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

- AND -

IN THE MATTER OF THE APPLICATION OF LEARIE COLLYMORE AND JOHN ABRAHAM (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

B E T W E E N: LEARIE COLLYMORE and JOHN ABRAHAM Appellants

- and -

THE ATTORNEY GENERAL Respondent

RECORD OF PROCEEDINGS

A.L. BRYDEN & WILLIAMS,
20, Old Queen Street,
London, S.W.1.

Appellants' Solicitors
& Agents.

CHARLES RUSSELL & CO.,
37, Norfolk Street,
London, W.C.2.

Respondent's Solicitors
& Agents.

IN THE PRIVY COUNCIL No. 26 of 1967

ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

Re: THE CONSTITUTION OF TRINIDAD AND TOBAGO being the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council, 1962

Re: THE APPLICATION OF LEARIE COLLYMORE and JOHN ABRAHAM (Persons alleging that certain provisions of ss. 1, 2, 3, 4, 5 and 7 of the said Constitution have been and are likely to be contravened in relation to them by reason of the said enactment of the Industrial Stabilisation Act, 1965) for redress in accordance with s.6 of the said Constitution.

BETWEEN:

LEARIE COLLYMORE and JOHN ABRAHAM Appellants

- and -

THE ATTORNEY GENERAL Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

E X H I B I T S

List of Documents transmitted to the Privy Council and not reproduced.

Description	Date
Order for Conditional leave to appeal to Her Majesty in Council	24th February 1967
Exhibit	
"A" Accounts of Oilfield Workers Trade Union for year ended 31st December 1964	-

Pursuant to Rule 18 of the Judicial Committee Rules 1957 the Respondent Attorney General has objected to the inclusion in the Record of the Judge's Notes on Motion.

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

- AND -

IN THE MATTER OF THE APPLICATION OF LEARIE COLLYMORE AND JOHN ABRAHAM (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

B E T W E E N: LEARIE COLLYMORE and JOHN ABRAHAM Appellants

- and -

THE ATTORNEY GENERAL Respondent

RECORD OF PROCEEDINGS

NO. 1

NOTICE OF MOTION

In the High Court

No.1

Notice of Motion 30th August 1965

In the High Court

No. 1

Notice of Motion 30th August 1965 (Contd.)

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 1678 of 1965.

IN THE MATTER of the Constitution of Trinidad and Tobago being the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council, 1962.

- and -

IN THE MATTER of the Application of LEARIE COLLYMORE and JOHN ABRAHAM (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.

NOTICE OF MOTION

TAKE NOTICE that the High Court of Justice at the Red House, in the City of Port of Spain will be moved on Friday the 3rd day of September, 1965 at the sitting of the Court at the hour of 9 o'clock in the forenoon or so soon thereafter as counsel can be heard, by counsel on behalf of the above named applicants Learie Collymore and John Abraham for the following relief namely:-

An Order declaring that the Industrial Stabilisation Act, 1965 is ultra vires the Constitution of Trinidad and Tobago and is null and void and of no effect.

AND THAT such order as to costs of and incidental to this Application may be made as the Court shall think fit.

AND FURTHER TAKE NOTICE that the grounds of the application are:-

(a) that the Industrial Stabilisation Act, 1965 is ultra vires the Constitution of Trinidad and Tobago and is null and void and of no effect; and, in particular,

(b) that sections 5 and 6 (1) (b) of the said Act are in conflict with sections 2 (c) (iii), 2 (c), 2 (f) and 2 (h) of the said Constitution;

(c) that sections 8 (2) (b) of the said Act is in conflict with section 2(h) and section 6 (2) of the said Constitution;

(d) that sections 10 and 11 of the said Act are mutually contradictory and in conflict with section 2 (b), (e) and (h) of the said Constitution;

(e) that sections 34 (3), 36 (5) and 37 (3) of the said Act are in conflict with section 2 (b) of the said Constitution;

(f) that Part VI of the said Act are in conflict with section 1 (j) and section 8 (1) of the said Constitution;

(g) that section 41 (3) of the said Act is in conflict with section 2 (e) and (f) of the said Constitution;

(h) that section 52 (1) and (2) of the said Act is in conflict with section 2 (f) of the said Constitution;

(i) that in divers other respects the said Act is in conflict with and in breach of the said Constitution;

(j) that in divers respects the said Act is inconsistent in itself; is impossible of physical operation and logically incapable of application;

In the High Court

No. 1

Notice of Motion 30th August 1965 (Contd.)

(k) that in any event the said Act constitutes an unwarranted invasion of the democratic rights and freedoms of the applicants and other citizens of Trinidad and Tobago guaranteed by and implied in the said Constitution and could not be reasonably justified in a society that has a proper respect for the rights and freedoms of the individual.

Dated this 30th day of August, 1965.

J.B. Kelshall & Co.

Applicants' Solicitors.

Messrs. J.B. Kelshall & Company of No. 9a Harris Promenade, San Fernando (whose address for service in Port of Spain is in care of Mr. Nath Persad Sharma of 80 Queen Street) Solicitors for the above named applicants.

To: The Attorney General of the Red House, Port of Spain.

And to: Texaco Trinidad Inc. of Point-a-Pierre in the Ward of Pointe-a-Pierre in the Island of Trinidad.

And to: Mr. Robert E. Wallace of the Ministry of Labour, Knowsley, Port of Spain.

NO. 2

AFFIDAVIT OF APPELLANTS

In the High Court

No. 2

Affidavit of Appellants 30th August 1965

We, Learie Collymore of White City, Forest Reserve, in the Ward of La Brea in the Island of Trinidad and John Abraham of 16 Wooding Street, in the town of San Fernando in the said Island jointly and severally make oath and say as follows:-

1. I, the deponent Collymore, am a citizen of Trinidad and Tobago; and I, the deponent Abraham, am a resident and domiciled in and belong to Trinidad and Tobago.

2. We are, both of us, employees of Texaco Trinidad Inc. hereinafter referred to as "the Company". I the deponent Collymore work under a contract of employment with the Company entered into on the 13th day of August, 1946. I, the deponent Abraham work under a contract of employment with the Company entered into on the 11th day of August, 1945.

3. I, the deponent Collymore, am employed by the Company as an hourly paid Compressor Mechanic in its petroleum operations at Forest Reserve in the Island of Trinidad and I, the deponent Abraham, am employed by the Company as a weekly paid refinery operator in its petroleum operations at Pointe-a-Pierre in the said Island.

4. We are, both of us, and have been for many years 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 Oilfield Workers' Trade Union, a Trade Union duly registered under the provisions of the Trade Union Ordinance (hereinafter referred to as "the Union") which is affiliated to the National Trade Union Congress of Trinidad and Tobago and through that Organisation to the International Confederation of Free Trade Union. We have made and make the required financial contribution to the maintenance of the Union and have taken part and take part generally in

In the High Court

No. 2

Affidavit of Appellants 30th August 1965 (Contd.)

its activities. I, the deponent Collymore, have been a member of the Union continuously since 1953 and am at present the secretary of its Forest Reserve Branch and a member of its General Council. I, the deponent Abraham, have been a member of the Union, continuously since 1954 and am at present a member of its General Council representing its Pointe-a-Pierre branch. There are now produced and shown to us copies of the latest income and expenditure account balance sheet and annual budget of the Union and shown to us in a bundle marked "A" which is exhibited hereto.

5. By virtue of a Collective Agreement dated the 16th February, 1963 (hereinafter referred to as "the Agreement") freely negotiated between the Company and the Union, the Company recognises the Union as "the exclusive representative of the workers covered by this Agreement" (that is to say, the Agreement) "for the purpose of collective bargaining in respect of wages, hours and condition of employment". We, are both of us, Collymore Compressor Mechanic and Abraham Refinery Operator covered by Agreement, a copy of which is now produced and shown to us marked "B" and is exhibited hereto.

6. By virtue of article 1 of the Agreement (Recognition) and in pursuance of Article 2 (Duration of Agreement), the Union by letter of the 23rd February, 1965 under the hand of its General Secretary, Cyril Gonzales, gave notice to the Company of the wish of the Union to negotiate amendments of the Agreement and on the 10th day of March 1965 submitted to the Company a statement of proposals and changes required.

7. By letter (with enclosures) dated the 25th March, 1965 under the hand of the manager, Employee Relations, of the Company, Mr. E.G. Stibbs, the Company in accordance with local and revelant practice, custom and usage forwarded to the Union counter proposals and changes.

8. Pursuant to Articles 1 and 2 of the Agreement and in accordance with local and relevant practice, custom and usage and consequent upon the exchange of proposals and changes aforesaid, the Union and the Company through their respective representatives commenced negotiations on the 6th day of April, 1965 at the Community Centre, Beaumont Hill, Pointe-a-Pierre. These negotiations continued from week to week down to the 27th July, 1965 when the Company broke them off, by letter of the 27th July, 1965 under the hand of the said E.G. Stibbs to the said Cyril Gonzales. We do not accept the facts or reasons therein set out as being entirely accurate.

9. The Industrial Stabilisation Act, 1965 (hereinafter referred to as "the Act") mentioned in the said letter of the 27th July, 1965 was enacted on the 20th day of March, 1965.

10. In purported exercise of their rights or duties under the Act the Company -

(a) by letter of the 25th March, 1965 notified the Minister of Labour of their intention to enter into an Industrial Agreement with the Union;

(b) by letter of the 27th July, 1965 reported that an alleged trade dispute existed or was apprehended in connection with the said negotiations.

True copies of the letters mentioned in paragraphs 6, 7, 8 and 10 are now produced and shown to us in a bundle marked "C" and are exhibited hereto.

11. In purported exercise of his rights or duties under the Act the Minister of Labour -

(a) on the 24th April, 1965 issued to the Company and the Union a statement as provided for by Section 19 of the Act;

(b) by referral of the 29th July, 1965 referred the alleged trade dispute so reported by the Company to the

In the High Court

No. 2

Affidavit of Appellants 30th August 1965 (Contd.)

Industrial Court purported established by Section 8 of the Act.

12. In purported exercise of rights or duties under the Act -

(a) The Acting Registrar of the Industrial Court by Summons dated the 30th July, 1965 required the attendance of the Union on the 4th August, 1965 before the Industrial Court for the purpose therein set forth;

(b) Their Honours Isaac Hyatali, Harold Hutson and O'Neil Lewis sitting as members of the Industrial Court, notwithstanding objection to the jurisdiction taken by Counsel for and on behalf of the Union, Bernard Primus Esq. made directions in terms of the paper-writing, which, with copies of the statement, referral and summons above mentioned, is now produced and shown to us in a bundle marked "D" and exhibited hereto.

13. In or about the early part of 1960 we and our fellow workers had reached the point where the then existing collective agreement made for us with the Company by the Union was expiring. The Company and the Union conducted negotiations freely but after several months they failed to reach agreement. We and our fellow workers were dissatisfied with the long delay in concluding satisfactory terms for the new agreement and we all urged the then leadership of the Union to call a strike. In response to this pressure the Union called upon us to withdraw our labour which, after due notice, we did. The outcome was a satisfactory agreement under which we served for the following two years.

14. In or about the latter part of 1962 the question of renewal again arose. The Union made the usual elaborate enquiries into conditions of work in the various categories in the industry, the cost of living, the development of the industry and comparative wage levels and movements in the territory

and in the world, and in to relevant matters. These enquiries involved as usual, inter alia, the participation of ourselves with many other employees of the Company and rank and file workers in the industry in the work of fact finding committees as a basis for analysis and assessment with a view to formulating our final proposals and changes for submission to the Company.

15. Armed with this material the Union freely negotiated with the Company and after protracted negotiations a satisfactory collective agreement was concluded without recourse to strike action or the threat of strike action.

16. But for the enactment of the Act, on this occasion similarly the Union on the one hand would have been able freely to conclude with the Company a new collective agreement favourable and acceptable to us and our fellow workers without the statutory intervention of the Minister of Labour and the Industrial Court; or, on the other hand, the leaders of the Union or we ourselves in concert with other employees of the Company and other workers in the Industry would have been free, without fear or threat of being charged and convicted of criminal offences punishable under the Act, to threaten or take strike action or other lawful and customary measures to bring about such an agreement.

17. We are advised and verily believe that were it not for the Act such activities, as are contemplated in the foregoing paragraph could have been undertaken, would have been lawful by virtue of the laws of our Country and that they stem from rights guaranteed by the Constitution of our Country and recognised by International Conventions and Charters.

18. We are advised and verily believe that the Act is in several respect as mentioned in the Notice of Motion herein, in conflict with and a violation of the human rights and fundamental freedoms and the protections therefore guaranteed to us by Sections 1, 2, 3, 4, 5 and 7 of the Constitution of Trinidad and Tobago and we fear and allege, having regard to the foregoing,

In the High Court

No. 2

Affidavit of Appellants 30th August 1965 (Contd.)

that certain provisions of the said sections have been, are being and are likely to be contravened in relation to us by reason of the enactment of the Act.

19. Accordingly we respectfully pray that this Honourable Court will be pleased to grant the relief set forth in the Notice of Motion herein.

Sworn to by the within named LEARIE COLLYMORE and JOHN ABRAHAM at the Registry of the Supreme Court of Judicature at the Red House in the City of Port of Spain, this 30th day of August, 1965.

Sgd. Learie Collymore
Sgd. John Abraham

Before me,

Sgd: W.E. Celestain.

Commissioner of Affidavits.

This Affidavit is filed on behalf of the Applicants herein.

No. 3

Judge's Notes on Motion 7th, 8th, 9th and 10th November 1965

NO. 3

JUDGE'S NOTES ON MOTION

(Title as No. 1)

Platts-Mills, Q.C. (Primus with him) for applicants.
Wharton, Q.C. for Texaco Trinidad Inc.
Richards, Q.C. for the Attorney General (Hassanali with him)
Warner for Minister of Labour.

Court asks for argument on whether Texaco Trinidad Inc and the Minister of Labour are properly joined as parties in this Application.

7th November 1965

PLATTS-MILLS, Q.C. Texaco Inc. and Minister of Labour are brought in for comity and

courtesy. No one can apply under section 6 unless he fears his right may be infringed by someone. Here we challenge not only infringement by legislation but by employees as well. We would be happy to excuse them.

WHARTON, Q.C. It is not sufficient to say applicant acted out of comity. No grounds for joining Texaco Co.

Minister of Labour does not object to being joined. Even though there appears to be no necessity.

Court rules they should be discharged with costs to be taxed and paid by Applicants.

PLATTS-MILLS, Q.C.:

Motion is proper procedure. (Richards says not taking any objections but not necessarily agreeing)

3/64 - Pierre v Mbanefo

30 Halsbury, 3rd Edition P. 305.

Purpose of motion is to obtain declaration that Industrial Stabilisation Act invalid and unconstitutional. In particular, on those fundamentals which guarantee human liberties. These are enshrined in this Constitution.

There are in the Constitution, provisions for altering it. (Section 38).

Main complaint is that the right of freedom of association is taken away by I.S.A. Constitution guarantees that no act of Parliament may be passed which infringes Constitution. Act infringes by denying (1) Right to bargain freely and (2) the right to strike in support of that right. Without which no form of free negotiation can exist.

There are a number of other complaints set out in Notice of Motion.

If there were only one departure from

In the High Court

No. 3

Judge's Notes on Motion 7th, 8th, 9th and 10th November 1965

7th November 1965 (Contd.)

Constitution, it may be said that by exercising that provision, Act will be all right. But in this case there are too many offending provisions and this cannot be purged.

Affidavit show applicants of long standing in Oil Industry. Both employed with Texaco Inc. for years and members of Union.

Legislation here owes priority to Courts. Have deliberately circumscribed power of Parliament.

Section 3 of Act clearly takes away right.

Pillai v Mudanayake 2 A.E.R. (1955) p.833.

One must look at Act and Constitution as a whole and see real character of it.

Acts controlling association do not necessarily infringe rights. But this Act rules out any question of a strike by workers.

Refers to Sec. 4 (1) of Constitution. If there was some provision of the then existing law which denied right it must be taken to be brought into line by Constitution. Sub Sec 5 defines "existing laws". Section 105 further includes "unwritten law". Refers Act 12 of 1962 Sec. 12.

The recitals at page 11 are written in the Constitution. Constitution puts burden on people. This must be looked at to see true character and meaning of Constitution.

Refers to Section 1 of Constitution.

Under subsection (b) "Individual" will include an association. Bill of Rights speaks of Human Being.

Sub-Sec. (d) preserves equality of treatment for all, but the I.S.A. provides different penalties for employers and employees.

Sub-sec. (j) is also infringed; also sub-sec. (d).

Section 2 of Constitution must also apply to corporate groups as well as individuals.

Section 2 (iii) is infringed because members of the Industrial Court may be deposed at whim of Governor General and it cannot be described as "appropriate" authority.

Sub-sec (f) is infringed because Act allows authority to presume parties guilty. Sub-sec (h) is infringed because Act denies right of this Court to ensure tribunals should keep to their proper tasks.

Sec. 3 cannot co-exist with para 4 of the ordinance.

Sec. 6 is infringed by I.S.A.

In defence section of Act, meaning of "Strikes" is what is in first 14 words. What comes after that is contradictory and unnecessary. If two men decided to take a day off, they would fall into category of strikers. This would render whole Act unbalanced as they would incur tremendous penalties.

Section 3 of Act purports to ensure right of bargaining but part IV takes it away. Last 4 lines of that section make nonsense.

Section 5 and 6 of Act established Industrial Court. This is not part of Supreme Court. It is an inferior Court.

The president of Court is judge and so independant but other members are not. They are there at pleasure of Crown. Sub-sec 6 says they are "full time" but this does not mean permanent. These sections are departure from sec. 2 of Constitution. They deprive right to appropriate Court. Since the members are not independant they offend 2 (e) and 2 (f). These two sections do not mean to refer only to criminal cases. Ordinary meaning of section 2 is that all tribunals shall be independant.

In the High Court

No. 3

Judge's Notes on Motion 7th, 8th, 9th and 10th November 1965

7th November 1965 (Contd.)

Sec. 2 (h) gives right to proper procedure. The Act takes this away. Section 8 of Act protects Court from such orders as Prohibition or Mandamus. But these were never available. These writs cannot go against judgments but only against men or associations. This section takes away power given to High Court under sec. 6 of Constitution.

Will now go to section (f) of Motion.

Far from ensuing right of free negotiation part IV of Act takes it away. Section 18 means that if a workman is working on certain terms and Union decides on behalf of one man to raise only one point it has to go through whole process of conciliation and sec. 19 is not sense. Sub-sec. 2 denies right of free negotiation. This refers back to sec. 9 of Act. This Section instructs Court as to what considerations shall be taken into account. The workman is threatened under 19 (2) of Act that he may be taken before the Court which will give effect to those considerations. The Workman should not have to consider such matters.

Section 21 implies agreement must be in writing. Any trivial agreement must be drawn up in writing in accordance with sec. 18 and executed. The Minister may object and send it to Court which is bound by the considerations referred to. All of this means that workmen cannot bargain freely. No oral agreement can reach Court or be registered.

Penalties provided under sec. 51 and in conflict with sec. 11 (4) (b).

Part VI provides different penalties for employers from those which may be imposed on workmen. The provision for cancelling the registration of a Trade Union is a cruel punishment. It may be Trade Union's first offence. It contrasts with immunity of employer from such penalty.

These are all in conflict with the constitution at sec. 2 (b) and 1 (e).

Sec. 37 may apply to a large number of very junior and casual workers.

These two parts are departure from freedom of association at sec. 1 (j). Right of association includes right to strike and to free bargain.

Crofter Tweed Co. v Veitch 1 All E.R. 1942 p. 142.

7th November 1965 (Contd.)

No human freedom can survive unless right of association be protected. If the bargaining power and right to strike are removed, the worker loses his right to free association and so Constitution is infringed. I admit that it is not said anywhere that you may go on strike.

Faver v Close (1869) 4 Q.B. p. 602

Gozney v Bristol Trade Soc. (1909) 1 K.B. p.922

Russel v Amalgamated Society of Carpenters and Joiners (1910) 1 K.B. p.506, 525.

Queen v Duff 5 Cox Cr. C. (1851) p.404

Larkin v Long (1915) A.C. p.814, 829
(1915) A.E.R. (Reprint) 469.

Reynolds v Shipping Fed. Ltd. (1924) 1 Ch. p.28.

8th November 1965

8th November 1965

Appearances as before

Platts-Mills mentions reports in newspapers.

Court says matter is subjudice and should not be discussed.

.....

Minshall's Constitutional Law
Citrine on Trade Union's Law 5.8.77
7 Halsbury Edn. P. 198 195 to 196
Bridges Constitutional Law 6th Edn. p.390
Hood Phillips Constitutional Law 3rd. Edn. p. 477 and 484.

In the High Court

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Judge's Notes on Motion 7th, 8th, 9th and 10th November 1965

8th November 1965 (Contd.)

Labour Relations and Law by Kahn - Freund p. 15, p.45, 54, 78, 127, 136.

Reverts back to Motion - at item (d) - submits.

Secs. 10 and 11 are contradictory. It is nonsensical that it should be mandatory that Attorney General should present argument. There is no harm in his getting the evidence as prescribed under 10 (2).

These sections stand in the face of all procedural rules. They conflict with secs. 2 (b) (e) and (h) of Constitution.

Item (g) Refers to sec. 41 (3). This creates a liability on the Union from which it cannot exculpate itself. One breach by one member may involve whole Union. The discretion may be given by one member against votes of all the rest. It conflicts with 3 (e) of Constitution, also with the words of Order.

Item (h) Sec. 52 (1). This puts a burden on director to prove that the Act complained of was done without his knowledge even if it was in his sphere with which he had no connection. This is a distortion of the normal burden of proof. This is in conflict with sec. 2 (f) of Constitution.

Asks leave to include sec. 51. Richards objects this is not included in motion.

Court says will give leave to include it under the omnibus objection in item (i).

Sec. 51 may include judges or a minister. Anyone who departs in slightest respect will be guilty of a crime.

The Act contravenes the terms of sec. 5 of the Constitution. This is set out at (k) of motion.

Platts-Mills asks leave to refer to Text books dealing with the I.L.O. and to a pamphlet issued by International Confederation of free trade unionists. - Richards objects.

Court rules it should not give consideration to the documents since they may not be authoritative and are not binding.

9th November, 1965

Appearances as before.

Platts-Mills, Q.C.

The effect of the Act is to deny to certain persons the right to strike at all. Secs. 3 and 16 refer only to Unions and Organisations. Individual rights are removed.

8th November 1965 (Contd.)

At Common Law "rights" and "freedoms" are the same. Freedom is objective definition of area. Right is objective definition of intention.

9th November 1965

Historically, the Common Law right to withhold labour was protected by statute. Through the Union he may bargain collectively.

Right to strike, of association and of collective bargaining are relicts of common law.

Refers to Broom's Legal Maximum 10th edn. p. 309.

RICHARDS

O. 15 R. 17 - O. 24 R. 5

Declaratory Order does not issue merely on theoretical question. Rocisin v Attorney General (1918) 34 T.L.R.417.

All applications under sec. 6 of Constitution are intended to secure right to which applicant is entitled. He must show that his right is being infringed. The applicant in this case does not show any such. Customs and Excise Commissioners v. E. Kiel & & Co. Ltd. (1951) 1 K.B. 472.

Sec. 16 of the Act is not mandatory. It may be reported to the Minister.

In the High Court

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Judge's Notes on Motion 7th, 8th, 9th and 10th November 1965

9th November 1965 (Contd.)

The Act does not prevent strikes. It only says that there must be no strikes while these steps are being taken. Act only refers to certain strikes as defined. The type of strikes intended to compel an employee.

Zaimir (p.185 - 186).

The requirements for a Declaratory Order have not been complied with. It has not been shown that any right of the applicants has been infringed.

The rights enshrined in Constitution do not relate to artificial bodies. Principle of Ultra Vires cannot apply.

Charran Singh v Charran Singh

Sec. 5 of Act merely establishes a Court - Sec. 6 provides its members. This is not to be in conflict with sec. 2 (e) of Constitution. Any prosecution under Act will be before a Court of Summary Jurisdiction.

Nowhere in the Act is there any infringement of Constitution.

Even if secs. 10 and 11 are mutually contradictory, that would not be ground of complaint. The purpose of sec. 10 is to protect confidential information.

Only rights prescribed in the Constitution are protected. There is no "right to strike". It cannot be read into the "right to associate". The Act does not take any one's right to associate but only limits the area of activity.

The law does not give a right to strike. The Statutes merely say that one who strikes shall have certain protection.

The Act does not prohibit strikes - Even if it did it would not infringe a right.

The Court was set up as an alternative to striking. The Act does not take away their right to negotiate. Sec. 23 preserves that right all the way.

Even if the Court finds any part of Act conflicts with Constitution it should consider the interests of public have not been served. The Court would consider them reasonable and justifiable.

Preamble to Constitution cannot be called in aid to enlarge on Constitution.

Regina v Sharpe

10th November, 1965

9th November 1965 (Contd.)

Appearances as before.

10th November 1965

Whole basis for an application like this is that some section must have been contravened in relation to applicant. Court is not required to make a declaration at large. The contravention complained of here is an Act of Parliament. The order must follow the rules which apply to declaratory orders.

Applicant must set out facts showing real interference. Not based on opinion. 0.38 R.3 Ann. Practice 1965; p.922 Para 3.

Guarantee Trust Co. v. Hannay (1915) 2 K.B. 536 - (1916) 21. R.

Lloyd's L.L. vol. 78 p. 507.

If applicant does not show that right has been actually infringed the Court will not make a declaration.

Court cannot grant relief not claimed. The only relief here claimed is for Act to be declared "ultra vires".

Re: Secs. 5 & 6

The words "appropriate tribunal" in Constitution mean properly established Court which the Industrial Court is. Independence of that Court is established in Trinidad and Tobago Gazette 28.10.65. This sets out for public information the terms under which the members were appointed. There

In the High Court

No. 3

Judge's Notes on Motion 7th, 8th, 9th and 10th November 1965

10th November 1965 (Contd.)

must be a presumption of propriety.

In most of the charges arising under Act person will be charged in Summary Court. Has right of appeal.

Sec. 8. The section does not deny right of those writs. The meaning of the section is that the writs cannot be used to affect a judgment after the Court has decided.

Sec. 10: A person charged under this section will be brought before Summary Court.

Sec. 34: The de-registration of a Trade Union is not a cruel punishment. The section in Constitution only applies to a person and not to an artificial entity.

GENERAL: A Court would only make an order if there was so many sections in Act in conflict with Constitution that the whole thing became bad. If only a few sections, court will not make order.

Court must take into account necessity of a Parliament to Legislate in interest of the public.

PLATTS-MILLS, Q.C. replies:

The terms of appointment of the members of the Court apply to the present incumbent. It is still open to legislature in the future to terminate applications at its wish.

It is not correct that a right must be spelt out in full in Constitution.

Refers - O.25 R. 5 Ann.Pract. 1962 gives us right to ask for declaration. Also Sec. 6 of the Constitution.

Refer Zainir p. 5 53 185 - 316.

Applicants have an interest as the Union to which they belong has been impeded.

Bolting v Councillors (1963) 1 A.E.R. p.725.

Sec 16 (4) coupled with Sec. 34 make it clear that the Act prevents strikes.

Refer Interpretation Act "Individual" Sec. 1 (a) to (d) refer to "right of individual" but these words are omitted in other sections. Therefore 1 (j) must refer to Trade Unions.

To make a Trade Union liable for action of member is not the same as making proprietor of a quarry house liable for servant because there is no rational connection.

No. 3

Judge's Notes on Motion 7th, 8th, 9th and 10th November 1965

10th November 1965 (Contd.)

NO. 4

JUDGMENT

No. 4

Judgment 11th December 1965

(Title as No. 1)

This is an application by way of motion for an order declaring that the Industrial Stabilisation Act, 1965 is "ultra vires" the Constitution of Trinidad and Tobago and is null and void and of no effect. The applicants based their right to make this application on section 6(1) of the Constitution which reads as follows:

> "6(1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of the foregoing sections or section 7 of this Constitution has been, is being, or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress."

The Attorney General contended that the provisions under section 6 of the Constitution are intended to secure rights to which an individual is entitled and that since the applicants here had failed to show in their application the infringement of any of their rights they may not invoke that section to seek a declaration. Further that the Court

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Judgment 11th December 1965 (Contd.)

cannot be asked to make a declaration at large, and that, in any event the application should not be made by way of Motion.

In support of their application the Applicants have filed an affidavit in which they set out their relationship to the Oilfield Workers' Trade Union and the ways in which they allege that the right of the Union is being infringed. I agree with the submission that in order to move the Court the applicants must show an interference with their rights or, at least a real fear thereof but that I am of the view that the applicants have succeeded in doing so.

The affidavit refers to a dispute which exists between the Oilfield Workers' Trade Union and Texaco Trinidad Inc. and states that the matter has been referred to the Minister of Labour in accordance with the provisions of the Industrial Stabilisation Act. If it were a fact that the Act prohibits a worker from striking then the applicants would be deprived through this procedure of what they claim to be a right, and consequently would be adversly affected. I think they have shown a sufficient interest to entitle them to make an application. The next question which arises from the submissions is whether they can ask merely for a declaratory judgment without any additional relief. The power of the Court to make a declaration whether there be a cause of action or not is derived from O. 26. R. 5 of R.S.C. (T) which reads as follows:

> "No action or proceeding shall be opened to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed, or not."

The rubric to this rule indicates that the discretionary power of the Court is very wide and refers to the Judgment of Lord Steindale M.R. in Harrison v Radcliffe U.D.C. (1922) 2 Ch. 507. he defined the power in these terms:

"In my opinion, under O. 25, R. 5 (which is the same as our O. 26, R. 5 of R.S.C. /T/); the power of the Court to make a declaration where it is a question of defining the rights of the parties is almost unlimited; I might say only limited by its own discretion. The discretion should, of course, be exercise judicially, but it seems to me that the discretion is very wide."

The principles on which the discretion will be exercised were also discussed in Zamir's The Declaratory Judgment at p.53.

"Indeed, in (such) circumstances the Courts tend to make declarations for the guidance of the parties. There are many cases to support this proposition. Here it will be sufficient to refer to one case - Ruslip-Northwood Urban District Council v Lee. There the Plaintiff local authority claimed a declaration that certain structures erected by the defendants on their land were 'temporary buildings' within the meaning of a certain statute; which gave the local authority power to pull down or remove such buildings. The defendants argued that the plaintiffs could not get a declaration where there was no dispute. The Court acceded to this proposition. "In my view" said Scrutton L.J. "all the Court should look at is whether there is a real dispute between the parties on the point raised." And he then went on to examine whether such a dispute did exist. "What is the dispute in this case?" he asked.

"Obviously the dispute was: are these temporary buildings or not? If they were temporary buildings erected without a plan and permission the local authority have power to come and pull them down. Equally obviously it is desirable that there should not be anything in the way of a risk of a fight

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Judgment 11th December 1965 (Contd.)

or a riot, through the local authorities proceeding to pull down the buildings before it has been determined whether they are or are not temporary buildings". Accordingly, the Court held it to be a proper case for a declaration. The important fact of the case was that the plaintiffs sought the ruling of the Court on a definite, concrete and existing dispute. Slesser L.J. said "the rule of conduct which was to be guided was that the local authority wished to know and very properly wished to know, whether they had or had not got statutory power to pull down these particular buildings". The fact that the declaration was claimed before the statutory powers were actually exercised was clearly not a consideration weighing against the grant of that declaration".

Later the question was reviewed in the case of Arnos Vale Ltd. v. Kitson W.I.R. Vol. 5 p. 532 when the long list of judicial decisions was considered and the principles followed. In my judgment the instant case is a proper one in which a declaration may be sought as to whether a right exists or not.

The only remaining question is whether the procedure by way of Motion is the correct method. I hold that it is since the Constitution has provided that on an application may be made to the High Court but has not provided any special procedure for doing so. See In Re Meister, Lucius and Bruning Limited (1914) W.N.390.

On a consideration of the Motion it is seen that the applicants sought a declaration that the industrial Stabilisation Act was ultra vires the Constitution in that, generally it denied individuals their right to strike and, more particularly, that it conflicted with the Constitution in many of its provisions. The two main issues to be decided, therefore, are (1) is there established in the Constitution of Trinidad and Tobago or

anywhere a right to strike, and (2) if so has that right been infringed by the provisions of the Industrial Stabilisation Act.

The history of the legality and otherwise of strikes and the growth of the Trade Union Movement is long and interesting and although it is not necessary to go into it in detail for the purpose of this judgment, a short outline is desirable for better understanding of the problem.

From early in the fourteenth century legislation was introduced to fix wages, and to impose penalties for a refusal to work for those wages. This policy of state regulation of wages was continued and extended right down to the 17th century when two statutes were passed making it apply to all workmen. Such statutory wage fixing and the compulsory payment and acceptance of wages necessarily involved the prohibition of agreements or combinations to alter conditions of labour, and it is not surprising to note that from an early date there were statutes to this effect. Notable among these were the Combination Act of 1799 and 1800 the latter of which made illegal all combinations of workmen to regulate the conditions of their work, including contracts between employer and employees for advancing or reducing wages. This situation was to some extent improved by the Combination Laws Repeal Acts of 1824 and 1825 which removed all criminal liability for conspiracy for combining to alter wages. The Act of 1825 did not expressly legalise strikes but it was recognised in some cases following that the exercise of right to combine for the purpose of raising wages necessarily involved the right to withhold labour for that purpose.

The Trade Dispute and Trade Union Act of 1927 following the National Strike of 1926 had a great impact of this line of argument for it declared illegal any strike which (1) had an object other than or in addition to the furtherance of a trade dispute or (2) was designed or calculated to coerce the Government.

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Judgment 11th December 1965 (Contd.)

There was much resentment to this bill, however, and it was eventually repealed by the Trade Disputes and Trade Union Act, 1946.

Meanwhile other legislation and certain telling decisions of the Courts had been adding to the potential of unions and the Movement grew steadily into a generally recognised force increasing the power of collective bargaining. To the extent that, although it is nowhere stated specifically that any individual has a right to strike, such action is not now unlawful and, provided it adheres to certain requirements, is protected by the absence of prohibitions.

But the protection there afforded is a negative one and no right is positively established. What emerges clearly from a consideration of the authorities and of the legislation enacted down through the years is that there is no right to strike positively and expressly established by any statute and it certainly did not exist at common law. It can, therefore, be the entitlement of an individual only if it is enshrined in a constitution. Nowhere in the Constitution of Trinidad and Tobago is a freedom to strike included among the liberties preserved although there is prescribed the freedom of association.

It was contended on behalf of the applicants that the right to strike must follow the right to associate because "no human freedom can survive unless the right to associate is protected." It was also submitted that if the bargaining power and right to strike are removed the worker loses his right to free association. I find myself unable to agree with this proposition. The strength of negotiation lies in collective bargaining which is indisputably preserved for the individual by the freedom to associate enshrined in the Constitution and the exercise of a strike is not a necessary concomitant. The need for a sharp distinction between the mere "freedom" to strike and the "right" to strike is set out very clearly

in the Labour Relations and the Law at p.15 where the learned author Professor Kahn Freund puts it this way:

> "To appreciate the significance of the Constitutions especially in France and Italy, one must bear in mind the Continental tradition of the strike as a political and economic weapon the use of which belongs to the fundamental rights of the citizen. Though not identical with the right of association, it may be its emanation, but, as happened in France and in Italy, it may be separately guaranteed in what corresponds to a Bill of Rights. This political or constitutional tradition accounts partly for the sharp jurisprudential distinction between the mere 'freedom to strike' and the 'right to strike' which is so important, especially in France. Freedom to strike is no more than the absence of prohibitions, but a right to strike is guaranteed against limitations by a law of contract, except where the means employed or the aims pursued by the strikers take the strike out of the scope of the constitutional guarantee. No corresponding right to lock-out exists, the right to strike must be understood as a privilege deliberately bestowed on the economically weaker party".

The same principle is put in slightly different terms in the 3rd Edition of Hood Phillip's Constitutional and Administrative Law at p.484.

> "A Strike may be defined as the cessation of work by a combination of employed persons, in consequence of a dispute, done as a means of inducing their employer or any employed persons to accept or refuse terms of employment. The so called 'right to strike' is merely the liberty of a number of persons in concert to do what such one may do individually, i.e. to withdraw their labour, provided that it is voluntary and neither the object nor the means used are unlawful at common law or by statute."

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Judgment 11th December 1965 (Contd.)

In the view that I take of things, therefore there is no prescribed right in the applicants to strike and consequently nothing which could be infringed.

But I, nevertheless, turn now to a consideration of whether the Industrial Stabilisation Act infringes the Constitution and takes away the power to strike if such had been established. It was submitted on behalf of the applicants that sec. 16 (1) of the Industrial Stabilisation Act must be regarded in conjunction with sec. 34 and that the combined effect of these two sections is to make it illegal for anyone to strike. And further that this Act provides cruel penalties for so doing.

It will be necessary therefore, to set out these sections in full so that the real meaning of them can be studied. Sec. 16 (1) reads as follows:

"Subject to this section, if any trade disputes exists or is apprehended in any industry or section of any industry, that dispute, if not otherwise determined, may be reported to the Minister by -

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

(b) An organisation of employers where the dispute is between 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

(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."

and section 34 (1) runs:

> "An employer shall not declare or take part in a lock-out and the 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 the provisions of this Act; and
>
> (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
>
> (c) the Minister has, within forty-eight hours of the decision to go on strike being given fourteen days notice in writing by the trade union or other organisation of its intention to call a strike or 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."

As I see it, section 16 merely provides machinery for employers and employees to bring a dispute to the attention of the Minister for him either to settle it or refer it to the Court; while section 34 prohibits employers and employees from striking without putting the machinery into motion and while it is in motion. There appears to be nothing which prohibits either side from resorting to a strike after this procedure has been followed, and the effect of these sections is to provide the means for arriving at agreement between the parties before resorting to the necessity for a strike. In short I hold that the Act does not prohibit strikes.

In addition to the general submissions that the Act is ultra vires it is contended that the Act conflicted with the Constitution in

In the High Court

No. 4

Judgment 11th December 1965 (Contd.)

many of its provisions. These are as follows:

> "That section 5 of the Act conflicts with section 2(c) (iii), 2(e), 2(f) and 2(h) of the Court."

I hold that the Court constituted under the Act is an appropriate judicial authority within the meaning of the provisions of the Constitution and that nothing in the Act deprives any individual of the rights prescribed in the sections of the Constitution referred to.

> "That section 8(2)(b) of the Act is in conflict with section 2(h) and section 6(2) of the Constitution;"

in that rights of the individual to the protection afforded by the writ of mandamus and prohibition are denied. As I understand the section of the Act it is only the judgment of the Court which shall not be subject to those writs. The purpose of the section is not clear but I cannot agree that any rights are curtailed by it.

> "That sections 10 and 11 are mutually contradictory and in conflict with section 2(b) (e) and (h) of the Constitution;"

Even if they were mutually contradictory I do not think it would be for this Court to hear an application for a declaration to that effect. In my view the section appears to confer rather too wide powers on the Attorney General in respect of the matters contained therein but I cannot agree that it infringes any of the basic rights referred to:

> "That sections 34 (3) (36) and 37 (3) of the Act are in conflict with section 2(b) of the Constitution."

It seems to me that this contention must stem from a misconception of the meaning and purpose of the section in the

Constitution which is clearly to preserve the liberty and freedom of an individual and to ensure that no harsh or inordinate suffering will be inflicted on him. In any event the penalties prescribed are maximum penalties and the Court has a discretion as to what should be imposed in particular circumstances.

> "That section 41 (3) of the Act is in conflict with section 2(e) and (f) of the Constitution;"

In my view this is no more than the vicarious liability which is created in many Statutes and does not infringe any rights.

> "That section 52(1) and (2) of the Act is in conflict with section 2 (f) of the Constitution."

The answer is the same as above.

> "That Part IV of the Act deprives the workman of the right of Association and collective bargaining by requiring him to comply with too many details."

I do not agree. The section only takes effect after there is a dispute and after there has been ample time for free and collective bargaining.

In the result I hold, for the reasons stated, that the application should be dismissed with costs to be taxed and paid by the applicants to the respondents.

11th December, 1965.

Maurice A. Corbin.
Judge.

In the High Court

No. 5

Formal Order 11th December, 1965.

NO. 5

FORMAL ORDER

(Title as No.1)

Dated the 11th day of December, 1965.

Entered the 11th day of December, 1965

Before the Honourable Mr. Justice Corbin.

UPON MOTION made unto this Court by Counsel for the applicants for an order for redress in accordance with section 6 of the Constitution of Trinidad and Tobago.

And upon hearing Counsel for the respondent, the Attorney General and upon reading the notice of motion dated the 30th August, 1965, the affidavit of Learie Collymore and John Abraham sworn to the 30th day of August, 1965 and the exhibits therein referred to, all filed herein

THIS COURT DOTH ORDER

that the said motion do stand dismissed out of this Court with costs to be taxed and paid by the applicants to the respondent, the Attorney General

AND IT IS ORDERED

that execution herein be stayed for a period of six weeks from the date hereof.

Ag. Deputy-Registrar.

In the Court of Appeal

No. 6

Notice of Appeal 20th January 1966

NO. 6

NOTICE OF APPEAL

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL.

No. 3 of 1966 Civil Action No.1678 of 1965.

IN THE MATTER of the Constitution of Trinidad and Tobago being the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council, 1962.

- and -

IN THE MATTER of the Application of LEARIE COLLYMORE and JOHN ABRAHAM (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.

NOTICE OF APPEAL

TAKE NOTICE that the Applicants-Appellants being dissatisfied with the decision more particularly stated in paragraph 2 hereof of the High Court of Justice contained in the Judgment of the Honourable Mr. Justice Maurice Corbin dated the 11th day of December, 1965 do appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

In the Court of Appeal

No. 6

Notice of Appeal 20th January 1966 (Contd.)

AND the applicants-appellants further state that the names and addresses including their own of the persons directly affected by the appeal are those set out in paragraph 5.

2. The applicants-appellants complain of so much of the Judgment as ordered that the Application of the applicants be dismissed with costs to be taxed and paid by the applicants to the respondents.

3. GROUNDS OF APPEAL

(1) The decision of the learned Judge is against the weight of evidence;

(2) The learned Judge erred in law in dismissing the application;

(3) The learned Judge misdirected himself on the issues raised in the said application;

(4) The learned judge failed to exercise his discretion properly or at all or wrongly exercised the same in refusing the order sought and/or in not making other appropriate order in favour of the applicants; and

(5) In particular:-

a. That the learned Judge was wrong in law in deciding that the Industrial Stabilisation Act does not interfere with and invalidate the right of collective bargaining and free negotiation.

b. That the learned Judge was wrong in law in deciding that the applicants did not have a right to strike at Common Law.

c. That the learned Judge was wrong in law in deciding

that Industrial Stabilisation Act does 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 right of free association and collective bargaining.

e. That the learned Judge should have granted the application.

f. That there are numerous points in the Industrial Stabilisation Act as set out in the application herein and in the Judgment herein at which that Act infringes the Constitution.

4. That the said Judgment to the extent complained off in paragraph 2 hereof be set aside and that the application be granted and a declaration be made in the terms thereof with costs in the Court below to be taxed or that a new hearing be held between the parties and for an order that the respondents do pay the costs of this appeal.

5. PERSONS DIRECTLY AFFECTED BY THE APPEAL.

The Attorney General	Attorney General's Office, Red House, Port of Spain.
Learie Collymore	White City, Forest Reserve.
John Abraham	16, Wooding Street, San Fernando.

Dated this 20th day of January, 1966.

Lennox Pierre
Solicitor and Agent for J.B. Kelshall and Company, Solicitors for the Applicants-appellants of 9a Harris Promenade, San Fernando (whose address for service in Port of Spain is c/o Mr. Nath Persad Sharma, 80, Queen Street, Port of Spain).

In the Court of Appeal

No. 6

Notice of Appeal 20th January 1966 (Contd.)

To: The Registrar of the Supreme Court of Judicature.

and The Crown Solicitor,
Crown Solicitor's Office,
7, St. Vincent Street,
Port of Spain.

NO. 7

JUDGMENTS

In the Court of Appeal

No. 7

Judgments 27th January 1967

IN THE COURT OF APPEAL

High Court
Civ. App. No.3/1966

In re:

THE CONSTITUTION OF TRINIDAD AND TOBAGO being the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council, 1962

And In re:

THE APPLICATION OF LEARIE COLLYMORE and JOHN ABRAHAM (persons alleging that certain provisions of ss. 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 s.6 of the Constitution.

And On Appeal

Between

LEARIE COLLYMORE and JOHN ABRAHAM
Appellants

-and-

THE ATTORNEY GENERAL Respondent

Coram: Sir Hugh Wooding, C.J.
C.E.G. Phillips, J.A.
H. Aubrey Fraser, J.A.

January 27, 1967.

A.J. Alexander for the appellants.

The Attorney General (G. Richards, Q.C.) and the Solicitor General, Ag. (G.des Iles) for the respondent.

J U D G M E N T

(1) Sir Hugh Wooding C.J.

(1) Sir Hugh Wooding C.J.

Section 36 of the Constitution provides that

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Judgments 27th January 1967

(1) Sir Hugh Wooding C.J. (Contd.)

"subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Trinidad and Tobago". In my judgment, the section means what it says. And what it says, and says very clearly, is that the power and authority of Parliament to make laws are subject to its provisions. Parliament may therefore be sovereign within the limits thereby set, but if and whenever it should seek to make any law such as the Constitution forbids it will be acting 'ultra vires'. The Constitution also makes express provision in and by its s.6 for the enforcement of the prohibitions prescribed by its Chapter I. The chapter, hereafter referred to as such, comprises the first eight sections of the Constitution and deals with "The Recognition and Protection of Human Rights and Fundamental Freedoms". And it is under the facility of s.6 that the appellants have claimed and are in my opinion entitled to the right to proceed.

The appellants moved for an order declaring that the Industrial Stabilisation Act, 1965, to which I shall hereafter refer as the Act, is 'ultra vires' the Constitution and is therefore null and void and of no effect. In the main, they founded their claim for relief on the ground that the Act falls within the mischief against which s.2 of the chapter provides. That section prescribes that, subject to ss. 3, 4 and 5 none of which comes into question here,

> "no law shall abrogate, abridge or infringe or authorise the abrogation abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared and in particular no Act of Parliament shall"

authorise, effect, impose or deprive in any of the respects enumerated and set forth in a number of paragraphs lettered (a) to (h). In the course of his submissions the Attorney General expressed the view that this section is not an act of

limitation but rather a rule of construction. I disagree profoundly. He would have us regard the section as having the same effect as s.2 of the Canadian Bill of Rights which was enacted in 1960 and which is known and accepted to be the source of the chapter. But that section reads as follows:

> "Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorise the abrogation, abridgment or infringement of any of the rights or freedoms herein recognised and declared, and in particular, no law of Canada shall be construed or applied so as to"

authorise, impose or deprive as in the said section expressly provided. Manifestly, the Canadian enactment is fundamentally different. It is not entrenched as a part of a constitution but is merely enacted as a statute of Parliament. Much more to the point, it is in terms interpretative and not prohibitive. In my opinion, the change from the language of the source was deliberate and purposive. I am accordingly in no doubt that our Supreme Court has been constituted, and is, the guardian of the Constitution, so it is not only within its competence but also its right and duty to make binding declarations, if and whenever warranted, that an enactment passed by Parliament is 'ultra vires' and therefore void and of no effect because it abrogates, abridges or infringes or authorises the abrogation, abridgment or infringement of one or more of the rights and freedoms recognised and declared by s.1 of the chapter. I so hold.

I turn then to the principal issue. The appellants' main contention was that the Act abrogates or abridges what they termed to be the right of free collective bargaining and the right to strike, both of which they

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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 (hereafter referred to as "the Industrial Court") 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 abridgment 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 lockout: see Parts VI and VII of the Act. In so saying, I recognise as the learned Attorney General argued that the Act nowhere specifies that workers shall not strike and that 'ex facie' it appears to forbid and thereby to postpone the taking of strike action only prior to and pending the operation of the machinery set up by Part VI of the Act. But since the operation is not interrupted except by the default or neglect of the Minister of Labour to refer the dispute within the prescribed time to the Industrial Court and does not cease until the reference has been finally determined, and since an order or award is binding under pain of severe penalties for any breach thereof, I do not understand how it can be said that the Act in substance does not exclude strikes. Moreover, if either party to the dispute fails or refuses to honour an award, it appears to be competent for the other party to found another dispute thereon, whereupon the machinery is again set to work and in the meantime a strike is once more forbidden: see s.39 (5) of the Act which reads as follows:-

"The fact that an award has been made and is in force shall not prevent an award being made for the settlement of a further dispute between all or any of the parties to the first-mentioned award, with or without additional parties, and whether or not the subject matter of the further dispute is the same in whole or in part as the subject matter of the dispute determined by the first-mentioned award".

I think therefore that the Act does substantially abrogate the so-called right to strike, but for the purposes of this appeal it suffices that the so-called right is abridged. Thus I come to the nub of the issue. This, as I see it, is whether the freedom of collective bargaining and the so-called right to strike are, or either of them is, inherent in (in the sense of being an integral feature of) the freedom of association guaranteed by the Constitution.

My first observation is that individual freedom in any community is never absolute. No person in an ordered society can be free to be antisocial. For the protection of his own freedom everyone must pay due regard to the conflicting rights and freedoms of others. If not, freedom will become lawless and end in anarchy. Consequently, it is and has in every ordered society always been the function of the law so to regulate the conduct of human affairs as to balance the competing rights and freedoms of those who comprise the society. Hence, although at common law, as is now under the Constitution, every person was free to associate with his fellows, a clear distinction was at all times drawn between the freedom to associate, the objects to be pursued in association and the means to be employed to attain those objects. If the objects or the means offended against the law, then, notwithstanding the freedom to associate, all or any of the associates could be charged with the commission of a crime or might be

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held liable in damages for the commission of a tort. In either case, the crime or tort was conspiracy. And while the legislature has from time to time intervened when it has found intervention necessary or expedient to redress any imbalance between the competing rights and freedoms, the distinction between association on the one hand and objects and means on the other has nonetheless remained unaffected.

In referring to the appellants' contention I have spoken of the so-called right to strike. Corbin J, who dealt with the motion in the High Court denied the right. He pointed to what he described as the "sharp distinction between the mere 'freedom' to strike and the 'right' to strike", and he quoted in his support passages from Prof. Freund's Labour Relations and the Law, at p.15, and Hood Phillips' Constitutional and Administrative Law (3rd edn), at p.484. I agree with the distinction, but in the context of constitutionally-guaranteed rights and liberties I prefer to regard the freedom and to speak of it as an immunity. I shall show why.

In the medieval system of industry in Britain, the recognised crafts were catered for by guilds which were combinations of masters and journeymen. At first, their concern was to protect the standards of their respective crafts by defining the terms of service for apprentices, but they did from time to time also determine the piece-rate to be paid to journeymen. Later, wages were frequently regulated by statute. But the decline in the 18th century in the official regulation of wages, accompanied as it was by the decay of the guilds, led to combinations of workers one of the objects of which was to secure and maintain adequate remuneration for the work they did. Quite early they resorted to strike action, but equally early such action

was condemned as conspiracies to do or cause injury to others or as conspiracies in restraint of trade. Thus, in 1721 certain journeymen tailors were found guilty of conspiracy for refusing to work at less than the wages they demanded and, on a motion in arrest of judgment, it was held that although the wages so demanded were in excess of what had been directed by statute that was not the gist of the offence. It was, the court said,

> "not for the refusing to work, but for conspiring, that they are indicted, and a conspiracy of any kind is illegal, although the matter about which they conspired might have been lawful for them, or any of them, to do if they had not conspired to do it":

see R. v Journeymen-Taylors of Cambridge, 8 Mod. Rpts 10. Then in 1783, in R. v Eccles & ors, 1 Leach Rpts 275, seven persons who went on strike were convicted of conspiracy to impoverish a tailor and to prevent him from carrying on his trade and the conviction was upheld, Lord Mansfield saying:

> "persons in possession of any articles of trade may sell them at such prices as they individually may please, but if they confederate and agree not to sell them under certain prices, it is conspiracy; so every man may work at what price he pleases, but a combination not to work under certain prices is an indictable offence".

I am in some doubt about these decisions however. If the combinations had as their object the securing of what the accused persons considered to be adequate remuneration for themselves and their refusal to work did not involve them in any breach of contract or in any intimidatory, obstructive or other unlawful act, then neither the object nor the means can properly be said to have been unlawful. But it appears that they were regarded, and accordingly condemned, as

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combinations in restraint of trade or as conspiracies to injure. My doubts need not trouble me however. As plainly appears from their affidavit in support of their motion, the appellants' claim of a right to strike is in essence a claim to combine with others to bring about a stoppage or other dislocation of work so as to exert pressure on their employer to give way to their demands and at the same time to retain their employment as of course. That is, in effect, a claim of right to commit breaches of contract without liability to have the contract discharged for its breach. That, too, is how "strike" is defined in the Act. So, since that is the quality of the strike with which this appeal is concerned, it suffices to say that no one can doubt that a combination to withdraw from work in breach of contract was punishable as a conspiracy at common law. The illegality of such combinations was explicitly confirmed by the Combination Acts of 1799 and 1800 which were enacted under the stress of the war with revolutionary France. However, after peace was restored the Acts were repealed by the Combination Laws Repeal Acts of 1824 and 1825. These provided that peaceful combinations, if limited in scope to fixing wages and hours of labour, were no longer to be an offence whether under the common or statute law, but they confirmed that violence and intimidation by any person (whether acting singly or in combination with others) and molesting or obstructing persons at work were offences for which punishment was accordingly prescribed. It was this modification of the common law as originally applied which was expounded in the earliest decisions to which we were referred, R. v Duffield & Ors (1851) 5 Cox C.C. 404, R. v Rowlands & Ors (1851) 5 Cox C.C.436 and (on appeal) 466, and R. v Druitt & Ors (1867) 10 Cox C.C. 592. It must consequently be borne in mind that at the outset trade unions were by the common law combinations which were illegal for having objects in restraint of trade and/or for employing means by their resort to strikes which were in breach of the law. The Combination

Laws Repeal Acts were thus the first step forward from illegality towards immunity.

Thereafter, many conflicts were waged between employers and workers, the employers often hiring "blackleg" labour as well as devising a document which they required their workers to sign repudiating participation in any trade union activity, and the workers organising themselves in associations for mutual assistance to secure better wages and conditions of employment as well as legislation such as would correct the imbalances in power and bargaining position between themselves and their employers. The earliest of such enactments was the Friendly Societies Act, 1855 which gave legal protection to societies with benefit functions and under which trade unions began to register. Then came the Molestation of Workmen Act, 1859 which sought to clarify the Combination Laws Repeal Act, 1825 by specifically exempting peaceful picketing in trade disputes over wages and hours from the penalties for "molestation" and "obstruction". But this apparent progress was set back by the decision in Hornby v Close (1867) 10 Cox C.C. 393 whereby the Court of Queen's Bench held that a mutual society which, in addition to the rules for the 'bona fide' relief of sick members and for other ordinary purposes of a friendly society, included in its constitution rules for the encouragement, relief and maintenance of men on strike was not a friendly society within the meaning of the 1855 Act and, further, that societies which were really trade unions were societies which existed for illegal purposes, that is to say, for purposes in restraint of trade. In the last-mentioned respect, the court approved and followed the decision of the Court of Exchequer Chamber in Hilton v Eckersley (1856) 6 E. & B.47 in which it was held that a combination of masters to employ only men who satisfied certain stipulated conditions was illegal for being in restraint of trade so that, even if they might not be liable to prosecution, any

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agreement they made for carrying out their purposes was likewise illegal and therefore void. The principle in Hornby v Close was followed in Farrer v Close (1869) L.R. 4 Q.B. Cas. 602 although the rules in question there "admitted of a perfectly innocent construction and were capable of being applied to purposes only which were within the scope of the object of a friendly society"; but the court held that it must look to the actual working of the society and not to its ostensible character and, in its view, the evidence showed that the society merely professed to be a friendly society, the rules having "in their practical application . . been made subservient to the purposes of a trade union instead of being confined to those of a friendly society".

A measure of relief was provided by the Trade Union Act, 1871. It authorised the registration of trade unions as such and declared that the purposes of a trade union should 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". Nonetheless, the courts were not "to entertain any legal proceedings instituted with the object of directly enforcing or recovering damages for the breach" of any agreement by members 'inter se', or between members and their trade union, or between one trade union and another albeit that the one might be a trade union of employers and the other of workers. It will be observed that the statute recognised trade unions for what the common law regarded them to be, hence it permitted them to register and to operate, hold and be given legal protection for their property as associations which were no longer unlawful merely because they were combinations in restraint of trade. At the same time, Parliament emphasised its use of the word "merely" by enacting a Criminal Law Amendment Act

prescribing penalties for the use of violence threats or intimidation and for molesting or obstructing any person in furtherance of trade union activity, and by defining molestation or obstruction so as to prohibit much of the peaceful picketing by watching or besetting which had been exempted from criminal liability by the Molestation of Workmen Act, 1859.

How little in the way of immunity was gained by the Trade Union Act, 1871 became speedily plain. In December of the following year a number of gasworkers were convicted of conspiracy for agreeing and combining with others to go on strike because a fellow worker had been dismissed: see R. v Bunn & Ors (1872) 12 Cox C.C. 316. In his summing up to the jury Brett J. stressed that the charge was one of an illegal conspiracy at common law which would be proved once it was shown that the accused had agreed among themselves or with others either to do an unlawful act or to do a lawful act by unlawful means; and he directed them in law that the breach without just cause of contracts of service was an illegal act for which each contract-breaker was punishable on conviction (that was indeed the state of the law at that time) and that, even if they were to suppose that interference with the exercise of the employer's business was a lawful thing to do, yet the agreement and combination to do that lawful act by the unlawful means of all of the men simultaneously breaking their contracts would bring them within the definition of a conspiracy.

Bunn's case was followed by R. v Hibbert & Ors (1875) 13 Cox C.C. 82 in which the indictment was for conspiracy to molest and obstruct employers with a view to coerce them to alter their mode of business. Cleasby B. directed the jury that the Criminal Law Amendment Act, 1871

> "Makes it an offence to molest and obstruct any person with a view to coerce him, if a worker, to quit his

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employment, or, if a master, to alter his mode of carrying on business";

and he went on to explain that

> "the meaning of the words molestation or obstruction is defined . . . to be the persistent following a workman about from place to place, or the hiding of a workman's tools. It is also a molestation or obstruction to watch or beset the house or other place where such person resides or works or carries on business, or happens to be, or the approach to such house or place, or if with two or more other persons he follows such person in a disorderly manner in or through any

Thus the trade unions and the workers whose interests they strove to promote were almost as far from immunity as ever. All that they had really gained was immunity from criminal liability for conspiracy for combining to withhold or without breaking their contracts of service to withdraw from work, provided the combination was peaceful and was for fixing wages and hours of labour. However, relief was now nigh. By the Conspiracy and Protection of Property Act, 1875 it was provided that

> "An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime";

and also that

> "Attending at or near the house or place where a person resides, or works or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting"

which was confirmed to be an offence. Further, it repealed the Master and Servant Act, 1867 which had retained as offences breaches of contracts of service in what were described without definition as cases "of an aggravated character" so that no such breach was any longer a criminal offence. But it is important to notice, especially when what is being discussed is the so-called right to strike, that the Act was essentially exemptive in character. It nowhere declared that anything which had been a conspiracy or a breach of contract of service would no longer be so. All that it did was to provide immunity from criminal liability for it.

The trade unions were soon to become aware of the liabilities to which they were as yet exposed. These were through actions for civil wrong. Thus, in Temperton v Russell & Ors (1893) 1 Q.B. 715, the Court of Appeal held that members of a joint committee of three trade unions, who in furtherance of a trade dispute had induced a number of persons to break their contracts to supply the plaintiff with building materials and to refuse to enter into further contracts with him, were liable in an action for damages both for maliciously procuring the breaches and for maliciously conspiring to injure the plaintiff by preventing persons from contracting with him. Three years later the House of Lords, although disagreeing with certain dicta of Lord Esher, M.R. and Lopes L.J. in Temperton's case, nevertheless confirmed that liability would arise if damage resulted from anyone doing an unlawful act or using any unlawful means to

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attain his purpose: see Allen v Flood (1898) A.C.1. The procuration knowingly and for his own ends of a breach of contract, which is an actionable wrong, would be such an unlawful act: that was the first limb of the action in Temperton v Russell. Conspiracy to injure would be such an unlawful means, which was the second limb of that action. And since watching or besetting a man's house with the object of compelling him to do or not to do that which it is lawful for him not to do or to do may constitute an actionable nuisance at common law, that too would be such an unlawful means: see J. Lyons & Sons v Wilkins (1899) 1 Ch. 255. This Lyons' case was of added importance because, as did the earlier case of R. v Bauld & Ors (1876) 13 Cox C.C. 282, it called attention to the statutory limit upon the exemption from the offence of watching or besetting, an exemption which was already being mistranslated into a right of peaceful picketing. As Chitty L.J. pointed out,

> "the only case in which watching or besetting is allowed, or in other words, is not unlawful, is that mentioned in the proviso at the end of the section" (s.7 of the Conspiracy and Protection of Property Act, 1875) "namely, where the attending at or near the house or place where a person resides, or works, or carries on business, or happens to be . . . is 'in order merely to obtain or communicate information'. Attending in order to persuade is not within the proviso".

What however I think must have been most disturbing of all to trade unions were two House of Lords decisions in 1901. The first - Taff Vale Railway Co. v The Amalgamated Society of Railway Servants (1901) A.C. 426 - established that a registered trade union may be sued in its registered name or, confirming Duke of Bedford v Ellis (1901) A.C.1.

by means of a representative action, which meant that all or any of its funds were rendered liable for the payment of damages recoverable for tort. The other - Quinn v Leatham (1901) A.C. 495 - confirmed the authority of Temperton v Russell (shorn however of the dicta disapproved in Allen v Flood) that a combination of two or more persons, without justification or excuse, to injure a trader by inducing his customers or servants to break their contracts or not to deal with him or not to continue in his employment is actionable if it results in injury to him. These decisions made it abundantly clear that the immunity from criminal liability afforded by the Conspiracy and Protection of Property Act, 1875 was not a safe shield. Further effort was therefore necessary to secure full legal immunity.

Immunity apparently complete was at long last achieved with the enactment of the Trade Disputes Act, 1906. By it (a) an act done in pursuance of an agreement or combination by two or more persons, if done in contemplation or furtherance of a trade dispute, was no longer to be actionable unless the act was actionable if done without such agreement or combination; (b) picketing was made lawful provided (and whether) it was for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working; (c) an act done by any person in contemplation or furtherance of a trade dispute was no longer to 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"; and (d) no court was any longer to entertain any action against a trade union, whether of workmen or masters and whether in the name of the trade union or by means of a representative action, in respect of any tortious act

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alleged to have been committed by or on behalf of the trade union. It should I think be observed that this immunity of a trade union from liability for tort, designed as it was to be fully protective of the funds of trade unions, was not restricted to tortious acts committed in contemplation or furtherance of a trade dispute; it extended to any tort: see Bussy v Amalgamated Society of Railway Servants & Anor. (1908) 24 T.L.R. 437; Vacher & Sons Ltd v London Society of Compositors (1913) A.C. 107; and Ware and De Freville Ltd v Motor Trade Association (1921) 3 K.B. 40. This put trade unions in the exceptional position once, but no longer, enjoyed by the Crown of total immunity for any wrongdoing. But, as was discovered in Rookes v Barnard (1964) A.C. 1129, intimidation in any form, be it violent or subtle, continued to be an unlawful means of inducing a desired result: hence it was held that trade union officials who intimidated an employer so as to achieve their purpose, and to whom as individuals the blanket immunity of their trade union was of course unavailable, could claim no immunity at all because (i) intimidation even by a single person without agreement or combination with others is actionable at the suit of the person to whom he has thereby knowingly caused injury and (ii) unlawful interference with a person's employment was made immune by the Act of 1906 only if lawful means were used to that end.

I need take no account now of the Trade Disputes and Trade Unions Act, 1927 which was the British Parliament's answer to the "general strike" in 1926, or of the Act of the same name by which it was repealed in 1946, or of the Trades Disputes Act, 1965 which displaced the decision in Rookes v Barnard. None of these is relevant here. The common law of England is deemed to have been enacted as part of our law subject however to such statutes

of general application of the Imperial Parliament and to such enactments of our legislature as were in operation on March 1, 1848: see s.12 of the Supreme Court of Judicature Act, 1962. Accordingly, until 1933 when our legislature was first persuaded to introduce trade union legislation, our law on the subject was the same as applied in England after the repeal of the Combination Laws.

In 1933 our legislature enacted a Trade Unions Ordinance having essentially the same effect as the English Trade Union Act, 1875. It included the same provision that the purposes of a registered 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". Hence the law even then remained substantially in the terms stated by Brett J. in R. v Bunn. It was not until ten years later that the legislature enacted the Trade Disputes and Protection of Property Ordinance providing the immunity for which the workers had clamoured. The immunity so made available was the same as was provided in Britain by the Conspiracy and Protection of Property Act, 1875 and the Trade Disputes Act, 1906. That is as far as our legislation went up to the coming into force of the Act. Here, therefore, Rookes v Barnard remains a binding authority.

I have made this review not only to show why I prefer to regard the so-called right or freedom to strike as what in essence it is, a statutory immunity, but more so because I think it exposes the fallacy of integrating the statutory immunity with the freedom of association. The immunity was a consequence of the free association which enabled the associates to win for themselves legislative relief from the imbalances to which the common law had made them subject. So just as the freedom of a builder to build should not be confused with the building he planned nor yet with the tools which he used for its erecting, so too freedom

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to associate should not be confused with the immunities which the associates secured nor yet with the means which were employed for their securing. Association, its objects and the means it employs are, as always, separate and distinct in their identities.

In my judgment, then, freedom of association means no more than freedom to enter into consensual arrangements to promote the common interest objects of the associating group. The objects may be any of many. They may be religious or social, political or philosophical, economic or professional, educational or cultural, sporting or charitable. But the freedom to associate confers neither right nor licence for a course of conduct or for the commission of acts which in the view of Parliament are inimical to the peace, order and good government of the country. In like manner, their constitutionally-guaranteed existence notwithstanding, freedom of movement is no licence for trespass, freedom of conscience no licence for sedition, freedom of expression no licence for obscenity, freedom of assembly no licence for riot and freedom of the press no licence for libel.

What is or is not inimical to the peace, order and good government of the country is not for the courts to decide. But the comment may perhaps be made that 'strike' is a word of significant import. I believe it is true to say that trade unions have always regarded the power to strike as an essential weapon. And, as Lord Devlin said in Rookes v Barnard (1964) A.C., at p. 1219, it is easy to see that at the time of the enactment of the Trade Disputes Act, 1906 in Britain, and I would add of the Trade Disputes and Protection of Property Ordinance in 1943 here, the legislature

> "might have felt that the only way of giving labour an equality of bargaining power with capital was to give it special immunities which the common law did not permit".

But now that trade unions are no longer struggling for survival or recognition and they enjoy the wholly discriminatory privilege (no longer as I said enjoyed by the Crown) of total immunity from liability for tort, and when under the protective cover of statutory immunities the strike weapon was so extensively used that to many it began to appear that the imbalance had tilted the other way, it is likewise easy to see that Parliament may have considered that the best means of holding the scales in equal poise was to refer to a tribunal for its impartial adjudication all disputes which the parties themselves should fail to resolve. That was within the prerogative of Parliament. And it should perhaps be noted that Parliament's decision accords with the view expressed by Sidney Webb as far back as 1906 when he wrote that

> "A strike or a lockout . . . necessarily involves so much dislocation of industry; so much individual suffering; so much injury to third parties, and so much national loss, that it cannot, in my opinion, be accepted as the normal way of settling an intractable dispute . . . I cannot believe that a civilised community will permanently continue to abandon the adjustment of industrial disputes - and incidentally the regulation of the conditions of life of the mass of the people - to what is, in reality, the arbitrament of private war":

see his memorandum annexed to the Report of the Commission of Inquiry (of which he was a member) which led to the enactment of the Trade Disputes Act, 1906. Accordingly, it seems tolerably plain that Parliament may reasonably have hoped by means of the Act to ensure industrial peace in the interest not only of the workers and employers but more so of the entire community. In this regard it may perhaps be in order to quote also from Prof. V.O. Key's "Politics, Parties and Pressure Groups" as follows:

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"The public good is, after all, a relative matter. It rarely consists in yielding completely to the demands of one class or group in society. It more often consists in the elaboration of compromise between conflicting groups, in the yielding to one class at one time and to another at another, and sometimes in the mobilization of the support of the great unorganized general public to batter down the demands of class interest".

That brings me to what I have said I consider to be an abridgment of the right of free collective bargaining. Collective bargaining is one of the principal objects of a trade union, so it should be particularly observed that s. 3 of the Act preserves it fully, to the extent that it obliges every employer not only to recognise any trade union which is representative of 51% or upwards of the workers employed by him, but also to treat and enter into such negotiations with it as may be necessary or expedient for preventing or settling trade disputes. What then has been abridged is freedom of contract. But that is not a freedom recognised, declared or guaranteed by the Constitution. And since the world has long since departed from the 'laissez-faire' doctrines of Adam Smith against which the trade unions themselves had often to contend, finance controls, commodity import controls, price and a number of other economic controls have become a familiar in our modern-day society. So, because there is nothing in the Constitution which prohibits Parliament from restricting freedom of contract it was a policy decision for Parliament, and is not a question for the courts, whether in the interest of the country the People (to use the language of the Act) should be permitted any say on the terms of industrial agreements so as to ensure as far as practicable that, as recited in paragraph (b) of the preamble to the Constitution and repeated

in s.9(2) of the Act, "the operation of the economic system should result in the material resources of the community being so distributed as to subserve the common good".

The appellants also challenged the validity of the Act or of some of its provisions on six subsidiary grounds. First, it was said that, because by s.6(1) (b) it provides for the appointment by the Governor-General of four of the five members constituting the Industrial Court for such period and on such terms and conditions as he thinks fit, the appointees are not independent and therefore the provision offends against paragraphs (e) and (f) of s.2 of the Constitution. I am unable to follow that argument. So much I think depends upon the meaning to be ascribed to independent. In relation to tribunals the word in my opinion means free from influence from any source and thus independent in judgment and assuring impartiality. The meaning given to it by the appellants includes outward and recognisable guarantees of its existence. But other than to the Judiciary of the Supreme Court such guarantees are not offered or available, or from the point of practicality capable of being offered or being made available, to members of every tribunal whatever. That is no reason however to question either their independence of judgment or their impartiality or their integrity. Which is all that s.2(f) of the Constitution demands and, even so, only in criminal proceedings. It is also to be observed that s.2(e) of the Constitution does no more than prescribe that "no Act of Parliament shall deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations". These principles, as I conceive them, are no different from what are ordinarily known as the principles of natural justice which have from time to time been variously

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described. For instance, in Spackman v. Plumstead District Board of Works (1885) 10 App. Cas. 229, at p.240, Lord Selborne, L.C. referred to them as "the substantial requirements of justice" and "the essence of justice"; in General Medical Council v Spackman (1943) A.C. 627, at pp.644/5, Lord Wright called them "the essential principles of justice"; and in Green v Blake & ors (1948) I.R. 242, at p.248, Black J. spoke of them simply as "justice without any epithet". As in the Constitution, they were likewise spoken of as "fundamental justice" by Lord Esher, M.R. in Hopkins & anor v Smethwick Local Board of Health (1890) 24 Q.B.D. 712, at p.716. The principles are well known and for the present need no recital since the only charge that they have been breached is founded upon the alleged denial of independence to the Industrial Court. I would remind those who make that charge that the Act took care to specify that the President shall be a judge of the Supreme Court, against which no criticism has however been levelled, and that the four members to be appointed by the Governor-General shall be (i) a barrister or solicitor of at least ten years' standing, (ii) a duly qualified accountant, (iii) a duly qualified economist and (iv) either another duly qualified accountant or another duly qualified economist or a person experienced in industrial relations. To suggest in such circumstances that the Act deprives persons going before the Industrial Court be it never so little of the right to a fair hearing either in accordance with the principles of fundamental justice or by an independent or impartial tribunal is to my mind, if I may borrow the language of Lord Wright in Spackman's case, not only theoretical but almost fantastic.

The second ground relates to s.8(2)(b) of the Act which provides that a judgment, order or award of the Industrial Court in any proceedings under the Act "shall not be subject to prohibition, mandamus or injunction in any Court on any account whatever". It was said that the Industrial Court has been invested with very wide powers. Undoubtedly so. But the only power on which reliance was sought to support this ground is its general power under s.11(4)(e) of the Act to give, in relation to a trade dispute.

> "all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the trade dispute",

Because prohibition, mandamus and injunction are excluded in relation to any exercise or non-exercise of that power, so the argument ran, s.2(h) of the Constitution has been contravened. This paragraph of s.2 prescribes that "no Act of Parliament shall deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection" to the human rights and fundamental freedoms recognised and declared by s.1. I find it impossible to conceive what directions may be given or things done within the scope of the power which could in the least adversely affect any of those rights or freedoms. The power, be it noted, not only speaks of the <u>expeditious</u> but couples it with the <u>just</u> hearing and determination of the trade dispute. Further, s.8(3) of the Act gives a right of appeal from any judgment, order or award of the Industrial Court on a point of law: so any unjust hearing or determination of a trade dispute, that is to say, unjust in law and not in sentiment, may then become the subject of review. It is right too that it be noticed that it is only a judgment, order or award which s.8(2)(b) of the Act exempts from being subject to prohibition, mandamus or injunction: hence, to the extent that

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these remedies may be applicable, if at all, they may go to prohibit or direct the Industrial Court or its members in respect of proceedings before it prior to the giving or making of its judgment, order or award. On examination, therefore, I am of opinion that this second ground also is purely theoretical.

Thirdly, it was said that ss.10(2) and 11(2) of the Act are repugnant to paragraphs (b), (e) and (h) of s.2 of the Constitution. The provisions of the two subsections are such that they should be set out in full. They are as follows:

> "10. (2) For the purpose of collecting such information, statistics and other material as may be required for the case of the People of Trinidad and Tobago, the Attorney General may authorise a public officer -
>
> (a) to enter upon the business premises of <u>any</u> employer, trade union or other organisation" (by definition this means organisation representative of employers or workers) "at any reasonable time and to require the production of <u>any</u> books, documents, accounts, returns or other material relevant to <u>any</u> trade dispute existing or <u>anticipated;</u>
>
> (b) to inspect <u>any</u> building, factory or works where workers are employed and to examine <u>any</u> material, machinery or other article therein;
>
> (c) to interview <u>any</u> worker employed by <u>any</u> such employer".
>
> 11. (2) Notwithstanding anything contained in the Income Tax Ordinance or in any other law, the (Industrial)

> Court may require the Commissioner of Inland Revenue or any other person who may be able to give information to the Court to provide such information as it may require from time to time. The Court may in its discretion on application by parties to the proceedings disclose information so obtained and may also prohibit the publication thereof".

When it is noticed that by s.10(1) of the Act the case for the People "shall include the presentation of arguments, submissions and evidence generally reflecting the public interest in the issues involved" in any trade dispute, and when regard is had to the several considerations enumerated in s.9(2) by which the Industrial Court is directed to be guided in making its awards so that "the operation of the economic system should result in the material resources of the community being so distributed as to subserve the common good", the words "any" and "anticipated" which I have italicised in s.10(2) are, I think, alarming. In exercising the authority which he may be given by the Attorney General thereunder a public officer may uncover vital commercial secrets or gather valuable information about manufacturing processes all or any of which, if so disposed, he may thereafter use or abuse. Moreover, this may occur in relation to the business of an employer who is not a party to or in any way himself concerned in the trade dispute which, even so, may not yet have arisen but be only anticipated between a trade union and some other employer. I have also italicised the phrase "in its discretion on application" in s.11(2) since 'ex facie' it gives the Industrial Court a discretion, to be exercised only on application by parties to the proceedings, either to disclose or to withhold information which it has itself required and obtained - presumably because the court thought it would be either necessary or helpful for its adjudication on the matter before it. In this regard, it is certainly

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relevant that the principles of fundamental justice mandatorily require a fair opportunity to be given to each of the parties to any dispute to correct or contradict any relevant statement or information to his prejudice which may be in or which may come to the knowledge of the tribunal having seisin of it: see Board of Education v Rice (1911) A.C. 179, per Lord Loreburn at p.182, and University of Ceylon v Fernando (1960) 1 All E.R. 631, per Lord Jenkins for the Privy Council at pp.637/9.

I should say at once that I do not agree that there is anything in either of the subsections which is offensive to s.2(b) of the Constitution. In my view, for reasons which will appear later, that provision is wholly irrelevant. The substantial question is whether anything in either of the subsections abrogates, abridges or infringes any of the recognised and declared rights and freedoms or deprives anyone of the right to a fair hearing in accordance with the principles of fundamental justice. The contention was that s.10(2) of the Act infringes the right of privacy and the right to the enjoyment of property, and that s.11(2) abridges or infringes the right to a fair hearing. I shall consider the subsections accordingly.

First, s.10(2) of the Act. The only right of or akin to a right of privacy recognised and declared by the Constitution is the right of the individual to respect for his private and family life, see s.1(c) of the chapter. No authority to a public officer to interview a worker employed by an employer upon whose business premises he may enter pursuant to paragraph (a) of the subsection of the Act can constitute, in my view, any breach of this right. And whether the right to the enjoyment of property has been affected is not a point which in my opinion is open to the appellants. I regret this because, as I have said, the subsection alarms me. But no inferences

should be drawn from this statement of alarm or regret. The point was not argued nearly as fully as I would have wished, and my own consideration of it was stopped short the moment it appeared that it was not open to the appellants. Accordingly, I reserve my opinion upon it and pass on to say why the appellants are incompetent to raise it. The right to bring proceedings such as the present is given by s.6(1) of the Constitution. But the subsection stipulates that any person seeking to exercise it must allege, and therefore also show, that some provision of ss.1 to 5 or of s.7 "has been, is being, or is likely to be contravened in relation to him". Both the appellants have alleged and proved that they are employees of Texaco Trinidad Inc. Neither of them therefore is an employer. And although both of them are members of the Oilfields Workers' Trade Union and of its General Council, they do not qualify either singly or conjointly to be regarded as a trade union or other "organisation" within the meaning of that term. Nor do they so allege. And since it is only the business premises of an employer, trade union or other organisation or a building, factory or works where workers are employed that a public officer may be authorised under s.10(2) of the Act to enter or inspect, any invasion (if it is) of the right to the enjoyment of property which the subsection may authorise is not and cannot be a contravention, actual or threatened, of any right in relation to the appellants or either of them. Accordingly, they cannot apply for redress in respect thereof.

I come next to s.11(2) of the Act. Read with subss. (1) and (3) of the section, it becomes I think clear that the Industrial Court can require the giving of information such as is referred to in subs. (2) only in the course of proceedings actually before it. The parties will therefore be aware of any such requirement if it is made. Accordingly, the effect of the subsection would seem to be to substitute a right to apply for disclosure

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of the information thus obtained in place of the obligation which in my opinion ordinarily rests upon a tribunal seeking the information to invite correction, explanation or contradiction by the party to whose prejudice such information may be. This was probably prompted by the specific reference to the Commissioner of Inland Revenue and the highly confidential nature of any information which the Industrial Court may require him to give. But, in my view, such a substitution does not without more deprive anyone of the right to a fair hearing in accordance with the principles of fundamental justice. Further, although the Industrial Court is given a discretion to grant or refuse the application, it is under an imperative obligation to exercise it as those principles require. If it does not, it will be guilty of error in law which can be the subject of appeal. Questions may be raised whether the parties can always be certain of the need to make application whenever it arises, but I doubt that any occasion is likely to occur when they will not. If it did, I have no doubt that a court independent of the parties and seeking to do impartial justice, as the Industrial Court by its constitution can confidently be expected to be, will at once call attention to the right and invite the party concerned to apply. The subsection could, I think, have been more carefully worded but, policy questions apart with which as I have said this court has nothing to do, I must reject the appellants' contention.

The fourth ground is that ss.34(3), 36(5) and 37(3) of the Act are in conflict with s. 2(b) of the Constitution insofar as the same provide for the cancellation of a trade union's registration for the commission of the offences therein referred to. It was said that the Act has thereby imposed or authorised the imposition of cruel and unusual treatment or punishment which s.2(b) of the Constitution prohibits. I do not agree that it is in any sense cruel to cancel the registration of a trade union for an

offence against the law. The severity of the punishment is presumably a measure of the gravity of the offence in the view of Parliament. But, that apart, the contention is I think basically unsound. Section 2 of the Constitution is concerned to protect the human rights and fundamental freedoms recognised and declared by s.1. It does so by a general followed by particular prohibitions. Some of the particular prohibitions are undoubtedly apt to protect artificial legal entities also, as for example the prohibition against any Act of Parliament depriving a person of the right to a fair hearing in accordance with the fundamental principles of justice /paragraph (e)/ or depriving a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law /paragraph (f)/. But, in my opinion, the prohibitions are intended to protect natural persons primarily. I say so because (a) the rights they protect are expressly designated as human rights; (b) four of the six of them enumerated in s.1 are further defined as rights of the individual and the other two are obviously so, being (i) the right to join political parties and to express political views and (ii) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward; (c) the fundamental freedoms no less than the rights are recognised and declared to have existed and are to continue to exist "without discrimination by reason of race, origin, colour, religion or sex", thereby I think clearly implying that they are freedoms of the individual; (d) four of the five of them enumerated in the section relate beyond question to the individual only; and (e) in the context of the required non-discrimination, I would interpret the fifth, "freedom of the press", as a compendious reference to those responsible for press publications. All the more then because of what I conceive to be the primary purpose of s.2, but also because I think it accords with its essential meaning, I would

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interpret "cruel" in its relation to the treatment or punishment prohibited by s.2(b) as not merely severe or harsh but as inhumane and inflictive of human suffering.

The last two grounds may be taken together. In my view, both ss.41 and 52 recognise that a trade union or other organisation acts, as it must, through its Executive. Consequently, if a trade union or other organisation is charged with an offence under s.41(1) of the Act, it is not a deprivation of its constitutional right to a fair hearing in accordance with the principles of fundamental justice or of its cognate constitutional right to be presumed innocent until proved guilty according to law that s.41(3)should deem the act constituting the offence, if directed by a member of its Executive, to be its own. Correlatively, it is likewise not any such deprivation if any offence against the Act is committed by a trade union or other organisation that s.52(2) should deem every member of its Executive to be 'prima facie' guilty also. Nevertheless, I would add that since s.41(3) affects only a trade union or other organisation, neither of the appellants can rely on it to complain of any contravention, actual or threatened, in relation to him such as is necessary to qualify him to move in respect of it under s.6(1) of the Constitution.

In the result, then, I am satisfied that Corbin J. was right to refuse the appellants the relief they sought and I would dismiss their appeal with costs.

H.O.B. Wooding
Chief Justice.

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J U D G M E N T

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Chapter 1 of the Constitution of Trinidad & Tobago (the second Schedule to the Trinidad & Tobago (Constitution) Order in Council, (1962) is entitled:

> "The recognition and protection of human rights and fundamental freedoms".

These rights and freedoms are specifically enumerated in sec. 1 and sec. 2 seeks to protect them by providing inter alia as follows:

> "Subject to the provisions of secs. 3, 4 and 5 of this Constitution, no law shall abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared.
> . . . . . ".

It is interesting to compare this provision with sec. 1 of the Canadian Bill of Rights, 1960, which formed the basic model for the drafting of the provisions of Chapter 1 of the Constitution. The Canadian prototype of sec. 2 of the Constitution (so far as is material for present purposes) is to the following effect:

> "Every law of Canada shall, unless it is expressly declared by an Act of Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorise the abrogation, abridgment or infringement of any of the rights or freedoms herein recognised and declared
> ..... "

It is, in my opinion, not surprising that in view of the particular language of this section the Canadian Bill of Rights has been described by an eminent authority as "only an Interpretation Act".

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See article by Professor Burn Laskin (Professor of Law, University of Toronto) entitled "Canada's Bill of Rights: A Dilemna for the Courts?" in Vol. II I.C.L,". (1962) Part 3 p. 530.

It was submitted by the learned Attorney General that the doctrine of ultra vires is not applicable to the present case. The argument was not fully developed, but it seemed to be based on a suggestion that the legal efficacy of Chapter 1 of the Constitution was not (or could not be) greater than that of the Canadian Bill of Rights, with regard to which there is ample scope for a conflict of legal opinion.

See article "Fundamental Rights in the New Commonwealth" by S.A. de Smith (Professor of Public Law in the University of London) in Vol. 10, I.C.L.Q. pp. 228 - 232.

However, whatever may be the true interpretation to be placed upon the requirement of sec. 2 of the Canadian Bill of Rights that laws to which it is applicable shall be "so construed and applied" as not to derogate from the constitutional guarantees to which it refers, it seems to me that the imperative provisions of sec.2 of the Constitution are so clear and explicit as not to admit of the possibility of their being construed otherwise than as rendering invalid any law which offends against the prohibitions therein contained. When once this proposition is accepted, it appears to me to be obvious that even without express provision a power of judicial review of Parliamentary legislation must reside in the Supreme Court of this country. This conclusion is only in consonance with the view expressed more than half a century ago by Griffith, C.J., Burton and O'Connor JJ. of the High Court of Australia in Baxter v Commissioners of Taxation (N.S.W.) (1907) 4 C.L.R. 1087 (at p. 1125) that -

"English jurisprudence has always recognised that the Acts of a legislature of limited jurisdiction (whether the

limits be as to territory or subject matter) may be examined by any tribunal before whom the point is properly raised. The term 'unconstitutional', used in this connection, means no more than ultra vires".

Actually, however, the position is put beyond doubt by the express terms of sec.6 of the Constitution which are as follows:

"6. (1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of the foregoing section or section 7 of this Constitution has been, in being, or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress,

(2) The High Court shall have original jurisdiction -

(a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) thereof,

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said foregoing sections or section 1 to the protection of which the person concerned is entitled.

(3) If in any proceedings in any court other than the High Court or the Court of Appeal any question arises as to the contravention of any of the provisions of the said foregoing sections or section 7 the person presiding in that court may,

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and shall, if any party to the proceedings so requests, refer the question to the High Court unless in his opinion the raising of the question is merely frivolous or vexatious.

(4) Any person aggrieved by any determination of the High Court under this section may appeal therefrom to the Court of Appeal.

(5) Nothing in this section shall limit the power of Parliament to confer on the High Court or the Court of Appeal such powers as Parliament may think fit in relation to the exercise by the High Court or the Court of Appeal, as the case may be, of its jurisdiction in respect of the matters arising under this Chapter".

This is the section which has been invoked by the appellants in this case, and for the reasons indicated, I have no hesitation in rejecting any submission to the effect that either the High Court or the Court of Appeal is not vested with full jurisdiction to make a declaration as to the validity of any law alleged to contravene the constitutional guarantees stipulated by Chapter 1 of the Constitution.

The resulting legal position, therefore, is that the legislative powers of the Parliament of Trinidad and Tobago, although a sovereign independant state, "as in the case of all countries with written constitution must be exercised in accordance with the terms of the constitution from whicn the power derives". (See per Lord Pearce, delivering the judgment of the Judicial Committee of the Privy Council in Liyanage v Reginam (1966) 1 All. E.R. 60 at p.67). This power of judicial review is only one of various features which are to be found in the Constitutions of many countries of the Commonwealth.

See Professor de Smith's The New Commonwealth and its Constitutions

(1964) Chapter 3 p.77, where the learned author makes the following statement:

"Among the characteristic features of modern Commonwealth Constitutions are the limitation of parliamentary sovereignty, guarantees of fundamental human rights, judicial review of the constitutionality of legislation . . . . The aim of many of these provisions is to capture the spirit and practice of British institutions; the methods of approach involve the rejection of British devices and the imposition of un-British fetters on legislative and executive discretion".

The appellants having unsuccessfuly challenged in the High Court the constitutional validity of the Industrial Stabilisation Act, 1965, (hereafter called 'the Act') have appealed to this Court on a variety of grounds. In opening the appeal counsel for the appellants submitted that there were three broad questions which arose for determination by the Court. These he formulated as follows:

(1) Is there included in the freedom of association recognised in and by the Constitution of Trinidad & Tobago and/or any other law applicable to Trinidad & Tobago, the right of free collective bargaining and/or the right to strike?

(2) Does the Act abrogate and/or abridge and/or infringe and/or authorise the abrogation and/or abridgment and/or infringement of either of these rights?

(3) Is the Act otherwise repugnant to the Constitution?

I propose to deal first with the second of these questions. In this connection it is necessary at the outset to refer to the absolute prohibitions against strikes contained in secs. 36 and 37 of the Act in relation to certain categories of workers. Section 36 applies to workers engaged in essential services which are

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defined in the Schedule to the Act, while sec. 37 is applicable to persons who may compendiously be described as persons engaged in public services. In my opinion, however, the validity of neither of these sections is in issue for the reason that the appellants do not fall within the category of persons to whom either of these sections relates and accordingly are not entitled to complain that as a result of these prohibitions any of the provisions of the constitutional guarantees have been, are being or are likely to be contravened in relation to them.

The contention of the appellants with regard to this question was founded on what was alleged to be the conjoint effect of secs. 16, 34 and 35 of the Act, and I am satisfied from the undisputed facts of the case that the appellants are entitled to claim redress by way of a declaration of the invalidity of sections 34 and 35 on the ground that they are persons whose constitutional rights may be affected by the provisions thereof. In this connection I reject the faint submission advanced by the learned Attorney-General to the effect that the validity of section 34 was not actually in issue, presumably for the reason that there is no evidence that the appellants sought to contravene its provisions and thus to incur the severe penalties therein prescribed. Put in another way, this argument amounted to a submission that the appellants were not entitled to declaratory relief in what was said to be a purely hypothetical and speculative matter.

See Zamir's The Declaratory Judgment, (1962) pp. 151 - 154.

One of the main objects of the Act, as stated in its long title, is to provide -

"for the establishment of an expeditious system for the settlement of trade disputes",

for which purpose there is established an

Industrial Court. Section 16 lays down the procedure to be followed in the case of the existence or apprehension of a trade dispute, whereby such dispute, real or apprehended, may, if not previously settled, be referred by the Minister of Labour for settlement by the Court, whose decisions are by sec. 16(8) rendered "binding on the employers and workers to whom the settlement relates".

It is in the context of the provisions of sec. 16 that secs. 34 and 35 of the Act must be considered. Section 34 provides as follows:

"34. (1) An employer shall not declare or take part in a lockout 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 the provisions of this Act; and

(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

(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 declare a lockout, as the case may be, so, however, that no such strike shall be called or lockout declared until after the last day on which the Minister may refer the dispute to the Court.

(2) An employer who declares or takes part in a lockout in contravention of subsection (1) is guilty of an offence and liable on summary conviction to a fine of

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twenty thousand dollars or to imprisonment for three years or both such fine or (sic) such imprisonment.

(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 of ten thousand dollars or to imprisonment for two years or to both such fine and such imprisonment; and the court shall, in the case of a trade union, notwithstanding the provisions of section 21 of the Trade Unions Ordinance, cancel the registration of such trade union.

(4) Any individual who calls out any workers on strike in contravention of subsection (1) is guilty of an offence and -

(a) if he is a member of the Executive of a trade union or other organisation, liable on summary conviction to a fine of two thousand five hundred dollars or to imprisonment for twelve months or to both such fine and imprisonment;

(b) if he is not such a member, liable on summary conviction to a fine of five thousand dollars or to imprisonment for two years or to both such fine and imprisonment.

(5) Any worker who takes part in a strike called in contravention of subsection (1) is guilty of an offence and liable on summary conviction to a fine of two hundred and fifty dollars or three months imprisonment or to both such fine and imprisonment.

(6) A prosecution for any contravention of any provision of this section shall not

be instituted save by or with the consent of the Attorney-General".

Section 35 is to the following effect:

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

(2) Any person who contravenes the provisions of subsection (1) is guilty of an offence and liable on summary conviction -

(a) in the case of an employer, to a fine of twenty thousand dollars or to imprisonment for two years or to both such fine and such imprisonment; and

(b) in the case of a worker, to a fine of two hundred and fifty dollars or to imprisonment for three months or to both such fine and such imprisonment".

It is observed that a strike is permissible only in the unlikely event of the Minister not doing what may be said to be his plain duty of referring a trade dispute to the Industrial Court for settlement in accordance with the provisions of the Act; and even in such a case compliance with the terms of sec.34(1)(c) is made a pre-requisite condition. When a dispute has been referred to the Court, the effect of sec. 35 is to prohibit strikes during the pendency of legal proceedings for the settlement of the dispute, the decision of which, being binding on the parties thereto puts an effective end to the dispute and so renders resort to strike action futile and unnecessary. In my opinion, the effect of these sections is virtually to prohibit recourse to strikes as a means of settling industrial disputes.

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In dealing with this aspect of the case the learned trial judge posed to himself the question - "whether the Industrial Stabilisation Act infringes the Constitution and takes away the power to strike if such had been established" - and answered it unfavourably to the appellants by coming to the conclusion that "the Act does not prohibit strikes". It should immediately be observed that the true question for determination is not whether the Act prohibits strikes, but whether its effect is "to abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement" of the so-called 'right' to strike, on the assumption that such a right exists and that it is one of the fundamental rights or freedoms guaranteed by the Constitution.

In this connection it was argued by the learned Attorney-General that the effect of the sections under review was merely to postpone the appellants' right (if any) to strike and that such postponement did not amount to an abrogation, abridgment or infringement of it. I am unable to accept this submission. In my judgment, the undisputed limitation of the so-called 'right' to strike effected by the Act clearly amounts at least to an abridgment or infringement of that 'right' within the meaning of sec. 1 of the Constitution.

I now turn to a consideration of the first question posed by counsel which is undoubtedly the main question arising on this appeal. The manner of formulation of the question was necessitated by the fact that nowhere in the Constitution is the so-called 'right' to strike expressly declared to be one of the rights specifically guaranteed thereby, and was based on the submission that this so-called 'right' is in fact constitutionally protected in that it forms an essential ingredient of the specifically guaranteed "right of association and assembly" (sec.1(j)), in its application to workers in general and more especially to members of trade unions. Put in another way, the argument was that the

so-called 'right' to strike, though not expressly mentioned in Chapter 1 of the Constitution, is in fact protected by necessary implication.

The history of the development and legal recognition of trade unions is indissolubly bound up with the common law principle of restraint of trade as well as the law of conspiracy. In order to prevent the growth in the number of combinations, either of employers or workmen, for the purpose of altering wages or conditions of labour, which had been the subject of statutory regulation from the time of the occurrence of the Black Death in England in 1348, several statutes were passed from an early period prohibiting the formation of such combinations. Despite these prohibitions however, trade combinations continued to flourish under the impetus of the Industrial Revolution. The policy of the State was to repress this growth by means of a general enactment, namely, the Combination Act, 1799 which was superseded by the Combination Act, 1800. This last mentioned statute as well as earlier special combination statutes were eventually repealed by the Combination Laws Repeal Act, 1824. "This Act expressly removed all criminal liability for conspiracy whether under the common or the statute law, for combining to alter wages, hours or conditions of work, to regulate the mode of carrying on any manufacture, trade or business or to induce persons to leave, refuse or return to work".

(See Citrine's Trade Union Law, 2nd Edn. p.7.)

It should be noted here that the Combination Laws Repeal Act, 1824 was replaced by the Combination Laws Repeal Amendment Act, 1825.

Thereafter the history of the trade union movement in England is essentially the history of a struggle for the securing of statutory immunity against the penalties or disabilities imposed by the common law as a result either of its doctrine relating to conspiracy or that relating to restraint of trade. Subsequent Acts

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of Parliament of the U.K., which it is necessary to note in any account, however scanty, of the history of the attainment of legal immunities by the trade union movement are the Molestation of Workmen Act, 1859, the Trade Union Acts, 1871 and 1876, the Criminal Law Amendment Act, 1871, (commencing on the same date - June 29, 1871 - as the Trade Union Act of that year), the Conspiracy and Protection of Property Act, 1875, and the Trade Disputes Act, 1906.

It is useful for the purposes of this judgment to set out a few of the provisions of these enactments. Reference may first be made to secs. 2 and 3 of the Trade Union Act, 1871, which is sometimes described as the Charter of Trade Unions. They are as follows:

> 2. "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.
>
> 3. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust".

Section 3 of the Conspiracy and Protection of Property Act, 1875 (as amended by the Trade Disputes Act, 1906) provides (so far as is material for present purposes) as follows:

> "An agreement or combination by two or more persons to do or procure to be done any Act in contemplation or furtherance of a trade dispute shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.
>
> An act done in pursuance of an agreement

> or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.
>
> Nothing in this section shall exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any Act of Parliament.
>
> Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offence against the State or the Sovereign".

It has been said that the "effect of this section is to legalize strikes subject to the exceptions contained in secs. 4 and 5" (see note in 5 Halsbury's Statutes of England (2nd edn) at p.896). The effect of each of the last mentioned sections is to withhold in specified cases the general exemption from liability to criminal prosecution contained in sec. 3 by providing penalties for the wilful and malicious breach of a contract of service in certain circumstances. Whereas sec. 4 is applicable to employees who are engaged in certain essential services, sec. 5 is of a more general nature and applies to any case where the employee knows or has reasonable cause to believe that -

> "the probable consequences of his [breach], either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose valuable property whether real or personal to destruction or serious injury".

As early as 1853 the common law of England had established as a distinct head of tortious liability the wilful inducement of a breach of contract without legal justification (Lumley v Gye (1853) 6 E. & B. 216). This species of legal liability was one to which organizers of

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strikes as well as strikers themselves were constantly exposed, and it was a great step in the process of the so-called 'legalization' of strikes when this liability was removed by secs. 2 and 3 of the Trade Disputes Act, 1906, which finally established what is known as the 'right of peaceful picketing' by providing as follows:

> "2. (1) It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.
>
> (2) . . . . . .
>
> 3. 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".

I consider the foregoing brief historial references sufficient for the purpose of illustrating the meaning of the expression 'right' as it has come to be used in reference to the activity known as striking. It is observed that the development of the law has been along the line of statutory exemption from legal liability for acts which were (or were assumed to be) contrary to the common law principles relating to restraint of trade and conspiracy. Apart from the fact that there were

certain circumstances to which legal immunity was not extended, there is to be noted the constant vigilance of the Legislature to ensure that what were regarded by the common law as certain basic rights of the individual were not violated; for example, freedom from annoyance, coercion, intimidation and violence.

Counsel for the appellants contended that the 'right' to strike is one that emanates from and is recognized by the common law. This submission was based on certain judicial dicta and particularly those of Fletcher Moulton, L.J., in Gozney v Bristol Trade and Provident Society, (1909) 1 K.B. 901, at p.922, where the learned Lord Justice said (inter alia):-

> "But the real fallacy of the argument on the part of the defendants lies deeper. It proceeds on the proposition that strikes are per se illegal or unlawful by the law of England. In my opinion there is no foundation for such a proposition . . . . Strikes per se are combinations neither for accomplishing an unlawful end nor for accomplishing a lawful end by unlawful means, and I therefore come unhesitatingly to the conclusion that the fact that the arrangements for giving strike pay do in a sense facilitate strikes is quite immaterial for the purposes of our decision, and that the defendant society does not become illegal by reason of its having this as one of its objects . . . . . "

In order to appreciate the true significance of these expressions it is necessary to bear in mind that in Gozney's case Fletcher Moulton, L.J., was not determining the 'legality' of an actual strike, but was dealing with the rather more abstract question as to whether a rule of a society which made provision for the payment of strike pay to its members offended against the common law principle of restraint of trade, and was merely stating that strikes are not by their intrinsic nature and under all circumstances necessarily illegal at common law by reason of the doctrine of restraint of trade.

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In Russell v Amalgamated Society of Carpenters & Joiners (1912) A.C. 421, it was held by a majority decision of the House of Lords (Lords Macnaghten, Shaw of Dunfermline, Mersey and Robson - Earl Loreburn, L.C. and Lord Atkinson not considering it necessary to express an opinion on this point), that certain rules of a society registered under the Trade Union Acts, 1871 and 1876, which provided for the 'militant' purposes of a trade union were such as to make the society an illegal association at common law as they were in unreasonable restraint of trade.

During the course of his judgment Lord Macnaghten said, ibidem, at p.430:-

> "It is not every restraint of trade that is unlawful. But I cannot doubt that restraint of trade which is unreasonable, oppressive, and destructive of individual liberty is unlawful".

Counsel for the appellants relied on the following passage from the judgment of Lord Shaw of Dunfermline, ibidem, at pp. 435 - 436;

> "Strikes may be perfectly legal or they may be illegal. It depends on the nature and mode of the concerted cessation of labour. If this concerted cessation is in breach of contract, then it could not be said to be within the law any more than could a breach of contract by a single workman. If, on the other hand, a strike be a cessation of labour on the expiry of contract, there is no necessary illegality there, any more than in the case of an individual workman completing his current bargain and then choosing to remain idle. But, of course, in this latter case, the concert for the cessation of labour may be for the sole or deliberate or obvious purpose of restraining trade, in which case different legal consequences might ensue, and to this I have referred. All of these principles (excluding the

exceptional case last mentioned) are now well settled by authority; and they are no longer questioned".

Of course the ideal type of strike, which is more likely to be found in Utopia than in the hard, practical world of modern industry, is one in which a number of workmen, without the slightest coercion or intimidation from others, and not exercising any among themselves, voluntarily combine to achieve a simultaneous cessation from work not involving a breach of their contracts of employment. On the further assumption that neither restraint of trade nor an intention to injure other persons is the 'sole or deliberate or obvious' or (to use the terminology of later cases) the 'real purpose' of the strike and that no breach of the ordinary law of the land takes place during the execution of such an operation, it may be true to say that such a strike is not tainted by illegality and is perfectly lawful. It must at the same time be remembered that just as the common law principle of freedom of contract allows to an individual employee the right of lawful termination of his contract of employment, so also no employer is legally compellable to re-employ a worker who has availed himself of that right. This is, in my opinion, the process of reasoning which fundamentally underlines the various judicial dicta which refer to the "lawfulness of strikes" or the 'right' of workers to go on strike.

In his charge to the jury in Regina v Druitt & ors., (1867) 10 Cox 592, a trial for conspiracy, Bramwell B., said (inter alia) ibidem, at pp. 600 - 601:

> "The men had a perfect right to strike, and if the whole body of the men struck against the masters, why should not the whole body of masters strike against the men? . . . . . .
> No right of property or capital, about which there had been so much declamation, was so sacred or so carefully guarded by the law of this land as that of personal liberty. . . . . .

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"But that liberty was not liberty of the body only. It was also a liberty of the mind and will; and the liberty of a man's mind and will, to say how he should bestow himself and his means, his talents, and his industry, was as much a subject of the law's protection as was that of his body . . . . . The public had an interest in the way in which a man disposed of his industry and his capital; and if two or more persons conspired by threats, intimidation, or molestation to deter or influence him in the way in which he should employ his industry, his talents, or his capital, they would be guilty of a criminal offence. That was the common law of the land, and it had been in his opinion re-enacted by an Act of Parliament, passed in the 6th year of the reign of Georve IV . . . . . "

In Crofter Hand Woven Harris Tweed Co. Ltd. v Veitch (1942) 1 All E.R. 142, Lord Wright said, (at pp. 158 - 159):-

"Where the rights of labour are concerned the rights of the employer are conditioned by the rights of the men to give or withhold their services. The right of workmen to strike is an essential element in the principle of collective bargaining".

Notwithstanding the various dicta on which counsel relied, one fact that cannot be gainsaid is that 'striking' is an activity that is replete with opportunities for, and provides strong inducements towards, the commission of illegal acts, and as such has a natural tendency to lead to situations of grave unrest and disorder which are inimical to the interests of the community as a whole, and which it is the duty of every state to endeavour to prevent or curb by any lawful means within the limits of its executive or legislative powers.

See sec. 36 of the Constitution.

Enough has been said to show the extent to which the so-called 'legality' of strikes in England is founded upon immunities provided by statute, and it is pertinent to observe here that the 'legality' of strikes in this country before the coming into operation of the Act depended mainly on legislative provisions substantially similar to those existing in England. These are to be found in the Trade Unions Ordinance, Ch. 22 No. 9 and the Trade Disputes and Protection of Property Ordinance, Ch. 22 No. 11. In such circumstances I consider as being basically unsound the submission of counsel for the appellants, in so far as it ignored the role of statute law in the process of the so-called 'legalization' of strikes and suggested that the 'right' to strike is the right of individuals under the common law, which, as it existed in England on the 1st of March, 1848, is deemed, subject to the provisions of statutory enactments, to have been in force in Trinidad as from that date. (Section 12 of the Supreme Court of Judicature Act, 1962).

The gradual evolution by means of legislative enactment of the so-called 'right' to strike, which as late as 1927 was substantially affected in England by the Trade Disputes and Trade Unions Act of that year, passed in consequence of the General Strike of 1926, is such as to impel me to the view that this 'right', if it may properly be so called, is something that is in its nature very different from the well-known basic rights or liberties of the subject which derive in England from the 'common law', but which, owing to the constitutional sovereignty of the British Parliament, are themselves liable at any time to be abridged by legislative enactment. Under the 'unwritten' British Constitution there is no scope for the existence of fundamental rights and freedoms in the sense in which they exist under our Constitution.

See Hood Phillips, Constitutional and Administrative Law, 3rd edn., pp.19 et. seq; 43 and 44.

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It should be noted here, in parenthesis, that the Trade Disputes and Trade Unions Act, 1927 (U.K.) was repealed in 1946.

At this point reference may usefully be made to 7 Halsbury's Laws of England (3rd Edn)., para. 416, pp. 195 - 196, where the following statement appears:

> ". . . . . the liberties of the subject are not expressly defined in any law or code. Further, since Parliament is sovereign, the subject cannot possess guaranteed rights such as are guaranteed to the citizen by many foreign constitutions. It is well understood that certain liberties are highly prized by the people, and that in consequence Parliament is unlikely, except in emergencies, to pass legislation constituting a serious interference with them".

The liberties in question are described in a passage in which the learned authors state: (op..cit. para. 418):-

> "The most important liberties which have been created and elaborated under these conditions are:-
>
> (1) The right of personal freedom or immunity from wrongful detention or confinement . . . . . .
>
> (2) The right of property . . . . . .
>
> (3) The right of freedom of speech or discussion . . . . . .
>
> (4) The right of public meeting . . .
>
> (5) The right of association, which arises from the fewness of the restrictions on the making of contracts and the constitution of trusts, from the case with which companies can be formed under the

" Companies Act, 1948, and Trade Unions under the Trade Union Acts, and from the laxity of the law of conspiracy.

It seems that there should be added to this list the following rights, which appear to have become well-established:-

(6) The right of the subject to have any dispute affecting him, which is brought before a judicial tribunal or officer, tried in accordance with the principles of natural justice. . . . . .

(7) The so-called right to strike, or the right of the subject to withhold his labour, even in concert with others, so long as he commits no breach of contract, or tort, or crime".

Two points need to be paid particular attention:-

(a) The use of the expression "so-called right to strike".

(b) The diffident manner of expression of the learned authors' opinion as to whether this so-called right should be added to the well-known list of liberties of the subject.

From their treatment of the matter it is clear that the learned authors consider this so-called right to strike as something separate and distinct from the well-established right of freedom of association, which, in any event, has never been unlimited but has always been conditioned by the necessity for paying regard to the rights of others. In my opinion, this method of treatment is correct. It is, of course, further to be observed that many eminent writers on Constitutional Law do not classify the right of freedom of association as

per se a liberty of the subject or otherwise than as an emanation from other well-established rights, namely, the rights of personal freedom, freedom of speech and public meeting. For example, in Wade and Phillips' Constitutional Law (7th Edn)., p.514, the topic of 'freedom of association' is dealt with as a particular aspect of 'Liberty of Discussion'. Professor Hood Phillips (op. cit.) classifies what are commonly known as the liberties of the subject, in chapters respectively entitled "Freedom of Person and Property, Freedom of Speech and Freedom of Association and Public Meeting". The last mentioned topic is introduced as follows:-

> "The rights of association and assembly consist in the liberty of two or more persons to associate or meet together provided they do not infringe any particular rule of common law or statute. Those who take part in an association or assembly will infringe the law if either their object is unlawful or they pursue or threaten to pursue their object by unlawful means".

Whatever the nature of the classification that may be adopted in relation to the freedom of association, in my judgment, a logical distinction falls clearly to be drawn between freedom of association strictly so called and freedom to engage in any particular activity of an association. While, for example, the law permits the members of a social club to associate for the purpose of 'rational recreation', which they may consider to be substantially achieved by the consumption of alcoholic beverages, I think it could hardly be said that a law which puts an absolute prohibition on the drinking of such beverages in any way interferes with the freedom of association of the members. Moreover, it seems to me that the difference in legal origin and evolution between the right of freedom of association and the so-called 'right' to strike is such as to make it impossible to hold that the so called right to strike is an essential

ingredient of freedom of association in its relation to members of trade unions and workers generally.

This is perhaps the appropriate stage at which to express my opinion that neither the legal recognition of trade unions nor their right to bargain collectively on behalf of their members has been impaired by the Act, except in in so far as it may be said that the combined effect of secs. 22, 23 and 24 is to limit a trade union's freedom of contract in that the Industrial Court is empowered, at the instance of the Minister of Labour, to nullify the validity of an industrial agreement arrived at consensually between the parties. But, as has been pointed out by the learned President, freedom of contract is not one of the fundamental freedoms guaranteed by the Constitution. On the other hand, sec. 3 of the Act, by providing for compulsory recognition by employers of trade unions representative of a majority of their employees, and by compelling employers to "treat and enter into such negotiations with any such trade union or organisation as may be necessary or expedient for the prevention or settlement of trade disputes", may in one sense be said to have the effect of enhancing a trade union's power of collective bargaining.

I am not unmindful of the fact that this view may be countered by the contention that the inability of workers to strike deprives them of a potent weapon whereby they have been customarily enabled to bring pressure to bear on their employers for the purpose of improving their conditions of labour. Whether this is so or not appears to me to be immaterial to the determination of the question as to whether the workers' 'right' to collective bargaining has been curtailed. To illustrate the truth of this proposition, the following analogy may be considered helpful. Assume an industrial dispute to be equivalent to warfare. While the fact that one of the combatants is denied the use of a particular weapon may weaken his

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capacity to fight, it does not affect his right to carry on the contest. I consider it only fair to add that in the present case the other combatant has also been deprived by the Act of the use of an equally potent weapon, viz:- the lock-out.

Reference was made by counsel for the appellants to the following passage appearing in Ridge's Constitutional Law of England (6th Edn)., (1937) at p. 390, in relation to the "rights of the subject":

> "The rights secured are essentially (1) personal freedom; (2) security of property: (3) freedom of speech; (4) right of public meeting; and (5) right of association. This last right includes that of striking, i.e., of combined withholding of labour where there is no breach of contract or tort or crime . . ."

It is worthy of observation that the assertion that the right of association includes that of striking is not made in the 8th edition of the same work (published in 1950) and for the reasons indicated I am of opinion that this view of the learned author is not correct in so far as it implies that the 'right' of striking is a necessary and indispensable element of the right of freedom of association. The conclusion to which I have thus arrived inevitably leads me to reject the submission that the so-called 'right' to strike falls by necessary implication within the constitutional guarantee of the "freedom of association and assembly" established by sec. 1 (j) of the Constitution.

Counsel appears to have put forward the alternative contention that the so-called 'right' to strike, although not falling within the terms of sec.1 of the Constitution, would nevertheless be entitled to the benefit of the protective provisions stipulated by sec.2. From this proposition I must express my profound dissent. In this connection I would refer to some observations made by Griffith C.J. while

delivering the judgment of the High Court of Australia in

The Federated Amalgamated Government Railway and Tramway Service Association v The N.S.W. Traffic Employee Association (1906) 4 C.L.R. 488 at p.534.

Although made in relation to a Federal Constitution involving the distribution of powers between the States and the Commonwealth of Australia, I am of the view that they are equally applicable to the provisions of our Constitution. The learned Chief Justice said:-

> "It follows, we think, from this consideration that the rules of construction expressed in the maxims exprossum facit cessare tacitum and expressio unius est exclusio alterius are applicable in a greater, rather than in a less, degree than in the construction of ordinary contracts or ordinaty statutes".

I have deliberately refrained from embarking upon any consideration of the true juristic nature of the alleged 'right' to strike which is in issue in this case, as I do not think it strictly necessary for the determination of the appeal. It is significant that no attempt was made by counsel to define the nature of this 'right'. However, it appears that the appellants are claiming that they are legally entitled to non-interference by Parliament with the special statutory immunities that have, before the Act came into operation, been applicable to persons who engage themselves in the activity commonly known as striking. In my judgment, they have signally failed to prove the existence of any such right.

The expression 'right' is, of course, used in a multiplicity of senses (see Salmond on Jurisprudence, (11th edn.) pp.259 et. seq., Jowitt's Dictionary of English Law, Vol. 2, pp. 1560 - 1561), and I agree with the learned trial judge's opinion that no 'positive right' to strike exists, in the sense of a right which is

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legally enforceable or the infringement of which gives rise to legal sanctions. Nevertheless, whatever the nature of its juristic foundation, even a so-called 'right', however nebulous or ill-defined, assumes the character of a fundamental right or freedom if it is expressly so declared by the provisions of the Constitution. On the other hand, it is clear that the difficulty of holding that it is so declared only by implication increases in direct proportion with the extent of uncertainty of the alleged 'right'.

It may be noted that a 'right' to strike, subject to regulation by law, is proclaimed by the Inter-American Charter of Social Guarantees (Jenks, The International Protection of Trade Union Freedom, (1951) p. 358), and that it has later found expression in the European Social Charter which was signed by thirteen of the member States of the Council of Europe in Turin on October 18, 1961 - (Article 6(4). Moreover, such a 'right' is one that has been recognised by the Constitution of more than one European country, e.g. the Constitution of the Fifth French Republic of October 4, 1958, reaffirming the preamble to the Constitution of the Fourth French Republic (1946); the Italian Constitution of 1946 (Article 40).

See Kahn-Freund, Labour Relations and the Law, pp. 191, 211.

It should, of course, at the same time be observed that there is nothing novel about the abolition or limitation of the 'right' to strike, as there are several countries where such a situation exists, e.g., Portugal, Turkey, Bolivia, Colombia, Thailand, Ceylon, Venezuela, Canada.

See Jenks, (op. cit.) pp.359 et. seq.

One further observation should be made. The contention of the appellants in this case is not that the alleged 'right' to strike, which is claimed to be one of the fundamental rights

or freedoms guaranteed by the Constitution, cannot be completely abolished by an Act of Parliament. Their sole complaint is that this was not done in a manner authorized by the provisions of sections 4 and 5 of the Constitution.

For the foregoing reasons I am of opinion that the appellants have failed to establish their contention that sections 34 and 35 of the Act are invalid as being ultra vires. I have given careful consideration to all the other questions arising in this appeal. As regards those I am in complete agreement with the conclusions arrived at by the learned President, whose judgment I have had the opportunity of reading before its delivery. In the result, I must reject the appellants' claim to a declaration that the Act is "ultra vires the Constitution of Trinidad & Tobago and is null and void and of no effect". Accordingly, I too would dismiss this appeal with costs.

CLEMENT E. PHILLIPS
Justice of Appeal.

J U D G M E N T

(3) H. Aubrey Fraser, J.A.

(3) H. Aubrey Fraser, J.A.

I begin this judgment with a quotation from the writings of Professor Dicey who said:

> "In almost every country some forms of association force upon public attention the practical difficulty of so regulating the right of association that its exercise may neither trench upon each citizen's individual freedom nor shake the supreme authority of the state. The problem to be solved, either as a matter of theory or as a matter of practical necessity, is at bottom always and everywhere the same. How can the right of combined action be curtailed without depriving individual liberty of half its value; how can it be left unrestricted without destroying either

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"the liberty of individual citizens, or the power of the Government?"

Professor Dicey wrote this in 1905 and what he said then may strike us as being fundamentally valid today because this case concerns the legality of an Act of Parliament which attempts to offer a solution to the problem posed. On an application to the High Court by motion the appellants sought a declaration that the Industrial Stabilisation Act, 1965, is ultra vires the Constitution and is null and void and of no effect. Corbin, J., dismissed the motion and the appellants have appealed.

The Industrial Stablisation Act, 1965, hereinafter referred to as the Act, received the Royal Assent and became operative on March 20, 1965. The preamble introduced it as an act to provide for the compulsory recognition by employers of trade unions and organisations representative of a majority of workers, for the establishment of an expeditious system for the settlement of trade disputes, for the regulation of prices of commodities, (and) for the constitution of a court to regulate matters relating to the foregoing and incidental thereto.

The appellants' complaint is directed mainly against secs. 34, 36 and 37 of the Act which are said to have infringed and abridged (sec. 34) and abrogated (secs. 36 and 37) the right to strike and consequently, it is contended, the provisions of sec.2 of the Constitution have been contravened for the reason impliedly that the Industrial Stabilisation Bill was not passed in the manner provided in sec.5 of the Constitution. Other sections of the Act are said to contravene the Constitution but I propose to deal with what the appellants apparently consider to be the heart of the matter. Briefly, the appellants contention is this: sec. 1 of the Constitution recognises the existence of certain human rights and fundamental freedoms and declares an assurance of their continuity without discrimination by reason of race, origin, colour, religion or sex. In protection and preservation

of those rights and freedoms sec.2 prescribes that subject only to the provisions in secs. 3, 4, and 5, no law shall abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the declared rights and freedoms. Although, admittedly, a law or Act of Parliament passed in accordance with secs. 4 and 5 may abrogate, abridge or infringe any of the declared rights and freedoms, it is contended that the provisions of sec. 5 not having been complied with in the manner prescribed or at all, there is no authority to abrogate, abridge or infringe any of the declared rights and freedoms as allegedly done by the Act. The argument is thence projected this way: if, as is contended for the appellants, the right of free collective bargaining and the right to strike are common law rights exigible by members of a trade union and are included in the freedom of association as declared in sec. 1(j) of the Constitution it follows necessarily that any law or Act of Parliament, specifically secs. 34, 36 and 37 of the Act, purporting to infringe, abridge or abrogate the right to strike is ultra vires the Constitution having regard to the non-compliance with sec. 5 as (1) and (2) which read as follows:

> "5. (1) An Act of Parliament to which this section applies may expressly declare that it shall have effect notwithstanding sections 1 and 2 of this Constitution and, if any such Act does so declare, it shall have effect accordingly except insofar as its provisions may be shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.
>
> (2) An Act of Parliament to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House."

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Without equivocation it should be said at once that the effectiveness of trade union action by resort to the strike weapon is considerably impaired and circumscribed by sec.34 of the Act; sec.36 actually prohibits the participation in a strike by workers in essential services; and sec.37 prohibits members of the public service and its uniformed branches from going on strike. In the event the appellants' contention is sound namely, that there is, and one must add, always had been, a common law right to strike it may well be that the provisions of secs. 34, 36 and 37 of the Act are ultra vires, there being a non-compliance with the provisions of sec. 5 of the Constitution.

The Attorney General submitted that the right to strike, if it can be so described, is not included in the fundamental freedom of association and assembly as declared in sec. 1(j) of the Constitution and that nowhere in the Constitution is to be found a declaration of such a right in clearly defined terms. He submitted also that the doctrine of ultra vires is not applicable to the instant case; that the right to strike is not a legal right; and, he said finally, that the Court must approach the matter from the point of view of the public interest. This final proposition was not developed by the Attorney General and therefore I do him no injustice if I give it a wide berth; but in steering clear of so imprecise a reference to the "public interest" which, if given the most favourable interpretation in its context, appears to be conterminous with "public policy", I recall the words of Burrough, J., in Richardson v Mellish (1824), Bing. 229 who, in speaking about public policy said:

> "I, for one, protest ..... against arguing too strongly upon public policy; it is a very unruly horse, and when once you get astride it you never know where it will carry you. It may lead you from the sound law. It is never argued at all but when other points fail."

In a case of this kind "public interest" if construed as "public policy" must mean the principles upon which freedom of contract or private dealing is restricted by law for the good the community. To give the words their literal meaning would introduce ideas of executive action based on a presumed social contract and this must inevitably involve political considerations. These are subjects with which I am not here concerned. My function is clear. My function is the same as was that of Date, J., in D'Augiar v Attorney General (1962), 4 W.I.R. 481 "to interpret the Constitution as it stands."

Deferring for the moment the question whether the right to strike is a legal or other right I now consider the three other submissions made by the Attorney General. The first point is that the doctrine of ultra vires is not applicable to the instant case. Having regard to the provisions of sec. 6 of the Constitution it is difficult to understand this submission. By that section any person may apply to the High Court for relief against the operation of any law which may offend against the provisions of sec. 2 of the Constitution. There is no doubt in my mind about this and the conjoint effect of secs. 2 and 6 of the Constitution is to confer upon the High Court the function of judicial review over such legislative measures as may be taken in contravention of the expressed provisions of secs. 4 and 5 of the Constitution. No question of the sovereignty of Parliament arises here. It is simply a matter of obeying the Constitution. No one, not even Parliament, can disobey the Constitution with impunity. Parliament can amend the Constitution only if the constitutional prescriptions are observed and providing Parliament fulfils the requirements of the Constitution its power is sovereign and supreme. But if Parliament fails or omits or neglects to do so and thereby contravenes the expressed provisions of the Constitution any person who alleges that he has been, or that he is, or that he is likely to be prejudiced by such contravention may seek recourse to the

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High Court and pray its relief.

There is clear authority for this view. I refer to the case of The Bribery Commissioner v Ramasinghe (1965) A.C. 172 in which the Privy Council held that a legislature has no power to ignore the conditions of law-making that are imposed by the instrument which itself regulates its power to make law; so that where, as in that case, the Constitution required the Speaker's certificate as a necessary part of the legislative process a Bill which did not comply with that provision was invalid and ultra vires even though it received the Royal Assent. Lord Pearce in his judgment said at p. 194:

> ". . . . The Court has a duty to see that the Constitution is not infringed and to preserve it inviolate . . . . . The English authorities have taken a narrow view of the Court's power to look behind an authentic copy of the Act. But in the Constitution of the United Kingdom there is no governing instrument which prescribed the law making powers and the forms which are essential to those powers. There was therefore never such a necessity as arises in the present case for the Court to take any close cognisance of the process of law-making."

Later in the judgment at p. 196 he posed the following question:

> "When a sovereign Parliament has purported to enact a bill and it has received the Royal Assent, is it a valid Act in the course of whose passing there was a procedural defect, or is it an invalid Act which Parliament had no power to pass in that manner?"

That question was answered at p. 197 in this way:

> " . . . . a legislature has no power to ignore the conditions of law-making that are imposed by the instrument which itself

"regulates its power to make law. . . . . the proposition . . . . is not acceptable that a legislature, once established, has some inherent power derived from the mere fact of its establishment to make a valid law by the resolution of a bare majority which its own constituent instrument has said shall not be a valid law unless made by a different type of majority or by a different legislative process."

This opinion confirms my own and on this point the case of Luyanage et al v The Queen (1966) 1 All E.R. 650 is also of considerable interest.

The subsidiary submission of the Attorney General that nowhere in the Constitution is to be found a declaration of a right or freedom to strike is correct; but this does not dispose of the appellants' contention that the right to strike is included in the freedom of association; and so I turn now to the main submission of the Attorney General on this point that the right to strike is not included in the freedom of association and assembly. If the right to strike is not included in the freedom of association then the short answer to the appellants' is that they have no case because the Constitution does not protect from legislative interference any rights other than those expressly or by necessary implication recognised and declared in sec. 1; but if the right of free collective bargaining and the right to strike are included in the freedom of association then they are protected by the Constitution.

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. In a careful argument Mr. Alexander recruited as an ally the dictum of Lord Wright in Crofter Hand Woven

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Harris Tweed Co. v. Veitch (1942) A.C. 435 in which at p. 463 he said:

> "The right of workmen to strike is an essential element in the principle of collective bargaining."

He also referred to the judgment of Fletcher-Moulton, L.J. in Gozney v Bristol etc. Trade and Provident Society (1909) 1 K.B. 905 who said at p. 921 -

> "Strikes are well-known occurrences in the labour world, and every workman who is prudent and realises his duty towards those who depend on him will take steps to provide against the suffering they bring. Every time a workman practices thrift he facilitates his taking part in future strikes, and no doubt that intention is present when he thus acts, and it is strange that such a motive should be held to be tainted with illegality".

There are other encouraging references notably among them being an article on The Law of Associations by Prof. Dennis Lloyd at p. 99 of Law and Opinion in England in the Twentieth Century edited by Morris Ginsberg. At p. 106 Prof. Lloyd says -

> "At the turn of the century the trade unions were still relatively weak, and although lawfully established for more than a quarter of a century under the ill-defined status conceded by the 1871 Act and with the right to strike legally recognised, they still appeared to be vulnerable to common law actions for conspiracy or wrongfully inducing breaches of contract."

Later in the same work in commenting on the Trade Disputes Act, 1906 as a far-reaching consequence of the decision in Taff Vale Railway Co. v. Amalgamated Society of Railway

Servants (1901) A.C. 426, he said -

> "This remarkable piece of legislation which appeared to go far beyond what was necessary to preserve the inviolability of the right to strike, had the result, as was judicially observed two years later, of removing the trade unions 'from the humiliating position of being on a level with other lawful associations . . . .'".

The foregoing are merely two of a number of expressions from differing sources which apparently tend to support the argument and give the impression that the right to strike is an established and recognised right protected and enforceable by law. Whether this is so is still to be judicially determined. Therefore it is at once necessary to define the terms of the proposition in order to limit the scope of the enquiry. Accordingly, definitions are indicated for the words "strike", "right" and "common law".

Firstly, the word "strike". Hannen, J., in Farrer v Close (1869) L.R. 4 Q.B. 602 defined a strike at p. 612 as "a simultaneous cessation of work on the part of workmen". This definition was elaborated upon a few years after in King v Parker (1876) 34 L.T. 887 at 889 by Kelly C.B., who said -

> "I conceive the word means a refusal by the whole body of workmen to work for their employers, in consequence either of a refusal by the employers of the workmen's demand for an increase of wages or of a refusal by the workmen to accept a diminution of wages when proposed by their employers".

Not the least significant differences between those two definitions is the introduction by Kelly C.B., of the element of a wage dispute as the real determinant while the common factor between them remained a simultaneous cessation of work by a group of workmen. From these definitions arise two clear inferences. The first is that a strike is a collective rather than an individual activity; and secondly, that

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wage rates were wholly the subject of agreement inter partes between the employer and the employed. The only significant development to the definition of a strike since 1876 occurred in 1915 in William Bros. (Hull) Ltd. v Naamlooze Vennvotschap (W.H.) Berghuys Kolenhandel (1915) 86 L.J. K.B. 334 in which Sankey, J., said that a strike is "a general concerted refusal by workmen to work in consequence of an alleged grievance". A nice distinction arises from this definition and it is that the determinent is no longer a dispute as to wages but rather the existence of an alleged grievance. This I think arose as a result of the definition of a trade union which for the first time was provided in sec. 16 of the Trade Union Amendment Act, 1876 as follows:

> "16. The term 'trade union' means any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restricting conditions on the conduct of any trade or business, whether such combination would or would not, if the principal Act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade".

Accordingly, strike action was resorted to as a means of collective bargaining within the total scope of the trade union function and purpose and the definition of a strike has since remained as defined by Sankey, J. in 1915. It is therefore a means of collective rather than individual action and is a simultaneous cessation of work by workmen in consequence of an alleged grievance. The definition of "strike" in the Act accords substantially with and is an elaboration of the judicial definition.

Ordinarily, the question - what is the common law - should not be difficult to answer; but where, as in this case, a common law right

is being claimed it will be necessary to determine both the nature of the common law and the character of the rights which it recognised as existing and enforceable. In Jowitt's Dictionary of English Law the common law is said to be -

> "that part of the law of England which before the Judicature Acts 1873-75 was administered by the common law courts. It is sometimes used in contradistinction to statute law, and then denotes the unwritten law, whether legal or equitable in its origin, which does not derive its authority from any express declaration of the will of the legislature. It depends for its authority upon the recognition given by the courts to principles, customs and rules of conduct previously existing among the people. This recognition was formerly enshrined in the memory of legal practitioners and suitors in the courts; it is now recorded in the law reports which embody the decisions of the judges together with the reasons which they assigned for their decisions . . . . . With reference to the subjects with which it deals, the common law is divided into civil and criminal; the former includes the two great branches of private rights arising out of contracts and torts; the latter deals with crimes."

This then is the common law which, by virtue of sec. 12 of the Supreme Court of Judicature Act, No. 12 of 1962 is deemed to have been in force in Trinidad since March 1, 1848 and accordingly we must look for authority and guidance to the "law reports which embody the decisions of the judges together with the reasons which they assigned for their decisions". In considering this question references will have to be made to the common law rights and disabilities recognised by the Courts and to the statutory measures adopted to alter the common law.

The civil liberty which has become known as the freedom of association and assembly has been developed by judicial precedent especially in the enunciation of the common law of contract. The Great Britain of the late 18th century was a developing industrial society in which contract supplied the legal instrument which enabled men to bargain for their services and to move freely from place to place. The idea of contract allowed men to negotiate terms and conditions of employment, at first individually and later collectively, through the agency of trade unions. The policy followed in earlier centuries of official regulation of wages by Act of Parliament had already declined by 1700 and in the century following workmen, deprived of their accustomed statutory protection began to combine among themselves, ostensibly to seek Parliamentary redress, but not infrequently for the purpose of enforcing wage demands against their employers by the direct and repressive sanction of "bad-work, go-slows or turn-outs (later known as strikes)". This then was the background in which the common law of contract had to develop and expand and the common law of combinations and associations had to be enunciated. The attitude of the Courts of the time is interesting. On the criminal side, the common law offence of conspiracy was at once invoked to curb agreements among workmen to combine and thereafter began the judicial development of the crime of conspiracy. Based on the wide proposition of Hawkins - see P.C. Bk.1 C.72 s.2 - that

> "all confederacies whatsoever wrongfully to prejudice a third person are highly criminal at common law, as where divers persons confederate together by indirect means to impoverish a third person"

the definition of conspiracy was gradually narrowed until it found its final resting place in Quinn v Leathem (1901) A.C. 495 as "the agreement of two or more, to do an illegal act by lawful means, or a legal act by illegal means."

On the civil side, the courts were not willing to recognise the existence of associations of workmen and were content to invoke the principles applicable to clubs and societies (religious and friendly). The theory was that a man was free to associate with whomsoever he wished and it was not the business of the courts to interfere with or enquire into the terms upon which membership of an association was offered and accepted. This disinclination to interfere with the domestic affairs of trade unions was not inspired solely by the recognition of the freedom of association but it remained the attitude of the Courts until the case of Bonsor v Musicians Union (1956) A.C. 104 in which it was held that the civil courts had jurisdiction to judicially review arbitrary action taken domestically by a trade union. The disinclination to interfere was not limited to the domestic affairs of unions but was applied as well to their agreements with employers and this was given statutory authority by sec. 4 of the Trade Union Act, 1871, which provides that -

> "nothing in this act shall enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any agreement between one trade union and another" (this includes employers' associations).

A similar provision is to be found in sec. 6 of the Trade Unions Ordinance, Ch. 22 No. 9. An interesting aspect of industrial relations becomes apparent from what has been said and it is - that the collective labour agreement which in this day and age must affect the economic and social lives of a great portion of the working population both here and in the United Kingdom, has substantially remained outside the scope of judicial review.

The common law in the late 18th century was being made to work its purpose as it appeared to the judges of that time. The

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writings of Adam Smith and Jeremy Bentham were gradually informing the economic and political policy of laissez-faire and among the ideas gaining ascendancy was the idea that the wealth of a nation was best secured by giving free play to the efforts of the individual to better his condition and therefore that each individual should be left free to conduct his own trade in his own way. These ideas had already influenced the development of legal theory and the concept of the illegality of contracts in restraint of trade had been introduced into the common law on the ground of public policy. A discernible jurisprudence was being formed around the theme of restraints on trade in the law of crime on the one side and the law of contracts and torts on the other. According to Russell, - see Russell on Crime 11th Ed. p. 214 - the common law courts received conspiracy

> "as a loosely expressed doctrine capable of almost indefinite extension. In effect it marked the point at which an agreement between two or more persons to do any act which the court disliked even on moral grounds, could be punished as a criminal conspiracy".

On the criminal side the flexibility of the crime of conspiracy resulted in repressive sanctions against combinations in restraint of trade and on the civil side contracts held to be in restraint of trade were jealously scrutinised. One of the early instances of the development of these ideas arose in a unique indictment for conspiracy against a group of journeymen tailors who were found guilty for agreeing among themselves not to work for wages less than those demanded by them collectively - R. v Journeymen-Taylors of Cambridge (1721) 8 Mod. 10 - The conspiracy alleged was not the agreement not to work (as it would have been in later years) but rather the agreement to demand higher wages which was construed as a conspiracy to raise their wages and, in effect, was a conspiracy in restraint of trade. Agreements in restraint of trade were considered at first to be void and then later to

be unenforceable; combinations in restraint of trade become criminal conspiracies or actionable torts; and so it is that the early common law of trade unions is largely to be found in the reports of civil actions and criminal prosecutions touching respectively, the validity and enforceability of contracts and of rules of associations which were in restraint of trade; and the disabilities to which workmen and trade unions, whose objects were in restraint of trade, would suffer.

The social conditions of industrial England were in part responsible for a series of Acts culminating in the Unlawful Combinations of Workmen Acts, 1799-1800 which made it a criminal offence for workmen to agree together for the purpose of obtaining in combination higher wages or shorter hours of work, or preventing any person from employing whomsoever he thought proper or for any workmen by persuasion or intimidation or any other means wilfully and maliciously to endeavour to prevent any person from taking employment, or to induce any person to leave his employment. The effect of this legislation was to make a mere collective agreement to combine for certain purposes a criminal conspiracy so that a fortiori the method whereby the combination was to effect its purpose must itself have fallen within criminal activity at common law as will shortly be demonstrated. The Unlawful Combinations of Workmen Acts were repealed by the Combination Laws Repeal Act, 1824 which expressly removed all criminal responsibility for conspiracy (whether under the common law or statute law) to combine to alter wages, hours or conditions of work or to induce persons to leave or refuse to return to work. This Act was followed by a series of industrial stoppages involving some rioting, violence and bloodshed and consequently the situation had to be restored by the Combination Laws Repeal Amendment Act, 1825. The 1825 Act did not legalise strikes or lock-outs or the persuasion of persons to leave, refuse or return to work; but it prescribed the combinations which were to be free or immune from criminal responsibility, limiting them to

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combinations for the purpose of the determination of wages, policies and hours of work required by those combining. The Act dealt with assaults, intimidation etc. for interference with the freedom of employers or workmen, and left conspiracies to commit any of the acts prohibited to be dealt with as conspiracies at common law to commit crime. An informative note on the 1825 Act is to be found in the Encyclopaedia of the Laws of England, 2nd Ed. Vol. 3 at p. 481. The editor says:

> "There are two conflicting views of the effect of this statute - one that all combinations to raise wages were criminal at common law, and that the statute created certain exceptions; the other, that such combinations were only criminal by statute, and that the Act of 1825 got rid of the old statutes and formed a new code on the subject."

As his authority for that statement and those following the editor cites 3 Stephen, Hist. Crim. Law, 226 and continues -

> "Concurrently with this conception the opinion prevailed that conspiracies in restraint of trade were offences at common law, apart from the enactments referred to."

Finally he says:

> "The opinion is thus summed up at 3 Stephen Hist. Crim. Law, 218
>
> (1) That all combinations of workmen to raise wages were illegal, with the limited exceptions introduced by the Act of 1825;
>
> (2) that all combinations to injure or obstruct an employer in his business, whether by his own workmen or outsiders, is a criminal conspiracy;
>
> (3) that agreements in restraint of trade

" are certainly so far unlawful as to be void, but it is uncertain whether they are criminal conspiracies."

In two prosecutions in 1851 for conspiracy among workmen to alter wages the courts recognised that the exercise of the right by fellow workmen to combine for the purpose of raising wages and altering the hours of work (which were among the exemptions in the 1825 Act) necessarily involved the right to withhold their labour to achieve that purpose - see R. v. Duffield (1851) 5 Cox C.C. 404 and R. v. Rowlands (1851) 5 Cox C.C. 436. The conclusion which may be drawn from these cases is that the freedom to withhold labour was exercisable without being unlawful only where the purpose to be achieved fell within those purposes made immune from criminal prosecution by the 1825 Act. This conclusion coincides with the judicial view then current and expressed by Crompton, J., in Hilton v Eckersley (1855) 6 E & B. 47 that all combinations to alter conditions of work were criminal conspiracies at common law as being in restraint of trade. This view was also held by Blackburn, J., in Hornby v Close (1867) L.R. 2 Q.B. 159 and remained the common law rule until disapproved by Mogul Steamship Co. v McGregor, Gow & Co. (1892) A.C. 25 after the Trade Union Act, 1871. In Russell on Crime 11th Ed. Vol. 2 p. 1719 the author says -

"prior to 1871, it had often been held criminal to conspire under certain circumstances for workmen to combine to raise the rates of wages; or to injure or obstruct employers; or to induce workmen to leave their employment; or to procure their discharge; or to strike; or to picket the works of employers."

On the civil side the common law of contracts in restraint of trade was considerably influenced by the judgment of Parker, C.J., in Mitchel v Reynolds (1711) 1 P. Wms. 181, in which it was held that a contract under seal to restrain a person from trading in a particular place, if made upon a reasonable consideration,

might be good; but if the restraint was general not to exercise a trade throughout the kingdom the contract was void for being oppressive. A long line of cases followed Mitchel v Reynolds, supra, culminating in Nordenfeldt v Maxim Nordenfeldt Co. (1894) A.C. 534, which may be said to express the current view which is that contracts in general restraint of trade are void as being contrary to public policy. A partial restraint will be binding in law if made on good consideration, and if it is reasonable. Having regard however to the changes introduced by modern extensions of business and modern facilities of communication, a restriction unlimited in space may now be binding provided that it is not more stringent than is reasonably necessary for the protection of the covenantee, and that it is not injurious to the interests of the public.

In the meantime, after the 1825 Act statutory reforms in trade union law were introduced from time to time to neutralise judicial interpretation of the common law and to avoid the illegality of action in restraint of trade by creating areas of immunity from criminal responsibility at first and later from civil liability in favour of combinations of workmen and thereafter in favour of individual workmen engaged in trade union activity. The cumulative effect of a series of judicial decisions following the 1825 Act was that while a strike to raise wages might be lawful, it was unlawful either to threaten the employer that such a strike would take place, or to persuade persons by peaceful picketing to take part in it. Consequently, the Molestation of Workmen Act, 1859 legalised peaceful picketing and relieved persons engaging in certain combinations from being deemed guilty of criminal conspiracy. But the judicial interpretation of the common law increased the feeling of insecurity among trade unions because trade unions being combinations with objects including restraints upon trade which the courts considered unreasonable, they were declared to be unlawful associations to whose agreements and trusts the law would afford no

protection. The decision in Hornby v Close (1867), supra, emphasised the disadvantages of a trade union whose objects were held to be in restraint of trade. In that case a trade union which brought a prosecution against a treasurer for larceny and embezzlement (having become registered as a Friendly Society in order to bring proceedings) was held not to be a society established for a purpose which was not illegal because it was a union in unlawful restraint of trade. The Court could not give any protection to the considerable funds of the union and the fraudulent treasurer went scot free. This was a shocking experience for the trade union movement and social justice demanded a change. Accordingly, the Trade Union Funds Protection Act, 1869 was enacted to correct the position. Shortly after in 1871 the first major reform was made by the Trade Union Act, 1871 which in prescribing a system of registration of trade unions partially legalised them. Sec. 3 provided that the purposes of any trade union shall not, by reason merely that they are in restraint of trade be unlawful so as to render void or voidable any agreement or trust. The Act also provided immunity from prosecution for criminal conspiracy to the members of a trade union the purposes of which were in unlawful restraint of trade; but as already pointed out, the Act barred a Court from entertaining legal proceedings brought to enforce domestic agreements. The trade union movement experienced another surprise by the case of R. v Bunn (1872) 12 Cox C.C. 316 in which Brett, J., held that a threat by workmen to go on strike unless the employers reinstated a discharged workman was a criminal conspiracy at common law by reason of coercion. As a direct consequence of this decision the Conspiracy and Protection of Property Act, 1875 was passed. This Act granted wider immunities to trade unions and their members from criminal prosecution and the protection seemed absolute or nearly so until two judgments of the House of Lords demonstrated otherwise. In Taff Vale Railway v Amalgamated Society of Railway Servants (1901) A.C. 426 it was held that a registered trade union could be

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sued as such in a civil action and that its funds were liable for damages inflicted by its officials. In Quinn v Loathem (1901) A.C. 495 where trade union officials had maliciously threatened a strike against the plaintiff's chief customer, unless the plaintiff dismissed his non-union workers the House of Lords only two weeks after Taff Vale held that they were liable in damages for the tort of conspiracy. The considerable agitation attending these judgments resulted in the passing of the Trade Disputes Act, 1906 which provided in sec. 1 that :

> "an act done in furtherance of an agreement or combination by two or more persons shall, if done in contemplation of furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable."

The 1906 Act thus prescribed still wider immunities from civil liability for trade unions and their members and in that position the trade unions stood believed by all in trade union circles to be secure and comprehensively protected until the case of Rookes v Barnard (1964) 1 All E.R. 367.

The decision in Rookes v Barnard, supra, being declaratory of the common law, albeit within a narrow orbit, is binding on this court. It is significantly important in the legal history of trade unionism because it illustrates the continuing power of the Courts to prescribe the areas of immunity in the discharge of their duty in construing statutes in relation to the common law. In that case the tort of intimidation was fully developed. It was held that although the ordinary breach of a contract to work, which may necessarily arise in a strike, is not an unlawful act (since and by reason of the 1906 Act) nevertheless the breach of a specific term of the contract of employment is an unlawful act and a threat to commit such a breach amounts to the common law tort of intimidation, and was not protected by sec. 3 of the Trade Disputes Act, 1906. It was held

further that an agreement to commit the tort of intimidation was a conspiracy to commit an unlawful act and was not protected by sec. 1 of the Act; consequently it became actionable by any person to whom foreseeable damage was caused.

This is a logical refinement of the common law tort of intimidation correctly applied by the Court in order to protect the right of an individual to exercise his professional (or trade) talents freely from the restraints imposed by the threat of unlawful collective action. It may be that the Trade Union Acts had provided such wide protection to trade union activity that the power of men in combination impinged upon individual liberty. What the court did was to redress the balance by refusing to allow an unlawful restraint on trade and so was able to protect the individual against the oppressive power of unrestrained collective action.

The Trade Union Ordinance, Ch. 22 No. 9 is a composite of the Trade Union and Trade Disputes Acts, 1871-1906 and for this reason it is commensurately a product of 100 years of interaction between the common law and statute law. From time to time the rules and principles of the common law have been made to give way to constructive changes by legislation in order to create conditions more agreeable for collective bargaining and to create an atmosphere more conducive to vigorous growth of the trade union movement. Legislation has not been used as an instrument of suppression but rather as an instrument of abstention. It has been used to safeguard activities of trade unions by protecting them against fraud and saving their members indirectly from the inequality of bargaining power. It has restrained the sanctions of the criminal law and granted relief from the weight of civil action. In short, statute law has granted a beneficent immunity from criminal responsibility and civil liability to trade unions and to their members provided they act lawfully in contemplation or furtherance of a trade dispute. But beneath a hundred years

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of statutory exemption there lay the authority of the common law, at first expressive, but lately dormant, yet alive and in being and able effectually to contain the tide of unrestrained freedom and restate the limits of what may seem to have become absolute immunity; and after all, as stated by Lord Evershed in Rookes v Barnard at p. 384 this is:

> "in accordance with the well-known principles of our law, one of the characteristics of which is (as has been pointed out by many eminent scholars, including Cardozo, C.J.) that its principles are never finally determined, but are and should be capable of expansion and development as changing circumstances require, the material subject matter being tested and retested in the law laboratories, the courts of justice."

I shall now consider more fully the third term among the definitions proposed, namely, the right. What I have said about the contest between the common law and statute law should adequately demonstrate that acts which may have been criminally illegal at common law were not declared to be legal by statute but instead, were exempt from criminal prosecution and civil action if done in certain circumstances. The question which arises therefore is whether a person who in doing an act which is exempted by statute from penal sanctions or from claims for compensation for civil injury, can be said to have acquired a right to do the act.

It is to be observed that a strike necessarily involves a number of persons but that the human rights and fundamental freedoms recognised and declared in sec. 1 of the Constitution are obviously applicable only to individuals and not to an association of individuals because the categories of discrimination viz:, race, origin, colour, religion and sex are intelligible only on the basis of individual identity. It is for this reason that the appellants moved the High Court as individuals alleging that their individual

rights, specifically their right to join other persons in a strike, have been abrogated, abridged or infringed. Both appellants are members of the Oilfield Workers Trade Union which is affiliated to the National Trade Union Congress and consequently, to the International Federation of Free Trade Unions, and as such they claim the right to strike in concert with others. It should be borne in mind that a strike is a collective stoppage of work, and to the extent to which it involves a stoppage of work by the individual workman, it may be said to be a collective stoppage of work resulting from personal breaches of contracts of work by individual workmen. It must follow therefore that a right to strike if it exists at all, can only properly exist as a collective right; but as will be seen from the appellants' affidavit, this is not being claimed. The failure to make this claim does not result from inadvertence but instead, it stems from a recognition of the true scope and intent of sec. 1 of the Constitution by which individual human rights and freedoms are declared. In praying the Court's jurisdiction the appellants' affidavit speaks firstly of their membership of a union and secondly of an agreement between their employers (Texaco Trinidad Inc.) and the union whereby exclusive representation for the purpose of collective bargaining in respect of wages, hours and conditions of employment is given to the union on behalf of its members. It is not clear whether all the employees of Texaco Trinidad Inc. are members of the union but it is stated that in 1960 the workers employed by the company were dissatisfied by the delay in concluding an agreement and they were all -

> "urged by the then leadership of the Union to call a strike. In response to this pressure the Union called upon us to withdraw our labour which, after due notice, we did. The outcome was a satisfactory agreement under which we served for the following two years."

The clear implication is that the collective stoppage of work was effectively used in the

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technique of collective bargaining. The appellants swear also that in 1962 when the question of renewal of the 1960 agreement arose a satisfactory collective agreement was negotiated between the union and the company without recourse to strike action or the threat of strike action. It is also alleged that the 1962 agreement (dated February 16, 1963) by its terms became liable to amendment by negotiation in 1965; that negotiations started and having continued inconclusively from April 6, 1965 to July 27, 1965 were broken off by the company on that day. By virtue of the Act, the dispute between the union and the company became the subject of proceedings in the Industrial Court which, the appellants contend, has no jurisdiction to hear the dispute. Finally it is said in paragraph 16 that but for the enactment of the Industrial Stabilisation Act the union and the company would have been able freely to conclude a new collective agreement or alternatively,

> "the leaders of the Union or we (the appellants) ourselves in concert with the employees of the company and other workers in the Industry would have been free, without fear or threat of being charged and convicted of criminal offences punishable under the Act, to threaten or take strike action or other lawful and customary measures to bring about such an agreement."

Manifestly, the statement contained in para. 16 contemplates not only that the employees of the company may go on strike to bring about an agreement satisfactory to themselves but also that other employees in the oil industry, presumably those working for other oil companies, may simultaneously go on strike with the appellants and their fellow workers in order to bring about an agreement satisfactory to the employees of Texaco Trinidad Inc. There is immense significance in this statement. The question which inevitably arises is - what is the precise right being claimed by the appellants. The full implications of their affidavit must

therefore be examined in order to ascertain this. A simple and self evident proposition must be stated at once. It is this. Every man engaged on contract is at liberty to withdraw his labour in the manner prescribed by the contract or by notice or for justifiable reason. In none of these situations can the stoppage of work by him be considered unlawful because there is no breach of contract. On the other hand a person who, without notice or justifiable cause, summarily withdraws his individual labour for the purpose of negotiating higher wages or better conditions of work commits an unlawful act and personally is civilly liable for a breach of contract. As was said by Lord Lindley in South Wales Miners Federation v Glamorgan Coal Co. Ltd., (1905) A.C. 239 at p. 253:

> "To break a contract is an unlawful act; or in the language of Lord Watson in Allen v. Flood (1898) A.C. 96, 'A breach of contract is in itself a legal wrong.' a breach of contract would not be actionable if nothing legally wrong was involved in the breach."

I may add here that it is immaterial that actions for breaches of this kind are not usually brought by employers. I return therefore to isolating the precise right claimed. As already pointed out the claim cannot be in respect of the individual right to lawfully withhold labour. Moreover no claim is made or could have been made that the right to strike is a right in rem exigible by all workmen everywhere and can be so declared in an action such as this; consequently the employees of other oil companies can form no part of the consideration in this case. The claim must therefore be for a personal right. But the individual as such has no personal right to strike for the reason that a strike is a collective activity which necessarily involves more than one workman. By elimination therefore the only other possibility is a claim by the appellants to be entitled as individuals to break their contracts of service simultaneously

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with other employees and, notwithstanding the individual commission of a wrongful act, to join collectively in a strike. In effect, the appellants are claiming an individual right to do a wrongful act, i.e. to stop work unlawfully in order to enjoy a collective right to strike. When expressed in these terms the real incongruity of the position rises to the surface. Except in the rare cases of justification in the criminal law particularly in cases of homicide, there is no authority anywhere for the proposition that the common law recognised as a personal right the freedom of an individual to commit an unlawful act. Put crudely, the proposition is that a wrongdoer has a personal right protected and enforceable in law to do an unlawful act.

I say protected and enforceable in law because every right is a legally protected interest, regardless of the source of the right whether by statute, common law or equity, and is enforceable in a court of law. The right which the appellants claim is an individual and personal right to strike or more accurately, to take part in a strike. Careful examination of the English cases will disclose that there has never been a right to strike recognised by the common law nor has it been so declared by statute. The exemptions or immunities which individuals have enjoyed singly and collectively in their freedom to associate in trade unions are not enforceable rights exigible against the world. There is no case decided in Great Britain which comes near to recognising such a right. On the contrary there is a great deal of learning supporting a contrary view.

I should however mention the case of Regina v Canadian Pacific Railway Co., 31 D.L.R. (2d) 209 in which McRuer, C.J., of the High Court of Ontario held that the right to strike is a common law right which was recognised as such by the Labour Relations Act, 1960. Of the judicial dicta upon which he mainly relied one is in Mogul Steam Ship Co. v McGregor, Gow & Co. (1892) A.C. 25 made by Lord Bramwell at p. 47:

> "There is one thing that is to me decisive. I have always said that a combination of workmen, an agreement among them to cease work except for higher wages, and a strike in consequence, was lawful at common law; perhaps not enforceable inter se, but not indictable."

Another of the dicta is the statement of Lord Wright in Crofter v Veitch, supra. McRuer, C.J., ultimately summed up the position as he saw it at p. 215 in this way:

> "The principles of law that I have just been discussing are authoritatively restated by the Hon. Mr. Justice Rand in Newell v Barker & Bruce, (1950) 2 D.L.R. 289 at p. 299 . . . where the learned judge said:
>
> It is now established beyond controversy that in the competition between workmen and employers and between groups of workmen, concerted abstention from work for the purpose of serving the interest of organised labour is justifiable conduct.
>
> On the authority of the cases that I have discussed and many others, I am forbidden to accept the argument put forward by Mr. Jackett that on the facts as found by the learned magistrate the strike is unlawful at common law . . . . . Although the Act does not purport to create a statutory right to strike, as I indicated it recognises the common law right to strike and so doing, limits it."

On appeal to the Ontario Court of Appeal Roach, J.A., said:

> "This Court is in substantial agreement with the reasons of the learned Chief Justice . . . and, subject to what I shall say in a moment, with his order . . . . . it would be lawful under the common law for the employees here concerned to go on

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> "strike, their purpose in so doing not to injure the employer but to bring about what they consider to be improvements in their working conditions and monetary benefits . . . . quite apart from the common law the statute has recognised the lawfulness of a strike . . . . . "

An appeal to the Supreme Court of Canada in the name Canadian Pacific Railway Co. v. Zambri 34 D.L.R. (2d) 654 was dismissed. But Locke, J., considered that the case should be decided upon the assumption that the strike of the members of the Union was lawful as had been found by McRuer, C.J., whose finding had been approved by the Court of Appeal. Cartwright, J., with whom Kerwin, C.J. Taschereau and Fanteux, JJ., concurred found on the particular facts that the strike was lawful under the provisions of the Labour Relations Act but said at p. 663:

> "I find nothing in the Act that renders lawful the calling of, or participating in, a strike where the cessation of work is in breach of a term in the contracts under which the employees are working requiring the giving of notice of a prescribed length before ceasing work; clear words in a statute would be required to bring about such an alteration in the law.. . .. the employee cannot have it both ways; if he is still an employee it is his duty to work, and if he refused to work he is in breach of the contract of employment and the employer can treat it as at an end. But in my opinion the position of the parties is altered by the relevant provisions of the Act."

Judson, J., with whom Abbott, Martland and Ritchie, JJ., concurred referred to the relevant section of the Act and said:

> "This subsection limits the right to strike until its requirements have been complied with. But once the statutory requirements have been complied with, the strike becomes lawful under the Act. The foundation of the

"right to strike is in the Act itself. . . . Whatever the common law may say about strikes this Act says that this strike is lawful because the statutory conditions have been complied with."

I have discussed the case at some length because it is the only case I have seen in which a court within the common law jurisdictions in considering the legal quality of a strike has held that the right to strike is a common law right. It should be observed however that no member of the Supreme Court of Canada approved the reasoning of McRuer, C.J., and it was held that the foundation of the right to strike in Canada is to be found in the expressed provisions of the Labour Relations Act.

An interesting work on this subject is Labour Relations and the Law, 1965 edited by Prof. Otto Kahn-Freund. In the introduction to the chapter on the Law and Industrial Conflict in Great Britain, Dr. K.W. Wedderburn says this:

"The modern law of industrial conflict has never been codified. It rests upon case law decisions and upon statutes which have from time to time been added to those decisions. Many of the statutes were passed with the object of changing certain common law rules evolved by the judges, and in consequence, the statutory principles frequently appear as an 'immunity' from 'ordinary' common law liabilities granted to trade unions or to individuals in trade disputes. For example the 'right to strike' or a right to freedom of association for trade unions, is nowhere positively and expressly established in English law - Although both rights have been recognised as part of our law and as fundamental to collective bargaining by certain modern judges, in substance such rights have to be spelled out of those 'immunities', which are frequently little more than immunity from judge-made prohibitions or limitations on the right to organise and to act

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> "collectively . . . . . the removal of the threat of prosecution for conspiracy based on mere combination in the case of strikes in furtherance of 'trade disputes' is the rock upon which the modern right to strike has been built in British Labour Law."

The author's comment on modern judges is a reference to the dictum of Lord Wright in Crofter Hand Woven Harris Tweed Co. v Veitch, supra, but in that case the right to strike was not an issue because nothing in the nature of a strike had occurred. What had occurred was the imposition of an embargo on the handling of goods consigned to the company and an interdict (an injunction in Scots law) was sought to prevent it. Apart from Lord Wright no other judge expressed the right in those terms and it is perhaps as well that the full context of Lord Wright's dictum be quoted. He said at p. 463:

> "As the claim is for a tort, it is necessary to ascertain what constitutes the tort alleged. It cannot be merely that the appellants' right to freedom in conducting their trade has been interfered with. That right is not an absolute or unconditional right. It is only a particular aspect of the citizen's right to personal freedom, and like other aspects of that right is qualified by various legal limitations, either by statute or by common law. Such limitations are inevitable in organised societies where the rights of individuals may clash. In commercial affairs each trader's rights are qualified by the right of others to compete. Where the rights of labourers are concerned, the rights of the employer are conditioned by the rights of men to give or withhold their services. The right of the workmen to strike is an essential element in the principle of collective bargaining."

In that context no one will challenge the dictum. I also hold that collective bargaining involves,

although not necessarily so, the use of the strike weapon by the workmen but it may also involve, again not necessarily so, and in fact less frequently, the use of the lock-out as a device by the employer. There is, it may be added, no legal distinction between combinations of employers and those of workmen. Their legality or illegality is determined by the same tests; and any combined action which may be unlawful in workmen is equally unlawful in employers. Some surprise if not alarm may possibly be expressed by workmen if employers of the present day ventured to claim a common law right to stage a lock-out. I have said enough I think to indicate that in my judgment the common law has never recognised a right to strike nor has such a right ever been declared by statute.

In many countries of the world, principally in the Latin-American republics, the right to strike is expressly recognised by law. On the other hand in this country as in many other countries sharing the heritage of the common law there has never been an enforceable right to strike by anybody, anywhere at any time. It would seem that the belief that such a right exists stems from the proposition that any act which the law does not prohibit may lawfully be done and thereby a legal right to do the act, protected and enforceable, comes into being as a natural consequence. That proposition is juristically not sound.

In parody of the platitude by the English pleader who said "the forms of action are dead but they rule us from the grave", I would say the doctrine of laissez-faire is dead but we must beware it does not rule us from its grave. Nor indeed should it be exhumed. The realities of economic survival in the 20th century and the clamant demand for social justice among all manner of men should, by a discernible necessity, make more acceptable the policy of intervention by the state to control and limit the unfettered exercise of individual liberty in order to subserve the common good and to harness adequately the creative and the productive capacity of a people. The

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Constitution has given to Parliament the power to make laws for the peace, order and good government of Trinidad and Tobago. But these great opportunities may be lost if misinformed opinion encourages the fear that legislative restraints must naturally result in the unnecessary deprivation of individual liberty. Such a reaction may well lead to a revival of the doctrine of unrestricted freedom and the fate men fear may yet befall them not because of state controls believed to be misguided but rather because of the anarchy which will inevitably flow from the unfathomable power of unrestrained collective action.

The right or the liberty or the freedom of collective bargaining, call it what you will, and its coercive arm, the right or the liberty or the freedom to strike are in reality the residue of immunities from criminal responsibility and civil liability enjoyed by trade unions and their members which have crystalised after nearly two hundred years of interaction between judicial interpretation of the common law on the one hand and the overriding authority of Parliament through statute law on the other hand. The right to indulge in a concerted stoppage of work which alone can constitute a strike is no more than a statutorily implied exemption from criminal and civil consequences limited in scope to action taken in furtherance or contemplation of a trade dispute. The course the common law has run commenced with the case of Mitchel v Reynolds and has reached, perhaps not yet full circle, to the case of Rockes v Barnard, while the strictures and later the variations and ameliorative changes wrought by statute law started with the Unlawful Combination of Workmen Acts, 1799-1800 and culminated with the Trade Union and Trade Disputes Acts, 1871-1906 from which the Trade Unions Ordinance, Ch. 22 No. 9 and the Trade Disputes and Protection of Property Ordinance, Ch. 22 No. 11 are drafted.

In neither of these sources can I find recognised or declared a collective right to strike nor a personal right to take part in a

strike. Consequently, I must hold that there is no common law right to strike and it must therefore follow that the so-called right to take part in a strike is not included in the freedom of association protected by sec. 2 of the Constitution.

In my judgment, secs. 34, 36 and 37 of the Industrial Stabilization Act, 1965, do not infringe, abridge or abrogate the fundamental freedom of association recognised and declared in sec. 1(j) of the Constitution and therefore did not require to satisfy the provisions of sec. 5 in order to be validly assented to. On this aspect of the appeal the appellants have failed and sharing as I do the views so adequately expressed by the learned Chief Justice on the other grounds of appeal I also would dismiss this appeal and I agree with the order proposed by the Chief Justice.

H. AUBREY FRASER

Justice of Appeal

No. 8 ORDER

(Title as No. 7)

UPON READING the Notice of Appeal filed herein on behalf of the above-named appellants dated the 20th day of January, 1966, and the judgment hereinafter mentioned

UPON READING the record filed herein

UPON HEARING Counsel for the appellants and Counsel for the Respondent

AND UPON MATURE DELIBERATION THEREUPON HAD

IT IS ORDERED that the Judgment of the Honourable Mr. Justice Maurice Corbin dated the 11th day of December, 1965, be affirmed, and that this appeal be dismissed with costs to be taxed and paid by the appellants to the respondent.

Sgd. E. MATTHEWS.

Assistant Registrar.

In the Court of Appeal

No. 9

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

No. 9
Order granting final leave to appeal to Her Majesty in Council.

31st May, 1967.

TRINIDAD AND TOBAGO:

ON APPEAL FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

Civil Appeal No. 3 of 1966.

In re:

THE CONSTITUTION OF TRINIDAD AND TOBAGO being the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council, 1962

And in re:

THE APPLICATION OF LEARIE COLLYMORE and JOHN ABRAHAM (persons alleging that certain provisions of Sections 1, 2, 3, 4, 5, and 7 of the 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 Constitution.

Entered and dated the 31st day of May, 1967.

Before The Honourables Mr. Justice A.H. McShine (President)
Mr. Justice C.E. Phillips
Mr. Justice H.A. Fraser.

UPON MOTION made unto the Court this day by Counsel for the Appellants for an order granting the said Appellants final leave to appeal to Her Majesty in Her Privy Council against the Judgment of the Court of Appeal dated the 27th day of January, 1967 and the Judgment of the Honourable Mr. Justice M.A. Corbin, dated the

11th day of December, 1965, upon reading the Notice of Motion dated the 19th day of May, 1967, the affidavit of Vernon OSWALD JENVEY sworn the 19th day of May, 1967, and the Certificate of the Registrar of the Court dated the 19th day of May, 1967, all filed herein, and upon hearing Counsel for the Appellants and for the Respondent

THIS COURT DOTH ORDER

That final leave be and the same is hereby granted to the said appellants to appeal to Her Majesty in Her Privy Council against the said Judgment.

(Sgd.) E. MATTHEWS

Assistant Registrar.

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Order granting final leave to appeal Her Majesty in Council.

31st May, 1967.
(Contd.)

EXHIBITS

"B" Agreement between Texaco Trinidad Incorporated and Oilfield Workers Trade Union

Exhibits

"B"

Agreement between Texaco Trinidad Incorporated and Oilfield Workers Trade Union.

16th February, 1963.

MEMORANDUM OF AGREEMENT

Between

TEXACO TRINIDAD INC. (hereinafter called the Company) and THE OILFIELDS WORKERS' TRADE UNION (hereinafter called the Union), on behalf of the workers employed by Texaco Trinidad Inc.. in their oil operations in Trinidad, dated 16th February, 1963.

ARTICLE 1

Recognition.

The Company recognises the Union as the exclusive representative of the workers covered by this agreement for the purpose of collective bargaining in respect of wages, hours and conditions of employment.

In the Court of Appeal

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"B"

Agreement between Texaco Trinidad Incorporated and Oilfield Workers Trade Union.

16th February, 1963. (Contd.)

ARTICLE 2

Duration of Agreement.

This agreement shall commence as from the 23rd December, 1962, and shall remain in force for a period of two years and two months, and shall thereafter continue in force until it is amended or terminated by either party giving to the other 90 days notice in writing of its intention so to do. In the event that either party require amendment as in this Article provided, then the notice seeking such amendment shall only become effective as from the date on which a statement of the changes or proposals required is received by the party to whom the notice is sent.

ARTICLE 3

Scope of Agreement

This agreement is intended to promote economic and efficient operation of the works of the Company, avoid industrial disturbances which interfere with production, achieve the highest level of employee performance consistent with safety, good health and sustained effort and to this end it provides the rates of pay, hours of work and conditions of employment for all workers employed by the Company in its oil operations who are 18 years of age and over and who are listed in the Schedule hereto. There are specifically excluded from this agreement Police and Apprentices.

ARTICLE 4

Management and right to employ

1. It is acknowledged that all the authority and regular and customary function of management are vested in the Company, provided however:-

(a) In the exercise of its right to employ, the Company will give the Union an opportunity to put forward workers for

consideration by the Company and where, in the opinion of the Company the Union's nominees are equal to other applicants, they will be given preference.

(b) Whenever a substantial reduction in the normal labour force is contemplated, the Company will advise the workers concerned and the Union before hand, and the names of such workers may be put forward as applicants for alternative employment.

(c) The Company will not contract out works normally performed by employees covered by this agreement, if such contracting would result in the lay off or demotion of its regular employees during the period of such contract work.

The Company further stipulates that when contract labour is engaged the contractor shall not pay less than the minimum rate for the particular job classification as provided in the Schedule to the existing agreement. This shall not apply if a contractor negotiates a separate agreement with the Oilfields Workers' Trade Union or has a current wage agreement with a trade union. In the event that it is proved to the Company's satisfaction that a contractor has repeatedly violated the above mentioned minimum rate provision, the Company will suspend said contract.

(d) The worker or the Union on his behalf shall have the right to appeal against disciplinary action in accordance with the Grievance Procedure set out in Article 20.

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"B"

Agreement between Texaco Trinidad Incorporated and Oilfield Workers Trade Union.

16th February, 1963. (Contd.)

ARTICLE 5

Assignment to Day and Shift Work and to Work Classifications.

(1) Day and Shift work - Regular Assignment.

Each employee shall be given by the Company a regular assignment to work as a day worker or shift worker as required.

(2) Day work and Shift work - Temporary Assignment.

In order to maintain continuity of operations the Company may at any time give an employee a temporary assignment to day work or shift work or intermittent shift work. During the whole period of such temporary assignment he shall be treated for all purposes including pay, as a regularly assigned day worker or shift worker as the case may be, but his basic wage rate shall not be reduced during the period of such temporary assignment. A temporary assignment shall not exceed 3 months.

(3) Work Classifications.

The Company shall give each employee a regular work classification in accordance with the classifications, designations and sub-divisions of the Schedule attached to this agreement, subject to promotion or demotion thereafter occurring or to temporary or permanent assignment to another work classification as required.

ARTICLE 6

Hours of work.

(1) A week shall, for the purpose of this agreement, consists of 7 consecutive days beginning generally at 00.01 hours on Sunday or where appropriate, the

commencement of the first shift after 00.01 hours on Sunday.

(2) Day workers.

(a) Within any week the established working week shall, subject as hereinafter provided consists of:- Alternately 44 hours and 40 hours - December, 23rd, 1962 until December 21st, 1963.

40 hours (5 consecutive week days) - from December, 22nd 1963, and subject as hereinafter provided, the established working day shall be:-

Effective December 23rd 1962 to December 21st 1963:

Monday to Friday -

8 hours from 7 a.m. to 4 p.m. with an interval of 1 hour for lunch from 12 noon to 1 p.m.

Saturday -

4 hours from 7 a.m. to 11 a.m. will be worked on alternate Saturdays.

Effective December 22nd 1963.

Monday to Friday -

8 hours from 7 a.m. to 4 p.m. with an interval of 1 hour for lunch from 12 noon to 1 p.m.

(b) Certain day workers may be required to start their working day at times different from the hours mentioned in (a) above and in such circumstances the established working day for such workers shall coincide with the altered hours of working but the established working week shall remain unchanged.

(c) Certain day workers may be required to

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begin and end their working week on days different from those mentioned in (a) above and in such circumstances the established working week for such workers shall coincide with the altered days of working and Saturday work will be at straight time.

(d) When a worker is required to report for work before the commencing hours of his established working day he may continue to work to the end of his established day and the period in excess of the hours of such established working day shall be overtime.

(3) Shift Workers.

(a) Two types of shift work may be performed as follows:-

(i) Continuous process shift work where the operations are normally carried out 24 hours per day or 168 hours per week without interruption on a 3 shift rotary shift system.

(ii) Non-continuous process shift work, where the operations, although requiring 2 or more rotary shifts per day, are not continuous in the sense that they do not run continuously for 168 hours per week and Sunday is not and established working day.

(b) The established working week for both continuous and non-continuous process shift workers shall average 42 hours per week over a period but shall be not more than 48 hours and not less than 40 hours. As from December 22nd 1963, the established working week shall average 40 hours over a period with appropriate changes in the maximum and minimum hours per week. The established working day for shift workers shall be a shift of 8

consecutive hours. The working hours of an established working day and the working hours of an established working week for shift workers shall be in accordance with the shift roster or plan under which they work. If and when necessary for the convenience of the Department, the Company in consultation with representatives of the workers may introduce other shift plans or rosters within the frame work of the above provisions.

(c) It is recognised that in order to meet operational requirements continuous process shift work may be changed to non-continuous process shift work and vice versa.

(d) Existing shift practices shall be continued.

4. Extra Time.

Notwithstanding the desire of the Company to carry out its normal operations without recourse to overtime all workers shall, if required by the Company, work in excess of the hours in their established working days provided that no worker shall be required to work for a continuous period of more than 16 hours working time except in an emergency.

ARTICLE 7

Wages.

(1) General.

Each worker's rate of pay shall be the rate per hour, or per week appropriate to his regular work classification as shown in the Schedule hereto.

(2) Hourly rated workers.

Each hourly rated worker shall be entitled to a wage payable weekly calculated by multiplying the number of hours worked by

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his appropriate rate per hour, except in circumstances described in the Articles of this agreement when certain hours worked will be paid at a higher rate per hour, eg: overtime hours.

(3) Weekly rated workers.

Each weekly rated worker shall be entitled to a wage payable weekly at the appropriate weekly rate of pay and such wage shall be apportionable wherever appropriate.

(4) Calculation of fractional time.

Hourly rated workers who work for only part of an hour will be credited with time as follows:

Minutes worked	Time credited
0 - 7	0 hours
8 - 22	¼ hour
23 - 37	½ hour
38 - 52	¾ hour
53 - 60	1 hour

(5) Frustrated Work.

When an hourly rated worker reports for work on his normal working day and is required to cease work by the Company before he can complete the full hours of an established working day he shall be paid for the hours which he actually worked plus 3 hours or for the full hours of the appropriate established working day which ever is the less.

ARTICLE 8

Bonus Additions to Wages.

(a) Cost of living bonus.

Bonus additions to wages for the purpose of assisting in meeting increase costs of

living shall be paid to each worker as follows:-

(i) The basis of calculation shall be Trinidad and Tobago official index of Retail Prices number of 100.0 points.

(ii) An addition of ½ cent per hour shall be made to the wages of all workers for every two (2) complete points rise in the Government's official index of Retail Prices above this starting number of 100 points, mentioned in (i) above.

(iii) If the Index of Retail Prices number after having risen at least two (2) points above the starting number of 100 shall subsequently fall, a deduction of ½ cent per hour shall be made from the Bonus Additions specified under (ii) above for every fall of two (2) complete points, but nothing in this clause shall authorise any deductions from the standard wage rates laid down in the Schedule.

(iv) Any such additions are to be regarded and treated as separate and distinct from the standard wage rates, and are to be described as "Costs of Living Bonus Additions".

(v) Costs of Living Bonus Additions shall be calculated in the following manner:-

(a) Hourly Rated Workers.

Per hour on the number of hours actually worked per week, including overtime, but the hourly governing additions shall be the same during overtime hours as during working hours.

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(b) Weekly Rated Workers.

Per hour worked not exceeding the number of hours in the appropriate established working week, except that any cash payments made in respect of overtime under Article 9 shall include Costs of Living Bonus Additions for the number of excess hours which are being settled in cash. Weekly paid shift man will receive Costs of Living Bonus calculated according to the number of hours in the appropriate established working week, and the usual shift practices will apply.

(c) Piece Workers.

Per hours worked not exceeding the number of hours per week the workers concerned normally work when on time work.

(vi) The amount of the Costs of Living Bonus Additions shall be adjusted monthly when necessary, as from and including the day following the date of publication of the Official Index of Retail Prices in accordance with Clauses (i) to (v) above. The existing conventions with regard to implementations shall continue.

(b) Shift Bonus.

(i) Workers employed on continuous process shift work in Article 6(3) shall receive a shift bonus for each hour worked at the following rates:

Day Shift	-	Nil
Evening Shift	-	8¢ per hour
Morning Shift	-	13¢ per hour.

Workers employed on non-continuous process shift work as described in Article 6(3) shall receive a shift bonus for each hour work at the following rates:

Day Shift	-	Nil
Evening Shift	-	7¢ per hour
Morning Shift	-	11¢ per hour

(ii) The shift bonus referred to above

shall be averaged at 7¢ per hour for continuous process shift workers, and 6¢ per hour for non-continuous process shift workers, wherever the normally rotating 3 shift arrangements apply. The appropriate "average" shift bonus rate will also apply to workers "acting" in such shift jobs where the normally rotating 3 shift arrangements apply.

In all other shift arrangements the amount of the shift bonus will be that prescribed above for the shift actually worked.

(c) Heat Bonus.

A bonus payment of 8¢ per hour shall be applied for maintenance work on or inside equipment as defined below. Heat money shall apply to work inside all equipment as long as the ambient temperature exceeds 112 degrees f. Heat money shall apply to work on outside equipment in the case of work on heater tube banks for the 12 hours following the withdrawal of fires and for limited time periods on other equipment as shall be agreed between the Union and the Company.

(d) Charge Hand Bonus.

A Charge hand who is employed as such shall receive at least 8¢ per hour over and above the maximum schedule rate applicable to his appropriate work classification in the schedule hereto. This bonus shall be increased to at least 9¢ per hour with effect from 22nd December, 1963.

(e) Height Money.

For construction or maintenance carried out at heights of 100' and over above ground level, excepting where such work is carried out on permanent platforms fitted with protective railing, "height money" shall be

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paid. Height money will be paid as an addition to the workers' normal wage rate for all hours worked at the specified heights as follows:

Height: 100' - 150' - 8¢ per hour
Over 150' - one half time rate

NOTE: Rigmen and rig builders do not qualify for height money in the range 100' to 150' but the existing practice will continue of paying height money for work above 150' when rigging crown blocks but not when greasing them.

ARTICLE 9

Overtime

(1) Hourly Rated Workers.

(a) Hourly rated workers will be paid overtime at time and one half their regular rate for all hours worked in excess of the number of hours constituting for the time being, their established working day, as set out in Article 6, such overtime rate shall be increased to double time for all such overtime hours in excess of 8 on any day.

(b) Hourly rated shift workers will be paid overtime at time and one half their regular rate for all hours worked in excess of their established working day as determined by the shift plan or roster to which they are assigned. The recognised practice with regard to shift work shall continue.

(c) Overtime rates payable when workers work in excess of scheduled day or shift hours and public holidays shall be in accordance with the provisions of Article 14.

(2) Weekly Rated Workers - Overtime - Compensatory Time Off.

(a) A weekly rated worker shall receive payment at straight time rate for all overtime hours worked. In the event that a worker wishes to take compensatory time off in lieu of such overtime payment or in lieu of part of such payment (provided the total overtime is in excess of 8 hours for the week), then he will advise his departmental official before the close of the relevant pay week and a date mutually convenient to the Company and the worker will be settled on which he will take the compensatory time off due to him, such date to be not later than two weeks after the overtime occurred.

For the purpose of calculating the cash payments referred to in this sub clause, the appropriate number of hours shall be multiplied by the worker weekly wage and divided by 42. (After December 21st, 1963 divide by 40).

(b) For the purpose of sub clause (a) above the following hours if worked, will count as overtime hours:

(1) All hours worked by day worker in excess of the established working day hours of the job to which he is assigned.

(ii) All hours worked by a shift worker in excess of the requirements of the shift plan to which he is assigned temporarily or permanently.

(iii) On public holidays listed in Article 14.

(iv) The recognised shift practices shall continue.

(3) Call Back

An Hourly Employee who is called out for emergency work after clocking out will be paid a minimum of 4½ hours pay at his regular rate for reporting or working 3

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hours or less, and will be paid one and one half times his regular rate for all work performed in excess of 3 hours. In the event that the worker having worked on a public holiday is called back in the manner described above, the applicable rate of pay shall be the overtime rate for public holiday.

ARTICLE 10

Allowances.

(1) Travelling Time.

When, except as provided in (a), (b), or (c) below, a worker is required by prior notice to work for a period of more than six (6) continuous working days, or to break shift, at a distant work place which is assessed as requiring more than one half hours travelling time (ie. one quarter hour each way) beyond his normal working hours for the return journey by Company transport from and to a previously designated place, then in addition to his wages computed by reference to his starting and stopping time at this distant work place, he shall be entitled to be paid at his straight time rate for travelling time,

(a) A worker assigned to such distant work place for a period of 10 working days or less shall be paid the prevailing rate for overtime for that part of the time occupied on the job and in travelling which exceeds the established working day.

(b) A worker engaged in such distant work place and for whom such distant work place becomes his normal place of employment shall not qualify for any payment for time spent in travelling.

(c) When a worker has to undertake regular journeys to and from one or more work places within the boundaries of the

established field which is his normal place of employment this shall not be considered as travelling to or from a distant work place.

In circumstances in which the existing practices of the Company are more favourable than the foregoing, existing practices regarding payment of travelling time by the Company shall continue to apply.

(2) Subsistence Allowance.

(a) Subsistence Allowance shall be paid to workers temporarily transferred to work in an exploratory camp or at a place other than their normal place of employment, subject to the following conditions:

(i) The exploratory camp or temporary place of employment is outside the boundary of and more than 7 miles distant from the established field at which the worker is based for employment.

(ii) That no daily transport is provided by the Company from and to the established field at which the worker is based. Subsistence Allowances, covering food and accommodation shall be paid at the following rates:

First 30 days - $3.00 per day worked *
After 30 days - $2.75 per day worked

* Where a temporary assignment involves overnight stays of not more than 7 days, a supplementary subsistence allowance of $2.40 per night (ie. a total allowance of $5.40 per night) shall be paid, unless accommodation is provided in lieu.

Under normal circumstances any such temporary transfer will be considered to have become permanent after 3 months, and the allowance will then cease. In the case of workers temporarily transferred to

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exploratory camps the allowance will continue to be paid until the exploratory camp has become an established field.

(b) Where no overnight stay is involved or only part of the day is spent away from a worker's base field, the following rates will be paid for individual meals during the time that the worker is actually away, unless he has been advised at his normal place of employment before his normal finishing time on the previous day that he will be required to work away from his normal place of employment on the following day:

Breakfast - $1.00
Lunch - $1.60
Dinner - $1.60

Breakfast allowance shall only apply where exceptional circumstances prevail.

(c) When a worker is called upon to continue working more than two hours after his normal finishing time, he shall be provided with a meal or be given a reasonable opportunity to obtain a meal with a meal allowance of $1.60 to be granted in lieu, and on completion of work shall, where necessary, be provided with transport to his home or transport allowance.

If the overtime continues beyond the sixth hour after his normal finishing time, then in addition to the above, he shall be provided with a second meal or $1.60 allowance in lieu.

(3) Disturbance Allowance.

A worker permanently transferred by the Company from one of its fields to another, such as necessitates a change in his place of abode in order to be reasonably near his work, shall be provided with:

(a) A Disturbance Allowance of $60.00

(b) Transportation of his household effects to the extent of up to two truck loads, provided by the Company or at the Company's expense. On determinating of a worker's services by reason of retirement or retrenchment, he will be provided with similar transportation back to his original field or to within a reasonable distance thereof.

A worker will not be eligible for the above concessions so long as he is in receipt of the subsistence allowance referred to above or if the transfer is effected at his own request.

ARTICLE 11

Annual Vacation Leave

(a) **Duration of Leave.**

Each worker included in the schedule shall be eligible to qualify for vacation leave with pay annually after each year of continuous service. The duration of the annual leave to be granted shall be related to the individual worker's continuous and unbroken service with the Company as at the date at which his leave falls due and shall be in accordance with the following table:

1 - 9 years continuous service - Two Weeks
10 - 24 years continuous service - Three Weeks
25 years and over continuous service - Four Weeks

(b) Accumulation of Leave.

A worker who becomes entitled to leave in any year must take at least one week of such leave when it becomes due. The balance of any leave not taken at due date may, by arrangement with the Company, be accumulated and taken with

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his full leave entitlement for the following year at his due date for leave in that following year.

Accumulation of a fraction of a week's leave is not permitted. No portion of leave may be accumulated more frequently than once in two years.

(c) Qualification for leave.

To qualify for each annual leave a worker must have worked with the Company for the preceding twelve months without a break in service. The commencing date for qualifying for each year's leave shall be the anniversary of either the date of employment or the due date for leave (see paragraph e).

(d) Leave Pay.

Each worker, when on annual leave, shall be paid wages as though he had worked during his normal working hours (excluding overtime) for the period of such leave.

(e) Due date for Annual Leave.

The date on which a worker's annual leave falls due will normally be the anniversary of his date of employment, but in certain cases, eg. long service workers, some other date will have been settled as the workers due date for leave each year.

The actual dates between which a worker takes his vacation shall be arranged by the Company as near to the due date as is conveniently possible

ARTICLE 12

Other Leaves of Absence.

(i) Leave for Union Business.

(a) If any worker an official or delegated

representative of the Union, desires leave of absence to engage in any business pertaining exclusively to the affairs of the Union, he shall, upon application to the Company by the appropriate Union official, be granted such leave without pay.

(i) Not more than six employees may be absent on such leaves at any one time and any such leave granted will not exceed thirty days. No employee will be granted more than two such leaves in a calendar year. The aggregate number of days in respect of all such leaves for this purpose will not be more than 180 in any calendar year.

(ii) Upon reasonable advanced notice, the Company will grant a leave of absence to employees to perform full time work for the Union for a period of up to one year. This leave will be extended for an additional one year at the request of the Union, but not more than two such extensions will be granted. Such an employee shall be re-employed by the Company provided he reports back to work within a reasonable time, not exceeding one month after the termination of his employment with the Union. Not more than two employees will be on leave at any one time under the provisions of this sub paragraph.

(b) Reasonable leave with pay shall be granted by the Company to workers who are required to take part in discussions between the Company and the Union on matters arising out of this Agreement.

(2) Maternity Benefit.

A female worker who has completed one year's continuous service with the Company and who becomes pregnant:

(a) Shall not be permitted to work in the six weeks following her confinement, and

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Exhibits

"B"

Agreement between Texaco Trinidad Incorporated and Oilfield Workers Trade Union.

16th February, 1963. (Contd.)

(b) shall have the right to leave her work if she produces a medical certificate stating that her confinement will take place within six weeks.

Such time off under (a) and (b) above shall be considered as leave of absence with half pay.

The total time off under (a) and (b) above shall not exceed in the aggregate three months.

(3) Military Service.

Employees other than temporary employees, who are conscripted into the Trinidad and Tobago Armed Forces, shall on completion of such military service, be reinstated by the Company in a position substantially the same as that which he previously held with the Company.

(4) Funeral Leave.

In the case of death in the immediate family, namely the death of a parent, spouse, child, brother, sister or parent in law of a full time worker, a worker shall be granted leave of absence for one day with pay, for the purpose of attending the funeral and/or to make the necessary funeral arrangements provided the worker will furnish the Company with satisfactory evidence to justify his claim for such leave of absence.

ARTICLE 13

Sick Benefits

(i) Qualification.

Subject to the conditions laid down in this Article, sick benefits as defined below, may be granted to all workers included in the Schedule who are employed on the Company's normal payroll except that sick benefits will not apply to workers who are hired for temporary work of less

than three months' duration, and who are designated as temporary workers.

(2) Certification of Sickness.

Sickness must be certify by the Company' medical officer or a Government District Medical Officer. Where in the opinion of the Company's medical officer, there is justification for so doing, the Company will accept the certificate of sickness of a private medical practitioner. The Company will pay for accepted certificate of sickness issued by the District Medical Officer or Private Medical Practitioner at the prescribed Government rates. The Company will not, however, be responsible for medicines or medical attention rendered or prescribed by such District Medical Officers or Private Medical Practitioner.

(3) Benefits.

(a) A maximum of four weeks on full pay in any twelve consecutive months ending with the worker return to work after he has recovered from his illness.

(b) If at the commencement of any particular continuous period of absence from work due to sickness a worker had received from the Company none or no part of the sick benefits detailed in paragraph 1 of this Article during the preceding twelve month period (ie. has a clear sickness record for the preceding twelve months) then if necessary the benefits detailed in paragraph 3 (a) shall, on certification, be increased by up to two weeks at full pay for that particular period of absence only.

(c) In the event that a worker undergoes a surgical operation, he will be granted sick benefit of full pay for the absence up to the period specified for that operation in the schedule of additional sick benefits, provided there is furnished a certificate of necessity by the Company's Medical Officer. If the worker undergoes a surgical

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operation which is not listed in the Schedule, comparable sick benefit on full pay will be granted in respect of the absence as determined by the Company's Medical Officer and as certified by him to be necessary. Such time off with full pay, as is granted under this sub-paragraph will, when necessary, be additional to the benefits provided under paragraph 1 in substitution for those in paragraph 3(b).

(d) For purposes of the above a week shall be the established working week as defined in Article 6.

(e) In the case of hourly rated workers no pay will be granted for the first day of any sickness, unless the period of sickness certified by the Medical Officer is two days or more. For those days in respect of which sick pay is granted, it shall be calculated according to the hours he would have been scheduled to work (excluding overtime) had he not been sick.

(f) All days of absence due to sickness, in excess of the sick benefits provided in this paragraph 3 shall be without pay and, in the case of weekly rated workers, the weekly wage will be apportioned accordingly.

(g) Sick benefits due for any week will be paid with any portion of wages due for that week, provided the necessary certificate of sickness is submitted by the worker to his Department prior to the closing of the time cards for the week in which his absence due to sickness has occurred. If the Worker is unable to present itself at the pay station due to sickness, arrangements will be made for monies due to him to be made available for collection by his accredited representative.

ARTICLE 14.

Public Holidays.

(a) Recognised Public Holidays.

The following are the public holidays recognised by the Company: New Years Day; Good Friday; Easter Monday; Queen's Birthday; May Day, Whit Monday; Corpus Christi; Discovery Day; Independence Day; Christmas Day and Boxing Day.

(b) Hourly Rated Workers - Payments.

(i) An hourly rated worker who is called upon to work on any of the public holidays listed above shall be paid at double time for all day or shift scheduled hours worked on such public holiday. For work in excess of scheduled day or shift hours on a public holiday treble time shall be paid for the first 8 hours worked and quadruple time thereafter.

(ii) An hourly rated worker who would normally have worked on and who is available for work that is not required by the Company to work on the above public holidays, shall receive the pay for the hours he would normally have worked had these specified days not been declared as public holidays, provided always that the worker concerned attends work on his normal working day both preceding and following the holiday, unless his absence from work on either or both of those days has been sanctioned by the Company.

(iii) If according to the shift plan or roster under he is working a shift worker's 'Day off' is scheduled and taken on the day on which a public holiday listed in (a) above is celebrated then he shall be paid 8 hours pay at straight time rate for that day. In the case of a weekly rated worker this payment shall be calculated by apportioning his weekly wage

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Agreement between Texaco Trinidad Incorporated and Oilfield Workers Trade Union.

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accordingly. The provisions of this paragraph will not apply when a worker is on vacation or other leaves of absence.

(c) Carnival Days.

The two days of Carnival are not public holidays recognised by the Company and for work on these days the normal rate of pay will apply.

ARTICLE 15

Acting Appointments

A worker who is appointed to act for a period of not less than one day for another worker in a higher grade shall be paid, during such acting period, at least the minimum rate of the higher grade.

A worker who is appointed to act in a position of substantially higher responsibility than his own, and of a higher status not covered by the Agreement shall receive an acting increase of Twelve Dollars per week.

A Junior Refinery Operator appointed to act in a position of substantially higher responsibility than his own, and of a higher status not covered by this agreement, shall receive a basic rate of pay whilst acting of Twenty Dollars ($20.00) per week above the maximum for his substantive position.

ARTICLE 16

Workers' Duties

(a) Workers are expected to perform the duties to which they are assigned. Ordinarily such assignment shall be within the job classifications for which they are employed.

(b) All work incident to good housekeeping, running and maintenance, etc. will, in so far as it is reasonable, be carried out by the workers affected where this is in accordance with plant custom.

ARTICLE 17

Capacity of Workers.

(a) The Company recognises the principle that the rate of pay of a worker shall not be increased as compensation for excessive work beyond his normal capacity, but rather that in such event additional manpower shall be employed.

(b) On any work normally requiring a definite number of men in a crew, the Company will assign a man to fill the position of any worker absent through any cause for more than two working days if:

(i) The work is to be carried on continuously without interruption or

(ii) There is to be no reduction in the volume of work.

The foregoing is not to apply where the reduction in crew is occasioned by the re-arrangement of work or change in equipment.

ARTICLE 18

Rates and Standards of Employment

It is agreed that the wage rates and conditions of employment settled by this Agreement are to be regarded as normal, but, at the discretion of the Company more favourable rates and conditions of employment may be granted to special cases, but under no circumstances can the Company fix rates and conditions less favourable than those provided in this Agreement.

ARTICLE 19

Warning Notice, Suspension, Dismissal, Re-engagement.

1. (a) For Unsatisfactory or some other offence by a worker which is considered by the Company to be serious, but which does not in the opinion of the Company, warrants suspension or dismissal

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"B"

Agreement between Texaco Trinidad Incorporated and Oilfield Workers Trade Union.

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he shall be issued with a warning notice before the complaint is entered on his records. Such complaint shall be removed from the records of a worker after one year if, during that year, his work and conduct have been satisfactory. Complaints which remain on the record of the worker shall be taken into account whenever further disciplinary action against him is being considered.

(b) The Company reserves the right to suspend or dismiss any worker for proper cause.

A worker who is suspended shall receive no pay during his period of suspension, and in the case of a weekly rated worker his wage will be apportioned. Such days of suspension shall not count for qualifying for any Employees Benefits under Article 11, 12, 13 and 14 hereof, but will otherwise not be regarded as break in employment.

If, however, acting under the procedure provided in the Agreement it is decided that the worker's suspension or dismissal was wholly unjustified, then the worker shall be reinstated without loss of pay or other benefits.

2. If the services of an hourly rated worker are terminated otherwise than for any fault of his own after not less than one year's continuous service, he shall be entitled to 2 weeks notice or 2 weeks pay in lieu thereof calculated according to Article 11 paragraph (d).

3. A worker who is "laid off" as distinct from being discharged or suspended shall, if he is re-engaged in the same capacity within a period of twenty four months, be paid the same rate as or a higher rate than he was receiving at the time he was "laid off".

4. In the event that it becomes necessary for the Company to terminate the services of a permanent employee with more than one year's service on account of redundancy, the Company agrees to make a severance pay. If and when such redundancy occurs, the Company will

negotiate with the Union the amount to be paid and this will be additional to any other normal benefits applicable in his case.

ARTICLE 20

Grievance Procedure.

It is agreed that any worker or group of workers may, individually or through their representative, present grievances to the management of the Company :

(a) If a worker believes himself to be unfairly treated by the Company, by reason of the application of any of the Articles of this Agreement, he may, within two working days after the occurrence of the specific event giving rise to the complaint, but not after, seek redress in the manner following:

Stage 1. A worker or workers desiring to raise any question in which they are directly concerned shall, in the first instance, discuss the matter with their immediate Supervisor (excluding charge hands).

Stage 2. Failing a satisfactory solution, the worker, with or without the appropriate Union Shop Steward may within 6 working days after the specific reason for the complaint, lodge the complaint with the Section Head who shall arrange a meeting to discuss the complaint within six working days from the date the complaint is lodged. At this meeting the worker may be accompanied by the appropriate Union Shop Steward.

Stage 3. Failing a satisfactory solution, the Employees of the Local Branch of the Union may lodge the complaint with the Company's Labour Officer within six working days of the decision at Stage 2. The Labour Officer will arrange a meeting with the appropriate Company's Official within six working days from the date the complaint was lodged.

At this meeting the aggrieved worker may be

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"B"

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accompanied by his Shop Steward and a Branch Officer. In the case of a group of workers not more than two shall make representations.

The decision of the Company' representative or representatives shall be confirmed in writing to the Local Branch of the Union within ten working days of hearing.

Stage 4. The question may thereafter, if no satisfactory solution is reached, be submitted in writing by the Central Executive of the Union within Fourteen working days of the date of the letter communicating the previous decision, to the Management of the Company, who shall by appointment discuss the issues involved with the Union's Executive. At this meeting the aggrieved worker or a representative of a group of workers may be interviewed at the request of either party. The final decision by Management shall be confirmed in writing to the Central Executive of the Union.

(b) Appeals against disciplinary action shall normally commenced at Stage 3, and the arrangements for hearing the appeals at Stage 3 will be made by the Labour Officer.

(c) The representations by Shop Stewards shall be at the request of the worker or workers concerned and while it is the desire of both the Company and the Union that the worker himself should present his case in Stage 1, nothing shall debar the worker from being accompanied by a shop steward at this stage should he so desire.

(d) Nothing hereinbefore contained shall be construed to prevent any worker having cause for complaint from presenting his grievance directly to the Company without the assistance of Union Officials.

ARTICLE 21

Conciliation Procedure - Board of Review.

(a) It is recognised by both parties that to

go beyond the Grievance Procedure for the settlement of any difference is a grave step which should, as far as possible, be avoided. Nevertheless, there is set out in this Article a procedure for conciliation by means of a Board of Review, which may be used when necessary as a final effort to promote a settlement of an unresolved dispute between the Company and the Union in matters of appeal against disciplinary action and concerning the interpretation or application of any of the Articles of this Agreement.

(b) The party desiring reference to a Board of Review will give notice in writing accordingly to the other party within six weeks of the announcement of the decision at stage 4 of the grievance procedure or of failure to reach settlement locally.

(c) Within one month of receipt of this notice the parties shall meet together to decide on the question or questions to which the Board of Review shall address itself. At this meeting each side will present to the other a short summary of their contentions in the dispute and the copies shall be forwarded to the Board of Review together with the question or questions to which the Board of Review is asked to address itself.

(d) Within fourteen days from the meeting mentioned in (c) above a Board of Review will be constituted consisting of one member nominated by each of the two parties, and a third member to be selected by the other two members.

(e) If the two members are unable to agree upon the selection of the third member they will, within fourteen days of the meeting referred to in (c), thereupon jointly request the Commissioner of Labour to suggest the names of three persons from whom the third member should be selected. Within seven days of receipt of the list of names from the Commissioner of Labour, each member will be entitled to eliminate one name, the member appointed by the complaining party to have first choice and to advise the other member of the name

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"B"

Agreement between Texaco Trinidad Incorporated and Oilfield Workers Trade Union.

16th February, 1963. (Contd.)

eliminated. The other member will then advise the name he eliminates and the remaining person shall thereupon be considered to be the third member of the Board of Review. The two parties shall jointly notify him of his selection as chairman.

(f) The first meeting of the Board of Review constituted as set out in (d) and (e) above shall be held within two calendar months of the date of the notice referred to in (b) above.

(g) Both parties may furnish to the Board of Review such additional information as is necessary to a full understanding of the subject of the complaint; nevertheless, matters which have not been introduced at any of the stages of the Grievance Procedure will be avoided as far as possible.

No information affecting the economic affairs or technical operations of either party shall be made public without the consent of the party furnishing it.

(h) Both parties will co-operate to facilitate the prompt consideration of matters referred to the Board and the expenses of the Board will be borne equally by the two parties.

(i) The general procedure to be followed by the Board of Review shall be in its sole determination and, at its discretion, it may request a hearing, or any required information, or make such investigation as it may deem necessary.

(j) The report of the Board of Review will be restricted to determining the question or questions to which it is asked to address itself and as to whether the Articles of the Agreement have been properly applied and if not, to recommend the remedy provided within this Agreement, but in no way shall the recommendations detract from, or alter in any way, the provisions hereof.

(k) Whilst the recommendations of the Board of

Review are not binding on either party, nevertheless, both parties agree that due consideration should be given to the recommendations in an effort to resolve the dispute.

ARTICLE 22

Avoidance of Disputes.

It being the declared policy both of the Union and the Company to try to reach a settlement of all matters at issue by the method of joint discussion and negotiation, both parties agree that until all possibilities of settlement by that method in accordance with the procedure laid down under this Agreement has been fully explored, they will not take or support any collective action in the nature either of a stoppage of work of a lock out and that if such occurs they will take immediate steps to regularise the position.

ARTICLE 23

Strike or Lock out.

(a) The Company agrees that there shall be no lock out of the workers and the Union agrees that there shall be no strike, stoppage or slow down of work for any cause which is, by this Agreement, to be dealt with under the Grievance Procedure and Board of Review. There shall also be no strike or lock out for any other cause unless and until either party gives to the other at least 48 hours notice in writing of their intention so to do. During this period of notice both parties will use their best endeavours to reach a settlement on the matter in dispute.

(b) The Union further undertakes in the event of stoppages of work being contemplated, it will take adequate measures to ensure safety and the continuance of the domestic supplies of all utilities, including the maintenance of the services of the Fire Brigade.

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Exhibits

"B"

Agreement between Texaco Trinidad Incorporated and Oilfield Workers Trade Union.

16th February, 1963.
(Contd.)

ARTICLE 24

Common Interests of Parties.

(a) The parties to this Agreement recognising their common interests in the promotion of the business of the Company, declare jointly and separately that they will use their best endeavours to protect and further the well being of this enterprise. To this end the Union agrees that it will co-operate with the Company and support its efforts to ensure a full day's work on the part of its workers who are members of the Union and it will actively combat absenteeism and other practices which curtail production, and will support the Company in its efforts to maintain discipline, to eliminate waste and inefficiency, to improve the standard of workmanship and to prevent accidents.

(b) The parties to this Agreement, recognising their common interests in the preservation of stability in the operation of the Company in Trinidad declare both separately and jointly that they will use their best endeavours towards the promotion of such stability in the safe-guarding of the Company's future well-being and the maintenance of good-will between the workers and the Company.

ARTICLE 25

Exhibition of Notices.

The Company is prepared to agree to the exhibition of Notice Boards, provided for the purpose, of notices dealing with Union matters, if such notices have first been approved by the Company.

ARTICLE 26

Notices.

Any notice to be given hereunder shall be given by the Company to the Union at 4a Lower Hillside Street, San Fernando, and by the Union to the Company at Pointe-a-Pierre and shall be sent by registered post or be delivered by hand.

ARTICLE 27

Collection of Union Dues.

The Company agrees, in those cases where the necessary authority in writing is given by each individual worker concerned, to collect the dues, entrance and reinstatement fees of the Union by means of deduction from wages. Such deductions will be made in accordance with presently established custom.

Dated and signed in San Fernando this 16th day of February 1963.

For and on behalf of:

OILFIELDS WORKERS' TRADE UNION

G. Weekes.
President-General

C. Gonzales.
General Secretary

For and on behalf of:

TEXACO TRINIDAD INC.

E.G. Stibbs
Manager, Employe Relations

J.G. Andrews
Personnel Officer, Employees

ALPHABETICAL INDEX TO MEMORANDUM OF AGREEMENT Dated 16th February, 1965 sic

In the Court of Appeal

Exhibits

"B"

Agreement between Texaco Trinidad International and Oilfield Workers Trade Union.

16th February, 1963. (Contd.)

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Exhibits

"B"

Agreement between Texaco Trinidad International and Oilfield Workers Trade Union.

16th February, 1963. (Contd.)

In the Court of Appeal

Exhibits

"C"

Correspondence.

(a) Union to Company.

23rd February, 1965.

"C" CORRESPONDENCE.

(a) Union to Company

23rd February, 1965

The General Manager,
Texaco Trinidad Inc.,
Pointe-a-Pierre.

Dear Sir,

I am directed by both the General Council and the Executive Committee of my Union to give you formal notice of my Union's intention to amend the present agreement between your Company and my Union, as provided in Article 2 of the said Agreement.

My Union's proposals for the amendment of the said Agreement shall be forwarded to you in due course.

Early acknowledgement of this notification will be greatly appreciated.

Yours faithfully,
OILFIELDS WORKERS' TRADE UNION

(s) C. Gonzales
General Secretary

CG/jh:

(b) Company to Union.

25th March, 1965.

(b) Company to Union

TEXACO TRINIDAD INC.

Pointe-a-Pierre,
Trinidad, W.I.
25th March, 1965.

The General Secretary,
Oilfields Workers' Trade Union,
4A, Lower Hillside Street,
San Fernando.

INDUSTRIAL AGREEMENT NEGOTIATIONS WITH TEXACO TRINIDAD INC.

Dear Sir,

Following our acknowledgment of 12th March,

a full answer to your letter of the 10th March, 1965 has been delayed while we have studied the extensive and very costly proposals submitted with your letter. We were disappointed that your proposals ignored the suggestions in my letter of 15th January, even though they had been agreed to in part by your President General in his letter of 1st. February.

We in Texaco still believe that this is the time to take a new and different approach in our bargaining procedures. We feel that our suggested approach would contribute to the best interests of your Trade Union, the Company, the Workers and the General public. Therefore, we would like to propose again that we seek a way to streamline our negotiations this time.

With this goal in mind, we invite you to consider with us a procedure by which we can continue our present Labour Agreement and negotiate a new schedule of wages. Any changes to the Agreement which might be required by the Industrial Stablisation Act, 1965, could, of course, be made; also, we could make appropriate amendments relating to our new Pension Plan.

However, in order not to delay the commencement of negotiations should you decide against the abbreviated procedure suggested above, we are enclosing (appendix A) a statement of our estimates of the costs of your proposals as we have interpreted them. We are also enclosing certain affirmative proposals for modifications, deletions and additions to our current Labour Agreement (Appendix B), which we intend to put forward if we do not mutually agree to the shortened approach to our negotiations.

According to our calculations, the changes you have proposed would be inordinately expensive, and a number of them would impose further restrictions upon the efficiency of our operations. Your proposals go considerably beyond what we had expected, bearing in mind

In the Court of Appeal

Exhibits "C"

Correspondence.

(b) Company to Union.

25th March, 1965. (Contd.)

Mr. Weekes' "demands", upon our Company.

Furthermore, some of the "demands", we fear, will hamper expeditious negotiations; and, if they remain in issue, proceedings will be more probable.

Please be assured that we sincerely desire to reach an early agreement with you by the most satisfactory means, which we believe to be direct negotiations, and we stand ready to meet with you promptly to accomplish this.

We now await word from you regarding our suggestions and to fix a date for a meeting.

Yours faithfully,
TEXACO TRINIDAD INC.

(s) E.G. Stibbs.
Manager, Employe Relations

Appendix "A"

APPENDIX A

O.W.T.U. PROPOSALS * COST ESTIMATES

According to our calculations the total increase in labour costs would amount to 93% current payroll, if the O.W.T.U. proposals of March, 10th were granted.

The following tabulation indicates a general breakdown on the approximate costs of the several proposals put forward by O.W.T.U. for the 1965 negotiations. These costs are estimated on the basis of the Company's understanding of the various proposals:-

1.	General Increase on all wages	20.0% of current payroll
2.	Increases proposed under amendments to job classifications	6.8% " "

3.	Supplemental Medical Plan	8.7% of current payroll		
4.	Increases in wages bonuses, premium pay, vacations, etc.	29.0%	"	"
5.	Penalty costs to Company when contractors are engaged	29.0%	"	"
		93.5%		

NOTE:

The above increase should be considered as additional to the cost of the Pension Plan which was introduced in 1965. The estimated annual cost of this Plan will be in excess of 10% of the Current payroll 10.0% " "

GRAND TOTAL 103.5%

Texaco Trinidad Inc.
Pointe-a-Pierre.

25th March, 1965.

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Exhibits

"C"

Corres-pondence.

(b) Company to Union.

25th March, 1965.

Appendix "A"

(Contd.)

APPENDIX B

Appendix "B"

TEXACO'S PROPOSED AMENDMENTS TO AGREEMENT.

This is a brief statement of proposals regarding the current Labour Agreement that Texaco will put forward in the event full scale negotiations for a new agreement are called for by the O.W.T.U.

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Exhibits

"C"

Correspondence.

(b) Company to Union.

25th March, 1965.

Appendix "B"

(Contd.)

1. Continue the following Articles in the current Agreement, dated 16th February, 1963:-

(a) Article 1 - Recognition
(b) Article 2 - Duration of Agreement (except to change dates and period of duration which would be agreed upon in the negotiations).
(c) Article 3 - Scope of Agreement
(d) Article 4 - Management and Right to Employ
(e) Article 5 - Assignment to day and shift work and to Work Classifications
(f) Article 7 - Wages (methods of calculations, etc.)
(g) Article 9 - Overtime (except to change to conform to 40 hours per week (average) schedule now in effect)
(h) Article 12 - Other leaves of absence
(i) Article 15 - Acting appointments
(j) Article 16 - Workers duties
(k) Article 18 - Rates and Standards of Employment
(l) Article 22 - Avoidance of Disputes
(m) Article 24 - Common interests of Parties
(n) Article 25 - Exhibition of Notices
(o) Article 26 - Notices

2. Make appropriate reference to the Texaco Benefits Plan installed on first January and which affords pension benefits to workers.

3. Revise Article 27 to provide that Union will specify and certify the duly authorised amount of Union dues to be deducted, and to clarify that a Union member has the right to revoke, at any time, his authorization for Union dues to be deducted from his pay.

4. Amend Article 13, Section (3) subsection (e) to provide that hourly paid workers will not in any instance be paid sick benefits for the first day of absence in an effort to

curtail abuses now prevalent.

5. Revise Article 20 to effect the following changes in the Grievance Procedure:

(a) Permit the Company to file grievances.

(b) Conform to provisions of the Industrial Stabilisation Act, 1965 that all Agreements must contain an "effective" grievances machinery, and suitable means of settling disputes.

(c) Clarify so that this Article will define the procedures for handling all disputes over any subject matter covered in the Agreement.

(d) All grievances filed shall specify the facts on which the complaint is based and the particular Article of the Agreement that is involved.

(e) Shorten the time periods between the various steps or events in the procedure.

6. Modify Article 21 to effect the following changes in the Conciliation - Board of Review Procedures -

(a) Shorten the time periods between the various steps or events in the procedure.

(b) The Board of Review's jurisdiction to be determined by the question or questions presented in the grievance filed under Article 20.

(c) The decision of the Board of Review to be binding on the parties.

7. Amend Article 23 - Strike or Lockout - to provide that no lockout or any stoppage, slow down, or "go slow" to occur until the expiration of a 120 hour notice following the completion of all procedures and processes provided for in the Industrial

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Exhibits

"C"

Correspondence.

(b) Company to Union.

25th March, 1965.

Appendix "B"

(Contd.)

Stabilisation Act, 1965.

8. Revise Article 16 so as to:-

(a) Conform to 40 hours per week (average) schedule now in effect.

(b) Clarify the definition of shift work to provide for those shift arrangements which do not include a night shift and those which comprise day shift only.

9. Revise Article 17 so as to clarify that Company is not prohibited from changing the existing number of men in crew or unit in the interest of achieving the maximum efficiency of operation.

10. Revise Article 19 so as to provide that proper cause for dismissal or suspension will arise if a worker engages in conduct believed by the Company to be prohibited by the Industrial Stabilisation Act, 1965.

11. Amend appropriate Articles to clarify the right of the Company to redeploy workers to achieve efficient and economical operation.

12. Amend appropriate Articles to clarify the right of the Company to assign a worker to perform duties outside his classification as may be required for efficient operation procedures.

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Exhibits

"C"

Correspondence

(c) Company to Minister of Labour.

25th March, 1965. (Contd.)

(c) Company to Minister of Labour.

TEXACO TRINIDAD INC.

Pointe-a-Pierre,
Trinidad, W.I.

March 25th, 1965.

INDUSTRIAL AGREEMENT WITH
OILFIELDS WORKERS' TRADE UNION

Minister of Labour,
Ministry of Labour,
"Knowsley",
1, Queens Park West,
PORT OF SPAIN.

Dear Sir,

Pursuant to the Industrial Stabilisation Act, 1965 Section 19 (1) we hereby notify you of our intentions to enter an Industrial Agreement with the Oilfields Workers' Trade Union not sooner than 30 days from date hereof.

The particulars of the several matters on which agreement will be sought are set forth, commented or explained in the following documents enclosed herewith:

(1) Letter of instant date to O.W.T.U. with its enclosures

(2) Letter of 10th March from O.W.T.U. with its enclosures

(3) Letter of 12th March to O.W.T.U.

(4) Letter of 15th January to O.W.T.U.

(5) Letter of 1st February to O.W.T.U.

(6) Letter of 23rd February from O.W.T.U.

(7) Letter of 25th February to O.W.T.U.

Acknowledge hereof is respectfully requested.

Yours faithfully,
TEXACO TRINIDAD INC.

/s/ E.G. Stibbs

Manager, Employe Relations.

In the Court of Appeal

Exhibits

"C"

Correspondence.

(d) Company to Union.

27th July, 1965.

(d) Company to Union

TEXACO TRINIDAD INC. Pointe-a-Pierre, Trinidad, W.I.

July, 27, 1965.

The General Secretary,
Oilfields Workers' Trade Union,
4a Lowe Hillside Street,
SAN FERNANDO

Dear Sir,

The Company's negotiating team and I have just returned from the negotiating room where we waited for the Union team from 10 o'clock onward. Your letter of July, 26th stated that you expected our team to be present today. We were present and we were again disappointed by the failure of the Union team to appear.

Enclosed is a statement which explains the position of the parties as we see it and the action we are taking today.

We shall await the call of the Minister of Labour.

Yours faithfully,
TEXACO TRINIDAD INC.

/s/ E.G. Stibbs

Manager, Employe Relations.

Statement annexed to Company's letter to Union of 27th July, 1965.

STATEMENT OF MR. E.G. STIBBS TO OILFIELDS WORKERS' TRADE UNION JULY, 27th 1965.

This is a brief statement with reference to the following announcement made to the Union at the negotiating meeting of July, 22nd:-

We have taken note of the attitudes and statements of certain Union leaders that prompt me to make the following announcements:

The Union Leaders have been unyielding on bargaining issues and have repeatedly threatened in our negotiation and in the press that there will be explosions and trouble of one sort or another. We have good cause to believe that Union leaders intend to use force in their efforts to settle on their terms:

Therefore, this is to announce that we reserve decision on whether to report this negotiation matter to the Ministry of Labour.

We have now decided what we shall do, and I should like to explain the factors we have considered in reaching the decision.

Since last Thursday the statements, press releases and actions of the O.W.T.U. officers, leaders and associates would be interpreted by a reasonable person as threats of force and illegal conduct.

Not only have you threatened us and given us an ultimatum, but also you have stooped to personal attacks on me and others in the Company. You have accused us of bad faith in bargaining both in the press and in letters. You have said that we have not negotiated in good faith because we are not prepared to make another offer. This does not mean we are in bad faith. This means merely that we do not agree to give, offer or concede more. We are not in bad faith, just because we do not see our way clear to agree with you. We are in good faith and have been all along.

During the past 16 weeks of bargaining we have had a total of 70 meetings of our two negotiating groups and we have made 54 offers and concessions to you. The Union has submitted its own revised proposals to us on June 4th and July 22nd.

Now, where are we? We are in dispute, we have told you that we are not prepared to make

In the Court of Appeal

Exhibits

"C"

Correspondence.

Statement annexed to Company's letter to Union of 27th July, 1965. (Contd.)

any additional offers or concessions. We stand on this. You have told us that you find our package of proposals unacceptable. You have threatened to settle on the streets in your press statements. You have issued a "Crisis Bulletin" containing an ultimatum and threat of positive action against the Company within two weeks.

What do we think is to be the effect of this? We have observed signs that the Union leaders' agitations are breeding trouble and may well incite the Company's employees to irrational actions.

We do not propose to wait for another two weeks while you try to build up emotions and inflame the people to possible unlawful action. Indeed, we consider it our duty to report to proper authorities that a trade dispute exists or is apprehended. We cannot see that any good can come from a continued failure to report on this dispute that is being used by Union leaders to promote political activities.

Since you have declined to join with us in our suggestion of June 18th for the selection of a private concilliator and as you have likewise rejected our suggestion that we jointly approach the Ministry of Labour, we have come to the decision that we should ourselves go to the Minister of Labour. Accordingly, we are reporting our dispute to the Minister of Labour today, and a copy of our letter will be sent to the Union as soon as it is delivered to the Minister.

(e) Company to Minister of Labour

TEXACO TRINIDAD INC. Pointe-a-Pierre, Trinidad, W.I.

July, 27th 1965.

Minister of Labour,
Ministry of Labour,
"Knowsley",
Queens Park West,
PORT OF SPAIN.

Dear Sir,

INDUSTRIAL AGREEMENT WITH OILFIELDS WORKERS' TRADE UNION
(File L. 11/7/6.)

We are herewith reporting to you under the provisions of Section 16 of Act Number 8 of 1965, Industrial Stabilisation Act, 1965, that a trade dispute exists or is apprehended.

Our letter dated March 25th 1965, with seven enclosures, notified you of our intention to enter an Industrial Agreement with the Oilfields Workers' Trade Union.

Thereafter from April, 6th to date, representatives of our Company and the Union have met a total of 70 times in negotiating sessions. The Company has made numerous offers and concessions and the Union has revised its original proposals on June 4th and July, 22nd. Nevertheless, we are not in accord on a new Agreement and the probabilities of agreeing now seem remote.

Therefore, and because of certain apprehensions expressed in our statements of July, 22nd and 27th, we are reporting to you by this letter and enclosures listed and described in the attached sheets; also we may wish to forward some additional enclosures in due course.

In the Court of Appeal

Exhibits

"C"

Correspondence.

(e) Company to Minister of Labour.

27th July, 1965.

(Contd.)

We are furnishing to the O.W.T.U. a copy of this letter and enclosures.

Yours faithfully,
TEXACO TRINIDAD INC.

(s) E.G. Stibbs,
Manager, Employe Relations.

c.c. The General Secretary,
Oilfields Workers' Trade Union.

"D" MINISTERIAL AND INDUSTRIAL COURT PROCEEDINGS.

"D"

Ministerial and Industrial Court Proceedings.

(a) Minister's Statement

24th April, 1965.

(a) Minister's Statement

TRINIDAD AND TOBAGO:

THE INDUSTRIAL STABILISATION ACT, 1965.

S T A T E M E N T

Under Sub-Section (2) of Section 19 of the Industrial Stabilisation Act, 1965.

W H E R E A S notice of a proposal to enter an industrial Agreement between Texaco Trinidad Inc. and the Oilfields Workers' Trade Union has been given to me together with particulars of the several matters and things on which agreement is to be sought:

AND WHEREAS I am of the opinion that the public interest requires that a statement be prepared based on the principles mentioned in sub-section (2) of Section 9 of the Industrial Stabilisation Act, 1965:

NOW THEREFORE under and by virtue of the provisions of Section 19 of the said Act I hereby make the following Statement with a view to indicating the considerations that any Industrial Agreements to be negotiated between the parties must take into account:

1. That the oil industry occupies a central place in the economy of Trinidad and Tobago and that its continued expansion is vital to the economic growth of the country and the welfare of its people.

2. That the division of the proceeds of the industry not only involves consideration of the Company's and the workers' share but is also a vital public interest through the share that accrues to Government by way of revenue.

In this connection, the Commission of Enquiry into the oil industry has made proposals for a further revision of the existing fiscal contributions made by the industry to the Government with special reference to

(a) Increases in royalty rates:

(b) Revision of the various tax allowances enjoyed by the industry;

(c) The separation of refining and production for taxation purposes.

Cabinet is now giving active consideration to the recommendation of the Minister of Petroleum and Mines regarding this matter.

3. That while workers in the industry are entitled to share in any increase in productivity of the industry, increase in labour costs (including fringe benefits) which adversely affect the growth of Government revenues derived from the industry or the ability of the Companies to maintain a high level of local investment will be contrary to the national interest.

4. That the Nation is committed to implementing a Second Five Year Development Plan, which was approved by Parliament after the fullest national discussion by the most representative and important economic organisations in the country, and which has as one of its principal objectives the provisions of additional jobs. And that any Industrial Agreement concluded in the industry

In the Court of Appeal

Exhibits

"D"

Ministerial and Industrial Court Proceedings.

(a) Minister's Statement

24th April, 1965.

(Contd.)

which has adverse effects on the growth of Government revenues will militate against the implementation of the Plan and the achievement of its objectives.

5. That any new Industrial Agreement must take into account the possible effects on employment having the regard to the relationship between increases in total labour costs and retrenchment in the industry over the period covered by the last two Agreements.

6. That there is now clear evidence of the decline in the level of indigenous crude oil production.

7. That consequently an increase in investment in exploration for new reserves, in costly operations such as secondary recovery programmes, and in the development of marginal production is urgently necessary since the proceeds of the industry's operations in Trinidad and Tobago constitute the principal source of funds for financing such investments.

8. That wages and other conditions of work in the oil industry exert a considerable upward pressure on wages and conditions of work in other industries both in the private and public sectors of the economy and that the resultant increases in wages in other industries with lower levels of productivity than the oil industry tend to aggravate the serious social and economic problem of unemployment by, among other things, accelerating the introduction of automated methods.

9. That the result of Industrial Agreement between the Company and the Union should not be such as to adversely effect the differential and different levels of skill among workers.

Dated this 24th day of April, 1965.

R.E. Wallace

Minister of Labour.

L.11/17/1 (b) Minister's Referral.

In the Court of Appeal

Exhibits

"D"

Ministerial and Industrial Court Proceedings.

(b) Minister's Referral.

29th July, 1965.

(Contd.)

INDUSTRIAL STABILISATION ACT, 1965
REFERRAL OF DISPUTE OR APPREHENDED DISPUTE TO THE COURT.

The Minister of Labour in exercise of the power conferred on him by Section 16 of the Industrial Stabilisation Act, 1965 hereby refers to the Court the following dispute or apprehended dispute particulars whereof are specified in the schedule hereto.

Dated this 29th day of July, 1965.

R.E. Wallace.
Minister of Labour.

S C H E D U L E.

PARTICULARS OF THE DISPUTE OR APPREHENDED DISPUTE

A. THE PARTIES.

(i) (a) Employer: Texaco Trinidad Inc.

(b) Business Address: Mr. E.G. Stibbs, Manager, Employe Relations Texaco Trinidad Inc., Pointe-a-Pierre, Trinidad.

(ii) (a) Union: Oilfields Workers' Trade Union

(b) Business Address: General Secretary, Oilfield Workers' Trade Union, 4A, Lower Hillside Street, San Fernando, Trinidad.

In the Court of Appeal

Exhibits

"D"

Ministerial and Industrial Court Proceedings.

(b) Minister's Referral.

29th July, 1965.

(Contd.)

B. PARTICULARS OF THE DISPUTE OR APPREHENDED DISPUTE IN RELATION TO WHICH THE QUESTION HAS ARISEN

By letter of the 27th July, 1965, Texaco Trinidad Inc. informed the Minister of Labour that a trade dispute exists or is apprehended between the Oilfields Workers' Trade Union and the Company. The letter was as follows:

"Texaco Trinidad Inc.

Pointe-a-Pierre,
Trinidad, W.I.
July, 27, 1965.

Minister of Labour,
Ministry of Labour,
"Knowsley",
Queen's Park West,
PORT OF SPAIN.

Dear Sir,

INDUSTRIAL AGREEMENT WITH OILFIELDS WORKERS' TRADE UNION (File L/7/1).

We are herewith reporting to you under the provisions of Section 16 of Act No. 8 of 1965, Industrial Stabilisation Act, 1965, that a trade dispute exists or is apprehended.

Our letter dated 25 March, 1965 with seven enclosures, notified you of our intention to enter an industrial agreement with the Oilfields Workers' Trade Union.

Thereafter, from April, 6th to date, representatives of our Company and the Union have met a total of 70 times in negotiating sessions. The Company has made numerous offers and concessions and the Union has revised its original proposals on June 4th and July, 22nd. Nevertheless, we are not in accord on a new Agreement and the probabilities of agreeing now seem remote.

Therefore, and because of certain apprehensions

In the Court of Appeal

Exhibits

"D"

Ministerial and Industrial Court Proceedings.

(b) Minister's Referral.

29th July, 1965.

(Contd.)

expressed in our statements of July, 22nd and 27th, we are reporting to you by this letter and the enclosures listed and described in the attached sheets; also we may wish to forward some additional enclosures in due course.

We are furnishing to the O.W.T.U. a copy of this letter and enclosures.

Yours faithfully,
TEXACO TRINIDAD INC.,

/s/ E.G. Stibbs
Manager, Employe Relations "

c.c. The General Secretary,
Oilfields Workers' Trade Union.

Copies of the enclosures referred to in the Company' letter of 27th July, to the Minister are submitted herewith.

(c) Summons.

(c) Summons

30th July, 1965.

INDUSTRIAL COURT OF TRINIDAD AND TOBAGO

No. 22 of 1965

S U M M O N S

To: General Secretary,
Oilfields Workers' Trade Union,
4A, Lower Hillside Street,
San Fernando,
Trinidad.

TAKE NOTICE that the Honourable the Minister of Labour has referred to this Honourable Court the annexed trade dispute between the TEXACO TRINIDAD INC. and the OILFIELDS WORKERS' TRADE UNION particulars whereof are contained in the Schedule thereto.

YOU ARE THEREFORE REQUIRED to attend

In the Court of Appeal

Exhibits

"D"

Ministerial and Industrial Court Proceedings.

(c) Summons.

30th July, 1965.

(Contd.)

before this Honourable Court on Wednesday, the 4th day of August, 1965 at the hour of 9.00 IN THE FORENOON at the FIFTH SUPREME COURT, RED HOUSE, PORT OF SPAIN, for the purpose of expressing your views as to the periods which are reasonably necessary for the fair and adequate presentation of your case in relation to the aforementioned dispute and to receive such directions as the Court may then give in that behalf and for the hearing and determination thereof.

AND TAKE FURTHER NOTICE that if you do not attend in person or by Counsel or Solicitor or other representative on your behalf, at the time and place appointed, the Court may proceed in your absence to fix the periods and give the directions aforesaid.

Dated this 30th day of July, 1965.

Conrad Douglin

Acting Registrar

Industrial Court of Trinidad and Tobago,
c/o Court of Appeal, Registry,
Red House, Port of Spain.

(d) Court's Directions.

(d) Court's Directions.

4th August, 1965.

TRINIDAD AND TOBAGO.

IN THE INDUSTRIAL COURT.

No. 22 of 1965.

In the Matter of a Trade Dispute under The Industrial Stabilisation Act, 1965.

PARTIES:

1. Texaco Trinidad Inc.
2. Oilfields Workers' Trade Union.
3. The Attorney General on behalf of the people of Trinidad and Tobago.

ENTERED the 4th day of August, 1965.

Dated the 4th day of August, 1965.

BEFORE:

The Honourable Mr. Justice Isaac Hyatali, President.
His Honour Mr. Harold Hutson, Vice President.
His Honour Mr. J.O'Neil Lewis, Member.

APPEARANCES:

Mr. J.A. Wharton, Q.C. associated with Mr. Selby Wooding instructed by Messrs. J.D. Sellier and Company.

Mr. Bernard Primus, instructed by Messrs. Kelshall and Company for the Oilfields Workers' Trade Union.

Mr. R.A. Crane, of Counsel, for the Attorney General.

The Trade Dispute herein having been referred by the Honourable the Minister of Labour to this Honourable Court on the 29th day of July, 1965 for settlement, and the Court having summoned the parties thereto to attend this day for the purpose of hearing their views as to the periods which are reasonably necessary for the fair and adequate presentation of their respective case to the Court and to receive such directions as the Court might give for the hearing and determination of the said Dispute, upon reading the Reference aforesaid, and upon hearing Counsel for Texaco Trinidad Inc., Counsel for the Oilfields Workers' Trade Union and Counsel for the Attorney General.

IT IS DIRECTED

That each party to the said Dispute do deliver on or before the 8th day of September, 1965, to the Registrar seven copies of a Statement of Case containing a concise statement of the material facts and contentions with all relevant exhibits and documents annexed thereto

In the Court of Appeal

Exhibits

"D"

Ministerial and Industrial Court Proceedings.

(d) Court's Directions.

4th August, 1965.

(Contd.)

on which such party intends to rely at the hearing of the Dispute aforesaid:

That the Registrar do deliver a copy of the Statement of Case of each party to the other party or parties as the case might be on or before the 11th day of September, 1965:

That each party be at liberty to deliver to the Registrar of the Court on or before the 25th day of September, 1965, seven copies of a Reply (if any) to any Statement of Case so delivered and that the Registrar do deliver a copy of the Reply (if any) of each party to the other party or parties as the case might be, on or before the 28th day of September, 1965, and there be no further reply without leave of the Court.

AND IT IS FURTHER DIRECTED

That the hearing of the Trade Dispute be heard on the 5th day of October, 1965, at 9.00 a.m. in the Sixth Supreme Court, Red House, Port of Spain or in such other Court as may be otherwise notified by the Registrar.

Conrad Doughlin.
Acting Registrar,
Industrial Court.

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

- AND -

IN THE MATTER OF THE APPLICATION OF LEARIE COLLYMORE AND JOHN ABRAHAM (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

B E T W E E N: LEARIE COLLYMORE and JOHN ABRAHAM — Appellants

- and -

THE ATTORNEY GENERAL — Respondent

RECORD OF PROCEEDINGS

A.L. BRYDEN & WILLIAMS,
20, Old Queen Street,
London, S.W.1.

Appellants' Solicitors
& Agents.

CHARLES RUSSELL & CO.,
37, Norfolk Street,
London, W.C.2.

Respondent's Solicitors
& Agents.