costs to the respondent out of the fund now in question, and directing him to pay to the appellants their costs of the adverse litigation between them.

The respondent must pay the costs of the appeal.

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Order of Judge in Equity varied accordingly.

Solicitors, for appellants: *McDonell & Moffitt.*

Solicitors, for respondent: *Allen, Allen & Hemsley.*

C. A. W.

[HIGH COURT OF AUSTRALIA.]

THE TROLLY, DRAYMEN AND CARTERS UNION OF SYDNEY AND SUBURBS } APPELLANTS;

AND

THE MASTER CARRIERS ASSOCIATION OF NEW SOUTH WALES } RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

Industrial Arbitration Act (N.S.W.) (No. 59 of 1901), sec. 36 (b)—Preference to unionists—Persons offering their labour at the same time—Notice to union of labour required—Jurisdiction of Court of Arbitration to compel—Prohibition—Construction of Statutes.

H. C. OF A. 1905. SYDNEY, *June* 13, 14, 19. Griffith C.J. Barton and O'Connor JJ.

Sec. 36 sub-sec. (*b*) of the *Industrial Arbitration Act* (N.S.W.) 1901, provides, *inter alia*, that the Court of Arbitration, in its award or by order made on the application of any party to the proceedings before it, may "direct that as between members of an industrial union of employés and other persons offering their labour at the same time, such members shall be employed in preference to such other persons, other things being equal."

The Court of Arbitration, in an industrial dispute between the appellant and respondent unions, made an award by which preference was ordered to be given to members of the appellant union on compliance with certain conditions as

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to the admission of members, and embodied in the order for preference a direction that any member of the respondent union requiring labour should, whenever reasonably practicable having regard to existing exigencies, notify the secretary of the appellant union of the labour required.

Held, that the Court had no jurisdiction to make the direction as to notice.

Decision of the Supreme Court, *Ex parte The Master Carriers Association of N. S. W.*, (1905) 5 S.R. (N.S.W.), 77, affirmed.

APPEAL from a decision of the Supreme Court of New South Wales.

The appellant union was an industrial union of employés registered under the *Industrial Arbitration Act* (N.S.W.), 1901, and the respondent association was also registered under that Act as an industrial union of employers. An industrial dispute between the union and the association was referred to the Court of Arbitration, and that Court, after hearing, made an award on 15th November, 1904, which contained the following clause:—

"27. If and so long as the rules of the union permit, or the union admits, a competent driver of sober habits and good repute to become a member" (on compliance with certain requirements which it is not necessary to set out), "then as between members of the claimant union (whose secretary, whenever reasonably practicable, having regard to existing exigencies, shall be notified of the labour required), and other persons offering their labour at the same time, members of the claimant union shall be employed in preference to such other persons, other things being equal," (subject to certain exceptions not material in this appeal, and with a direction that non-unionists entering the employment of members of the respondent association should apply to become members of the appellant union within a specified time). "When unionists and non-unionists are employed together they shall work in harmony, and receive equal pay for equal work."

The respondent Association on 15th February, 1905, applied to the Supreme Court of New South Wales to make absolute a rule *nisi* for a prohibition to restrain the Court of Arbitration from further proceeding in respect of so much of the award as directed that the secretary of the union should be notified of the

labour required, and that non-unionists entering the employment of the members of the association should apply to become members of the union.

The grounds on which the rule *nisi* was granted were that the Court of Arbitration had no jurisdiction to order that members of the respondent association should give the secretary of the appellant union notice of the labour required; and had no jurisdiction to order non-unionists to become members of the appellant union, as it had done in its award.

The Full Court (consisting of *Darley* C.J., *Owen* J., and *Pring* J.), made the rule absolute on both grounds, unanimously as to the second ground, but as to the first ground by a majority, *Owen* J. dissenting (1).

It was from the decision of the Supreme Court as to the first ground that this appeal was brought.

Gordon, K.C. and *Hughes*, for the appellant union. The Court of Arbitration had power to direct that notice should be given. It is consequential upon the power to order preference to unionists conferred by sec. 36 (*b*), and is contained in it by necessary implication. Without the power to order that notice shall be given effect cannot be given to the preference clause. Unless some such provision is embodied in the award, employers who object to unionist labour, can altogether nullify the preference clause by giving notice to non-unionists and not to unionists. It imposes no hardship on those who are willing to employ unionists, but ensures that unionists shall get the benefit which the legislature intended they should obtain from preference. Without it the unionist has not the opportunity to apply for employment and so place himself in the position of equality with non-unionists.

[BARTON J.—Is the opportunity equal if the unionists are to have a special notice over and above that given to non-unionists?]

There is nothing to prevent the employer inviting non-unionists to apply. Where labour is required immediately there is no restriction upon the right to engage labour of whatever kind is available. The notice is only to be given, "whenever reasonably practicable, having regard to existing exigencies." This is a

(1) (1905) 5 S.R. (N.S.W.), 77.

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power within the meaning of sec. 26 (*b*), to make any order or award in pursuance of an order made under sec. 36 (*b*). Preference to unionists is of the very essence of industrial arbitration: *Taylor* v. *Edwards* (1). The power of the Court to make all orders necessary to give effect to powers expressly conferred upon it by the Act are not to be taken away from it, except by express words or necessary implication: *Randolph* v. *Milman* (2).

[BARTON J.—But even without the power to order notice, the provision for preference is clearly workable, though possibly not so effectively as with it.]

Without the notice the preference clause is in practice ineffective. Before the Act was passed unionists and non-unionists were on equal terms. The policy of the Act was to encourage organisation of labour, and consequently advantages were offered to members of bodies organised under the Act, *e.g.*, preference to unionists. It deals not with individuals as such, but as members of combinations. The only way in which the unionist can receive notice is through the representative of his union, and, therefore, provision must be made for such notice in practice in order to carry out the policy of the Act. The non-unionist remains on the same footing as before; he is outside the purview of the Act, and must attend to his own interests. The preference is intended to be an advantage, not a mere form; an advantage given as a compensation for giving up the right to refuse to work with a non-unionist. The interference with the individual freedom is more than compensated, both to employer and employé, by the benefits arising from the change. The favour to unionists is sufficiently safeguarded by the condition that other things must be equal.

The Court of Arbitration must have power to make all necessary subsidiary orders and directions, and, if so, the question whether some particular direction is a proper one would be a matter for appeal merely, not prohibition, and the Act provides that there shall be no appeal.

[GRIFFITH, C.J.—One difficulty is this: The Act deals with disputes between employers and employés, not persons who desire to become such. Where is there any jurisdiction given to

(1) 18 N.Z.L.R., 876. (2) L.R. 4 C.P., 107.

the Court of Arbitration to decide a question between a person who desires to be an employer, and one who desires to be an employé ?]

That is clearly within the contemplation of the legislature in sec. 36.

Cullen K.C., (with him *Windeyer*), for the respondent association. The words of sec. 36 (*b*) are clear, and no question of implication can arise. The Court of Arbitration has no jurisdiction until labour has been offered and accepted. It cannot go behind the period of such an offer and impose a duty upon the employer beforehand. Sec. 36 (*b*) was intended to guard against the possibility of an employer saying, as he could before the Act, "no unionist need apply." It cannot be made to mean, "you must act in such a way as to prevent competition on equal terms by non-unionists." The governing words are "offering their labour at the same time." The provision in the Act may not be as effective as some people think it should be, but the Court is not at liberty, on that account, to widen its powers or to go beyond them, in order to make this provision more effective for the purpose which the legislature is supposed to have entertained: *Rossi* v. *Edinburgh Corporation* (1). The Act is one in restriction of the common law rights of the subject and must not be strained so as to increase the restriction: *Clancy* v. *Butchers' Shop Employés Union* (2); *Master Retailers Association of N.S.W.* v. *Shop Assistants Union of N.S.W.* (3). The employés are to offer their labour, and until they do so the question of preference cannot arise. As was said in *Clancy* v. *Butchers' Shop Employés Union*, (2) after the relationship of employer and employé has ended the employer is free to do as he pleases, so here, until the moment arrives at which the Act is to operate upon the two parties, the employer is equally free, and any attempt by the Court to impose restrictions upon him is beyond its jurisdiction. There is nothing in the Act giving the Court power to make employers seek unionists, though the latter are given certain advantages and privileges when offering their labour, and when in employ-

(1) (1905) A.C., 21.

(2) 1 C.L.R., 181.

(3) 2 C.L.R., 94.

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ment. [He referred to sec. 35]. The keynote of sec. 36 (b) is equality of opportunity to apply. It is only where the applicants are there that inequality arises, in the form of preference to those who are unionists. The argument that the Act contemplates only organised labour, and that therefore notice should be given to the unionists through the union, is based on the assumption that the Court has power to order that notice shall be given. If it has that power, the direction in question may be a proper one. The question is whether it has the power, not whether it has exercised a power in an improper way. There is no reason why the words should not be construed literally. So construed they are clear and unambiguous and confer an important power. It should not be assumed that they were intended to confer any other or greater power than is contained in the plain meaning of the words.

Gordon K.C. in reply. *Rossi* v. *Edinburgh Corporation* (1) does not apply. In that case the magistrates, whose jurisdiction was in question, had in effect assumed the power to control operations that were altogether outside the scope of the Act conferring the jurisdiction.

Cur. adv. vult.

June 19.

GRIFFITH C.J. This is an appeal from a decision of the Supreme Court of New South Wales making absolute a rule *nisi* for a prohibition to the Court of Arbitration to prevent the enforcement of an award whereby it was ordered that "whenever reasonably practicable, having regard to existing exigencies," the secretary of the appellant union should be notified by an employer belonging to the respondent association of the labour required. That means, of course, that before the members of the respondent association can engage any fresh labour, they must, whenever reasonably practicable, notify the secretary of the appellant union. The learned Chief Justice and *Pring* J. were of the opinion that the order was made without authority. *Owen* J. was of the contrary opinion, thinking that the order was really incidental to the provision in the Act giving the Court power to order preference to

(1) (1905) A.C., 21.

unionists under certain circumstances. The only question is whether the order was within the competence of the Court of Arbitration. If that Court has power to make an order of this kind, the reasonableness of it cannot be made the subject of appeal. It is a mere question of jurisdiction.

The *Arbitration Act*, as was pointed out in the case of *Clancy v. Butchers' Shop Employés Union* (1), is an act in restriction of the liberty of the subject, and this Court said in that case (2): "though that is no reason why the fullest effect should not be given to its provisions, it is a reason why the meaning should not be strained as against the liberty of the subject." In that case it was also pointed out that the jurisdiction of the Arbitration Court to deal with industrial matters began when the relationship of employer and employé came into existence, and that the Act did not empower the Court to control the conduct of employers after the employment had terminated or at hours when the relationship had ceased to exist. Our attention has not been drawn to any provision in the Act which authorizes the Court to interfere with the freedom of an employer before the relationship of an employer and employé has come into existence. The moment of engagement, when it comes to fixing the terms of employment, is the first moment at which the powers conferred by the Act seem to attach. The only provision which has been suggested as extending this power is that contained in sec. 36 of the Act, upon which the appellant union relied, which provides that the Court in its order, award or direction may "direct that, as between members of an industrial union of employés and other persons, offering their labour at the same time, such members shall be employed in preference to such other persons, other things being equal," and they are further to appoint for that purpose a tribunal before which the question of equality is to be decided. There is no question as to the later words of the section. We have only to construe these words, "the power to direct that as between members of an industrial union of employés and other persons, offering their labour at the same time, such members shall be employed in preference to such other persons, other things being equal."

(1) 1 C.L.R., 181.

(2) 1 C.L.R., 181, at p. 201.

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It is contended for the appellant that incidentally that section authorizes the Court to make an order for the purpose of bringing about the result that members of a union shall always be in a position to offer their labour at the same time as other persons, and that, unless there is some such power, the provision is nugatory. We have, however, to consider the words of the Statute, and it is to be observed, that the power, which is given to the Court to give the direction in question, is limited to the case in which members of an industrial union and other persons are "offering their labour at the same time." Those last words are the governing words of the section, and the Court of Arbitration cannot do anything more than is contained in that provision, unless the power which it is asked to exercise is one which is necessarily involved in order to give effect to the power expressly conferred. The principle which is at the base of the appellants' contention seems to be this, that the Court, for the purpose of bringing about the condition of things that members of unions and other persons may offer their labour at the same time, may give a direction that the employer shall give notice of some sort before he engages anybody. Now it might, no doubt, be considered reasonable, for the purpose of enabling members of a union to put themselves in a position to claim preference, to provide that a master should be required to give a public notice that he will require labour at a certain time. If such a provision were in the Act, expressly or impliedly, the Court of Arbitration could give any directions on the subject it might think fit. It might prescribe the length of notice to be given, the persons to whom it should be given, the mode of giving it, whether by advertisement or otherwise, and in the exercise of its discretion the Court would have absolute power, and no other Court could control it. But would such a power as that be consistent with the liberty of the subject existing at common law, and continuing so far as it was not clearly taken away by the Act?

Such a condition would involve, of course, a remarkable interference with the liberty of the employer, that he should not be allowed to engage a servant without giving notice of his intention to do so. For, whether the prescribed notice was public or private, there would be no difference in principle. In considering

the question whether such a provision is to be implied in the Act, it is important to bear in mind that, if it is, the discretion of the Court is unlimited and cannot be controlled. Is it a necessary inference from what the legislature has said that it did intend to confer such a power? I confess that I cannot see any foundation for the argument. Employers are free to conduct their businesses as they please, except only so far as they are controlled by the Act or by the Court exercising its powers under the Act. One condition has been laid down by the legislature in regard to the preference to unionists, that it may be ordered as between persons offering their labour at the same time. I am not aware of any principle upon which it can be held that that provision authorizes the Court of Arbitration to give any direction to employers that they shall give notice to one set of persons or another before they proceed to exercise their common law right of engaging any person they see fit. Except so far as they are empowered to do so by the provisions of the Act, the Court cannot control the common law rights of the subject. That proposition is supported by the decision in the case of *Rossi* v. *Edinburgh Corporation* (1). In that case power was given by the Statute in question to magistrates to make by-laws. The *Edinburgh Corporation Act* provided that persons selling ice-cream without a licence from the magistrates "who are hereby empowered to grant the same" for the house or premises in which it was sold should be liable to a penalty. The magistrates thought that that power could not be satisfactorily exercised without embodying in the licence certain restrictions upon the sale of other articles. It was contended that the power to do this was a necessary incident of the power to grant the licence. On that point Lord *Halsbury* L.C. said (2): "I can only look at the Statute itself and construe it, and when I construe the Statute I find there is in the Statute a plain prohibition with respect to certain things. The magistrates, of course, are not only empowered but bound to give effect to legislation which has been passed; but when it is argued that because they are given the power to restrict, within certain hours, the sale of ice-creams

(1) (1905) A.C., 21.

(2) (1905) A.C., 21, at pp. 25, 26.

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therefore they have implied power to do all that might be desirable or expedient with reference to the times and circumstances under which ice-creams shall be sold, it seems to me the argument entirely fails. What is sought to be done, whether directly by by-laws, or indirectly by the language of the licence that is issued, is something that can only be done by the legislature. It is a restraint of a common right which all His Majesty's subjects have—the right to open their shops and to sell what they please subject to legislative restriction—and, if there is no legislative restriction which is appropriate to the particular thing in dispute, it seems to me it would be a very serious inroad upon the liberty of the subject if it could be supposed that a mere single restriction which the legislature has imposed could be enlarged and applied to things and circumstances other than that which the legislature has contemplated." Lord *Davey* said (1): "My Lords, it is said that this is in the nature of a condition for giving effect to the provisions of the Statute, but I am not prepared to say that you can do that. I am of opinion that you cannot under the guise of giving better effect to the provisions of a Statute extend the Statute to the prohibition or the restraint of trades which are not included in the Statute." And Lord *Robertson* said (2): "I can find no warrant in the Statute for forcing the dealer to close his premises at the hours during which he is forbidden to sell ice-cream, and I know of no principle upon which the magistrates can be held entitled to eke out what they may consider a weak prohibition by imposing an additional one." In the same way I am unable to find any authority, and I know of no principle, upon which the Court of Arbitration can be held entitled to eke out what it may consider a weak direction by giving an additional one. On the ground therefore that there is no power given by the *Arbitration Act* to direct any such notice to be given to anyone unless the employer thinks fit to give it, I think that the direction contained in the award is not within the power of the Arbitration Court.

It was urged that there was nothing in the direction to prevent the employer giving notice to other persons as well as to members of the appellant union. That is no doubt true. But that is con-

(1) (1905) A.C., 21, at p. 29. (2) (1905) A.C. 21, at p. 30.

sidering the matter only as between the employer and the members of the union. But, as between the employer and all persons who are desirous of being employed, the latter are entitled to the same consideration, whereas if the notice is directed to be given to one class only, that might be unfair to the other class who are equally entitled or not entitled to it. There is a great deal of force in the argument that the condition of equality of opportunity implied in the words "other things being equal," would be violated if effect were given to the direction in question.

However, I do not rest my argument on that ground, but on the general ground that there is no implied power conferred by the Statute authorizing the Court to eke out the power conferred by section 26 by giving the additional direction that notice of the labour required be given by the employer to the secretary of the union.

BARTON J. The *Arbitration Act* provides in sec. 36: [His Honor read the material part of the section, as already set out, and proceeded:] We know that there arose a dispute between the union and association, who are parties to this appeal, and that for the settlement of that dispute the parties had recourse to the Arbitration Court. That Court, after hearing the dispute, drew up an award, in which there occurs the following clause. [His Honor read clause 27 of the award, which has been already set out, and continued:] It will be seen that, the prefatory conditions being performed by the applicant union, the right of the unionist to preference was not to be merely such as is described in the section, but there was to be this added provision that whenever reasonably practicable, having regard to existing conditions, there was to be a notification to the secretary of the labour required. The question is whether the imposition of that additional direction is or is not outside the jurisdiction of the Arbitration Court.

The jurisdiction of the Court is defined in a large measure by sec. 26, which may be read in connection with sec. 36. I must say that I cannot find in either of those sections any words warranting the imposition of this additional condition, nor, looking through the Act, can I find anything relating to the

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precise subject of this condition, which by express terms, or by implication, confers it. Only, as it seems to me, by establishing that the direction in the award was tantamount to the direction which sec. 36 empowered the Court to give, can the claimant union establish that the direction complained of is within the Court's jurisdiction. Is it then the same thing to direct that, as between members of the union and other persons offering their labour at the same time, such members should be employed in preference to such other persons, other things being equal, and to direct that as between members of the appellant union, whose secretary shall be notified of the labour required, and other persons outside the union, members of the union shall be employed in preference to such other persons, other things being equal? It seems to me impossible to contend that these two things are one and the same thing. To argue that would be to contend that the giving of what might be summarized as "beforehand notice" to the secretary of the union, while no such notice is required to be given to the other applicants for employment, gives no undue advantage to members of the union. I think it would be perfectly idle to make such a contention. If this were not in fact an advantage to members of the union, they would not be here contesting this appeal. Not only is importance to be attached to the words "offering their labour at the same time," but also to the words "other things being equal." The offer of labour at the same time, as between unionists and non-unionists entitles unionists to preference, other things being equal. Can it be said that, if beforehand notice is given to the representatives of the union, there is a condition of equality at the time when the labour is offered? It seems to me that that cannot be contended. Those member of the union who have beforehand notice will be able to present themselves at least at the same time as the others, and they will have a double advantage, for they can not only present themselves at the same time and in greater numbers than the non-unionists, because of the impossibility of notifying an equal number of non-unionists, but they will have the opportunity of presenting themselves before the non-unionists. It seems to me that an analogous position would be that, supposing there were two horses starting in a race,

the preference to unionists might be considered as a handicap in favour of one of them. If the conditions provided for the owner or jockey of one horse dealing in a certain way with the other horse so that he could not win the race, then that would be tantamount to the condition which it is sought to add to the direction allowed by sec. 36. The condition, it must be recollected, deals with the preference that shall be attached to those who apply at the same time. Clearly those who apply first are not included. Those who apply first have an advantage over those who apply later, because they are the subjects of an earlier choice. That is a position which, if it were legalised by giving the Court power to make such a direction, would have the effect of giving an advantage of such great importance that one could not expect the Court to be endowed with it except by express words in the Act. But there is no such provision. Whether this matter is concluded as between those who apply at the same time, or between those who apply at different times, the unionist having the earliest opportunity of applying, in the one case it seems to me not within subsection (*b*) of sec. 36, and in the other case it seems that there is no provision in the Act which would authorize or warrant it. In either case, in my opinion, it is outside the jurisdiction of the Court. I forbear from quoting further from the case of *Rossi* v. *Edinburgh Corporation* (1), because the principle governing the case is shown clearly by the passages which His Honor the Chief Justice has quoted. I agree, therefore, that the appeal should be dismissed with costs.

O'CONNOR J. The question for our decision depends entirely upon what seem to me the very plain words of sec. 36 (*b*) of the *Arbitration Act*. It is the duty of the Court to endeavour to ascertain the intention of the legislature as expressed in that enactment. It is claimed by the appellants that the intention of the legislature as expressed by the enactment was to authorize the Arbitration Court to direct that notice should be given to the union. On the other hand it is contended that the meaning of the words used by the legislature is not open to that interpretation. Now, with reference to the intention of the

(1) (1905) A.C., 21.

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legislature, there is a passage in a judgment of Lord *Watson* in the case of *Salomon* v. *Salomon & Co.* (1), which seems to me appropriate to some of the contentions urged on behalf of the appellants. Lord *Watson* said: "Intention of the legislature is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a Court of law or equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication."

The only guide, therefore, as to what the legislature intended is the words it has used; the first of all rules of interpretation is to find out the meaning of the legislature from what it has said. Now, I have no difficulty at all, and never have had during the argument, in seeing that there was only one meaning to be placed on these words, if one takes them in their ordinary grammatical sense, and that is this. The legislature interferes with the liberty of the employer at one point, and one point only, in the engagement of labour, and that is the point at which labour is offering itself for employment. For the purposes of this Act, all labour is divided into union and non-union labour, and the section in question provides that when the labour is offered, the liberty to employ whomsoever he thinks fit, which previously belonged to the employer, shall no longer belong to him, but he shall be bound, other things being equal, to give preference to union labour. Now, it is said that if the interpretation contended for by the union is not placed upon the Act, this provision will be entirely ineffective, because the master or employer may, if he thinks fit, give private notification to non-unionists, and thereby ensure that their offer shall be made before that of the union labour. It appears to me that that statement of the consequences of such an interpretation is not correct.

It is clear that this law applies to all classes of labour, not only to that required here, in which it might be possible by private arrangements to neutralize this section in some cases. It applies

(1) (1897) A.C. 22, at p. 38.

to classes of labour in which large bodies of men are and must be constantly seeking employment. It applies to the cases of wharf labourers, shearers, and other kinds of employés, and the Court must assume that the legislature contemplated a condition of things in which there would be competition for labour amongst unionists themselves, as well as with those who do not belong to unions. It contemplated further, that when work was sought by a number of persons, unionists and non-unionists, offering their labour at the same time, the employer might be directed to give preference to union labour. It has been naturally asked by the respondents, how can you read in the words that the legislature have used, any intention to confer upon the Court this power to direct a notice to be given to the union? It is said that this is one of those cases in which the right given cannot be exercised adequately and effectively without this further right to enforce a notification to the union. Now one must be very careful, in extending the meaning of the words actually used, to see that the Court is not departing from the function of the Judge in interpreting the law and enacting something which the legislature, for whatever reason, has omitted to enact. It appears to me that if you seek to go beyond that stage of the employment to which I have already referred, namely, when the employé is offering his labour, you restrict the liberty of the employer to a very serious degree, and not only that, but as was pointed out by my learned brother, Mr. Justice *Barton*, you are giving an undue preference to the unionist in offering his labour.

The principle upon which the appellant union endeavours to support its contention is dealt with in *Broom's Legal Maxims*, viz., "*Quando lex aliquid alicui concedit, concedere videtur et illud sine quo res ipsa esse non potest.*" Its full and true import is set out in the judgment in the case of *Fenton* v. *Hampton* (1) as follows: "Whenever anything is authorized, and especially if, as matter of duty, required to be done by law, and it is found impossible to do that thing unless something else not authorized in express terms be also done, then that something else will be supplied by necessary intendment. But, if, when the maxim comes to be applied adversely to the liberties or interests of others, it be found that

(1) 11 Moo. P.C.C., 347, at p. 360.

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no such impossibility exists, that the power may be legally exercised without the doing that something else, or even going a step farther, that it is only in some particular instances, as opposed to its general operation, that the law fails in its intention, unless the enforcing power be supplied, then, in any such case, the soundest rules of construction point to the exclusion of the maxim, and regard the absence of the power which it would supply by implication as a *casus omissus*."

Every word of that applies here. There are many instances under this Act in which the intention of the legislature can be carried out, without any direction as to notification of the union, though there may be cases in which it cannot. But, whether few or many, it appears that the legislature has not thought fit to enact that there shall be a preference to unionists, in giving them a greater opportunity of offering their labour than is given to other persons not members of the union when seeking employment.

Under these circumstances, I think it is impossible to hold that there is implied here any such power as that which it is sought to read into the terms of the section, and if we look at the plain words as they stand, clearly no such power is given.

I therefore am of opinion that the decision of the majority of the Supreme Court was right, and that the appeal should be dismissed.

Appeal dismissed with costs.

Solicitors, for the appellant union, *Brown & Beeby*.

Solicitors, for the respondent association, *Mackenzie & Mackenzie*.

C. A. W.