

they treated his illness as one of a temporary character. That the mere non-payment of wages did not indicate that defendants were treating the contract as terminated, but that they were relying upon the effectiveness of the resolution with respect to the stoppage of pay during absence from duty.

Drysdale, K.C., for appellant. *Ritchie*, K.C., and *Finn*, contra.

Province of Manitoba.

KING'S BENCH.

Killam, C.J.]

GIBBONS v. METCALFE.

[July 29.

Conspiracy—Combination in restraint of trade—Agreement to boycott plaintiff in his business.

Plaintiff and defendants were members of a corporation known as "The Winnipeg Grain and Produce Exchange," and dealt in grain both on their own account and for others on commission. The Exchange had certain rules which prevented members from doing a commission business at less than certain rates and from operating on a joint account basis with persons not members of the Exchange without charging the full minimum commissions on the interest of any such outsider in any transaction entered into by a member. During the autumn of 1902 the defendants and other members of the Exchange came to the conclusion on reasonable evidence and bona fide belief, that certain persons and firms not members of the exchange were carrying on business with members in violation of the commission rules and that the plaintiff was the medium through whom the purchases and sales were made on account of such outsiders and the defendants then agreed amongst themselves that they would neither sell nor buy grain from the plaintiff and afterwards carried out this agreement, thereby causing loss and damage to the plaintiff in his business of grain dealer. Plaintiff then brought this action for damages and for an injunction to prevent the defendants from continuing the boycott and from continuing to conspire together to injure his trade and business. Some of the other findings of fact were as follows:

1. The main object and purpose of the defendants in so combining and acting were to prevent the outside parties referred to from selling grain to or buying it from them or other members of the Exchange having offices in the Grain Exchange Building and doing a business similar to theirs, unless and until those outside dealers would agree to be bound by the rules of the Exchange.

2. Such combination and action were not intended to be continued in case the plaintiff would agree not to deal with such outsiders.

3. The defendants so combining were not actuated by any malicious feeling towards the plaintiff or said outsiders or by any wish to injure him