

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
William Jose and others v. The Metallic
Roofing Company of Canada, Limited, from
the Court of Appeal for Ontario; delivered
the 30th July, 1908.*

Present at the Hearing :

LORD ROBERTSON.

LORD ATKINSON.

LORD COLLINS.

SIR ARTHUR WILSON.

[Delivered by Sir Arthur Wilson.]

This litigation arises out of a strike of workmen in the employment of the Plaintiffs (Respondents), and other proceedings following thereupon. The strike is the only matter which their Lordships think it necessary to deal with on this Appeal.

The Plaintiffs were manufacturers employing workmen in their business. The Defendants (as the suit was ultimately constituted) were eight persons, sued on their own behalf, and on behalf of the members of a local Toronto trade union, and also on behalf of the members of another union of wider scope.

The statement of claim alleged that the Defendants had conspired to injure the Plaintiffs in the conduct of their business; and the first complaint was that, in pursuance of the conspiracy, the Union called out the Plaintiffs' men, who, in obedience to the call, went out on strike.

The case went for trial and was heard before McMahon, J., and a jury. There was no doubt that the strike took place, and no doubt that there were resolutions of the Unions directing the strike. The question relating to it was whether there was any right of action in respect thereof against the Defendants.

The learned Judge in charging the jury said to them :—

“ I am going to ask you, in the questions which
 “ I am submitting, whether any of the Union men
 “ who were in the Plaintiffs’ employment left the
 “ employment of their own volition, of their own free
 “ will, and without any regard to the resolution that
 “ was passed by the Union, because, if they did that,
 “ that was within their right. But if they left
 “ through the resolution that was passed, which
 “ provides that within a certain number of days, if
 “ the agreement was not signed, they would be called
 “ out, and forced to leave the Plaintiffs’ employment,
 “ then there was an illegitimate exercise—that was a
 “ power that ought not to be exercised as against the
 “ Metallic Roofing Company. And if it was exercised
 “ to their detriment, then the Union is liable in
 “ damages.”

The same view is expressed in subsequent passages of the learned Judge’s charge, and their Lordships think that these passages cannot but have meant to the jury that the calling out of the men on strike by resolutions of the Unions, if those resolutions were the cause of the strike, was an actionable wrong, without regard to motive, and without regard to the conspiracy alleged. That is a ruling which, in their Lordships’ opinion, cannot be supported.

It was contended, however, that at the close of the trial, before the case went to the jury, the learned Judge corrected any misapprehension which might have arisen from his earlier rulings. What passed is thus recorded :—

“ I have asked you, Gentlemen of the Jury, in
 “ the first question, were the workmen of the Plaintiff

“ Company wrongfully and maliciously coerced to
“ leave its employment by the Defendants or any of
“ them ?

“ Now, if you answer that question in the affirma-
“ tive, that negatives that the Union were doing what
“ they did in their own interest, because they were
“ doing something that was manifestly wrong.”

Their Lordships think that what has been cited is insufficient effectively to correct the previous misdirection.

On the ground of the misdirection already pointed out, their Lordships think that the verdict and judgment cannot be supported. They will, therefore, humbly advise His Majesty that the Appeal should be allowed, that the judgments below should be discharged and a new trial had, that the Respondents should pay the costs in the Court of Appeal and in the Divisional Court, and that the costs of the first trial should abide the result of the new trial.

The Respondents will pay the costs of this Appeal.

