TRADE UNIONS IN CANADA.

PART I.

THE LEGAL STATUS.

In order to fully appreciate the issues which have appeared in the Canadian courts concerning the determination of the legal status of Canadian trade unions, attention will first be directed to the British North America Act passed in 1867 by the British Parliament. Sections 91 and 92 of this Act assign to the Dominion and the Provincial Parliaments respectively a number of specifically enumerated powers. Two such powers are significant in this instance—that of Section 91 (27) which assigns to the Dominion "criminal law except the constitution of courts of criminal jurisdiction but including procedure in criminal matters"; and that of Section 92 (13 and 14) which assigns to the provinces "property and civil rights" and "procedure in civil matters."

The legal status of trade unions under the Dominion law is, for the present purpose, set forth in two Acts, the Trade Union Act of 1872 and the Act of 1892 consolidating the Criminal Code. The former Act contains the following provisions:

> The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise or so as to render void or voidable any agreement or trust.[1]

Section 5 provides "that this Act shall not apply to any trade union not registered under this Act."

The Criminal Code extended the exemptions of trade unions from the law against combines providing that "the purposes of a trade union are not, by reason merely that they are in restraint of trade, unlawful within the meaning of the last preceding section."[2] The paragraph referred to provided that "a conspiracy in restraint of trade is an agreement between two or more persons to do or procure to be done any unlawful act in restraint of trade."[3] Unlawful acts in restraint of trade are defined as "to unduly limit the facilities for transportation, producing, manufacturing, supplying, storing, or dealing in any article or commodity which may be a subject of trade

[1] R.S., 1906, c. 125, s. 32.
[2] R.S., 1906, c. 146, s. 497.
[3] R.S., 1906, c. 146, s. 497.

or commerce"; or "to restrain or injure trade or commerce in relation to any such article or commodity"; or "to unduly prevent, limit, or lessen the manufacture or production of any such article or commodity"; or "to unreasonably enhance the price thereof"; or "to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity or in the price of insurance upon person or property."[4] This same section contains the provision that "nothing in this section shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees."

The significance of these provisions is, in the first place, the provision that a registered trade union may expect its agreements with employers to have legal validity; and, in the second place, that the individual right to combine for trade purposes is unquestioned.

Assuming, then, the individual right to combine for trade purposes, the question remains as to the legality of the unincorporated trade union, which question in turn has had in the Canadian courts three aspects—the liability of the union for damages because of the acts of its members, the enforceability of an agreement or contract entered into by a union, and the rights of the union over its own members. Not one of the provinces apparently has enacted legislation concerning the legal status of an unincorporated union in regard to these matters.[5]

An attempt will be made therefore to present the law as it has been developed in the courts of the various states and of the Dominion. Insofar as convenient the cases will be presented in chronological order.

In *Krug Furniture Co.*, v. *Berlin Union of Amalgamated Woodworkers*[6] before the Ontario High Court of Justice plaintiff brought action against defendants and some of its members for an injunction to restrain them from interfering with plaintiff's workmen and from preventing workmen from entering into their employment, and also for damages for wrongfully and maliciously procuring the plaintiff's workmen to break their contracts with the plaintiff and to cease working with them. In answer to the contention of the union that action should be dismissed against them because they, were not an in corporated body Judge Meredith held that "this is but a technical objection"—that "no encouragement should be given

[4] R.S., 1906, c. 146, s. 498.

[5] Quebec provides (Revised Statutes of Quebec, 1925, c. 255) that the agreements of trade unions approved by the Lieutenant-Governor are enforceable at law.

[6] (1903), 5 O.L.R. 463 at p. 468.

to any organized body to evade the consequences of its act by abstaining from obtaining corporate capacity or other legal existence"; that furthermore after a trade union has appeared and pleaded in an apparently corporate capacity it is to late at the trial to raise the objection that it is not in fact incorporated or liable to be sued.

In Local Union No. 1562, United Mine Workers of America v. *William and Rees*[7] before the Supreme Court of Canada an appeal was made by defendants from the judgment of the Appellate Division of the Supreme Court of Alberta.[8] The union had sent a committee to the employer and by threatening a general strike had induced him not to employ the respondents. Although injury was proved Judge Anglin denied the liability of the union to damages. He contrasted the case with *Krug Furniture Co.* v. *Berlin Union of Amalgamated Woodworkers* (*supra*) by saying that in the Ontario case

> the defendant Union, sued as a corporation, appeared, apparently as such, unconditionally and its statement of defence did not contain the plea *nul tiel corporation* as required by the rules of Court. Its incorporation was accordingly presumed. The explicit denial of incorporation in the present instance precludes any such presumption. In my opinion the judgment against the Local Union in its adopted name cannot be maintained.

In *Hay* v. *Local Union No. 25 Ontario Bricklayers and Masons International Union*[9] a case before the First Divisional Court of Ontario, an appeal was made from the judgment of the Third Division Court, which had favoured the plaintiff as against these defendants. Judge Hodgins "in a written judgment, said that the initial difficulty was that the Local Union being unincorporated could not be sued." (No reasons).

In *Chase* v. *Starr*[10] before the Manitoba King's Bench action was brought by the general chairman and secretary-treasurer of the Canadian division of the International Brotherhood of Locomotive Engineers, an unregistered trade union, against a former secretary of that organization to compel him to give an accounting of funds in his possession when relieved from office. The secretary refused to surrender his office, claiming that he had not received notification that his services were dispensed with and refused to surrender the funds. The counsel for the defense attacked the legal status of the labour organization, claiming that it was operating in restraint of trade and moving for non-suit. Justice Galt in examining the case stated at p. 1116:

[7] [1919] 49 D.L.R. 578 at pp. 589-90.
[8] [1919] 45 D.L.R. 150.
[9] (1929), 35 O.W.N. 287.
[10] (1923), 2 D.L.R. 1112.

I know of no case in the Canadian Courts defining the respective rights of a registered and non-registered trade union. The English decisions are almost our only guide. The subject is full of complexity, and I can see no escape from the necessity of tracing up the history of trade unions and the laws applicable to them, both in England and in Canada.

As a result of this examination he reached the conclusion that almost all of the provisions of the case decided by the House of Lords in 1912, *Russell* v. *Amalgamated Society of Carpenters and Joiners*[11] applied to the one in question (p. 1128). The Amalgamated Society of Carpenters and Joiners had been held to be an illegal association chiefly because of the discipline and restrictions of conduct to which members of the union were required to give their assent, and as a result the obligations of the union to its members were not enforceable at law. Justice Galt at pp. 1131-2 concluded:

I cannot resist that the provisions in the constitution and ritual of the plaintiffs relating to strikes, are open, under our Canadian law, to the same objection as were the rules of the respondent in *Russell* v. *Amalgamated Society of Carpenters and Joiners.* They are in direct restraint of trade and render the plaintiffs an unlawful trade union to the extent of preventing them from enforcing rights in a Court of Law. It is unnecessary to decide whether, or to what extent, they could have enforced their claim against the defendant, if they had registered their organization under the Trade Unions Act.

An appeal was taken by the plaintiff and in the Manitoba Court of Appeal the decision was reversed in *Chase et al.* v. *Starr.*[12] It was contended that the provisions of the Trade Union Act of 1872[13] applied to all trade unions. Justice Trueman said that in the "absence of any reasons for the exclusion of unregistered trade unions from the Act effect may be given to the section (Section 5) . . . for interpreting the law towards all trade unions" (p. 147). Furthermore it was declared that the public policy of Manitoba had always been one of promoting collective bargaining (p. 147).

The case was next taken to the Supreme Court of Canada[14] which dismissed the appeal with costs. The following extract from the judgment shows the chief grounds on which this decision was made:

The primary objects of the brotherhood plainly are to secure satisfactory arrangements for its members in relation to conditions of employment and rates of pay, and to provide means of settling disputes amongst their own members arising out of their service; and, as I have said, there is nothing to indicate that the constitution has in view any means other than lawful means for accomplishing these objects . . . . The question is of great

[11] [1912] A.C., 421.
[12] [1923] 4 D.L.R. 103.
[13] Provisions quoted above, p. 349.
[14] *Sub nom. Starr* v. *Chase* [1924] 4 D.L.R. 55 at pp. 59, 65, 66.

importance in Canada, because of the peculiar condition of trade union law in this country. The Trade Unions Act, R.S.C. 1906, c. 125, has not been adopted by the Provinces, and as to many of its provisions there is, to say the least, the greatest doubt as to the authority of the Dominion to enact them. Section 32, for example, in providing that the purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render void or voidable any agreement or trust, is, *prima facie,* dealing with the subject of civil rights and property. No doubt the declaration that trade unions, whose purposes are in unlawful restraint of trade, are not, on that ground, to be regarded as criminal conspiracies, coupled with the declarations on the subject contained in the Cr. Code, R.S.C. 1906, c. 146, which have been cited to us, establish beyond question, if there ever was a doubt upon the subject, that such a society as the Brotherhood of Locomotive Engineers is not a criminal society. But these declarations do not carry us beyond the point reached by the declaration in the first section of the Trade Unions Funds Protection Act above mentioned. If the respondent's contention is sound, it is highly probable that every trade union in Canada is, as regards the security of its funds, absolutely at the mercy of the officials who have the custody of them. This would indeed be an extraordinary thing. Provincial and Dominion statutes for the past 15 or 20 years have been directed to the encouragement of what is called "collective bargaining." Associations of employers as well as associations of employees, must, if "collective bargaining" is to be effectual and bargains are to be carried out, have rules giving authority to discipline recalcitrant members; and must have funds; and most trade unions have rules vesting in some body authority to give a final decision upon the question of strike or no strike, a fact which the Industrial Disputes Investigation Act, 1907 (Can.) c. 20, s. 15. [See amendment 1910 (Can.), c. 29, s. 2], explicitly recognizes. It would be singular indeed if the rights of the members of such associations in the funds provided for defraying expenses and salaries of officers, were left with no legal protection except that which arises from the liability to criminal prosecution.

In *British Columbia Telephone Co.,* v. *Morrison, The International Brotherhood of Electrical Workers, Local Union No. 213, and Local Union No. 310, of said Brotherhood, et al.*[15] before Supreme Court of British Columbia the issue arose of the interference with contractual relations of a union and its employer. Local 310 of the International Brotherhood of Electrical Workers, an unregistered union, had entered into an agreement with the plaintiff for closed shop. This agreement was ratified by the Brotherhood. The union was subsequently ordered by the Brotherhood to amalgamate with Local 213, the members of which were being prevented from working by the closed shop agreement of Local 310 with the plaintiff. To enforce amalgamation the Brotherhood revoked the charter of Local 310. Before the full effect of such revocation of the charter could be determined, plaintiff obtained an injunction, containing

[15] (1921), 1 W.W.R. 694 at p. 706.

provisions, restraining the defendant from in any way interfering with the agreement. The Court held that:

if the brotherhood had, after due consideration, deliberately ratified the agreement, then, it was in duty bound not to do anything which would affect its proper performance. On the contrary, it attempted to effectually destroy the right of one of the parties to still continue as an organization, amenable to the terms of the agreement.

In *Polakoff* v. *Winters Garment Co.*,[16] before the Supreme Court of Ontario action was brought by the International Ladies Garment Worker's Union, an unincorporated and unregistered labour union, against the Toronto Cloak Manufacturers' Protective Association, an incorporated society, the members of which were Toronto manufacturers of ladies' garments. The action was to enforce an agreement in writing in the nature of a collective bargain made in 1925. The court came to the conclusion in the words of Justice Raney that "the union was an illegal society incapable because of its illegality of maintaining this action or indeed any other civil action in an Ontario Court" (p. 58). This ruling was based upon the precedent of the decision of the House of Lords in *Russell* v. *Amalgamated Society of Carpenters and Joiners* (*supra*). Justice Raney maintained that the rules of the International Ladies Garment Workers were essentially similar to those of the Amalgamated Society of Carpenters and Joiners—rules typical of most trade unions (p. 60); and granting the proposition that public policy in Ontario is not contrary to the public policy that had the sanction of the House of Lords in the *Russell* case (*supra*), Justice Raney said at p. 55:

Have I the power, sitting at the trial of an action—indeed has any court in Canada the power—to declare a public policy on this subject different from the public policy declared by the House of Lords? I have no doubt that I, at all events, have no such authority.

In discussing the applicability of the Dominion Trade Unions Act and the provisions of the Criminal Code to the case, he contended, p. 54:

So far as the Trade Union Act of Canada gives protection against criminal prosecution, labour unions are better protected by sections of the Criminal Code of Canada; and, so far as it deals with property and civil rights, which it purports to do by removing the common law disability of registered trade unions to make contracts, it would appear to be clearly *ultra vires*. This is the only statute in force in Ontario purporting to deal with the status of trades unions, and this statute, as I have pointed out, has no application to the case now before the Court.

In *Caven* v. *Canadian Pacific Railway*[17] before the Alberta Supreme Court plaintiff brought action for damages for improper

[16] (1928), 62 O.L.R. 40.
[17] [1924] 3 D.L.R. 783 at p. 786.

dismissal by defendant. Plaintiff, who was a conductor and member of conductors' union, an unregistered union, was charged with having accepted cash fares from passengers for which he made no return to the audit department. The charges were preferred by five men, hired by the company to check up on conductors. Theirs was the only evidence. Plaintiff was notified of the charge seven weeks later. Article 10 of the union's agreement with the railroad provided:

> No Trainman shall be disciplined or dismissed until his case has been investigated and he has been proven guilty of the offense against him, and decision rendered. He, however, may be held off for such investigation for a period not exceeding three days and when so held off he will be notified in writing that he is being held off for that purpose and advised of the charges against him. He may, if he desires, enjoy the privilege of the assistance of a fellow employee in stating his case at the investigation . . . . All material and necessary witnesses must be notified in writing to appear. If they appear their evidence shall be taken in the presence of the accused. If they do not appear the accused shall be furnished with a copy of their written statements and their names. If accused is not satisfied with the decision he will be given an opportunity of reviewing the evidence and may appeal through his representatives to the higher officials. Should the charge not be proven the trainman will be reinstated at once and paid for all time at schedule rates and reasonable actual expenses.

In the initial trial plaintiff was declared guilty of charges and dismissed from the employment of the company. Instead, however, of carrying his case as per agreement to higher officials, plaintiff took his case to law, claiming that he did not commit the charges, that he was not dismissed on those charges, that he was not proven guilty, that no proper decision could in fact be rendered because examiners were company officials. Plaintiff was awarded $10,000 in damages by the court. Justice Walsh maintained in support of the decision that, in the first place, the delay was exceedingly unfair to plaintiff and that it was settled by law that an employer who with full knowledge of misconduct on the part of his employee retains him in his service cannot afterwards dismiss him for that offense because he has condoned it. Defendant, it was reasonable to assume, knew of acts of plaintiff during the delay (pp. 788-90). In the second place, the right of the plaintiff under the common law not to be thus peremptorily dismissed for misconduct can be set up against defendant's right to investigate and to dismiss as a result of it. For this reason "investigation held without legal warrant and decision does not justify dismissal. . . . Article 10 is not remedy for such a case as this . . . The Board was not a legally constituted investigating Board" (p. 791).

The defendant appealed the case to the Appellate Division of the

Alberta Supreme Court.[18] The appeal was allowed. Justice Harvey for the majority began by declaring that "whatever may have been the situation raised by the pleading or as argued below when the case reached us it was common ground that Article 10 was a part of the plaintiff's agreement of employment by the defendant." The question was, did the plaintiff prove non-compliance and did the defendant prove compliance? Justice Harvey's answer to this was that there was no reason to assume, as did Justice Walsh, that company condoned action for seven weeks (p. 128); and so "if employee desires to take advantage of the agreement he must be held bound by any burdens consequent upon it. If plaintiff on being notified of the proposed investigation had refused to submit to it, other consideration would apply, but he did not. It was not contemplated by the parties to the agreement that in such a circumstance the result of the investigation should not be binding (p. 128).

The case was in the next instance appealed by the plaintiff to the Privy Council *Caven* v. *Canadian Pacific Railway*.[19] The appeal was not allowed. Lord Shaw for court held that appellant if he was wrongfully dismissed should have appealed to higher officials. "He would table the agreement" (p. 846). It was maintained that no sanction could be found for the proposition that the contract could be ignored or held invalid because it excluded the jurisdiction of courts of law.

The principle of law thus stated is seen to be one of equal obligation to both sides in such a dispute, binding upon both employer and employed (p. 850).

In *Young* v. *Canadian Northern Railway*[20] before the Manitoba King's Bench plaintiff who had been dismissed sought reinstatement into the service of defendant or damages for wrongful dismissal. When hired in 1920 as a machinist plaintiff was told that he would receive "the going rate of wages." In June 1927 he was informed that his services were no longer needed because of reduction in staff. At the time of his hiring there was in existence in writing "wage agreement No. 4" of which plaintiff declared himself cognizant. Plaintiff had never been member of the Railroad Union, Division No. 4, which negotiated the agreement. He was in fact a member of the O.B.U., but he claimed that if the wage agreement was made for the shops it should be part of his own contract unless such was expressly excluded in the agreement. The Union had several times in recent years declared that agreement should not apply to non-members.

[18] *Caven* v. *Canadian Pacific Railway*, [1925] 1 D.L.R. 122 at p. 123.
[19] [1925] 3 D.L.R. 841.
[20] [1929] 4 D.L.R. 452.

Rule 27 of the agreement applied to seniority providing that those who had served longest should be laid off last. Plaintiff, was laid off before thirty other men who were his juniors. Plaintiff according to the procedure set up for such cases in Rules 35 and 36, appealed to his shop foreman and was referred to the shop committee, from which he could get no satisfaction. The shop committee, composed in part of members of Division 4, displayed neither patience nor impartiality. Rule 37 provided that no employee should be discharged for any cause without first being given an investigation. No investigation was made.

Plaintiff's plea was not granted. Justice Dysart held in the first place that agreement was not a contract. It contained no recitals nor considerations expressed or implied. Furthermore, "if employee is correct in his contention, there is no mutuality in contract because he contends that he is at liberty to work for life but not bound to remain a day" (p. 460). In the second place, plaintiff could not have been a party to the contract because he was not a member of the Division and the Division never spoke for him (p. 460). Furthermore, since he probably was not cognizant of the rules the custom of seniority rights could not apply in his case (p. 465).

Plaintiff appealed to Manitoba Court of Appeals (*Young* v. *Canadian Northern Railway Company.*[21] Appeal was not allowed. Justice Fullerton maintained in the first place that such an agreement was not applicable to workmen other than union members (p. 356). In the second place, he said at p. 356:

> There is no contract if it is left to one of the parties to determine the character or amount of the performance due from him.

There is nothing in the rules which is binding on the employee, so agreement is a "unilateral obligation unenforceable for want of mutuality" (p. 356).

> I am satisfied that so-called wage agreements entered into between workmen's unions and employers are never intended by the parties to be legally enforceable agreements. . . . . If employers do not live up to the terms of their agreements the workmen may apply for a Board of Investigation under the Industrial Disputes Investigation Act R.S.C. 1927, c. 112, and failing a satisfactory adjustment may go on strike (p. 357).

Justice Trueman agreed that appeal should not be allowed but on different grounds. He maintained that plaintiff was party to agreement but had a remedy at law only after he had taken all of the steps in the settlement of his complaint which the rules of the agreement provided. He cited *Caven* v. *Canadian Pacific Railway*[22] as proper precedent for the case.

[21] [1930] 3 D.L.R. 352.
[22] [1925] 3 D.L.R. 841.

The case was next appealed to the Privy Council, *Young* v. *Canadian Northern Railway Company*,[23] and the judgment of the lower courts were sustained by it. Lord Russell for the court said at p. 89:

> It consists of some 188 "rules," which the railway companies contract with Division No. 4 to observe. It appears to their Lordships to be intended merely to operate as an agreement between a body of employers and a labour organization by which the employers undertake that as regards their workmen, certain rules beneficial to the workmen shall be observed By itself it constitutes no contract between any individual employee and the company which employs him. If an employer refused to observe the rules, the effective sequel would be, not an action by an employee, not even an action by Division No. 4 against the employer for specific performance or damages, but the calling of a strike until the grievance was remedied.

The above cases seem not to establish very definitely the present legal status of trade unions in Canada. The only statute in Canada concerning the legal status of trade unions is the one passed in 1872 by the Dominion which would seem to provide for the enforceability of collective agreements entered into by unions registered under the Act. Few unions in Canada are, however, registered and, moreover, the right of the Dominion to make such a provision was seriously questioned by the Supreme Court of Canada itself in *Chase* v. *Starr* (*supra*) and denied by the Supreme Court of Ontario in *Polakoff* v. *Winters Garment Co.* (*supra*). The Manitoba Court of Appeals on the other hand, contended in *Chase* v. *Starr* (*supra*) that not only was the provision valid but it applied to unregistered unions as well.

If judged by the extent to which unions have been held liable to damages for the unlawful acts of their members it seems reasonable to assume that unions have no status at law, at least according to the Ontario Courts[24] and the Supreme Court of Canada.[25] If judged by the enforceability of agreements entered into by unions with employers, in Ontario[26] and Manitoba,[27] and by the most recent decision of the Privy Council,[28] unions are not legal entities. Decisions in British Columbia,[29] Alberta,[30] and former decisions by the Privy

[23] [1931] A.C. 83.

[24] *Krug Furniture Co.*, v. *Berlin Union of Amalgamated Woodworkers* 5 O.L.R. 463; *Hay* v. *Local Union No. 25 Ontario Bricklayers and Masons International Union* (1929), 35 O.W.N. 287.

[25] *Local Union No. 1562 United Mine Workers of America* v. *William and Rees* (1919), 49 D.L.R. 578.

[26] *Polakoff* v. *Winters Garment Co.* (1928), 62 O.L.R. 40.

[27] *Young* v. *Canadian Northern Railway*, [1929-30] 4 D.L.R. 452.

[28] *Young* v. *Canadian Northern Railway*, [1931] A.C. 83.

[29] *British Columbia Telephone Co.* v. *Morrison, The International Brotherhood of Electrical Workers, Local Union No. 213, et al.* (1921), 1 W.W.R. 694.

[30] *Caven* v. *Canadian Pacific Railway*, [1924] 3 D.L.R. 783.

Council [31] would indicate that they are. If judged by the legal right of the union to protect its funds a decision in Manitoba [32] and the Supreme Court of Canada [33] would indicate that unions are legal entities.

Several interesting questions are raised by these decisions. The House of Lords in 1912 in the *Russell* case (*supra*) pronounced trade unions illegal bodies because they were in restraint of trade. This case, because it was maintained there where no other guides, was considered precedent by the Manitoba King's Bench in *Chase* v. *Starr* (1923) (*supra*) in deciding that the union could not recover funds embezzled by the former treasurer of the organization, a position maintained by Justice Fullerton (dissenting) when the case was before the Manitoba Court of Appeals. It was also considered precedent by the Supreme Court of Ontario in *Polakoff* v. *Winters Garment Co.*, (1928) (*supra*) in deciding that a collective agreement made by the union was non-enforceable. The point of the matter is that the *Russell case* (*supra*) was not referred to as precedent in any other decisions either in the Canadian Courts or by the Privy Council itself. The *Russell case* (*supra*), it seems, could logically have been considered precedent for any of the other decisions described above because the basis of the decision—that the union exercised an unreasonable restraint over its members—seems as easily applicable to the facts of these other situations. The *Russell* decision probably conflicts much less extensively with the public purpose of the present as applied to the enforceability of collective contracts than as applied to the security of a union's funds. Possibly the threat of the *Russell* decision to unionism as brought out in *Chase* v. *Starr* (*supra*) explains the absence of its consideration as precedent by the Privy Council in the *Craven* and *Young* cases (*supra*).

These latter cases, in which the issue was the enforceability of collective agreements, were decided both by the Provincial Courts and the Privy Council not on the basis of the *Russell* case but on other grounds. The Ontario case, *Polakoff* v. *Winters Garment Co.*, (*supra*), which came intermediate to these cases in point of time, was, on the other hand, decided solely on the precedent of *Russell* v. *Amalgamated Society of Carpenters and Joiners* (*supra*).

The courts' decisions in *Young* v. *Canadian Northen Railway* (*supra*) seemed clearly to reverse those in *Caven* v. *Canadian Pacific Railway* (*supra*). Justice Walsh for the Alberta Supreme Court in the latter case rather clearly took the position that such an agree-

[31] *Caven* v. *Canadian Pacific Railway*, [1925] 1 D.L.R. 122.
[32] *Chase et. al* v. *Starr*, [1923] 4 D.L.R. 103.
[33] *Starr* v. *Chase*, [1924] 4 D.L.R. 55.

ment as existed between the union and the company was not legally tenable. This position in the Alberta Court of Appeals and the Privy Council was not even made an issue, these courts assuming that the agreement was binding and directing their attention chiefly to the extent of the plaintiff's compliance to the agreement.

The underlying assumption in *Young* v. *Canadian Northern Railway Co.*, (*supra*) on the contrary was, from the beginning, that collective agreements were not enforceable because of their lack of mutuality. The exception to this position was that of Justice Trueman of the Manitoba Court of Appeals, who cited the decision of Lord Shaw in *Caven* v. *Canadian Pacific Railway* (*supra*) as proper precedent.

(*To be continued.*)

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