

IN THE PRIVY COUNCIL

No. 22 of 1958

ON APPEAL

FROM THE WEST INDIAN COURT OF APPEAL

B E T W E E N

VERE CORNWALL BIRD
EDMUND HAWKINS LAKE
NOVELLE RICHARDS
ERNEST WILLIAMS
BRADLEY CARROTT
JOHN IRELAND
LEVI JOSEPH
JOSEPH SAMUEL and
LIONEL HURST

(Defendants) Appellants

UNIVERSITY OF LONDON
W.C.1.
- 7 FEB 1961
INSTITUTE OF ADVANCED
LEGAL STUDIES

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- and -

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JOSEPH REYNOLD O'NEAL
GERTRUDE O'NEAL

(Plaintiffs) Respondents

CASE FOR THE APPELLANTS

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1. This is an appeal by special leave from a judgment of the West Indian Court of Appeal (Mathieu Perez, Jackson and Holder C.JJ.) dated 25th April 1957, dismissing an appeal from a judgment of Date J of 3rd January 1956 awarding an injunction restraining the Defendants their servants and agents from watching and besetting the business places of the plaintiffs and ordering the Defendants to pay £80 to the Plaintiffs as damages for conspiracy. The West Indian Court of Appeal allowed a Cross Appeal of the Plaintiffs on 3 points and varied the Judgment of the learned trial judge in respect of damages which they increased to £100. They affirmed the order of the Court below in other respects. The case occupied seven days in the Supreme Court of the Windward Islands and Leeward Islands and five days in the West Indian Court of Appeal.

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2. The Appellants other than the Appellant Joseph Samuel are members of the Executive Committee of the Antigua Trades and Labour Union, which came into being in accordance with and is registered pursuant to the Trade Unions Act 1939 (Leeward Islands No.16 of 1939) as amended. Certain Defendants hold other offices in addition. The Respondents carry on business in partnership under the names of O'Neals Drug Store in the City of St. John's and in a nearby building Gertrude O'Neal conducts a curio shop.

p.55, l.36.

Record
p.14,1.26.

p.15,1.17.

3. The action was brought in the Supreme Court of the Windward Islands and Leeward Islands by the Respondents as Plaintiffs against the Petitioners as Defendants for damages for conspiracy to watch and beset the business places of the Respondents so as to intimidate customers. It is then pleaded in parenthesis that the intention of the conspiracy was to injure the Respondents and so to compel the Respondents to submit to the demand of the Union that they should pay compensation to one Miss Winter, a clerk whom they had dismissed. The Respondents alleged that threats and acts of violence and intimidation and coercion were used by the Appellant Levi Joseph and by other persons called the pickets which acts, according to the allegation of the the Respondents, "prevented divers customers and prospective purchasers from entering the said business places and purchasing therein." The Respondents claimed as damages the sum of \$500 and an Injunction.

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4. The action involves amongst other matters the question whether Trade Union legislation in the West Indies, which is closely parallel to comparable English legislation, should be interpreted in a restrictive manner so as to narrow the rights and the protection accorded to Trade Unions and Trade Unionists or whether as contended for by the Appellants it should be given an effect similar to that which has been given to the English legislation.

5. The facts leading up to the picketing may be summarised as follows:-

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p.31,1.1

(a) In May 1949 one Averyl Winter was employed by Miss Gertrude O'Neal as a clerk at the Drug Store on a weekly basis. She continued working there until Saturday 11th June, 1955, when she was summarily dismissed by the Plaintiff Gertrude O'Neal and paid one week's wages in lieu of notice; no reason was given for the dismissal. It was clear that by the dismissal Miss Winter was deprived of at least 10 weeks accumulated holiday with pay.

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p.25,1.22.
p.141,1.33.

p.29,1.42
p.29,1.19
p.31,1.3

p.29,1.14

(b) On Monday 13th June the Appellant Ireland, a Field Officer of the Union of which Miss Winter is a member, went to Miss O'Neal and asked for the reasons for Miss Winter's dismissal. Miss O'Neal refused to give any. Thereupon, according to Miss O'Neal, Mr. Ireland demanded one year's pay for Miss Winter, and this also was refused.

(c) Representations were then made by the Union to the Labour Commissioner of Antigua about Miss Winter's dismissal and conciliation meetings under his

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p.141,1.1

Chairmanship were held at the Labour Department between representatives of the Drug Store and representatives of the Union on 23rd June and 7th July. The Union's representatives asked for the reinstatement of Miss Winter, but the Respondents said that in dismissing Miss Winter without giving reasons and paying her a week's wages in lieu of notice they were acting within their legal rights, and that they were not prepared to consider the claim for reinstatement. At the second meeting a written undertaking was signed by Miss Winter to the effect that nothing said there would be used by her in any case of slander or libel; the representatives of the Drug Store then gave five reasons which they said were the only reasons for the dismissal. These reasons were criticized by the Union's representatives, who expressed the view that they proved nothing against Miss Winter and did not justify her dismissal, but the Respondents declined to consider any form of settlement.

p.145,1.9

(d) The voluntary negotiations having broken down, the Union approached the Government for the appointment of a Board of Inquiry under the Trade Disputes (Arbitration and Inquiry) Act, 1939 (Leeward Islands No. 17 of 1939), section 8(1) of which reads as follows:-

"8(1) Where any trade dispute exists or is apprehended the Governor may, whether or not the dispute is reported to him under this Act, inquire into the causes and circumstances of the dispute, and, if he thinks fit, refer any matter appearing to him to be connected with or relevant to the dispute to a Board of Inquiry (hereinafter referred to as the Board) appointed by him for the purpose of such reference, and the Board shall inquire into the matters referred to it and report thereon to the Governor."

By Instrument dated 16th August, 1955, the Acting Governor appointed a Board of Inquiry 'to inquire into the causes of the dispute that arose over the dismissal of Miss Averyl Winter by the Proprietors of O'Neal's Drug Store, St. John's, and to report thereon to the Governor and to submit to him such conclusions, recommendations and observations as the Board sees fit.'

At the Inquiry, on 24th August, the Respondents submitted that there was no trade dispute between Miss Winter and the Respondents and that the appointment of the Board was consequently invalid. They contended that the relationship of employer and employee had been terminated by the giving of a week's wages in lieu of notice, and that accordingly there could be no trade

p.148,1.32

Record
p.149,1.3.

dispute within the meaning of the Act. The Board ruled that 'the terms of reference contained in the instrument dated 16th August 1955 which gave the Board its validity showed prima facie that there was a trade dispute existing between the proprietors of O'Neal's Drug Store and Miss Averyl Winter and therefore the Board had full power and authority to inquire into the dispute.'

p.149,1.11

The Respondents then withdrew from the Inquiry, but the minutes of the meetings at the Labour Department, which contained the reasons given by Miss O'Neal for the dismissal of Miss Winter, were produced in evidence and closely examined and witnesses were called and gave evidence on oath and were cross examined before the Board of Inquiry.

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p.149,1.42

p.148,1.1

(e) The Board of Inquiry reported to the Acting Governor on 31st August 1955, and expressed the opinion that there was no moral justification for the dismissal of Miss Winter and, using 'as a norm one of the accepted principles of good industrial relations, that is the principle of mutual respect and tolerance of human rights between employer and workman', recommended that the proprietors of the Drug Store be asked to pay her a sum equivalent to thirteen weeks' wages as a compensation for her dismissal. Miss Winter had been given only one holiday of two weeks' leave in over 6 years' employment although 2 weeks annual paid holiday was provided for in her terms of employment.

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p.155,1.10

p.155,1.31

31-3; 92-37

p.147,1.1

(f) The Administrator of Antigua sent a copy of the Report to the Respondents for 'such action with the view to a settlement of the dispute as may be deemed advisable.' The Administrator also informed the Respondents that the Acting Governor agreed generally with the recommendation of the Board. The Respondents ignored this communication. The Union were also informed of the Report and Recommendation and of the agreement of the Acting Governor and on 9th September the Executive Committee resolved' ... that provided up to the time of the publication of the Board's award the dispute is not settled, the General Secretary (the Appellant Lionel Hurst) should take the necessary steps to picket the business premises'. Not all the Appellants who were members of the Executive Committee were present on 9th September.

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p.58,1.35

p.58,1.35

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On 16th September the Administrator caused the Report to be published in the local press, and the following day the plaintiffs' business premises were picketed, and the pickets were still there at the time of the Judgment on 3rd January 1956 when the Court granted an injunction restraining them. The pickets were employed and paid by the Union and not by any one or all of the Defendants and were given their instructions by the General Secretary on behalf of the Union and not otherwise.

Record
p.156,1.1
p.26,1.18
p.27,1.8
p.37,1.5
p.57,1.1

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6. In their Statement of Claim the Respondents alleged that those of the Appellants who were members of the Executive Committee in furtherance of the conspiracy mentioned in Paragraph 3 hereof wrongfully and without legal authority caused or procured the Appellant Samuel who was the chief picket and the other pickets to watch and beset the business places of the Respondents in the manner and for the purposes complained of. They further alleged that the Executive Committee members among the Appellants on several occasions attended in the vicinity of the Respondents' premises and gave encouragement to the pickets.

p.15,1.32
p.16,1.2

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The Respondents further alleged that the Appellant Levi Joseph and the pickets committed certain isolated acts alleged to be unlawful namely:-

On 17th day of September, 1955, carrying placards to the said business places of the Respondents and surrounding them blocking the approaches and entrances thereto and shouting in a threatening manner to persons who attempted to enter the said business places 'Don't buy from O'Neal's Drug Store, a Strike is on', and being accompanied by a Steel Band; parading up and down outside the said business places ringing a bell and shouting 'Don't buy from O'Neal's Drug Store people. You no hear you no foo buy from this Drug Store.'

p.16,1.14

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On 19th September one picket assaulted a person; carrying flags and placards with slogans such as 'Hold the line the workers' security is challenged'; surrounding and obstructing persons especially old men, women and children who attempted to enter the said business places shouting at them 'Hold the Line.'

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On the morning of the 24th September, 1955, conducting themselves in a boisterous and disorderly manner marching up and down in front of the said business places shouting 'Hold the Line - Don't buy from this Drug Store, Workers must be respected.'

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None of these acts were alleged to be criminal acts. A further cause of action was alleged against all the Appellants including the Appellant Joseph Samuel, namely in Paragraph 9 of the Statement of Claim, a conspiracy to create a nuisance.

7. By their Defence the Appellants denied the alleged conspiracy, and put all the isolated acts of the pickets in issue, and denied that they were the employers of the pickets and that they had authorised or consented to or knew of any improper picketing. They alleged that there was a trade dispute between the Union and the Respondents; that the picketing was in furtherance of the dispute and that it was at all times lawful. 10

p.108,1.4.

8. Both sides adduced evidence and the trial judge made the comment, "this case is remarkable for the number of persons not called as witnesses." He drew attention to "the failure of the Plaintiffs to call the majority of the persons said to have been interfered with (by the pickets) or the policeman on duty in the streets." The facts on which he based this observation were that to support pleas of quite general "threats and acts of violence and intimidation and coercion" applied to all customers who approached the shops the Respondents called only people who suggested they had been approached by the pickets. The first was a school girl Veronica Harris who said "We took it as a joke and ran off laughing," and of whom the trial judge said "it appears to me that this girl's evidence cannot be taken as proving anything against the pickets." 20 30

p.16,1.8

p,48,1.37
p.105,1.8

p.47,1.16

Iris Barrow said that on several occasions when she went to the Store a picket said to her "Hold the Line. Don't go in." This lady added that she was a good personal friend of the Plaintiffs and that her employers had been picketed by the Union because of the conduct of her brother's manager in dismissing her clerk.

Mr. Nelson a carpenter, complained that the Defendant Samuel spoke to him as he went into the Drug Store and said "Nelson don't you hear you must not go in there to buy. You is a dog." And on his coming out said "You going to want the Union and you burning your own coals." This witness added that he had been Chairman of a section of the Union and his son had been General Secretary of the Union and both had been dismissed from office and that he would do all in his power to destroy the policy of the Union. 40

As to the Police the evidence was that there had been policemen present observing the conduct of the pickets at all times throughout the picketing. And on a number of occasions there had been high ranking officers of the Police present and observing the conduct of the pickets.

Record
p.27,1.25
p.33,1.29

p.51,1.1
p.33,1.39

Two Police Officers were called as witnesses; the first Sergeant Roberts; this Officer said that he saw one incident where the Defendant Samuel attempted to hold a man going into the Store. The Sergeant walked quickly to him and asked why Samuel interfered with people; Samuel answered that they were friends and that they were just making a joke; the Officer added that there was nothing hostile in Samuel's attitude to the man and that he accepted his explanation. The Judge likewise accepted it. The real importance of the evidence of Sergeant Roberts was that he had frequently carried out inspections at the Store during the picketing and that policemen had always been stationed there and that he had never witnessed nor received any report of any incident which he considered would justify criminal proceedings against anyone. He had received one complaint only throughout the picketing but did not consider it warranted any action.

p.50,1.14

p.101,1.41

The second policeman was the Assistant Superintendent of the Police Mr. Blaize. He had been summoned to go there by Miss O'Neal. He saw no disorder but heard pickets saying "Hold the Line"; he spoke to the picket, the Defendant Joseph, about whom there had been a complaint and questioned him about his conduct and saw nothing improper being done.

The Appellant Bird, the President of the Union happened to be passing at the time in his car. Mr. Blaize stopped the car and told the Appellant Bird of the incident.

p.52,1.3

Perhaps the most revealing witness called by the Respondents was Mr. Lowen a wood carver, who said that he went to each of the business places nearly every day to do business with the Respondents; he knew all the pickets but not by name; he had had no trouble with them at any time; he gave no evidence of any untoward event save only of the alleged assault between the Defendant Samuel and his friend where Sergeant Roberts at once intervened and which proved to be a good natured joke.

All the other witnesses called by the

p.98,1.35.

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p.108,1.39.

Plaintiffs were employees or personal friends of the Plaintiffs; or persons who had some special reason for being biased against the Union. One witness had been dismissed from the Union's store for dishonesty; another witness had a brother whose place of work had been picketed by the Union because he, as manager, had dismissed some employee; the third as mentioned above had been Chairman of a section of the Union while his son had been General Secretary of the Union and both had been dismissed. One who was a close personal friend of the Plaintiffs said that it would give him pleasure to kick one of the pickets.

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p.73,1.37.

9. The Respondents Counsel conceded that there was no evidence of any agreement or joint action amongst the Defendants until it came to the hearing of the case. The Appellants in their evidence disclosed the Minutes of the Executive Committee of the Union. They showed that they had taken every step that was open to them by way of normal approaches to Miss O'Neal and proposals for negotiation and official attempts at conciliation with the assistance of the Labour Commissioner of the Labour Department, The Union had gone further than it had ever gone before by asking for and submitting to a statutory Board of Inquiry under the Trade Disputes (Arbitration and Inquiry) Act 1939 s.8. It was only when the Respondents refused any kind of negotiation and declined to accede to or discuss the recommendation of the Board of Inquiry that the Union resorted to the step of picketing the places of business of the Respondents. That the Defendants other than the General Secretary Mr. Hurst and the organiser of the Union Mr. Levi Joseph and the field worker Mr. Ireland acted in any way except as members of the Executive Committee in resolving to picket the premises. There was no evidence that anyone of the Appellants acted in any way at all in the matter except on behalf of the Union.

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p.139,

10. The principal submissions in law on behalf of the Appellants were:-

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- (i) That the Union only was the Employer or master or principal in relation to the pickets;
- (ii) That the Appellants who were Executive Committee members and the pickets did not stand in the relationship of master and servant and the Appellants were not responsible in law for any illegal acts committed by the individual pickets;
- (iii) That Miss Winter was a "workman" for the purpose of the Trade Unions Act, 1939;

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- (iv) That at all material times a trade dispute existed between Miss Winter, represented by the Union, on the one hand and the Respondents on the other hand;
- (v) That the Appellants were entitled to the Protection of Sections 6 and 7 of the Trade Unions Act, 1939 as amended;
- 10 (vi) That the predominant object of the picketing was the furtherance by the Appellants of the legitimate interests of themselves as trade unionists and of the Union, and there was no evidence of any other purpose or object; and that in consequence they were entitled to protection at Common Law on the basis of such authorities as Mogul v. McGregor Gow (1892) A.C. 25, Sorrel v. Smith (1925) A.C.700, and Crofter Hand Woven Co. v. Veitch (1942) A.C. 435.

20 11. The Trial Court (the Supreme Court of the Windward Islands and Leeward Islands) (Date J.) by its Judgment on the 3rd January 1956 held that Miss Winter was a workman and that a trade dispute existed and that the predominant object of the Appellants was to forward or defend their own legitimate interests. Date J. further held that the Appellants had other objects in mind, which he did not define, and that unlawful means, amounting to obstruction, coercion, intimidation and threats of violence, had been used by the pickets amongst whom was one of the Defendants Samuel. It is submitted that on the basis of the above evidence and findings of fact the only possible decision was in favour of the Appellants.

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p.93,1.47.
p.110,1.18.

12. In the Trade Disputes (Arbitration and Inquiry) Act, 1939, 'trade dispute' is defined as meaning

"any dispute or difference between employers and workmen, or between workmen and workmen, connected with the employment or non-employment, or the terms of the employment, or with the conditions of labour, of any person."

40 The identical definition is brought into the Trade Unions Act 1939, s.2. by the Trade Unions (Amendment) Act 1949 s.2.

The Trade Unions Act does not define workman but provides in Section 2 that the term 'includes labourers'. In the Trade Disputes (Arbitration and Enquiry) Act 1939 'workman' is defined as meaning 'any person who has entered into or works under a contract with an employer whether the contract be by way of manual labour,

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clerical work or otherwise, be expressed or implied, oral or in writing, and whether it be a contract of service or of apprenticeship or a contract personally to execute any work or labour.'

The Trade Unions Act as amended by the Trade Unions (Amendment) Act 1942 provides:

- S.6(1) 'An action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court. 10
- S.6A (1) 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. 20
- S.6A (2) 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. 30
- S.6B. '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.' 40

and, as replaced by the Trade Unions (Amendment) Act 1947,

- S.7 '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...'

- 10 13. The Trial Judge rejected the Appellants submission that they were in law entitled to the protection of Sections 6 and 7 of the Trade Unions Act, 1939, as above set out or to protection at Common Law. He accepted as though there were no argument to the contrary that the pickets were employed by the Defendants. A possible reason for this erroneous view was that neither of the courts in the West Indies was reminded of the decisions to the effect that a Trade Union is in law an independent entity for example Taff Vale v. Amalgamated Society of Railway Servants (1901) A.C. 26 and Bonsor v. Musicians Union (1956) A.C. 104. He found that the particular incidents spoken to by certain of the Plaintiffs' witnesses did take place, and that the pickets told people in forceful language that they must not buy from O'Neals. The judge found that these acts were unlawful because "... there were acts of coercion and intimidation and threats of violence. Furthermore there is abundant evidence of "persuading" (as opposed to "writing")..... and the repeated shouts and other noises of the pickets and the degree of annoyance inflicted on the Plaintiffs by the pickets' general behaviour went beyond what was reasonably necessary to the carrying out of lawful picketing." As pointed out in Paragraph 6 above no part of these acts was alleged or found to constitute a crime or an independent tort within S.6A(1) or S.6A(2) of the Trade Unions Act 1939 as amended.
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- p.107,1.45
p.109,1.46
p.110,1.42
p.109,1.36
- p.113,1.16
14. The Appellants submit that the Trial Court has erred in law in confusing the purpose of the furtherance by the Appellants of the legitimate interests of the Trade Union with the individual acts committed occasionally by certain of the pickets; that the pickets were employed by the Union acting through its secretary Lionel Hurst and not by the Defendants and that the purpose of the picketing was the putting into effect of the resolution passed on behalf of the Trade Union by those of the Appellants who were Executive Committee members and who were present at the meeting of 9th September 1955, in the furtherance of the legitimate interests of the Union, and that the pickets were never employed by or acting on behalf of

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all or any of the individual members of the Executive Committee or of the Appellants.

p.118

15. Among the Grounds of Appeal presented to the West Indian Court of Appeal by the Appellants were the following:-

That there was no evidence given at the trial to support the findings of the learned Judge that there were other objects in the minds of the Appellants other than the predominant object of the furthering by the Appellants of their own legitimate interests;

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That the learned Judge was wrong in law in holding that the pickets stood in the relationship of servant and master of the Appellants;

That the learned Judge was wrong in law in holding that the Appellants were responsible for the unauthorised acts of the pickets;

That the learned Judge misdirected himself on the law relating to conspiracy when he held that (a) "the evidence points conclusively to at least connivance on the part of the defendants." (b) "It is not disputed that the defendant Samuel combined with the other defendants for the purposes of picketing of the plaintiffs' premises." This was certainly disputed and there is no note of any suggestion that this Appellant conceded any such point.

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16. The Respondents preferred a Cross-Appeal the Grounds of which were:-

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(1) That the definition of the expression "workman" in the Trade Unions Act, 1939, does not include Clerk.

(2) That the learned Judge was wrong in law in holding that a trade dispute existed between the Respondents and Miss Winter, represented by the Antigua Trades & Labour Union.

(3) That the damages were inadequate.

17. The West Indian Court of Appeal delivered its Judgment on the 9th April 1957.

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The Court of Appeal held:

(i) That Miss Winter, not being a labourer, was

not a "workman" for the purposes of the Trade Unions Act 1939.

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(ii) That there did not and could not within the language of the Trade Unions Act 1939 exist a trade dispute between the Union and the Respondents.

(iii) That the Appellants are not entitled to claim the protection of Section 7 of the Trade Unions Act, 1939.

10 (iv) That the judge did not find that the predominant object of the picketing was the furtherance of the Appellants' legitimate interests, and there was no sufficient and satisfactory evidence on which the Trial Court could have reached such a conclusion. p.133,1.37-41.

20 (v) That the Trial Court can only be understood to have meant that since there were other objects of the picketing apart from the purposes mentioned in Section 7, the immunity provided by Section 7 could not enure for the benefit and protection of the Appellants.

(vi) That the Appellants as individuals were the employers of the pickets and were personally responsible for the individual acts of the pickets; that some of those acts were unlawful.

18. The Court of Appeal accordingly affirmed the Order of the Trial Court but on different grounds and varied the amount of Damages by increasing it to £100 (\$480).

30 19. The Appellants submit that the Judgment of the Court of Appeal is wrong in law and should be set aside and the action dismissed and the injunction granted by Date J. should be rescinded for the following among other

R E A S O N S

40 1. THAT it is well established that the term "workmen" as defined in the Trade Unions Act, 1939, means all persons employed in trade or industry as construed widely and generously, and certainly includes a shop assistant.

2. THAT for the reasons given in the Judgment of p.93,1.47 the Trial Court there existed a trade dispute between Miss Winter represented by the Antigua Trades and Labour Union and

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the Respondents and the reasoning of the Court of Appeal on this issue reduces itself to this absurdity, that an employer can avoid the effects of the Trade Unions Act and of the Trade Disputes (Arbitration and Inquiry) Act by the simple expedient of dismissing from his employment a member of the Trade Union with whom he has been in dispute.

3. THAT the findings of fact of the Trial Judge that the predominant object of the Appellants was the furtherance of the legitimate interests of the Trade Union which he expressed in the terms "It is clear that although the predominant object of the picketing here is the furtherance by defendants of their own interests" does not justify the view expressed by the Court of Appeal in the terms: 10
- "...We are not satisfied that this statement contains a definite finding that the main purpose of the alleged conspiracy was to further the appellants' legitimate interests, still less are we convinced that there is sufficient and satisfactory evidence on which a conclusion could be reached that the predominant object of the picketing was the furthering of the appellants' own interests...." 20
4. THAT the patient carrying through by the Appellants acting for the Union, of the recognised processes of negotiation and conciliation and the statutory procedure of the Board of Inquiry, with the picketing only as a last resort, is convincing evidence of the conscientious attitude of the Appellants as elected Trade Union officers carrying out their legitimate functions in good faith. 30
5. THAT the findings as to the existence of a trade dispute and as to the predominant object of the Appellants entitle the Appellants in law to the full protection of Sections 6 and 7 of the Trade Unions Act, 1939, as amended, and that such protection is not taken away by the acts of the individual pickets, for whose acts in excess of the furtherance of the legitimate interests of the Trade Union the Appellants are not responsible. 40

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p.135, l.21.

6. THAT the finding as to the predominant objects of the Appellants entitles the Appellants to protection at Common Law apart from any protection to which they might be entitled by Statute and that the Court of Appeal erred in ignoring the Common Law position.
7. THAT there is nothing in the evidence of the witnesses or in the Judgment of the Trial Court to warrant the conclusion of the Court of Appeal that the Appellants "external acts and conduct show that by mutual consent and acquiescence they had a common purpose to cause injury to the Respondents and bring them into subjection by employing means which were manifestly unlawful." The said conclusion of the Court of Appeal is in effect a reversal of the finding of the Trial Court that the predominant object of the Appellants was the furtherance of the legitimate interests of the Trade Union and is not supported by evidence.
8. THAT the Appellants do not stand in the relation of master and servant to the pickets and, accordingly are not liable in law for the illegal acts if any committed by the pickets.
9. THAT the liability for any illegal acts committed jointly or severally by the pickets is the liability of those pickets and does not arise in this case.

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JOHN PLATTS-MILLS

IN THE PRIVY COUNCIL

ON APPEAL FROM

THE WEST INDIAN COURT OF APPEAL

B E T W E E N

VERE CORNWALL BIRD
AND OTHERS

(Defendants)

Appellants

- and -

JOSEPH REYNOLD O'NEAL
and GERTRUDE O'NEAL

(Plaintiffs)

Respondents

CASE FOR THE APPELLANTS

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