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DISTRICT NO. 26, UNITED MINE WORKERS OF AMERICA (*Defendant*) ..... APPELLANT;

AND

HAROLD McKINNON *et al.* (*Plaintiffs*) RESPONDENTS;

AND

DOMINION COAL COMPANY LIMITED (*Defendant*).

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA

Trade unions—Whether district president has power under constitution to extend life of collective agreement—Subsequent ratification by higher authority.

The articles of a trade union's constitution which provide that its district president has "full power to direct the workings of the district organization" between sessions of the district executive board and that "all general agreements shall be voted upon by the members", do not empower the district president to make a new collective agreement embodying the provisions of a previous one or to make an agreement extending the term of a previous one without a vote being taken. No subsequent purported ratification by the district executive board, the district convention, the international president and the international convention, can validate such proceedings made by the district president. (*Per* Kerwin C.J. and Taschereau, Cartwright and Fauteux JJ.; Rand J. *contra.*)

Labour law—Check-off clause in collective agreement—Expiration of agreement—Short term extension by president—Statutory extension—Request by some employees to discontinue check-off—Injunction—Trade Union Act, R.S.N.S. 1954, c. 295, ss. 13, 15(b), 67(3), (4).

By the terms of a collective agreement expiring on January 31, 1956, the employer agreed to check off all dues, etc. from all employees, members of the union, and every employee undertook to maintain his membership in the union and to submit to deduction of the dues, etc., during the life of the agreement. In the fall of 1955, the union and the employer commenced to bargain with a view to renewing

*PRESENT: Kerwin C.J. and Taschereau, Rand, Cartwright and Fauteux JJ.

the agreement. The negotiations foundered, and a conciliation board recommended, on May 4, 1956, that the agreement should be renewed on the same terms; this recommendation was rejected by a vote of the members of the union. The district president and the employer agreed on short term extensions of the expired agreement.

In November 1955, the plaintiffs revoked the check-off authorization they had given the employer, and on May 11, 1956 (which was the day on which the prohibition against the employer altering the terms or conditions of the agreement expired pursuant to s. 15 of the *Trade Union Act*), the plaintiffs sued for the recovery of deductions made from February 4 to May 5, 1956, and asked for an injunction restraining the employer from making future deductions.

The trial judge dismissed the claim to recover the amounts already deducted but granted the injunction. This judgment was affirmed by the Court of Appeal. The union appealed to this Court as to the injunction, and there was no cross-appeal by the plaintiffs as to the deductions.

Held (Rand J. dissenting): The appeal should be dismissed. The plaintiffs were entitled to an injuction restraining the employer from making deductions from their wages after the prohibition enacted by s. 15 of the Act had ceased to be operative. The right of the employer to make deductions was contained in the collective agreement, but after May 11, 1956, the plaintiffs were no longer bound by it.

Per Cartwright J.: There was no term in the agreement permitting its temporary extension, in the manner attempted in this case, and the Court could not supply such a term by implication. *Hamlyn & Co. v. Wood & Co.*, [1891] 2 Q.B. 488, applied.

Per Rand J., *dissenting*: The fair inference to be drawn from the evidence respecting the holding of a district convention in June 1955 was that the district executive were directed to give notification to reopen the agreement for negotiation. It must be assumed that the possibility of negotiations prolonged beyond January 31 was then contemplated. The mandate given the executive must be taken, therefore, to embrace the power to effect the temporary continuance of the agreement until an accord was reached. Such a power was recognized by the implication of the articles of the constitution. It followed that the agreement did not expire until at least November 30, 1956, the last date to which it was extended.

APPEAL from a judgment of the Supreme Court of Nova Scotia, *in banco*[1], affirming a judgment of MacDonald J.[2] Appeal dismissed, Rand J. dissenting.

D. McInnes, Q.C., and *J. H. Dickey, Q.C.*, for the defendant union, appellant.

I. M. MacKeigan, Q.C., and *E. G. DeMont*, for the plaintiffs, respondents.

[1] (1957), 40 M.P.R. 42, 8 D.L.R. (2d) 217.
[2] (1956), 5 D.L.R. (2d) 481.

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W. H. Jost, Q.C., for the defendant Dominion Coal Company Limited.

The judgment of Kerwin C. J. and Taschereau and Fauteux JJ. was delivered by

THE CHIEF JUSTICE:—This is an appeal by the defendant District No. 26, United Mine Workers of America, against a judgment of the Supreme Court of Nova Scotia *in banco*[1], affirming that of MacDonald J.[2], which had dismissed the claim by the twelve individual plaintiffs-respondents for $156, arrears of wages in part from February 4, 1956, to May 5, 1956, but which had granted an injunction restraining the other defendant, Dominion Coal Company Limited, from paying over the sum of $1 per week, or any other sum, from the wages of each of the plaintiffs by way of check-off of union dues to or for the benefit of the appellant. The cross-appeal of the respondents to the Court *in banco* from that part of the trial judgment disallowing their claim for $156 was dismissed and as no cross-appeal to this Court has been taken by them we are not concerned with that issue, but only with the injunction.

The respondents, together with about 350 others, worked in the company's repair and maintenance plant at Glace Bay, and prior to the summer of 1955 they and their fellow-employees were members of Local 4522 of the appellant. The great majority of the company's miners were, and still are, members of other locals of the appellant. Section 1(d) of the *Trade Union Act,* R.S.N.S. 1954, c. 295, defines "collective agreement" and, effective February 1, 1953, such a collective agreement was entered into between the company and the appellant, the relevant clauses of which are:

No. 20. *Check-off*:

The Company agrees to check off all dues, fines and initiation fees from all members of the United Mine Workers of America employed in and around the collieries. The Company also agrees to check off for assessments or levies for strictly U. M. W. purposes. Authority to make such deductions shall be given to the Company by the President and Secretary of District No. 26, United Mine Workers of America, such authorities to state the purpose for which the assessment or levy is to be made.

[1] (1957), 40 M.P.R. 42, 8 D.L.R. (2d) 217.
[2] (1956), 5 D.L.R. (2d) 481.

No. 28. *Maintenance of Membership*:

Every employee who is a member of the U. M. W. of A. at the effective date of the beginning of this Agreement, or who becomes a member of the Union during the life of this Agreement, shall continue to be a member, in good standing, of the Union during the life of the Agreement provided he continues to be eligible to be a member, and during the life of the Agreement shall have deducted from his wages all dues, levies, fines and assessments in accordance with Clause 20 of this Agreement.

No. 29. *Term of Agreement and Provision for Renewal*:

This Agreement is in effect from February 1st, 1953, and will continue in full force and effect until January 31st, 1955, and from year to year thereafter unless notification to re-open the Agreement is served by either of the parties hereto, such notification to be served in writing not later than October 1st in any year later than the year 1953, ...

subject to a proviso which is not material.

In accordance with the provisions of this agreement each of the respondents signed a check-off card authorizing the company to deduct weekly from his wages the sum of $1. In the summer of 1955, being dissatisfied with the appellant as their bargaining agent, the respondents and about 300 skilled artisans organized an independent union, Central Auxiliary Workers' Union, but attempts to have the latter certified as bargaining agent failed.

Section 13 of the *Trade Union Act* enacts:

13. Either party to a collective agreement whether entered into before or after the commencement of this Act, may, within the period of two months next preceding the date of expiry of the term of, or preceding termination of the agreement, by notice, require the other party to the agreement to commence collective bargaining with a view to the renewal or revision of the agreement or conclusion of a new collective agreement.

Pursuant thereto, in September 1955, a notification to commence collective bargaining with a view to the renewal or revision of the agreement or conclusion of a new collective agreement was given by the appellant to the company. In accordance with s. 15(a) of the Act representatives of the company and the appellant commenced to bargain collectively, but these negotiations proved unavailing. On the application of the appellant a conciliation board was appointed in accordance with the Act by the Minister of Labour. The Board's recommendation filed

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with the Minister on May 4, 1956, was that the terms of the old agreement should be inserted in a new one. In view of s. 15(b) of the Act:

(b) if a renewal or revision of the agreement or a new collective agreement has not been concluded before expiry of the term of, or termination of the agreement, the employer shall not without consent by or on behalf of the employees affected, decrease rates of wages, or alter any other term or condition of employment in effect immediately prior to such expiry or termination provided for in the agreement, until a renewal or revision of the agreement or a new collective agreement has been concluded or a conciliation board, appointed to endeavour to bring about agreement, has reported to the Minister and seven days have elapsed after the report has been received by the Minister, whichever is earlier, or until the Minister has advised the employer that he has decided not to appoint a conciliation board.

the seven days mentioned expired May 11, 1956.

In the meantime, on November 29, 1955, each of the respondents and about 328 others had filed with the company an "off-set card" signed by him revoking the authority given by him to the company by the check-off card to deduct from his wages and pay to Local 4522 of the appellant any sums of money whatsoever as initiation fees or dues or for any other purpose whatsoever. According to a statement contained in each of these cards, it was given pursuant to subss. (3) and (4) of s. 67 of the *Trade Union Act*. Subsection (3) refers to the check-off card as an assignment and subs. (4) provides:

(4) Unless the assignment is revoked in writing delivered to the employer, the employer shall remit the dues deducted to the union or organization named in the assignment at least once each month, together with a written statement of the names of the employees for whom the deductions were made and the amount of each deduction.

Notwithstanding the "offset" cards the company continued to deduct $1 weekly from the wages of each of the respondents and to remit that sum to the appellant. Finally, pursuant to art. XIX of the appellant's constitution, the following question was submitted on June 19, 1956, to the members of the appellant: "Are you in favour of continuation under the present agreement for the duration of the agreement year" (*i.e.*, January 31, 1957), and was answered in the negative by a vote of 4417 to 1899.

Industrial peace between employer and employees, which it is the aim of the *Trade Union Act* to maintain, is important, but the above history of the disputes between the appellant union on the one hand and the respondents

and their adherents on the other indicates that difficulties may arise, as in all fields of human relationships. So long as no applicable law is infringed, labour unions and their members are free to provide, by arrangement, for their mutual rights and obligations. Those of the parties to this appeal are governed by the constitution of the appellant, s. 3(c) of art. VIII of which and art. XIX of which provide:

Article VIII

3(c) Between sessions of the District Executive Board he [the president] shall have full power to direct the workings of the District organization and shall report his acts to the District Executive Board for its approval.

Article XIX

1. All general agreements shall be voted upon by the members who are parties to such general agreements, and no general agreements shall be signed by the District Officers unless a majority of those voting approve of same.

These are the terms upon which the respondents became members of the union and, unless authority may be found in the *Trade Union Act* or the collective agreement effective February 1, 1953, between the company and the appellant, justification for the actions shortly to be related must be found in these articles. It is agreed that prior to October 1, 1955, a notice had been duly served on the company to reopen the collective agreement and, therefore, by virtue of cl. 29 thereof, as authorized by s. 13 of the Act, that agreement would cease to be in force on and after January 31, 1956, unless legally extended as a result of the following. On or about January 24, 1956, the appellant, through its president, and the company purported to extend that agreement for a period of two months, *i.e.*, until March 31, 1956. Later, similar documents from time to time purported to extend the agreement to April 30, 1956, to June 30, 1956, to September 30, 1956, and to November 30, 1956.

I agree with Parker J.[1] that the phrase "the workings of the District organization" in art. VIII of the appellant's constitution does not include the making of a new collective agreement embodying the provisions of the old one, nor the making of an agreement extending the term of the latter. I also agree with him that no purported ratification

[1] (1957), 40 M.P.R. 42, 8 D.L.R. (2d) 217.

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by the district executive board in May 1956, the district convention in September 1956, the district executive board in September 1956, the international president, and the international convention in October 1956, can validate proceedings not authorized by the appellant's constitution. That constitution governs officers of the union, as well as the rank and file, and if, as I think, the former exceeded the powers conferred upon them, no effect may be given to their illegal actions.

The appeal should be dismissed with costs to be paid by the appellant to the individual respondents. No order should be made as to costs of Dominion Coal Company Limited.

RAND J. (*dissenting*):—This appeal raises a question under a labour agreement. The appellant is an international union to which approximately 10,000 miners and associated workers in Nova Scotia and New Brunswick belong. The organization of the union can be shortly described. In a territorial sense the union is District No. 26 of the international union, and is divided into 7 sub-districts; within each of the latter are mine localities in which local unions are organized. The district union has a constitution and its executive apparatus consists of a president, vice-president, secretary-treasurer, and an executive board, made up of those officers *ex officio* and one member from each sub-district. The highest district authority is the convention. Representatives to that are elected by the local unions, and the number is determined by the membership of each. The convention meets at such time and place as it may determine; special conventions may be called by the district executive board and shall be summoned on the requisition of a majority of the local unions. Underlying the district organization is the international constitution and the executive organs which it provides. Each district elects a representative to the international executive board.

The district executive board carries out the duties imposed upon it by the district constitution in harmony with the policies enunciated or decisions made by the convention. The president, in the tradition of unionism, is, generally speaking, the source and spearhead of action. By art. VIII, s. 3, of the constitution, between sessions of the

district executive board, he is invested with power to direct the workings of the district organization and is to report his acts to the executive board for approval. By art. XIX, it is provided that:

> All general agreements shall be voted upon by the members who are parties to such general agreements, and no general agreements shall be signed by the District Officers unless a majority of those voting approve of same.

As of February 1, 1953, a general agreement between the appellant and the defendant company became effective which was to continue until January 31, 1955, and thereafter from year to year unless notification to "reopen" the agreement was served by either of the parties prior to October 1 of any year later than 1953. This was modified by a proviso that should a national emergency be declared by the federal government, either party could "terminate" the agreement on 30 days' notice.

In September 1955, a notification to reopen was given by the union. On October 8, negotiations for modifying the existing agreement began. They continued without success until well along in January 1956 when the union applied for the appointment of a conciliation board by the Minister, charged with that duty, under the powers of the *Trade Union Act*. The board was set up and without delay entered upon its task. On May 4, 1956, its report was filed with the Minister. In effect the recommendations made were that owing to the conditions affecting the industry the existing terms should be re-embodied in a new agreement.

In the meantime the union and the company had on or about January 26 purported to enter into a temporary extension of the existing agreement, continuing it until March 31. Shortly before that was to expire a similar extension until April 30 was made; a third carried it to June 30, another until September 30 and finally, so far as the matter before us shows, it was prolonged until November 30 of that year. As of January 1, 1957, a new agreement became effective.

By cl. 28 of the 1953 agreement, what is known as a "maintenance of membership" provision required every employee a member of the union at the time of its coming into force or becoming a member before its expiration to maintain his membership in good standing "during the life"

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of the agreement, provided he continued to be eligible for membership; and during that period there were to be deducted by the company from his wages, in accordance with cl. 20, all dues, levies, fines and assessments imposed by the union. The respondents were members of the union and were bound by these clauses and they furnished the company with written authority to make the deductions as contemplated by s. 67 of the Act.

In the autumn of 1955, a relatively small group of employees of the machine-shop and one or two other non-mining departments of the company, including the respondents, being dissatisfied with terms of the agreement applicable to them, and the apparent inability of the union to effect any improvement, decided to withdraw and to form a new union. An application under the Act was made to the Labour Board for an order declaring the group to constitute an appropriate unit for collective bargaining purposes, but early in 1956 the application was dismissed on the merits. In the meantime notice had been given to the company by the respondents purporting to revoke the consents to deductions. These notices were disregarded by the company in view of the clauses of the contract mentioned which were still effective and s. 18 of the Act which requires every person bound by a collective agreement or on whose behalf a collective agreement has been entered into to do everything he is required to do and refrain from doing anything he is required to refrain from doing by the provisions of the agreement.

By s. 15 of the Act, if a revision of an agreement has not been concluded before the "expiry of the term, or termination of the agreement", the employer is forbidden, without the consent of the employees affected, to

> . . . decrease rates of wages, or alter any other term or condition of employment in effect immediately prior to such expiry or termination . . .

or unless

> . . . a conciliation board, . . . has reported to the Minister and seven days have elapsed after the report has been received by the Minister, ...

Such a report was received on May 4 and the bar of the section thus expired on May 11. On that day the respondents began this action, claiming a recovery of deductions amounting to $156 made after January 31, 1956, and for an injunction restraining future deductions.

At trial MacDonald J.[1] found the agreement to have expired as of January 31, 1956; but he held that s. 15 enabled the company to continue the deductions until May 11. He held also that the so-called extensions were invalid both because they were themselves general agreements, the authority to enter into which required the prior approval of a referendum not taken, and, seemingly, because once a term in time had been given an agreement any alteration including an extension was forbidden by s. 20. The agreement having expired, cl. 28 had been fulfilled and the respondents were freed from their assignment. The claim for the deductions was dismissed but that for an injunction against future deductions allowed. On appeal these views, except as to the effect of s. 20, were concurred in by the Court *in banco*[2].

The controversy is seen, then, to hinge on the question whether the extensions were valid and continued the "life of the contract" until a new general agreement had been concluded, or whether they had been entered into without authority or as against the statute and were, as found and held, ineffectual.

A district convention was held in June 1955. Although it does not seem to be expressly so stated, the fair inference from the evidence is that at that meeting it was decided that notification to reopen the agreement for negotiation should be given and that the district executive were directed accordingly. What, then, if anything, relating to incidental action by the district executive was impliedly and necessarily involved in that decision and instruction to proceed with negotiation looking to revision?

That negotiations of this sort can drag out for months is a matter of every-day knowledge and it was confirmed in this case, and retroactive applications, for example, of wage increases, the usual result of that delay, are a commonplace. On the other hand, the actual termination of a working agreement containing provisions beneficial to both employer and labour, the product of years of trial, experience and contention, might have serious consequences. At the very least it would be embarrassing to the hearing of grievances, the settlement of disputes, the questions of

[1] (1956), 5 D.L.R. (2d) 481.
[2] (1957), 40 M.P.R. 42, 8 D.L.R. (2d) 217.

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vacations, of prices of workmen's coal, of recognition of mining committees and others. Such a hiatus between agreements would violate not only the principle underlying labour and management relations, that a contract is to be coterminous with work, but also the basic desirability of the Act that employment be maintained under settled understandings to avoid the economic and industrial wastage of strikes and controversies poisoning labour relations.

The possibility of negotiations protracted beyond January 31 is then to be assumed as contemplated by the convention. Previous negotiations had gone through a similar protraction and similar extensions of agreement had been made by the president with the approval of the district executive. I take the mandate, therefore, given the latter to embrace as part of the negotiating authority the power to effect the temporary continuance of the agreement until accord on terms acceptable to the membership had been reached which would constitute a new general agreement for a defined period which the parties would respect and which, for that period, would put an end to controversy.

That such a power is recognized by the implication of the articles of the constitution seems to me to be inescapable from a proper interpretation of art. XIX. It is headed "General Agreement Referendum", and seems to be the only specific reference in the constitution to collective agreements. The practice of negotiation and bargaining, apart from its adoption by the Act, has long been a feature of labour and management action, an established practice which the constitution contemplates and in the light of which the article is to be given meaning. What is meant by a general agreement is that a comprehensive consensus on terms is given new formal embodiment and duration. A referendum is not a light matter equivalent to a motion in a meeting; it involves a highly detailed procedure to ascertain the opinion of the union, in an extended constituency with a large number of voters, on a matter of vital importance. The mere continuation of the *status quo* while their representatives are negotiating for new conditions is not such a matter, nor is an extension agreement a "general agreement". An extension might be needed for, say, three weeks, and the inappropriateness in that case of resorting to a referendum or of treating it as a "general agreement" is

patent. Were these extensions not made in good faith, not to maintain the existing terms of the working conditions for negotiating purposes, but to effect some ulterior object such as keeping cl. 28 in force to coerce employees seeking to escape it, a different situation would be presented. But there is nothing of that sort here. MacDonald J. describes the action taken as a "subterfuge" to obtain a "prohibited result", namely, the continuance of the agreement beyond its expiry date. He apparently interprets s. 20, enacting that no provision "relating to the terms of a collective agreement" shall be revised, as preventing an extension. But the prohibition is against a revision "during the term thereof" meaning the expressed term and a revision effective during the term; its object is to prevent, in the interests of industrial peace, the period so agreed upon from being reduced. But I am unable to draw the implication of a prohibition that would be in the face of the primary policy of the Act. A perusal of the evidence satisfies me that the actions of the president and the district executive were in good faith and that the extensions were for the purpose solely of preserving the existing labour relations pending, among other things, the action of the convention, a full consideration of further negotiating steps in the interest of the union, and the reaching of agreement between the men and the company by a change of opinion of one or both.

The use of the different expressions, "to reopen" and "to terminate" the agreement in lines 3 and 5 of cl. 29 and the limit of time within which the notification is to be given are significant to the scope and character of the negotiations envisioned. The first points to an immediate parley for the modification of something previously closed to discussion; it implies a continuation of the thing being dealt with; there is an existing structure of relations to be worked at, repaired or altered, and it is presupposed that the structure will continue while that work proceeds. The word "terminate", on the other hand, bears the sense of finality; the structure, in the presence of emergency, is put an end to.

On the view of the Courts below that the extension was a new contract, keeping in mind s. 20 of the Act which declares that a collective agreement shall be deemed, in my opinion conclusively, to be for a term of at least one year from when it comes into operation, there could never be a

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valid temporary extension less than a year notwithstanding that the object of the section, a specific period which will have been achieved, would be furthered. On its approval by a referendum, or with an express authorization to the president by the convention to enter into it, either party could thereupon decline further negotiation until a year had elapsed. Against that view every practical and policy consideration is ranged.

It should not be overlooked that the agreement could have been continued indefinitely if the convention had so decided, and against that the respondents admittedly would contend in vain. Their sole ground is that the agreement was "reopened" by a notice and they must accept the subsidiary and consequential action necessarily involved in the instruction given to take that step.

From this it follows that the president, confirmed by the executive board, entered into these extension agreements with the authority of the convention, that they were made for the sole purpose of continuing the existing terms until a new general agreement could be agreed upon and approved by a referendum, and that within the meaning of the language of cl. 29 of the agreement, the life of the latter did not expire until at least November 30, 1956.

I would, therefore, allow the appeal and dismiss the action with costs throughout.

CARTWRIGHT J.:—For the reasons given by the Chief Justice I agree with the conclusion at which he has arrived and I wish to add only a few words.

The right of the Dominion Coal Company Limited to make deductions from the wages of any of its employees against their will and to pay the amounts deducted to the appellant must, if it exists, be found in a statute or in a contract binding upon those employees. That right was contained in the collective agreement so long as by its terms or by virtue of the statute it continued in force, but I can find no escape from the conclusion that it no longer bound the respondents after May 11, 1956.

The desirability of a term in the collective agreement permitting its temporary extension, in the manner attempted in this case, while negotiations are proceeding is shown in the reasons of my brother Rand; but I can find no such term expressed and, in my opinion, the Court cannot supply

it by implication. The applicable rule as to the making of such implications by the Court is stated in *Hamlyn & Co. v. Wood & Co.*[1] Lord Esher M.R. said at p. 491:

> I have for a long time understood that rule to be that the Court has no right to imply in a written contract any such stipulation, unless, on considering the terms of the contract in a reasonable and business manner, an implication necessarily arises that the parties must have intended that the suggested stipulation should exist. It is not enough to say that it would be a reasonable thing to make such an implication. It must be a necessary implication in the sense that I have mentioned.

Bowen L.J. and Kay L.J. agreed, and the latter added, at p. 494:

> I agree with the rule as laid down by the Master of the Rolls, viz., that the Court ought not to imply a term in a contract unless there arises from the language of the contract itself, and the circumstances under which it is entered into, such an inference that the parties must have intended the stipulation in question that the Court is necessarily driven to the conclusion that it must be implied.

I would dispose of the appeal as proposed by the Chief Justice.

Appeal dismissed with costs, RAND J. *dissenting.*

Solicitor for the defendant, appellant: D. McInnes, Halifax.

Solicitor for the plaintiffs, respondents: I. M. MacKeigan, Halifax.

Solicitor for the defendant, Dominion Coal Co. Ltd.: W. H. Jost, Halifax.

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[1] [1891] 2 Q.B. 488.