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*Jan. 30, 31
Feb. 1, 4
May 13

HAROLD MURRAY ORCHARD, PATRICK CALDWELL, EDMUND HOULE, ALBERT COWLEY, MALCOLM BAKER, ANTHONY HOLEWELL and AXEL LARSEN, Sued on their own behalf, and on behalf of all other members of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Milk Wagon Drivers and Dairy Employees, Local No. 119, except the plaintiff (*Defendants*) .....APPELLANTS;

AND

JOHN EVERS TUNNEY (*Plaintiff*) .....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Labour law—Unincorporated trade union—Liability of officers for wrongful acts towards members—Whether members' rights based on status or on contract—Whether union or other members liable for wrongful acts of officers.

The plaintiff was a member of a trade union and employed in a "union shop". A complaint was made to the executive board of the local and he was notified that an inquiry would be held and that, in the meantime, he was suspended. A letter was immediately written informing the plaintiff's employer that he had been temporarily suspended, whereupon he was discharged from his employment. An inquiry was thereafter held by the executive board, following which the board found the plaintiff guilty and in effect expelled him. A meeting of the union was called to consider the finding of the executive committee but no vote was taken. The plaintiff sued for damages claiming against the defendants both personally and as representing all other members of the local.

Held: The plaintiff was entitled to a declaration that he was still a member of the local because, under the constitution of the local and international unions, the action of the executive board required confirmation by the local and remained conditional until it received that confirmation. There was no authority whatever for a "temporary suspension"

*PRESENT: Rand, Locke, Cartwright, Abbott and Nolan JJ.

before the inquiry by the executive board. The plaintiff was also entitled to damages against the defendants in their personal but not in their representative capacity.

Per Rand, Cartwright and Abbott JJ.: The rights of a member of a trade union are based upon contract and not upon status. The contract is with all other members of the union and not with the union as such. The union has no capacity to contract with a member and it follows *a fortiori* that a union as such cannot incur liability in tort. The acts of the defendants were clearly *ultra vires,* the original "temporary" suspension having been without a semblance of authority. The members of the executive board were individually responsible for those acts.

Per Locke and Nolan JJ.: The statements made to the respondent's employer that he had been suspended by the union and that he had ceased to be a member were both false and were found to have been made maliciously with intent to injure him. Damage having resulted the individual members of the board were personally liable to the respondent in tort.

APPEAL from the judgment of the Court of Appeal for Manitoba (1) affirming the judgment of Williams C.J.Q.B. (2).

H. G. H. Smith, Q.C., and *C. L. Dubin, Q.C.,* for the appellants.

L. St. G. Stubbs, Q.C., and *Gerald Stubbs,* for the respondent.

The judgment of Rand, Cartwright and Abbott JJ. was delivered by

RAND J.:—The appellants are a trade union and certain of its officers. The latter, as members of the executive board, and the union, as represented by them, are charged by the respondent, Tunney, with wrongfully purporting to suspend and expel him from membership and with wrongfully causing his employment to be terminated by an employer bound by a union shop agreement. A union shop is one in which an employee must as a condition of his employment be or become and continue to be a union member.

A defence *in limine* is that the respondent, by the constitution and by-laws of the union to which he subscribed, is bound to exhaust the procedure of appeal to the tribunals of the union including those of the international organization with which the local union is affiliated, an

(1) 15 W.W.R. 49, [1955] 3 D.L.R. 15. (2) 9 W.W.R. (N.S.) 625.

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appeal which admittedly he did not prosecute, and because of which, under the decision in *White et al. v. Kuzych* (1), it is said that the action is premature: and this must first be dealt with.

Several answers are given: that no charge in writing as required by the regulations of the union was made and none furnished the respondent; that the executive board was not legally constituted; that the hearing was unfairly conducted; that the right of appeal to the general executive of the international union at Miami, Florida, was illusory and a virtual denial of the respondent's rights; and that by the regulations of the local union the finding of the executive board was subject to confirmation by a general meeting of the union, which it did not receive.

I find it unnecessary to pass upon more than the last ground. Section 33 of the constitution and by-laws of the local union provides in part that

> The Executive Board shall try all members against whom charges have been preferred, and report the findings at the next regular meeting of the union.

and s. 45:

> All decisions of the Executive Board shall be concurred in at a regular meeting of the union before becoming effective. The accused shall have the right to appeal to the General Executive Board.

The respondent was alleged to have made false statements to other members reflecting upon the manner in which the affairs of the union involving, among other things, financial features, had been conducted by the secretary-treasurer, the appellant Houle. Apparently a complaint had been made orally either to the president or to the executive board by Houle the gist of which was conveyed to the respondent by a letter notifying him that an inquiry would be held, and that in the meantime he was suspended. With the approval of the executive board and a vice-president of the international body, notice was at once sent by Houle to the employer of the respondent to the effect that he had been temporarily suspended from the union and, under the labour agreement, could not, during the suspension, be continued in the service. The

(1) [1951] A.C. 585, [1951] 2 All E.R. 435, [1951] 3 D.L.R. 641, 2 W.W.R. (N.S.) 679 (*sub nom. Kuzych v. White et al.*).

employer thereupon notified him of that communication, paid him a week's wages in advance and ended his employment.

At the inquiry witnesses were called, three by Houle and two on behalf of the respondent; on the evidence given at the trial the statements made were, in substance, by one witness that the respondent had made remarks to him of the nature charged, and by the other four that no such remarks had been made to them. On this the board found Tunney guilty and, in the language of the minute, he was "suspended from all rights, benefits and privileges", language which it is accepted was intended to effect expulsion.

Shortly after this was announced and on the written request of a number of members a meeting of the union was convened for the purpose of considering the charges and "the findings thereon at the trial thereof". Tunney was excluded from the meeting and after a disorderly session during which it seems to have become apparent that an approval of the board's action was doubtful, the meeting ended without a vote being taken and the matter was given no further consideration. At this meeting, as well as on the inquiry and at another session of the executive board, the dominating as well as the domineering role of Houle was made plainly evident.

The effect of s. 45 is that the finding of the board remains conditional until by concurrence it becomes accomplished. Under art. XVIII, s. 20, of the international rules an appeal may be taken from the "decision of the local executive board" to the general executive board. In the absence of confirmation there was no decision and the condition of taking or enabling an appeal did not come into existence.

Mr. Smith urges that s. 45 conflicts with art. XVIII, s. 1(*a*) of the international constitution. By art. XXI, s. 1(*a*):

> Each Local Union shall have the right to make such by-laws as it may deem advisable, providing they do not conflict with the laws of the International Union.

And by art. XVIII, s. 1(*a*):

> A member or officer of a local union, charged with any offense constituting a violation of this Constitution, shall, unless otherwise provided in this Constitution, be tried by the Local Executive Board.

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The local constitution and by-laws were approved on January 6, 1924, by the president of the international union, under the authority of art. VI, s. 5, of the international constitution:

> The General President shall assist and advise local unions, draft agreements when called upon, and approve local by-laws.

Presidential approval is, I should say, sufficient to raise a presumption of the absence of such a conflict. The president is the highest executive officer of a vast organization, invested with the widest authority, and his approval of s. 45 can be taken to be a matter of ordinary administration. But on the true construction of art. XXI, s. 1(*a*), there is no conflict. The finding, when confirmed, remains the decision of the board, the trial tribunal. So far from conflicting with the spirit and the prescriptions of the international constitution, the by-law serves them in preventing local controversies from encumbering with petty matters the work of the general executive. That was in the mind of vice-president O'Laughlin when in the meeting of the local executive board called to consider a series of charges made against Houle arising indirectly out of this dispute, he rasped,

> . . . There are grounds for the General President not answering your communications before. He is now in Frisco and he is certainly not going to be bothered with the trials and tribulations of a little local union—(Loud protests) I will qualify that,—when he is at a convention involving one million members.

The approval is also a protection against arbitrary and dictatorial action of local officers, the need for which, in the interests of the local union, has been convincingly demonstrated here.

The initial suspension was conceded to have been wholly unauthorized. From its commencement until the trial, the respondent had suffered financially while seeking and engaging in other work and may in the future be seriously prejudiced in employment whether he remains a union member or not. His actual pecuniary loss does not seem to have been calculated but the evidence indicates it to have been not less than $700 and he was able ultimately to obtain employment only with a non-union employer. In that situation to what, if any, relief is he entitled and against whom?

In the absence of incorporation or other form of legal recognition of a group of persons as having legal capacity in varying degrees to act as a separate entity and in the corporate or other name to acquire rights, incur liabilities, to sue and be sued, the group is classified as a voluntary association. There are many varieties of this class ranging from business partnerships, labour unions, professional, fraternal and religious societies to social clubs, in the latter of which personal relations are the main objects, and in the descending or ascending scale the difference in the interests would seem to be proper to be reflected in the legal significance, if any, attributable to them.

Most of their purposes in some form or other touch property; and as their economic character grows that contact is correspondingly enlarged. In a degree depending upon the nature of their objects, they have been left largely to their own government on the ground, probably, that it is better to let family affairs settle themselves; but as they have evolved and membership has taken on greater economic importance resort to the Courts has become more frequent and the warrant for juridical interposition to prevent injustice has called for a more critical analysis of the jural elements involved.

Organizations of workmen to promote interests primarily economic have already become of impressive importance to the individual member in his relations with fellow-workmen and employer. In this country, apart from removing from them all taint of illegality as combinations, legislation, generally speaking, has been limited to arrangements with employers. In Manitoba *The Labour Relations Act,* R.S.M. 1954, c. 132, provides the usual machinery for the certification of unions as bargaining agents, for the conciliation of labour disputes looking to the elimination of strikes, for the negotiation of labour agreements, and for ancillary matters such as unfair labour practices.

In the protection of its interests, the ranks of labour are looked upon as marshalled against a compact order of private capital and there tends to be demanded of members an unquestioning loyalty. By its nature, certainly in its earlier stages, the organization lends itself to the domination of strong personalities and the corruptions of power.

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There has resulted an increasing use of the device of either union or closed shop. With only self-determined disciplinary procedure restraining action by officials, the ordinary member must at times either submit to dictatorial executive action or run the risk of being outlawed from the employable ranks of his trade or labour class.

Following the enactment in England of the *Trade Union Acts*, 1871 and 1876, one of the main objects of which was to abrogate the condemnation of unions, in most cases, as combinations in restraint of trade, the ground on which the jurisdiction in equity was grounded is generally taken to have been declared in *Rigby v. Connol* (1), to be the protection of interests in property. In *Taff Vale Railway Company v. The Amalgamated Society of Railway Servants* (2), the House of Lords, interpreting the legislation as recognizing a labour union to be capable of owning and exercising the power of property and of acting by agents, held an action in tort to lie against the union in its registered name for illegal acts committed by its authorized agents. This was followed five years later by an amendment to the statute which specifically denied such an action.

In the course of elaborating, in the light of this legislation, the legal relations between members of a union, the Courts of England in the earlier stages distinguished between the remedies that were open. In *Kelly v. National Society of Operative Printers* (3), the Court of Appeal upheld an injunction against a certified trade union from acting upon an illegal expulsion, but dismissed a claim for damages as for a breach of contract. Swinfen Eady L.J., at p. 1058, puts it thus:

> I am not aware of any authority for the proposition that a member of a voluntary unincorporated association can recover general damages against the association as such, for a breach of the rules, or of the contract contained in the rules. The committee of the society is the agent of all the members of the society, but one member cannot recover from the other members damages for the acts of the committee.

Phillimore L.J. at p. 1060 says:

> These damages can only be supported as damages for breach of contract. With whom did the plaintiff contract? Not, I think, with the trade

(1) (1880), 14 Ch. D. 482. (2) [1901] A.C. 426.
(3) (1915), 113 L.T. 1055.

union, which, as Lord Macnaghten says in *Russell's* case (1), is merely an unincorporated society of individuals. I think that the plaintiff contracted with each and every of the members, and if anybody has broken any contract with him it is each and every member. Further, the officers of the society are agents for him quite as much as for the other members. And if he sues the trade union for what it has done, he is suing himself among others.

and Bankes L.J. at p. 1062:

Here the contract relied on is that contained in the rules. These rules do, in my opinion, constitute a contract as between the plaintiff and the other members of his trade union. . . . Further than this, the very ground on which the plaintiff succeeds in obtaining an injunction is fatal to his claim for damages. He succeeds in that claim because he has established that the London committee and the executive committee in expelling him from the society acted without authority and in defiance of the rules. Having established that fact, it is not possible to contend that they were at the same time the authorised agents of his fellow-members to do the acts which he complains of as constituting breaches of his contract.

In *Bonsor v. Musicians' Union* (2), before the House of Lords, in which a similar question of damages was raised, *Kelly, supra,* was expressly overruled, and a registered union held liable in contract for the wrongful expulsion of a member. The issue called for an examination of the reasons in *Taff Vale* going to the character of the contractual relations involved in the union. On that question there was a difference of opinion; Lord Morton of Henryton and Lord Porter viewed them clearly and Lord Keith of Avonholm somewhat elusively as existing between the union as such and the member; Lord MacDermott and Lord Somervell of Harrow, as between the members. The latter associated themselves with Lord Macnaghten and Lord Lindley to whom, in *Taff Vale,* the use of the union name in the action was a procedural feature only which did not change the internal legal structure of the association.

Before pursuing that question, a contention which in Canada, at least, seems to be raised here for the first time, should be examined. It was argued that union membership had by its characteristics attained the stage of status, and that rights arising from it in the respondent had been infringed. It was on this ground that the judgment of Tritschler J. in the Court of Appeal proceeded.

(1) *Russell v. Amalgamated Society of Carpenters and Joiners et al.,* [1912] A.C. 421.

(2) [1956] A.C. 104, [1955] 3 All E.R. 518.

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I am unable to assent to that contention. There are few, if any, more ill-defined ideas in law than that of status. We have examples which are clear in legal features, such as marriage, but the difficulty of bringing them under a general conception or principle is demonstrated in the comprehensive exposition given the subject by Dr. Carleton K. Allen in (1930), 46 L.Q.R. 277.

Reducing it to its more concrete forms, status in its strict sense appears a condition of one or more persons between or toward whom and another or others distinctive legal relations exist to which by the domestic law special rights, duties, capacities and incapacities are annexed. Generally, at least, status embodies personal elements and is recognized by foreign states, although, in them, its incidents may or may not be accorded enforcement. Its creation may involve a voluntary or contractual assumption of the condition, but the incidents are determined by law. Thus while the right of the master in England over the personal freedom of the slave was denied by Lord Mansfield in *Somerset v. Stewart* (1), property interests arising from the status might properly have been regarded differently. Probably the most significant of the characteristics is the effect upon the legal capacities or incapacities of the parties.

I cannot bring the relations of a member with his immediate union within such a condition. With or without international affiliation these groups, as yet, are local to their own political jurisdictions or other geographical areas and are intended to be so; what special rights or capacities can be predicated of membership which to foreign employment or law, or to our own present law, would be matter for any form of recognition? What is vital to a member is his right as such to protection in employment; that would be an incident of the status; and the conclusive answer seems to be that on the assumption that the group is bound by an underlying agreement the incidents are already furnished by the parties themselves. To declare a contractual provision to be an incident of a newly-recognized status would be an unnecessary act of

(1) (1772), Lofft. 1, 98 E.R. 499.

legislation; to extend it to an element beyond the contract would be to embark upon legislative policy in an unwarranted manner.

There is no legislation in Manitoba similar to that of the *Trade Union Acts*, 1871-1876; and it was not argued that *The Labour Relations Act, supra,* had any wider effect than as already stated. Apart, then, from statute, that a union is held together by contractual bonds seems obvious; each member commits himself to a group on a foundation of specific terms governing individual and collective action, a commitment today almost obligatory, and made on both sides with the intent that the rules shall bind them in their relations to each other. That means that each is bound to all the others jointly. The terms allow for the change of those within that relation by withdrawal from or new entrance into membership. Underlying this is the assumption that the members are creating a body of which they are members and that it is as members only that they have accepted obligations: that the body as such is that to which the responsibilities for action taken as of the group are to be related.

By the contract, therefore, liabilities incurred in group action are group liabilities and it is this unexpressed assumption that warrants the conclusion of several of the Lords in *Taff Vale* and in *Bonsor* in limiting execution of the judgments in those cases recovered to the property of the union. That such a limitation can be effected contractually as between the parties is undoubted and its attribution to the agreement is simply making explicit what is implicit in their act of organization. The contractual rights of a member are, then, with all members except himself, otherwise it would be the group as one that contracts; and what ordinarily is complained of as a breach toward a member must, in the light of the rules and the agreement to be bound by a majority, be such as at the same time is a violation in respect of all the other members and not of one or more only. Not having contractual capacity, it follows, *a fortiori,* that a union as such cannot incur liability in tort.

This contractual condition gives rise to a right to engage in all work for which the union mark is a requisite; and when a union or a closed shop agreement is entered into

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with an employer, union membership secures to each member the right to continue in that employment free from improper interference on the part of the union or its officers. Membership is the badge of admission and continuance and, *vis-à-vis* the employer, to remove the badge is directly and immediately to defeat the right.

The executive board here is vested with authority to require the employer to comply with the terms of the union contract, including the feature of the closed or union shop. The board, purporting to act within the scope of its authority, may, by way of analogy with a corporation, commit either an *ultra vires* act, that is, one that does not become an act of the membership body, or an act *intra vires* that brings about a breach of contract through an improper exercise of authority.

That distinction is pointed out by Farwell J. in *Taff Vale, supra,* where at p. 433 he uses the following language:

> I have already held that the society are liable for the acts of their agents to the same extent that they would be if they were a corporation, and it is abundantly clear that a corporation under the circumstances of this case would be liable. See, for example, *Ranger v. Great Western Ry. Co.* (1854), 5 H.L.C. 86, where Lord Cranworth points out that, although a corporation cannot in strictness be guilty of fraud, there can be no doubt that if its agents act fraudulently, so that if they had been acting for private employers the persons for whom they were acting would have been affected by their fraud, the same principles must prevail where the principal under whom the agent acts is a corporation. It is not a question of acting *ultra vires,* as in *Chapleo v. Brunswick Permanent Building Society* (1881), 6 Q.B.D. 696, but of improper acts in the carrying out of the lawful purposes of the society.

This is as applicable to the labour union here as it was to the partly recognized society with which he was dealing.

That the original suspension here was without a semblance of authority is not disputed; it was an *ultra vires* act for which the members of the executive were individually responsible. By that act, their notification under the cloak of apparent authority to the employer, and their action on the inquiry, they brought about, as they intended to do, a nullification of the respondent's legal right as a union member to continue in the employment specifically of the employer, a dairy company, and generally of a union shop. This was a direct infringement of or trespass upon that right which of itself gave rise to

a cause of action against those committing it: *Ashby v. White et al.* (1), an action brought by a person entitled to vote at an election for members of Parliament against the returning officer for refusing to admit his vote. In the Queen's Bench on a motion in arrest of judgment, it was held, Holt C.J. dissenting, that the action did not lie, but on appeal to the House of Lords the judgment was reversed. In his reasons, the Chief Justice used the following well-remembered language, at pp. 953-5:

> If the plaintiff has a right, he must of necessity have a means to vindicate and maintain it, and a remedy if he is injured in the exercise or enjoyment of it; and indeed it is a vain thing to imagine a right without a remedy; for want of right and want of remedy are reciprocal. . . .
>
> And I am of opinion, that this action on the case is a proper action. My brother Powell indeed thinks, that an action upon the case is not maintainable, because here is no hurt or damage to the plaintiff; but surely every injury imports a damage, though it does not cost the party one farthing, and it is impossible to prove the contrary; for a damage is not merely pecuniary, but an injury imports a damage, when a man is thereby hindred of his right.

No reasons appear to have been given by the Lords but those of the Chief Justice were undoubtedly upheld.

To the same effect was *Marzetti v. Williams et al.* (2).

The steps so taken by the board and the subsequent action were found by the Courts below to have been wilful and without justification or excuse. Acting in an *ultra vires* course they were not representing the union; their acts were those of third persons; and they cannot be heard to say, nor was it argued, that what they did was done as legitimate measures in advancing the interests of their organization.

The cause of action alleged against the individual appellants in tort is then well founded. The relief allowable against the union is limited to the declaration of the respondent's continued membership and the injunction against interfering with him as a member. And I am unable to say that the damages awarded, considering the possible consequences in the future, are excessive.

(1) (1703), 2 Ld. Raym. 938, 92 E.R. 126.

(2) 1 B. & Ad. 415, 109 E.R. 842.

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I would, therefore, allow the appeal and modify the judgment below to the extent of striking out the last sentence of para. 4 of the formal judgment so that the paragraph will read:

THIS COURT DID FURTHER ORDER AND ADJUDGE that the Order and Judgment of the learned trial Chief Justice, set out in paragraph 4 of the formal judgment under appeal, whereby it was Ordered and Adjudged that the plaintiff do have judgment for damages of $5,000 against the defendant members of the said executive board of the defendant Local Union No. 119 in their individual capacities, and also against the defendant Local Union No. 119 as represented by the members of the said executive board, be VARIED to read that the plaintiff do have judgment for damages of $5,000 against the individual defendants personally.*

In other respects the judgment is affirmed. The respondent will be entitled in this Court to his costs against the appellants in their individual capacities and to one-half of his costs against them in their representative capacity.

The judgment of Locke and Nolan JJ. was delivered by

LOCKE J.:—While there is a very extensive record in this case, much the greater part of it relates to matters which are no longer the subject of dispute. In addition to the damages awarded against the individual plaintiffs and against them in their representative capacity at the trial, further relief by way of a direction for an accounting was given against the appellant Houle. This latter portion of the judgment was varied in the judgment of the Court of Appeal, certain of the claims for an accounting being set aside, and there is no cross-appeal as to these matters by the respondent.

The appeal taken to this Court is from that part of the judgment of the Court of Appeal which declared that the respondent was at all relevant times a member in good standing of Local Union No. 119 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America: that the action taken by the executive board of the union in suspending the respondent from his rights as a member was null and void: restraining the executive board and the union from enforcing the suspension of the respondent and interfering with the exercise of his rights as a member and awarding judgment for

* The judgment of the Court of Appeal contained the additional words "and against all other members of Local Union No. 119 (except the Plaintiff) to the extent of their interest in the funds of the local union".

damages in the sum of $5,000 against the individual appellants and against all other members of Local Union 119 to the extent of their interest in its funds, and granting to the respondent his costs on the terms of the judgment at the trial.

The facts to be considered in dealing with these issues are few and not in dispute.

The respondent had become a member of the local union at Winnipeg in the year 1935, at which time he was in the employ of the Crescent Creamery Co. Ltd. as a salesman. He continued in the employ of that company and as a member of the union until 1940, when he enlisted for service in the navy. On his discharge in 1945, after a short delay, he re-entered the service of the creamery company and again became a member of the union. This state of affairs continued until the occurrence of the events which gave rise to this litigation.

The union had for an undisclosed period of time prior to 1947 represented the salesmen employed by Crescent Creamery Co. Ltd. and, as their bargaining agent, had entered into a series of collective agreements with them and other dairy companies, dealing, *inter alia*, with wages, hours and other conditions of employment and providing for a union shop obligating the employer to engage members of the union as salesmen. Membership in the union was prescribed as a condition of continued employment. Such a collective agreement which, by its terms, was to continue in effect from April 1, 1947, until October 31, 1948, was in force on July 18, 1947, when a letter was addressed by the appellant Houle, in his capacity as secretary-treasurer and business agent of the union, to the general manager of Crescent Creamery Co. Ltd., notifying the company that the respondent

> has been temporarily suspended by the Executive Board of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 119, as of July 18th, 1947 and under the terms of Agreement between your Company and the Union, J. Tunney cannot remain in your employment till his suspension is cancelled

and requesting the company to comply with the agreement.

On receiving this, the company laid Tunney off work and his remuneration ceased.

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By letter dated July 21, 1947, the appellant Orchard wrote Tunney advising him that he had been charged under a clause in the constitution of the union with saying on several occasions that he had "the goods" on the secretary obtained by making investigations, and insinuating that discrepancies existed in the affairs of the union. The letter asserted that such statements were detrimental to the welfare of the union, stated that the trial of the charges would be held in the Labour Temple in Winnipeg on August 4 at 7 p.m., and informed Tunney that he was suspended "from all benefits of the local" until the trial was disposed of.

A hearing took place at the time stated and on August 7, 1947, Orchard again wrote Tunney advising him that he had been found guilty of the charge by the executive of the local and:

> In accordance with Section 5, Clause 10, you are hereby suspended from all rights, benefits and privileges as contained in the Constitution and Laws of our Brotherhood, as from August 4th, 1947.

The respondent endeavoured to get other employment with another dairy company which was a party to the collective agreement with the union but, by reason of his suspension, they would not employ him. Thereafter, he engaged for a while in a different type of employment, eventually obtaining employment as a salesman with a dairy company which did not employ union labour.

On September 30, 1947, the Crescent Creamery Co. Ltd. wrote the respondent informing him that, as they had been notified that he was no longer a member of Local 119, they could no longer employ him as a driver salesman. A cheque for $36, being a week's wages, in lieu of notice, was enclosed. The respondent had not been re-employed by the Crescent company up to the time of the trial which was held at Winnipeg in April 1950.

The constitution of the local union provided by s. 33 that the executive board should try all members against whom charges had been preferred and report the findings at the next regular meeting of the union. Section 45 required that all decisions of the executive board should be concurred in at a regular meeting of the union before becoming effective and that the accused should have the

right to appeal to the general executive board. The latter body is appointed under the provisions of the constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, with which Local 119 was affiliated.

It was admitted on the hearing before the Court of Appeal that the executive board of the local union had no power to suspend a member before the trial of charges preferred against him under the provisions of the constitution, and the contrary was not asserted in this Court. The statement in the notification sent to the Crescent Creamery Co. Ltd. on July 18, 1947, by the appellant Houle that Tunney had been temporarily suspended was untrue.

The learned trial judge and all of the learned judges of the Court of Appeal have expressed the opinion that the order of the executive board of which Orchard advised Tunney by the letter of August 7, 1947, was made without jurisdiction. With this conclusion I respectfully agree, and this whether the procedure to be followed was governed by the provisions of the constitution of the local union or that of the international brotherhood.

An order or decision such as this, made without jurisdiction, is a nullity: *Macfarlane et al. v. Leclaire et al.* (1); *McLeod v. Noble et al.* (2). As the learned trial judge has pointed out, there was no effective decision of the executive board from which to appeal or which might be concurred in at a regular meeting of the union before becoming effective under s. 45. The appeal provisions were, accordingly, inapplicable and the contention based upon the decision of the Judicial Committee in *White et al. v. Kuzych* (3), that the respondent did not exhaust his remedies under the constitution before commencing his action must be rejected.

The respondent not having been suspended in accordance with the requirements of the constitution, the appeal against that portion of the judgment declaring him to have been a member in good standing of Local Union 119 at all relevant times must fail.

(1) (1862), 15 Moo. P.C.C. 181, 15 E.R. 462.
(2) (1897), 28 O.R. 528.
(3) [1951] A.C. 585, [1951] 2 All E.R. 435, [1951] 3 D.L.R. 641, 2 W.W.R. (N.S.) 679 (*sub nom. Kuzych v. White et al.*).

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There remains the question as to the nature of the respondent's remedy for the damages he has unquestionably sustained.

There is no legislation in Manitoba similar to the *Trade Union Act* of 1871 or the Act of 1876, considered in *Taff Vale Railway Company v. The Amalgamated Society of Railway Servants* (1), nor to the *Trade Disputes Act* of 1906 (6 Edw. VII, c. 47) which was passed in England in consequence of the *Taff Vale* decision. Section 4 of the latter statute prohibits actions in tort against trade unions in respect of any tortious acts alleged to have been committed by them or on their behalf. A trade union in Manitoba not having the status, however, of such organizations in England to which the legislation of 1871 and 1876 applied and not being a corporate entity, a representation order was made in the present action by the Court of Appeal in advance of the trial. By that order, the persons who are the individual appellants in the present case were ordered to represent and defend the action on behalf of all other members of Local Union No. 119, except the present respondent, as well as on their own behalf.

The judgment at the trial, in addition, *inter alia,* to awarding damages of $5,000 against the members of the executive board in their individual capacities, gave judgment in that amount against Local Union No. 119 as represented by the members of the said Board. By the judgment of the Court of Appeal this portion of the judgment was varied by directing that the plaintiff have judgment in the said amount

against the individual defendants personally and against all other members of Local Union No. 119 (except the Plaintiff) to the extent of their interest in the funds of the local union.

It was alleged in the statement of claim that the actions of the executive board complained of were actuated by indirect and improper motives and that they had acted maliciously in order to injure the plaintiff. The learned trial judge held that the purported expulsion of the plaintiff was done in bad faith and all of the learned judges

(1) [1901] A.C. 426.

of the Court of Appeal were in agreement that the actions complained of were done maliciously with intent to injure him.

For the appellants it was alleged that the respondent's remedy, if any, was damages for breach of contract only, this on the footing that the relationship existing between the respondent and the other members of the local union was contractual, the terms of the contract being as defined in the rules applicable to the organization. This was recently held to be so in the case of the members of a registered trade union in England in *Bonsor v. Musicians' Union* (1). The point is that, if the cause of action was in contract rather than in tort, the damages would be assessable upon the principle defined in *Hadley et al. v. Baxendale et al.* (2). If this rule applied, it might well be that the damages proven were insufficient to justify the award of $5,000 made at the trial.

In my opinion, the cause of action for damages against the individual defendants was in tort. I further consider that as against the defendants, made so by the representation order, the only enforceable claim was for a declaration that the plaintiff was a member of the union in good standing.

Tunney's situation in July of 1947 was that he had steady employment with a large dairy company by which he had been employed for an aggregate of approximately 7 years, drawing a substantial weekly salary and apparently assured of indefinite employment so long as his services were satisfactory to his employer, and the union of which he was a member remained the bargaining agent for the salesmen and he remained a member in good standing. As a member of the union he was entitled to the benefits of the agreement that had been made by the union as bargaining agent for the salesmen.

The action of the individual appellants who have been found to have acted in concert in notifying his employer, first, that he had been suspended, and secondly, that he was no longer a member of the union, were wrongful acts. Both of these statements were false and caused immediate

(1) [1956] A.C. 104, [1955] 3 All E.R. 518.

(2) (1854), 9 Exch. 341, 156 E.R. 145.

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damage to the respondent in that he at once lost his employment and was unable to obtain work from any of the other dairy companies in Winnipeg who were parties to the collective agreement and all the other benefits and advantages to which membership in the union entitled him.

This is not such a case as *Lumley v. Gye* (1), where the cause of action was for inducing a breach of a contract of employment. The actions of the individual appellants did not result in the Crescent Creamery Co. Ltd. breaking its contract of employment with Tunney. Since the bargaining agent authorized to act on his behalf had agreed that membership in the union was to be a condition of his continued employment, the action of the employer in, first, suspending, and then dismissing him, with payment of a week's wages in lieu of notice, did not involve any breach of contract on its behalf. However, in my opinion, similar principles are applicable in determining the question of liability.

The members of the executive board were in a particularly advantageous position if they wished to injure Tunney in this manner. The employer was bound by its agreement to employ only members of the union and could not be expected to enquire into the regularity of the proceedings resulting in Tunney's alleged suspension or in his having thereafter ceased to be a member. The board were in a position to exert pressure upon the employer since a breach on its part of the covenant to employ only union men might well precipitate a strike.

In *Quinn v. Leathem* (2), Lord Macnaghten said, at p. 510:

> Speaking for myself, I have no hesitation in saying that I think the decision [*Lumley v. Gye, supra*] was right, not on the ground of malicious intention—that was not, I think, the gist of the action—but on the ground 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 recognised by law if there be no sufficient justification for the interference.

(1) (1853), 2 E. & B. 216, 118 E.R. 749.

(2) [1901] A.C. 495.

Lord Lindley at pp. 534-5 said:

As to the plaintiff's rights. He had the ordinary rights of a British subject. He was at liberty to earn his own living in his own way, provided he did not violate some special law prohibiting him from so doing, and provided he did not infringe the rights of other people. This liberty involved liberty to deal with other persons who were willing to deal with him. This liberty is a right recognised by law; its correlative is the general duty of every one not to prevent the free exercise of this liberty, except so far as his own liberty of action may justify him in so doing. But a person's liberty or right to deal with others is nugatory, unless they are at liberty to deal with him if they choose to do so. Any interference with their liberty to deal with him affects him. If such interference is justifiable in point of law, he has no redress. Again, if such interference is wrongful, the only person who can sue in respect of it is, as a rule, the person immediately affected by it; another who suffers by it has usually no redress; the damage to him is too remote, and it would be obviously practically impossible and highly inconvenient to give legal redress to all who suffered from such wrongs. But if the interference is wrongful and is intended to damage a third person, and he is damaged in fact—in other words, if he is wrongfully and intentionally struck at through others, and is thereby damnified—the whole aspect of the case is changed: the wrong done to others reaches him, his rights are infringed although indirectly, and damage to him is not remote or unforeseen, but is the direct consequence of what has been done. Our law, as I understand it, is not so defective as to refuse him a remedy by an action under such circumstances.

In *Giblan v. National Amalgamated Labourers' Union of Great Britain and Ireland* (1), Romer L.J. said in part:

In my judgment, if a person who, by virtue of his position or influence, has power to carry out his design, sets himself to the task of preventing, and succeeds in preventing, a man from obtaining or holding employment in his calling, to his injury, by reason of threats to or special influence upon the man's employers, and the design was to carry out some spite against the man, . . . then that person is liable to the man for the damage consequently suffered. The conduct of that person would be, in my opinion, such an injustifiable molestation of the man, such an improper and inexcusable interference with the man's ordinary rights of citizenship, as to make that person liable in an action.

There is an exhaustive review of the authorities in *Pratt et al. v. British Medical Association et al.* (2), where McCardie J., at p. 260, expressed the opinion that it is an actionable wrong for a single person or a body of persons to inflict actual pecuniary damage upon another by the intentional employment of unlawful means to injure that person's business, even though the unlawful means may not comprise any act which is *per se* actionable, and that fraud fell within the expression "unlawful means".

(1) [1903] 2 K.B. 600 at 619-20. (2) [1919] 1 K.B. 244.

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It was the false statements made by Houle and Orchard which led to Tunney's dismissal and, whether or not malice is of the gist, malice has in the present case been expressly found.

Illustrations of the application of the principle above referred to are to be found in the judgment of this Court in *The Manitoba Free Press Company v. Nagy* (1), and in *National Phonograph Company, Limited v. Edison-Bell Consolidated Phonograph Company, Limited* (2).

I see no ground for any interference with the judgment for damages against the individual appellants.

Since, however, it has been found that the actions of the executive board were *ultra vires* and were done maliciously with intent to injure the respondent, in my opinion the judgment against them in their representative capacity as representing all the other members of the union cannot be sustained. The individual appellants had no authority from their fellow members to act in the manner complained of, either by the constitution of the union or by any course of conduct of the other members. As the evidence shows, very considerable numbers of the members protested vigorously against what had been done and disapproved of the actions of the executive board. The directors of a limited company cannot impose liability upon it by entering into transactions on its behalf which are beyond its corporate powers and I think, upon the same principle, the members of this union are not, even to the extent of their interest in the funds of the union, liable for acts done wholly beyond those powers entrusted to the individual appellants.

I agree that the judgment should be varied in the manner directed by my brother Rand and with his proposed order as to costs.

Judgment varied.

Solicitors for the defendants, appellants: Thompson, Shepard, Dilts & Jones, Winnipeg.

Solicitors for the plaintiff, respondent: Stubbs, Stubbs & Stubbs, Winnipeg.

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(1) (1907), 39 S.C.R. 340.

(2) [1908] 1 Ch. 335.