

in the present case would be to give it a meaning which it was never intended to bear and no person concerned ever supposed it to bear. On the 1st October Bennett, Walsh, & Company cabled to the owners asking the specific question, when they withdrew the steamer and got back the answer "After outward cargo discharged from Montreal." The respondents never thought that the steamer had been withdrawn on the 1st, for they not only paid up what was due but commenced the shipliner's work for an outward voyage. The master was of the same mind, for he allowed the work to proceed till the 4th October, when he interrupted it. Their Lordships think it clear that there was no withdrawal of the steamer until that effected by the master on the 4th October. And on that date there was nothing to justify a withdrawal, for there was nothing in arrears, the full hire for the month ending the 11th October having been paid and received. Much stress was laid in argument upon the case of *Tonnelier v. Smith*, 2 Com. Cas. 258. That case related to a charter-party similar in many respects to the present one. At the beginning of a month it was clear that the charter-party would come to a natural termination during the month, so that the amount actually earned would be less than the monthly sum which in that case, as in this, was payable in advance. The question was whether an estimate was to be made at the beginning of the month of what would be earned and that amount only paid, or whether the full monthly sum was to be paid at the beginning of the month, leaving the adjustment to be made afterwards? The Court of Appeal adopted the latter view. The case does not seem to their Lordships to afford much assistance in the decision of the present case. The appellants further raised a question as to the propriety of the damages awarded against them. But their Lordships in the course of the argument intimated their opinion that the objections so raised were not well founded. Their Lordships will humbly advise His Majesty that the appeal should be dismissed. The appellants will pay the costs.

Appeal dismissed.

Counsel for the Appellants—J. A. Hamilton, K.C.—Maurice Hill. Agents—Botterell & Roche, Solicitors.

Counsel for the Respondents—Atkin, K.C.—Macdougall, K.C. (of the Colonial Bar). Agents—Lawrence Jones & Company, Solicitors.

HOUSE OF LORDS.

Tuesday, April 16.

(Before the Lord Chancellor (Loreburn), the Earl of Halsbury, Lords Macnaghten, James of Hereford, Robertson, Atkinson, and Collins.)

SWEENEY v. COOTE.

Reparation—Conspiracy—Action of Damages—Combination of Parents to Secure Dismissal of Teacher because of Religious Opinions.

Opinions that a combination of Protestant parents to withdraw their children from a National school with the object and result of securing the dismissal of a Roman Catholic teacher, not because of any spite or ill-will entertained by them against her personally, but because of her religious opinions, would not be a "conspiracy" against her such as would furnish her with a ground for an action of damages against the parents.

Appeal *in forma pauperis* from a judgment of the Court of Appeal in Ireland (LORD ASHBOURNE, L.C., FITZGIBBON and HOLMES, L.JJ., WALKER, L.J., dissenting), who had reversed a judgment of BARTON, J.

The appellant, who was a Roman Catholic, had been appointed, with the approval of the National Board, to give manual instruction, chiefly in sewing, in a National school under Presbyterian management.

The respondent was a member of a Presbyterian congregation, and was a ruling elder in the church, and called a meeting of the parents of children attending the school, at which several of those present came to an arrangement to withdraw their children from the school because a Roman Catholic teacher had been appointed.

The salary of the appellant depended upon a capitation grant, and the result of the action of the parents was to reduce her salary considerably, and eventually she was compelled to resign her appointment.

She brought an action against the respondent, in the Chancery Division, claiming an injunction and damages.

BARTON, J., pronounced a judgment in her favour, which was reversed by the majority of the Court of Appeal, as above mentioned, on the ground that there was no evidence of an unlawful combination.

LORD CHANCELLOR (LOREBURN)—This is a case in which I desire to say as little as I can, because I feel that it is a sad story, and I do not wish to aggravate any of its features by unnecessary observations. It is an action for conspiracy, and no other ground of action is relied upon. In such a proceeding it is necessary for the plaintiff to prove a design common to the defendant and to others to damage the plaintiff without any just cause or excuse. That, at all events, it is necessary to prove. Now, a conclusion of that kind is not to be arrived at by a light conjecture; it must be plainly

established. It may, like other conclusions, be established as a matter of inference from proved facts, but the point is not whether you can draw that particular inference, but whether the facts are such that they cannot fairly admit of any other inference being drawn from them. In my opinion it has not been proved that there was a design intentionally to damage the plaintiff, although I think that the intention may have been to make a protest, which may be thought reasonable or unreasonable, against the course which had been taken. Nor do I see evidence of combination between the defendant and others. I will only add two observations. The first is that I am not prepared myself to assent to all the propositions that are laid down in the judgments of the Court of Appeal in Ireland; and the second is, that I hope that this case will not be regarded as indicating that the opinion on a matter of fact of a judge of first instance ought to be set aside without grave reasons. The judge of first instance has opportunities which no other Court has of arriving at a just conclusion with regard to the facts, and I think that it is always necessary that there should be strong ground before he is overruled as to the inferences at which he arrives. But in this case I think that there was strong ground, and that the conclusion of the Court of Appeal was right.

EARL OF HALSBURY—I am of the same opinion. In one sense I agree with the view which the Lord Chancellor has suggested to your Lordships. On the other hand, I feel some difficulty in dealing with the case, because it seems to me that there is no evidence of the facts on which reliance is placed here—that is to say, no evidence showing such facts as would under any circumstances that have been suggested give a ground for action. To put the matter plainly, what I mean is this—what is suggested is that there was a combination between the defendant and some others (I observe that there is a vagueness in stating who the co-conspirators were) to bring about the dismissal of this lady. My first objection is that I think, whether it would form a ground of action or not, that it is not established by the facts put in proof. If it were true that there had been such a combination, and if the object was what is suggested, to cause her to be dismissed, not upon any ground of personal objection to her or any spite or ill-will to her, but upon the ground that in the view of the parents and of the persons procuring the combination it was an undesirable thing for a Roman Catholic to be put in that position, I am of opinion that it would form no ground of action. But the difficulty which I have in dealing with it is that I think that it fails from the beginning. There is no sufficient evidence of a *vy* combination. There is no evidence upon which I think that any Court ought to rely, even if it were a ground of action, for saying that in this case there is any proof of the combination in the sense in which it is necessary that there should be

combination in order to form the ground of an action for conspiracy. In contenting myself, as I do, with saying that I think that there is no evidence, I wish to guard myself against its being supposed that I should think that there was a cause of action even if the proposition which has been put forward by the learned counsel were established, namely, that there was a combination to do this thing. It appears to me that it would be impossible, under the circumstances, to contend that it was not the perfect right of any parent to take that view, however unreasonable it might be, and if he took that view it was perfectly competent to him to consult other parents in the same place and to ask them to aid and assist him in doing what was within his right, namely, withdrawing the children from the school—although the effect might be that it would cause the dismissal of the schoolmistress. Therefore while I content myself with saying that I think that there is no evidence of the broad proposition which is put forward, namely, that this was done as a combined act; on the other hand, it must not be supposed that if what was suggested had been proved, namely, that there was that combination, I at all events should be of opinion that it would not form a ground of action at law.

LORD MACNAGHTEN—I am of the same opinion. I agree substantially with the judgment of Lord Ashbourne and the judgments which have been delivered here. I do not think that there is any evidence to support the appeal and to restore the judgment of Barton, J.

LORD JAMES OF HEREFORD—I concur.

LORD ROBERTSON—I do not think that this House is required to discuss once more the delicate questions of the law of conspiracy merely because this case is labelled as belonging to that chapter of the law, when there are no facts to justify the description. Like Lord Ashbourne I can see no trace of conspiracy, and, indeed, the learned counsel for the appellant was faint and deprecatory in suggesting rather than asserting who were the conspirators, although this is the base of the action. Again, I see no evidence whatever of any pressure or inducement, or any interference with the choice, liberty, or will of any given person. The picture of social life presented in the evidence is not a pleasing one, nor was the respondent's part laudable; but we are in search of actionable wrong, and there is none here. The fact that religious dislike was the motive of the persons whose conduct is impugned cannot infuse into their acts a quality of illegality which does not otherwise belong to them.

LORD ATKINSON—I concur in thinking that the decision of the Court of Appeal in Ireland was right, and that there is no evidence to sustain the cause of action declared—namely, an agreement “to prevent by undue pressure, inducement, and influence divers persons from exercising

their lawful right of sending their children to" the school in question "according to their free choice, liberty, and will"—nor do I think that there is evidence to sustain the other causes of action which have been suggested in the course of the argument both here and in the Court below.

LORD COLLINS—I am of the same opinion.

Appeal dismissed.

Counsel for Appellant—Vesey Knox, K.C.
—Stebbing. Agent—H. Deane, Solicitor.

Counsel for Respondent—J. H. Campbell, K.C.—P. Gausson (both of the Irish Bar).
Agents—Jordan & Lavington, Solicitors.

HOUSE OF LORDS.

Thursday, April 25.

(Before the Lord Chancellor (Loreburn), the Earl of Halsbury, Lords Macnaghten, James of Hereford, and Atkinson.)

BIST v. LONDON AND SOUTH-

WESTERN RAILWAY COMPANY.

Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37), sec. 1. sub-sec. 2 (c)—Serious and Wilful Misconduct.

A railway company issued and posted the following notice:—"Enginemen and firemen must not leave the footplate of their engine when the latter is in motion." The enginedriver of a passenger train running at a fast speed left the footplate of his engine and climbed on to the tender for the purpose of getting coal for his engine and was struck by the arch of a bridge and killed. It was contended upon his behalf that in order to increase the pressure of steam in his engine, which had fallen below the normal, and make up for lost time, a better quality of coal was required than that which was immediately available in the well of the tender. The County Court judge found in fact that there was sufficient coal in the well of the tender, and that it had not been proved either that the low pressure of steam or the loss of time upon the journey had been caused by the inferiority of the coal in the tender's well. He held that the accident had been caused by the "serious and wilful misconduct" of the enginedriver, who knew of the rule.

Held that there was sufficient evidence to justify his conclusion.

This was an appeal from a judgment of the Court of Appeal (COLLINS, M.R., ROMER and MATHEW, L.JJ.), who had affirmed a decision of the County Court Judge of Hampshire, sitting at Basingstoke. The appellant was the widow of Alfred Edward Bist, an enginedriver in the employment

of the respondent company, who was killed by an accident on the 4th March 1905.

The facts of the case sufficiently appear from the rubric and from the following findings of the County Court Judge:—That the deceased driver was killed by being struck by the arch of the Elvetham Road bridge; that the deceased was so struck while standing on the tender of his engine when the train was in motion and running at a fairly fast speed; that at the time the deceased went on to the tender there was a sufficient supply of coal in the well of the tender for the purpose of firing the engine until, at all events, the train arrived at Basingstoke; that had it been necessary a supply of coal could probably have been obtained at Basingstoke of a better quality; that the deceased man was fully aware of the rule prohibiting enginemen from going upon the tender while the train is in motion; that it was not proved to his (the learned County Court Judge's) satisfaction that either the low pressure of steam or the loss of time on the journey was caused by any inferiority in the quality of the coal on the engine; and being of opinion that the facts constituted 'wilful misconduct' within the meaning of the Act, gave judgment for the respondents.

At the conclusion of the arguments their Lordships gave judgment as follows:—

LORD CHANCELLOR (LOREBURN)—Everything that could be said in support of this appeal has been said, and it is not without regret, which would, I am sure, in such circumstances be common to everyone, that I have come to the conclusion that it ought to be dismissed. I shall not say anything in regard to the construction of this Act, which has already been discussed in previous cases. The only question here is whether the facts which have been found admit of the interpretation which has been placed upon them by the learned Judge of the County Court when he came to the conclusion that they proved "serious and wilful misconduct." This unfortunate man broke a rule which certainly is a very important rule. There was evidence that he knew of its existence, and that he knowingly and wilfully acted in defiance of it. It was a rule to save life, and to prevent danger both to the public and to the servants of the company. I cannot say that there was no evidence to warrant the conclusion of the learned Judge. It is quite true that this Act is a remedial Act, and like all such Acts should be construed beneficially. Negligence will not suffice. I think that the duty of the Court is to insist that there shall be sufficient proof, and to scrutinise that proof, bearing in mind always that negligence will not suffice. But in this case I think that there was sufficient evidence, and therefore we are not entitled to disturb the decision of the County Court Judge and of the Court of Appeal.

EARL OF HALSBURY—I am of the same opinion. It seems to me impossible to contend that this was not what the language