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## *TRADE UNIONS UNDER ENGLISH AND AMERICAN LAW.*

Fiction and law are curiously blended in a legal or historical consideration of the origin, purposes, regulations, or control of trade unions, and in the effect of legislative enactments to guide or curb them in their relations to their own members, or in so far as the public may be affected by them, or those who are affiliated with them.

Charles Reade, the famous English novelist, in his powerful novel, "Put Yourself in His Place," placed before the world some of the evils of these associations of his day and time, and which "expose" had no small share in the passage by the English Parliament of laws and enactments, the beneficent results of which remain to-day, just as his, probably, more powerful novel "Hard Cash," resulted in a complete reformation of the Lunacy Law of England: but this article is chiefly concerned with viewing these associations from a purely legal standpoint, and no vantage ground seems to be better adapted for the purpose than the latest important judicial exposition of the questions involved, viz., the case of the *Hitchman Coal and Coke Company* v. *Mitchell,* et al., decided January 18, 1913, by the United States District Court, for the Northern District of West Virginia, decreeing that a perpetual injunction issue restraining the defendants from the acts complained of.

The plaintiff is a coal mining operating company, owning and operating mines in the West Virginia district, and employing miners who are affiliated as members of the United States Mine Workers, of which association the defendants are officers. It appeared from the evidence that the more valuable natural conditions of superior veins of coal, roofing, methods of mining and superior quality of coal, enabled these West Virginia oper-

ators to mine coal cheaper than the operators in Western Pennsylvania, Ohio, Indiana and Illinois, and this state of affairs resulted in the defendants approaching the competing operators in the last mentioned states, and proposing an agreement, which was entered into subsequently, under which defendants would unionize the West Virginia miners, (who at that time were non-union), and compel them, as members of the union, to obey the rules and by-laws of the United Mine Workers, and thus do away with the unequal competition in favour of the West Virginia operators. This was in 1898, and for a period of fourteen years, and with an expenditure of hundreds of thousands of dollars, and at the cost of human lives sacrificed, they were still unsuccessful in their attempts at unionizing the West Virginia miners, when matters were brought to a crisis by the plaintiff, in the above case, obtaining a temporary or interim restraining order, which, by the decree of the above court, was made perpetual.

The learned judge in his opinion first, by a course of clear, forcible, and logical reasoning, aided by a legal exposition and consideration of the law involved, attempted to shew and did shew, what part of the English common law became part of the law of the State of Virginia, at the time of the American Revolution in 1776, and how much of that law remained in force in the said state, when the first state constitution of West Virginia was adopted in 1861 and 1863, (what is known now as West Virginia, having previously formed a part of Virginia), and remained unchanged at the time of the commission of the alleged acts complained of.

The court gives an elaborate resumé of the conditions of labour existing at the time of the enactment of the first statute in England affecting labour and known as the "Statutes of Labour" and passed in 1349 and 1350, in the reign of Edward III. It fixed the amount of wages for labour during the summer months, and empowered justices of the peace to fix the amount for the winter months. Then came the Statute of Apprentices, enacted in 1563, which remained the law for two hundred and fifty years and was repealed in 1813, but during that whole period, it, as

far as its enforcement was concerned, was a dead letter; so much so, that for the statutory regulations, was substituted a system of private contractual relations between master and servant, or employer and employee. This statute was in force two centuries when it was construed as affecting only those industries existing at the time of its passage in 1563.

The next enactment on the subject in point of time, was the "Combination Act" passed in 179[illegible], and re-affirmed in 1800, making unlawful any combination to secure an advance in wages, changing or decreasing the hours of labour, or preventing an employer from hiring anyone else, or whom he chose to hire, or inducing workmen to leave their work, or to attend a meeting to advance any of these purposes.

In 1825 was enacted "The Molestation and Obstruction Act," and in 1859 an Act was passed more clearly defining "Molestation and Obstruction," as contained in the Act of 1825, and this defining Act of 1859 was construed in 1867, by the Queen's Bench, through Cockburn, C.J., as follows:—"I am very far from saying that the members of a trade union, constituted for the purpose not to work except under certain conditions, and to support one another in the event of being thrown out of employment, in carrying out the views of the majority, would bring themselves within the criminal law, but the rules of the society would certainly operate in restraint of trade and in that sense be unlawful."

Through the efforts of the labour unions themselves was enacted in 1871 a provision that "the purposes of any trade union shall not be deemed to be unlawful so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise."

The above Act was the result of long agitation of the subject of trade unions and their relations to the public in particular, which brought about the appointment by Queen Victoria, in 1857, of a Royal Commission, which made ten preliminary reports, its final one being on March 9, 1869; as a result, the Government introduced a bill legalizing these unions, in so far

as they, being combinations, were in restraint of trade and also contained clauses making certain acts criminal.

From 1871 to 1906 Acts were passed which were either modified or repealed, until "The Trade Disputes Act, 1906," was enacted, and which provided that it and the Acts of 1871 and 1876 together could be cited, as the "Trade Union Acts of 1871 in 1906," and which embraces at this time all the statutory laws of England touching trade unions.

Two trite and pertinent questions arise in the consideration of all the above statutes as to reasons for their enactment. The "Molestation and Obstruction Act" of 1825 made lawful any peaceful persuasion to induce workmen to abstain from working in order to raise wages. Was this enactment absolutely necessary to validate such a purpose because the same persuasion under the common law was unlawful? And was the Act of 1871, as to punishment of members of a trade union, enacted to change a different rule under the common law?

From the rather complex and involved legislation of to-day in England, it is hard to arrive at a correct estimate of the nature and character or status of these unions in that country. Their position in the political fabric seems, to say the least, rather anomalous. In the *Taff Vale* case, *Taff Vale R. Co.* v. *Amalgamated Society*, [1901] 1 K.B. 170, in discussing the Trade Union Act of 1871, Farwell, L.J., says: "A trade union is neither a corporation nor an individual nor a partnership between individuals. It is an association of men which almost invariably owes its legal character to the Trade Unions Act, 1871-1876, and the legislature in giving a trade union the capacity to act, by agents, has, without incorporating it, given to it one of the essential qualities of a corporation." See the same case in appeal, [1901] A.C. 426.

Previous to 1906 it was clearly unlawful for a trade union or its officers, to induce, persuade, or procure workers to break contracts with their employers. This was distinctly held in *Quinn* v. *Leathem*, [1901] A.C. 495, and in *South Wales Miners* v. *Glamorgan Coal Company*, [1905] A.C. 239. The latter case

was an action for wrongfully and maliciously procuring, on the part of the Miners' Federation, its members in the mines to break their contracts of service with the company. The Federation's efforts were found to have been untainted with malice, but five "stop days" had been ordered, and that it was obeyed by over one hundred thousand men, each of the five times breaking their contracts with their employers. The lower court dismissed the action, the Court of Appeal reversed this judgment and awarded damages. Upon appeal to the House of Lords, the Court of Appeal was affirmed, and good faith was held no justification; "that to combine to procure a number of persons to break contracts is manifestly unlawful." This ruling is in accord with American cases, amongst them: *Tubular Rivet Company* v. *Exeter Boot & Shoe Company* (1908), 86 C.C.A. 648; *A. R. Barnes & Company* v. *Berry* (1907), 156 Fed. Reports, 72; *Thacker Coal Company* v. *Burke*, 5 L.R.A. (N.S.) 1091 and annotations; but section 3 of the English Act, 1906, provides that "An act done by a person in contemplation or furtherance of a *trade dispute*, shall not be actionable on the ground *only* that it induces some other person to break a contract." It would seem very evident from the context of the above quoted section of the Act of 1906, that it was passed with the direct purpose of wiping out the rule laid down in the *South Wales* case, and it is equally clear the section applies only to trade disputes existing between the particular employer and his employees, and could not be stretched to include within its provisions what is familiarly known as a "sympathetic strike," where the breaking of contracts is involved.

Another feature of the English legislation affecting trade unions is, the importance given the rules and by-laws that may be adopted by them from time to time; in order for them to benefit from the registration provisions (which is permissive and not mandatory), these rules must be filed with the registrar and all changes must be at once reported and printed, and copies furnished on demand to anyone on payment of a nominal fee. The purpose of this publicity is to make it apparent to

the public at large, just to what extent the union is lawful in its purpose and designs, and that courts in a proper case may determine its nature and character by an examination of such rules; hence, since the passage of this legislation, the English courts have been called upon to determine by such examination, whether some of these unions were within the pale of the law or not, and from these decisions can be evolved some very valuable information, as to what penalties and obligations can be enforced as in favour of these unions, and against the employers of their members or against the public interests. See *Chamberlain's Wharf, Limited* v. *Smith,* [1900] 2 Ch. 605; *Cullin* v. *Edwin,* [1903] 88 L.T. 686.

In the case of *Gozney* v. *Bristol Trade and Provident Society,* [1909] 1 K.B. 901, Channel, J., says:—"What I think has to be found to make the association illegal is that the members agree to submit their own action to the decision of others and to strike or not as directed. That would certainly make the society unlawful, and probably also it would be unlawful if the object is to combine for the purpose of putting pressure on employers and thereby to fetter their freedom of action."

It is part of the evidence in the *Hitchman* case, first above referred to (and this from one of the defendants therein, Green, and an officer of the United Mine Workers), that this particular union, during a period of fourteen years, "spent hundreds of thousands of dollars of the members' money," and "sacrificed human lives in their attempt to redeem that promise," to unionize the miners of West Virginia. What promise? The promise or arrangement made in 1898 at Chicago, with the mining companies of other States, who were producing coal at a disadvantage, and heretofore alluded to. Is it possible that such a conspiracy could be allowed to exist, much less to be carried into execution, in any count[illegible] possessing to any degree a modicum of our boasted latter day civilization?

And is it a basis for complaint by these unions, that they are frowned upon unjustly by the courts, simply because the shield, or ægis of the law, is suddenly thrust between them

and their intended victims, with the warning "Thus far shalt thou go and no further?"

Many a worthy cause in the world's history has been prostituted to ignoble and unholy ends, and much of the opprobrium attaching to-day, and in the past, to these associations, is and was the direct result of such prostitution. It will not be amiss here to quote from the court in the *Hitchman* case:—"Before applying these principles to this particular organization and case, I cannot, in view of the extended quotations from labour leaders and advocates contained in the brief of counsel for defendants, but disclaim the sentiment expressed by such leaders, to the effect, that either the legislative bodies or the courts of this country, Federal or State, have been or are unfriendly to labour organizations. The contrary is true. The statute books are full of laws for the benefit of labour, to better their conditions, to insure their health, safety and their lives. Organized labour is entitled to all praise for the effective work done in aid of securing these laws, and the courts of the country have been prompt in fully and effectively enforcing such laws."

All labour unions, organized for lawful purposes, and striving to achieve those purposes by lawful means and procedure, are entitled to the protection of the law to the fullest extent; but, on the other hand, any and all combinations, labour or otherwise, organized for unlawful purposes, or being lawful in purpose, which are prostituted to unlawful proceedings and to the accomplishment of unlawful ends, should be required either to reform their unlawful purposes, cease from their unlawful procedure, or cease to exist. And no part of the body politic is or can be more vitally interested in the suppression of labour organizations, unlawful in purpose or proceeding unlawfully, than the members of such organizations lawful in purpose and procedure.

As to combination, each person has a right to choose whether he will labour or not, and also to choose the terms on which he will consent to labour, if labour be his choice. The power of choice in respect of labour and terms which one person may exercise singly, many persons, after consultation, may exercise

jointly, and they may make a decree of their choice, and may lawfully act thereon for the immediate purpose of obtaining the terms required; but they cannot create any mutual obligation having the legal effect of binding each other not to work, or not to employ, unless upon terms allowed by the combination. Any arrangement for that purpose, whatever may be its purport or form, does not bind as an agreement, but is illegal on account of restraint of trade, and therefore void. Every party to it, who chooses to put an end to it, is thenceforward as free to claim his own terms for his own labour as if such arrangement had never been made, and any attempt to enforce, by unlawful coercion, performance of any such supposed agreement against a party who chooses to break from it, and labour or contract for labour upon different terms, is an attempt to obstruct him in the lawful exercise of his right to freedom to trade; and is thus a private wrong. It is also a violation of a duty towards the public—that is to say, of the duty to abstain from obstructing the exercise of the right to the free course of trade. A person can neither alienate for a time his freedom to dispose of his own labour or his own capital according to his own will; neither can he alienate such freedom generally and make himself a slave (see *Hilton* v. *Eckersley*, 6 Ell. & Bl. 47; see the argument of Hargrave in the *Negro Sommerset's* case, 20 State Trials, 23); it follows that he cannot transfer it to the governing body of a union.

In the relations of these organizations to the general public as consumers of the products of capital and labour, it must be admitted that, in the absence of special legislation such as that of England, and of doubtful constitutionality in a country under written constitutions, Federal or State, it is just as unlawful for the labourer to form a trust or monopoly as it is for capital to do so. The same rule of common law governs the one as the other, and in the United States, the Act of Congress, known as the Sherman Anti-Trust Law, is simply declaratory of the same principle. The latest construction of this Act, by the Supreme Court of the United States, in the *Standard Oil Com-*

*pany* v. *United States,* 221 U.S. 1, and *United States* v. *American Tobacco Company,* 221 U.S. 106, is that "it prohibits all contracts and combination which amount to an unreasonable or undue restraint of trade in Interstate commerce." By the English authorities hereinbefore cited, it will be seen that the same doctrine of the "unreasonable restraint of trade, has been applied there as against these labour unions, and in regard to the decisions of the several states of the American union, it is to be always borne in mind that some of the states have enacted legislation touching these organizations differing in character from each other, and that their decisions may be found conflicting and confusing. For example, the State of New York has passed laws excepting trade unions from all restrictions on combinations and conspiracies imposed by other statutes, or by the common law, and other states have laws excepting them especially from the operation of their Anti-Trust Laws, but a Texas statute having a like effect has been declared unconstitutional by its Supreme Court. *National Cotton Oil Co.* v. *Texas,* 197 U.S. 115.

From the consideration of the review of the English Law and decisions as set forth by the learned court in the *Hitchman* case, the following conclusions were arrived at by the court in making the injunction against the United Mine Workers of America, perpetual: "That these union combinations must be considered in their relations to their respective members, to those who may employ such members, and to the public interest; that in their relations to their respective members, they cannot, even under the advanced legislation of England, undertake to require by oath, or otherwise, a surrender of the individual freedom of their members, and when they seek to do so they become illegal; that in their relations to the employers of their members, while they may use all peaceful efforts to advance their members' interests by aiding them to secure better wages, shorter hours, and better conditions, they cannot accomplish these ends by violence, coercion or intimidation. They may not, by common law, interfere with the contracts which their members have entered into with their employers, nor by any means induce

them to break such contracts, except where permissive legislation exists, such as the English Act of 1906. To break a legal contract is unlawful and therefore to persuade, or to induce, one to do this unlawful t' ing is itself unlawful, and these unions have no right, by intimidation or coercion, to destroy the inherent right which the employer has to control his property and to conduct his business in any lawful manner he may choose. Such employer may fix the terms and conditions upon which he will give employment, may employ whom he desires, may refuse to employ whomsoever he may wish not to employ, and, in the absence of contract, may discharge whom he pleases and refuse to discharge whom it may please him to retain; and it is entirely within the right of the union to advise its members, in the absence of contract on their part with the employer, to quit their labour for him; in other words, to strike, and to insist upon a definite term of employment before they go back to their labour; but neither the union nor its striking members have any right, by intimidation or coercion, to prevent other labourers or any of the members of the union itself, from taking employment under the employer's terms, if they so desire. They may, by reasoning and persuasion, under such conditions, induce its own members and others not to assume the employment, where the breaking of no contract is involved, but this is as far as they can go.

"In the relations of these unions to the public, it is to be remembered that while the membership of organized labour is great, the number of non-union labourers, as a rule, is many times greater, and it is the law's function and duty to fully, without fear, favour or partiality protect the rights of the latter as well as those of the former. These rights guarantee to the labourer the absolute right to join the union or not as he sees fit. The unions cannot, under the law, use any means of intimidation or coercion to compel him to do so. The limit of their right to do so is persuasion, and if he joins, they cannot compel his continuance. As a member he may withdraw when he chooses. The union members, as individuals, may voluntarily

determine not to work with non-union labourers if they so desire, and they can cease working themselves on that account, but they can do nothing in the way of coercion to compel either other union or non-union men to cease working on the one hand, or to prevent the employer from filling their places with other union or non-union men on the other. The right of the individual labourer to sell his labour, which is his property, in a lawful manner and upon such terms and conditions as he may himself determine for his best interests, must be upheld by the law, just as fully and freely as it is upheld in all the other relations of civic life, regardless of these labour unions."

The other conclusions of the court in the *Hitchman* case, were as follows:—"That this organization known as the United Mine Workers of America, is an unlawful one because of its principles as set forth in its constitution, obligation for membership and rules, which require its members to surrender their individual freedom of action, to require in practical effect all mine workers to become members of it whether desirous of doing so or not, to control and restrict, if not destroy, the right of the mine owner to contract with its employees independent of the labour union, to exclude his right to discharge in the absence of contract, whom he pleases, when he pleases, and for any cause or reason that to him seems proper, assumes the right on its part by and through its officers to control the mine owner's business by shutting down his mine, calling out his men on strike in obedience to their obligation to the union whenever the union officers deem it to be for the best interests of the union, regardless of the rights and interests of the mine owner and of his direct loss and damages, and such indirect loss and damage as may be inferred by him by reason of the resulting violation of contracts by him with others. I further conclude that it is an unlawful organization, because of its procedure and practices, in that it seeks to create a monopoly of mine labour such as to enable it as an organization to control the coal mining business of the company, and has by express contract joined in a combination and conspiracy with a body of rival operators, resident

in other states, to control, restrain, and to some extent destroy the coal trade of the State of West Virginia." *Adair* v. *United States*, 208 U.S. 161.

In the celebrated case of *Allen* v. *Flood*, [1898] A.C. 1, it was held by a majority of six to three, in the House of Lords, that no action lies against a trade union, by a dismissed workman for maliciously inducing his employer to dismiss him. In that case the trade union threatened a strike unless the workman who had violated a rule of the union was discharged, and the employer yielded to the threats; but three years afterwards, the House of Lords held in *Quinn* v. *Leathem*, [1901] A.C. 495, that a combination of two or more, without justification or excuse, to injure a man in his trade by inducing his customers or servants to break their contracts with him, or not to deal with him, or continue in his employment, is, if it results in damage to him, actionable: in this case the employer recovered £250 from the president, treasurer and secretary and two members of the trade union. Act 34 and 35 Vict. ch. 32, entitled an "Act to Amend the Criminal Law," relating to violence, threats and molestation, contained various provisions for preventing the molestation of masters and workmen, to induce them to yield to particular combinations or associations. This Act has been repealed by "The Conspiracy and Protection of Property Act," 1875, 38 and 39 Vict. ch. 86, which amended the law as to conspiracy and breach of contract by workmen.

While to some extent legalized by the Acts 1871 and 1876, trade unions are put in the position of voluntary associations, and the power of the courts to interfere in their domestic affairs is restricted by section 4 of the Act of 1871, which denies the courts jurisdiction directly to enforce them or to award damages for breach of the following, viz.: agreements between members of a trade union, concerning the conditions on which each member as such, shall or shall not sell their goods, transact business, employ or be employed; agreements to pay a subscription or penalty to a trade union: *Mullett* v. *United French Society*, [1904] 91 L.T. 1331; agreements to apply trade union funds,

first, in providing benefits for members, *Rigley* v. *Connol,* [1880] 13 Ch. D. 482; *Cullin* v. *Elwin,* [1903] 88 L.T. 686; second, in furnishing contributions to an employer or workman not a member, in consideration of his acting in conformity with its rules; third, in discharging a fine imposed on any person by a court of justice; agreements between two or more trade unions; and it would seem that a member or his representative cannot sue a registered trade union to recover "sick pay." *Burke* v. *Amalgamated Society of Dyers,* [1906] 2 K.B. 583; and see *Russell* v. *Carpenters and Joiners,* [1910] 1 K.B. 506. There seems to be some uncertainty as to whether the fact that some of the rules of a trade union are in restraint of trade, if it is substantially legal, affects the rights of members to recover benefits. *Swaine* v. *Wilson,* [1890] 24 Q.B.D. 252; *Gozney* case, [1908] 24 Times L.R. 814. There is also some uncertainty as to how far the courts will interfere indirectly to enforce, inter se, the rights of trade union members. An injunction has been granted to restrain the application of funds contrary to agreement. *Wolfe* v. *Matthews,* [1882] 21 Ch. D. 194. In *Yorkshire Miners' Association* v. *Howden,* [1905] A.C. 256, it was held that section 4 of the Trade Disputes Act, 1906, did not bar an action to prevent misapplication of trade union funds by paying strike money, in cases not authorized by the rules of a trade union. It has been held that an injunction cannot be granted to restrain a trade union from expelling one of its members. *Chamberlain's Wharf, Limited* v. *Smith,* [1900] 2 Ch. 605; *Rigby* v. *Connol,* supra.

As regards the civil liability of trade unions, there was much discussion between 1871 and 1906 in England, as to whether or not trade unions were civilly liable for strikes or lock-outs; many controversies arose as to the court's power to restrain their activity by an injunction or actions in cases of controversy or malicious wrong, or to entertain actions against trustees or other persons representing the union, so as to make the funds of the union liable for the wrongs committed under the authority of the managers of the union. By 1906 it had been settled

that a combination of trades in their own interests is not actionable merely because it happens to affect other trades adversely, although the agreement may be unenforceable as between the parties to it because in restraint of trade. It was decided in the *Mogul* case, [1892] App. Cas. 25, that the courts had power to grant injunction or award damages against trade unions, in respect of breach of contract wrongfully procured by the acts of members or officials with the authority of the union. *Quinn* v. *Leathem*, [1901] A.C. 495; *Denaby Collieries, Ltd.* v. *Yorkshire Miners' Association*, [1906] A.C. 384. It was also held in the *Quinn* case, supra, that a combination to injure might be actionable, whether the acts of an individual were or not. The opinion expressed in the *Quinn* case, supra, that conspiracy and damage gave a cause of action even though the same acts by a single person would not be actionable has been over-ridden by section 3 of the Trade Disputes Act, 1906, which provides that an act done by a person in contemplation or furtherance of a trade dispute, shall not be actionable on the ground only that it induces some other person to break a contract of employment, or that it is an interference with the trade, business or employment of some other person or within the right of some other person to dispose of his capital or labour as he wills. See *Conway* v. *Wade*, [1908] 1 K.B. 844.

In regard to the quasi-corporate liability of trade unions and their funds for tort, or for procuring breach of contract, the decisions in the *Taff Vale R. Co.* v. *Amalgamated Society*, [1901] A.C. 426, in *Quinn* v. *Leathem*, [1901] A.C. 495, *Gibbons* v. *Labour Unions*, [1903] 2 K.B. 600, *Reade* v. *Stonemasons*, [1902] 2 K.B. 732; *The South Wales* case, [1905] A.C. 239, which latter case is known as "The Stop Day Case," were absolutely overridden.

By section 4 of the same Act, which provides an action against a trade union, whether of the workmen or masters, or against any members or officials thereof, on behalf of themselves or all other members of the trade union in respect of any tortious act, alleged to have been committed by, or on behalf of the trade

union, shall not be entertained by any court. The exact effect of these cases last mentioned, upon actions against members or officials of trade unions who have committed torts or procured breaches of contracts in the course of trade disputes, has not been fully ascertained. The Act is considered not to apply on proceedings in respect of acts done before its passage. In *Bussy* v. *Amalgamated Society*, [1908] 24 T.L.R. 437, sec. 4, above referred to, was held to apply to all actions against a trade union for tort, but not to protect members or officials from suit as individual for torts, even if committed on behalf of the union. In *Conway* v. *Wade*, [1908] 24 T.L.R. 874, a threat to an employer as to what would follow if he did not discharge a man who had ceased to be a member of a trade union for non-payment of a fee, was held to have been in contemplation or furtherance of a trade dispute within section 3 of the Act of 1906. It would seem that an action against a member for tort would still lie except so far as excluded by section 3. *Flood* v. *Jackson*, [1895] 2 Q.B. 21. By section 5 of the Act of 1906, "trade disputes" means any dispute between employer and workmen, or between workmen and workmen, which is connected with the employment or non-employment, or with the conditions of labour of a person and workmen, or all persons employed in trade or in industry, whether or not in the employment of an employer with whom a trade dispute arises. The change made in the law by this section does not affect any conspiracy for which punishment was awarded by statute, nor of the law as to riot, unlawful assembly, breach of the peace, or sedition, or an offence against the state or sovereign, (1875, ch. 86; see par. 2 and 3). There is one exception to this general statement, namely, that wilful and malicious breach of a contract of service or hiring, with knowledge that to do so will probably endanger life, or cause serious bodily injury, or expose valuable property to destruction or harm, is summarily punishable; and that wilful and malicious breach of contract by employees of authorities supplying gas or water is similarly punishable if the employees know, or have reasonable cause to believe, that it will deprive the consumers, wholly or in part, of their supply. Under the pre-

sent law of England, with the exception above stated, a strike or lock-out, even if it involves a breach of contract, is not criminal, unless it is attended by other acts which are criminal, per se.

A trades union or labour organization as now understood and considered, is a corporation of workmen having for its object the improvement of their industrial condition. It may consist of a few labourers with a mutual or common understanding with reference to a single purpose, or perhaps a formal organization with a large membership, widely scattered, but in both instances the status under the law is the same. Its compactness in the one case, nor its extensiveness in the other, give it, nor subject it, to no unusual or peculiar rights or liabilities.

Whether a combination of this character, or either of them, was ever criminal, per se, is a question that has never been satisfactorily or definitely settled.

In an early decision in 1721 defendants were indicted for conspiracy to raise their wages by a pre-arranged plan not to work. An objection was raised, arresting judgment, that the defendants were not compelled nor obliged to work, and in answer the court said, it is reported, that they were indicted for conspiracy and not for refusing to work, and that a conspiracy of any kind was illegal even if the subject-matter of the conspiracy was lawful for them, or any part of them, to do in the absence of conspiracy to do it. *Rex* v. *Journeymen Tailors,* 8 Mod. 11. The authority of this case has been questioned on account of the notorious inaccuracy of the reporter and the case, as stated, has certainly little to recommend it. See *Stevedores* v. *Walsh,* 2 Daly (N.Y.) 1. What one man may lawfully do in pursuance of a legal right, more than one may do together. The number who unite to do an act cannot change its character from lawful to unlawful. To constitute a criminal conspiracy the agreement must have in mind the doing of something illegal as a means or as an end. As to conspiracy of trade unions or labour combinations in England, see Conspiracy and Combinations Act, 1875, (38 and 39 Vict. c. 86), for the full text of which see note in *Gibson* v. *Lawson,* [1891] 2 Q.B. 549.

Combination means power and power implies ability to command or control, and the advantages which result from concerted action when substituted for individual effort are too apparent to admit of discussion.

To gain control over the will of their employer, to secure the ability and power to dictate the terms and conditions of their employment is the one purpose of all labour organizations, resulting whether mediately or immediately, in the maintaining or increasing of the wages paid their members.

For the reason that such an ultimate object was considered at one time to be against public policy these combinations have been held to be illegal and to subject these concerned to indictment for criminal conspiracy. The reasons and causes for this legal view may be found in the economic ideas which shaped and rounded out the political polity of former times. It was contended that the public interest required trade should be protected from *restraint* and the price of commodities, and particularly of necessaries, should be regulated by the law of supply and demand.

Any combination by which the price was increased, whether a combination or masters limiting the output of an article, or otherwise, or of workmen by compelling an increase in wages, was held to be unlawful as in contravention of public policy, and in restraint of trade.

But these views for the protection of trade have in recent years been considerably modified by certain exceptions, as our industrial progress has rendered no longer necessary a specific application of the above principle, and the most notable exception, perhaps, is that of labour organizations.

This is due in England to the passage by Parliament of the Act 34 and 35 Vict. c. 32, resulting from the report of a commission which itself was the outcome of the dissatisfaction over the conviction in the case of *Rex* v. *Druitt*, 10 Cox C.C. 600.

In Canada the change or departure was marked by the passage of the Act 35 Vict. c. 30, and known as "The Canada Trade Union Act," and in the United States, the exception in favour

of trade unions is one largely due to the action of the courts themselves. *Thomas* v. *R.R. Co.*, 62 Fed. Rep. 817; and the Court of Appeals of the State of New York held in the case *Curran* v. *Galen*, 152 N.Y. 33, "the organization or corporation of workingmen is not of itself against any public policy, and must be regarded as having the sanction of law, when it is for such legitimate purposes as that of obtaining an advance in the rate of wages or compensation, or of maintaining such rate." And a by-law fixing the wages at which the members of a trade union shall work and giving an action for a penalty, is valid. *Stevedores* v. *Walsh*, 2 Daly (N.Y.) 1, and it also has been held to be not illegal for workmen to form an association and agree in furtherance of its object not to teach others their trade unless by consent of the association. *Snow* v. *Wheeler*, 113 Mass. 179.

Turning to the consideration of the means by which a labour combination may lawfully inflict damage upon an opponent, it is very plain that if the damage is the result of the exercise by the members of the labour union of rights which they possess as individuals, no legal wrong is done. The law takes no cognizance of every wrong which may be inflicted, because it invests men with certain absolute rights, and if by the exercise of these rights other men suffer, it is an unfortunate consequence which must be borne without complaining. This leads to the consideration of what absolute rights labourers as members of trade unions enjoy. The first right, to strike, is naturally the result of the control of their own labour. However slow the law of England may have been to recognize the rights of labourers, it is now well settled there and established in the United States, by the fundamental law, that a labourer may, with or without reason, decline to work for anyone or with anyone, and the damage which such person may sustain as a result is immaterial, for the right of the labourer to withhold his labour is absolute, and is not qualified by whatever the effect of the exercise of this right may have upon others, or even by the fact that an injury was contemplated or intended. If one labourer enjoys this right he does not lose it when acting with others, hence it follows, that a strike, that is the simultaneous refusal to work by a body of

workmen, is not per se unlawful. Perhaps if the men were bound by contract of which the strike was the violation, it would present a different question, but if the men might lawfully quit, the fact that they collectedly availed themselves of their right cannot render the act criminal. *Com.* v. *Hunt,* 4 Met. (Mass.) 134; *Curran* v. *Treleaven,* [1891] 2 Q.B. 560.

Another absolute right, which labourers in common with other individuals may enjoy, is the exercise of their power of persuasion, if the appeal be not directed to the accomplishment of some unlawful purpose. The principle which governs the cases which holds that interference with contract relations is unlawful, stands upon a peculiar ground. It is not unlawful for strikers by persuasion to cause employees to leave the service of their employer, or to dissuade other workmen from seeking employment from him. In the case of *United States* v. *Kane,* 23 Fed. Rep. 748, the court said, "The defendants may lawfully persuade the workmen of the plaintiff to abandon the employment in which they were engaged, as long as they use only argument or reason and avoid the use of threats, injury or violence, or any other unlawful act." See *Richter* v. *Tailors' Union,* 11 Ohio, Dec. 49.

Another absolute right of the labourer is to refuse to trade with a person absolutely or contingently. The admission of this right, with the other two, settles the right of a labour union, to use against an unyielding employer, the means of inflicting injury, which from its origin is called a "boycott"; this is the refusal of the members of the union to have any dealings with the employer or with a person who deals with him. So long as strikers employ no other means to deter others from dealing with the employer, except persuasion and withdrawing their own patronage, there is nothing illegal or criminal in their action. *Bohn Mfg. Company* v. *Hollis,* 54 Minn. 223; *State* v. *Glidden,* 55 Conn. 76.

The case of *Allen* v. *Flood,* [1898] A.C. 1, has been followed in Canada: *Perault* v. *Gauthier,* 28 Can. Supreme Court, 241; and has also been followed in those jurisdictions of the United

States, where it is held that malice is no element of tort. *Clemmitt* v. *Watson*, 14 Ind. App. 38.

In New York the question may be said to be undecided, though a late decision of the Appellate Division of the Supreme Court has been rendered conforming to this view. *Curran* v. *Galen*, 152 N.Y. 331; *Davis* v. *Engineers*, 28 N.Y. App. New York Appellate Division 396; *Protective Association* v. *Cumming*, 53 N.Y. Appellate Division, 227; but in Massachusetts, on a state of facts similar to those in *Allen* v. *Flood*, supra, it was held that an action will lie. *Plant* v. *Woods*, (Mass. 1900) 57 N.E. Rep. 1011. It has also been held in Massachusetts, that if the members of a labour combination, by striking and refusing to return to work until a penalty imposed by the union upon the employer is paid, force the employer to pay such penalty, he may maintain an action for its recovery. *Carew* v. *Rutherford*, 106 Mass. 1.

M. F. B. KENNEY.

## *MECHANICS' LIENS.*

The rights of lien holders in the percentage required by the Mechanics' Lien Act to be retained by owners has been the subject of a good deal of litigation, and some difference of judicial opinion.

In the recent case of *Price* v. *Rathbone*, 4 O.W.R. 602, the Court of Appeal has determined that a sub-contractor, though not a wage earner, is entitled to a lien on the percentage in priority to any right of set-off the owner may have against the contractor by reason of his default in the performance of his contract, and in arriving at that conclusion have virtually overruled *Farrell* v. *Gallagher*, 23 O.L.R. 130; and have followed in preference *Russell* v. *French*, 28 Ont. 215. The latter case was decided in 1898, and in 1905 it was discussed by Mr. Hodgins, K.C. (now Mr. Justice Hodgins), in a very able article to be found ante vol. 41, p. 733.

The conclusion at which the learned writer arrived was that *Russell* v. *French* was not a correct exposition of the statute

Those who favour that view may be therefore inclined to doubt the soundness of the recent deliverance of the Court of Appeal.

The broad question is: does the statute as it now stands give to sub-contractors, not being wage earners, a lien on the percentage required to be retained by an owner so as to intercept the latter's right to set off against it any counterclaim he may have against the contractor, by reason of his default, if any, under the contract, or for any other cause? The Court of Appeal have practically answered that question in the affirmative.

It may be here remarked that the earlier statutes dealing with Mechanics' Liens up to the year 1896 required the percentage to be retained on "the price to be paid" whereas since 1896 the Acts have required, and the present Act now requires, that the percentage shall be retained on the value of the work and materials actually done and furnished. *In re Cornish*, 6 Ont. 259, Boyd, C., and Ferguson, J., held that the Act prior to 1896 though requiring the percentage to be retained on "the price to be paid" really meant not the whole price to be paid but the price to be paid for the work and material actually done and furnished, which seems to be, in effect, importing into the Act a limitation which it did not in fact contain.

Might not the true distinction between the two Acts be thus illustrated: Under the Acts prior to 1896, if an owner made a contract for work and materials to the amount of $100, the $100 would be "the price to be paid" irrespective of whether work to that amount was done or not, and on which the percentage must have been retained; under those Acts the owner might validly pay to the contractor, on the making of the contract $90, and on the remaining $10 sub-contractors would have a lien, provided it was earned, but if the contractor never earned the remaining $10, no sub-contractor under him would have any lien thereon.

But under the present Act an owner entering into such a

contract is not protected if he pay $80 down. He must retain for every dollar's worth of work and materials done and furnished by a contractor, twenty cents; and on its being so retained all sub-contractors under that contractor, whether wage earners or otherwise, have a lien thereon.

It must be remembered that the Acts prior to 1896 expressly provided that, save as therein provided, the lien "given by the Act should not attach so as to make the owner liable to a greater sum than the sum payable by the owner to the contractor," and that those Acts had no provision making the owner liable for more than he owed, except inferentially, where he made payments beyond the ninety per cent. and they gave a lien on a percentage which might never in fact be earned. The present Act, 10 Edw. VII. c. 69, s. 10, contains a like provision as to the owner not being liable for more than he owes to his contractor, but sec. 12 (3) gives sub-contractors now a specific lien on the percentage which cannot come into existence until it has actually been earned, which serves to constitute a very important difference between the two Acts. But it has been said, with a good deal of reason—Granted that all sub-contractors have a charge upon the percentage, what is there in the Act which gives them any priority in respect to their lien over the equitable rights of the owner as the holder of the fund? Sub-contractors may, as under the former Acts, have a charge, but it is a charge impliedly subject to the equities which subsist between the holder of the fund and the person legally entitled thereto. Admit that the owner becomes trustee of the twenty per cent., can he be required to part with its possession until his just claims against his cestui que trust have been satisfied? On the other hand it may be argued that the statute has given a statutory right in that fund to the sub-contractors, and no subsequently accruing rights of the owner can intercept that statutory right. That is practically the view of the Court of Appeal and we are inclined to think that no fault can well be found with that conclusion. It is somewhat similar to the case

of a first mortgagee making further advances, after he has notice of a subsequent mortgage. Such advances cannot be tacked to his first mortgage to the prejudice of the subsequent mortgagor; and it is not unreasonable, nor unjust, that subsequently accruing equities of an owner shall not prejudice or affect the rights of lien holders whose liens have attached before such equities have arisen.

The argument founded on s. 15 (4), which expressly provides that as against liens for wages, the owner is to be precluded from applying the percentage to the completion of the contract or for any other purpose, or to the payment of damages for non-completion of the contract by the contractor or sub-contractor, or in payment or satisfaction of any claim against the contractor as sub-contractor, was duly considered by the Court of Appeal and notwithstanding the contention that there being this express provision in favour of wage earners and no such provision in favour of other sub-contractors, such other sub-contractors are not entitled to the same protection in regard to the percentage as wage earners, the Court held that they were.

The Court of Appeal regard this provision as not affecting the other provisions of the Act which they hold are sufficient to protect the liens of other sub-contractors from being intercepted by counter claims of the owner against the contractor, though not expressly provided for in the Act. The provision in favour of wage earners the Court of Appeal regarded as directed to cases where there are no progress certificates in which there may be nothing payable to the contractor, except the ultimate balance. This last suggestion as to the supposed meaning of s. 15 (4) does not appear to us to have any good foundation. The percentage fund in no way depends on the existence or non-existence of progress certificates; it arises automatically as the work and materials are actually done and furnished altogether irrespective of progress certificates or payments to the contractor thereunder, and for every dollar's worth of work and materials done and furnished the owner has to lay aside twenty

cents of the price for the benefit of sub-contractors, if any. The true reason for the courts' decision therefore, would seem to be not that s. 15 (4) is intended to apply to some special state of facts in which wage earners are intended to be specially benefited, but that such provision is in fact redundant and that the Act without it would have to be construed as if it contained it.

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## *THE LAW OF SUPPORT FOR LAND.*

Lord Haldane, in his judgment in the case of *Howley Park Coal and Cannel Company* v. *London and North-Western Railway Company* (107 L.T. Rep. 625; (1913) A.C. 11, at p. 25), recently pointed out that the proposition that the right of support for land is an incident of ownership was one of the few propositions which the learned judges who took part in the decision of the great case of *Dalton* v. *Angus* (44 L.T. Rep. 844; 6 App. Cas. 740) were agreed upon. This is a strikin, comment on the state of our law of support.

It is only a little over thirty years ago that *Dalton* v. *Angus* was decided. The question in that case might be described as rudimentary. It was heard before the House of Lords in November, 1879. But the law was in such an unsatisfactory state that it was found necessary to co-opt seven judges—viz., Baron Pollock and Justices Field, Lindley, Manisty, Lopes, Fry, and Bowen—and before these judges the case was again heard in the following year. Five specific questions were put to them, but in substance there was only one point—viz., whether after twenty years' enjoyment of support by a building from adjoining land the owner of the building could claim as a right the continuance of the support for his building. In due course—for time was desired to consider the questions—their Lordships delivered their opinions; and then Lords Selborne, L.C., Penzance, Blackburn, and Watson delivered their judgments. Thus we find in effect the judgments of eleven of the highest legal authorities of the day addressed to one short question. To these we must add the judgment of Mr. Justice Lush, who tried the case in the first instance at assizes, those of Chief Justice Cockburn and Mr. Justice Mellor in the

Queen's Bench Division, and those of Lord Justices Cotton, Thesiger, and Brett—in all, seventeen judges.

The case of *Dalton* v. *Angus* was a case of an easement of support. But rights of support are not all easements. The fundamental right of support is the one referred to by Lord Haldane in the opening lines of this article—viz., the right which every owner of land has to have his land supported by that of his neighbour, or, in other words, the right of preventing his neighbour letting down his land by excavations in that neighbour's lands.

The law of support has been quite unnecessarily confused by the free use of the terms "vertical" and "lateral" support. On principle, there is no distinction whatever between these two forms of support. Ownership of land may take the form of ownership of the surface and everything that is above and below it. This is the usual form of ownership. Or it may take the form of ownership of a stratum, as, for instance, where a man owns the surface, while another owns the minerals. Or twenty strata, one beneath the other, may be owned severally by as many owners. No doubt, in the common form of ownership, vertical support has no cogency whatsoever, for the vertical support is afforded from the owner's property itself. In the second form of ownership mentioned above, lateral support has little cogency, vertical support being all-important. Yet the principle is the same, and it is now well established that, just as much as a man has a natural right to lateral support for his land from the land of his neighbour (as to which see *Dalton* v. *Angus* *sup.*), so also has the owner of the surface a natural right to vertical support from the minerals lying underneath his land (*Davis* v. *Treharne*, App. Cas. 460), and the owner of a substratum has a natural right to vertical support from other substrata below his property: (see *Butterknowle Colliery Company* v. *Bishop Auckland Industrial Co-operative Company*, 94 L.T. Rep. 795; (1906) A.C. 305, at p. 313).

Although a great deal may be urged against the wisdom of our law in this respect, and great inconvenience and hardship often result from the rule, it is now well established that the law

gives no natural right of support for land weighted with buildings. This was the law centuries ago (see *Wilde* v. *Minsterley*, 1639, 2 Roll. Ab., Trespass, pl. 1; *Palmer* v. *Fletcher*, 1663, 1 Sid. 167), and it is the law to-day: (*Dalton* v. *Angus*, *sup*). But it ought to be observed that where land incumbered by buildings is deprived of the support afforded it by other land of another owner, it is still open for the owner of the buildings to recover from the other damages for the deprivation of support, if it can be shown that the weighted land would have subsided for want of support whether the buildings were upon it or not: (*Brown* v. *Robbins*, 4 H. & N. 186; *Bell* v. *Love*, 48 L.T. Rep. 592; 10 Q.B. Div. 547; *Manchester Corporation* v. *New Moss Colliery Limited*, 93 L.T. Rep. 762; (1906) 1 Ch., at p. 290).

In the same way as there is no natural right to support for land weighted by buildings from adjoining or subjacent land, neither is there any natural right to support for the buildings of one owner from the buildings of his neighbour: *Peyton* v. *London Corporation*, 1829, 9 B. & C. 725. It has even been laid down that where two houses are so situated that one derives support from the other, the owner of the second, if he desires to pull down the house, need not take active steps to protect the other, as, for instance, by shoring it up: *Southwark*, *&c.*, *Water Company* v. *Wandsworth Board of Works*, 79 L.T. Rep. 132; (1898) 2 Ch. 603, at p. 612).

The hardships which would follow were the foregoing natural rights of support the only security for the protection of owners of landed property from subsidence or disturbance caused by the excavations of their neighbours, have been met by the recognition in law of easements of support. Thus, a right, in the form of an easement, may be acquired, as we have already pointed out, to the continuance of the support afforded to houses by the adjoining land of another person: *Dalton* v. *Angus*, *sup.*). So also a right may be acquired to the continuance of the support afforded to a house by the adjoining house of a neighbour: *Lemaitre* v. *Davis*, 46 L.T. Rep. 407; 19 Ch. Div. 281; *Waddington* v. *Naylor*, 60 L.T. Rep. 480). These rights may be acquired like other easements—viz., by express or implied grant or by prescription: *Dalton* v. *Angus*, *sup.*).

Returning to the natural rights of support, it is sometimes said that an implied right of support arises on the severance of land in point of title. Thus, it is sometimes said that where the surface becomes severed from the minerals underlying it, the grantee of the minerals impliedly grants, in the instrument of severance, a right of support to the surface from the minerals beneath it. The better view, however, appears to be that the surface owner acquires as of common right a right of support for his property in its natural condition; not because of any implication on the grant, but from the mere fact of the natural relative positions of the properties: see *per* Lord Macnaghten in *Butterknowle Colliery Company* v. *Bishop Auckland Industrial Co-operative Company, sup.*, at p. 313. Lord Haldane, in the recent case (107 L.T. Rep. 625, (1913) A.C., at p. 18), said he did not like the phrase "implication attached to a common law grant," but that the right to support is a natural right of property, and there is a natural obligation on the owner of land not to use his own property so as to injure that of his neighbour.

It is, however, clear that by the instrument effecting a severance of the surface and the underlying minerals a right may be given of violating the common law right of support which would otherwise be enjoyed by the surface owner. Whether this right of interfering with support is given or not is in all cases a question of construction of the instrument of severance, whether that instrument be a lease, a conveyance, or even an Act of Parliament. The authorities on this point are very numerous, but they all tend to show that there is a paramount rule of construction to be observed—viz., that very clear words are necessary to take away the right of support (see, *e.g.*, *Butterknowle Colliery Company* v. *Bishop Auckland Industrial Co-operative Company*, 94 L.T. Rep. 795; (1906) A.C. 305); and the same principle of construction applies in questions of support between the owner of the upper of two subterranean substrata and the owner of the lower substratum: *Butterley Company Limited* v. *New Hucknall Colliery Company Limited*, 99 L.T. Rep. 818; (1909) 1 Ch. 37; (1910) A.C. 381).

The recent case in the House of Lords (107 L.T. Rep. 625; (1913) A.C. 11), furnishes another instance of the application of

this principle of construction. Their Lordships held that railway companies are entitled, as an incident of their ownership of the surface, to the natural right of support from minerals lying near their property, notwithstanding the mining sections of the Railways Clauses Act of 1845. It had been assumed—and this assumption was certainly stimulated by the language of many learned judges in the past—that the effect of the mining sections of that Act was to displace altogether all rights of natural support which would otherwise have existed in favour of the railway company. This assumption is right, so far as regards the minerals lying within the distance from the railway prescribed by the Act; but the House of Lords has now held that outside that distance the Act does not affect the natural right of support which the company necessarily acquires when it acquires the surface for its line.

It is somewhat surprising that so important a question should have been deferred for decision for nearly seventy years after the passing of the Act. But the decision is one affecting the law of support, and deferred decisions is one of the features of this branch of our law.—*Law Times.*

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Much has been said of recent years as to the prevalence of the crime of perjury. Judges and journalists have often had occasion to call attention to this evil, but no adequate remedy appears to be in sight. That as much as possible should be done goes without saying. As an illustration of one way of dealing with it and the most obvious was the prompt action of the Chief Justice of Manitoba at a trial before him, some months ago, when he directed the arrest of a witness who had in his opinion been guilty of the most flagrant perjury. The sheriff was at once sent for and the witness taken into custody during the progress of the trial. The learned Chief Justice pointed out that perjury was becoming so common an occurrence in the courts that some drastic means must be taken to stamp it out. Prompt action like this will have beneficial effect.

# REPORTS AND NOTES OF CASES.

## Province of Nova Scotia.

### SUPREME COURT.

Full Court.] WRIGHT *v.* BENTLEY. [March 3.

*Auction sale—Sale of horse—Fraudulent circumstances—Employment of puffer—Repudiation of purchase—Reasonable time allowed for—Question of fact.*

In an action brought by plaintiff on a promissory note given by defendants for the purchase price of a horse sold by plaintiff at auction the evidence shewed that the sale was made under fraudulent circumstances, the horse being wholly unfit for the purpose for which defendants required it and for which plaintiff prior to the sale represented it would be suitable, and plaintiff's son, who was unknown to defendants, having made a number of bids at the sale running the price of the horse up to a sum far in excess of its value.

*Held*, that plaintiff could not recover.

*Held*, further, that defendants were entitled to a reasonable time to determine whether they would repudiate the purchase and return the horse or not, that what is a reasonable time is a question of fact depending upon the circumstances, and that under the circumstances shewn by the evidence the period from October 15th, 1909, when the sale was made, to November 27th following, when the horse was returned, was such reasonable time.

*Putnam*, for defendant, appellant. *McLellan*, K.C., for plaintiff, respondent.

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Full Court.] [March 3.

CHESLEY *v.* BENNER.

*Bail bond—Condition—Collection Act—Appearance for examination under—Words "final judgment"—O. XIV.*

Where a bail bond was conditioned for defendant's appearance for examination under the provisions of the Collection Act, pursuant to an order for his examination to be made within 30 days of the entry of final judgment in the cause.

*Held*, that the order for leave to enter final judgment granted by a judge at Chambers under the provisions or O. XIV. was not the final judgment to be entered in the cause referred to, and that defendant and his sureties were liable notwithstanding the order for examination under the Collection Act was not made until more than thirty days after the date of the order giving leave to enter final judgment.

*Mellish*, K.C., for appellant. *J. E. Ralston*, for respondent.

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# Province of Quebec.

## KING'S BENCH.

Archambeault, C.J., Trenholme, Lavergne, Cross and Gervais, JJ.] [Feb. 22.

REX *v.* EAVES (No. 2).

(9 D.L.R. 419.)

*Usury—By discounts—"Lending"—Who is a "money lender"—Criminal law—Limit of rate.*

*Held*, 1. The offence of "lending" money at a greater interest than is authorized by the Money Lenders Act, R.S.C. 1906, ch. 122, for which a money-lender may be indicted under s. 11 of that statute, includes discounts made contrary to s. 6 thereof which in terms prohibits a money-lender from stipulating for, allowing or exacting on any negotiable instrument, contract or agreement, concerning a loan of money the principal of which is under $500, "a rate of interest or discount greater than 12 per cent. per annum."

2. A person is shewn to be a "money-lender" within the Money Lenders Act, R.S.C. 1906, ch. 122, if it be proved that he discounted promissory notes at a prohibited rate at various times each of less than $500 and so within the statute, although all for the same customer.

3. A person who is a money-lender within the terms of the Money Lenders Act, R.S.C. 1906, ch. 122, is guilty of a criminal offence under sc. 11 of that Act if he discounts for the customer at one time several notes made by various other persons maturing at various dates for less than $500 each, alth ugh the notes aggregate more than $500 and the net amount of the advance after deducting the discount was also more than $500, where the discount charge was separately computed and retained on each note

at a rate of more than 12 per cent. per annum, if there was no contract of open credit and the discount was made directly upon such notes without the customer himself giving his own note for the gross amount exceeding $500 as the subject of discount with the smaller notes as collateral only to the advance, so as thereby to make the transaction a single one for more than $500, to which the statute would not apply.

*N. K. Laflamme*, K.C., for the Crown. *J. P. Whelan*, for respondent.

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# Province of Manitoba.

## COURT OF APPEAL.

Perdue, Cameron and Haggart, JJ.A.] [Feb. 24.

RE CRABBE AND TOWN OF SWAN RIVER.

(9 D.L.R. 405.)

*Municipal corporations—Revocation of pool-room license—Right of town council to revoke—Right of licensee to be heard before town council.*

*Held*, 1. A town council has the right to revoke a pool-room license for an infraction of a by-law of the town by the licensee, where such by-law existed at the time of the application for the license, and where the infraction was expressly made ground for such revocation at the time of such application.

2. Where a town council, having the right to revoke a pool-room license for certain infractions of a by-law of the town, revokes the license, without giving the licensee a chance to be heard at a judicial hearing, such action is not illegal, where it appears that the town in question is a small place, and the pool-room one of the principal loitering places and one that may very quickly become notoriously objectionable, and the court is satisfied that, even if the members of the council did not have a knowledge from personal observation, there were sufficient grounds to justify their action, especially where there is no suggestion that the council acted arbitrarily or in bad faith.

*Whitla*, K.C., and *Scarth*, for plaintiff. *Rothwell*, for municipality.

NOTE.—A discussion of the subjects involved in this case appears in an annotation in 9 D.L.R. 411.

# Book Reviews.

*A Digest of the Law, Practice and Procedure relating to Indictable Offences, being "Archbold" abridged and alphabetically arranged.* By ARTHUR DENMAN, Barrister-at-law and Clerk of Assize. London: Sweet & Maxwell, Limited, 3 Chancery Lane. Stevens & Sons, Limited, 119 and 120 Chancery Lane.

The first chapter of this very useful and handy book is designed for the assistance of circuit officers in the general routine of their business. The rest of the work is an abridgment of Archbold so well known to the profession. The aim of the author has been to reproduce in a compact form such portions of that monumental work as long experience tells him are the most likely to be referred to, and to omit such portions which are of less importance and only very occasionally called in practice. The compiler's long experience and intimate acquaintance with the numberless subjects connected with criminal law which come before Magistrates and at Assizes renders him peculiarly qualified to undertake this condensation. It is a most useful compendium and a time saver of great value. Its comparatively small cost puts it within the reach of all Court officers as well as of Students. Practising lawyers need it at any price.

*A Practical Guide to Death Duties and to the preparation of Death Duty Accounts.* By CHARLES BEATTY, Solicitor, of the Estate Duty Office. Fourth edition. London: Effingham Wilson, 54 Threadneedle Street.

This brings up to date all necessary information on the above subject in England. It will also be useful to those of the profession in this country who have to deal with what is known here as the Succession Duties Act, dealing with a tax yearly swelling to larger proportions, and which, though illogical and often very unjust, has come to stay.