

association, a body incorporated under the Friendly Societies and Insurance Corporations Act, whose object was "to unite the instrumental portion of the musical profession for the better protection of its interests in general and the establishment of a minimum rate of prices to be charged by members of the said association for their professional services, and the enforcement of good faith and fair dealings between its members, and to assist members in sickness and death." After the plaintiff had become a member the defendants adopted and added as part of one of their articles of association the following: "No member of this association shall play on any engagements with any person who is playing an instrument, unless such person can shew the card of this association in good standing. This by-law shall not apply to oratorio or symphony concerts, bands doing military duty, or amateurs. * * * ." After the passing of this by-law the plaintiff and the other members of the regimental band to which he belonged played at a concert, and with the permission of the commandant and officers of the regiment. For so playing (some of the band not being members of the association) a fine was imposed on the plaintiff by the executive committee of the defendants, and in consequence of its not being paid within the time prescribed, he was expelled from membership.

Held, that, at the time the plaintiff joined the association, it was a perfectly legal society, its objects being of a friendly and provident nature; but the amendment was unreasonable and in restraint of trade, and for that reason, and also because contrary to the Queen's Army Regulations and the Militia Act of Canada, was illegal, and the plaintiff's expulsion was invalid, and he was entitled to an injunction and damages.

Rigby v. Carroll, 14 Ch. D. 482, *Mineral Water Bottle, etc., Society v. Booth*, 36 Ch. D. 465, *Swaine v. Wilson*, 24 Q.B.D. 252, and *Chamberlain Wharf, Limited v. Smith*, [1900] 2 Ch. 605, considered.

F. E. Hodgins, for the plaintiff. *E. F. B. Johnston*, Q.C., for the defendants.

Meredith, C.J., Rose, J.]

[Dec. 24, 1900.]

CARNAHAN v. ROBERT SIMPSON CO.

Master and servant—Injury to servant—Negligence of fellow-servant—Workmen's Compensation Act—Factories Act—Elevator—Mechanical device.

The plaintiff was employed as a dressmaker in the defendants' departmental store, and, while descending in their elevator after her day's work was done, was injured by the fall of the elevator.

Apart from a question as to the defective condition or arrangement of the safety appliances in connection with the elevator, the cause of the fall was the failure of the person in charge to properly manage it and to use the brake for the purpose of controlling its movements, and which, but for that failure, would have controlled its movements.