

2-1-1977

# The New Regime of Labor Relations Crimes in Trinidad and Tobago

Chuks Okpaluba

Follow this and additional works at: <http://repository.law.miami.edu/umialr>



Part of the [Foreign Law Commons](#)

---

## Recommended Citation

Chuks Okpaluba, *The New Regime of Labor Relations Crimes in Trinidad and Tobago*, 9 U. Miami Inter-Am. L. Rev. 79 (1977)  
Available at: <http://repository.law.miami.edu/umialr/vol9/iss1/4>

This Article is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized administrator of Institutional Repository. For more information, please contact [library@law.miami.edu](mailto:library@law.miami.edu).

## THE NEW REGIME OF LABOUR RELATIONS CRIMES IN TRINIDAD AND TOBAGO

CHUKS OKPALUBA\*

### 1. THE GENESIS OF THE INDUSTRIAL RELATIONS CRIMES

The story of the criminal prosecution of workers who combine with a view toward improving their lot in the work place has been told by several labour historians in the common law world.<sup>1</sup> It suffices to state here that Caribbean trade unions share a common legal experience with those in the United Kingdom.<sup>2</sup> Although there seems to be no reported cases, trade union historians have shown that workmen's combinations were illegal in the Caribbean<sup>3</sup> before the introduction of trade unions legislation.<sup>4</sup> The crime of criminal conspiracy was imported into this area by English judges for the purpose of frustrating collective actions by workers. The resort to the criminal conspiracy weapon meant two things: firstly, combinations by workers to alter their wages were a crime;<sup>5</sup> secondly, the taking of collective action in the nature of withdrawal of labour was similarly a crime.<sup>6</sup>

After the enactment in the U.K. of the Trade Union Act, 1871 and the removal of criminal conspiracy by the Conspiracy and Protection of Property Act, 1875, the Courts developed the concept of civil conspiracy<sup>7</sup> and in 1964 patented a tort of intimidation,<sup>8</sup> notwithstanding the immunities given to trade unions by the 1871, 1875 and the Trade Disputes Act of 1906.

In the Caribbean, the crime of conspiracy for collective labour actions has been abolished<sup>9</sup> and trade unions are immune from tort actions<sup>10</sup> but criminal prosecutions were retained for withdrawal of labour in the so-called essential industries.<sup>11</sup> Thus, Fraser, J.A., commenting on the essence of the Trade Union Ordinance of Trinidad and Tobago, observed that:

---

\*LL.B., LL.M. (Lond.); Senior Lecturer in Law, University of the West Indies, St. Augustine, Trinidad, West Indies. This article is part of a research project into *Compulsory Labour Adjudication in Trinidad & Tobago* commissioned and financed by the National Union of Government and Federated Workers.

From time to time the rules and principles of the common law have been made to give way to ameliorate changes by legislation in order to create conditions more conducive to vigorous growth of the trade union movement.<sup>12</sup>

In that regard, the learned judge continued:

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.<sup>13</sup>

Legislation has neutralised the common law illegalities of trade unions not by positively declaring collective labour activities legal as such, but by exempting them from criminal prosecution and civil action if done in certain circumstances, namely, in furtherance of a trade dispute. In *Collymore v. Attorney General* the question confronting the Justice of Appeal was 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 that act." This question arose in the process of the Court of Appeal's deliberations as to whether the enactment of the Industrial Stabilisation Act, 1965 violated the plaintiffs' right to strike, in that it contravened their constitutional<sup>14</sup> and common law rights.<sup>15</sup> The Court answered in the negative.<sup>16</sup>

The challenge in that case was prompted by the emergence in Trinidad and Tobago of the regime of industrial relations crimes created by the Industrial Stabilisation Act, 1965 (ISA). The introduction of that piece of legislation saw the genesis of a set of crimes peculiar to industrial relations which could be committed only by parties thereto. These crimes were intended to fortify the establishment of the system of compulsory labour adjudication in an industrial relations atmosphere that was basically a free-for-all type where every conceivable labour dispute, however trivial, was capable of giving rise to strike action or lockout. The sudden transformation from the latter system to one heavily compulsory necessitated the creation of crimes, in order, apparently, to coerce obedience and compliance with the rules and restraints laid down in the Act.<sup>17</sup>

All of these crimes were, in turn, constituted summary offences and within the jurisdiction of the Magistrates' Courts.<sup>18</sup> When the Industrial Relations Act, 1972 (IRA), repealed the ISA, these offences were resur-

rected, some reclassified and new crimes created. While the greater bulk of the offences are still summary, some have been renamed "industrial relations offences" and one is now the crime of contempt of Court. Unlike the summary offences, the others are within the jurisdiction of the Industrial Court.

There are now three categories of offences dealing with breaches of the law of labour relations in Trinidad and Tobago. Leaving aside the classification of these crimes, it is interesting to note the differences of approach between the two types of Courts that are entrusted with the administration of these offences. In view of the different rules with respect to burden of proof, evidence, and procedure which obtain in the Industrial Court, one wonders whether the offences with which it deals could be properly be described as crimes.

The prosecution of both the unions and the workers for committing these offences may give rise to legal problems of varying dimensions. There are procedural problems. Getting the alleged offender into Court, coupled with the question of whether a trade union can be subjected to prosecution, may occasion problems. Assuming that a corporate employer and a trade union can be prosecuted, it is important, in order to attach liability, to discover when the crime can be said to have been committed. Several of these issues came before the Court of Appeal in *Transport and Industrial Workers Union v. Fernandes*.<sup>19</sup> These issues and other problems connected with the industrial relations crimes form the theme of this article.

## II. IDENTIFYING THE OFFENCES

### A. *The New Summary Offences*

Section 71 of IRA confers upon workers certain rights in respect of trade union membership and activities, and correspondingly, the right not to be a member of any trade union or any particular trade union.<sup>20</sup> When a worker decides to become a member of a trade union or, while already a member of a trade union, participates in the union's activities, the employer may not complain. By virtue of section 42, the employer is prohibited from dismissing or treating the worker in any way to the worker's prejudice because of his union interests or connections. It is a summary offence where the employer conducts himself to the contrary. Nor can the employer make a worker's membership or noninvolvement in a trade union a condition of employment.<sup>21</sup> For an infraction of these provisions,

the fine is up to \$5,000. Where all the circumstances of the offence have been proved, the employer is entitled to a defence that he did not have the specific intent in question.<sup>22</sup>

The prosecution of an employer was at issue in *Raghunan & Others v. Public Transport Service Corporation*.<sup>23</sup> The employer, in effect, had dismissed workers for their trade union membership or activities.<sup>24</sup> The workers alleged breach of s.4(1)(d) of ISA (which was similar to the provisions under discussion) against the employers for refusing them employment after they had gone on strike in protest against a percentage wage increase awarded by the Industrial Court. Their claims were dismissed by a magistrate. Before the Court of Appeal the workers argued that by refusing to take the workers back after the strike, the employers adversely affected their employment since they were members of a trade union which was seeking better labour conditions. For the Corporation, it was submitted that the workers' complaints were misconceived because: (i) the workers' strike, due to dissatisfaction with the Industrial Court award, was illegal under the Act; (ii) they were therefore in breach of their contracts and no longer employees of the Corporation; and, (iii) their remedy lay in appeal, not striking.

Fraser, J.A. (with whom de la Bastide, J.A. agreed) held that the case did not fall within the contemplation of s.4 which deals with an employer dismissing an employee on account of his participation in trade union activity. Secondly, a strike by workers because of their dissatisfaction with the award was an offence under s.34 and in contempt of Court. Finally, s.40 of the Act made the award of the Industrial Court binding on all parties to the dispute, and the employees by their illegal conduct broke their contracts of employment with the Corporation.<sup>25</sup> The magistrate's decision was affirmed.

The other three major summary offences are: offences in connection with industrial actions in the essential services; failure by an employer to comply with an agency shop order; and the so-called fraudulent medical certificates.<sup>26</sup>

The taking of industrial action is prohibited in the essential services because of the danger inherent in disruptive actions which inevitably entail much hardship on the consuming public.<sup>27</sup> Where an employer or worker takes industrial action in the essential service, the employer or the worker is liable to summary conviction. Those who call the strike or cause the industrial action or persuade others to take such action may also be prosecuted. Where a trade union calls a strike in the essential

services, a conviction may lead to the cancellation of the union's certificate of recognition. The holder of an office in the union who induces or persuades a worker to go on strike is punishable by fine or imprisonment or both. In addition he "shall be disqualified from holding office in any trade union or other organisation for a period of five years after the conviction."<sup>28</sup>

To further buttress the prohibitions against industrial actions in the essential services, summary conviction awaits any person who "for the purpose of promoting or maintaining the conduct of industrial action taken or continued in an essential service . . . directly or indirectly contributes financial assistance to an employer or a trade union that calls for or causes such action to be taken or to any worker involved in such action."<sup>29</sup> Nor are the recipients of such assistance absolved from criminal conviction.<sup>30</sup> Public Servants, members of the Prison Service, Fire Service, Teaching Service and members of the Staff and other employees of the Central Bank of Trinidad and Tobago who participate in any industrial action are, in accordance with s.69(2) also liable to summary conviction. In similar fashion, the holder of an office in a trade union or in an organisation of persons within the category above listed "who calls for or causes industrial action to be taken or any person or organisation induces or persuades any other person to take such action" in any of the services, is liable to summary conviction.<sup>31</sup>

An innovation brought about by the IRA is the introduction of the agency shop order which is:

an order made by the Board and binding on an employer, the recognised majority union and the workers in the bargaining unit, whereby it is directed in respect of all workers from time to time comprised in the bargaining unit for which the union is certified, that the terms and conditions of employment of those workers shall include a condition that every such worker must pay contribution in accordance [with the provisions of the Act].<sup>32</sup>

Once such an order is made, the employer is under an obligation, any other rule of law notwithstanding,<sup>33</sup> to deduct the contribution from the wages of the workers comprised in the bargaining unit as specified therein.<sup>34</sup> The amount is, according to the specifications in the Act, to be paid over to the recognised majority union.<sup>35</sup> A summary conviction may arise where the employer against whom an agency shop order is made fails to comply with its terms and conditions.<sup>36</sup>

The strange offence of "fraudulent medical certificate" is committed where a worker who, by deception, absents himself from his employment.<sup>37</sup> The section does not indicate whether or not the deception is to be construed through the submission by the worker of the medical certificate. The marginal note reads "fraudulent medical certificates" but the expression does not appear in the body of s.77(1) — nor indeed, in any other part of the section. The work of the Court will then centre on the construction of the meaning of the word "deception" which according to s.77(5) means "the fraudulent or deceitful use of a medical certificate." The interpretation of the terms "fraudulent" or "deceitful" therefore constitute the core of the crime.<sup>38</sup>

A medical practitioner who issues a medical certificate to a worker for the purpose of enabling such worker, by deception, to absent himself from his employment by means of such certificate is liable to summary conviction. Amazingly, it is possible under s.77(3) that the medical practitioner may be held guilty and the worker may not be convicted of this offence. Such conviction would be possible where in "all the circumstances of the case the medical practitioner may reasonably be considered to have acted for such purpose." It is further provided that in prosecuting the medical practitioner:

It shall be competent for the prosecution to adduce evidence of all the surrounding circumstances of the case, including the existence of other medical certificates of the medical practitioner issued allegedly for the purpose of enabling the worker or co-workers of the worker in question by deception to absent himself or themselves, respectively, from his or their employment by means of such certificates; and such evidence shall be admissible notwithstanding any rule of law to the contrary.<sup>39</sup>

In his defence, the medical practitioner could produce evidence to show that he did not know, or had no reasonable cause to believe, that the medical certificate would be used to enable the worker by deception to absent himself from his employment. By this enactment, it would appear that the legislator is questioning the integrity of the medical profession. Furthermore, one wonders who is to decide whether a medical certificate issued by a duly qualified and registered medical practitioner is, or is not, issued for the purpose of deception. This argument will, of course, collapse where the evidence is glaringly clear that a particular medical practitioner issues medical certificates to workers without medically examining their fitness or otherwise. Even in that instance, the medical practitioner may

not know the fraudulent intent of the worker. Further, it is normal that the burden will lie on the prosecution to prove beyond all reasonable doubts the criminal intent of the practitioner.<sup>40</sup>

#### B. *Contempt of the Industrial Court*

It must be observed that the contempt offence within this context is different from the usual contempt issues that may ordinarily arise in the face of the Court or those unconnected with the Court's proceedings but may tend to bring the integrity of the Court into disrepute.<sup>41</sup>

s.66(1) prohibits the taking of any form of industrial action in connection with a trade dispute while proceedings in relation to that dispute are pending before the Industrial Court or the Court of Appeal.<sup>42</sup> s.66(2) prohibits the taking of industrial action as a result of disagreement or dissatisfaction with an order or award of either the Industrial Court or the Court of Appeal.<sup>43</sup> A contravention of any of these provisions amounts to a contempt of the Industrial Court or the Court of Appeal, as the case may be.

In *Metal Box Trinidad Ltd. v. Union of Foods, Hotels and Industrial Workers*, the Industrial Court was faced with the interpretation of this section. The Union, purportedly acting pursuant to the provisions of s.84(1) complained that, having agreed with the Company for a cessation of a strike action and a resumption of work; that the Union and Company had jointly requested that the unresolved dispute be referred to the Industrial Court; the Company subsequently refused to take back into its employ fifty-five of the workers who struck; and that the Company instead issued suspension notices and had in fact dismissed another fifty-two of the workers.

The first issue was whether proceedings in relation to this dispute were pending before the Court. If the answer was in the affirmative, then the second question was whether the conduct of the Company was such as to amount to a lockout? These two points were essential with regard to s.66(1) and for the commission of a contempt of court as in s.66(3). There was no doubt that the matter was referred to the Court on the mutual request of the parties and that they had appeared for directions. In this connection the union had proposed that the parties could only cease industrial action by mutual consent. Convinced by the union's case, the Court pointed out that in the circumstances, the requirement of s.66 that industrial action should cease could not be complied with unilaterally. The Court sought the assurance of the Company that arrangements had



been made for a resumption of work. Such assurance was given and it was the Company's failure to abide by that assurance that led to this complaint. The Court found that the Company had given the assurance in bad faith and without any intention of complying with it, while they (the Court), had proceeded on the basis of the assurance to give directions for the hearing of the matter. Therefore, the proceeding in relation to this dispute were pending in the Court.

What action then did the Company take that gave rise to the complaint? The Company was to admit the strikers to employment as agreed on Monday, January 27. When the workers (140 of them) reported to work on the agreed date, time and place, they were assembled in the canteen and told that they would be interviewed for processing. On the worker's insistence the Company agreed that a list of work assignments would be posted on the main gate the next morning. This list assigned work to 85 of these men and they were allowed to start work. The others were told to go to the southern gate where they were given suspension notices pending investigations into their alleged violent conducts during the strike. Thirty of them were subsequently dismissed.

On the question of whether there was a lockout, the Company argued that what they have done was merely take disciplinary action which it was entitled to take and was not based on the fact that the men took strike action. It was further argued that a lockout according to the Act means that a suspension from employment or a refusal to employ workers must be done to induce or compel workers to agree to terms and conditions of or affecting employment.<sup>44</sup> The Company claimed its action in this matter was not done to compel workers to agree to terms or conditions of employment. Even if the Company escaped liability by virtue of the interpretation of the term "lockout," it had to show that the conduct complained of was not an industrial action—a term of wider import than lockout—which includes "any action" done by either of the parties to compel the other to agree to terms of employment or to comply with any demands made by that party.<sup>45</sup>

Braithwaite, P. held that the Company's failure to honour its undertaking constituted a continuation of industrial action within s.66(1). The Company, therefore, committed an industrial relations offence contrary to that section. As a party to a dispute, it continued industrial action by way of lockout while proceedings in relation to that dispute were pending before the Court. Consequently, it was in contempt of Court within s.66(3). The Company was liable for a fine of ten thousand dollars within

s.63(2) (a) and under s.63(1) (a) liable to pay the workers concerned the wages, salaries and other remuneration they may have lost as a result of the Company's continuation of industrial action.

The Court appears to have taken it for granted that the procedure for complaining about contempt in these circumstances is the same procedure contained in s.84, but that section concerns procedure for industrial relations offences. Admittedly, this offence is connected with industrial relations but the Act has not included it with the other industrial relations offences. Granted that the Court has power to regulate its own procedure<sup>16</sup> and could quite legitimately follow any procedure, it is submitted that where the Court decides to exercise this statutory discretion, it ought to indicate with some clarity what procedure it considers appropriate. It should not create the misleading impression that the procedure in the particular instance has been statutorily regulated.

Apart from the case where the magistrate is entrusted with the power of conviction for the violation of the employees' right to belong to and take part in union activities, no mention is made about the prosecution for the other summary offences. It is not clear which Court has jurisdiction over these offences. Certainly, the Industrial Court is empowered to deal with contempt matters and industrial relations offences. Which Court should pronounce guilt on an employer who fails to comply with the terms and conditions of an agency shop order made by the Registration Recognition and Certification Board within s.73? Perhaps this situation may be construed as an industrial relations offence, in which case the Industrial Court would be competent to handle it. Another possible source of jurisdiction may arise under s.7(1)(e) which empowers the Court to hear and determine any other matter brought before it pursuant to the provisions of the Act. Further, the jurisdiction of the Court may be questioned in connection with who referred the matter to it, the Minister of Labour or the recognised majority union? None of them.

### C. *Industrial Relations Offences*

Within the category of the industrial relations offences are the following:

#### (1) *Failure to Recognise and Treat*

One of the means through which the Legislature of Trinidad and Tobago sought to firmly entrench the system of collective bargaining in labour relations was to make provisions in the ISA for compulsory recog-

nition of trade unions by employers for the purpose of collective bargaining.<sup>47</sup> The procedure was laid down in s.3 of that Act and although s.3(7) stipulated penalty for breach of the compulsory recognition provisions, research has failed to reveal any prosecution under the section, which is not surprising. Under the provisions of the Act it would have been impossible to determine whether recognition has been unlawfully refused in any given circumstance because the procedure for the determination of bargaining rights left much to be desired.<sup>48</sup>

The 1972 Act has established a better system for ascertaining bargaining rights. The institution entrusted with that function is the Registration Recognition and Certification Board.<sup>49</sup> This Board, pursuant to its duties and powers under the Act, may issue a certification of recognition to a trade union stating that the union is the recognised majority union for a defined bargaining unit. A duty then arises between that union and the employer to treat and enter into negotiations with each other for the purposes of collective bargaining. An industrial relations offence is committed by either the union or the employer who refuses to carry out the duty as required by the Act.<sup>50</sup>

(2) *Industrial Actions not in Conformity  
with the Act's Provisions*

Industrial action may be in conformity with the provisions of the Act if the action is taken in accordance with the procedures laid down in the Act.<sup>51</sup> Apart from failure to follow the disputes procedures,<sup>52</sup> there are circumstances in which it is illegal to take industrial action in purely industrial relations matters. For this purpose, unresolved disputes are grouped into two categories. First, there are the so-called "rights disputes"<sup>53</sup> which must be referred to the Industrial Court for determination. Rights disputes, as contemplated by this phrase, are those disputes concerning the application to any worker of existing terms and conditions of employment or the denial of any right applicable to any employee, or those that concern employment, non-employment, suspension from employment, refusal to employ, re-employment, or reinstatement of any worker.<sup>54</sup> The subsection is so worded that neither party to the dispute can take industrial action as a means of settling such dispute.<sup>55</sup> It must be referred to the Industrial Court on application by either party or through the Ministry of Labour.

Second, where the dispute concerns matters others than those mentioned above, as in the case of the so-called "interest dispute,"<sup>56</sup> and the

dispute is declared "unresolved"<sup>57</sup> by the Minister, the parties may choose either of two lines of action. They may jointly request that the matter be referred to the Court by the Minister, or, either party may decide to strike or lockout. The legal validity of such strike or lockout is, however, dependent upon the giving of the appropriate strike or lockout notice by the party taking the action.<sup>58</sup> In the final analysis, disputes in this category are left outside of the compulsory requirements as in recognition or rights disputes and can be settled by voluntary means. This is clearly evidenced by the Industrial Court's opinion in *Trinidad Footwear, Ltd. v. Transport & Industrial Workers' Union*<sup>59</sup> when the President said:

. . . at the stage at which such a dispute is reported to the Minister of Labour either party is afforded the opportunity to elect that failing settlement under the Minister, the dispute is to be settled under the voluntary principle by 'the arbitrament of private war', and both parties are thereupon authorised to take such resort.

When the parties are on strike or lockout pursuant to a particular "interest" dispute, it would appear that their other rights and obligations under the compulsory aspect of the Act remain intact.<sup>60</sup>

At any rate, no industrial action can validly be taken other than as statutorily stipulated, nor could any such action precede the reporting of a trade dispute to the Minister of Labour. A breach of these procedures and stipulations by either the employer or the Union may lead to the commission of an industrial relations offence which is punishable in accordance with the statutory provisions.<sup>61</sup>

Although it may be easier to find the commission of an industrial relations offence in strict compulsory arbitration, it has proved futile to convict in circumstances where the dispute involves "interest" and has properly been reported to the Minister of Labour. In *Tractors & Machinery, Trinidad Ltd. v. Transport & Industrial Workers' Union*,<sup>62</sup> the Union complained to the Industrial Court that after the Union had informed the Company that the workers had ceased their strike which was consequent upon a breakdown in negotiations between the parties over new terms and conditions of employment, the Company locked out some of the workers who had been on strike. The Union contended that the Company's failure to communicate to the workers that they were locked out was an industrial relations offence. The court held that since the parties could take industrial action, when the Union called their workers out on strike, the Company mounted a lockout because "one man's strike is the other man's lockout."<sup>63</sup> The Court further held that the absence of

any notice by the employer to the workers that it was locking them out did not change the character of the Company's action. Therefore the Company was not guilty of an industrial relations offence.

### III. SOME PRELIMINARY LEGAL PROBLEMS

#### A. *Procedural Issues*<sup>64</sup>

Even if it is alleged that a trade union or a corporate employer has breached any of the provisions of the Act and that a prosecution is contemplated, the question may arise as to how to summon the Union or the employer to court. In *Transport & Industrial Workers' Union v. Bernard*,<sup>65</sup> the appellant union was convicted by a magistrate for allegedly calling a strike in contravention of the provisions of the Industrial Stabilisation Act, 1965. During the proceedings, the Union appeared under protest and questioned the validity of the service of summons. The magistrate convicted the Union of the offence and ordered it to pay a fine of \$2,000 and, in default, distress was ordered to be levied on its property.

The summons requiring the Union to appear and answer the charge before a Magistrate was served on the President of the Union at the Union's registered office in Port of Spain. The Union objected that the magistrate had no jurisdiction to determine the matter since the summons was not properly served upon the Union. In support of the Union's case is s.23(2)(d) of the Interpretation Act, 1862<sup>66</sup> dealing with the serving of documents, which provides:

where an enactment . . . authorises or requires to be served on any person without directing it to be served in a particular manner, the service of that document may be effected . . .

(d) in the case of a corporate body or of any association of persons, whether incorporated or not, by delivering it to the secretary or clerk of the body or association at the registered office of the body or association or serving it by post on such secretary or clerk at such office.

There was no doubt that the Interpretation Act applied to the Industrial Stabilisation Act. In further support of the Union's argument is the English case of *Pearks, Gunston & Tee Ltd. v. Richardson*,<sup>67</sup> in which the Divisional Court had to decide whether a writ of summons issued against a Company was properly served on the Company when the summons was served in a shop owned by the Company. s.62 of the Companies Act (UK), 1962 provided that:

any summons, notice, order or other document required to be served upon the Company may be served by leaving the same or sending it through the post in a prepaid letter addressed to the Company at the registered office.

Despite the use of the word "may," it was held that the serving according to the statutory stipulation was mandatory and that the summons was bad. In the *Transport & Industrial Workers' Case*,<sup>68</sup> the Court of Appeal of Trinidad and Tobago, on the basis of the English case and the local statutes already referred to, held that the appeal would be allowed and the conviction quashed on the ground that the writ of summons was not served on the Union in accordance with the law. The Court refused to be persuaded by the argument of the respondent which sought to bring the instant case within the province of s.40(1) of the Summary Courts Ordinance which provided that:

Every summons shall be served by a constable upon the defendant either by delivering a copy of it to him personally, or, if he cannot be found, by leaving a copy of it with some person for him at his usual or last known place of abode.

The tenor of this provision indicates that it was intended to apply, in the language of Phillips, J.A., to "actual human beings, natural persons, physical persons and [it] has no application to legal persons or fictitious persons which are created by the law and have not actual physical existence."<sup>69</sup>

The principle laid down in *TIWU v. Bernard* by the Court of Appeal is still the law in the absence of express statutory enactment to the contrary. It is binding on the magistrates dealing with the summary offences. However, it is submitted that it does not bind the Industrial Court in relation to its jurisdiction over industrial relations offences since the procedure thereof has been regulated by the Industrial Relations Act. Even in contempt matters, which are not necessarily classified as industrial relations offences, where no procedure has been statutorily laid down, it will be up to the Industrial Court to stipulate its own procedure or follow recognised judicial procedure. What would appear rather important in the prosecution of industrial relations offences is the requirement that the complaint must be made within three months from the time when the offence took place. Any such complaint after the three months' period will not be entertained.<sup>70</sup> Again, the question of issuing writs of summons for an alleged industrial relations offence is out because:

all proceedings for the obtaining of an order against any person in respect of an industrial relations offence, shall be instituted by an application to the Court by the employer, the recognised majority union concerned, if any, or, where there is no such union, any union which, at the time of the commission of the industrial relations offence has as members of that union workers employed by the employer.<sup>71</sup>

#### B. *Can a Trade Union be Prosecuted?*

Although the Industrial Stabilisation Act created the offences, it did not expressly state that a trade union can be prosecuted.<sup>72</sup> Perhaps that was thought to be an unnecessary stipulation since there is an overwhelming amount of case law in the common law jurisdiction to the effect that a trade union can sue and be sued both in contract<sup>73</sup> and tort<sup>74</sup> and can be prosecuted in its own name for the commission of a crime<sup>75</sup> in appropriate circumstances. Notwithstanding the case law, one of the preliminary objections raised by the union in *Transport & Industrial Workers' Union v. Fernandes*<sup>76</sup> was that a trade union is an unincorporated body and not a "natural person." Consequently, for a complaint to be instituted against it, there must be some legislative enactment which expressly or by necessary intentment designates an unincorporated body or includes such a body in the definition of the term "person" for the procedural purposes of the Summary Courts Ordinance.

Apart from the fact that the provisions of s.34(1) and (3) of ISA which set forth the crime under which the union was being prosecuted expressly state that a trade union can be convicted, the Trinidad and Tobago Interpretation Act, 1962 provides that:

Words in an enactment importing whether in relation to an offence or not, persons or male persons include male and female persons, corporations, whether aggregate or sole, and unincorporated bodies of persons.<sup>77</sup>

It was held that an unincorporated body such as a trade union registered under the Trade Unions Ordinance is a "person" within the meaning of the Interpretation Act, 1962.<sup>78</sup>

Assuming that there is no Interpretation Act, one may ask how the Courts have treated trade unions since the enactment of trade union legislation. There are abundant precedents in common law jurisdictions to

illustrate that the Courts have accorded some legal status to trade unions. The first time the English Courts had to consider the legal position of the legislative creature of trade unions was in the famous case of *Taff Vale Ry. Co. v. Amalgamated Society of Ry. Servants*.<sup>79</sup> The issue was whether a trade union could be sued in its registered name. In his often quoted opinion, Farwell, J. said:

although a corporation and an individual or individuals may be the only entity known to the common law who can sue or be sued, it is competent to the legislature to give to an association of individuals which is neither a corporation nor a partnership nor an individual a capacity for owning property and acting by agents, and such capacity in the absence of express enactment to the contrary involves the necessary correlative of liability to the extent of such property for the acts and defaults of such agents. It is beside the mark to say of such an association that it is unknown to the common law. The legislature has legalised it, and it must be dealt with by the Courts according to the intention of the legislature.<sup>80</sup>

The learned Justice therefore concluded that such an association could sue and be sued under its registered name.

Farwell, J. was reversed in the Court of Appeal where it was held that since the legislature expressly refrained from incorporating a trade union, it cannot be sued in its registered name. But the House of Lords unanimously restored Farwell, J.'s opinion and, despite the subsequent neutralisation of the effectiveness of the torts aspect of this case,<sup>81</sup> their Lordships' pronouncements in relation to the sueability of trade unions in their registered names have survived the amending legislation.<sup>82</sup>

The existence of a trade union as a legal entity was again at issue in the House of Lords case of *Bonsor v. Musicians Union*. A member brought an action for damages and an injunction against the Union. The question revolved around the argument that the contract of union membership was one between the member and the other members, not between each individual member and the union as an entity. Accordingly, the member could not sue himself.<sup>83</sup> Thus, the member's action could succeed only if he could show that his contract of membership was with the union as an entity distinct from the member. In the Court of Appeals,<sup>84</sup> Jenkins, L.J. held that they could not so decide without going to the lengths of attributing full corporate status to a registered trade union and he and the other members of the Court were not prepared to do so.



Despite the complexities which abound in the speeches of the five Law Lords who sat in the case in the House of Lords, there was a consensus of opinion among their Lordships that a body such as a registered trade union could be a party to a contract and therefore could be sued. Their Lordships, however, differed on the question of the separateness of the union entity. Lord Morton, with whom Lord Potter agreed, took the view that the Union, though not an incorporated body, is capable of entering into contracts and of being sued as a legal entity distinct from the individual members. Conversely, both Lords McDermott and Somervell thought that a trade union as an unincorporated association was not a separate juridical entity and it could be sued in its own name simply because Parliament, through the Trade Union Act, 1871 had so decreed.<sup>85</sup>

The Canadian Courts appear to have a much more developed jurisprudence on this issue although the question of ascertaining the legal status of trade unions continues to trouble trade unionists in Canada. In spite of existing precedents<sup>86</sup> it was recently argued in *O'Laughlin v. Halifax Longshoremen's Association*,<sup>87</sup> by way of a preliminary motion, that an action brought against the trade union for wrongful expulsion by the plaintiff was a nullity on the ground that the union was not a legal entity capable of being sued in its own name. The motion having been dismissed by Hart, J. of the Nova Scotia Supreme Court,<sup>88</sup> the union appealed. Cooper, J.A. of the Nova Scotia Court of Appeal took the opportunity to exhaustively deal with the problem in Canadian jurisdictions.<sup>89</sup>

Cooper, J.A. held in *O'Laughlin*,<sup>90</sup> that the Association was a legal entity capable of being sued in its own name in the action brought against it by the member. This was so notwithstanding that the association was not incorporated or certified as a bargaining agent<sup>91</sup> because a trade union is a juridical person and could be sued as such.

In the earlier Canadian case of *Re Patterson & Nanaimo Dry Cleaning & Laundry Workers' Union, Local No. 1*,<sup>92</sup> the British Columbia Court of Appeal considered the question whether the union was a legal entity for the purposes of incurring criminal responsibility in violation of the British Columbia Industrial Conciliation and Arbitration Act, 1947. It was held that the union was a juridical person and could therefore be prosecuted in its own name. The Court reached this conclusion on the ground that there was an implied legislative intent to create trade unions as statutory entities by conferring upon them certain rights, immunities and duties.

O'Hallaran, J.A. was of the opinion that registration was not the main reason upon which *Taff Vale* was decided but that it was "one of many elements reflecting Parliament's recognition of trade unions as legal entities."<sup>93</sup> He cited as an instance the 1902 British Columbia Trade Union's Act which provided that no trade union and no trustees of any trade union shall be liable in damages for certain wrongful acts unless the members of the appropriate governing body have authorised or concurred in the wrongful acts. He concluded that this circumstance indicates that the trade union may be liable for damages in an action against it in its own name without resort to the representative method of suing ordinary voluntary organisations.<sup>94</sup>

In the Commonwealth Caribbean, the requirement for registration is compulsory for every trade union.<sup>95</sup> Registration, therefore, is the prerequisite to legal validity of Caribbean trade unions. As in the case of England and Canada, Caribbean trade unions are immune from certain legal actions.<sup>96</sup> They are responsible, for all practical purposes, for the regulation of terms and conditions of employment of their members and they represent their members in practically every issue concerning them in the employment place. In Trinidad and Tobago, the same Act which created the offences in question in the *Fernandes Case* established new legal rights for trade unions with corresponding duties on the employers. The major one was the question of compulsory recognition. The subsequent Industrial Relations Act, 1972 carried that further by establishing the certification system for collective bargaining purposes.<sup>97</sup> It cannot then be doubted that by creating rights, liabilities and duties, the legislature of Trinidad and Tobago intended trade unions in the country to possess some legal personality that should be cognisable at law.

### C. *When is the Crime Committed?*

The answer to this question is essentially one of definition. For example, in the *Metal Box Case*,<sup>98</sup> the issue of contempt centered on whether the conduct of the employers amounted to a lockout. Similarly, the Industrial Court may have to consider what constitutes a strike for which a penalty for contravention may attach and when a trade union may be deemed to be guilty of calling such strike. Both of these questions have been determined by the Court of Appeal.

In *Martin & Beddoe v. Gift*<sup>99</sup> the branch secretary of the Union of Foods, Hotels and Industrial Workers requested an immediate meeting with the Secretary of the Co-operative Citrus Growers Association, the

employers, to settle a number of matters outstanding and other agreements made by the parties but not "fully implemented." On the day the meeting was requested, the Secretary of the Association was off sick and the appellant was informed he will be able to meet him five days later. This was not acceptable to the branch secretary who insisted, to no avail, on seeing the Secretary. Explanations by the Association's Office Manager were ignored. The following day, the union's President-General, and other union representatives went with the branch secretary to the Office Manager's office where the branch secretary allegedly insisted that certain outstanding matters must be finalised on that date.

A short time later a large number of employees, who normally would have been working elsewhere on the premises, led by the branch secretary and the President-General, entered the Association's main office building. They remained there for most of the day — "talking, laughing, singing and generally conducting themselves in a way as to make it very difficult for the office workers to do work." On these facts, the appellants were charged of, and convicted by a magistrate for the offence of calling out workers on strike in contravention of s.34(1) of the Act and in accordance with s.34(3).

In order to constitute a violation of s.34(1), the cessation of work must be "in consequent of a trade dispute" and the cessation must have been intended as an instrument of persuasion.<sup>100</sup>

S.2 of the No. 2 Amendment to ISA, a strike meant:

the cessation of work by a body of workers employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of workers employed to continue to work for an employer in consequence of a trade dispute, and includes any concerted interpretation of work or slowing down by workers commonly known as "a sit-down strike" or "a go-slow" . . . .<sup>101</sup>

Clement Phillips, J.A. (with whom McShine, C.J. and Fraser, J.A. concurred) held that there had been a cessation of work by many of the Association's employees acting in combination. The question before the Appeal Court was whether the cessation of work was "in consequence of a trade dispute,"<sup>102</sup> within the meaning of the Act.

It was strenuously argued by the Union officials that the cessation was a consequence not of a trade dispute but of a refusal or failure of the Association's Management to accede to the request of the Union's

representatives for immediate consideration of important matters and could not constitute a trade dispute. The Court of Appeal rejected the argument.

To determine the meaning of "in consequence of," Phillips, J.A. looked to the judgments of the English Courts which have expressed opinions on the meaning of that phrase in various statutes. In the earlier case of *Bromley RDC v. Croydon Corporation*,<sup>103</sup> where a similar expression was construed within the context of the Highways and Locomotives (Amendment) Act, 1878<sup>104</sup> as amended by the Locomotives Act, 1898,<sup>105</sup> Buckley, L.J. had said:

The amended section runs, from any person by or in consequence of whose order such weight or traffic has been conducted'. These words do not, I think, mean necessary consequences in fact naturally resulting from the order.<sup>106</sup>

Kennedy, L.J. agreed with Buckley, L.J.'s construction of "in consequence of" but went further by saying that the phrase did not mean natural consequence but rather "something which, as [Buckley, L.J.] said, would not have occurred in the absence of the contract or work."<sup>107</sup>

In a subsequent case, *Preston v. Norfolk County Council*,<sup>108</sup> Lord Greene, M.R. considered a provision in the Agricultural Holdings Act, 1923, which said that "where the tenancy of a holding, terminates by reason of a notice to quit given by the landlord and in consequence of such notice the tenant quits the holding, then . . . compensation for the disturbance shall be payable by the landlord to the tenant in accordance with the provisions of this section. . . ." The Master of the Rolls for the Court of Appeal said:

It is true that the validity of the notice was tested and established by means of an action to recover possession. We do not think, however, that the answer to the question can depend on whether an ejectment order is or is not, in fact, asked for or made. In order to ascertain whether what we have called the 'casual link' exists or not, it is, we think, necessary to look beyond the mere form of the action and the mere form of the order.<sup>109</sup>

Phillips, J.A. concluded that there was a "casual link" between the existing trade dispute and the cessation of work by the Association's employees.<sup>110</sup> The existence of the trade dispute was the direct foundation of the union's request, the refusal of which, in turn, led directly to the

cessation of work. Such cessation of work constituted a strike within the statutory provision<sup>111</sup> and the convictions of the union branch secretary and President-General were affirmed.

Recently, the Industrial Court had to consider whether a set of facts amounted to lock-out or strike. The decision would make either the employers or the union guilty of an industrial relations offence under s.63 of the IRA. In *Trinidad and Tobago Meat Processors Ltd. v. Union of Foods, Hotels & Industrial Workers*,<sup>112</sup> the butchers of the Company had refused to slaughter 96 pigs on one afternoon when they were ordered to clock out early and go home. The following day, they again refused to obey the order to slaughter the pigs and were given warning notices. The shop-steward told the management that the order was contrary to the butchers' terms and conditions of employment and he sought to have the warning notices withdrawn. Management declined to withdraw the orders and warning notices. The butchers were given suspension notices and the shop-steward informed the Production Manager that as from that afternoon the workers were on strike.

The following day, the other workers, not butchers, clocking in and assembled in the canteen. Management, through the notice board in the canteen warned them that their action constituted illegal industrial action. They were warned later that day of the likelihood of disciplinary actions. When they reported to the premises on the subsequent morning their time cards were missing and the gates were closed. The union argued that this action was a lockout, while the employers argued that the union had taken industrial action in violation of the provisions of the IRA.

It was held that the Company was not guilty of an industrial offence because under the circumstances their action did not amount to a lockout because the workers had "on the two previous working days, entered the premises and sat down as trespassers refusing to do their lawful duties. The Company was in the circumstances entitled to refuse entry to any of them who would not signify an intention to work." The Court further held that the workers' conduct constituted an illegal industrial action.

#### IV. PROSECUTING THE CORPORATE EMPLOYER<sup>113</sup>

To establish that a crime has been committed, it is necessary to show the existence of *mens rea*, a guilty mind. In prosecuting an employer no particular problem of proving *mens rea* is presented when that employer is an individual or a group of individuals. However, when the employer is a

corporation, proving the existence of a guilty mind is more difficult, because in a strict legal sense the employer is not a human person and therefore lacks a human mind.

Although there are no Caribbean cases on this problem of prosecution, the approach of the English common law judges is illuminating. In the English cases, the principles of agency and vicarious liability in criminal prosecutions of corporate employers are often considered. The speech of Viscount Haldane, LC in *Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd.*,<sup>114</sup> involving the carriage of goods by sea, is often cited as the classical statement of the English rule:

. . . a corporation is an abstraction. It has no mind of its own more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation; the very ego and centre of the personality of the corporation. That person may be under the direction of the shareholders in general meeting; that person may be the board of directors itself . . . If Mr. Lennard was the directing mind of the Company, then his action must, unless a corporation is not to be liable at all, have been an action which was the action of the Company itself within the meaning of s.502 . . . It must be upon the true construction of that section in such a case as the present one that the fault or privity is the fault or privity of somebody who is not merely a servant or agent for whom the Company is liable upon the footing *respondeat superior*, but somebody for whom the Company is liable because his action is the very action of the Company itself.<sup>115</sup>

The corporation itself need not know about the wrongful act to be prosecuted for vicarious liability in tort.<sup>116</sup> It is sufficient that the wrongdoer is an employee of the corporation and acted in the course of his employment. Such vicarious liability may be limited, however by the scope of authority granted to the employee. In *Magna Plants Ltd. v. Mitchell*<sup>117</sup> the Court held that the only class of persons whose guilt could be imputed to the corporation are "responsible officers" of the Corporation. It may not be clear. A car-hire Company's depot engineer was held in the case itself not to be a "responsible officer," yet a branch sales manager was. *Moore v. Bresler*.<sup>118</sup>

Denning, L.J.'s stated in *Bolton (H.L.) (Engineering) Co. Ltd. v. T. J. Graham & Sons Ltd.*:<sup>119</sup>

A company may in many ways be linked to a human body. They have a brain and a nerve centre which controls what they do. They also have hands which hold the tools and act in accordance with directions from the centre. Some of the people in the Company are mere servants and agents who are not more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing minds and will of the Company, and control what they do. The state of mind in these managers is the state of mind of the Company and is treated by the law as such. So you will find that in cases where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of the Company. That is made clear in Lord Haldane's speech in *Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd.*<sup>120</sup> So also in the criminal law, in cases where the law requires a guilty mind as a condition of a criminal offence, the guilty mind of the directors or the managers will render the Company themselves guilty.<sup>121</sup>

In a subsequent case Lord Parker, C.J. considering the Denning statement said:

... there is fundamentally no difference between a master who is an individual and a master who is a limited Company, save that in the case of a limited Company their knowledge must be the knowledge of those whom in *Bolton (H.L.) Engineering Co. Ltd. v. T. J. Graham & Sons Ltd.*, Lord Denning referred to as the brains of the Company. There is no doubt that there are many cases where the knowledge of somebody in the position of the brain, maybe the directors, the managing director, the secretary, the responsible officers of the Company, has been held to be the knowledge of the Company. It seems to me that that is a long way away from saying that a Company is fixed with the knowledge of any servant; again to quote Lord Denning: the knowledge of the hands as opposed to the brain merely because it is the servant's duty to perform that particular task.<sup>122</sup>

In the recent case of *Tesco Supermarkets, Ltd. v. Nattress*,<sup>123</sup> the House of Lords considered whether a company could be held criminally liable for a chain store manager's violation of the 1968 Trade Description Act. The Divisional Court upheld the conviction on the ground that the Company had delegated authority to the manager and was therefore liable for the manager's criminal omissions.<sup>124</sup> The House of Lords found that the manager was one of several hundred managers of the appellant com-

pany's supermarket, that he could not be identified with the company, and that the company had done all it could to implement a proper system for its store. Consequently, the House of Lords held that the company was not liable for the manager's criminal omissions. Lord Reed rejected the "alter ego" concept as "misleading" when dealing with a company.<sup>125</sup> The court indicated that a distinction must be drawn between a company's servant, agent, delegate or representative and that person who is the "embodiment of the company." If that person, whose mind is the mind of the company, is guilty of *mens rea*, then the company is guilty of *mens rea* as well.<sup>126</sup>

*Tesco, supra*, is relevant to the discussion of the Industrial Relations Act, since it dealt with a statute similar to s.70 of the Act, which provides:

Where an offence punishable under this Act has been committed by a Company, any person who at the time of the commission of the offence was a director, general manager, secretary or any other employee of the Company, not being a worker, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence, unless he proves that the contravention was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.<sup>127</sup>

What will in due course constitute a bone of contention is the expression "or any other employee of the Company." This expression would seem to be too general but through the use of the popular rule of construction — the *ejusdem generis* rule — it may be narrowed down to only those within the category of officers listed in the section. Thus, a clerk or the manager's secretary may not qualify as any other employee of the Company within the section.

## V. PROSECUTING THE UNION

Both the Industrial Stabilization Act and its succeeding act, the Industrial Relations Act, provide that trade unions can be held liable for certain crimes. However, a trade union is an artificial entity and can only function through the organ of human beings. A trade union, like a corporation, acts through the agency of its officials. In this regard, a primary question arises: when is a strike called by members of a union considered a strike called by the union for which the union can be held criminally responsible? This question arose in *Transport & Industrial Workers'*



*Union v. Fernandes*.<sup>128</sup> In that case, the Transport and Industrial Workers' Union was prosecuted for calling out their members on strike, contrary to s.34(3) of ISA. The strike was in fact called by a shop steward. The shop steward had met the Production Manager at least three times asking that the Company withdraw certain outstanding cases between the Company and the union which were pending in the Industrial Court and had requested an immediate meeting with the workers. When the strike was on, the Production Manager spoke over the phone to one of the members of the Executive Board of the union at the union's headquarters who asked the Manager "what do you want me to do about that?"

The Magistrate found that the shop steward at the factory was acting as the agent of the union when he called the strike and that his act constituted that of the union. The union was convicted and fined \$3000 and the union appealed. The Court of Appeal had to decide whether the shop steward was the agent of the union. The issue of agency was a novel one in labour relations law, although there were common law cases on the question of the civil liability of trade unions for the acts of their officials. There was, however, no case dealing with the civil or criminal liability of a union for acts of a shop steward. Furthermore, the ISA did not specify whose conduct could be taken to be that of the union.

In the cases concerning civil liability of a union,<sup>129</sup> the officials involved were paid officers and therefore servants of their respective unions, thus creating a vicarious relationship for incurring civil liability. However, criminal responsibility moves on the premise that a guilty mind is necessary for the commission of a criminal offence. Hence the requirement for *mens rea*.<sup>130</sup> As in the case of a corporation, a trade union has no soul, it is merely an "abstraction." A crime by a union can only be legally possible through the mind of those who could be said to be in possession of the mind of the union.

Having held that a trade union is a *quasi corporation*,<sup>131</sup> the Court of Appeal of Trinidad and Tobago proceeded to apply the corporate principles of criminal responsibility in the *Fernandez Case*.<sup>132</sup> In the opinion of the Court, whether or not the acts of the shop steward could be said to be that of the union "must depend on the nature of the charge, the relative position of the officer or agent, and the other relevant facts and circumstances."<sup>133</sup> It meant also that the shop steward must be in the position of the "nerve centre" as well as the "brain" of the union.

The magistrate reasoned that, the union, like any other similar body, could only act through its Executives, officers, servants or agents. Those

persons must be held responsible for any act done in the capacity in which they hold office and in connection with the union they serve. If they exceed their powers, the union may repudiate their actions. Here the union had chosen to remain silent. Accordingly the conviction was imposed on the ground that the union was vicariously liable for the acts of the shop steward done "in the capacity in which he held office." The power of the shop steward, the Magistrate held, was implied in his duties.

In quashing the magistrate's ruling, the Court of Appeal admitted in evidence the union Constitution in order to ascertain the union's procedure for calling strikes. Under the union rules, no strike or any type of withdrawal of labour shall be called without the "sanction of the Executive Board." The power of the Executive Board in calling a strike was subject to consultation with the particular Branch of the union that would be involved in strike action. The union Rule provided that "any member or members violating these conditions shall be reported to the General Council by the Executive Board for such action as the General Council may deem fit." From these regulations, two propositions emerge: first, the power to call a strike is vested in the union's Executive Board alone; second, there is no implied authority in any other person to call a strike, with the possible exception of those very high officials whose acts would easily be ratified by the Executive Board. The Court ruled that a trade union may be criminally liable for the acts of such of its responsible officers as form the brain centre of the union, or, in the case of an individual, a person to whom delegation in the true sense of delegation of management, has been passed.<sup>134</sup> Thus, the Court of Appeal unanimously held that the act of the shop steward, under the circumstances of the case, could not properly be considered to be the act of the union for the purposes of incurring criminal liability under s.34(3) of the ISA.

The concept of *implied authority* rejected by the Court of Appeal in *Fernandes* has now been accepted by the House of Lords in *Heaton's Transport (St. Helens) Ltd. v. Transport & General Workers' Union*.<sup>135</sup> In *Heaton's*, shop stewards were also involved in an industrial action. A joint committee of shop stewards had "blackened" the appellants' lorries at the Liverpool docks. Under the Transport & General Workers' Union Rules, shop stewards were elected for the purpose of "representing membership on matters affecting their employment," and in doing that, they "shall receive the fullest support and protection from the union." The Committee had prepared a document which they expected all haulage firms carrying goods into or out of the Merseyside dock and the union to sign in which

the firm should give an undertaking not to load or unload containers without consultation. When the appellants refused to sign the agreement, their lorries were consequently "blackened" at Liverpool docks.

The appellants complained to the National Industrial Relations Court that by blacking their lorries the union was guilty of an unfair industrial practice under s.96(1) of the new repealed Industrial Relations Act, 1971. Despite the Court's order to restrain the blacking and the subsequent fines, the blacking continued contrary to the request of the Union's General Secretary. The union appealed against the fines, the orders, and the Court's refusal to review the case.<sup>136</sup> In the Court of Appeal, it was held that although the shop stewards were themselves in contempt of the Court's order, the union was not guilty of unfair industrial practice since the shop stewards were neither servants nor agents of the union and were not carrying on any tasks delegated to them by the union. The Court of Appeal found that there was no evidence to suggest that the shop stewards had either expressed or implied authority from the union to act as they did. Accordingly, the Court of Appeal set aside the orders of the Industrial Court.<sup>137</sup>

Restoring the order of the Industrial Court, the House of Lords, in an unusual joint judgment delivered by Lord Wilberforce,<sup>138</sup> rejected as irrelevant the distinction drawn by the Court of Appeal between the shop stewards who were agents rather than servants. According to their Lordships the test was the same: "was the servant or agent acting on behalf of, and within the scope of the authority conferred by, the master or principal?"<sup>139</sup> Their Lordships found that the original source of the shop stewards authority was the agreement entered into by each member joining the union whereby the members authorised specific persons or classes of persons to do particular kinds of acts on their behalf. Some authority could be also implied from custom and practice. It was held that there was evidence of a general implied authority for the shop stewards to defend and improve the rates of pay and working conditions of the members whom they represented by negotiation or industrial action, including blacking, at the relevant place of work, and as that authority was not withdrawn, the union was guilty of unfair industrial practice.<sup>140</sup>

It is a matter of conjecture whether a subsequent Court in Trinidad and Tobago, faced with the facts similar to those in *Transport and Industrial Workers' Union v. Fernandes*,<sup>141</sup> would abide by that decision or follow *Heaton Transport v. TGWU*.<sup>142</sup> A number of distinguishing features are, however, manifest in two cases. First, *Fernandes* was a case of crim-

inal prosecution while *Heaton* was purely a civil case. This distinction is perhaps paramount for the consideration of whether criminal guilt requires more than a finding of vicarious which is the requirement for a finding of civil wrong.

Second, there is the important difference between the structure and arrangements in the government of trade unions in the Caribbean and those of their English counterparts. There is, in general, a concentration of power at the centre in Caribbean trade union government and there is no such devolution of authority as may have been possible within the U.K. Transport and General Workers' Union. The size of the English Unions makes devolution and decentralisation feasible and expedient, whereas in the Caribbean, unions are relatively small and their Headquarters are easily accessible.

Third, the nature of the action involved may be relevant. In *Heaton*, the industrial action constituted an unfair industrial practice, while in *Fernandes*, the strike was punishable as a crime. While other types of industrial action may be taken with the authority of Junior officers, decisions on strike actions are often reserved for the Executive Committee of Caribbean Trade Unions.

Fourth, shop stewards in the Caribbean are chosen mainly at the particular branch work place. They are not, strictly speaking, elected union officers. Finally, "the absence of any reference in the IRA as to who may make a trade union liable under the sections confirms *sub silentio* that this decision stands."<sup>143</sup> It is submitted that *Fernandes* was rightly decided in the circumstances. At any rate, *Heatons* must be confined to its peculiar facts and circumstances.

Indeed, the choice between *Fernandes* and *Heatons* fell on the Industrial Court in *Trinidad and Tobago Meat Processors Ltd. v. Union of Foods, Hotels and Industrial Workers*.<sup>144</sup> There the facts manifestly indicate that the workers had taken part in an industrial action and the question was whether the union was responsible for that action and therefore guilty of committing an industrial relations offence. The only officer of the union involved in the action was a shop steward who fully supported and participated in the action. The question, therefore, was whether his role was sufficient to support the charge that the union was guilty of an industrial relations offence. As the Court pointed out, the Company's complaint against the union could only be upheld if the union itself was responsible for taking the industrial action.

It must be observed that in dealing with contempt of the Court for non-observance of its orders or awards, s.7(8) of the IRA provides:

for the purposes of the foregoing provisions of this section, a trade union and the holders of office in a trade union or other organisation shall be deemed to be guilty of a breach of an order or award (including an order made under s.6(5) by which the union . . . is bound, if a worker or other person who is a member of that union . . . commits that breach by the direction or with the concurrence of any holder of an office in that trade union or other organisation.

Again, in defining the holder of "office in relation to a trade union," s.2(p) (ii) includes a shop steward.

On the other hand, there is no provision in the Act imputing liability to a trade union for acts of a union official in relation to an industrial relations offence under s.63.<sup>145</sup> Determining that there was no evidence that the shop steward was empowered by the union rules to call a strike or that anyone entitled under the rules to take such action had delegated the power to the shop steward, the Industrial Court treated the matter as decided by *Fernandes*. Braithwaite, P. rejected the company's submission, based on *Heaton's*, that delegation need not come from the top as effective authority can be conferred on shop stewards expressly or implicitly from the bottom as not being of much assistance to the Company's case.

In *Heatons*, Lord Wilberforce warned that the case did not establish a principle of general application; ". . . it is necessary to emphasize that this question has to be resolved exclusively within the context of the actual disputes before the Court relating to particular localities, and on the evidence before it." The Industrial Court heeded this warning. It held that because the workers of one branch of the union follow the directions of one shop steward to take strike action, this cannot be said to confer authority on the union shop steward to undertake strike action on behalf of the entire union. Consequently, the Company's case failed.

## VI. CONCLUSION

The foregoing sets out the measures which, in the process of establishing the new system of compulsory labour adjudication, the law-makers in Trinidad and Tobago have thought necessary to take. These measures have meant the creation of crimes previously unknown to the law of

labour relations either in Trinidad and Tobago or any other Commonwealth Caribbean jurisdiction. As the study has endeavoured to show, the emergence of these crimes has triggered off a number of legal problems.

But the practical problem of enforcing crimes of the type contained in the industrial relations legislation of Trinidad and Tobago has already been noted.<sup>146</sup> This problem has been borne out by the fact that notwithstanding the numerous breaches of the Industrial Relations Act, no prosecution has been made under the summary offences section of the Act. One such attempt to prosecute Central Bank workers in 1975 attracted so much publicity that the Attorney General found it politically expedient to withdraw the charges.

On the other hand, it has been seen that recent prosecutions have taken place in connection with contempt matters and industrial relations offences. The reason probably is that unions and employers, in sheer desperation and desirous of settling their disputes have complained to the Industrial Court in order to stop economic sanctions from being imposed upon them by the other side.

Notwithstanding the problem of enforcement and the legal issues discussed in this paper concerning prosecution of the parties for contravention of the various offences, it is clear that a new regime of crimes peculiar to labour relations has come into existence not only in the field of labour relations but also in the criminal law of Trinidad and Tobago.

## NOTES

<sup>1</sup>The English experience is documented in S. & B. Webb, *History of Trade Unionism* (1950); Pelling, *History of British Trade Unionism*; Hedges & Winterbottom, *Legal History of Trade Unionism*; Citrine, *Trade Union Law*; and K. W. Wedderburn, *The Worker and The Law*. The American materials include: L. Teller, *The Law Governing Labour Disputes and Collective Bargaining* (1940); C. O. Gregory, *Labour and The Law* (1946).

<sup>2</sup>It is not clear whether the law in this area followed English law because of the principle of reception since the reception date closed in several of the Caribbean countries long before the emergence of trade unions. On the subject of reception of law in the West Indies, see Patchett, *Jamaica Law Journal*, April and October, 1973.

<sup>3</sup>Phelps, "Rise of the Labour Movement in Jamaica", 9 *Social & Economic Studies* 417 (1960); Eaton, "Trade Union Development in Jamaica", Part 1, 8 *Caribbean Quarterly*, No. 1, 43 and Part II, 8 *Caribbean Quarterly*, No. 2, 69 (1961).

<sup>4</sup>For the dates of the Trade Unions Acts in the Caribbean see C. Okpaluba, *Statutory Regulation of Collective Bargaining*, note 2.

<sup>5</sup>See *R. v. Duffield*, 5 Cox CC 404 (1851); *R. v. Rowlands*, 5 Cox CC 436 (1851); *Hilton v. Eckersley*, 6 E&B 47 (1855); *Hornby v. Close*, LR 2 QB 159 (1876); *Russel on Crime*, Vol. 2, 1719.

<sup>6</sup>*R. v. Journeymen—Tailors of Cambridge*, 8 Mod, 10 (1721); *R. v. Bunn*, 12 Cox CC 316 (1872).

<sup>7</sup>See especially C. Grunfeld, *Modern Trade Union Law*, 407 (1966).

<sup>8</sup>*Rookes v. Barnard* [1964] AC 1129 reversed in the U.K. by the Trade Disputes Act 1965. It must be noted that the principle established in *Rookes v. Barnard* is still alive in most of the Caribbean jurisdictions since no corresponding legislation to the U.K. one has been enacted in any of the Caribbean countries except in Antigua with their new Labour Code Act, 1975 and the Bermuda Labour Relations Act, 1975 s.33.

<sup>9</sup>See the various Trade Unions Acts. In the case of Trinidad and Tobago the matter is dealt with in s.5 of the 1933 Act (Cap. 22 No. 9).

<sup>10</sup>It was recognized in *Bird v. O'Neal* [1961] AC 907 that the immunity does not avail individual members and officials from committing personal torts.

<sup>11</sup>See Trade Disputes and Protection of Property Ordinance, Cap. 23 No. 11. St. Lucia Essential Services Act, 1975 (ESA), No. 3 of 1975; Antigua Labour Code Act, 1975 (LCA), s.K23; Jamaica Labour Relations and Industrial Disputes Act (LR & IDA), No. 14 of 1975, s.9; Bermuda Labour Relations Act (LRA), No. 15 of 1975 Part III.

<sup>12</sup>*Collymore & Abraham v. Attorney General*, 12 WIR 5, 42 (1968).

<sup>13</sup>*Ibid.*

<sup>14</sup>I.e., the freedom of association: see C. Okpaluba, "Freedom of Association in West Indian Labour Law", 7 *Lawyer of the Americas*, 291 (1975).

<sup>15</sup>*Cf. per Lord Wright in Crofter Hand Woven Harris Tweed Co. Ltd. v. Veitch* [1942] 1 All ER. 142; *per* McRuer, C.J.H.C. (Ontario) in *Newell v. Barker & Bruce*, 2 D.L.R. 289 (1950).

<sup>16</sup>12 WIR at 6 (1967).

<sup>17</sup>The criminal offences flowing from the conduct of the parties to industrial relations according to the ISA were:

- (a) an employer who, after a claim for recognition has been established in favour of a trade union in accordance with the provisions of the Act, fails or refuses to recognise that trade union; s.3(5)
- (b) an employer who treats an employee in a prejudicial manner or who threatens to dismiss the employee because of the latter's membership in, connections with, or activities in a trade union; S.4(3)
- (c) a worker who ceases work because the employer is an officer or member of a trade union of employers; S.4(5)
- (d) an employer who declares or takes part in a lockout in contravention of the lockouts procedures laid down by the Act; S.34(2) the procedure was stipulated in s.34(1)
- (e) any trade union which calls a strike in contravention of the strikes procedures; S.34(3)
- (f) any member of the Executive of a trade union who calls out any worker(s) on strike in disregard of the provisions of the Act; S.34(1)
- (g) any worker who takes part in a strike called in contravention of the law; S.34(5)
- (h) anyone—whether employer or worker—who declares a lockout or calls a strike while proceedings in relation to a trade dispute between such employer and such worker are pending before the Industrial Court or the Court of Appeal; S.35
- (i) an employer who declares a lockout in any essential service; S.36(2)

- (j) a trade union who calls a strike in an essential service; S.36(5)
- (k) a worker in an essential service who takes part in a strike therein; S.36(4)
- (l) a public officer who takes part in any strike; S.37
- (m) any person who contributes financial assistance directly or indirectly to a trade union on strike or the employer on a lockout. S.34C(1). This section was added by one of the 1967 amendments.

<sup>18</sup>Cap. 3 No. 4. Laws of Trinidad and Tobago (1950).

<sup>19</sup>13 WIR 310 (1968).

<sup>20</sup>See the discussion in 7 *Lawyer of the Americas* at 302 (1975). Cf. Bahamas Industrial Relations Act 1970, s.75(1); Jamaica Labour Relations and Industrial Disputes Act 1975, s.4; Antigua Labour Code Act 1975, s.K3.

<sup>21</sup>IRA, s.42(2). Cf. Bahamas IRA s.42. Subsection 4 of the Bahamas s.42 has put the burden of proof on a balance of probabilities for the purposes of this offence. *Contra* the general standard of proof in Criminal cases that the prosecution must prove its case beyond all reasonable doubts. Cf. *Woolmington v. D.P.P.* [1935] A.C. 462.

<sup>22</sup>See Okpaluba & Rubin, "Dismissal and Reinstatement in a West Indian Jurisdiction", 3 *Anglo-American Law Review* (1974), 251 at 272 esp. note 81.

<sup>23</sup>For the contemporary U.K. law on this subject see now s.44 of the Employment Protection Act, 1975.

<sup>24</sup>(1971) T&TLR (Pt. V) 98.

<sup>25</sup>Cf. per Donovan, L.J. in *Rookes v. Barnard* [1963] 1 Q.B. 676 at 682-683; per Lord Denning, M.R. in *Morgan v. Fry* [1968] 2 Q.B. 710 at 728; same judge in *Stratford v. Lindley* [1965] A.C. 269 at 285. See further K. Foster, "Strikes and the Employment Contract" 34 M.L.R. 275 (1971). See *Statutory Regulation of Collective Bargaining* at 69. Cf. *Secretary of State for Employment v. ASLEF* (No. 2) [1972] 2 W.L.R. 1370 and see Brian Napier in [1972] 1 I.L.J. 125.

<sup>26</sup>See *Statutory Regulation*, op. cit., Chapters 8 and 9.

<sup>27</sup>In Trinidad and Tobago the essential services are listed in IRA Sch.2; Bahamas IRA s.70(2); Jamaica LR & IDA Sch.1; Antigua LCA, the Schedule; St. Lucia Essential Services Act, 1975 (ESA), First Schedule. IRA T&T s.67(2). Cf. St. Lucia ESA, s.10; Bahamas IRA s.72; Jamaica LR & IDA s.10; Antigua, LCA, s.K23(1).

<sup>28</sup>S.67(5).

<sup>29</sup>S.68(1).

<sup>30</sup>S.68(2).

<sup>31</sup>S.69(1)(3). For the category of persons within these groups see: Public Servants: The Civil Service Act, 1965 (as amended); Police: Police Service Act, 1965 (as amended); Teachers Education Act, 1966; Central Bank Employees: Central Bank Act, 1964.

<sup>32</sup>S.72.

<sup>33</sup>Cf. (i) contractual illegality of deduction from wages and see Okpaluba, "The Truck Laws in Contemporary Guyanese Labour Relations", forthcoming, *Guyana Law Journal*, 1977; (ii) constitutional protection against unlawful deprivation of property and see *Lilleyman v. IRC*, L.R.B.G. 15 (1964); 13 W.I.R. 224 (1964) (Cummings, J.) affirmed *sub. nom. IRC & A.G. v. Lilleyman* (1964) L.R.B.G. 221; 7 W.I.R. 496 (1964) (BCCA); *Prakash Seereeram v. A.G. & Trinidad Islandwide Caneframers Association* (Braithwaite, J.) (Unreported) No. 2919 of 1974, affirmed



on this ground by the Trinidad and Tobago Court of Appeal in three separate judgments of Sir Isaac Hyatali, C.J., Phillips and Rees, J.J.A. (December 5, 1975) Civil Appeals Nos. 11 and 14 of 1975.

<sup>34</sup>S.74(1) and (2).

<sup>35</sup>S.74(3).

<sup>36</sup>S.74(9).

<sup>37</sup>S.77(1).

<sup>38</sup>For the meaning of deception in English Criminal Law see J. C. Smith & B. Hogan; *Criminal Law* (3rd ed. 1945).

<sup>39</sup>S.77(4).

<sup>40</sup>For more criticism of this aspect of IRA see *Statutory Regulation*, *supra*, at 72.

<sup>41</sup>*Per* Rees, J. in *Attorney General v. Panday and the Vanguard Publishing Co. Ltd.* 15 W.I.R. 172 (1967). See now s.7 of IRA.

<sup>42</sup>The Court of Appeal is responsible for its own contempt.

<sup>43</sup>*Cf. per* Fraser, J.A. in *Ragunanan v. Public Transport Service Corporation*, *supra*.

<sup>44</sup>S.2(1)(u). By section 2(1)(u), a lockout is defined as: the closing of a place of employment or the suspension of work by an employer or the refusal by an employer to employ or continue to employ any number of workers employed by him, done with a view to induce or compel workers employed by him to agree to terms or conditions of, or affecting employment, but does not include the closing of a place of employment for the protection of property or persons therein.

<sup>45</sup>S.8.

<sup>46</sup>S.8.

<sup>47</sup>This appeared from the express objects of the ISA and in Dr. Eric Williams' *Reflections on the Industrial Stabilisation Bill*. See *Statutory Regulation*, Chaps. 3 and 6; *Essays on Law and Trade Unionism*, Ch. 3.

<sup>48</sup>*Third Annual Report of the President of the Industrial Court*, 1968, para. 29. See also: *Trinidad Textile Manufacturing Co. Ltd. v. Union of Foods, Hotels and Industrial Workers* (Unreported) (1969) Civil Appeal No. 33 of 1969; *Town & Country Ltd. v. Union of Foods, Hotels and Industrial Workers* (Unreported) (1971) Civil Appeal No. 73 of 1970; and *Texaco Trinidad Inc. v. Petroleum Staff Association* (1974) No. 23 of 1969 (Ind. Court).

<sup>49</sup>*Statutory Regulation*, 57.

<sup>50</sup>S.40(2).

<sup>51</sup>S.60. This section also stipulates requirements for strikes and lockouts notices. Strike ballot is required in the Bahamas—IRA s.71(1)(b).

<sup>52</sup>Part V of IRA deals with disputes procedures; Bahamas IRA Part VI; Antigua LCA Division K Part II.

<sup>53</sup>Defined by the Industrial Court as "disputes over existing rights". See in *Trinidad Footwear Ltd. v. Transport & Industrial Workers' Union* C.8/74.

<sup>54</sup>S.54(1)(a) and (b). The distinction in the Bahamas is between a "limited dispute" and a "general dispute" see s.67(1). For the meaning of "major trade dispute" in Antigua see LCA s.K13. No corresponding distinction appears in the Jamaica Act.

<sup>55</sup>S.54(1)(b).

<sup>56</sup>Described by the Industrial Court as "disputes over creation or alteration of terms of employment". See in *Trinidad Footwear, supra*.

<sup>57</sup>S.59.

<sup>58</sup>*Id.*

<sup>59</sup>C.8 of 1974.

<sup>60</sup>Again, to quote the Industrial Court in *Trinidad Footwear*:

The Union's certificate of recognition remains valid and the Company remains valid and the Company remains bound by section 40 in any matter covered by collective bargaining in relation to the bargaining unit concerned other than matters included in the instant dispute. The Union retains the exclusive right to have the Company treat and negotiate with it in good faith in any 'rights' matter or in any 'interest' matter not covered by the instant dispute. At this stage of the instant dispute, however, it cannot resort to the compulsory provisions of the Act but must rely on its right to use the strike weapon to bring the employer over to its own point of view.

<sup>61</sup>S.63. Offences in connection with unlawful industrial action in Jamaica are dealt with in LR & IDA s.13; Bahamas IRA s.72; Antigua LCA s.K22.

<sup>62</sup>C.7 of 1975 delivered February 17, 1976.

<sup>63</sup>*Per* Braithwaite, P. in *Metal Box (Trinidad) Ltd. v. Union of Foods, Hotels, & Industrial Workers*, C.1 of 1975 (Ind. Ct.).

<sup>64</sup>In this connection too, reference may be made to the unreported Court of Appeal decision in *Nunez & Young v. Thomas*, No. 446 of 1968.

<sup>65</sup>14 W.I.R. 473 (1969).

<sup>66</sup>No. 2 of 1962.

<sup>67</sup>[1902] 1 K.B. 91.

<sup>68</sup>*Id.*

<sup>69</sup>14 W.I.R. at 475 (1969).

<sup>70</sup>S.84(2).

<sup>71</sup>S.84(1).

<sup>72</sup>*Cf.* s.65 of Antigua Labour Code Act relating to suits by and against trade unions including prosecutions. S.37(1) of the Bermuda LRA stipulates that a trade union may be prosecuted for an offence under the Act as though it were a body corporate.

<sup>73</sup>*Bonsor v. Musicians Union* [1956] A.C. 104 applied by the Court of Appeal of the West Indies Associated States in *Antigua Trades and Labour Union v. Smith*, 14 W.I.R. 447 (1970).

<sup>74</sup>See *The Taff Vale Case* [1901] A.C. 426, *infra*.

<sup>75</sup>In *Re Patterson & Nanaimo Dry Cleaning & Laundry Workers' Union, Local No. 1* [1947] 4 D.L.R. 159 (Canada).

<sup>76</sup>13 W.I.R. 310 (1968).

<sup>77</sup>S.34(1).

<sup>78</sup>For the avoidance of any doubts the IRA, 1972 has provided (s.2(1)(q)) that "person" includes a Company and a trade union.

<sup>79</sup>[1901] A.C. 426.

<sup>80</sup>*Id.*, at 429.

<sup>81</sup>Trade Disputes Act, 1906 s.4.

<sup>82</sup>See e.g. *per* Lord Morton of Henryton in *Bonsor v. Musicians' Union* [1955] 3 All E.R. 518, at 523.

<sup>83</sup>The Court of Appeal decision in *Kelly v. Natsopa*, 84 LJ KB 2236 (1915) was to that effect.

<sup>84</sup>[1954] Ch. 479.

<sup>85</sup>Perhaps Lord Keith could be grouped in this camp.

<sup>86</sup>Apart from the cases referred to later in the text the reader may wish to note the following: *Vancouver Machinery Depot Ltd. v. United Steelworkers of America* 4 D.L.R. 518 (1948); *Hughes v. Seafarers' International Union of North America, Canadian District & Heinekey* 31 D.L.R. (2d) 441 (1961); *Hornak v. Paterson* 58 D.L.R. (2d) 175 (1966); *United Mines Workers of America, District No. 26 & McKinnon v. Seafarers' International Union of North America, Canadian District et. al.* 26 D.L.R. (2d) 678 (1960).

<sup>87</sup>28 D.L.R. (3d) 315 (1972).

<sup>88</sup>14 D.L.R. (3d) 308 (1970).

<sup>89</sup>See his judgment in 28 D.L.R. (3d) 315 (1972).

<sup>90</sup>*Id.*

<sup>91</sup>28 D.L.R. (3d) 333 (1972).

<sup>92</sup>4 D.L.R. 159 (1974).

<sup>93</sup>*Id.* at 170.

<sup>94</sup>*Id.* at 170-171. For the question of representative action aptly described as "this cryptic procedure" see Sherbaniuk, "Actions By And Against Trade Unions in Contract and Tort", 12 U. of T.L.J. 151 (1958). See further *Shank v. KVP Company Ltd.* 58 D.L.R. (2d) 693 (1966) and *Jenkins v. Utility Glove (1961) Ltd.*, 62 D.L.R. (2d) 48 (1967).

<sup>95</sup>This appears from the definition of trade unions in the Caribbean Trade Unions Acts. See also Bahamas IRA s.6.

<sup>96</sup>See e.g. s.6 of the Trinidad and Tobago Trade Disputes and Protection of Property Ordinance Chap. 22 No. 11. See also *Hackshaw v. NUGE & Ors.* (1967) TTLR 333 (Corbin, J.); (1967) TTLR 338 (T&TCA): *Vacher & Sons Ltd. v. London Society of Compositors* [1913] A.C. 107; Antigua Labour Code Act, s.G7. For the extent of these immunities see *Ware and de Ferville Ltd. v. Motor Trade Association* [1921] 3 K.B. 40; *Boulting & Another v. Association of Cinematograph Television & Allied Technicians* [1963] 1 All E.R. 715; *Camden Exhibition and Display Ltd. v. Lynott & Anor* [1965] 3 All E.R. 28.

<sup>97</sup>*Supra.*

<sup>98</sup>*Supra.*

<sup>99</sup>17 W.I.R. 400 (1970).

<sup>100</sup>See Okpaluba, *The System of Compulsory Labour Arbitration in Trinidad and Tobago*, Ch. 5, for a discussion of this case.

<sup>101</sup>The IRA definition of strike is discussed in *Statutory Regulation* at 41.

<sup>102</sup>In the IRA, the expression is "in contemplation of, or in furtherance of, a trade dispute".

<sup>103</sup>[1908] 1 K.B. 353.

<sup>104</sup>S.23.

<sup>105</sup>S.12(1)(b).

<sup>106</sup>[1908] 1 K.B. at 359.

<sup>107</sup>*Id.*, 360-361.

<sup>108</sup>[1947] 2 All E.R. 124.

<sup>109</sup>*Per* Lord Greene, M.R. at 127.

<sup>110</sup>His Lordship also cited *per* Lord Wright in *Smith, Hogg & Co. Ltd. v. Black Sea & Baltic General Ins. Co. Ltd.* [1940] AC 997 at 1003-1004.

<sup>111</sup>*Cf.* the Industrial Court judgment in *Trinidad Bakeries Ltd. v. National Union of Foods, Hotels, Beverages and Allied Workers* Nos. 49 and 93 of 1967.

<sup>112</sup>Industrial Court C.2 and C.3 of 1974.

<sup>113</sup>On this subject see Welsh, "Criminal Liability of Corporations", 62 L.Q.R. 539 (1946).

<sup>114</sup>[1915] A.C. 705.

<sup>115</sup>*Id.* at 713.

<sup>116</sup>*E.g.* *Morris v. Martin & Sons, Ltd.* [1965] 2 All E.R. 725 and *Lloyd v. Grace, Smith & Co.* [1912] A.C. 716 where the employers were both held vicariously liable for the fraud and dishonesty of their servants. *Contra Cheshire v. Bailey* [1905] 1 K.B. 237 expressly disapproved by Lord Denning in *Morris v. Martin, supra*.

<sup>117</sup>[1966] Cr. L.R. 395.

<sup>118</sup>[1944] 2 All E.R. 153.

<sup>119</sup>[1956] 3 All E.R. 624.

<sup>120</sup>[1915] AC 705 at 713.

<sup>121</sup>[1956] 3 All E.R. at 630.

<sup>122</sup>In *Henshall (John) (Quarries) Ltd. v. Harvey* [1965] 2 O.B. 233 at 241.

<sup>123</sup>[1971] 2 All E.R. 127.

<sup>124</sup>[1970] 3 All E.R. 357.

<sup>125</sup>[1971] 2 All E.R. at 132.

<sup>126</sup>*Id.* at 131.

<sup>127</sup>*Cf.* the Bermuda provisions—LRA s.38.

<sup>128</sup>17 WIR 400 (1970).

<sup>129</sup>See *Flood v. Jackson*, 1895 2 K.B. 21; *Taff Vale v. Amalgamated Society of Ry. Servants*, 1901 A.C. 426; *Giblan v. National Amalgamated Labourers' Union*, 1903 2 K.B. 600.

<sup>130</sup>*Sweet v. Parsley* [1969] 1 All E.R. 347.

<sup>131</sup>*Per* Lord Atkinson in *Amalgamated Society of Ry. Servants v. Osborne* [1910] A.C. at 102.

<sup>132</sup>13 WIR 310 (1968). There is another instance, where by analogy the Courts have applied a principle of corporation law to trade unions. This is the so-called rule in *Foss v. Harbottle*; and see *Steele v. South Wales Miners' Federation* [1907] 1 KB 361; *Cotter v. National Union of Seamen* [1927] 2 Ch. 58; *Caeser v. British Guiana Mine Workers' Union* (1959) 1 WIR 232. For notable exceptions to this rule see *Edwards v. Halliwell* [1950] 2 All ER 1064; *Caeser v. BCMW* (1961) 3 WIR 508; *Mbene et al. v. Ofili* (1968) 1 *African Law Report* (Comm.) 235; *Hodgson & Others v. NALGO & Others* [1972] 1 All ER 15.

<sup>133</sup>*Id.* at 315.

<sup>134</sup>Note the cases referred to earlier in this article under "Prosecuting the Corporate Employer".

<sup>135</sup>[1972] 3 All E.R. 101.

<sup>136</sup>NIRC judgment in [1972] 2 All E.R. at 1222.

<sup>137</sup>[1972] 2 All E.R. at 1239.

<sup>138</sup>[1972] 3 All E.R. at 109.

<sup>139</sup>[1972] 3 All E.R. at 109. See also *Hewitt v. Bonin* [1940] 1 K.B. 188; *Morgans v. Launchberry* [1972] 2 All E.R. 606.

<sup>140</sup>This judgment is severely criticised by Hepple in "Union Responsibility for Shop Stewards", 1 ILJ 197 (1972).

<sup>141</sup>*Cf.* in *Ideal Casements Ltd. & Others v. Shamsi & Others* [1972] L.C.R. 408.

<sup>142</sup>*Supra.*

<sup>143</sup>*Statutory Regulation*, 81.

<sup>144</sup>Industrial Court C.2 and C.3 of 1974.

<sup>145</sup>Because of the inclusion of the shop steward as a person holding office in a trade union, *Fernandes* principle will not apply where the Act expressly or by necessary implication provides that a trade union will be liable for the actions of a holder of an office in the organisation. Referring to ss.66(5) and 69(3), it is clear from the reading of these sections that the holder of an office in a trade union will be guilty of summary offence for calling or causing industrial action within the industries therein named. The necessary implication may be that because the officers are themselves guilty, they will be the persons that could make the union liable.

<sup>146</sup>*Statutory Regulation, op. cit.*, Chapter 10.