

11, 1969

IN THE PRIVY COUNCIL

No. 26 of 1967

ON APPEAL  
FROM THE COURT OF APPEAL OF TRINIDAD  
AND TOBAGO

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD  
AND TOBAGO BEING THE SECOND  
SCHEDULE TO THE TRINIDAD AND  
TOBAGO (CONSTITUTION) ORDER IN  
COUNCIL, 1962

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- and -

IN THE MATTER OF THE APPLICATION OF LEARIE  
COLLYMORE AND JOHN ABRAHAM (BEING  
PERSONS ALLEGING THAT CERTAIN  
PROVISIONS OF SECTIONS 1, 2, 3, 4,  
5 and 7 OF THE SAID CONSTITUTION  
HAVE BEEN AND ARE BEING AND ARE  
LIKELY TO BE CONTRAVENED IN  
RELATION TO THEM BY REASON OF THE  
ENACTMENT OF THE INDUSTRIAL  
STABILISATION ACT, 1965) FOR  
REDRESS IN ACCORDANCE WITH SECTION  
6 OF THE SAID CONSTITUTION

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
- 9 MAR 1970  
25 PL... SQUARE  
20 DN, W.C.1.

B E T W E E N :

LEARIE COLLYMORE and  
JOHN ABRAHAM Appellants

- and -

THE ATTORNEY GENERAL Respondent

CASE FOR THE APPELLANTS

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- 30 1. This is an Appeal from a judgment dated 27th January, 1967 of the Court of Appeal of Trinidad and Tobago (Sir Hugh Wooding, C.J., C.E.G. Phillips, H. Aubrey Fraser, J.J.A.), dismissing with costs an Appeal from the judgment dated 11th December, 1965, of the High Court of Justice of Trinidad and Tobago (M.A. Corbin, J.) dismissing with costs an application on motion by the Appellants for an Order for a declaration that P.37.
- P.21.
- P.2.

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the Industrial Stabilisation Act, 1965 hereinafter called "the Act" is ultra vires the Constitution of Trinidad and Tobago, is null and void and of no effect.

- P.5. 2. By their affidavit in support of the Notice of Motion the Appellants deposed (inter alia) that they were employees of Texaco (Trinidad) Inc., hereinafter referred to as "the Company", and that both of them had for many years been associated together with other employees of the Company as well as with other workers in the Oil Industry of Trinidad and Tobago as members of the Oilfields Workers' Trade Union hereinafter referred to as "the Union", a Trade Union duly registered under the provisions of the Trade Union Ordinance and affiliated to the National Trade Union Congress of Trinidad and Tobago and, through that organisation, to the International Federation of Trade Unions. 10
- P.5 11.13-28.
- P.8 11.29-40.
- P.6 1.14. The Appellants further deposed that by virtue of a Collective Agreement dated the 16th February, 1963 hereinafter called "the Agreement", freely negotiated between the Company and the Union the Company recognised the Union as "the exclusive representative of the Workers covered by this Agreement" "for the purposes of collective bargaining in respect of wages, hours and conditions of employment". Both the Appellants were covered by the Agreement. By virtue of article 1 of the Agreement and in pursuance of article 2 thereof the Union, by letter of the 23rd February, 1965 by its General Secretary, gave notice to the Company of the wish of the Union to negotiate amendments of the Agreement and, on the 10th March, 1965, submitted to the Company a statement of proposals and changes required. Thereafter negotiations took place until the 27th July, 1965 when the Company broke them off by a letter of that date from the Company's manager, one Mr. E.G. Stibbs. The Company thereupon, in purported exercise of rights or duties under the Act which was enacted on the 20th March, 1965, gave notice by letter dated 25th March, 1965 to the Ministry of Labour of their intention to enter into an Industrial Agreement with the Union and by letter dated 27th July, 1965 reported to the Ministry of Labour that an alleged trade dispute existed or was apprehended in connection with the said negotiations. In purported exercise of rights or duties under the Act, the Minister of Labour on 29th July, 1965 referred the alleged trade dispute to the Industrial Court set up under S. 5 of the Act and the Acting Registrar of the Industrial Court, 20 30 40 50
- P.6 1.30.
- P.7 1.9.
- P.7 1.20.
- P.7 1.34.
- P.8 1.3.

by Summons dated the 30th July, 1965, required the attendance of the Union on the 4th August, 1965 before the Industrial Court. The said affidavit further established that it had been the practice of the Union in calling a strike to give due notice to the Company.

3. No evidence in opposition was filed by the Respondent.

10 4. The following statutory provisions amongst others, are relevant to this Appeal.

(A) The Constitution of Trinidad and Tobago (hereinafter referred to as "the Constitution") provides as follows:

20 "1. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour, religion or sex the following human rights and fundamental freedoms, namely,

. . . . .

(b) the right of the individual to equality before the law and the protection of the law;

. . . . .

30 (d) the right of the individual to equality of treatment from any public authority in the exercise of any function;

. . . . .

(j) freedom of association and assembly; ... "

40 "2. Subject to the provisions of Sections 3, 4 and 5 of this Constitution, no law shall abrogate, abridge or infringe or authorise the abrogation, abridgement or infringement of

any of the rights and freedoms hereinbefore recognised and declared and in particular no Act of Parliament shall -

"(b) impose or authorise the imposition of cruel and unusual treatment or punishment;

. . . .

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(d) authorise a Court ... to compel a person to give evidence if he is denied ... protection against self-crimination;

. . . .

(f) deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty ... ;

. . . .

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(h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms."

(B) The Industrial Stablisation Act, 1965 provides:-

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"8. (2) (a) Subject to subsection 3, a judgment, order or award of the Court in any proceedings under this Act -

(a) shall not be challenged, appealed against, reviewed, quashed or called in question in any Court on any account whatever; and

(b) shall not be subject to prohibition, mandamus or injunction in any Court on any account whatever;

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(3) Any party to a matter brought before the Court shall be entitled as of right to appeal to the Court of Appeal -

. . . .

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(b) on a point of law from any other judgment, order or award of the Court. The decision of the Court of Appeal on any matter brought before it under paragraph (b) shall be final.

10. (2) For the purpose of collecting ... information, statistics and other material ... for the case of the People of Trinidad and Tobago, the Attorney General may authorise a public officer -

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(a) to enter upon the business premises ... to require the production of any books, documents ... or other material relevant to any trade dispute ...;

(b) to inspect any building ... to examine any material, machinery or article therein;

(c) to interview any worker ... .

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(3) Any public officer authorised as aforesaid ... who discloses any information /obtained in pursuance of subsection (2) above/ is guilty of an offence ... and liable ... to a fine of one thousand dollars or imprisonment for one year or to both ... ."

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"11. (1) ... the Court shall have all the powers as are vested in the High Court of Justice ... to enforce the attendance of witnesses and examine them on oath ... ; but if any witness objects on the grounds that it will tend to incriminate him, ... he shall not be required to answer such questions ...

(2) Notwithstanding anything contained in the Income Tax Ordinance or in any other law, the Court may require the Commissioner of Inland Revenue or any other person ... to provide such information as it may require ..."

"16. (1) ... if any trade dispute exists or is apprehended ... that dispute, if not otherwise determined, may be reported to the Minister by - 10

(a) an organisation of workers, on behalf of workers who are parties to the dispute and are members of that organisation; 20

(b) an organisation of employers, where the dispute is between the employers and workers in the employment of those employers;

(c) an employer, where the dispute is between that employer and workers in the employment of that employer; or 30

(d) a trade union, on behalf of workers who are parties to the dispute and are members of that trade union,

and the Minister shall certify receipt of such report.

. . . . 40

(4) Where steps to promote a settlement of the dispute have been taken by the Minister under subsection (2) or subsection (3) ...

and those steps have not resulted in a settlement, the Minister shall refer the dispute for settlement to the Court and shall do so within twenty-one days from the date on which the dispute was first reported to him."

- 10 "34. (1) An employer shall not declare or take part in a lock-out and a worker shall not take part in a strike in connection with any trade dispute unless -
- (a) the dispute has been reported to the Minister in accordance with provisions of this Act; and
- 20 (b) the Minister has not referred the dispute to the Court for settlement within twenty-eight days of the date on which the report of the dispute was first made to him; and
- 30 (c) the Minister has, within forty-eight hours of the decision to go on strike, been given fourteen days notice in writing by the Trade Union or other organisation of its intention to call a strike or to declare a lock-out, as the case may be, so, however, that no such strike shall be called or lock-out declared until after the last day on which the Minister may refer the dispute to the Court.

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- . . . . .
- (3) Any Trade Union or organisation which calls a strike in contravention of subsection (1) shall be guilty of an offence and liable on summary conviction to a fine ... or to imprisonment ...; and the Court shall in the

case of a trade union ...  
cancel the registration of such  
trade union."

"35. (1) No worker may go on strike and  
no employer may declare a  
lock-out while proceedings in  
relation to a trade dispute  
between such worker and such  
employer are pending before  
the Court or the Court of  
Appeal." 10

"36. (2) ... a worker ... engaged in  
essential services shall not  
... take part in a strike ...

. . . .

(4) a worker who contravenes sub-  
section (2) is liable to a  
fine of two hundred and fifty  
dollars or to imprisonment for  
six months or to imprisonment  
for three months or to both  
such fine and such imprisonment. 20

(5) a trade union ... who calls a  
strike in an essential service  
is guilty of an offence ...  
and the Court shall, ... , if  
it is satisfied that the  
calling of such strike was  
authorised by the Executive of  
such trade union ... cancel the  
registration of such trade  
union." 30

"37. (3) An official of a trade union  
... who calls a strike in any  
of the public services  
specified in subsection (1)  
is guilty of an offence ... and  
the Court shall ... if it is  
satisfied that such strike was  
authorised by the Executive of  
such trade union ... cancel the  
registration of such trade  
union." 40

"40. (1) An award of the Court shall be  
binding on -

. . . .



(d) all trade unions ...  
on whom the award is  
at any time declared  
by the Court to be  
binding..."

"41. Imposition and recovery of penalties for breach of an order or award.

10 (3) For the purpose of this section a trade union ... shall be deemed to be guilty of a breach of an order or award by which it is bound, if a worker who is a member of that trade union commits that breach by direction of any member of the Executive of that union ..."

20 5. The Appellants claimed and now claim that the above mentioned provisions of sections 16, 34, 35, 36 and 37 of the Act, amongst others, abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of freedom of association and assembly contrary to Section 1 and Section 2 of the Constitution. The Respondents disputed the claim.

6. Further the Appellants contended and now contend

30 (i) that S. 8 of the Act, in preventing the application to the Court of the processes of certiorari, prohibition, mandamus and injunction, deprives the Appellants of the benefits of the procedural provisions necessary for protection of their rights contrary to Ss.2 (b) and (h) of the Constitution;

40 (ii) that Ss.10 (2) and (3) and 11 (1) and (2) of the Act are repugnant to paragraphs (b), (d), (e) and (h) of S. 2 of the Constitution, in that they provide and impose impermissible and unworkable provisions about obtaining and disclosure of information;

(iii) that Ss.34 (3), 36 (5) and 37 (3) of the Act are in conflict with S. 2 (b) of the Constitution in providing for

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the cancelling of the registration of a trade union;

(iv) that S. 41 (3) of the Act is a denial of the right to be presumed innocent until proved guilty as required by S. 2 (b) and of the right to a fair hearing under S. 2 (e) of the Constitution.

- Pp.10-17. 7. The Appellants advanced the above submissions and others mentioned in the notes made by the learned trial Judge of the argument before him to show that the unconstitutional parts of the Act could not be severed from the rest. 10
8. The application was tried by Corbin, J. on 7th, 8th, 9th and 10th November, and the learned Judge gave his judgment on the 11th December, 1965 in which he held that:-
- (1) If the Court had been satisfied that the Act infringed the Constitution, the matter was a proper one in which to make a declaration. 20
- P.24 1.26.
- P.24 1.29. (2) That the procedure by way of motion was the correct procedure.
- P.28 1.1. (3) That there is no "prescribed right" in the Appellants "to strike and consequently there was nothing which could be infringed" by Sections 16, 34 and 35 of the Act.
- P.29 1.32. (4) In any event the Act did not take away any right to strike. 30
- P.29 1.40. (5) That the additional arguments of the Appellants referred to in Paragraphs to P.31 1.25. 5, 6 and 7 hereof were erroneous.
- P.34 1.26. 9. The Appellants appealed to the Court of Appeal. By their Notice of Appeal dated the 20th January, 1966 the Appellants contended more particularly:-
- (a) That the learned Judge was wrong in law in deciding that the Act does not interfere with and invalidate the freedom of association and the right of collective bargaining. 40

- (b) That the learned Judge was wrong in law in deciding that the Applicants did not have a right to strike.
- (c) That the learned Judge was wrong in law in deciding that the Act did not interfere with and invalidate the right to strike.
- (d) That the learned Judge was wrong in law in deciding that the right to strike is not a necessary concomitant of the freedom of association and of the right of collective bargaining.

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10. Judgment was given in the appeal on 27th January, 1967. The learned Chief Justice in the course of his judgment said:-

P.37.

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"I turn then to the principal issue. The Appellants' main contention was that the Act abrogates or abridges what they term to be the right of free collective bargaining and the right to strike, both of which they maintain to be inherent in the freedom of association which is a fundamental freedom under the Constitution. To the extent that S. 24 of the Act imposes the condition that no agreement between a trade union and an employer shall have effect unless or until it is registered and that S. 23 authorised the Court constituted under the Act on objection by the Minister of Labour to refuse to register it although it was freely negotiated between them, I am in no doubt that the freedom of collective bargaining has been abridged. It may well be that the abridgement does not cut very deep or that insofar as it does it is in the public interest, but with such questions this Court is not concerned. I am likewise in no doubt that the Act considerably abridges if indeed in substance and effect it does not altogether abrogate the so-called right to strike or to declare a lock-out: see Parts VI and VII of the Act."

P.39 1.43.

The learned Chief Justice then reviewed the legal history of the right to strike and concluded that the supposed right to strike is only a statutory immunity and concluded that "freedom of association means no more than freedom to enter into consensual arrangements

Pp.41-

P.53 1.34.  
P.54 1.7.

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- P.56 1.26.  
Pp.57-66.
- to promote the common interest objects of the associating group," and that the effect of the Act is only to abridge the freedom of contract, which is not a freedom recognised, declared or guaranteed by the Constitution. The Chief Justice rejected all the contentions referred to in Paragraph 6 above.
- P.70 1.19.
11. Phillips, J.A. in the course of his judgment agreed that the High Court and the Court of Appeal had full jurisdiction to make a declaration as to the validity of any law which is alleged to contravene any of the rights stipulated by the Constitution. The learned Judge after reviewing the legal history of the right to strike came to the conclusion that the right to strike did not fall within the constitutional guarantee of the "freedom of association and assembly" established by section 1 (j) of the Constitution. He concurred with the learned Chief Justice as to the other contentions of the Appellants.
- P.99 1.35.
12. Aubrey Fraser J.A., said:-
- "In order to decide whether or not the right to strike is included in the freedom of association I must first determine whether the right to strike is a common law right and therefore entitled as such to protection on the ground that it is by necessary implication included in the freedom of association as contended by the Appellants."
- P.124 1.44.
- The learned Judge came to the conclusion on reviewing the law that neither a collective right to strike nor a personal right to take part in a strike was recognised by law and that therefore there was no common law right to strike. On the other grounds of appeal he agreed with the views expressed by the learned Chief Justice.
13. The Appellants respectfully submit that freedom of collective bargaining and the right to strike are inherent in the freedom of association which is guaranteed by Section 1 (j) of the Constitution and they further submit that strikes have not been illegal per se at any material time. In the respectful submission of the Appellants, in a modern democratic community, apart from the right to

10 form political parties, association in Trade  
 Unions is the most important and necessary  
 form of free association by working people.  
 Trade Unions enable working people to have  
 and exercise a measure of bargaining power  
 which approaches that of their employers.  
 This power and this approach to equality are  
 based upon the right of working people  
 lawfully and collectively to withdraw their  
 labour on giving due notice. To abridge the  
 right to withhold labour in association is a  
 serious and indeed fundamental derogation from  
 the right of working people freely to associate  
 in Trade Unions for their protection and for  
 the maintenance and improvement of their  
 conditions of work and of their rates of pay.

20 14. The Appellants respectfully submit that  
 the judgment of the High Court and of the  
 Court of Appeal were wrong and that this Appeal  
 ought to be allowed for the following (amongst  
 other)

#### R E A S O N S

1. BECAUSE Section 1 (j) of the Constitution  
 provides for the continued existence  
 without discrimination of freedom of  
 association and assembly.
2. BECAUSE Section 2 of the Constitution  
 provides that no law shall abrogate,  
 abridge or infringe or authorise the  
 30 abrogation, abridgement or infringement  
 of any of the human rights and funda-  
 mental freedoms recognised and declared  
 by Section 1 of the Constitution.
3. BECAUSE the effect of Sections 16, 34  
 and 35 of the Act is to abrogate, abridge  
 and infringe freedom of association and  
 assembly contrary to the provisions of  
 Section 1 and Section 2 of the  
 Constitution.
- 40 4. BECAUSE Section 8 of the Act denies to  
 working people the benefit of  
 procedural provisions in violation of  
 Section 1 and Section 2 of the  
 Constitution.
5. BECAUSE Sections 10 (2) and 11 (2) of  
 the Act are repugnant to Section 1 and  
 Section 2 of the Constitution.

6. BECAUSE the requirement under Sections 34 (3), 36 (5) and 37 (3) of the Act that a Court shall cancel the registration of a Trade Union for an offence however trifling and with whatever motive it may have been committed and even if unintentional constitutes cruel or unusual treatment or punishment which is prohibited by Section 1 and Section 2 of the Constitution. 10
7. BECAUSE Section 41 (3) of the Act deprives a Trade Union of the constitutional right to be presumed innocent until proved guilty contrary to Section 1 and Section 2 of the Constitution; and
8. BECAUSE Section 41 (3) of the Act imposes on a Trade Union vicarious criminal liability for the conduct of a member of the executive when acting without authority and even when not acting as such executive member contrary to Section 1 and Section 2 of the Constitution. 20

J. PLATTS-MILLS

D. TURNER-SAMUELS.

No. 26 of 1967

IN THE PRIVY COUNCIL

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O N A P P E A L  
FROM THE COURT OF APPEAL OF  
TRINIDAD AND TOBAGO

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RE THE CONSTITUTION OF TRINIDAD AND  
TOBAGO  
AND RE THE APPLICATION OF LEARIE  
COLLYMORE AND JOHN ABRAHAM

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B E T W E E N :

LEARIE COLLYMORE and  
JOHN ABRAHAM Appellants

- and -

THE ATTORNEY GENERAL Respondent

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CASE FOR THE APPELLANTS

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Lodged the 6 December 1968.

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London, S.W.1.

Solicitors and Agents for Appellants.