1967
*May 31
*June 1
Oct. 3

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 2085, J. E. PULLEN; D. T. KNIGHT; THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 343, RUSSELL ROBINS; THE INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL UNION NO. 101, WINNIPEG, MANITOBA, KAMIL MICHAEL GAJDOSIK; ARNO WISCHNEWSKI, PETER KUBISH, JOHN SPENCE, ELOF JACOBSEN, EMIL ANDERSON, NICK GONCHARUK, RINO GEMIN, PETER PIEROZINSKI, KEN CHRISTENSEN, MELVIN EVENSON, HENRY WALL, ROGER FILLION, J. LAMOUREUX, ERLING NORDAL, V. VALLITTU, TED LAMOR, DAVE ADAMS, GILBERT ANDERSON, MURRAY ARMSTRONG, ROBERT HOEHN, LUIGI CARLUCCI; THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPER HANGERS OF AMERICA, GLASS WORKERS LOCAL UNION NO. 1554 (*Defendants*) .....APPELLANTS;

AND

WINNIPEG BUILDERS' EXCHANGE, THE GENERAL CONTRACTORS' SECTION OF THE WINNIPEG BUILDERS' EXCHANGE and POOLE CONSTRUCTION LIMITED (*Plaintiffs*) ...RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Labour relations—Picketing—Stoppage of work—Strike in violation of collective agreements and in breach of statute—Injunction restraining employees from continuing illegal strike—Whether in effect directing specific performance of contract for personal service—Whether Courts below in error in continuing injunction—The Labour Relations Act, R.S.M. 1954, c. 132, ss. 2(1), 18(1), 22(1).

On a motion to continue an interlocutory injunction until the trial of the action the judge who heard the motion concluded (i) that the business agent and members of the defendant Glass Workers' Union had brought a building project to a complete halt for the purpose of compelling a subcontractor to coerce its employees into joining the said union, (ii) that the employees who were the individual defendants had acted in concert in ceasing to work until picketing ceased and had done so for the purpose of collaborating with the members of the Glass Workers' Union in their attempt to coerce non-union glaziers employed by the subcontractor to join that union, and (iii) that this

*PRESENT: Cartwright, Martland, Ritchie, Hall and Spence JJ.

conduct on the part of the individual defendants constituted a strike as being a cessation of work in concert for the purpose of compelling their employer to agree to a condition of employment *viz.* that there should be no non-union workers employed on the project. On this view of the facts the judge decided that the conduct of the business agent was illegal, that the cessation of work by the employees constituted an illegal strike and that the injunction should be continued to the trial. All of the defendants, including the defendant unions, were enjoined from taking part in the strike action and from picketing. The injunction order was affirmed, subject to a variation, by a majority decision of the Court of Appeal and an appeal, with leave, was then brought to this Court.

On this appeal a motion to quash the appeal was dismissed and the question to be decided was whether on the facts as found by the judge of first instance he was right in law in ordering that the defendants be enjoined from engaging in the strike action. In the Court below, Freedman J.A., who dissented in part, would have set aside this part of the injunction order on two main grounds: (i) that the evidence was insufficient to show that in refusing to work the defendants were acting in concert, (ii) that the order, which in essence told the employees that they must not strike—that is to say, that they must continue to work on the project, was contrary to a well-founded policy of the courts not to direct what was in effect specific performance of a contract for personal service.

Held: The appeal should be dismissed.

As to the first of the above grounds of dissent, it was held, for reasons referred to *infra*, that this Court should not depart from the view of the facts taken concurrently in both Courts below.

As to the second ground, it was true that the courts have repeatedly refused to issue an injunction if it will result in the enforcement *in specie* of a contract not otherwise specifically enforceable and that a contract for personal services such as an agreement for hiring and service constituting the common relation of master and servant will not be specifically enforced. But there was no principle of law that when a group of employees engage in concert in an illegal strike, forbidden alike by statute and by the terms of the collective agreement by which their employment is governed, the courts must not enjoin them from continuing the strike leaving the employer to resort to forms of redress other than an application for an injunction.

There was a real difference between saying to one individual that he must go on working for another individual and saying to a group bound by a collective agreement that they must not take concerted action to break this contract and to disobey the statute law of the province. The strike engaged in here was in direct violation of the terms of collective agreements binding on the striking employees and in breach of express provisions of *The Labour Relations Act*, R.S.M. 1954, c. 132. Undoubtedly, an effect of the injunction was to require the striking employees to return to work, but that constituted no error in law; to hold otherwise would be to render illusory the protection afforded to the parties by a collective agreement and by the statute.

[*Winnipeg Builders' Exchange et al. v. Operative Plasterers and Cement Masons International Association et al.* (1964), 50 W.W.R. 72, approved; *Lumley v. Wagner* (1852), 1 De G.M. & G. 604, referred to.]

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Appeals—Appeal to Supreme Court of Canada—Motion to quash dismissed—Injunction granted by lower Court now spent—Whether judgment sought to be appealed within words "any final or other judgment" in s. 41(1) of the Supreme Court Act, R.S.C. 1952, c. 259.

At the opening of the argument of this appeal counsel for the respondents moved to quash the appeal on the grounds, (i) that the injunction was spent and the question whether or not it should have been granted had become academic and (ii) that this Court had no jurisdiction to hear the appeal because the judgment sought to be appealed did not come within the words "any final or other judgment" in s. 41(1) of the *Supreme Court Act*.

Held: The motion to quash the appeal should be dismissed.

As to the first ground, it was not questioned, the building having long since been completed, that the injunction was spent and without further effect. In such circumstances the well-settled practice of the Court was to refuse to entertain an appeal. However, leave to appeal had been granted because it was urged that a question of law of great and nation-wide importance was involved as to which there was a difference of opinion in the Courts below and, from the nature of things, it was unlikely that unless leave were granted in this or a similar case it would ever be possible to bring that question before this Court for determination.

In this state of affairs, the members of the Court were of opinion that they ought not to concern themselves with the question whether the inferences of fact drawn by the judge of first instance and the majority of the Court of Appeal were warranted by the evidence. The view of the facts on which the majority in the Court of Appeal proceeded did not constitute a final finding as between the parties as to those facts; at the trial they might be found differently. The proper course for this Court was to endeavour to state and to answer the question of law which arose on the facts as found by the majority.

As to the second ground, the Court was of opinion that the words of s. 41(1) are wide enough to embrace any judgment of the Court therein referred to pronounced in a judicial proceeding and that the respondents' argument that the Court can grant leave to appeal only in respect of a final judgment or an "other judgment akin to a final judgment" should be rejected.

[*Sun Life Assurance Company of Canada v. Jervis*, [1944] A.C. 11; *The King ex rel. Tolfree v. Clark et al.*, [1944] S.C.R. 69; *Coca-Cola Company of Canada Ltd. v. Mathews*, [1944] S.C.R. 385, referred to.]

APPEAL from a judgment of the Court of Appeal for Manitoba[1], affirming, subject to a variation, an order of Bastin J. continuing until trial an interlocutory injunction enjoining the defendants from bringing about or continuing an unlawful strike and from picketing at certain premises. Appeal dismissed.

W. Stewart Martin, Q.C., and *Sidney Green*, for the defendants, appellants.

[1] (1966), 57 D.L.R. (2d) 141.

S. A. Dewar, Q.C., and *W. L. Ritchie, Q.C.*, for the plaintiffs, respondents.

The judgment of the Court was delivered by

CARTWRIGHT J.:—This appeal is brought, pursuant to leave granted by this Court, from a judgment of the Court of Appeal for Manitoba[1] pronounced on March 15, 1966, affirming, subject to a variation, an order of Bastin J. made on October 21, 1965, continuing until the trial of the action an interlocutory injunction which he had granted *ex parte* on October 6, 1965.

The evidence before Bastin J. on the application to continue the injunction consisted of affidavits which were in some respects in conflict. There was no cross-examination on any of the affidavits and no transcript of any *viva voce* evidence appears in the appeal case although the formal order of Bastin J. recites having read the *viva voce* evidence of Earl Larson.

The action was commenced on October 6, 1965. The above-named respondents are plaintiffs and the defendants are the above-named appellants and also the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada Local Union No. 254 Winnipeg, Manitoba, hereinafter referred to as "the Plumbers' Union", P. Grouette, Gary Petrie, Alex Couvier, Gilbert Gregoire and Marcel Jubinville, who in the statement of claim were included with those designated as the "Labourers", and Abe Ruben sued on his own behalf and representing all members of The Brotherhood of Painters, Decorators and Paper Hangers of America, Glass Workers Local Union No. 1554, hereinafter referred to as "the Glass Workers' Union".

At the time of the hearing before Bastin J. Poole Construction Limited, hereinafter called "Poole" was engaged as a general contractor in the construction of an eighteen-storey office building on the Royal Bank site in the City of Winnipeg. Poole was a member of the respondent Winnipeg Builders' Exchange, hereinafter called "the Exchange", and of the General Contractors' Section of the Exchange, hereinafter called "the Section".

[1] (1966), 57 D.L.R. (2d) 141.

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The defendant unions are all trade unions within the meaning of s. 2(1) of *The Labour Relations Act*, R.S.M. 1954, c. 132.

Canadian Comstock Company was a subcontractor of Poole. It entered into a collective agreement on August 9, 1965, with the International Brotherhood of Electrical Workers, hereinafter called "the Electricians' Union", whose business agent was the appellant Pullen.

Section 5 of the agreement is as follows:

Strikes and Lockouts:

(*a*) It is agreed by the Union that there shall be no strike or slowdown either complete or partial, or other collective action which will stop or interfere with production during the life of this Agreement or while negotiations for a renewal or revision are in progress.

(*b*) It is agreed by the employer that there shall be no lockout during the life of this Agreement or while negotiations for a renewal or revision are in progress.

The appellant Robbins was the business agent of the United Brotherhood of Carpenters and Joiners of America, hereinafter referred to as "the Carpenters' Union". This union had signed a collective agreement with the Section. Sections 1(*c*) and 5 of the agreement are as follows:

Both parties hereto agree to enforce and see that its members enforce all provisions of this Agreement and also any decision of an Arbitration Board under Section 4.

Strikes and Lockouts

(A) It is agreed by the Union that there shall be no strike or slowdown either complete or partial, or other action which will stop or interfere with production during the life of this Agreement or while negotiations for a renewal of this Agreement are in progress.

The appellant Gajdosik was the business agent of the International Hod Carriers, Building and Common Labourers' Union of America, hereinafter called "the Labourers' Union". The Labourers' Union had signed a collective agreement with the Section, on April 1, 1965. Sections 1(*c*) and 5 of this agreement are similar to the sections in the Carpenters' agreement above quoted.

Ruben was the business agent of the Glass Workers' Union. No collective agreement was entered into by this Union. None of its members worked on the project. The Glass Workers' Union was not the certified bargaining agent for any of the employees of Poole or its sub-trades and there was no application pending for its certification.

The appellant Knight was the business agent of the Plumbers' Union. There was no collective agreement between this union and any of the respondents or their sub-trades.

On or before September 20, 1965, Ruben found out that non-union glaziers were working on the site and he so informed Knight. These non-union workers were employed by Arthur Rempel Ltd., a subcontractor of Seal Dow Ltd., which was a subcontractor of Poole. Ruben felt that this matter should be brought to the attention of Poole.

On September 21, Ruben and Knight attended at Poole's office where they met one Oneschuck, its district manager. They advised Oneschuck of the situation, stating that members of trade unions normally object to working with non-union employees and that the presence of such employees could lead to difficulty on the job site.

On October 1, 1965, at the site, Ruben approached Arthur Rempel, the President of Arthur Rempel Ltd., and insisted that he advise his company's employees to contact Ruben at the Labour Temple at a fixed date for the purpose of joining the Glass Workers' Union. Ruben further insisted that Arthur Rempel Ltd., sign a collective agreement with his union. Rempel reported that his company would not force its employees to join the union. Ruben then informed him that if his company did not co-operate it could expect trouble.

In the early morning of October 5, 1965, Ruben set up a picket line at the entrance of the Royal Bank site. He was carrying a placard with the following wording:

"There are non-union glaziers on this project."

One person crossed the picket line, otherwise there was a complete stoppage of work. Later Knight and Pullen were present on the site and when Pullen was reminded that the electricians were bound by a collective agreement, and was asked whether they would abide by it, he failed to give a definite answer.

At approximately 11.30 a.m. the picket line was withdrawn whereupon the electricians went to work.

At approximately 7.30 a.m. on the next day, October 6, Ruben, along with one or two others, established a picket line and all employees refused to report for work or to

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cross the picket line, with the result that construction was brought to a standstill. An *ex parte* injunction was granted by Bastin J. late the same afternoon. Notwithstanding service of a copy of this injunction upon Ruben, he again picketed the site on the next morning but by 8.30 a.m. on October 7, 1965, the employees resumed work gradually.

At the time when Ruben commenced picketing at the site there was no dispute between any of the plaintiffs and the defendant unions or the individual defendants.

In his reasons for judgment Bastin J. after setting out the contents of a number of the affidavits filed in support of the application before him and of all the affidavits filed by the defendants reached the following conclusion as to the facts, (i) that Ruben and members of the Glass Workers' Union had brought the building project to a complete halt for the purpose of compelling Arthur Rempel Ltd. to coerce its employees into joining the Glass Workers' Union, (ii) that the employees who are the individual defendants had acted in concert in ceasing to work until the picketing ceased and had done so for the purpose of collaborating with the members of the Glass Workers' Union in their attempt to coerce the glaziers employed by Arthur Rempel Ltd. to join that union, and (iii) that this conduct on the part of the individual defendants constitued a strike as being a cessation of work in concert for the purpose of compelling their employer to agree to a condition of employment *viz.* that there should be no non-union workers employed on the project.

As to whether or not the defendant unions had authorized the conduct of the individual employees which the learned judge had found to constitute a strike he was of opinion that this issue of fact could not be determined until the trial.

On this view of the facts Bastin J. decided that the conduct of Ruben was illegal, that the cessation of work by the employees constituted an illegal strike and that the injunction should be continued to the trial in the following terms:

> 1. THIS COURT DOTH ORDER that the defendants and each of them, their officers, servants, agents and members and any person acting under their instructions or any other person having notice of this order be and are hereby strictly enjoined and restrained until the trial or other final disposition of this action, from declaring, authorizing, counselling, aiding or engaging in or conspiring with others either direct or indirectly

to bring about or continue an unlawful strike with respect to the employment of employees with the plaintiff Poole Construction Limited or its sub-contractors in combination or in concert or in accordance with a common understanding.

2. AND THIS COURT DOTH ORDER that the defendants and each of them, their officers, servants, agents and members and any person acting under their instructions or any other person having notice of this order be and are hereby strictly enjoined and restrained until the trial or other final disposition of this action from

(i) watching, besetting or picketing or attempting to watch, beset or picket at or in the vicinity of The Royal Bank Building premises at the South-east corner of Fort Street and Portage Avenue, in the City of Winnipeg, in Manitoba;

(ii) interfering with the servants, agents, employees or suppliers of the plaintiff Poole Construction Limited or its sub-contractors or any other persons seeking peaceful entrance to or exit from said premises by the use of forces, threats, intimidations, coercion or any other manner or means;

(iii) ordering, aiding, abetting, counselling or encouraging in any manner whatsoever either directly or indirectly, any person to commit the acts aforesaid or any of them.

It will be observed that all of the defendants were enjoined. In dealing with the argument of counsel for the defendants that no case was made for enjoining the defendant unions the learned trial judge, after suggesting that the known facts might support an inference that the unions had authorized the cessation of work, continued as follows:

> Since the unions now claim to have disapproved of the work stoppage, it is no hardship for them to be included in the list of those who are enjoined since, without being named, they are forbidden by law to aid or abet those who are enjoined from committing a breach of the injunction.

All of the defendants appealed to the Court of Appeal and in that Court there were differences of opinion. Monnin J.A., with whom Schultz J.A. agreed, held that the appeal of the Plumbers' Union should be allowed as there was no collective agreement in existence between it and any of the plaintiffs but that the appeal of Knight, its business agent, should be dismissed because of his personal participation in the matter and that as to all the other appellants the order of Bastin J. should be affirmed. Freedman J.A., dissenting in part, would have dismissed the appeal of Ruben but would have allowed the appeals of all the other appellants, including the Glass Workers' Union. There is no cross-appeal to this Court in regard to the Plumbers' Union.

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At the opening of the argument of the appeal in this Court counsel for the respondents moved to quash the appeal on the grounds, (i) that the injunction granted by Bastin J. is spent and the question whether or not it should have been granted has become academic and (ii) that this Court has no jurisdiction to hear the appeal because the judgment sought to be appealed does not come within the words "any final or other judgment" in s. 41(1) of the *Supreme Court Act*.

This motion was dismissed without the Court calling upon counsel for the appellants.

As to the second ground we were all of opinion that the words of s. 41(1) are wide enough to embrace any judgment of the Court therein referred to pronounced in a judicial proceeding and that the respondents' argument that the Court can grant leave to appeal only in respect of a final judgment or an "other judgment akin to a final judgment" should be rejected.

As to the first ground, it is not questioned that Bastin J. correctly stated the facts existing on March 16, 1967, when in dismissing an application by the plaintiffs to dissolve the injunction he said:

> The building, the construction of which was allegedly being impeded by defendants' actions, has long since been fully completed. There is nothing to be enjoined. By passage of time and the happening of events defendants are no longer prevented by the injunction from doing anything. The injunction is spent and without further effect.

In such circumstances the well-settled practice of this Court has been to refuse to entertain an appeal; it is necessary to refer only to *Sun Life Assurance Company of Canada v. Jervis*[1], *The King ex rel. Tolfree v. Clark et al.*[2] and *Coca-Cola Company of Canada Ltd. v. Mathews*[3]. However, these authorities and others to the same effect were stressed during the argument on the motion for leave to appeal and, as I understand it, leave was granted because it was urged that a question of law of great and nation-wide importance was involved as to which there was a difference of opinion in the Courts below and, from the nature of things, it was unlikely that unless leave were granted in this or a similar case it would ever be possible to bring that question before this Court for determination.

[1] [1944] A.C. 111.
[2] [1944] S.C.R. 69.
[3] [1944] S.C.R. 385.

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In this state of affairs, it appears to me that we ought not to concern ourselves with the question whether the inferences of fact drawn by the learned judge of first instance and the majority of the Court of Appeal were warranted by the evidence. The view of the facts on which the majority in the Court of Appeal proceeded does not constitute a final finding as between the parties as to those facts; at the trial they may be found differently. It appears to me that our proper course is to endeavour to state and to answer the question of law which arises on the facts as found by the majority.

There was no difference of opinion in the Courts below as to whether Ruben was properly enjoined. He has not appealed to this Court but the Glass Workers' Union has. As that union was enjoined on the ground that in the opinion of the majority, Ruben should, for the purposes of their decision only, be assumed to have been its agent and acting for it it is necessary to consider whether the decision that he should be enjoined was right. In my opinion it was and I do not find it necessary to add anything to what has been said in the Courts below as to his conduct and the propriety of enjoining it.

Had I been dealing with the matter at first instance, I might well have been of the same opinion as Freedman J.A. that the material filed, particularly in view of the form of the proceedings, did not warrant the drawing of the inference that in doing the wrongful acts which he did Ruben was acting as agent of the Glass Workers' Union in the course of his agency but I do not think we should dissent from the finding of Bastin J. concurred in by the majority in the Court of Appeal that he was so acting. It follows that I would dismiss the appeal of the Glass Workers' Union.

We come now to the serious question of law which was ably and vigorously debated before us. The operative portions of the order of Bastin J. have already been quoted and the main question is whether on the facts as found he was right in law in ordering in para. 1 that the defendants be

> enjoined and restrained until the trial or other final disposition of this action, from declaring, authorizing, counselling, aiding or engaging in or conspiring with others either direct or indirectly to bring about or continue an unlawful strike with respect to the employment of employees

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with the plaintiff Poole Construction Limited or its subcontractors in combination or in concert or in accordance with a common understanding.

It will be observed that this wording restrains the defendants from engaging in an unlawful strike of employees of Poole or its subcontractors. As a matter of syntax I think it clear that the concluding words of the paragraph, "in combination or in concert or in accordance with a common understanding", qualify, *inter alia*, the words "engaging in an unlawful strike". However this is of little importance since the existence of the element of acting in combination or in concert or in accordance with a common understanding is necessary to constitute a strike.

Freedman J.A. would have set aside this part of the injunction order on two main grounds. The first of these was that the evidence was insufficient to show that in refusing to work the defendants were acting in concert. As to this I have already indicated my view that we should not depart from the view of the facts taken concurrently in both Courts below.

The second ground on which the learned Justice of Appeal proceeded was expressed by him as follows:

> But there is a second objection to this aspect of the injunction of even greater weight. What precisely is the effect of an injunction restraining these workmen from continuing an unlawful strike at the Royal Bank site? The order in essence tells these men that they must not strike—that is to say, that they must continue to work on the Royal Bank job. Such an order is contrary to a well-founded policy of the courts not to direct what is in effect specific performance of a contract for personal service. I am far from saying that the conduct of these men may not have been wrongful or in breach of contract. If it was, other forms of redress are open to the employer and indeed are being so claimed in this action. I say only that an injunction compelling continuance on the job is not a proper remedy.

Having discussed the case of *Winnipeg Builders' Exchange et al. v. Operative Plasterers and Cement Masons International Association et al.*[1] and found it distinguishable from the case at bar, he continued:

> Nor, in my view, is the covenant that the union or the men would not participate in a strike the kind of 'express negative covenant' the breach of which should give rise to an order of injunction as was here granted. Such a negative covenant arises, for example, where a person binds himself to serve the other party to the contract exclusively during its term. If in breach of this covenant he seeks to work for someone else,

[1] (1964), 50 W.W.R. 72, 48 D.L.R. (2d) 173.

say a competitor of his employer, he can be restrained. But the effect of the injunction in such a case may be described thus: 'You have agreed not to work for anyone other than your employer, A, during the period of the contract. So you must not work for B.' The important thing to note is that the injunction does *not* say: 'You must continue to work for A', for that would in effect be ordering specific performance of a contract for personal service. Cases like *Lumley v. Wagner* (1852), 1 De G.M.&G. 604; 42 E.R. 687, and *Warner Bros. Pictures Inc. v. Nelson,* [1936] 3 All E.R. 160; 106 L.J.K.B. 97, illustrate the nature and scope of an injunction which is granted to restrain the breach of an express negative covenant of that character. These cases show that the injunction is limited in the manner I have indicated.

It would be a strange thing if it were otherwise. An injunction to restrain improper picketing is one thing. An injunction in effect to compel workmen to continue to work for a particular employer, on pain of going to jail for its breach, is quite another. Such an injunction is so far reaching in its consequences that occasions for resort to it are likely to be rare indeed.

In these passages the learned Justice of Appeal appears to me to enunciate as a principle of law that when a group of employees engage in concert in an illegal strike, forbidden alike by statute and by the terms of the collective agreement by which their employment is governed, the courts must not enjoin them from continuing the strike; that the employer must resort to forms of redress other than an application for an injunction.

The question which we are called upon to decide is whether the principle so enunciated is a correct statement of the law. In my respectful opinion it is not.

There is no doubt that it has been repeatedly held in cases of high authority that the courts will not issue an injunction if it will result in the enforcement *in specie* of a contract not otherwise specifically enforceable and that a contract for personal services such as an agreement for hiring and service constituting the common relation of master and servant will not be specifically enforced. The cases that so decide are collected and discussed in Cheshire and Fifoot on Contract, 6th ed., 1964, at pp. 533 to 535.

In rejecting the appellants' argument based on the cases last mentioned and referring particularly to that of *Lumley v. Wagner*[1], Monnin J.A. observed that "the complexity of labour-management relations in a highly industrialized civilization was presumably not even thought of" by the Lord Chancellor when that case was decided.

[1] (1852), 1 De G. M. & G. 604.

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In *Winnipeg Builders' Exchange et al. v. Operative Plasterers and Cement Masons International Association et al., supra,* the granting of an interim injunction which, *inter alia,* restrained the defendants from engaging in an unlawful strike was upheld in a unanimous judgment of the Court of appeal for Manitoba after a full consideration of the submission that the Court ought not to affirm an order which had the effect of compelling employees to return to work. The proposition of law which appears to me to be stated by Freedman J.A. would have been a bar to the continuation of the injunction and must therefore have been rejected by the Court of Appeal. In my opinion the judgment of the Court of Appeal in that case correctly states the law.

One of the main purposes of *The Labour Relations Act,* R.S.M. 1954, c. 132, is to achieve and maintain harmonious relations between employers and employees and to avoid the loss caused to the parties directly involved and to the public at large by work stoppages caused either by strikes or lockouts. Procedure is provided for arriving at collective agreements. A collective agreement duly entered into is made binding upon the employer and upon every employee in the unit for which the bargaining agent has been certified, s. 18(1). During the term of a collective agreement the employer is forbidden to declare or cause a lockout, s.22(1)(*a*), and employees are forbidden to go on strike, s.22(1)(*b*). Attention has already been called to the fact that under the terms of the collective agreements existing in the case at bar it was expressly provided that there should be no strike during the life of the agreements.

In my view the purposes of the *Labour Relations Act* would be in large measure defeated if the Court were to say that it is powerless to restrain the continuation of a strike engaged in in direct violation of the terms of a collective agreement binding on the striking employees and in breach of the express provisions of the Act. The *ratio* of such decisions as *Lumley v. Wagner, supra,* does not, in my opinion, require us so to hold. There is a real difference between saying to one individual that he must go on working for another individual and saying to a group bound by a collective agreement that they must not take concerted action to break this contract and to disobey the statute

law of the province. Undoubtedly, as Freedman J.A. points out, an effect of the order which has been upheld by the Court of Appeal in the case at bar was to require the striking employees to return to work. In my opinion that constituted no error in law; to hold otherwise would be to render illusory the protection afforded to the parties by a collective agreement and by the statute. It is true that an employer whose operations are brought to a standstill by an illegal strike or a union whose employees are rendered idle by an illegal lockout may bring an action for damages or seek to invoke the penal provisions of the *Labour Relations Act* but the inevitable delay in reaching a final adjudication in such procedures would have the result that any really effective remedy was denied to the injured party.

As I have already expressed my opinion that, for the purposes of this appeal, we should accept the view of the facts on which the Courts below have proceeded it follows that I would dismiss the appeal.

Before parting with the matter, I wish to stress, perhaps unnecessarily, that all that we are deciding is that on the facts as they were assumed by them to exist the Courts below did not err in law in continuing the injunction. The action has yet to go to trial and there on a fuller investigation the facts may be found to be different.

I would dismiss the appeal with costs, including the costs of the motion for leave to appeal; the appellants are entitled to the costs of the motion to quash which was dismissed at the hearing of the appeal.

Appeal dismissed with costs.

Solicitors for the defendants, appellants: Tallin, Kristjansson, Parker, Martin & Mercury; Bowles, Pybus, Gallagher & Company; and Mitchell, Green & Minuk, Winnipeg.

Solicitors for the plaintiffs, respondents: Thompson, Dilts & Company, Winnipeg.