H. Carscallen, K.C., and D'Arcy Tate, Hamilton, for plaintiff.

H. H. Bicknell, Hamilton, for defendant.

BRITTON, J.—The trade mark was registered in October, 1897, to be applied to the sale of clothing. The union is a voluntary unincorporated association of practical tailors, and was formed, and is continued, for promoting, among other things, the mental and physical welfare of its members, to aid in maintaining a high standard of workmanship, and to assist its members to obtain fair wages, etc. The defendant is not a member. The trade mark has been used since 1883, and has on it that date. It is admitted that the owners of the trade mark have no proprietary interest in the goods or garments to which the label or mark is to be attached. In the view I take of the case, I am obliged to give my decision upon the facts proved or assumed to be proved, and I purposely refrain from discussing whether there is any right to a trade mark independent of and disconnected from a business, and whether the specific trade mark is within the Dominion Trade Mark and Design Act, so as to entitle plaintiff to any protection against persons who may choose to use a similar mark. . . . One of the labels or marks used by defendant was once used by a union not now existing, and formerly in the city of St. Thomas. There is no evidence of calling in their labels, but at all events their label is not an imitation, much less a false and fraudulent imitation, of plaintiff's label. . . . The other labels plaintiff had are genuine. The plaintiff issues labels to tailors in good standing in the union, and that give these men a right to use the labels. They are for the protection of union men, and if the men use the labels improperly, and against the interests of the union, that is a matter for the union to consider in dealing with its members, but an employer, who is not a member, cannot be restrained from dealing with union men, or from putting a genuine label upon union work.

The objects of the union are laudable, and so long as the attainment of these objects is sought in a proper way, and without infringing upon any other person's rights, there can be no complaint. Quinn v. Leathem, [1901] A. C. 495, is instructive as shewing that labour unions may go too far in attempting to interfere with persons who are not members. If defendant did, fraudulently and deceitfully and with intent to injure the workmen, or any of them, represented by plaintiff, sell to defendant's customers an inferior article,