[HIGH COURT OF AUSTRALIA.]

THE BRISBANE SHIPWRIGHTS' PROVIDENT UNION, JAMES ARCUS, JOHN DAWSON AND THOMAS MITCHELL Defendants, } Appellants;

AND

THOMAS HEGGIE . . . . . Respondent,
Plaintiff,

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

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Brisbane, 1905 *Dec.* 4, 5;

Melbourne, 1906 *March* 12.

Griffith C.J., Barton and O'Connor JJ.

Action, cause of—Inducing employer to dismiss employé and not to employ him further—Deliberate interference with rights of others actuated by desire to do harm—Interference with trade—Trade union—Trade dispute—Trade competition—Queensland Criminal Code, secs. 534, 543—*Practice—Appeal direct from judgment founded on verdict of jury.*

An appeal lies to the High Court direct from the judgment of the Supreme Court of a State, founded upon a special verdict of a jury; but the verdict itself cannot be impeached upon the hearing of the appeal, which must be considered exclusively upon the facts found and appearing on the record.

Musgrove v. *McDonald*, 3 C.L.R., 132, applied.

The respondent was employed as a shipwright in the service of the Queensland Government, at one of the Government Docks. When called upon to join the appellant union and pay the entrance fee, he refused, and the appellants, representing the union and by its express direction, informed the Government that, if the respondent were not dismissed, the union shipwrights employed at the dock would be called out, and as long as the respondent's employment continued, they would not be allowed to resume work. The jury found that the officer of the Government was induced and coerced by these representations to dismiss the respondent, and that the appellants had combined and conspired together to procure his dismissal with the intention of injuring him and depriving him of the opportunity of earning his livelihood as a shipwright, until he should become a member of the appellant union. In an action by the respondent for damages for the injury sustained by him by reason of those representations:

Held, that the facts as found by the jury disclosed an actionable wrong.

Allen v. *Flood*, (1898) A.C., 1; *Quinn* v. *Leathem*, (1901) A.C., 495, considered and applied.

Principles of law applicable in an action against a trade union and its officers, for conspiring to procure the dismissal from his employment of a non-unionist, considered.

APPEAL from a judgment of the Supreme Court of Queensland, 23rd May 1905. (*Real* J.)

The following statement of the facts is taken from the judgment of the Court:—

This was an action brought by the respondent against the appellants for damages for, amongst other things, maliciously conspiring to induce, procure, and cause the proper officer of the Government of Queensland to dismiss the respondent from his employment as a shipwright under the Government and to cease to employ him, and to refuse to employ him further unless he would join the defendant union and pay the entrance fee. The action was tried before *Real* J., and a jury, to whom specific questions were put, and which were answered as follows:—

Question 1.—In or about the month of June 1903, did the defendants, the Brisbane Shipwrights' Provident Union, James Arcus, John Dawson, and Thomas Mitchell, with others, combine, conspire, and agree to induce, procure, and coerce the proper officer of the Government of the State of Queensland, under whose control the plaintiff then was, and the said Government, through its proper officer, to dismiss the plaintiff from his employment under the said Government, and to cease to employ him, and to refuse to further employ him? Answer.—Yes.

Question 2.—In pursuance of the said combination, conspiracy, and agreement, did the defendants, Arcus, Dawson, and Mitchell, on behalf and with the authority of the said Union, and by the express direction of the said Union, in a general meeting assembled, wait upon and interview the said proper officer of the Government? Answer—Yes.

Question 3.—Did the defendants Arcus, Dawson, and Mitchell, by their statements and representations made at such interview, inform the said proper officer that, if the plaintiff was not dis-

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missed, the shipwrights then at work would be called out, and that no union shipwright would be allowed to work in the said dock for the Government whilst the plaintiff was employed by the Government therein? Answer—Yes.

Question 4.—Did the defendants, by the statements and representations of the defendants Arcus, Dawson, and Mitchell, made at the interview aforesaid, mean and intend the aforesaid officer of the Government to understand, and did he understand, the said statements and representations to mean, that if the plaintiff was not dismissed, the defendants would, so long as he was retained in the Government employment as a shipwright at the said dock, forbid any Union shipwright working for the said Government, and had the power and would use the power, to punish any shipwright who might, contrary to their request, take such work, and that the Government would be prevented from obtaining sufficient or competent shipwrights to perform the work necessary and proper to be, from time to time, done at the said dock for the the Government? If not, say what they did mean and intend? Answer—Yes.

Question 5.—Did the defendants, by the statements and representations made at such interview by the defendants Arcus, Mitchell, and Dawson, to the aforesaid proper officer of the Government, induce, procure, and coerce the said proper officer of the Government, and the Government through him, to dismiss the plaintiff from his employment under the Government on the 6th day of June 1903, and to cease thenceforth to employ him, and to refuse to further employ him? Answer—Yes.

Question 6.—Did the defendants do the acts aforesaid with the intent to injure the plaintiff and to deprive him of the opportunity of earning his livelihood as a shipwright—(*a*) absolutely; (*b*) until he paid the defendant Union the sum of £2 for entrance fee, and applied to become a member of the Union? Answer—Yes, absolutely until he paid the defendant Union the sum of £2 for entrance fee, and applied to become a member of the Union.

Question 7.—Were the acts of the defendants found by you in your answers to the previous questions wrongful and malicious? Answer—Yes.

Question 7A.—Did the defendants do the acts aforesaid, (*a*) to

protect their own interests, and (*b*) to carry out the rules of the defendant Union? If yes to (*a*) or (*b*), say how. Answer—(*a*) Yes, by procuring the dismissal of Heggie; (*b*) yes, in accordance with their interpretation of the rules.

Question 8.—Did the defendants do the acts aforesaid to warn Sunners that the members of the Union would not work with non-unionists? If yes, say for what purpose or purposes, if any. Answer—Yes, for reasons already given in the answers to previous questions.

Sunners was the officer of the Government in charge of the work. Damages were assessed at £100. On these findings, both parties claimed to be entitled to judgment. After argument, the learned Judge entered judgment for the plaintiff, and from this judgment the present appeal was brought by special leave.

Lukin (with him *O'Sullivan*), for the appellants.

Even on the findings of the jury as they stand, the appellants are entitled to judgment; but on the evidence some of the findings should be still more in appellants' favour.

[GRIFFITH C.J.—This is an appeal direct from the decision of a judge, not from the refusal by the Court to grant a new trial, and, therefore, the verdict must be taken as it stands, and the facts cannot be inquired into further. That has already been decided by this Court in *Musgrove* v. *McDonald* (1).]

Here the findings are contradictory and entitle the defendant to judgment.

[GRIFFITH C.J.—We cannot investigate the facts, except so far as they are necessary to explain the findings.]

[It was here proposed by counsel to read the rules of the appellant union.]

[BARTON J.—Are they not all swallowed up by the findings?]

No; they are necessary to a complete understanding of the findings. In *Allen* v. *Flood* (2) all the facts were gone into.

[GRIFFITH C.J.—There it was permissible. Here we are prevented by our decision in *Musgrove* v. *McDonald* (3). If this were an appeal from an order of the Supreme Court refusing a

(1) 3 C.L.R., 132, at p. 149. (2) (1898) A.C., 1.
(3) 3 C.L.R., 132.

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new trial, the facts could then be gone into. But the rules may be referred to, so far as is necessary to make the verdict intelligible.]

On the findings as they stand there has been no violation of any legal right at all; and even if there had been, there is abundant excuse for it. The whole question involved, is whether coercion, such as was proved in this case, is illegal.

[GRIFFITH C.J.—The use of the word "coercion" has no particular significance.]

If the act, found by the jury to have been performed, was a lawful act, the fact that it was done maliciously does not make it illegal. To use coercion is not unlawful, provided a person is exercising a legal right.

The term "injury" connotes an intent to do wrongful harm: *Mogul Steamship Co.* v. *McGregor, Gow & Co.* (1) per *Bowen* L.J., approved of by *Watson* L.J. in *Allen* v. *Flood* (2). The appellants have a right to (1) combine, (2) refuse to work, and (3) notify their employer of their refusal. Evil intention or malice is quite irrelevant: *Rogers* v. *Rajendro Dutt* (3); *Bradford Corporation* v. *Pickles* (4); *Mogul Steamship Co.* v. *McGregor, Gow & Co.* (5). This case is very similar in its facts to *Allen* v. *Flood* (6), except that in the latter there was the motive to punish. A man has a perfect right to choose with whom he will work, and that right extends to enable him to let the employer know what his choice is (7). No right of action arose from the intimation by the Union that no union shipwright would be allowed to work in the dock, while the plaintiff was employed therein (8). Hence the combination, the agreement not to work with respondent, and the giving notice to that effect, was all done in exercise of a legal right. In *Hutley* v. *Simmons* (9), the notices were the same as here, but no cause of action arose: *Kearney* v. *Lloyd* (10); *Scottish Co-operative Society* v. *Glasgow Fleshers' Association* (11). A combination of two or more without justification or excuse to

(1) 23 Q.B.D., 598, at p. 612.
(2) (1898) A.C., 1, at p. 93.
(3) 13 Moo. P.C.C., 209.
(4) (1895) A.C., 587.
(5) (1892) A.C., 25.
(6) (1898) A.C., 1.
(7) (1898) A.C., 1, at p. 98, *per Watson* L.J.
(8) (1898) A.C., 1, at p. 129, *per Herschell* L.J., and at pp. 163 and 167, *per Shand* L.J.
(9) (1868) 1 Q.B., 181.
(10) 26 L.R. Ir., 268.
(11) 35 Sc. L.R., 645.

injure a man in his trade by inducing a man's customers or servants to break their contracts with him or not to deal with him or continue in his employment, is, if it results in damage to him, actionable: *Quinn* v. *Leathem* (1). But in that case the question was whether an action will lie where injury has resulted from a combination to injure and ruin another, not where it was to advance the parties' own trade interests. The object in this case was to preserve the interest of the unionists. In *Quinn* v. *Leathem* (1), there was persecution of the worst kind. There the plaintiffs had no interest in Leathem's customers or servants.

[GRIFFITH C.J.—But was there an unlawful act?]

Lord *Shand* says the act was unlawful because the motive was improper.

[GRIFFITH C.J.—The chief difficulty arises from the use of the word "wrongful" throughout. It is often capable of two meanings.]

The judgment of *Lindley* L.J. (2) shows that an act is not unlawful unless it is an infringement of the rights of another.

[GRIFFITH C.J.—Then the question remains—What are the rights of others?]

Without being guilty of any unlawful act the appellants could conbine a right to resolve and a right to inform their employer of their resolution and act upon it. At any time unionists may agree not to work with non-unionists, and may tell the employer without being guilty of any wrongful act. This is *primâ facie* an act which is lawful, and, therefore, it is not necessary to show justification. *Read* v. *Friendly Society of Operative Stonemasons of England, Ireland and Wales* (3), has no bearing on the question arising in this case. There the defendants pleaded justification. [They also referred to *Giblan* v. *National Amalgamated Labourers' Union of Great Britain and Ireland* (4), and *Glamorgan Coal Company* v. *South Wales Miners' Federation* (5).]

MacGregor, for the respondent. There are two classes of decisions in cases of this kind: (1), where the act is that of an

(1) (1901) A.C., 495.
(2) (1901) A.C., 495, at p. 532.
(3) (1902) 2 K.B., 732.
(4) (1903) 2 K.B., 600.
(5) (1903) 2 K.B., 545; (1905) A.C., 239.

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individual, and (2), where there is an element of conspiracy present. Even in the absence of conspiracy, any intentional action, if done without just cause or excuse, which injures another in his trade, is an actionable wrong: *Mogul Steamship Co.* v. *McGregor, Gow & Co.* (1). To put the respondent's case in the strongest possible light, the appellants would be liable if, individually, they stated their refusal to work unless respondent was dismissed. In directing the jury in *Reg.* v. *Druitt* (2), *Bramwell*, B., stated the law as follows:—"The liberty of a man's mind and will to say how he should bestow himself and his means, his talents and his industry, was as much a subject of the law's protection as was that of his body." *Giblan* v. *National Amalgamated Labourers' Union of Great Britain and Ireland* (3) also assumes that any interference with the liberty of another is an actionable wrong. So interference with another's contractual rights is actionable, and also interference to prevent a person getting employment. *Mogul Steamship Co.* v. *McGregor, Gow & Co.* (4); *The King* v. *Eccles* (5); *Gregory* v. *Duke of Brunswick* (6). *Allen* v. *Flood* (7), is entirely referable to individual, and not concerted action. Six of the Judges called upon to assist the Lords held that a man's labour was as immune from interference as his property. In that case there was no proof of molestation, obstruction, intimidation, or coercion, all of which features were present in *Quinn* v. *Leathem* (8) and the present case. The decision in *Temperton* v. *Russell* (9) is still law and applies to this case: *Leathem* v. *Craig* (10). In that case the defendants combined and agreed to communicate to the employer their intention to injure him and deprive him of his livelihood unless he employed union labour exclusively. That was the sole object of their conspiracy. The answers given by the jury to the questions 7 (*a*) and 8 have been relied upon by the appellants as showing a mixed motive. This is not so. Their object was to prevent any but unionists obtaining work, which,

(1) 23 Q.B.D., 598, at p. 613, *per Bowen* L.J.
(2) 10 Cox C.C., 592, at p. 600.
(3) (1903) 2 K.B., 600.
(4) 23 Q.B.D., 598, at p. 614, *per Bowen* L.J.
(5) 1 Lea C.C., 274.
(6) 6 M. & G., 205, 953.
(7) (1898) A.C., 1.
(8) (1901) A.C., 495.
(9) (1893) 1 Q.B., 715.
(10) (1899) 2 I.R., 667, at p. 773, *per Holmes* L.J.

according to *Read* v. *Friendly Society of Operative Stonemasons of England, Ireland and Wales* (1) is not a sufficient justification in law for their action. Nor is there justification in the finding that their action was to protect their own interests. *Giblan* v. *National Amalgamated Labourers' Union of Great Britain and Ireland* (2); *Taff Vale Railway Co.* v. *Amalgamated Society of Railway Servants* (3); *Martell* v. *Victorian Coal Miners' Association* (4). "Picketing," as a means of interfering by third parties with trade relations of others, has been held to be a wrongful act and unlawful. *Lyons & Sons* v. *Wilkins* (5), in which it was stated that the earlier of these decisions was not overruled by *Allen* v. *Flood* (6), nor varied by anything laid down therein: *Charnock* v. *Court* (7); *Walters* v. *Green* (8); *Slattery* v. *Kiers* (9).

[GRIFFITH C.J.—The effect of those decisions is that interference with a man's liberty is *primâ facie* wrongful, and if it takes place for the purpose of injuring another, then it is unlawful.

O'CONNOR J.—If instead of a direct threat being made the employer is informed of the facts and probable consequences, is that actionable in the same way as a threat?]

If by an individual, it is questionable; if by a combination, it certainly is: Criminal Code, sec. 543.

Lukin in reply. The Queensland Criminal Code, sec. 543, has no application to the facts of this case. In sec. 543 the word "injure" signifies, according to *Bowen* L.J., more than an intent to harm; it connotes an intention to do a wrongful act. The intent to injure can be negatived by reference to the rules of the Union.

[O'CONNOR J.—I can understand the exercise by you of a right over your union men, but does that give you the right to go beyond that and affect other relationships?]

Here, the appellants do not go beyond that right; what is done is a natural consequence of it.

[BARTON J.—It was important in *Allen* v. *Flood* (6), that the

(1) (1902) 2 K.B., 88, 732.
(2) (1903) 2 K.B., 600.
(3) (1901) A.C., 426.
(4) 29 V.L.R., 475; 25 A.L.T., 120.
(5) (1896) 1 Ch., 811; (1899) 1 Ch., 255.
(6) (1898) A.C., 1.
(7) (1899) 2 Ch., 35.
(8) (1899) 2 Ch., 696.
(9) 20 N.S.W. W.N., 45.

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delegate had no distinct authority behind him to enforce a strike. His statement therefore did not amount to a threat.]

If the acts themselves are not wrongful the intention is immaterial: *Boots* v. *Grundy* (1).

Cur. adv. vult.

Melbourne, March 12, 1906.

The judgment of the Court was read by

GRIFFITH C.J. [After stating the material facts His Honor proceeded]: As no application was made to the Supreme Court for a new trial, it is not now open to the appellants to impeach the findings of the jury. The matter must, therefore, be considered exclusively upon the facts as found by the jury and appearing upon the record, in the same manner as formerly upon a bill of exceptions or a special verdict: *Musgrove* v. *McDonald* (2).

For the appellants, reliance was placed upon the case of *Allen* v. *Flood* (3), while the respondent relied mainly upon the case of *Quinn* v. *Leathem* (4). *Allen* v. *Flood* was an action for maliciously and wrongfully, and with intent to injure the plaintiff, procuring his employers to break their contract with him, and not to enter into any new contract with him, and also for unlawfully and maliciously conspiring with others with the same object. There was, however, no evidence of any conspiracy. The case was tried by a jury, who found for the plaintiff on the cause of action first stated, and judgment was given for him. This judgment was affirmed by the Court of Appeal. On appeal to the House of Lords, the Judges were summoned, and the following question was put to them—"Was there any evidence of a cause of action fit to be left to a jury?" In the very elaborate opinions given by the learned Judges who advised the House, and in the speeches of the learned law Lords, the whole subject of interference with liberty of trade was very fully considered, and various divergent opinions were expressed; but as was pointed out in *Quinn* v. *Leathem* (4), the actual question for decision was whether there was, in that case, any evidence fit to be left to a

(1) 82 L.T., 769, at p. 771, *per Bigham* J.
(2) 3 C.L.R., 132.
(3) (1898) A.C., 1.
(4) (1901) A.C., 495.

jury. The majority of the law Lords (Lords *Watson*, *Herschell*, *Macnaghten*, *Shand*, *Davey* and *James* of Hereford; Lords *Halsbury*, L.C., *Ashbourne*, and *Morris* dissenting) held that the evidence for the plaintiff failed to show that the defendants had committed any unlawful act. The only point of law involved in the decision was that an act which does not amount to a legal injury does not become actionable by reason merely that it is done with a bad intention, or a bad motive. See *per* Lord *Macnaghten* (1). This case, therefore does not govern the present, in which it is not open to the Court to examine the evidence for the purpose of inquiring whether it justified the conclusion of the jury that the defendants had been guilty of a conspiracy to injure the plaintiff.

The case of *Quinn* v. *Leathem* (2) also turned upon the facts, which were very different from those found by the jury in the present case. In the discussion of both cases frequent reference was made to a passage in the judgment of *Bowen* L.J., in *Mogul Steamship Co.* v. *McGregor, Gow & Co.* (3):—"Now, intentionally to do that which is calculated in the ordinary course of events to damage, and which does, in fact, damage another in that other person's property or trade, is actionable if done without just cause or excuse. Such intentional action when done without just cause or excuse is what the law calls a malicious wrong: (see *Bromage* v. *Prosser* (4); *Capital and Counties Bank* v. *Henty* (5)). The acts of the defendants which are complained of here were intentional, and were also calculated, no doubt, to do the plaintiffs damage in their trade. But in order to see whether they were wrongful we have still to discuss the question whether they were done without any just cause or excuse. Such just cause or excuse the defendants on their side assert to be found in their own positive right (subject to certain limitations) to carry on their own trade freely in the mode and manner that best suits them, and which they think best calculated to secure their own advantage."

Lord *Herschell*, commenting on this passage in *Allen* v. *Flood*

(1) (1901) A.C., 495, at p. 508.
(2) (1901) A.C., 495.
(3) 23 Q.B.D., 598, at p. 613.
(4) 4 B. & C., 248.
(5) 7 App. Cas., 741, at p. 772, *per* Lord *Blackburn*.

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(1), remarked :—"The notion that there may be a difference in this respect between acts affecting trade or employment and other acts seems to be largely founded on certain *dicta* of *Bowen* L.J., in the case of *The Mogul Steamship Co.* It must be remembered that these were *obiter dicta*, for the decision was that the defendants were not liable. The passage perhaps chiefly relied upon is the following:—'Now intentionally to do that which is calculated in the ordinary course of events to damage, and which does in fact damage, another in that other person's property or trade, is actionable if done without just cause or excuse. Such intentional action when done without just cause or excuse is what the law calls a malicious wrong.' It will be noted that the learned Judge here makes no distinction between acts which interfere with property and those which interfere with trade. For the purpose then in hand the statement of the law may be accurate enough, but if it means that a man is bound in law to justify or excuse every wilful act which may damage another in his property or trade, then I say, with all respect, the proposition is far too wide; everything depends on the nature of the act, or whether it is wrongful or not." Subject to this limitation, which, with all respect, seems to be implied in the concluding words of *Bowen* L.J., not quoted by Lord *Herschell*, that very learned Judge, as we understand him, accepted the doctrines propounded in the passage which he was criticising, and which, in our opinion, are good law.

In *Quinn* v. *Leathem* (2), Lord *Lindley* said:—"As to the plaintiff's rights. He had the ordinary rights of a British subject. He was at liberty to earn his 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 recognized 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

(1) (1898) A.C., 1, at p. 139.

(2) (1901) A.C., 495, at p. 534.

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 pratically impossible and highly inconvenient to give legal redress to all who suffer 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. The cases collected in the old books on actions on the case, and the illustrations given by the late *Bowen* L.J. in his admirable judgment in the *Mogul Steamship Company's Case* (1), may be referred to in support of the foregoing conclusion, and I do not understand the decision in *Allen* v. *Flood* (2) to be opposed to it."

We do not think it necessary to discuss in further detail the various opinions expressed by the learned Judges who took part in the decisions of these cases, and the other cases referred to in the arguments addressed to us, but we think that they establish some rules or doctrines applicable to all actions for what are called malicious injuries, which will go far towards solving the questions raised in the present case.

I. The first rule is that any interference with the rights of another, which in fact occasions damages to him, is actionable, unless such interference is authorized, or justified, or excused by law. In this proposition the term "rights" includes the right which every man possesses to the free enjoyment, subject to any specific rule of law, of his personal liberty; which, again, includes freedom to make, subject to any specific rule of law, such employment of his capacities, mental or physical, as he may think fit, and to invite the co-operation of any person he may think fit in

(1) 23 Q.B.D., 598, at pp. 613, 614. (2) (1898) A.C., 1.

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any enterprise in which he proposes to engage. On this point we need only refer to the authorities quoted by Lord *Brampton* in *Quinn* v. *Leathem* (1) viz. :—"*Primâ facie* it is the privilege of a trader in a free country in all matters not contrary to law, to regulate his own mode of carrying it on according to his own discretion and choice. If the law has in any other matter regulated or restrained his mode of doing this, the law must be obeyed. But no power short of the general law ought to restrain his free discretion." (*Per Alderson* B., delivering the judgment of the Exchequer Chamber in *Hilton* v. *Eckersley* (2)):—"All are free to trade upon what terms they will." (*Per* Lord *Halsbury* L.C. in the *Mogul Steamship Co.'s Case* (3)):—"The liberty of a man's mind and will, to say how he should bestow himself and his means, his talents and his industry, was as much a subject of the law's protection as is that of his body." (*Per Bramwell* B., in *R.* v. *Druitt* (4)):—"Every person has a right under the law, as between himself and his fellow-subjects, to full freedom in disposing of his own labour or his own capital according to his will. It follows that every other person is subject to the corresponding duty arising therefrom, and is prohibited from any obstruction to the fullest exercise of this right, which can be made compatible with the exercise of similar rights by others." (*Sir W. Erle on Trade Unions*, p. 12)—Familiar instances of acts authorized, or absolutely protected by law, which may be harmful to the intangible right in question are afforded by statements made in Courts of Justice, and by prosecutions of persons actually guilty of offences. Competition in trade, which at common law is absolutely lawful, is another instance.

Hence we obtain the further proposition that—

II. Interference which results merely from the exercise of free competition in trade is not wrongful, and is, therefore, not actionable. Of this rule, the *Mogul Steamship Co.'s Case* (5) is an illustration.

But in the infinite variety of human affairs, it often happens, and must happen, that acts which in themselves are neutral, *i.e.*, which are neither absolutely authorized nor expressly forbidden

(1) (1901) A.C., 495, at p. 525.
(2) 6 E. & B., 47, at p. 74.
(3) (1892) A.C., 25, at p. 38.
(4) 10 Cox C.C., 592, at p. 600.
(5) (1892) A.C., 25.

by law, have the effect of interfering with the rights of some person to his damage, although the mind of the doer was not at all directed to the person to whom the damage is caused, and the damage is a mere incidental or accidental consequence of the act. Now, the common law is characterized by a kindly regard for the infirmities of human nature, and never lays on men's shoulders a burden too grievous to be borne. It does not, therefore, hold the doer necessarily responsible for damage arising under such circumstances, but requires a further inquiry to ascertain whether the damage was really a mere incidental or accidental result of an act not wrongful, or whether the doer took advantage of the circumstances to enable him to do some harm to another person whom he desired to injure. In the latter case he is not entitled to the benefit of the ambiguous or neutral circumstances. But the burden of showing that the doer did so take advantage lies upon the party alleging the fact. This is, we think, the principle which governs actions for malicious prosecutions, and actions for defamation on privileged occasions, as well as actions such as that now before us. It may be expressed in the following further propositions :—

III. If the circumstances attending an act which occasions interference with the rights of another, and which is, *primâ facie*, lawful, are such that the interference may be a merely incidental or accidental consequence of the act, the act is to be regarded as, *primâ facie*, neutral, and as being justified or excused, until the contrary is shown; and the burden of displacing the presumption of innocence lies on the person complaining.

IV. Acts not forbidden by law, and done in the exercise of the right of personal liberty, or in the discharge of a duty, though of imperfect obligation, which the doer owes, or believes he owes, to himself, or to another, are, *primâ facie*, lawful. But

V. If the interference is not in fact merely incidental or accidental, but is deliberate, and is actuated by a desire to do harm to the person whose rights are interfered with, whether accompanied or not by some other motive, the protection which would otherwise arise from the circumstances is excluded.

Of this rule, actions for malicious prosecution and actions for defamation on a privileged occasion afford familiar instances. It

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used to be said that malice, so called, was an essential element of the cause of action in these cases; and hence difficulties arose as to imputing malice, which, it was said, imports a state of mind, to a corporation. This particular difficulty is now removed by the recognition of the principle that the liability of a corporation in such a case attaches on the ground that it is responsible for the acts of its authorized agents. But, while the innocence or wrongfulness of the acts in these cases depends, in one sense, upon the state of mind of the doer, this, properly regarded, is not because that state of mind is an element of the cause of action, but because the state of mind of the doer is such as to deprive him of the benefit of the ambiguous circumstances, which, but for it, would afford him protection. Unless, however, the act complained of is an infringement of a legal right, this question does not arise. Of this the case of *Bradford Corporation* v. *Pickles* (1), affords an illustration. In that case, the act complained of was an act done in the lawful exercise of a right of property, and did not involve the infringement of any legal right of any other person. The motive of the doer was, therefore, held to be immaterial. So, in *Allen* v. *Flood* (2), and the *Mogul Steamship Co.'s Case* (3).

VI. If the interference is the direct result of the carrying out of an unlawful enterprise, propositions III. and IV. have no application, and the cause of action is complete as soon as actual damage follows.

These rules are, we believe, consistent with all the decisions. They appear to us to be in accord with common sense, which is a good test to be applied in ascertaining whether a suggested proposition is, or is not, a rule of the common law.

It appears, then, that cases of this kind fall into three classes—(1) Cases in which the alleged interference is not a violation of any legal right, but is a mere incidental or accidental effect of a lawful act (in this case no action lies); (2) cases in which it is the direct result of an unlawful act (in this case an action lies); (3) cases in which the act is, *primâ facie*, neutral, and its innocence or wrongfulness depends upon the motive operating on the mind of the doer. Thus, in the cases of malicious prosecution or defamation on a privileged occasion, the existence or non-existence

(1) (1895) A.C., 587. (2) (1898) A.C., 1. (3) (1892) A.C., 25.

of an improper motive determines the character of the act. In such cases the question is really one of motive, as distinguished from intention. The terms are not synonymous, and confusion has sometimes arisen from a failure to distinguish between them. In some cases either word might be used with substantial accuracy, as in the passage quoted by Lord *Macnaghten* from *Parke* B., in his speech in *Quinn* v. *Leathem* (1). For instance, a man forms the intention to kill another, and kills him. His motive for forming that intention may, or may not, be distinct from the intention. It may be a desire for revenge for a real or fancied injury, in which case the motive precedes, and is distinct from, the intention. In other cases, it may be so involved in the intention as to be undistinguishable from it. When a man deliberately intends by his act to do harm to another, it is impossible to say that part, at least, of his motive is not the desire to produce that result. In criminal law, motive, as distinguished from intention, is seldom material. Indeed, at common law, the case of defamation is the only one that occurs to us. In the case of a fraudulent preference under the English bankruptcy law (which depends upon motive), a person who makes a payment with a view to give a preference to a particular creditor obviously intends the creditor to obtain the preference. But in general, the motive which induces a man to form an intention is distinct, and should be distinguished, from the intention itself. This distinction is clearly laid down in sec. 23 of the *Queensland Criminal Code*. In all cases of interference with liberty, not purely incidental, an intention to interfere may probably be predicted, but it does not follow that the motive is always improper. No doubt, a difficulty often arises in determining the motive by which a person who is charged with a wrongful act was actuated. But this difficulty, so far from being peculiar to cases like the present, is common to all actions for so-called malicious injuries, and the tribunal must ascertain the motive in the best way it can upon the evidence presented to it. The doctrine laid down in Proposition V. seems to have been, in substance, the view taken of the law by *Romer* L.J., in *Giblan* v. *National Amalgamated Labourers' Union of Great Britain and Ireland* (2), and by *Real* J., in the present case.

(1) (1901) A.C., 495, at p. 508.

(2) (1903) 2 K.B., 600, at p. 619.

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Within which class, then, does the present case fall? Clearly, we think, within the second. For, by sec. 543 of the *Queensland Criminal Code*, any person who conspires with another to injure any person in his trade or profession is guilty of a misdemeanour, and the findings of the jury are, in effect, that the defendants engaged in such a conspiracy, and that the damage complained of resulted from it.

It is suggested that the answer of the jury to Question 7A (*b*) may modify the finding as to a conspiracy. The rules mentioned in that answer may, we think, be referred to for the purpose of interpreting it. The rule in question is No. 33, and is as follows:—

> 33.—(1) Members are prohibited from working with shipwrights who are not members of this union, excepting strangers to the port, who shall be allowed fourteen days' grace. Should any person who has been a member of this union, and whose name has been struck off the roll, be employed where members are at work, they shall not work with such person, unless he agrees to such terms as may be satisfactory to members on the job.
>
> . . . . . .
>
> (3) Any shipwright working with the tools must become a member of the union, otherwise members are prohibited from working with him.

Having regard to the terms of this rule, the answer of the jury, in our opinion, only amounts to a finding that the defendants, when breaking the law, thought that they were justified in doing so because of a duty which they supposed themselves to owe to their union. This would not be a defence to a prosecution, and we do not think it is a defence to an action for a conspiracy. The doctrine which allows a neutral act, done in the discharge of a supposed duty, and without any desire to cause injury to another, to be treated as innocent, has no application to an act prohibited by positive law. With respect to acts not so prohibited, but which may be rightful or wrongful according to circumstances, the conditions on which the rightfulness or wrongfulness depends are part of the common rule of law governing the case, and determine, therefore, whether the act itself is rightful or wrong-

ful. In our opinion, the findings of the jury also involve a deliberate desire on the part of defendants to injure the plaintiff. In this view their action, actuated by this intention, was itself unlawful, so that, even if the case fell within the third class, the defendants are not entitled to the benefit of the rule expressed in Proposition IV., but are liable under that expressed in Proposition V.

In the view which we take of the law, as applicable to the specific facts found by the jury, it becomes unnecessary to consider the abstract question of what other motives would be improper, or what would be sufficient evidence of an improper motive to be left to a jury, when the rule expressed in the fourth Proposition is set up as a defence.

As to the objection that the defendant Union cannot lawfully be deemed guilty of a conspiracy, we think, and indeed it was not contested, that this Court is bound to follow the decision of the House of Lords in *Taff Vale Railway Co.* v. *Amalgamated Society of Railway Servants* (1).

For these reasons we are of opinion that the appeal fails.

Appeal dismissed with costs.

Solicitors, for appellants, *Atthow & McGregor.*

Solicitors, for respondents, *Crouch & Darvall.*

H. E. M.

(1) (1901) A.C., 426.