

HOUSE OF LORDS.

Tuesday, July 27, 1909.

(Before the Lord Chancellor (Loreburn),
Lords Macnaghten, James of Hereford,
Atkinson, Collins, Gorell, and Shaw.)

CONWAY v. WADE.

(ON APPEAL FROM THE COURT OF
APPEAL IN ENGLAND.)*Reparation—Trade Union—Interference
with Employment—Act Done in “Con-
templation or Furtherance of a Trade
Dispute”—Trade Dispute not Existent or
Imminent.*

A trade union official, in order to enforce payment of a fine by a member, uttered threats to his employer and thereby procured his discharge. These proceedings were not authorised by the trade union, and in fact there was no trade dispute existing or contemplated by the men. In an action of damages by the discharged workman, held that the defender had committed an actionable wrong, and that his liability therefor was not affected by the Trade Disputes Act 1906, section 3, the act complained of not being done in contemplation or furtherance of a trade dispute.

The appellant, who was a workman, brought an action of damages against the respondent, the officer of a trades union, for having used threats to the workman's employer and wrongfully procured his discharge. The facts appear fully from their Lordships' judgments. The jury in answer to a question had found that there was no trade dispute existing or contemplated by the men of the union. A verdict in favour of the appellant had been set aside by the Court of Appeal (COZENS-HARDY, M.R., FARWELL and KENNEDY, L.J.J.) in respect of the terms of the Trade Disputes Act 1906, section 3.

Their Lordships gave considered judgment as follows:—

LORD CHANCELLOR (LOREBURN)—In my opinion the order appealed from should be reversed. This action was tried before the County Court Judge at South Shields. Your Lordships have not that learned Judge's summing up before you, but no kind of objection was raised to it. A series of questions was put to the jury by desire of counsel on both sides, and duly answered, so that we have all the material facts either admitted or found. If the jury were right, what happened was as follows:—The plaintiff was in employment under the firm of Readhead & Co. The defendant Wade, in order to compel the plaintiff to pay a fine due to the trade union, and to punish him for not paying it, procured Messrs Readhead & Co.'s foreman to dismiss him, by threats that unless they dismissed the plaintiff the union men in their service would leave off work, which was not true. The plaintiff had to quit his employment in consequence

and so suffered damage. So far I own that from the evidence as it appears on paper I am not sure that I should have myself found all those things. But I am quite sure that the jury who heard the witnesses are better judges on such a subject than I can be. The defendant must be taken to have acted as a mischief-maker in order to injure the plaintiff from unworthy motives, accompanied by threats that he would cause Messrs Readhead's men to come out, in a matter with which he had no concern, for it is admitted that though district delegate of the union he was acting without authority. The only defence really made to this action, beyond a denial of these facts, was the 3rd section of the Trade Disputes Act 1906, and it was upon this ground alone that the Court of Appeal decided the case. Manifestly it is essential to any defence under this section that the defendant should show that the act complained of was done in contemplation or furtherance of a trade dispute. Otherwise the section cannot possibly apply. Now the jury, in addition to their other findings, have found explicitly that there was no trade dispute either existing or contemplated by the men, which has been properly taken to mean that the act complained of was not done in contemplation or furtherance of a trade dispute. The Judge was satisfied with this verdict, as was the Divisional Court. In the Court of Appeal, however, the learned Judges have found this fact the other way, and thereupon entered judgment for the defendant. Knowing as I do how adverse the Court of Appeal is from usurping the functions of a jury I conclude that the learned Judges were enabled to bring this case within this section by taking a different view of the section from that which I take, for the verdict of the jury seems, I believe, to all your Lordships a reasonable enough conclusion from the evidence, and one which it is our duty to support. "Trade dispute" is a familiar phrase in earlier Acts of Parliament, and is defined in this Act. I do not know that the definition is of much assistance. If this section is to apply there must be a dispute, however the subject-matter of it be defined. A mere personal quarrel or a grumbling or an agitation will not suffice. It must be something fairly definite and of real substance. If this be so, I am then so far from thinking it impossible to doubt that there was a trade dispute that I actually think that there was none, if indeed, my opinion, founded on printed evidence, is worth much. The law, however, prefers the opinion of a jury, and the jury have in this case come to the same conclusion. I prefer to say nothing as to some opinions expressed in the Court of Appeal with regard to this Act and the motives supposed to have actuated those who passed it. If the Act is to be interpreted or applied in the view that stirring up strife is the aim and object of any part of it, then indeed it will be a fountain of bitter waters. But some opinions were also expressed as to a matter on which the Court of Appeal has

both authority and jurisdiction, namely, the true meaning of the words "in contemplation or furtherance." I regret that I cannot altogether agree with what was said. It is necessary to consider how the law stood before 1906. As to the liability of trade union funds and the law of conspiracy we are not here concerned. But it is material to see in what circumstances an individual could be sued for inducing someone not to employ or not to serve another, for that is the point arising in this appeal, and to that I will confine myself. I think that on that point the law stood as follows:—If the inducement was accompanied by violence or threats (always remembering that a warning is one thing and a threat is another) there was a good ground of action. I next suppose that there was no violence and no threat and yet the inducement involved a breach of contract; then also it was established after a long controversy, commencing with *Lumley v. Gye* (2 E. & B. 216) in 1853, that an action could be maintained, unless at all events some sufficient justification could be made good. But suppose that one person simply induced someone not to employ another or not to serve another, without violence or threat or breach of contract, would an action lie, and in what circumstances, in such a case. I believe that there has not been either a conclusive or an exhaustive answer to that question. The further difficulty arises, What is a sufficient justification? Is it supplied by self-interest or by trade competition, or by what other condition or motive? No answer in general terms has ever been given, and perhaps no answer can be given. A parallel difficulty arises where the inducement is by two or more persons acting together. It is always a source of danger when the law is uncertain, and inasmuch as industrial warfare unhappily takes too often the form of strikes and lockouts, and inducing other persons to co-operate in them, uncertainty as to the weapons allowed by the law is likely to cause more alarm than perhaps may be justified. Certainly some dicta in recent cases gave rise to an apprehension that it might be held unlawful for men to induce others to join them in a strike, especially in what is called a secondary strike; for the essence of a strike consists in inducing others not to serve particular employers, or, as the case may be, any employers in a particular trade. I believe that, stated generally, to have been the state of the law preceding the Trade Disputes Act of 1906 so far as it was settled, and that the uncertainties were as I have described. The 3rd section, which purports to deal with this point, is as follows:—"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 with the right of some other person to dispose of his capital or his labour as he wills." Let me see how this

alters the pre-existing law. It is clear that if there be threats or violence this section gives no protection in any case, for then there is some other ground of action besides the ground that "it induces some other person to break a contract," and so forth. So far there is no change. If the inducement be to break a contract without threat or violence, then this is no longer actionable, provided always that it was done "in contemplation or furtherance of a trade dispute." What is the meaning of these words I will consider presently. In this respect there is a change. If there be no threat or violence and no breach of contract, and yet there is "an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills," there again there is perhaps a change. It is not to be actionable provided that it was done "in contemplation or furtherance of a trade dispute." So there is no longer any question in such cases whether there was "sufficient justification" or not. The condition contained in these words as to a trade dispute is made sufficient. I come now to the meaning of the words "an act done in contemplation or furtherance of a trade dispute." These words are not new in an Act of Parliament; they appear in the Conspiracy and Protection of Property Act 1875. I think that they mean that either a dispute is imminent and the act is done in expectation and with a view to it, or that the dispute is already existing and the act is done in support of one side to it. In either case the act must be genuinely done as described and the dispute must be a real thing imminent or existing. I agree with the Master of the Rolls that the section cannot fairly be confined to an act done by a party to the dispute. I do not believe that that was intended. A dispute may have arisen, for example, in a single colliery of which the subject is so important to the whole industry that either employers or workmen may think a general lockout or a general strike necessary to gain their point. Few are parties to but all are interested in the dispute. If, however, some meddler sought to use the trade dispute as a cloak beneath which to interfere with impunity in other people's work or business, a jury would be entirely justified in saying that what he did was done in contemplation or in furtherance not of the trade dispute but of his own designs, sectarian, political, or purely mischievous, as the case might be. These words do, in my opinion, in some sense import motive, and in the case which I have put a quite different motive would be present. If the jury so found, the meddler would not be protected by the 3rd section of the Act of 1906. But I have no doubt that an act done with a single eye to the dispute "in contemplation or in furtherance" of it, would not be actionable on any of the grounds specified in the section. In regard to a peacemaker, who in the opinion of the Court of Appeal is not protected under

this section, he requires no protection. A peacemaker is not under the laws of this country and never has been held liable in an action. As for the present appeal, I move your Lordships to allow it with costs here and below.

LORD MACNAGHTEN concurred.

LORD JAMES OF HEREFORD—In order to arrive at a conclusion upon this appeal your Lordships must determine two questions of fact. The first is—"Were the acts complained of the outcome of a trade dispute within the meaning of the 3rd section of the Act of 1906?" In my opinion the jury found correctly (1) that a trade dispute did not exist and was not contemplated by the men; (2) that the men did not communicate any such existence or contemplation of a trade dispute to the defendant; (3) that the defendant did not act in consequence of any such communication. I see no ground for setting aside those findings; on the contrary, if I had been a member of the jury, so far as I can judge, I should have been of the same opinion. The circumstances given in evidence seem to show that the complaint in respect of the non-payment of the fine was not a genuine complaint, but was put forward as a pretence under which the plaintiff might be deprived of the position to which he had been promoted. It seems that the fine referred to had been imposed eight years before the events in question, and that it had never been enforced although the plaintiff had intermittently been a member of the union, and had been received as such, and apparently no dispute existed as to his liability to pay the fine. On the 23rd September 1908 the plaintiff entered upon employment at Readhead's works as an ordinary workman. On the 25th the defendant saw the plaintiff's receipt for the union payment and said, "It is all right, go to work." Up to this time it seems clear that no trade dispute existed. But within a few days the plaintiff was appointed a chargeman with an advance of wages from 28s. to 33s. per week. I come to the conclusion that it was the preference of the plaintiff that caused certain of his fellow workmen to desire to get rid of him, and with that object to put in motion the defendant, who could speak with apparent authority to the plaintiff's employers. Accepting this duty the defendant took the old forgotten incident of non-payment out of stock and represented it as a ground of complaint against the plaintiff. At any rate I think that this inference might well be drawn by the jury, and if such result is correct, I submit that no sufficient ground exists under which your Lordships can come to the conclusion that this finding should be overruled. The second question that has to be determined is, "Did the defendant use threatening language to the plaintiff's employer with the intention of preventing the plaintiff from retaining his employment?" The jury have found affirmatively that the defendant made use of such language with the intention alleged. The

question involved is, of course, one of fact. The words used may be without controversy, but the sense in which they are used may have to be determined not only by the mere words but by many surrounding circumstances—even those of voice and gesture. In this case the defendant's threat to the plaintiff that he would not be allowed to work shows, as it seems to me, that the defendant's position was one of hostility to the plaintiff. His interference was caused by a desire that the plaintiff should not continue in Readhead's employment. There was no apparent reason why the defendant should act as a gratuitous adviser in the interests of the plaintiff's employers, and if he did not interfere as an adviser it seems apparent he must have done so in a spirit of hostility to the plaintiff and with the object of depriving him of his employment—in which effort he succeeded. I think that a good cause of action was established, and that the defendant is not protected by the 3rd section of the Act of 1906. The appeal therefore succeeds.

LORD ATKINSON—It was, in my opinion, perfectly competent for the jury as reasonable men to have come to the conclusion on the evidence that the whole story put forward by the defendant as to the existence amongst the fellow-workmen of the plaintiff of an objection to his presence and a resolve to leave the employment if he was to continue in it was a fabrication. There are two circumstances in the case which to my mind point in that direction—first, the fact that none of the plaintiff's fellow-workmen ever suggested to him that any such objection or resolve existed; and second, the fact that neither in the letter of the defendant of the 17th October 1907, nor in that of his solicitor of the 21st of the same month, is any reference whatever made to either of these matters. Messrs Hannay & Stewart, the plaintiff's solicitors, had, in their letter of the 17th October, the receipt of which the defendant acknowledged, distinctly charged him with unlawfully and maliciously procuring the plaintiff's dismissal from his work at Readhead's yard, and also with having informed the plaintiff that he (the defendant) would stop the former's getting work elsewhere. There is not in the correspondence any denial of the truth of either of these charges, nor, stranger still, any statement to the effect that the defendant, as he now contends, only communicated to Baines, the manager of the works, the resolve which the workmen of the firm had already formed, or that he had merely remonstrated in a friendly way with or advised their manager. That story was reserved for the trial, and the fact that it was so reserved might, in my view, be most reasonably regarded as throwing grave suspicion upon it. It appears to me to be clear, and indeed I hardly think that it is seriously disputed, that the words used by Wade to Baines are capable of conveying a threat, and that the jury were justified as reasonable men in finding, as

they did, that the words did convey a threat. I do not gather from the judgments of the learned Lords Justices that they did not think there was evidence sufficient to support this finding, as well as the two findings (1) that what Wade did prevented, and was intended to prevent, the plaintiff from getting or retaining employment; and (2) that this was done in order to compel the plaintiff to pay the arrears of the fine which he owed; and was also (3) to punish him for not having theretofore paid it. I gather that the Court of Appeal were of opinion that, apart from the Trade Disputes Act of 1906, the plaintiff would on these findings have been entitled to a verdict, notwithstanding that the defendant did not conspire with another or with others but merely acted alone. If so, I concur with them. If, however, the jury were of opinion, as apparently they were, that the above-mentioned story put forward by the defendant was a fabrication, I fail to see how their first finding, that no trade dispute existed among the men, or was contemplated by them, is perverse, provided it means, as I think that it must be taken to mean, a dispute between the men employed at Readhead's works at the time when Wade spoke to Baines. It is quite true that Baines, having in his evidence-in-chief said that before he saw Wade there was, as far as he knew, no reason to stop Conway, and also that "he knew of no dispute in Readhead's works in October in the nature of a trade dispute, and none between employer and workman," on his cross-examination stated that Linny "said something to him about Conway" that there was a money dispute, that "Linny said that if Conway was kept on the men would stop work." He did not mention when this last-mentioned conversation took place, but even assuming that it took place before his interview with Wade, Baines was obviously a witness friendly to the defendant. He had acted in obedience to the tyrannical requirements of the latter. He had gone to the Adam and Eve Lodge and signed a paper "because he was in a hurry to get back." It was quite competent for the jury to accept the other portions of Baines' evidence, fortified as they are by the evidence of the plaintiff, and to reject this statement extracted in an obviously friendly cross-examination. It would appear to me, therefore, that the finding of the jury on the first question, if taken in the sense which I have indicated, can well be supported by the evidence. It is not suggested that any trade dispute existed amongst, or was contemplated by, any workmen other than the workmen employed at Readhead's works, nor is it suggested that any trade dispute was contemplated by any employers of workmen other than those interested in this firm. A trade dispute may no doubt have been contemplated by Wade at the time when he interfered, as the intended and probable result of his own action. That, no doubt, appears on the evidence of the plaintiff himself. But Wade was an outsider; he was neither an

employer nor a workman—he was a mere intermeddler—with no authority from any trade union body to act as he did. One of the questions to be decided therefore is, whether section 3 of the Trade Disputes Act 1906 applies to a non-existing dispute, not arranged for, intended to be brought about, regarded as imminent or likely to occur, or even thought of by any employer or any workmen, or by anyone save an intruder of this kind at the time when he intervenes. In order that a dispute may be a trade dispute at all, a workman must be a party to it on each side, or a workman on one side and an employer on the other, and an act done in furtherance of a dispute is not protected unless the dispute be one of that character. It is help, assistance, or encouragement to such a dispute that the Legislature apparently had in view when it used the words "in furtherance." Must it not, when it uses in juxtaposition with these words the words "in contemplation," be held to have had in view a dispute, which must at the time when the act which it designed to protect was done, have been, at all events, "thought of" by some person who should be a party to it when it arose if it was to be a trade dispute within the meaning of the Act? Otherwise an intruder such as Wade would be shielded from liability simply because of his own mental outlook, however peculiar that outlook might be, and however unknown to or unshared in by others. From the illustration taken by the Master of the Rolls and the observations made by the other Lords Justices, I gather that this latter is their view. If I am right in thinking so, then with all respect I must say that I am unable to concur with them. Just as the Legislature intended to protect acts in the nature of aid, assistance, help, and encouragement rendered to the disputants of the kind described on one side or the other of a dispute which had actually arisen when they used the words "in furtherance of," so I think they must be held where they use the words "in contemplation of" to have meant them to apply to aid, assistance, help, or encouragement given to the same persons when these persons were arranging for, designing, or meditating a dispute which by their participation in it when it did arise would become a "trade dispute." It is impossible to suppose, I think, that the Legislature ever intended that where perfect peace prevailed in any factory or establishment, and an intruder, a mere mischief-maker, actuated by greed or some feeling of revenge, interfered, and by threats and molestation stirred up strife and disputes which neither employer nor workmen theretofore thought of, he should be made irresponsible because of the very mischief which he intended and hoped to stir up. On this the true construction, as I think, of the words "done in furtherance and contemplation of a trade dispute," occurring in the third section of the Act of 1906, borrowed as they are from the Conspiracy and Protection of Property Act 1875, it would appear to me that there is no inconsistency what-

ever between the finding of the jury on the first question left to them and their findings on questions 6 and 7. The fact that Wade, being what he was, interfered in order to compel the plaintiff to pay the old arrears he owed, and also in order to punish him for not paying them, does not in my view at all establish that his interference was an act done "in contemplation of a trade dispute" within the meaning of the statute. The finding of the jury, therefore, on question No. 1 cannot, I think, be properly disturbed, and its alleged perversity was in effect, in my view, the only question raised by the notice of appeal. It follows, therefore, that, in my opinion, the decision of the Court of Appeal should be reversed, and the judgment of the Divisional Court be restored, and this appeal allowed with costs.

LORD COLLINS—I am of opinion that this appeal should be allowed and the judgment of the County Court Judge and of the Divisional Court restored. No doubt the learned counsel for the defendant submitted at the end of the plaintiff's case that there was no case for the jury, and the learned Judge refused to stop the case. The learned counsel then called witnesses, including the defendant himself, and after the jury had answered a series of questions put by the learned Judge, but framed by the parties as raising the proper issues, and the Judge had entered judgment for the plaintiff, the defendant's counsel forthwith moved for a new trial on the ground that the verdict was against the weight of evidence, but he did not contend that on the findings as they stood he was entitled to judgment. The learned Judge declined to order a new trial. The defendant thereupon appealed to the Divisional Court. His notice of appeal properly did not raise any question except that argued in the Court below, viz., that the verdict was against the weight of evidence. The Divisional Court, addressing themselves to the same point only, affirmed the decision of the Court below. On appeal to the Court of Appeal the same point only seems to have been raised, and I can find no trace in the report of the judgments indicating that, admitting the findings to be unimpeachable, the defendant was nevertheless entitled to judgment, and the Court of Appeal accordingly arrived at their judgment only by ignoring the findings in favour of the defendant as perverse and unsupported by any reasonable evidence. Therefore in my opinion the case does not raise, and this House is not called upon to consider, the question whether, accepting the findings, the plaintiff is entitled to judgment. The case has been conducted throughout on the footing that he is. Furthermore, if the Divisional Court are right in refusing to disturb the verdict, this House is not called upon to put a construction on the recent Trade Disputes Act, since the jury have negatived any trade dispute actual or contemplated. I entirely agree with the reasoning of Channell, J., in refusing to disturb this finding, which, in

my opinion, it was quite reasonable for the jury to arrive at honestly on the evidence. It follows that the decision of the Court of Appeal must be reversed, and that of the Divisional Court restored.

LORD GORELL concurred.

LORD SHAW—By the Trade Disputes Act 1906 (sec. 3) it is provided 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 with the right of some other person to dispose of his capital or his labour as he wills." In the present case an act was done by the respondent which induced the appellant's employer forthwith to dispense with his services. The circumstances are set forth in the judgment of Lord James of Hereford, to which I shall afterwards refer. The jury have substantially affirmed that the act was of a threatening or coercive character, and caused the loss of employment in circumstances which at common law would have afforded a good ground of action. But the respondent pleads that the act was done "in contemplation or furtherance of a trade dispute," and that his common law liability is thus removed. These terms have been construed by the learned Judges of the Court of Appeal. In view not only of the general importance of the question but of the terms in which the judgments of the learned Lords-Justices are couched, I need not say that I have considered with much anxiety the point raised. It is no doubt true that by sec. 5 (3) the expression "trade dispute" receives a very wide interpretation. It "means any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment, or the terms of the employment... of any person," &c. But I cannot see my way to hold that "trade dispute" necessarily includes accordingly every case of personal difference between any one workman and one or more of his fellows. It is true that after a certain stage even such a dispute, although originally grounded, it may be, upon personal animosity, may come to be a subject in which sides are taken, and may develop into a situation of a general aspect containing the characteristics of a trade dispute, but until it reaches that stage I cannot hold that a trade dispute necessarily exists. I cannot better illustrate my meaning than by simply taking the facts of the present case in the light of the rules of the trade union to which the appellant belonged. It is said that eight years ago he had been fined by his union and had not paid. In the interval he had rejoined the membership and was apparently a full paying member. Wade, the respondent, was an official delegate of the union. By the rules of the union district committees were appointed to decide all complaints and disputes between members or branches in

their district, and with regard to the official delegates it is provided that "under no circumstances shall they take part in a movement initiated by members, or a strike which has not first been sanctioned by the executive council in accordance with these rules." This was not a strike. At the most it was a "movement initiated by the members." I do not think that it was even the latter, but assume that it was, and it will be at once seen that the whole scheme of the union rules is to settle such movements so as to prevent them from reaching the stage of a strike, and to hear not only disputes between members but even complaints before they have reached the stage of dispute. The conduct of Wade was contrary not only to the terms but to the spirit of the rules, and I am not surprised to observe that the trade union accepts no responsibility whatever for such conduct. Suppose, however, these rules, instead of being violated, had been followed in the present case. When a complaint was made, if it ever was made, to Wade as to the non-payment by Conway of a fine, two courses were open—either to suggest to Conway the payment which might have been made and all dispute avoided; or, second, to act according to the rules, and submit the case to the district committee and see that Conway was brought into line with the union. In that case also Conway might have been either excused or the fine adhered to. Up to that stage there were not, in my opinion, the general elements of a trade dispute which the statute requires. In this view what is meant by the words "in contemplation or furtherance of a trade dispute"? I think that the argument was well founded that the contemplation of such a dispute must be the contemplation of something impending or likely to occur, and that they do not cover the case of coercive interference in which the intervener may have in his own mind that if he does not get his own way he will thereupon take ways and means to bring a trade dispute into existence. To "contemplate" a "trade dispute" is to have before the mind some objective event or situation—with those elements of fact or probability to which I have adverted—but does not mean a contemplation, meditation, or resolve in regard to something as yet wholly within the mind and of a subjective character. I think that any other construction would be ill-founded, and would lead to strange and mischievous results. With regard to the term "furtherance" of a trade dispute, I think that must apply to a trade dispute in existence, and that the act done must be in the course of it and for the purpose of promoting the interests of either party or both parties to it. It will be seen accordingly that I dissent respectfully but totally from the view of the Master of the Rolls that "the words 'in contemplation' are difficult, but they must embrace an act done by a person with a view to bringing about a trade dispute," and from the opinion of Farwell, L.J., that "the Act was intended to encourage trade disputes,

whether trade unions were concerned in them or not." When the learned Lord-Justice adds that "all that is requisite is that he (the interloper) should be in a position to induce some workmen to make some complaint, it matters not what, which could be called a dispute between employers and workmen or between workmen and workmen, and to lead the foreman to discharge his enemy for fear of trouble, and this stirring up of strife is the aim and object of this section," it will be seen how far a wider construction of the terms "in contemplation or furtherance of a trade dispute" may be carried; but, in my opinion, to carry them beyond the region of a trade dispute, either actual, impending, or probable, and into the region of private animosity, which may, if thwarted, take the shape of bringing a trade dispute into being, is not a sound construction, but, on the contrary, is a misconstruction of the section. Whether the trade dispute was actual, impending, or probable, is a question of fact in each case. Having reached that stage, I find myself in such entire agreement with the narrative and bearing of the circumstances, both in fact and in law, given by Lord James of Hereford, that I adopt and do not presume to add to his Lordship's opinion.

Judgment appealed from reversed.

Counsel for Appellant—Avory, K.C.—Joel—H. D. Woodcock—G. C. O'Gorman. Agents—Gibson & Weldon, Solicitors.

Counsel for Respondent—C. A. Russell, K.C.—E. Shortt. Agents—Robinson & Bradley, Solicitors.

PRIVY COUNCIL.

Friday, July 30, 1909.

(Present—The Right Hons. Lords Macnaghten, Dunedin, and Collins, and Sir Arthur Wilson.)

DOMINION NATURAL GAS COMPANY
v. COLLINS AND OTHERS.

(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.)

Reparation—Negligence—Proximate Cause—Act of Third Party—Onus of Proof

In the case of articles dangerous in themselves there is a peculiar duty to take precaution imposed on persons who send forth or instal such articles. The *onus* of proof is upon such persons to show that consequential damage has, as its proximate cause, the conscious act of a third party.

An appeal was brought from the Court of Appeal for Ontario under circumstances which are fully stated in their Lordships' considered judgment, which was delivered by

LORD DUNEDIN—The defendants, the Dominion Natural Gas Company, recover