[HIGH COURT OF AUSTRALIA.]

THE WATERSIDE WORKERS' FEDERATION OF AUSTRALIA . . . . . Appellant;
Defendant,

AND

STEWART AND ANOTHER . . . . Respondents.
Plaintiffs,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

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MELBOURNE, *Oct.* 28, 29.

SYDNEY, *Nov.* 21.

Knox C.J., Barton, Isaacs, Gavan Duffy and Rich JJ.

Industrial Arbitration—Organization—Corporation—Power to enter into bond—Condition of bond—Payment of fixed sum in event of strike—Penalty or liquidated damages—The Constitution (63 & 64 *Vict. c.* 12), *sec.* 51 (xxxv.)—*Commonwealth Conciliation and Arbitration Act* 1904-1915 (*No.* 13 *of* 1904—*No.* 35 *of* 1915), *secs.* 2, 4, 6, 8, 19, 22, 26, 27, 29, 33, 38, 51-72—*Conciliation and Arbitration Regulations* 1913 (*Statutory Rules* 1913, *No.* 331), *reg.* 5.

Held, that an association registered as an organization under the provisions of the *Commonwealth Conciliation and Arbitration Act*, and having power under its rules to deal with its property for the purposes for which it was constituted, may lawfully enter into a bond for those purposes.

An organization of employees was a claimant in certain proceedings in the Commonwealth Court of Conciliation and Arbitration, and in order to obtain an undertaking from the respondents therein that they would not discriminate against the members of the organization, the organization entered into a bond by which it acknowledged itself to be bound to the Industrial Registrar of that Court in the sum of £500, the condition of the bond being that, if the organization should pay to the Industrial Registrar the sum of £50 if and so often as two or more members of the organization in combination should strike work, or fail to accept work which might be offered to them, as a means of enforcing compliance with any demand made by them or on their behalf on any respondent bound by the awards of the Court in which the organization was a claimant

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or with any demand made by any other trade union on any employer or employers the obligation should be void, or otherwise it should be of full force and virtue.

Held, that the £50 mentioned in the bond was liquidated damages and not a penalty; and, therefore, that in an action by a respondent to whom the bond had been assigned to recover damages upon the bond, a breach of the condition having been proved, judgment was properly given for the amount of the bond with leave to issue execution for £50.

Decision of the Supreme Court of Victoria (*Hodges* J.) affirmed.

APPEAL from the Supreme Court of Victoria.

An action was brought by Alexander Murdoch Stewart (the Industrial Registrar of the Commonwealth Court of Conciliation and Arbitration) and John Wilson Fraser against the Waterside Workers' Federation of Australia (hereinafter called " the Organization "), an organization of employees registered under the *Commonwealth Conciliation and Arbitration Act* 1904-1915.

By the statement of claim it was alleged that the defendant, by its bond bearing date 26th June 1918, became bound to the Industrial Registrar in the sum of £500 to be paid by the defendant to the said Industrial Registrar, subject to a condition thereunder written whereby the condition of the said bond was declared to be that, if the Organization pay to the said Industrial Registrar the sum of £50 if and so often as any two or more members of the Organization in combination either strike work, or fail to accept work which is offered to them, as a means of enforcing compliance with any demand made by them or on their behalf on any respondent or respondents bound by the awards of the said Court in which the said Organization is claimant, or with any demand made by any other union or any employer or employers, this obligation shall be void or otherwise it shall be of full force and virtue. It also alleged that on 21st November 1918 certain specified members of the Organization in combination struck work, or, alternatively, failed to accept certain work which was offered to them, as a means of enforcing compliance with a certain demand made by them or on their behalf on the plaintiff Fraser, who was a respondent bound by awards of the Commonwealth Court of Conciliation and Arbitration; that on the same day and subsequent days the members

specified in combination failed to accept work offered to them by the plaintiff Fraser as a means of enforcing compliance with the particular demand made by them or on their behalf on the plaintiff Fraser; that the defendant had not paid to the Industrial Registrar, or at all, the sum of £50 or any sum in respect of the breaches of the bond alleged; and that the Industrial Registrar, by deed dated 21st December 1918, assigned the bond and the benefits and rights thereunder to the plaintiff Fraser. The plaintiffs claimed severally, and in the alternative, £500 and interest thereon.

The action was heard by *Hodges* J., who gave judgment adjudging that the plaintiffs recover from the defendant £500, the amount of the bond, that the plaintiffs recover from the defendant the sum of £50 the damage sustained by reason of the breach of the condition of the bond with costs to be taxed, and also that the plaintiffs have execution against the defendant in respect only of the £50.

From that decision the defendant appealed to the High Court.

The material facts are stated in the judgments hereunder.

The appeal was first argued before *Barton*, *Isaacs* and *Gavan Duffy* JJ. on 14th and 15th October, when it was ordered to be re-argued before a Full Bench. It was accordingly argued before *Knox* C.J. and *Barton*, *Isaacs*, *Gavan Duffy* and *Rich* JJ. on 28th and 29th October.

Owen Dixon, for the appellant. The Organization had no power to enter into the bond. A statutory corporation has no powers except those expressly or impliedly granted to it (*Ashbury Railway Carriage and Iron Co.* v. *Riche* (1); *Baroness Wenlock* v. *River Dee Co.* (2); *Small* v. *Smith* (3)), and the only powers that will be implied are those which are incidental to the main purpose of the organization (see *Australian Workers' Union* v. *Coles* (4)).

[ISAACS J. referred to *Dundee Harbour Trustees* v. *D. & J. Nicol* (5).

[RICH J. referred to *McGlew* v. *New South Wales Malting Co.* (6); *Bonanza Creek Gold Mining Co.* v. *Regem* (7).]

The main and only purpose of the incorporation of organizations

(1) L.R. 7 H.L., 653.
(2) 10 App. Cas., 354.
(3) 10 App. Cas., 119, at p. 129.
(4) (1917) V.L.R., 332; 39 A.L.T., 1.
(5) (1915) A.C., 550, at p. 556.
(6) 25 C.L.R., 416, at p. 420.
(7) (1916) 1 A.C., 566.

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is the representation of large bodies of persons before tribunals and the enforcement of awards. The incorporation of organizations was sustained under sec. 51 (xxxv.) of the Constitution by reference only to that purpose; and, even if the *Commonwealth Conciliation and Arbitration Act* could be construed to give wider powers, they will be limited by that purpose (*Jumbunna Coal Mine, No Liability*, v. *Victorian Coal Miners' Association* (1). The incidental powers do not include a power to enter into contracts relating to the general rights of members of an organization, and the fact that the President requires such a contract to be entered into as a condition of his award cannot give authority to enter into it. Under sec. 123 of the *Instruments Act* 1915 (Vict.) the judgment for £50 is wrong. No damages were proved, and therefore judgment should have been for one shilling. The £50 fixed by the bond is a penalty, and not liquidated damages. It is an amount fixed *in terrorem*, and is not a genuine pre-estimate of an anticipated loss.

[ISAACS J. referred to *Dunlop Pneumatic Tyre Co.* v. *New Garage and Motor Co.* (2).]

The condition of the bond provides that the striking must be as a means of enforcing compliance with "any demand made by them," that is, the organization, and not any demand made by members. That is shown by the subsequent use of the words "any other union." The respondent Fraser is not a respondent to any award within the meaning of that term in the condition. The word "respondent" is there used in its technical sense, and Fraser is not a respondent on the record in any award.

Starke (with him *Stanley Lewis*), for the respondents. One of the objects of the *Commonwealth Conciliation and Arbitration Act* is to permit associations, including trade unions, to be registered as organizations for the purpose of dealing with industrial disputes (sec. 55), and for that purpose they are made corporations (sec. 58). By rule 2 of the rules of the appellant Organization, which is made under the authority of reg. 5 of the *Conciliation and Arbitration Regulations* 1913 (Statutory Rules 1913, No. 331), it is declared

(1) 6 C.L.R., 309, at pp. 333-336, 345, 355-360, 375.
(2) (1915) A.C., 79.

that the purpose of the Organization is to combine in one body all persons engaged in the loading, &c., of ships "in order that their interests may be protected, their status raised and their conditions improved." The *Conciliation and Arbitration Regulations* 1913 are within the constitutional power conferred by sec. 51 (xxxv.) of the Constitution (*Jumbunna Case* (1); *United Grocers, Tea and Dairy Produce Employees' Union of Victoria* v. *Linaker* (2)).

[ISAACS J. referred to *Federated Seamen's Union of Australasia* v. *Belfast and Koroit Steam Navigation Co.* (3).]

The purpose of the Organization being that stated in rule 2, anything which is conducive to that purpose is within the ambit of its power, and anything reasonably incident to the carrying out of that purpose will be upheld. In this case the Organization was asking for improvements in the conditions of labour, and it was reasonable that in return for the granting of those improvements the Organization should give the bond. A bond of £50 made between the Organization and employers conditioned upon members of the Organization not striking would be within *Dunlop Pneumatic Tyre Co.* v. *New Garage and Motor Co.* (4), and the £50 would be liquidated damages. The fact that the payment of £50 is conditioned upon the event of a strike occurring does not make the £50 any the less liquidated damages. The fact that the Industrial Registrar is made the person to whom the sum is to be paid makes no difference. Neither sec. 123 of the *Instruments Act* 1915 nor the rules of equity apply to a bond given to a Court or a public official having power to require the bond as a term upon which judgment shall be granted. The £50 is in the nature of a recognizance. [Counsel referred to *Chitty's Archbold*, 12th ed., p. 1008; *Moody* v. *Pheasant* (5); *Middleton* v. *Bryan* (6); *Roberts* v. *Mariett* (7).] The bond is clearly for the benefit of respondents to awards, and either the Industrial Registrar or a respondent in respect of whom there has been a breach may sue on it (*In re Empress Engineering Co.* (8); *Gandy* v. *Gandy* (9)).

(1) 6 C.L.R., 309.
(2) 22 C.L.R., 176.
(3) 24 C.L.R., 462.
(4) (1915) A.C., 79.
(5) 2 Bos. & P., 446.
(6) 3 M. & S., 155.
(7) 2 Wms. Saund. (notes), 541.
(8) 16 Ch. D., 125.
(9) 30 Ch. D., 57.

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Owen Dixon, in reply. The reason why bonds given to a Court or an officer were held not to be within the Statute was because the Court had control of them (*Smith* v. *Bond* (1)). That does not apply to this bond. It was not under the control of a Court of Justice; nor did the Industrial Registrar take it pursuant to any express power or function conferred upon him by the *Commonwealth Conciliation and Arbitration Act*, but it was taken by him merely because he was a convenient person.

Cur. adv. vult.

Nov. 21.

The following judgments were read :—

KNOX C.J., BARTON AND GAVAN DUFFY JJ. This was an action to recover £500 on a bond. The facts alleged in the statement of claim and proved at the hearing of the action before *Hodges* J. were as follows :—The defendant is an organization duly registered and incorporated under the *Commonwealth Conciliation and Arbitration Act* 1904-1915. The defendant Organization was the claimant in certain proceedings in the Commonwealth Court of Conciliation and Arbitration in which a claim was made for preference to its members. In the course of the proceedings the President intimated that he was not prepared to order preference as claimed if the respondents would give an undertaking not to discriminate against members of the Organization, and added that he thought such an undertaking should only be required if the Organization entered into the bond which was the foundation of the present proceedings. This the Committee of Management of the Organization agreed to do, and accordingly the bond was executed under the seal of the defendant Organization, the seal being affixed in accordance with the rules of the Organization with the authority of a majority of the Committee of Management. The bond was dated 26th June 1918, and was in the words and figures following, viz. :— "Know all men by these presents that the Waterside Workers' Federation of Australia (an organization duly registered under the *Commonwealth Conciliation and Arbitration Act* 1904-1915) is held and firmly bound to the Industrial Registrar of the Commonwealth

(1) 10 Bing., 125, at p. 131.

Court of Conciliation and Arbitration in the sum of five hundred pounds of lawful money of Great Britain to be paid to the said Industrial Registrar for the due payment whereof the said the Waterside Workers' Federation of Australia hereby binds itself firmly by these presents sealed with its seal the twenty-sixth day of June one thousand nine hundred and eighteen The condition of this obligation is such that if the Waterside Workers' Federation of Australia pay to the said Industrial Registrar the sum of fifty pounds if and so often as two or more members of the Waterside Workers' Federation of Australia in combination either strike work or fail to accept work which is offered to them as a means of enforcing compliance with any demand made by them or on their behalf on any respondent or respondents bound by the awards of the said Court in which the said Federation is claimant or with any demand made by any other Union on any employer or employers this obligation shall be void or otherwise it shall be of full force and virtue.—The common seal of the Waterside Workers' Federation of Australia was affixed to the document by order of the Committee of Management in the presence of J. Woods, President; J. H. Morris, Secretary; E. Cremer, S. J. Roberts, H. G. Walsh, L. Braund, T. R. Clarke, W. O. Liston, E. D. Jackson, J. W. Cadden, Frank J. Hall."

On 21st November 1918 certain members of the defendant Organization employed at the schooner *Rose Mahony*, acting in combination, struck work or failed to accept work which was offered to them as a means of enforcing compliance with a demand made by them or on their behalf on J. W. Fraser, one of the plaintiffs in the action, viz., that not less than six men should be employed in a hold in all cases. By deed dated 21st December 1918 the bond was assigned to the plaintiff J. W. Fraser by Mr. A. M. Stewart, the Industrial Registrar, who was joined as a plaintiff in the action. On the hearing of the action *Hodges* J., having found the facts stated above to have been proved, gave judgment for the plaintiffs, and ordered that judgment be entered for them for £500, the full amount of the bond, with leave to issue execution for £50, "the damages sustained by reason of the breach of the condition of the bond," and costs of the action. Evidence was given on the hearing

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that in consequence of the strike the ship was detained for several days, men employed to work the cargo being unskilled, and that owing to the increased time occupied in the work the labour cost to the plaintiff Fraser, who was the stevedore, was increased by £20, the loss to the shipowners being considerably greater. In substance, this was the only evidence given on the question of damages.

The defendant Organization appealed to this Court from the judgment of *Hodges* J., and on the appeal the points raised were: (1) that the bond sued on was *ultra vires* the defendant Organization; (2) that on the true construction of the bond and on the facts as found in the Court below no breach was established; (3) that in any event the plaintiffs were not entitled to more than nominal damages.

With regard to the first point, we are of opinion that the bond was not *ultra vires* the defendant Organization. It is clear from a perusal of the Act, especially secs. 2 (VI.), 19 (*b*), 22, 26, 27 and 51-72, that the object of the Legislature in providing for the creation and recognition of organizations under the Act was that such organizations might represent their members in disputes brought before the Court of Conciliation and Arbitration. See also *Conciliation and Arbitration Regulations* 1913 (Statutory Rules 1913, No. 331), especially reg. 5 (I.) (*h*) and (*j*). It is clear also from the rules of the Organization that it has power to deal with its property for the purposes for which it was constituted. Rule 2 provides: "The purpose of the Organization is to combine in one body all persons engaged in the loading, discharging, and coaling of ships, in order that their interests may be protected, their status raised and their conditions improved." Rule 26 provides that "The funds of the Organization shall be used for purposes connected with and incidental to the objects for which this Organization is formed, as set out in these rules." The rules of the Organization, especially rules 32-34, also provide for the submission of disputes to the Court by the Committee of Management.

In these circumstances we think it is clear that the Organization is the agent of its members primarily for the purpose of representing them in disputes under the Act, and that incidentally to such representation the Organization has power to deal with its property

for the purpose of obtaining in proceedings under the Act what may be regarded as an advantage for its members. If the Organization can pledge its property or deposit its money for this purpose, we see no reason to doubt that it has power to enter into a bond with the same end in view. In the present case the bond was given for the purpose of obtaining from the respondents to the claim of the Organization an undertaking which the Committee of Management of the Organization undoubtedly regarded as advantageous to its members, and in our opinion it was within the power of the Organization to give the bond as incidental to the main purposes of the main business (see *Dundee Harbour Trustees* v. *D. & J. Nicol* (1)).

With regard to the second point, the argument, as we understood it, was (*a*) that it was not proved that the demand in support of which the strike took place was made by or on behalf of the Organization, and (*b*) that the demand was not made on "a respondent bound by the award." As to (*a*) it is, in our opinion, clear that the word "them" in the phrase "any demand made by them" contained in the condition of the bond relates not to the Federation but to the "two or more members" of the Federation mentioned in the earlier part of the condition. There was ample evidence that the demand which led to the strike was made by or on behalf of two or more members of the Federation who struck work as a means of enforcing compliance with the demand. As to (*b*) it is sufficient to say that in the very award in connection with which the bond was given the plaintiff Fraser is described as a "respondent bound by the award."

The contention for the appellant on the third point was that the sum of £50 mentioned in the condition of the bond was a penalty and not liquidated damages, and that leave should not have been given to issue execution for £50 as there was no evidence of damage having been sustained to that amount. It was argued that the fact that the amount of £50 fixed by the bond was payable to the Industrial Registrar, who could have no personal interest and could sustain no damage from a breach of the condition, and not to any person bound by the award, showed that that sum was fixed as a penalty or deterrent, and not as liquidated damages, and that this

(1) (1915) A.C., at p. 561.

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view was supported by the fact that the bond contained no provision for the manner in which the Registrar was to dispose of the money when he received it. The question whether in any given case the amount secured by a bond is to be regarded as a penalty or as liquidated damages depends on the intention of the parties to the transaction, their intention being ascertained from the language of the bond read in the light of the circumstances under which it was given. In the present case the relevant circumstances appear to us to be: (*a*) that the purpose of giving the bond was to protect the respondents bound by the award against the consequences of members of the Federation engaging in a strike; (*b*) that there were many respondents bound by the award, and that such respondents were widely distributed throughout Australia; (*c*) that the bond was given at the suggestion of the Court in order to obtain the benefit of an undertaking by the respondents which was enforceable by the Court; (*d*) that it was therefore desirable that the institution of proceedings to enforce the obligation of the bond should also be under the control of the Court through the Registrar, and (*e*) that in the event of a breach of the condition it would be practically impossible to calculate with any reasonable degree of accuracy the actual loss sustained by a respondent affected by such breach. Taking these circumstances into consideration, we think it is clear that the bond was taken in the name of the Registrar for two reasons, viz., first, in order that proceedings to enforce it might be under the control of the Court, and, secondly, in order to avoid the necessity of giving a separate bond to each respondent bound by the award, the Registrar being intended to act as representative of the whole body of respondents bound by the award, and the bond being taken by him on their behalf and for their benefit and protection. The circumstances to which we have referred appear also to warrant the conclusion that the parties intended that any money recovered by the Registrar under the bond should be applied by him in compensating respondents who might sustain damage by reason of a breach of the condition, and that, as it would obviously be almost impossible to calculate the amount of damage actually sustained by a respondent in consequence of such a breach, the parties intended to fix a conventional amount of £50 as a sum

certain to be paid by way of compensation to or for the benefit of any respondent who might be injured by a breach of the condition of the bond. Giving due weight to these considerations, we are of opinion that the sum of £50 was inserted in the bond not as a penalty or deterrent, the object of which was to prevent the commission of a breach of the condition, but rather as an agreed sum representing the compensation to be paid to any respondent whose business might be interfered with to a greater or less extent by reason of such a breach.

For these reasons we have come to the conclusion that leave was rightly given to issue execution for the sum of £50 with costs of the action.

The order will be that the appeal be dismissed with costs.

ISAACS AND RICH JJ. The appellants contend (1) that it was *ultra vires* of the Organization to give the bond, (2) that there was no breach of the condition because Fraser was not a respondent, (3) that the amount of damage was not proved.

As to the first point, the Organization was registered under sec. 55 of the Commonwealth *Conciliation and Arbitration Act*. It has been decided that the authority to create such an organization is incidental to the main power in pl. xxxv. of sec. 51 of the Constitution. It has also been decided in the *Jumbunna Case* (1) that the sections which authorize the creation of those organizations and which endow them with powers are within the constitutional legislative authority of the Parliament. That is not challenged now. It follows that the first question we have to determine depends on whether, on a proper construction of the Commonwealth Statute, the giving of a bond in the circumstances here is within or beyond the statutory authority of the Organization. The scope of the Act, as appears both from its nature and its express terms, is of an extremely wide character. Reading sec. 2, sec. 4 (particularly the definition of "Association"), sec. 6, sec. 8, sec. 29 (*d*), sec. 38, and the group of sections 55 to 61, and sec. 71, it appears to us quite plain that, for the purpose of carrying out its functions under the Act, the giving of such a bond is within the power of an organization. It is only

(1) 6 C.L.R., 309.

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pledging funds which the Act enables it in the widest terms to have and hold and deal with for the purpose and as the price of obtaining what the Act enables it to obtain, and which is not declared to be obtainable without giving the bond. In principle, the case is covered by *Young* v. *Brompton &c. Waterworks Co.* (1)—see particularly per *Cockburn* C.J. at foot of p. 677. We cannot doubt that the President, if he chose, might in his discretion refuse some claim if he thought its unconditional grant might be prejudicial to the community, or unfair to respondents, unless, for instance, a reasonable sum of money were deposited to answer damages to be sustained by respondents in the event of a strike or a lock-out, as the case might be. And if that could be done, a bond could be given instead of the cash. The rules of the Organization, particularly No. 26, are wide enough to include expending funds for such a purpose as the present, but we prefer to found our judgment on the broader propositions we have stated.

The second objection ultimately was that "respondent" means someone who is formally made a party defendant to some process. But the question is what it means in this case. There was no plaint. The dispute was submitted on a certificate of the Registrar under sec. 19 (*a*). Strictly speaking, neither party summoned the other. There was a dispute in which the Organization claimed certain conditions from the employers, who contested the claim. In that sense Fraser was a respondent. In that sense he was styled "respondent" in the award, and that is the sense in which the term is used in the bond. That objection therefore fails.

The third contention is supported by two arguments, both founded on the principle that in such a case damages must be proved. The two arguments are, first, that the Registrar could not sustain any damage, and the assignee cannot stand in any better position; and, secondly, that, assuming the assignee's position is to be regarded, the condition is for this purpose to be ignored except for testing whether there has been a breach, and that actual damage must be proved. The Registrar stands very much in the same position as the ordinary formerly stood in relation to an administration bond. The nature of the transaction is to be gathered by a

(1) 1 B. & S., 675.

consideration of the circumstances in which it was given. The bond is a specialty contract, and, as *Bigham* J. says in *Pye* v. *British Automobile Commercial Syndicate Ltd.* (1), "the Judge must look to all the circumstances of each particular contract—to what the parties did as well as to the language used—and must say from them what the intention of the parties was." There are canons of construction and rules of evidence to be observed when the occasion requires; but that is, of course, consistent with the general rule just mentioned. Looking at the novel circumstances in which the bond was given, and reading the terms of the award which refer to it, the true conclusion is this:—The claimants (so the employees asking for improved conditions may fairly be termed) wished for a concession, a non-discrimination assurance. They got it, but were unable to get it without an assurance in return. The employers' assurance was in favour of the employees, and the employees' assurance was to be an effective assurance in favour of the employers. To guard both parties, the Registrar was made the obligee. No employer could enforce the bond unless the Registrar moved either by suing or by assigning. But the persons intended to be benefited were the respondents, that is, the disputing employers. The principle is clear that a beneficiary, though not a party to a contract, can in equity enforce a claim under it. In a case like the present there might, in the absence of assignment, be a question as to the definiteness of the benefit intended in respect of any particular person. But if a bond be assigned to an intended beneficiary, the assignee unites not only the legal but also the equitable right to recover. That disposes of the first ground. As to the second ground, the common law anciently regarded the whole sum as recoverable on breach of the condition. But relief could in certain cases be obtained from a Court of equity against payment of the whole amount. For the present purpose it is sufficient to recall the central principle on which that relief was afforded. In *Peachy* v. *Somerset* (2) Lord *Macclesfield* founded the relief on "the original intent of the case, where the penalty is designed only to secure money, and the Court gives him all that he expected or desired." The Statute of William, as pointed out by *Tindal*

(1) (1906) 1 K.B., 425, at p. 429.

(2) 1 Stra., 447, at p. 453.

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C.J. in *Smith* v. *Bond* (1), had for its object the taking away of the necessity of applying for relief to a Court of equity. What relief would equity, on recognized principles, give here? What was the real intent of the parties? Reading the bond, including the condition, by the light of all the circumstances, the true intent appears to have been this: Seeing there are many respondents, seeing that they have given an assurance that can be met, if broken, by an order as to preference should application be made, seeing further that if in combination the employees of any particular employer cease work to enforce further demands damage will be caused to that employer, and seeing that the damage so occasioned may be great or small though certain, yet very expensive and very difficult, if not impossible, to calculate precisely, the parties agreed on a definite sum, namely, £50, for each and every such occasion, not exceeding £500. Combined refusal to work is certain to cause some damage, almost inevitably substantial damage, but no one can ever tell how much loss is sustained by not doing business. The £50 was therefore a fixed sum—the minimum and the maximum limit of liability of recompense for the concerted cessation of work. That being the clear and certain intent of the parties—the £50 not being recoverable in any other way—equity would not, on any principle heretofore recognized, relieve (see *In re Graham*; *Graham* v. *Noakes* (2)). And applying those considerations to the technical point that damage must be proved whenever in a bond of this character there is a breach of condition, the answer equally technical is *res ipsa loquitur*. The £50 not having been paid as the condition provided in the event which happened, and not being recoverable otherwise, the loss is self-measured and amounts to exactly £50, neither more nor less.

The judgment was therefore correct, and the appeal should be dismissed.

Appeal dismissed with costs.

Solicitors for the appellant, *Farlow & Barker.*

Solicitors for the respondents, *Gillott, Moir & Ahern.*

B. L.

(1) 10 Bing., at p. 131.

(2) (1895) 1 Ch., 66, at p. 70.