and the sub-contractor then advised the appellant that any men he employed there must be union men, and the appellant agreed.

At the time the appellant secured his contract he was aware of the Union's rule forbidding its members to work with non-union men engaged in the same class of work, and of its further rule whereby it entered into collective agreements with the Master Plumbers Association only and not with individual master plumbers such as the appellant. Notwithstanding, he made no effort to join the Master Plumbers Association, nor did his workmen apply to join the Union. He however attempted to negotiate with the Union through the respondents but without success. The contract he had obtained was thereupon terminated by mutual consent and he then brought action against the respondents claiming they had conspired to interfere with his contractual relations.

Held: The respondents as officers of the Union were within their rights in advising the general contractor of the consequences that would ensue if the appellant carried out his contract by the employment of non-union labour. The evidence did not support the contention that they conspired to injure the appellant, nor that any acts on their part, or of either of them, was the cause of the cancellation of the appellant's contract.

Smithies v. *National Association of Operative Plasterers,* [1909] 1 K.B. 310, and *Larkin* v. *Long,* [1915] A.C. 814, distinguished. *Local Union No. 1562, United Mine Workers of America* v. *Williams and Rees,* 59 Can. S.C.R. 240 at 247 referred to; *Quinn* v. *Leathem,* [1901] A.C. 495 and *Lumley* v. *Gye,* (1853) 2 E. & B. 216, applied.

Per: Rand J.—The proper view to attribute to the cancellation of the contract was not the refusal of labour by the respondents but to the chosen course of action by the building contractor.

Per: Rand J.—It is now established beyond controversy that in the competition between workmen and employers and between groups of workmen, concerted abstention from work for the purpose of serving the interest of organized labour is justifiable conduct. *Crofter Harris Tweed Co.* v. *Veitch,* [1942] All. E.R. 142.

Judgment of the Court of Appeal, [1949] O.R. 85; [1949] 1 D.L.R. 544, affirmed.

APPEAL from a judgment of the Court of Appeal for Ontario (1), affirming the judgment of the trial judge, Smiley J. (2), dismissing the plaintiff's action for damages and for an injunction for interfering with his contractual relations.

G. T. Walsh, K.C., and *Thomas Delaney,* K.C., for the appellant.

A. W. Roebuck, K.C., and *D. R. Walkinshaw* for the respondents.

(1) [1949] O.R. 85; [1949] 1 D.L.R. 544.

(2) [1948] O.W.N. 625; [1948] 4 D.L.R. 64.

The judgment of Kerwin, Taschereau and Estey, JJ. was delivered by:—

ESTEY J.:—The appellant (plaintiff) carries on business as a master plumber, steamfitter and sprinklerfitter in the City of Hamilton and brings this action against Barker, business agent of Local 67 in Hamilton of the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada (hereinafter described as the "union" where the general association is referred to, or "Local 67" if only the local association is referred to), and the defendant Bruce, official organizer for Canada of the union.

The appellant's contention is that the respondent Barker conspired with the members of Local 67 and the respondent Bruce to injure and obstruct by unlawful means the appellant in pursuit of his business, in consequence of which the W. H. Cooper Construction Company Limited (hereinafter referred to as "the Cooper Company") cancelled a large contract with the appellant for work upon the Proctor & Gamble building in Hamilton.

The appellant's claim for damages and an injunction have been rejected both at trial and in the Appellate Court.

The evidence is largely concerned with the contracts in respect of the construction in 1945 of a large building for Proctor & Gamble Company of Canada Limited in Hamilton. H. K. Ferguson Company Inc. of Cleveland had the contract for its construction and entered into a sub-contract with the Cooper Company for the construction thereof, except that it would itself install "all the new equipment and all the process piping work, and oil refinery, and all those various processes that they use on refining for their soap business." Moreover, the plans were prepared by H. K. Ferguson Company Inc. and its engineers and those of Proctor & Gamble Company of Canada Limited. H. K. Ferguson Co. Inc., had a project manager to whom the Cooper Company had to answer and who approved of all sub-contracts let and materials purchased by the company. A. C. Davis was the project manager.

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H. K. Ferguson Company Inc. had an agreement with the union under which it could employ upon the construction of this building only union men. Moreover, the constitution of the union provided that no member of the union was permitted to work on any job where non-union men were employed on similar work.

The Cooper Company called for tenders for some of the plumbing and steamfitting they were required to do under the contract and as a result offered a contract to Adam Clark Company. Adam Clark Company did not feel, because of their other work, they had sufficient men to undertake this contract, with the result that it was then offered to the appellant. When appellant indicated his willingness to accept, he was told by the Cooper Company to go ahead. He did so, doing a small amount of work and ordering some materials. H. K. Ferguson Company Inc. through its representative Davis approved of Cooper Company accepting appellant's tender. At that time neither Davis nor Cooper knew appellant employed non-union men.

When Barker heard of the possibility of the appellant, who employed non-union men, getting this sub-contract, he immediately communicated with Bruce. Bruce at once, on November 8, 1945, spoke to Davis as follows:—

> I called his attention to the fact that Mr. Newell was a non-union employer and that it would interfere with all of the rest of his operations * * * I made it clear to him that if he desired to have the rest of his work done by members of the United Association, in accordance with the terms of our agreement, that he would have to see that union men were employed on that other work.

Davis immediately spoke to the Cooper Company:—

> I told Mr. Cooper that a non-union man could not work there, because I expected to do a lot of industrial work, and the International men would not work along with them on the same job, which he knew.

Ralph Cooper up to that time understood the appellant hired union men and in fact stated that had he known appellant was not employing union men he would not have offered him the work on this building. Ralph Cooper immediately told appellant "I want it clearly understood that all men that you put on the Proctor & Gamble project must be union men." The appellant admits that the Cooper Company so insisted. He also acknowledges that

he knew that union and non-union men could not work on the construction of this large building because of the union rules, and says that he immediately endeavoured to make a contract with the union that would permit him to do so.

Appellant's first approach to the union was on Saturday, November 10, when he and Barker had a conversation on the street. The respective versions of this conversation are quite different except that it is agreed appellant asked that he be permitted to sign a contract with the union. Whatever Barker's precise reply may have been, he did not encourage appellant, who interpreted his attitude as a refusal. Early that afternoon appellant advised Ralph Cooper to that effect. Ralph Cooper then communicated with Barker and as a consequence, on the following Monday, November 12, Barker, Bruce, Cooper and Davis met at a conference. As to the discussion at this conference there are again contradictions as to the precise language used, but it appears that Bruce did in effect intimate that he could not prevent the Cooper Company contracting with the appellant, but if non-union men were employed he would have difficulty in supplying the men to H. K. Ferguson Company Inc. on their part of the work. The qualifications and possibility of appellant's men joining the union were discussed, as well as that of an agreement or arrangement by which appellant might be permitted to employ union men, but no progress was made toward the attainment of this end. It was agreed at this conference that the Cooper Company would again approach Adam Clark of the Adam Clark Company and Bruce stated that if that company would undertake the contract he would endeavour to get the necessary men.

When Cooper advised the appellant that at this conference nothing had been attained on his behalf, the latter requested a further delay of four days and said that he would write a letter "over the heads of Bruce and the business agent." That same evening at about nine o'clock appellant delivered his letter to Barker. In the course of his evidence he refers to his letter as his written application for a contract with the union. It is not an application; on the contrary, it states he had made application

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on Saturday to Barker which was refused, and that refusal confirmed at the conference on Monday, November 12. He then states that refusal is an interference with his legal rights and unless it is withdrawn in four days he would be forced to take legal action.

When appellant delivered this letter to Barker at the latter's home a conversation took place between the two but no progress was made.

Barker says he showed the letter to Bruce. He also placed it before his executive but no action was taken and no reply was made thereto.

When on November 19 the position remained unchanged, the Cooper Company notified appellant they were "unable to enter into the contract" and at its request he signed the following release:—

> I hereby accept the above notice and release you from all responsibility or liability or damages which I have suffered or may sustain by reason of your being unable to enter into such contract.
>
> Yours very truly,
>
> W. Newell.

The learned trial Judge found that a contract had been concluded between the Cooper Company and the appellant. As it is upon this basis the case may be considered most favourably to the appellant, I accept, as did the learned Judges in the Court of Appeal, that finding.

The evidence discloses that Bruce and Davis at their conversation on November 8 discussed not only the employment of non-union men by the appellant but work which Davis himself had under consideration. It was not a disagreeable conversation. No demands were made. If there is a conclusion suggested by the evidence it is that Davis realized his error in approving of appellant's contract and that he would see that only union men were employed. Neither Bruce nor Davis as to this or any other occasion deposed to language used by Bruce which would support a submission that H. K. Ferguson Company Inc. was threatened, intimidated, coerced or in any way forced to take the position which it did. In this regard the case is quite distinguishable from *Smithies* v. *National Assoc. of Operative Plasterers* (1), and *Larkin* v. *Long* (2).

(1) [1909] 1 K.B. 310. (2) [1915] A.C. 814.

Immediately Davis realized the inconsistent position of his company was due to his having approved of the appellant's contract, without a clause providing for the employment of union men, he took steps to have it, in this regard, rectified.

The respondents, as officers of the union and Local 67, were quite within their rights in advising Davis of appellant's employment of non-union men and the difficulties that the employment of non-union men upon the construction of this building would involve. *Local Union No. 1562, United Mine Workers of America* v. *Williams and Rees* (1).

The appellant immediately took steps to comply with the Cooper Company's condition and his complaint after November 8 is to the effect that they conspired to prevent him from obtaining a contract with the union.

The evidence discloses that Local 67 enters into agreements with the Master Plumbers' Association at Hamilton but not with individual master plumbers. It therefore follows that master plumbers in that city deal with the union through the Master Plumbers' Association. The members of the union are journeymen plumbers who are received into membership upon receipt of individual applications.

Appellant was familiar with the methods and activities of the Master Plumbers' Association, the union and Local 67. He had been in business at Hamilton since 1920. At one time he had been a member of the Master Plumbers' Association and chairman of one of their committees. He employed union men from 1920 to 1934 except for a period of fifteen months commencing in 1929 when, because of some disagreement, the union did not permit their men to be employed under him. In the course of his evidence he detailed a number of differences, commencing in 1923, between himself and the union until in 1934 he dissociated himself from the union and has since maintained a non-union shop. He explained that so long as he was content with small contracts there was no interference on the part of the union but in large contracts the union

(1) (1919) 59 Can. S.C.R. 240 at 247.

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insisted that only union men should be employed and that as union men would not work along side non-union men the presence of the latter on the job stopped the work.

The appellant, notwithstanding this knowledge, placed his tender and when offered the work indicated his willingness to accept. He neither at that time nor at any time material to this litigation made an effort to become a member of the Master Plumbers' Association. His efforts to obtain the right to employ union men was directed to Local 67 and the union. His first approach was on Saturday morning, November 10, when he met Barker on the street and asked to sign a contract with the union. Apart from the fact that some such request was made, the contradictions between these parties as to this conversation are such that it is impossible to ascertain precisely what happened, but it is clear that no progress was made and that afternoon appellant reported to Ralph Cooper that Barker refused to grant him a contract with the union. Then Ralph Cooper arranged for the conference, which took place on Monday, November 12, when Davis, Cooper, Bruce and Barker were present. When this conference failed to advance his position toward the attainment of a contract, appellant asked Cooper for a further delay of four days. This was granted and that evening the appellant wrote and delivered to Barker the letter dated November 12. Throughout this letter, as well as throughout his conversation with Barker, he does not indicate any change in his opinion respecting the union, which he frankly admitted he had often criticized as being unfair to him and not having adhered to its constitution. It was open to the union and respondents to conclude, particularly because of their past disagreements and no indication of any change in his views, that appellant's main concern was that he get a contract with the union which would give him the privilege of carrying out his contract with the Cooper Company. In any event, the union had a right to take the position that it would deal only with master plumbers who were members of the Master Plumbers' Association and that journeymen plumbers should individually apply for membership. The appellant did not endeavour to obtain membership in the Master Plumbers'

Association in Hamilton and through that association to deal with the union, nor did the journeymen plumbers in his employ apply for membership in Local 67.

Appellant selected his own method for making his application to the union and pressing for its acceptance. It was not in accord with the practice of the union. We need not speculate as to what position the union would have taken had appellant become a member of the Master Plumbers' Association. It is sufficient that he did not do so at any time material hereto, and the union was within its rights in these circumstances in not formally considering his application until he had done so.

Appellant's contract was suspended as of November 8 but not cancelled until the 19th of November. The intervening time was given to appellant because of his assurance that he would make arrangements with the union. When on November 19 he had not succeeded, at the request of the Cooper Company he signed the release.

Throughout the evidence establishes that the respondents did no more than what they individually conceived to be their respective duties as officers of the union and Local 67. The evidence as to their conduct does not support a conclusion that they conspired or in any way agreed or combined to injure the appellant. The evidence does support the finding of the learned trial Judge:—

> I am not prepared to find there was anything in the actions of the defendant Bruce inconsistent with an endeavour to have the agreement beween the Union and the Ferguson Company lived up to and to assist it and the Cooper Construction Company in carrying out their respective contracts under the conditions of such agreement plus possibly a desire to secure with respect to that job and future jobs the employment of Union men.

The evidence does not support a conclusion that Bruce in communicating with Davis, or any language or acts on the part of Bruce and Barker or either of them was the cause of the cancellation of appellant's contract. It rather leads to the conclusion that Davis acted upon his own judgment and just as he would have acted had he otherwise learned or discovered that non-union men were being or would be employed on the construction of this building. In these circumstances there was no interference on the part of the respondents with contractual relations within

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the meaning of the oft-quoted statement of Lord Macnaghten in *Quinn* v. *Leathem* (1), in referring to *Lumley* v. *Gye* (2).

* * * that a violation of legal right committed knowingly is a cause of action, and that it is a violation of legal right to interfere with contractual relations recognized by law if there be no sufficient justification for the interference.

The evidence does not support any of the appellant's allegations with respect to the existence of a boycott on the part of the respondents.

The appellant asks that conclusions favourable to his contention be drawn from the record in Bruce's diary of Thursday, November 8, reading in part: "Hamilton, with B. A. Barker. We met Mr. Davis of H. K. Ferguson Co. on Proctor Gamble job—and had Newell case disposed of, —saw W. Clark and Adam re job and need of taking on work."

On Thursday, November 8, Bruce visited Hamilton. He saw Davis, as already intimated, and because of the latter's complete acquiescence with respect to his company's obligation to employ only union men, he recorded "had Newell case disposed of." On the same day Bruce interviewed Clark of the Adam Clark Company and assured him that if he would take the contract he (Bruce) would do his best to supply the necessary men. Bruce did not, nor did he purport to, effect a contract between Adam Clark Company and the Cooper Company. It is not suggested he had any authority to do so. Moreover, Ralph Cooper states that at the conference on Monday, November 12:—

* * * and finally we decided that we would go back and talk to the Adam Clark organization and see if they would take the job on.

Bruce's conduct both on November 8 in interviewing Clark and his conduct on November 12 does not appear to be any different from that of a union man who was anxious to have the employers act within the limits prescribed by the union rules and when they did so that he would exert his best effort to see that the necessary men were provided and thereby delays avoided.

The appellant objected to secondary evidence of the agreement between H. K. Ferguson Company Inc. and the

(1) [1901] A.C. 495 at 510. (2) (1853) 2 E. & B. 216.

union. Appellant had indicated upon the examination for discovery that he would insist upon the production of the original if evidence of this agreement was sought to be adduced. As a consequence, respondent Bruce asked his head office in Washington, D.C., for the original. He did not specify the date, and as apparently a new contract is signed every year and his request was made in 1947, head office sent him the 1947 contract. Bruce says he was familiar with both of these contracts and that certainly the sections material to this litigation were identical and that he did not notice the date until the trial. He then wired for the 1945 original which covered the time material to this action and was advised that because of the confusion in moving their offices it could not be found. This evidence does not establish either that it was lost or destroyed. It was out of the jurisdiction, but it is clear that reasonable efforts would have obtained it. On the part of the respondents secondary evidence, therefore, was not admissible. *Porter* v. *Hale* (1).

Appellant overlooks, however, that as part of his own case he adduced in evidence through his witness Ralph Cooper:—

"Well, the H. K. Ferguson Company have an agreement with A. F. of L. steamfitters and pipe men in the States, and of course we have to have union men on this job, so," he said, "you had better cheek into this immediately."

* * * I called Mr. Newell and said to him, "I want it clearly understood that all men that you put on the Proctor & Gamble project must be union men. We want no difficulty. Cooper Company have for years hired nothing but union men, we have nothing but the finest co-operation from the union and it has to be a union job." Mr. Newell said, "All right, I will take care of that," and he said, "you leave it with me for a few days."

And again:—

Q. Taking this specific contract, this P. & G. Contract, would you have been able to hire him on this P. & G. Contract if you knew he did not hire union men?—A. Not with the set-up, not with the agreement which the Ferguson Company had with the A.F. of L. Union.

And the appellant himself deposed:—

In the large contracts it is generally in the closed shops, and it is mandatory for the union members when making agreements that they have a clause inserted there, they must have a sympathetic clause, and no agreements are permissible by the head office, United States, unless the Association the defendants belong to has that clause.

(1) (1894) 23 Can. S.C.R. 265.

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And again:—

That stops the whole job, through my interference, would term it, by not having union men on the job. The union men won't work side by side with the non-union men.

If a party in the conduct of his own case adduces inadmissible evidence, he cannot subsequently complain if that evidence be taken into account in determining the litigation. *Goslin* v. *Corry* (1). This is upon the same principle that evidence adduced to which objection was not taken at the proper time cannot be objected to upon an appeal.

Both parties are bound by the view taken of their respective cases and the mode of conducting them by their counsel at the trial and they cannot look for a new trial on grounds admitted to be urged at N.P. * * * and where evidence has been admitted without objection as relevant to the issue, it cannot be objected to as inapplicable after the judge has begun to sum up.

Roscoe's *Evidence in Civil Actions,* 20th Ed., p. 235; *Phillip* v. *Benjamin* (1); *Wigmore on Evidence,* 3rd Ed., sec. 18, p. 323.

The foregoing evidence of Ralph Cooper, which is supported by that of the appellant, justified the statement of the learned trial Judge:—

The Ferguson Company had an agreement with the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada to use all Union men and of which Bruce was apparently aware.

The judgment of the Court of Appeal for Ontario should be affirmed and the appeal dismissed with costs.

RAND J.:—The courts below have concurred in finding that there was no direct object or purpose by individual or concerted action of the respondents to injure the business of Newell, the appellant. The general building contractor had awarded to Newell certain work of plumbing and heating, and upon that fact coming to the notice of the respondents, they drew to the attention of the Engineering Company, which was entrusted with the total construction, the fact that, in those circumstances, they would be unable to supply union labour required for other work of the same general nature as that awarded Newell. The International Union, which the respondents in dif-

(1) (1839) 9 A. & E. 644.

ferent capacities represented, had a written agreement with the Engineering Company that only union employees for that class of work would be engaged on constructions undertaken by them. It was also a rule of the Union that members would not work on a job in association with non-union labour of the same class except in special cases approved by named officers.

It is now established beyond controversy that in the competition between workmen and employers and between groups of workmen, concerted abstention from work for the purpose of serving the interest of organized labour is justifiable conduct. *Crofter Harris Tweed* v. *Veitch* (1), is the latest authority for this view, and it clarifies the distinction between such action for an object or purpose of the sort mentioned and an agreement of two or more to injure a competitor. In the analysis made by Viscount Simon, in particular, of such and similar purposes as they have been exemplified in the leading cases from *Mogul S.S. Company* v. *McGregor,* Gow & Co. (2), *Allen* v. *Flood* (3), and *Quinn* v. *Leatham* (4), *to Sorrell* v. *Smith* (5), the purpose of malice, as meaning either malevolence or a primary intent to injure a competitor, as distinguished from an incidental effect of a predominating purpose of another nature, and that of strengthening or defending a recognized and accepted social interest, are elaborated and differentiated; and where we are not troubled with questions of mixed or multiple purposes, as we are not here, the legal result in the ordinary case presents little difficulty.

The purpose, therefore, of the respondents as found, which the evidence, I should say, clearly supports, having been to serve the interest of the Union and not having been directed at injury to Newell, the action of the respondents would have been unexceptionable if its effect had been merely to influence the building contractor not to enter into an engagement with Newell. But there was an existing contract which the building contractor elected to

(1) [1942] 1 All E.R. 142.
(2) [1892] A.C. 25.
(3) [1898] A.C. 1.
(4) [1901] A.C. 495.
(5) [1925] A.C. 700.

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bring to an end; and the question is whether that circumstance gave an objectionable character to the conduct of the respondents.

What they did was, at most, to refuse to authorize the union men to work on the job or to persuade them not to do so while a certain condition of things existed. There was no act of which, on the foregoing conception of legitimate conduct, the appellant could complain. A building contractor who, in the conditions of labour organization today, contemplates available labour as unaffected by its own special interests, proceeds on a false assumption; he is familiar with the everyday refusal of union employees, for a variety of reasons, to enter upon work. The market of labour is, therefore, restricted by considerations of competing interests which are now part of the accepted modes of action of individuals and groups.

Does the exercise of those rights become illegal by declaring the reason for it or by stating the conditions necessary to a willingness to work, when that reason or those conditions relate to an existing contract? It would seem to be obvious that it does not. If, when a contractor has entered into an obligation of the sort here, individuals cannot ascribe to that fact their decision to remain as they are, then their freedom of contract is so far denied; and the statement of that reason in the circumstances of this case is not to be converted into an inducing offer to remove the objectionable fact.

The action of the respondents was not, therefore, either a procurement or an inducement of the breach which I will assume took place in Newell's contract; but by it the building contractor, having regard to the arrangement made by the Engineering Company and the Union, and the necessity for obtaining considerable labour for the remaining portion of the plumbing and heating work, facing on the one hand the contract and on the other the source of labour not open to him, was put to a choice of the side on which he considered his own interest to lie. It is, I think, the proper view to attribute the cancellation of the contract not to the refusal of labour by the respondents, but to the chosen course of action of the building contractor. The decision to abstain may have been the

controlling influence upon him, but whether we attribute the rule to the balance of policy between these contending factors, or to the election on the part of the building contractor, the result is the same. If this were not so, by unitedly declining to associate themselves with non-union workers, the respondents and their workmen would involve themselves in illegality brought about by the mere fact that the desire of the building contractor for their labour was stronger than that of observing the contract with Newell: by the offer of work made them, they became involved in the necessity of either accepting it with its objectionable conditions, or of avoiding collective refusal, or paying damages. To state that proposition in relation to the circumstances with which we are dealing is, I think, to answer it.

I would dismiss the appeal with costs.

LOCKE J.:—The appellant's claim as pleaded was that the respondent Barker, who was at the relevant time the business agent of Local Union 67 of the United Association of Journeymen Plumbers and Steamfitters, and Bruce, the organizer for Canada of the said Union, had unlawfully and maliciously conspired and agreed with other members of the said Local Union to injure the appellant by unlawful means in the pursuit of his lawful trade and calling and to destroy his business as a master plumber and steamfitter. In particular it was alleged that by threats, coercion and intimidation practised by the respondents upon the W. H. Cooper Construction Company, Limited, and in consequence of a boycott instituted by the respondents and others unknown against the appellant, the said Company had broken a contract which it had entered into with the appellant, whereby the appellant suffered damage: alternatively, the appellant alleged that the respondents with others unknown had "unlawfully and knowingly procured the W. H. Cooper Construction Company, Limited, to commit a breach of its contract with the plaintiff." While, in addition, the appellant alleged that the respondents operating through the Union had instituted and pursued a system of boycott against the plaintiff, allegations which apparently refer to matters other than the alleged loss of the Cooper contract, this claim was not pursued.

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Accepting the finding of the learned trial judge that there was a concluded oral agreement made by the appellant with the Cooper Company it is not denied that after this had been done Cooper informed the appellant that it was necessary that he should employ Union labour for the work and he agreed to do this. I agree with Laidlaw J.A., that this undertaking on the part of the appellant became a condition of his contract with the Cooper Company, failure to comply with which would relieve that company of its obligations under the agreement. Upon conflicting evidence the learned trial judge has found that the statement made by the respondent Bruce to Cooper was "I can't stop you from carrying on with Mr. Newell's contract at all but you realize that if Mr. Newell carries on with this work that I cannot give Al Davis all the men he will require for this process piping." Davis was an official of the H. K. Ferguson Company of Cleveland, a concern which had the principal contract for the work. This company had given a subcontract to the Cooper Company for part of the work only, the Ferguson Company proposing itself to do a major part of the work including the equipment and process piping, which would require the employment of men of similar qualifications to those employed by the appellant. Apart from any question as to whether a contract between the Ferguson Company and the International Union obligating the former to employ only Union men upon any of its undertakings was in strictness proven, the evidence showed that the members of the Union were by the terms of its constitution forbidden to work with non-Union men and that the Ferguson Company recognized that it was obligated to permit only Union men to work upon the job. It thus appears that Bruce's statement to Cooper was merely a statement of fact. Unless it would be an actionable wrong on the part of the plumbers and steamfitters, members of the Union, as between themselves and the appellant to decline to work with non-Union men, and it is quite clear that it would not, to state that they would so decline cannot be actionable at the suit of the appellant.

When the appellant found that he was unable to comply with the condition of his contract with the Cooper Com-

pany that only Union men would be employed upon the work, he agreed, at the request of that company, to the cancellation of his contract and to release it of any obligation. There was in fact no breach of contract by the Cooper Company, as alleged in the pleadings.

Had the claim been based upon a contention that by some unlawful act of the respondents the appellant had been disabled from carrying out his obligations, it would also, in my opinion, fail. The learned trial judge has found that there was no evidence of conspiracy or of anything unlawful in the acts of the respondents and it has been found in the Court of Appeal that it was not proven that the failure of the appellant to reach an agreement with Local Union 67, or to obtain the benefit of any agreement between that Union and the Master Plumbers' Association, was caused by any act on the part of the respondents. I agree with these conclusions.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Morris & Morris.*

Solicitors for the respondents: *Roebuck, Bagwell, McFarlane and Walkinshaw.*