Starke J. in *Matthews v. Chicory Marketing Board* (1938) 60 C.L.R. 263, 283 (approved in *Wilcox Mofflin Ltd. v. N.S.W.* [1952] A.L.R. 281, 292), and Dixon and Williams JJ. in *Clements and Marshall Pty. Ltd. v. Field Peas Marketing Board (Tas.)* (1947) 76 C.L.R. 401, 414; he denied that the *Field Peas* case depended on the fact that a general course of business, applicable to the whole Tasmanian trade in field peas, was proved, a contention which certainly seems inconsistent with an "individualized" approach to s. 92 problems. The wide operation of such a provision as s. 16 (iii) is illustrated in his Honour's conclusion: "In my opinion – to take eggs as an example – it is at all events enough to confer upon the whole of a given quantity of eggs in the hands of their producer the second and third exemptions contained in s. 16 (iii) [i.e. goods required by the producer for interstate trade etc., or intended to be used for such trade etc.], that at the time such eggs come into existence the producer requires, or intends to use, all those eggs, or some substantial portion of them which as yet he cannot reasonably ascertain, for the purpose of putting them, by his disposition or dispositions, *into a course of dealing which, according to normal practices, will commit them to interstate trade (not necessarily his own interstate trade).*"[9] It would have been sufficient, he said, had the purchaser here been a *Victorian* merchant, *himself* intending to resell interstate. He did not think the case fell under the first exemption in s. 16 (iii) – goods the subject of trade, commerce or intercourse between the States. On a parity of reasoning, he said, s. 92 itself would defeat the Board's title in the present case, and he cited the *Field Peas* case and the *Wilcox Mofflin* case.

R. L. SHARWOOD

[9] [1953] A.L.R. 44, 49; my italics.

TORT—WHETHER INJUNCTION SHOULD HAVE BEEN GRANTED AGAINST EMPLOYEES WHO ASSISTED IN BREACH OF LICENCE—NO ACTIONABLE INTERFERENCE

THE Victorian case of *Rutherford v. Poole*[1] presents clearly the law of one sphere of tort – actionable interference with contractual relations – which until very recently was extremely confused.

In this case the plaintiff was granted an exclusive licence to manufacture steamtraps by the patentee of the process. Subsequently the patentee began to manufacture the articles himself, employing the defendants, who knew the licence had been granted. The licensee

[1] [1953] V.L.R. 130.

sought and was granted injunctions against the patentee and also against the defendants, restraining them from assisting the patentee in work he had been forbidden to do, on the grounds, as stated by Dean J., that the defendants had been implicated in the breach with full knowledge of it.

Poole and another defendant appealed to the Full Court. Norris, for the licensee, contended that an actionable interference was committed by the defendants knowingly and without justification joining in and facilitating breaches of contract. This is the definition of the tort as stated in the case of *Lumley v. Gye.*[2]

Herring C.J. in his judgment, traces the current of the law of unlawful molestation. Examination of the two most recent decisions in this field, the *Crofter Harris Tweed Co.* case[3] and *D. C. Thomson v. Deakin*[4] shows us that the tort today has very wide limits, in that interference with contractual relationships, be it directly by inducement or indirectly by the commission of some wrongful act which brings about the breach, may cause an action to lie. The cases continue to support the proposition laid down by Simon L.C. in the *Crofters'* case that such indirect interference must be wrongful, though it would seem that the interference itself constitutes the tortious act. In this case it was contended that though defendants had not induced the breach, they, by their wrongful acts, had facilitated it.

But Herring C.J. then points out that in every case there must be a direct invasion by some third party, standing outside the contractual relationship. Defendants were acting throughout as servants of the patentee, one of the contracting parties, and their acts could not be treated as anything but the acts of servants acting within the scope of their authority. It has been well settled in *Said v. Butt,*[5] and more recently in *Thomson's* case, that acts of this sort by a servant cannot constitute actionable interference, nor, taken together with the master's acts in breach of the master's contract, can they give rise to an action for conspiracy. As Evershed M.R. says, "The servant's acts would be the master's acts, and the curious situation would then result that the master would be inducing a breach of his own contract."[6] The mental intent of the defendants (a very important feature of this tort) was not discussed, it being established that no actionable interference had been committed.

The plaintiff also relied on a second line of authority, in attempting to show that the defendants had acquired property in the

[2] (1853) 2 E. & B. 216.
[3] [1942] A.C. 435.
[4] [1952] 2 T.L.R. 105.
[5] [1920] 3 K.B. 497.
[6] *Thomson v. Deakin* [1952] 2 T.L.R. 105, 114.

articles specified in the licence (the steamtraps) with notice of the terms of the licence, and so an injunction should be granted against them under the doctrine enunciated by Knight Bruce L.J. in *De Mattos v. Gibson.*[7]

On the evidence it was found however that no such property had been acquired. Lowe J. also stated that in the light of recent cases the doctrine in *De Mattos v. Gibson* seems to have been confined to the equities arising out of the sale of land, and that it has never been generally applied to personalty.

PETER L. WALLER

[7] (1858) 4 De G. & J. 276, 282.

TORT—NEGLIGENCE—PLAINTIFF A TRESPASSER

IT has long been recognized that the branch of the law of tort which deals with the duties of an occupier of dangerous premises could be dealt with under the general principles of the law of negligence, but the strongly entrenched rules relating to dangerous premises have so far proved impregnable.[1] However, it may be that the fatal attraction of injured children to the sympathies of the judges has lured the High Court into an invasion of this sphere in *Thomson v. Municipality of Bankstown.*[2]

The facts are briefly stated. A boy of thirteen walking along the road with his bicycle saw a bird fly into a nest situated in a crevice in an electric light pole. The crevice may have been anything from eight to eleven feet from the ground. Desiring to get the nest he placed his bicycle against the pole and climbed on to the handlebars. "What he did then is not entirely clear[3] but he came into contact with an uninsulated wire, the remains of a lightning conductor and received a violent shock."[4]

The trial judge awarded the plaintiff £6,500, but this decision was set aside by the N.S.W. Supreme Court on the grounds that the plaintiff was a trespasser. The High Court (Webb J. dissenting) restored the original verdict on the general ground of negligence.

Dixon C.J., Williams and McTiernan JJ. proceeded on the assumption that the injury in no way involved the relationship of occupier-trespasser. If the plaintiff had been injured while walking along the road he would have had a good cause of action—"it appears to us

[1] *Otto v. Bolton* [1936] 2 K.B. 46. [2] [1953] A.L.R. 165.

[3] The wire may have been anything from two feet to eight feet from the ground (*ibid.* at 179) and the wire may not have been alive until the plaintiff swung it against the high tension wires overhead (*ibid.* at 167). There is an unfortunate dispute over the factual position.

[4] Per Kitto J. (*ibid.* at 178).