[HIGH COURT OF AUSTRALIA.]

THE WATERSIDE WORKERS' FEDERATION OF AUSTRALIA . . . } APPELLANTS;
DEFENDANTS,

AND

BURGESS BROTHERS LIMITED . . . RESPONDENTS.
PLAINTIFFS,

ON APPEAL FROM THE SUPREME COURT OF TASMANIA.

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HOBART, *Feb.* 14, 16.

Griffith C.J., Barton and Isaacs JJ.

Principal and Agent—Organization registered under the Commonwealth Conciliation and Arbitration Act—Responsibility for acts of branch of organization—Construction of rules—Act in nature of strike—Conspiracy—Combination.

The rules of an organization of employees registered under the *Commonwealth Conciliation and Arbitration Act* assumed the existence, but did not make any provision for the establishment, of branches of the organization throughout the Commonwealth. They provided that members of the organization might be enrolled in any branch, and that each branch might make rules applicable to itself only, supplementary to but not inconsistent with the rules of the organization. The government of the organization was vested in a committee of management composed of delegates from the branches. Rule 16 provided that "every branch may conduct its local business and settle its own disputes without interference from the organization," that "any branch desiring the assistance of the organization shall lay the matter in dispute before the committee of management, which shall determine the course of action to be pursued," and that a branch seeking such assistance should do so unreservedly, abstain from action pending consideration, and abide by the decision of the committee of management when given.

Held, that, in the absence of express authority and of any ratification, the organization was not liable for acts in the nature of a strike done by a branch without the knowledge of the governing body of the organization.

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Decision of the Supreme Court of Tasmania: *Burgess* v. *Katz*, 11 Tas. L.R., 57, reversed.

APPEAL from the Supreme Court of Tasmania.

An action was brought in the Supreme Court in its Local Courts Act jurisdiction by Burgess Brothers Ltd., a registered company carrying on business as general merchants in Hobart, against the Waterside Workers' Federation of Australia, a union of employees registered as an organization under the *Commonwealth Conciliation and Arbitration Act* 1904-1909, and Frederick Katz and Timothy Watson. By the plaint it was alleged (*inter alia*) that the defendants Katz and Watson "and the members of the defendant Federation" conspired and combined amongst themselves and with persons engaged in loading and unloading ships at the port of Hobart to cause and compel the plaintiffs to break their contracts with men who were engaged in carting for them and were not members of the Federated Carters' and Drivers' Industrial Union of Australia, and to cause the plaintiffs to cease to deal with or employ any persons in their carting operations except persons who were members of that Union, and to cause certain shipping companies to refuse to carry or to accept for conveyance the goods of the plaintiffs, and, by coercing and threatening those shipping companies with loss and threatening to strike and striking, caused them to refrain from dealing with the plaintiffs or to carry their goods. The plaintiffs alleged certain injury arising from the acts complained of, and claimed £295 damages. The action was heard before *Nicholls* C.J. and a jury, who found a verdict for £50 damages against all the defendants, and stated, in answer to a question put to them by the learned Chief Justice, that they found against the defendant Federation on account of the acts of the Hobart branch of the defendant Federation. Judgment was entered accordingly. The defendant Federation, pursuant to leave reserved at the trial, moved to set aside the verdict and to enter a nonsuit or verdict for the defendant Federation, and the motion was referred to the Full Court. The defendant Federation moved in the alternative for a new trial, and they also appealed against the judgment. The Full Court having dismissed the motions and the appeal (*Burgess*

v. *Katz* (1)), the defendant Federation now, by special leave, appealed to the High Court.

The other material facts are stated in the judgments hereunder.

H. I. Cohen, for the appellants. Under the Rules of the Federation a branch in relation to its local affairs acts for itself alone. There is no evidence of any express authority from the Federation to the branch, or of any ratification by the Federation. No authority is conferred by the Rules of the Federation which could make it responsible for the acts of the branch.

Alec Thomson (with him *Page*), for the respondents. Rule 16 of the Rules of the Federation gives express authority to the branch to do anything the Federation could do, not only with regard to federal matters, but with regard to local matters. The branch is constituted the *alter ego* of the Federation in Tasmania. The meaning to be put on the provision in rule 16 that "every branch may conduct its local business and settle its own disputes without interference from the organization" is that the branch is to act as the Federation in respect of those matters.

[Reference was made to *Giblan* v. *National Amalgamated Labourers' Union of Great Britain and Ireland* (2); *Smithies* v. *National Association of Operative Plasterers* (3); *Denaby and Cadeby Main Collieries Ltd.* v. *Yorkshire Miners' Association* (4).]

Cur. adv. vult.

The following judgments were read:—

Feb. 16.

GRIFFITH C.J. The appellants are an organization registered under the Commonwealth Conciliation and Arbitration Acts. Its Rules assume the existence of branches of the organization throughout the Commonwealth, but do not contain any express provisions as to their formation. They provide that members of the organization may be enrolled in any branch, that each

(1) 11 Tas. L.R., 57.
(2) (1903) 2 K.B., 600, at p. 614.
(3) (1909) 1 K.B., 310, at p. 333.
(4) (1906) A.C., 384, at p. 390.

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branch may make rules applicable to itself only, supplementary to but not inconsistent with the Rules of the organization. The government of the organization is vested in a committee of management composed of delegates from the branches. Rule 16 provides that "every branch may conduct its local business and settle its own disputes without interference from the organization," and that "any branch desiring the assistance of the organization shall lay the matter in dispute before the committee of management, who shall determine the course of action to be pursued." A branch seeking such assistance must do so unreservedly, and abstain from action pending consideration and abide by the decision of the committee of management when given.

There is a branch of the organization called the "Hobart Waterside Workers Union," which consists of "persons working on or in connection with the wharves in the port of Hobart." This branch, which appears to be in law a voluntary association, is governed by certain rules adopted in February 1909. The members of the branch are members of the organization, but have no voice in its management except through their delegates.

The action was brought by the respondent company against the appellants and two persons named Katz and Watson. The plaint alleges that Katz and Watson and the "members of the defendant Federation" conspired and combined amongst themselves and with persons engaged in unloading ships at Hobart to cause and compel the plaintiff company to break their contracts with other persons working for them, and to cause the company to cease to deal with persons not members of another industrial union, and to cause two shipping companies to refuse to carry the plaintiffs' goods or accept them for conveyance, and by coercing and threatening the shipping companies with loss, and threatening to strike and striking, caused them to refrain from dealing with the plaintiff company or to carry their goods.

The phrase "members of the defendant Federation" appears to have been treated as a synonym for "the defendant Federation." Otherwise there is no complaint at all against the appellants as a legal entity.

The case was tried with a jury, who found that the acts complained of were in fact done by all the defendants, but said that they found against the appellants on account of the acts of the Hobart branch, which, it may be mentioned, had in fact expressly authorized and approved the acts complained of.

It is manifest that the appellants, being a corporation, can only act through agents. It was, therefore, necessary for the plaintiffs to establish that the acts complained of were done by their authorized agents. There is no question of express authority. The governing body of the appellant organization had in fact no knowledge of the acts complained of until after they had been done, and then, so far from approving or ratifying them, expressed its disapproval. The persons doing the acts did not even purport to act on behalf of the organization. I must not be supposed to suggest that under such circumstances any attempted ratification would have been effectual.

The respondents were, therefore, compelled to rely upon the contention that the members of the Hobart Union were agents of the organization having a general authority to do on its behalf the acts complained of. The Supreme Court of Tasmania accepted that contention and dismissed a motion for judgment or nonsuit or for a new trial made by the appellants.

Before this Court the respondents relied entirely upon the authority which, they contended, was established by the rules I have already quoted. It is impossible to construe rule 16, which is the one mainly relied on, as implying a general authority to a branch or to its individual members to act as agents for the organization collectively. Indeed, so far as any implication can be drawn from that rule, it tends to negative any such authority. It follows that, as the plaintiffs failed to show that the acts complained of were done by authority of the appellants, the verdict of the jury was without foundation, and that judgment should have been entered for them as against the appellants. The order appealed from should therefore be set aside, and judgment entered for them.

It is, perhaps, not surprising that when a branch of a great organization like the appellants takes action in the nature of a strike some persons should impute the blame to the organization

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itself, but in a Court of Justice mere surmise or suspicion is not sufficient. A person or a corporation is not in a Court of Justice held liable for the actions of others unless his or its authority to do the actions on his or its behalf is established by evidence. In the present case, however, there is no foundation for even surmise or suspicion.

The question of proof of agency was the only one argued before us, and I express no opinion on the other interesting questions that might have been raised if the appellants' authority had been made out.

BARTON J. The action was brought by Burgess Brothers Ltd. against Frederick Katz, Timothy Watson and the Waterside Workers' Federation of Australia. The jury found against all the defendants with damages £50. The finding against the present appellants was expressly based on the acts of the Hobart branch, called the Hobart Waterside Workers' Union. Katz and Watson are not appellants, and the verdict against them stands. The Waterside Workers' Federation of Australia put forward, among other grounds of appeal, that the verdict was against evidence, inasmuch as they are not responsible in this case for the acts of the local union or its members. If the Hobart branch had no authority from the present appellants for their action, the case against the latter fails for want of evidence, even if the Hobart branch, or its members, did actually conspire and combine to cause the respondent company to break their contract with their customers or to cause them to cease to deal with non-members of the Federated Carters' and Drivers' Union, or if the Hobart Union or its members conspired and combined to cause the Union Steamship Co. and Huddart Parker Ltd. to refuse to carry the respondents' goods; or if the Hobart branch or its members by coercion and threats caused the steamship companies to refuse to deal with the respondent company.

From the course of the argument as well as from the pleadings, it may be taken that the phrase used in the latter, "the members of the defendant Federation," is to be taken to apply to the appellants as an organization.

Now, it is not pretended by the plaintiff, now the respondent

company, that the appellants gave any express authority to the Hobart Union in connection with this matter. The company avowedly bases its whole contention on the Rules of the appellant organization; and although a contention was faintly based on the scope of the Rules in addition to one specific rule, it was substantially based on the terms of that one rule. It may be premised that the Waterside Workers' Federation did not create the branches, but that it was formed by a combination between a number of existing unions, which, on the formation of the Federation, seem to have been called its branches. These various Waterside Workers' Unions were in more States than one.

The specific rule already referred to, which I need not repeat, is numbered 16.

It will be seen that the rule begins with a declaration which expresses certain powers of a branch union as they must have existed before the federation, and continues those powers to each branch. So far as that declaration goes, it introduces no new rule of action for the branches. They remained, as they were previously, free to conduct their local business and settle their own disputes without interference. The declaration merely continues that freedom to them, and, so far, authority in connection with such matters is not assumed, but disclaimed, by the appellant body. The rule goes on to require a branch to lay a dispute before the Federation's committee of management for determination of the course to be pursued, but this requirement is limited to cases in which the branch requires the assistance of the organization. Here again it is impossible to find authority to do such acts as those in question. The concluding sentence of the rule only provides that when a branch does seek the assistance of the committee of management it shall do so unreservedly, abstain from further action while the matter is under consideration, and abide by the decision of the committee when given. This clause of the rule does not carry the matter one whit further in the direction of the authority which is the necessary condition of success against the appellants.

So the rule fails to help the respondent company in any part of it, and if it is read as a whole the case is no better. Indeed, I am much disposed to think that to sustain the argument for the

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respondent company it would be necessary to show in these rules a context evincing that it must be read in some sense differing from that which its words would ordinarily bear. We asked counsel if he could find such a context, and were not directed to any rule or rules which could possibly furnish it. There being no express authority conferred either by antecedent instructions or by the rules of the appellants, is an authority to be implied from the relation between it and the local branch? I find no circumstances sufficing to raise that implication, for I find nothing in the relative positions of the two bodies to warrant the supposition that the one is responsible for the acts of the other not expressly authorized. Indeed, there is nothing to show that when the crucial action was taken at Hobart the Waterside Workers' Federation knew of what was being done, nor has any document been referred to which would show that it was at that time even consulted as to the course of action to be taken.

Then, was there any ratification? The only document which can possibly be pointed to in that connection is the letter signed W. M. Hughes, dated 17th July 1913, and addressed on behalf of the Conciliation Board of the appellant body to the president and members of the Hobart Union. So far from ratifying the acts which caused this suit, or any of them, the letter recommends the members of the Hobart branch to work all cargo of any member of the Steamship Federation. It expresses no approval of the cessation of work, but asks for its resumption; and disapproval, definite though polite, is apparent from the terms of the letter.

On the whole question of authority, it appears, first, that the appellant did not expressly, either by its Rules or apart from them, authorize any of the acts of the branch which are here complained of; secondly, that no authorization can be implied from the Rules or the circumstances; and thirdly, that even if it were proved, and it has not been proved, that the acts purported to be done on behalf of the appellant organization, there is no evidence that that body ratified them in the least degree.

Apart, therefore, from every other point, the action fails on this ground and the appeal must be allowed.

Isaacs J. The grounds of appeal as formally set out are numerous. By arrangement only one point was argued, any others available standing over in case the Court thought the first insufficient. As the Court considers that point fatal to the respondents, it is unnecessary to hear counsel upon the others.

Assuming all else in respondents' favour, there remains the question of the appellants' responsibility for what was done.

The appellants are an "organization" registered as such under the *Commonwealth Conciliation and Arbitration Act*, and owing their existence and status as an "organization" to that Statute. The power of the Commonwealth Parliament to create such an industrial body is, as decided in *Jumbunna Coal Mine, No Liability* v. *Victorian Coal Miners' Association* (1), incidental to the power contained in sec. 51 (xxxv.) of the Constitution. In other words, the status of the organization is federal, and its purposes are federal.

The facts are such that there has to be considered the question whether the acts complained of fall within the scope of authority actually conferred upon the Hobart branch to act for the organization as a whole. And to some extent there comes into play the question as to the scope of incorporation of the organization (see *Lambert* v. *Great Eastern Railway* (2)).

The organization itself did not, by its governing body (rule 14) or in any other way, directly sanction or authorize the particular acts complained of, or any action whatever, in relation to the respondents. On the contrary, it knew nothing of those acts until after they had been completed, and then it at once discountenanced them. Consequently the only way in which liability can be imputed to the appellants, is on the doctrine stated by *Willes* J. in *Bayley* v. *Manchester &c. Railway Co.* (3), and by *Farwell* J. in *Taff Vale Railway Co.* v. *Amalgamated Society of Railway Servants* (4), that is, by previously putting the Hobart branch in its place to do a class of acts which include those complained of. It was properly conceded by learned counsel for the respondents that this condition could not be

(1) 6 C.L.R., 309.
(2) (1909) 2 K.B., 776.
(3) L.R. 7 C.P., 415, at p. 420.
(4) (1901) A.C., 426, at p. 433.

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satisfied except by article 16 of the appellants' Rules. The case therefore depends on the interpretation of that article.

It does not expressly authorize any wrongful act. Further, it does not expressly authorize a strike in relation to a purely intra-State dispute, such as the dispute in this case, and such a strike would be outside the scope of incorporation of a federal organization; *à fortiori*, it does not authorize an unlawful intra-State strike.

On the other hand, a strike in relation to a federal industrial dispute is always unlawful (Commonwealth Act, sec. 6).

Consequently, on the well established principles of law—the first, that of two reasonably possible intendments that which is in favour of legality is preferably accepted (*Co. Litt.* 42a; *Russell* v. *Amalgamated Society of Carpenters and Joiners* (1), and *Amalgamated Society of Engineers* v. *Smith* (2)), and the second, that there is no presumption of authority for the agent to do what the principal could not lawfully do (*Poulton* v. *London and South Western Railway Co.* (3), and *Walters* v. *Green* (4))—rule 16 cannot be read as impliedly giving authority to commit a tort or other unlawful act. By the Tasmanian Act (53 Vict. No. 28 (1889)), sec. 2, a strike in relation to a purely intra-State matter is legalized unless accompanied with certain circumstances unnecessary to mention. Consequently, whether a strike is or is not within rule 16, and as to a purely intra-State matter, or whether rule 16 is confined to federal matters, and does not, by presumption, include a strike at all, the rule fails to carry the respondents as far as they require to go in order to succeed.

It may be also, by a quite independent line of consideration, that the branch is, by rule 16, not authorized at all in relation to its own local affairs, but merely informed that, so far as they are concerned, it is at liberty to act independently of the organization. Though the Hobart branch is not registered, it was in fact a prior separate formation with independent rules and a limited sphere of locality (see rule 1 of that branch). It was regarded as a "Union"; and reading the two sets of rules together, it may be

(1) (1912) A.C., 421, at pp. 435, 436.
(2) 16 C.L.R., 537, at p. 566.
(3) L.R. 2 Q.B., 534.
(4) (1899) 2 Ch., 696, at p. 703.

that article 16 of the organization Rules treats the Hobart Union, considered as a branch, as still competent to deal with such local disputes as do not affect the members of the organization. A local dispute may become federally one having a wider import, and the latter part of rule 16 may be intended to meet this. In that view the rule may stand in very much the same position as the corresponding rule in the *Denaby Case* (1).

The appellants, therefore, are in my opinion entirely free, legally as well as morally, from responsibility, and are entitled to succeed.

Appeal allowed. Judgment appealed from discharged so far as regard the appellants. Judgment entered for the appellants in the action with costs of action and of motion to the Supreme Court. Respondents to pay costs of appeal.

Solicitor for the appellants, *Charles Chant.*
Solicitors for the respondents, *Ewing, Hodgman & Seager.*

B. L.

(1) 1906) A.C., 384, at pp. 391, 392.