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Contracting Out, Grievance Procedure and Union Liability

Locke J.

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Résumé de l'article

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JURISPRUDENCE DU TRAVAIL

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LOCKE J.

This is an appeal from a judgment of the Court of Appeal of British Columbia which dismissed the appeal of the present appellant, the defendant in the action, from a judgment of Clyne J. By that judgment the respondent recovered general damages in the sum of $2,500., special damages for loss of profit for a named period, anl was granted an injunction restraining the appellant from interfering with the plaintiff, his agents or servants or any of them, in the operation of his business by endeavouring to induce or coerce the plaintiff to join the defendant union or from negotiating or dealing with any person, firm or corporation in any way to induce or coerce the plaintiff to join the said union.

For some years prior to the month of September 1956 the respondent was the owner and operator of a contracting and trucking business in Vancouver and at the time in question owned a tractor and four trucks. He had for years supplied trucks to the City Construction Co. Ltd., a company carrying on its business in British Columbia, together with drivers employed by him, and a truck which he himself operated, these vehicles being used by the construction company in connection with their operations, in consideration of an agreed payment to the respondent. In this arrangement the position of the respondent was that of an independent contractor and the truck drivers employed by him acted as his servants and were paid by him. There was no written contract between the parties but the evidence shows that the services rendered were satisfactory to the construction company and would have been continued for an indefinite period of time but for the events complained of.

The appellant is a trade union, as that expression is defined in the *Labour Relations Act* (c. 17, S.B.C. 1954, s.1). Local No. 213, the appellant in these proceedings, is an organization forming part of an international union which has its headquarters in the United States.

(1) Supreme Court of Canada. International Brotherhood of Teamsters and al V. Thérien, January 26, 1960. Hon. Patrick Kerwin, P.C., C.S.C., Locke, J., concurred in by Taschereau, J., Cartwright, J., Martland, J.

On September 28, 1955, the appellant had entered into an agreement as to wages and working conditions with the City Construction Co. Ltd. as the bargaining agent of the truck drivers employed by that company and which covered all construction work undertaken by it in the province. While no evidence was given upon the point, it appears to have been assumed throughout that the union had been certified as the bargaining agent of these employees under the provisions of the *Labour Relations Act* and was, accordingly, empowered to contract in writing on their behalf in regard to their working conditions, rates of pay and other matters commonly forming part of a collective agreement.

Clause 10 of this agreement read: —

> When Truck Drivers are required, competent Union men, members of Local No. 213 shall be hired. When competent No. 213 Union men are not available, then the employer may obtain Truck Drivers elsewhere, it being understood that they shall join the Union within thirty (30) days or be replaced by competent Union tradesmen when available. It is the prerogative of the employer to hire and discharge employees. It shall not be the duty of the employer to induce non-members to join the Union.

Clause 16, which dealt with what was described as grievance procedure, provided in part that, if during the term of the agreement any dispute should arise as to the carrying out of its terms or its interpretation, each party should appoint three persons to be members of a committee to examine the difficulty in an endeavour to find a solution. If this failed the clause provided that an arbitration board should be constituted and its decision should be final.

The facts, as found by the learned trial judge, are as follows: During the summer of 1956 one Carbonneau, a business agent of the union, called at the premises of the City Construction Co. Ltd. to make certain that the truck drivers employed belonged to the union. There he saw Therien and told him that he must join the union as well as the other drivers of his trucks. Therien, presumably having in mind the provisions of the *Labour Relations Act*, refused to join the union but agreed that he would employ union drivers for his other trucks and thereafter did so. Carbonneau admitted that in June 1956 he knew that Therien was himself an employer of labour: nevertheless, he told Therien that if he did not join the union they would « placard » the company and have his truck put off the job. Thereafter Carbonneau and another union representative had several conversations with the despatcher of the construction company and told him that if the company continued to use Therien's truck they would « placard » the various places where the company was doing work. Smith referred the matter to the general manager of the company, C. W. Bridge, and Carbonneau told the latter that Therien must not only employ union drivers but must be a member of the union himself and that if Therien continued to drive a truck the company's job would be placarded. The learned trial judge found that by this term the union officials meant, and were understood to mean, that they would, by means of a picket line carrying placards, take such steps as would have the effect of interfering with and obstructing the operations of the company and of making it appear to the public and other labour unions

that the company had broken its contract with the defendant union, or was indulging in unfair labour practices.

In consequence of these threats, Bridge wrote to the respondent informing him that the construction company would no longer be able to hire the truck driven by himself after that date. The letter read in part:

> as we habe been threatened with picket lines, etc., should you be seen operating on any of our jobs, even though you own your own vehicle and employ Union personnel on your other trucks, I find it necessary to refrain from hiring you as several of our jobs have completion dates and must be finished without interference from Union disputes.

The respondent continued for a few days longer supplying trucks, including the one driven by himself, to the Construction Company, but on September 24, 1956, he was finally told that the company could no longer do business with him.

Subsection (1) of s. 4 of the *Labour Relations Act* reads in part:

> No employer or employers' organization, and no person acting on behalf of an employer or employers' organization, shall participate in or interfere with the formation or administration of a trade-union or contribute financial or other support to it.

Section 6 of the Act reads:

> No trade-union, employers' organization, or person shall use coercion or intimidation of any kind that could reasonably have the effect of compelling or inducing any person to become or refrain from becoming, or to continue or to cease to be, a member of a trade-union.

In *Morrison v. Yellow Cab Co. Ltd.* (1956) 18 W.W.R. 593, Clyne J. had held that an employer in a position similar to that of the present respondent was precluded by s-s (1) of s. 4 from becoming a member of a trade-union in the province, a conclusion with which I respectfully agree. Notwithstanding the provisions of the section, the Secretary-Treasurer of the union said in evidence at the trial that, in spite of the fact that he was an employer, the union would accept him into its membership.

That damage to the respondent resulted from these actions cannot be disputed. By way of defence to the action the appellant says, firstly, that it is not a legal entity which may be found liable in tort, and secondly, that the evidence does not disclose a cause of action, either at common law or under the *Industrial Disputes Act.*

The first of these questions is not determined in the appellant's favour by the decision of this Court in *Orchard v. Tunney,* 1957 S.C.R. 436. In that case the action was originally brought against Orchard and six other members of the Executive Committee of Local Union No. 119 of the International Brotherhood of Teamsters Union. By an interlocutory order made by the Court of Appeal after the judgment at the trial, a representation order was made and the style of cause amended to indicate that these individual defendants were sued on their own behalf and on behalf of all other members of the labour

union except the plaintiff. The proceedings in the matter do not indicate whether the collective agreement signed by the union with Tunney's employers had been made after the union had been certified as the bargaining agent under the provisions of the *Labour Relations Act* (R.S.M. 1948, c. 27) and, as the action was not brought against the union, the question as to whether it was in law an entity which might be made liable in tort was not considered, either at the trial by Williams C.J. or in the Court of Appeal or argued in this Court. There was, accordingly, no issue in this Court as to the legal status of the labour union. Accordingly, what was said by Rand J. in delivering the judgment of the majority of the Court and by me in delivering the judgment of our late brother Nolan and myself, which really merely consisted in restating what had been said earlier in this Court by Duff J. (as he then was), Anglin J. (as he then was) and Brodeur J. in *Local Union v. Williams* (1919) 59 S.C.R. 240, cannot be taken as deciding that in Manitoba a trade union certified as bargaining agent under the *Manitoba Act* (which closely resembles that of British Columbia) is not an entity which may be held liable in tort. A case is only authority for what it actually decides.

The question as to whether a trade union certified as a bargaining agent by a statute in the terms of the *Labour Relations Act of British Columbia* may be made liable in an action, either in tort or contract, has not heretofore been considered by this Court.

In *Taff Vale Railway v. Amalgamated Society of Railway Servants,* 1901 A.C. 426, the action was brought against a trade union registered under the *Trade Union Acts of 1871 and 1876* for an injunction restraining the union, its servants and agents and others acting by their authority from watching or besetting the Great Western Railway Station at Cardiff. A motion made on behalf of the union before Farwell J. to strike out the name of that defendant on the ground that it was neither a corporation nor an individual and could not be sued in a quasi-corporate or any other capacity was dismissed.

It appears to me to be clear that, had it not been that the trade union was registered under the *Trade Unions Act,* the action against it by name would not have been maintained. Provision was made by the Act of 1871 for the registration of trade unions and they were given power, *inter alia,* to purchase property in the names of trustees designated by them and to sell or let such property. The trustees of any registered union were empowered to bring or defend actions touching or concerning the property of the union and might be sued in any court of law or equity in respect of any real or personal property of the union. The union was also required to have a registered office and to make annual returns to the Registrar appointed under the Act yearly, and any trade union failing to comply with the provisions of the Act and every officer of the union so failing was made liable to a penalty.

Farwell J. said that the fact that a trade union is neither a corporation nor an individual or a partnership between a number of individuals did not conclude the matter. After pointing out that the Acts legalized the usual trade union contracts, established a registry of trade unions giving to each an exclusive right to the name in which it was registered and authorized it through the

medium of trustees to own a limited amount of real estate and unlimited personal estate, said in part (p. 429):

> Now, although a corporation and an individual or individuals may be the only entity known to the common law who can sue or be sued, it is competent to the Legislature to give to an association of individuals which is neither a corporation nor a partnership nor an individual a capacity for owning property and acting by agents, and such capacity in the absence of express enactment to the contrary involves the necessary correlative of liability to the extent of such property for the acts and defaults of such agents. It is beside the mark to say of such an association that it is unknown to the common law. The Legislature has legalised it, and it must be dealt with by the Courts according to the intention of the Legislature...
>
> Now, the Legislature in giving a trade union the capacity to own property and the capacity to act by agents has, without incorporating it, given it two of the essential qualities of a corporation — essential, I mean, in respect of liability for tort, for a corporation can only act by its agents, and can only be made to pay by means of its property. The principle on which corporations have been held liable in respect of wrongs committed by its servants or agents of the employer — qui sentit commodum sentire debet et onus — (see *Mersey Docks Trustees v. Gibbs* (1886) L.R. 1 H.L. 93) is as applicable to the case of a trade union as to that of a corporation... The proper rule of construction of statutes such as these is that in the absence of express contrary intention the Legislature intends that the creature of the statute shall have the same duties, and that its funds shall be subject to the same liabilities as the general law would impose on a private individual doing the same thing It would require very clear and express words of enactment to induce me to hold that the Legislature had in fact legalised the existence of such irresponsible bodies with such wide capacity for evil.

The order dismissing the motion was set aside by the Court of Appeal but restored in the House of Lords. Halsbury L.C. said that he was content to adopt the judgment of Farwell J. with which he entirely concurred and added (p. 436): —

> If the Legislature has created a thing which can own property, which can employ servants, and which can inflict injury, it must be taken, I think, to have impliedly given the power to make it suable in a Court of Law for injuries purposely done by its authority and procurement.

Lord Macnaghten, Lord Shand and Lord Brampton were agreed in adopting the judgment of Farwell J. and the reasoning upon which it proceeded. Lord Lindley, after saying that he had no doubt that, if the trade union could not be sued in its registered name, some of its members could be sued on behalf of themselves and the other members of the society and an injunction and judgment for damages could be obtained in an action so framed, said that the question in the litigation was of comparatively small importance but that the Act appeared to indicate with sufficient clearness that the registered name is one which may be used to denote the union as an unincorporated society in legal proceedings as well as for business and other purposes, and that the use of the name imposed no duty and altered no rights but was only a more convenient mode of proceeding than that which would have to be adopted if the name could not be used.

It was, undoubtedly, as a result of the judgment in the *Taff Vale Case* that the *Trade Disputes Act of 1906* (c. 47) which amended the *Trade Union Acts of 1871 and 1876* was passed. That Act did not alter the law as declared by the House of Lords as to registered trade unions being entities which might be held liable in tort, but declared the rights of persons on behalf of trade unions to carry on what has now become to be known as peaceful picketing, and further declared that an action against a trade union or any members or officials there of on behalf of themselves and all other members of such union in respect of any tortious act alleged to have been committed by or on behalf of the union should not be entertained by any court.

It was clearly, I think, in consequence of the *Taff Vale* decision that the Legislature of British Columbia enacted the *Trade Union Act of 1902* (c. 66). This Act declared that no trade union or the trustees of any such union shall be liable for damages for any wrongful act or omission or commission in connection with any strike, lock-out or trade or labour dispute, unless the members of such union or its council or other governing body shall have authorized, or shall have been a concurring party in such wrongful act: that no such trade union nor any of its servants or agents shall be enjoined, nor its funds or any of such officers be made liable for communicating to any person facts respecting employment or hiring or in persuading or endeavouring to persuade by fair or reasonable argument any workman or person to refuse to continue or become the employee or customer of any employer of labour. Section 3 of that Act further declared that no trade union or its agents or servants shall be liable in damages for publishing information with regard to a strike or lock-out or for warning workmen or other persons against seeking employment in the locality affected by any strike , lock-out or labour trouble or from purchasing, buying or consuming products produced by the employer of labour party to such strike.

It will be seen that the British Columbia Act, by its reference to trade unions as such, as well as to the servants and agents of such unions restricting their liability in tort to the extent defined, recognized the fact that a trade union was an entity which might be enjoined or become liable in damages for tort.

It may be said in passing that there was no such statute in force in the Province of Manitoba when the cause of action arose in *Orchard's Case*. In *Cotter v. Osborne* (1909) 18 M.R. 471, the action to restrain and recover damages for the acts of certain members of a trade union in the course of a trade dispute was brought against the individuals and a representation order made by Mathers J. As in *Orchard's Case* the question as to whether the union might have been sued or enjoined by name was not raised.

By the *Labour Relations Act*, s. 2, a trade union as defined includes a local branch of an international organization such as the appellant in the present matter. Extensive rights are given to such trade unions and certain prohibitions declared which affect them. The Act treats a trade union as an entity and as such it is prohibited, *inter alia*, from attempting at the employer's place of employment during working hours to persuade an employee to join or not to

join a trade union, from encouraging or engaging in any activity designed to restrict or limit production or services, from using coercion or intimidation of any kind that could reasonably have the effect of compelling any person to become or refrain to become a member of a trade union and from declaring or authorizing a strike until certain defined steps have been taken. By s. 7 if there is a complaint to the Labour Relations Board that a union is doing or has done any act prohibited by ss. 4, 5 or 6, the Board may order that the default be remedied and, if it continues, the union may be prosecuted for a breach of the Act. By s. 9 all employers are required to honour a written assignment of wages by their employees to a trade union. A union claiming to have as members in good standing a majority of employees in a unit appropriate for collective bargaining is entitled to apply to the Labour Relations Board for certification as the bargaining agent of such employees and, when certified, to require the employer to bargain with it and, if agreement is reached, to enter into a written agreemnt with it which is signed by the union in its own name as such bargaining agent. Throughout the Act such organizations are referred to as trade unions and thus treated as legal entities.

The question as to whether a trade union such as the present appellant is an entity which might be proceeded against by name in proceedings under the *Industrial Conciliation and Arbitration Act, 1947* (c. 44) was considered by the Court of Appeal in *In re Patterson and Nanaimo Dry Cleaning and Laundry Workers Union Local No. 1,* 1947, 2 W.W.R. 510. The provisions of that statute, which was repealed by the *Labour Relations Act,* in so far as they affect the present consideration, appear to me indistinguishable from the latter Act. Proceedings had been taken in the Police Court against the union named, for an alleged breach of the provisions of the Act in authorizing a strike of the employees before a conciliation board had been appointed to endeavour to bring about an agreement. It was only necessary in the case to determine whether a trade union, acting as a bargaining agent, could be proceeded against under the Act, but the broader question as to whether the union had, by reason of the Provisions of the *Trade Union Act* and the *Industrial Conciliation and Arbitration Act,* been constituted an entity in law was discussed in the reasons delivered by O'Halloran and Robertson JJ.A. Both of these learned judges expressed the view that such a union was by virtue of these statutes of the province an entity distinct from its members or, as expressed by Robertson J.A., adopting what had been said by Scott L.J. in *National Union of General and Municipal Workers v. Gillian,* 1946, 1 K.B. at 85, a *persona juridica.*

In a later case: *Vancouver Machinery Depot v. United Steel Workers of America,* 1948, 2 W.W.R. 325, the court held that an international union which had not been actually appointed a bargaining agent under the *Industrial Conciliation and Arbitration Act, 1947* was none the less a legal entity against which an action for damages might be maintained. Sidney Smith J.A., with whom Sloan C.J. and O'Halloran J.A. agreed, said in part (p. 328): —

> It seems to me that it would lead to all sorts of anomalies if a union's legal status under the Act was conferred merely by its being chosen to represent a group of workers. The matter of the status of a union as a legal entity, either at large or limited in purpose, depends upon the recognition and definition by the legislature of its capacity.

Were it not for the provisions of the *Trade Unions Act* and the *Industrial Relations Act* if the union was simply an unincorporated association of workmen, it would not, in my opinion, be an entity which might be sued by name, and what was said by Duff J. and by Anglin J. (with whom Brodeur J. agreed) in *Local Union v. Williams* above referred to would apply. Such an unincorporated body not being an entity known to the law would be incapable of entering into a contract (*Canada Morning News Co. v. Thompson*, (1930) S.C.R. 338). That, however, is not the present case.

I agree with the opinions expressed by the learned judges of the Court of Appeal in the cases to which I have above referred. The granting of these rights, powers and immunities to these unincorporated associations or bodies is quite inconsistent with the idea that it was not intended that they should be constituted legal entities exercising these powers and enjoying these immunities as such. What was said by Farwell J. in the passage from the judgment in the *Taff Vale case* which is above quoted appears to me to be directly applicable. It is necessary for the exercise of the powers given that such unions should have officers or other agents to act in their names and on their behalf. The legislature, by giving the right to act as agent for others and to contract on their behalf, has given them two of the essential qualities of a corporation in respect of liability for tort since a corporation in respect of liability for tort since a corporation can only act by its agents.

The passage from the judgment of Blackburn J. delivering the opinion of the judges which was adopted by the House of Lords in *Mersey Docks v. Gibbs*, (1864) L.R. 1 H.L. at 110, referred to by Farwell J. states the rule of construction that is to be appplied. In the absence of anything to show a contrary intention — and there is nothing here — the legislature must be taken to have intended that the creature of the statute shall have the same duties and that its funds shall be subject to the same liabilities as the general law would impose on a private individual doing the same thing. *Qui sentit commodum sentire debet et onus.*

In my opinion, the appellant is a legal entity which may be made liable in name for damages either for breach of a provision of the *Labour Relations Act* or under the common law.

The decision of this Court in *Society Brand Clothes Ltd. v. Amalgamated Clothing Workers of America*, 1931 S.C.R. 321 and *International Ladies Garment Workers Union v. Rothman*, 1941 S.C.R. 388, do not conflict with this conclusion. When those actions were instituted there was no legislation in the Province of Quebec similar to the *Trade Union Act of 1902* and the *Labour Relations Act of British Columbia* above referred to.

There remains the question as to whether the evidenced discloses a cause of action. The appellant says that what was done by its servants was nothing more than to insist upon compliance by the City Construction Co. Ltd. with the terms of clause 10 of the collective agreement.

No doubt there was coercion exercised by Carbonneau in threatening the respondent that if he did not join the union he would have him put off the

job, and it is equally clear that for Therien to join the union was legally impossible. It was not, however, this wrongful act which was the cause of the injury complained of, and if there is a cause of action it must be found elsewhere.

In addition to ss. 4 ond 6 of the *Labour Relations Act* which are above quoted, ss. 21 and 22 are to be considered. Section 21 reads: —

> Every person who is bound by a collective agreement, whether entered into before or after the coming into force of this Act, shall do everything he is required to do, and shall refrain from doing anything that he is required to refrain from doing, by the provisions of the collective agreement, and failure to so do or refrain from so doing shall be an offence against this Act.

Section 22, so far as relevant, reads: —

> (1) Every collective agreement entered into after the commencement of this Act shall contain a provision for final and conclusive settlement without stoppage of work, by arbitration or otherwise, of all differences between the persons bound by the agreement concerning its interpretation, application, operation, or any alleged violation thereof.

The apppellant and the City Construction Company Ltd., in compliance with this requirement, had provided for the settlement of disputes as to the inerpretation of the agreement by clause 16 above referred to.

The evidence shows that the employer wished to continue its arrangement with the respondent in his capacity as an independent contractor and that Therien rightly took the attitude that he would not join the union, presumably because the Act forbade him to do so.

Clause 3 of the contract provided that its terms should apply to all subcontractors or sub-contracts let by the employer and it might perhaps be contended that this applied to an independent contractor supplying trucks and services such as did the respondent. The learned trial judge held that clause 10 did not apply to an independent contractor such as the respondent who drove his own truck. The employer was apparently of this opinion and the matter was one which should have been dealt with accordingly under the grievance procedure clause of the contract. The appellant, however, without resorting to this, threatened to placard jobs upon which the employer was engaged which, as found by the learned trial judge, meant that the union would, by means of a picket line carrying placard, take such steps as would have the effect of obstructing the operations of the company and making it appear to the public and other labour unions that the company had broken its contract with the defendant union or was indulging in unfair labour practices. This conduct was a breach both of the terms of the agreement and of s. 21 of the *Labour Relations Act*. That the decision of the City Construction Co. Ltd. to terminate its longstanding arrangement with the respondent resulted from these wrongful acts is undoubted.

As it was said by Lord Dunedin in *Sorrell v. Smith*, (1925) A.C. 700 at 718,719, in summarizing what had been decided in *Mogul Steamship Company*

v. M'Gregor, (1892) A.C. 25, *Allen v. Flood,* (1898) A.C. 1 and *Quinn v. Leathem,* (1901) A.C. 495, even though the dominating motive in a certain course of action may be the furtherance of your own business or your own interests, you are not entitled to interfere with another man's method of gaining his living by illegal means.

I agree with Sheppard J.A. that in relying upon these sections of the Act the respondent is asserting, not a statutory cause of action, but a common law cause of action, and that to ascertain whether the means employed were illegal inquiry may be made both at common law and of the statute law.

While in the concluding paragraph of the appellant's factum it is said that the action was barred by the terms of s. 2 of the *Trade Unions Act* (c. 342, R.S.B.C. 1948), since there is no evidence that the members of the union or its governing body authorized or concurred in the wrongful act counsel for the appellant did not argue the point before us. If it was intended to raise any such defence, the facts relied upon should have been pleaded for the reasons stated by my brother Cartwright. Since no mention is made of the matter in the reasons for judgment delivered by the trial judge and in the Court of Appeal, it is apparent that the question was not argued in either court.

Section 2 of the Act, as it appears in c. 342 of the Revised Statutes, with slight changes which do not affect the present question, reproduces that section in the statute of 1902 which I have above referred to. In my opinion, it has no bearing upon the present matter. There was here no strike or lock-out or trade or labour dispute within the meaning of those expressions in the Act. The disputes there referred to are, in my opinion, those commonly so described arising between employers and employees as to wages, working conditions, hours of employment and other like matters. The wrongful act of the business agent in bringing about by unlawful threats the severing of business relations between an employer and an independent contractor, to the detriment of the latter, was not done in connection with any such dispute.

I would dismiss this appeal with costs.

Concurred in by

Mr Justice TASCHEREAU

THE CHIEF JUSTICE

I am in substantial agreement with the reasons of Locke J. on the two main questions, i.e., that the appellant is an entity which can be sued and that it committed an actionable wrong.

As to the firts, the point is raised at p. 7 of the appellant's factum, where it is stated « The Union is not a suable entity:..... (c) under The Trade Unions Act ». This is expended at p. 19 of the factum where s. 2 of The

Trade Unions Act is set out in para. (1) of (c), and at p. 20 the following appears:

> (2) It is submitted that this section does not make a trade union a legal entity. It bears no resemblance to the trade union legislation that was before the Courts in the *Taff Vale Case*, 1901 A.C. 426.
>
> (3) It is further submitted that section 2 of The Trade Unions Act prohibits the imposition of liability in this case, because there is no evidence that the members of the appellant union or its governing body authorized or concurred in any wrongful act.

The point was not considered in the Courts below and certainly it is not mentioned in any of the reasons for judgment, but, for the reasons given by Cartwright J., I am of opinion that the point fails. Like him, I am assuming that the wrongful act committed by the appellant was « in connection with any... trade or labour dispute », but I am expressing no opinion as to whether or not that is so.

On the second point as to whether it should be found that the appellant did not intend to ignore the « grievance procedure » referred to in clause 16 of the Collective Agreement between the appellant and City Construction Company, Limited, I agree with Cartwright J. that the argument fails on the facts.

The appeal should be dismissed with costs.

CARTWRIGHT J.

The facts out of which this appeal arises are stated in the reasons of my brother Locke.

Two main questions are raised. It is said, first, that the appellant is not an entity which can be sued and, secondly, that in any event its conduct, of which complaint is made, did not constitute an actionable wrong.

On both of these questions I am in substantial agreement with the reasons of my brother Locke. I wish, however, to add a few observations as to two matters.

The first is as to the effect of section 2 of the *Trade-Unions Act* R.S.B.C. 1948 c. 342. This section reads as follows:

> 2. No trade-union nor any association of workmen or employees in the Province, nor the trustees of any such trade-union or association in their representative capacity, shall be liable in damages for any wrongful act of commission or omission in connection with any strike, lockout, or trade or labour dispute, unless the members of such trade-union or association, or its council, committee, or other governing body, acting within the authority or jurisdiction given such council, committee, or other governing body by the rules, regulations, or directions of such trade-union or association, or the resolutions or directions of its members resident in the locality or a majority thereof, have authorized or have been a concurring party in such wrongful act.

The predecessor of this section was first enacted in 1902 by section 2 of chapter 66 of the Statutes of British Columbia for that year. The minor verbal

differences between that section and the present one are of no significance. As has already been pointed out by my brother Locke, it would be surprising that a section should be passed to provide that a trade-union should not be liable in damages for a wrongful act in connection with certain matters unless certain conditions existed if it were the view of the Legislature, as the appellant contends, that a trade-union cannot be sued in tort under any circumstances. I propose, however, to examine the question whether the section affects the right of action to which, in the courts below, the plaintiff has been found to be entitled.

This question is raised in the appellant's factum in the following paragraph:

> It is further submitted that section 2 of The Trade Unions Act prohibits the imposition of liability in this case, because there is no evidence that the members of the appellant union or its governing body authorized or concurred in any wrongful act.

The wrongful act for which the appellant has been found liable is, by the use of illegal means, inducing the City Construction Company Limited to act in such a manner as to cause damage to the respondent.

In its Statement of Defence the appellant does not plead the *Trade-Unions Act*, but it was not required to do so; see s. 23 (7) of the *Interpretation Act*. R.S.B.C. 1948, ch. 1:

> (7) Every Act shall, unless by express provision it is declared to be a private Act, be deemed to be a public Act, and shall be judicially noticed by all Judges, Magistrates, and others, without being specially pleaded:

The Statement of Claim contains an allegation that the wrongful act complained of was that of the appellant and that the threat which has been held to constitute the illegal means referred to above was uttered « by or on behalf of » the appellant. In my opinion this was a sufficient allegation that the act attributed to the union was authorized in the manner described in s. 2 of the *Trade-Unions Act*. In cases to which the section applies, such authorization is made a condition precedent to the existence of liability on the part of the union and, on the assumption that the section is applicable in the case at bar, an averment of the performance or occurrence of the condition is implied in the Statement of Claim under Marginal Rule 210 (order 19 r. 14) of the Supreme Court Rules of British Columbia which reads:

> 14. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant (as the case may be); and subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

If the apppellant intended to contest the existence of the authorization contemplated by s. 2 of the *Trade-Unions Act* this should have been distinctly specified in its Statement of Defence. Had the issue been raised on the pleadings, it would have been necessary to consider whether the onus of disproving

authorization would not have rested upon the appellant as being a matter peculiarly within its knowledge; but, in my opinion, the issue was not raised. It further appears that nowhere in the evidence or in the course of the trial did the appellant suggest that what was done by its officers was not duly authorized by it. The theory of the appellant's defence was that the actions of its officers were justified or, at all events, were not unlawful. The appellant sought throughout not to repudiate the acts of its officials but to vindicate them. If this point was taken in the courts below it would appear to have been rejected as there is no mention of it in any of the reasons delivered.

In his reasons the learned trial judge makes no reference to any argument based upon section 2, but he does say:

> The acts of the union officials were the acts of the union, and as they were wrongful the union is responsible to the plaintiff in damages.

While the notice of appeal to the Court of Appeal contained 6 paragraphs and 22 sub-paragraphs, the question of authorization under section 2 is not mentioned. However, as the point is set out in the appellant's factum I have expressed my views upon it. I am of opinion that in the circumstances of this case section 2 of the *Trade-Unions Act* does not assist the appellant. In dealing with this point I have assumed, without deciding, that the wrongful act committed by the appellant was « in connection with a trade or labour dispute », but I wish to make it clear that I am expressing no opinion as to whether or not it should be so regarded.

The second matter to which I wish to refer is the appellant's argument that on the evidence it should have been found that the appellant did not intend to ignore the « grievance procedure » provided in clause 16 of the collective agreement between the appellant and the City Construction Company Limited.

This argument fails on the facts. The learned trial judge does not refer to it expressly but it is implicit in his findings of fact that the threat made to the City Construction Company Limited was that its jobs would be placarded unless the respondent's services were dispensed with, and that it was neither said nor understood that the placarding would not take place unless and until the « grievance » and arbitration procedure had been resorted to and had resulted in a decision in favour of the union.

While Davey J.A. did not find it necessary to express a final opinion on this point, he examined it and I find his reasons for rejecting the appellant's submission convincing and wish to adopt them, particularly the following passages: —

> The union threatened to picket the Company's jobs without having recourse to arbitration proceedings provided by clause 16 of the agreement as required by Section 22 of the Act, for final and binding settlement of all disputes concerning, inter alia, the interpretation and carrying out of the collective agreement.
>
> The union's remedy was not to picket but to invoke arbitration to determine whether or not the Company was observing clause 10.

> The union's witnesses say in effect that the Company was told that picketing would only be resorted to after exhausting the grievance procedure, but the learned trial judge, understandably, has made no express finding on that qualification. In the light of the meagre information before me, I completely fail to understand that qualification, or the need at that stage of threats to picket, or to picket at all after recourse to arbitration, because there is nothing to suggest that the company would not have observed an award in favour of the union. Failure to obey the award would have exposed the company to prosecution under the Act. On the other hand, if the arbitrators took the same view of clause 10 as the learned Judge did the union's demands would collapse because it, in turn, would be found by the award.
>
> As I see it at the moment, the union's threat to picket was not justified as a measure to protect its contractual rights under the collective agreement, but on the contrary was a repudiation and violation of clause 16 of the agreement providing for a final binding settlement of disputes by arbitration.

For the reasons so expressed I would reject this argument of the appellant. I would dispose of the appeal as proposed by my brother Locke.

MARTLAND J.

I agree with the reasons of my brother Locke and merely wish to make some observations regarding the effect of s. 2 of the *Trade Unions Act*, R.S.B.C. 1948, c. 342. That section, subject to some slight changes which are here immaterial, is the same as the section which first appeared in c. 258, Statutes of British Columbia 1902, which was probably passed in consequence of the decision of the House of Lords in *Taff Vale Railway v. Amalgamated Society of Railway Servants*, (1901) A.C. 426. Its purpose was to limit the circumstances in which trade unions could be made liable in damages by reason of acts done in connection with a strike, lockout, or trade or labour dispute.

In the present case, there was no strike or lockout. Was there a trade or labour dispute? To constitute such a dispute, there must be, I think, a dispute between an employer and his employees or, perhaps, as between the employees themselves, respecting the terms or conditions of their employment. To constitute a trade or labour dispute there would have to be a dispute between City Construction Company Ltd. and its employees. A dispute between the respondent, who was not an employee, and the appellant, the certified bargaining agent of those employees, was not a trade or labour dispute.

In considering the question as to whether there was a trade or labour dispute as between City Construction Company Ltd. and its employees, I think it is necessary to take into consideration the relationship which had been established between them by reason of the collective agreement made on behalf of the employees by the appellant, as their bargaining agent, and the application of the provisions of the *Labour Relations Act*, c. 17, S.B.C. 1954, to that relationship.

That Act has established a method of collective bargaining between employers and employees. Once a trade union has been certified as a bargaining agent for a unit of employees the employer can be required by law to bargain collectively with that agent. In the present case, this was apparently done and a collective agreement resulted. In so far as a disagreement as to the meaning of a provision of a collective agreement is concerned, s. 22 (1) of the Act provides as follows:

> 22. (1) Every collective agreement entered into after the commencement of this Act shall contain a provision for final and conclusive settlement without stoppage of work, by arbitration or otherwise, of all differences between the persons bound by the agreement concerning its interpretation, application, operation, or any alleged violation thereof.

The collective agreement in this case contained such a provision.

The effect of the collective agreement which was made pursuant to the *Labour Relations Act* was to govern by contract the terms and conditions of employment of the company's employees. The result is that all those matters which, at the time of the *Trade Unions Act* was enacted, might have become the subject of a trade or labour dispute had been provided for by contract. The only question which might arise was as to the proper interpretation of the collective agreement itself, and, even in that case, the agreement provided an obligatory arbitration procedure. I do not think that a difference of view between an employer and employees as to the interpretation of a collective agreement, in such circumstances, constitutes a « trade or labour dispute » within the meaning of that expression as it is used in the *Trade Unions Act.*

Mutation et promotion dans les rapports d'arbitrage en 1958

> *A l'unanimité un Conseil d'Arbitrage décide que le mot transfert signifie le passage d'une occupation à une autre occupation. Il y a promotion lorsqu'il y a passage d'un grade inférieur à un grade supérieur. Là où il n'y a pas de grade, il faut considérer les avantages monétaires. Si ces avantages sont égaux, on ne peut réclamer de travailler dans un endroit plutôt que dans un autre.* [1]

« L'employé faisant grief travaille pour l'Aluminum Company of Canada Limited à l'Isle Maligne. Le 4 novembre 1956, cet employé qui exécutait le travail d'Opérateur de Pont Roulant de la salle de cuves 406 a été transféré comme Opérateur de Pont Roulant à la salle de cuves 405 et un autre employé est devenu opérateur de Pont Roulant de la salle de cuves 406 à la place du plaignant, malgré qu'il ait moins de service continu que celui-ci.

(1) Différend entre Aluminum Company of Canada Limited, Isle Maligne et le Syndicat National des Employés de l'aluminium de St-Joseph d'Alma, Inc. Me Honoré Parent, C.R., président, Marcel Pépin, arbitre syndical, Me Bernard Sarrazin, arbitre patronal. Le Service d'information du Ministère du Travail, Québec, 17 octobre 1958, no 1271.