

11, 1969

1.

IN THE PRIVY COUNCIL

No. 26 of 1967

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

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

- and -

10 IN THE MATTER of the APPLICATION of LEARIE COLLYMORE and JOHN ABRAHAM (Persons alleging that certain Provisions of Sections 1, 2, 3, 4, 5 and 7 of the said Constitution have been and are being and are likely to be contravened in relation to them by Reason of the Enactment of The Industrial Stabilisation Act, 1965) for Reasons in accordance with Section 6 of the said Constitution

UNIVERSITY OF LONDON
INSTITUTE OF FINANCED
LEGAL STUDIES
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25 RUSSELL SQUARE
LONDON, W.C.1.

B E T W E E N

LEARIE COLLYMORE and JOHN ABRAHAM

Appellants

- and -

THE ATTORNEY GENERAL

Respondent

C A S E FOR THE RESPONDENT

1. This is an appeal from a judgment and order

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of the Court of Appeal of Trinidad and Tobago (Wooding, C.J., Phillips and Aubrey Fraser, J.J.A.) given on the 27th January, 1967, dismissing the appeal of the Appellants from the judgment and order of the High Court of Trinidad and Tobago (Corbin, J.) given on the 11th December, 1965, dismissing the motion of the Appellants for relief by way of an Order declaring the Industrial Stabilisation Act, 1965, to be ultra vires the Constitution of Trinidad and Tobago and null and void and of no effect. Final leave to Appeal was granted by the Court of Appeal on the 31st May, 1967.

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2. The relevant statutory provisions are set out in the Appendix to this Case. The Industrial Stabilisation Act, 1965, enacted on the 20th March, 1965, has been amended by two Acts passed after the date of the judgment of the Court of Appeal. The extracts in the Appendix are set out in their original and unamended form, i.e. as they stood at the time material for the present proceedings.

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p. 2-4

3. The general grounds of the Appellants' Motion were that : the Industrial Stabilisation Act, 1965, was ultra vires the Constitution; it was inconsistent within itself and impossible to operate; and that it constituted unwarranted invasion of the democratic rights and freedoms of the Appellants. The particular grounds were that : Sections 5 and 6(1)(b) of the Act conflicted with Sections 2(c)(iii), 2(e) 2(f) and 2(h) of the Constitution; Section 8(2)(b) conflicted with Sections 2(h) and 6(2); Sections 10 and 11 were self contradictory and conflicted with Sections 2(b), (e) and (h); Sections 34(3), 36(5) and 37(3) conflicted with Section 2(b); Part IV of the Act conflicted with Sections 1(j) and 8(1); Section 41(3) conflicted with Sections 2(e) and (f); and Sections 52(1) and (2) conflicted with Section 2(f).

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4. The sequence of events leading up to the issue of the Motion were as follows. The Appellants deposed on affidavit that they were members of the Oilfield Workers' Trade Union

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	p. 127-161
10	p. 128
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20	p. 174-176
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5. By their affidavit the Appellants deposed that, but for the enactment of the 1965 Act, the Union would have been freely able to conclude a

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p. 9, 1.16

new and acceptable agreement with Texaco. Alternatively, the members of the Union would have been free to threaten or to take strike or other lawful action to bring about an agreement. They believed that these activities would have been lawful and that they stemmed from rights guaranteed by the Constitution and recognised by International Conventions and Charters.

p. 21-31

6. The learned trial Judge commenced the judgment by stating that the Appellants based their right to make their application upon Section 6 of the Constitution, which declared that any person alleging that the fundamental rights and freedoms enshrined in the Constitution were being or were likely to be contravened in relation to him might apply to the High Court for redress. He then dealt with the preliminary submissions of the Attorney General: that the Appellants had failed to show that any of their rights had been infringed and that they were therefore not entitled to seek a declaration; that the Court could not be asked to make a declaration at large; and, that the application ought not to have been made by way of motion. On the first point the learned Judge held that, although the Appellants, in order to move the Court, must show an interference with their rights, or at least a real fear thereof, in his opinion they had done so. If the effect of the 1965 Act was to prohibit a worker from striking, then he would be deprived of what the Appellants termed a right. In his view the Appellants had shown sufficient interest to allow them to apply to the Court. On the second point he held that the discretion of the Court to give a declaratory judgment was very wide, and that a case such as the present, where the question was whether or not a right existed was a proper one in which a declaration might be sought. On the third, he pointed out that as the 1965 Act had not prescribed any procedure as to the manner of making application to the Court, there could be no objection to an application by way of Motion.

p. 22, 1.12

p. 22, 1.23

p. 24, 1.25

p. 24, 1.31

7. Corbin J. then turned to what he describes as the main issues. There were as to whether

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- the Constitution conferred a right to strike, and, if it did, whether the 1965 Act infringed that right. Dealing with the first point, he surveyed the history of the legality of a strike and pointed out that no right to strike was conferred either by statute or common law. The strength of negotiation lay in collective bargaining, and this was enshrined in the Constitution by the right to associate. But a power to strike was not a necessary concomitant of collective bargaining. It was necessary to draw a sharp distinction between the right to strike and the mere freedom to do so. As the Appellants had no positive right to strike, there was nothing that could be infringed. Although this really disposed of the application, Corbin, J. nevertheless considered whether the 1965 Act infringed the Constitution by taking away the power to strike, assuming this to be established. He considered Sections 16 and 34 of the 1965 Act and concluded that, whereas Section 16 established machinery for bringing a dispute to the Minister, either for settlement by him or reference to the Court, Section 34 merely prohibited strikes while this machinery was in motion. The effect of the Section was to provide procedure for arriving at agreement; and there appeared to be nothing to prevent the use of the strike weapon after the procedure had been followed. Therefore he held that the 1965 Act did not prohibit strikes.
8. As to the particular grounds of complaint, the learned Judge found as follows:
- (a) Section 5 of the 1965 Act did not conflict with Sections 2(c)(iii), 2(e), 2(f) and 2(h) of the Constitution because the Industrial Court was an appropriate Judicial body within the meaning of the Constitution, and nothing in the 1965 Act deprived the individual of the rights set out in those subsections.
- (b) Section 8(2)(b) of the 1965 Act did not conflict with Section 6(2) of the Constitution. It was the judgment only

p. 26, 1.20

p. 26, 1.45

p. 29, 1.38

p. 30, 1.6

p. 30, 1.9

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of the Industrial Court which could not be attacked by prohibition or mandamus. There was no curtailment of rights.

- (c) Sections 10 and 11 of the 1965 Act were not in conflict with Section 2(b), (e), and (h) of the Constitution. Sections 10 and 11 conferred "rather too wide powers" on the Attorney General, but this did not infringe basic rights. If Sections 10 and 11 of the 1965 Act were contradictory, it was not open to the Court to make a declaration to that effect. 10
- (d) Sections 34(3), 36(5) and 37(3) were not in conflict with Section 2(b) of the Constitution. The purpose of Section 2(b) was to preserve the liberty and freedom of the individual and to insure that no harsh or inordinate suffering would be imposed upon him. Further, the penalties imposed were maximum penalties. 20
- p. 31, 1.12 (e) Section 41(3) was not in conflict with Section 2(e) and (f) of the Constitution. It did no more than impose vicarious liability.
- (f) Section 52(1) and (2) was not in conflict with Section 2(f) of the Constitution for the reason given in (e) above.
- p. 31, 1.23 (g) Part IV of the Act did not deprive the workmen of the right of association and collective bargaining. It took effect only after a dispute had arisen and after there had been ample time for free and collective bargaining. 30

In the result he dismissed the application with costs.

- p. 33-36 9. From this decision the Appellants appealed putting forward, in addition to general grounds, the particular grounds that, contrary to the judgment of Corbin, J. : the Act interfered with and invalidated the right of collective bargaining 40

and free negotiation; the Appellants had a common law right to strike; the Act interfered with and invalidated the right to strike; the right to strike was a necessary concomitant of the right of free association and collective bargaining; and, that there were "numerous points" as set out in their application where the Act infringed the Constitution.

p. 37-66

10. The first judgment in the Court of Appeal was given by Wooding, C.J. He held that Section 6 of the Constitution gave the Appellants a right to make their application for relief. Further, that the Supreme Court had been made the guardian of the Constitution, and thus it was not only within the competence of the Court to declare Acts of Parliament ultra vires, but it was the right and duty of the Court to make such declarations when they were warranted. The learned Chief Justice then turned to what he described as the principal issue which was that the Appellants contended that the Industrial Stabilisation Act, abrogated or abridged what they termed to be the right of free collective bargaining and the right to strike both of which they maintained to be inherent in the freedom of association conferred by Sections 1 and 2 of the Constitution. He was in no doubt that the Act abridged the freedom to bargain collectively and substantially abrogated the freedom to strike. However a distinction was to be drawn between the freedom to associate on the one hand, and on the other hand the objects to be pursued in association and the means employed to attain those objects. Next, he agreed with the distinction drawn by Corbin, J., between the "right" and the "freedom" to strike. He however preferred to regard the freedom as an immunity. He justified this by tracing the historical development of trade unionism, pointing out that the law in Trinidad and Tobago, until the passing of the Industrial Stabilisation Act, was substantially the same as the law stood in England immediately after the Trades Disputes Act, 1906. He added however that Rockes v. Barnard was a binding authority on Trinidad and Tobago. This survey demonstrated

p. 39, 1.30

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- p. 53, 1.40 that the immunity was a special statutory immunity legalising that which otherwise would have been illegal. It also illustrated that immunity was a consequence of free association. It followed therefore that the immunity was a matter which Parliament could abridge or abrogate as they saw fit. As to the freedom to bargain collectively, this was preserved by Section 3 of the Act. What Parliament had done in the learned Chief Justice view, was to abridge the freedom of contract. Freedom to contract was not a freedom recognised declared or guaranteed by the Constitution. 10
- p. 56, 1.26
- p. 37, 1.7. 11. The learned Chief Justice then turned to the challenges on the subsidiary grounds. In substance he agreed with the views expressed by Corbin, J. He expressed himself in rather stronger terms than did Corbin, J., on the effect of Sections 10 and 11 of the Act. So far as Sections 34, 36 and 37 were concerned, he could not regard the penalties imposed as cruel and unusual treatment or punishment and he went on to say that, in his opinion the human rights and fundamental freedoms declared by the Constitution existed for the protection primarily of natural and not artificial persons. 20
- p. 64, 1.14
- p. 67-93
and p. 93 -
p. 125 12. Phillips and Aubrey Fraser, JJ.A., agreed with the views of Wooding C.J., on the subsidiary points, and they delivered judgments on the principal issue which were in substantially the same terms as the judgment of the learned Chief Justice on this issue. 30
13. In the particular circumstances of this case, the Respondent does not challenge either the assertion by the Appellants that they were entitled to found an application to the High Court on Section 6 of the Constitution, or the decision of the High Court that the Court ought to hear such application. Further, the Respondent does not raise any point upon the form of the proceedings. However, the Respondent respectfully submits that the Industrial Stabilisation Act, 1965 as originally 40

enacted did not violate any provision of the Constitution and was in every respect a valid and effective Act. (The Respondent would make the same submission about the Act as subsequently amended, but for the purposes of this appeal it is not necessary to consider the amendments).

10 13. The Respondent respectfully submits that the right of association, like all other rights protected by the Constitution, is subject to all laws in force in Trinidad and Tobago on the 31st August, 1962 - including the Trade Disputes (Arbitration and Inquiry) Ordinance and the Trade Disputes and Protection of Property Ordinance. Furthermore, the right of association is a right to associate for lawful purposes. Parliament may not forbid people to associate but it is entitled to say that, when in association, they shall not do certain things.
20 If people are free to associate but are forbidden by statute to do certain things in association, that statute does not infringe the freedoms of association and is invalid (assuming it to have been passed after the 31st August, 1962) only if it infringes some other human right or fundamental freedom guaranteed by the Constitution.

30 14. The Industrial Stabilisation Act does not, in the Respondent's respectful submission, interfere in any way with freedom of association. It imposes certain restrictions on the activities of persons in association, but the activities thus restricted are not activities preserved from restriction by any provision of the Constitution.

40 15. The so called "right to strike", in the respectful submission of the Respondent, is not protected by the Constitution. This so called "right" is no more than a freedom of persons, acting in association, to do certain things. As such it is neither more nor less than the freedom of an individual or of individuals acting in association to do any other act not prohibited by the law. The Parliament of Trinidad and Tobago remains free to prohibit any activities

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not hitherto prohibited, provided only that engagement in such activity is not itself the exercise of a right protected by the Constitution. The Respondent respectfully submits the act of striking is not the exercise of any such right. The Respondent also respectfully submits that the foregoing comment is equally true of the so called "right" to bargain collectively. Moreover, the effect of the Industrial Stabilisation Act, with its provisions for the compulsory recognition of trade unions by employers, is to protect and encourage the process of collective bargaining.

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16. Further, the "right" to engage in the activity of striking is not in any event a natural and inherent right. As is demonstrated by the learned Judges in the Courts below, it was permitted only by special statutory concession, and without such concession it would be an activity forbidden by law. Applying the general principles as they are submitted in paragraphs 13 to 15 above, it is an activity which the Parliament of Trinidad and Tobago has power to abridge, enlarge, or abrogate.

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17. The Respondent respectfully submits that the order of the Court of Appeal of Trinidad and Tobago was right and ought to be affirmed, and this appeal ought to be dismissed with costs, for the following (among other)

R E A S O N S

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1. BECAUSE the Industrial Stabilisation Act, 1965 does not infringe the freedom of association guaranteed by the Constitution.
2. BECAUSE there is no right to strike guaranteed by the Constitution.
3. BECAUSE there is no right to bargain collectively guaranteed by the Constitution.
4. BECAUSE the said Act protects, rather than impedes, the process of collective bargaining.

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5. BECAUSE no provision of the said Act violates the Constitution in any particular.
6. BECAUSE of the reasons given by the learned Judges in the Court of Appeal and the High Court.

J.G. Le QUESNE.

GERALD DAVIES.

APPENDIX

Supreme Court of Judicature Act, 1962

Section 12. "Subject to the provisions of any enactment in operation on the 1st of March, 1848, and to any enactment passed after that date, the Common Law Doctrines of Equity, and Statutes of general application of the Imperial Parliament that were in force in England on that date shall be deemed to have been enacted and to have been in force in Trinidad as from that date and in Tobago as from the 1st January, 1859." 10

The Trinidad and Tobago (Constitution) Order in Council, 1962. S.I. 1875

Second Schedule. The Constitution of Trinidad and Tobago.

Preamble. "Whereas the People of Trinidad and Tobago - 20

(a) have affirmed that the nation of Trinidad and Tobago is founded upon principles that acknowledge the supremacy of God, faith in fundamental human rights and freedoms, the position of the family in a society of free men and free institutions, the dignity of the human person, and the equal and inalienable rights with which all members of the human family are endowed by their Creator; 30

(b) respect the principles of social justice and therefore believe that the operation of the economic system should result in the material resources of the community being so distributed as to subserve the common good, that there should be adequate means of livelihood for 40

all, that labour should not be exploited or forced by economic necessity to operate in inhumane conditions but that there should be opportunity for advancement on the basis of recognition of merit, ability and integrity.

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

Recognition and declaration of rights and freedoms.

- 20 (a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;
- (b) the right of the individual to equality before the law and the protection of the law;
- (c) the right of the individual to respect for his private and family life;
- (d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;
- (e) the right to join political parties and to express political views;
- 30 (f) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward;
- (g) freedom of movement;
- (h) freedom of conscience and religious belief and observance;
- (i) freedom of thought and expression;
- (j) freedom of association and assembly; and

(k) freedom of the press.

Protection of
rights and
freedom.

2. Subject to the provisions of sections 3, 4 and 5 of this Constitution, no law shall abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared and in particular no Act of Parliament shall -

- (a) authorise or effect the arbitrary detention, imprisonment or exile of any person; 10
- (b) impose or authorise the imposition of cruel and unusual treatment or punishment;
- (c) deprive a person who has been arrested or detained
 - (i) of the right to be informed promptly and with sufficient particularity of the reason for his arrest or detention; 20
 - (ii) of the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with him;
 - (iii) of the right to be brought promptly before an appropriate judicial authority;
 - (iv) of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful; 30
- (d) authorise a court, tribunal, commission, board or other authority to compel a person to give evidence if he is denied legal representation or protection against self-crimination; 40

- (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;
- (f) deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law in a fair and public hearing by an independent and impartial tribunal, or of the right to reasonable bail without just cause.
- (g) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted; or
- (h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.

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3. (1) Sections 1 and 2 of this Constitution shall not apply in relation to any law that is in force in Trinidad and Tobago at the commencement of this Constitution.

Saving as to certain laws.

(2) For the purposes of subsection (1) of this section a law in force at the commencement of this Constitution shall be deemed not to have ceased to be such a law by reason only of -

- (a) any adaptations or modifications made thereto by or under section 4 of the Trinidad and Tobago (Constitution) Order in Council 1962 or
- (b) its reproduction in identical form in any consolidation or revision of laws with only such adaptations or

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modifications as are necessary or expedient by reason of its inclusion in such consolidation or revision.

Acts at variance with this chapter.

5. (1) An Act of Parliament to which this section applies may expressly declare that it shall have effect notwithstanding sections 1 and 2 of this Constitution and, if any such Act does so declare, it shall have effect accordingly except insofar as its provisions may be shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.

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(2) An Act of Parliament to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House.

(3) For the purposes of subsection (2) of this section the number of members of the Senate shall, notwithstanding the appointment of temporary members in accordance with section 27 of this Constitution, be deemed to be the number of members specified in subsection (1) of section 23 of this Constitution.

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Enforcement of protective provisions.

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

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(2) The High Court shall have original jurisdiction -

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

(b) to determine any question arising in the case of any person which is

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referred to it in pursuance of sub-section (3) thereof,

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of, any of the provisions of the said foregoing sections or section 7 to the protection of which the person concerned is entitled.

10 (3) If in any proceedings in any court other than the High Court or the Court of Appeal any question arises as to the contravention of any of the provisions of the said foregoing sections or section 7 the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless in his opinion the raising of the question is merely frivolous or vexatious.

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

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

30 8. (1) In this Chapter "period of public emergency" means any period during which - Interpretation.

(a) Trinidad and Tobago is engaged in any war; or

(b) there is in force a Proclamation by the Governor-General declaring that a state of public emergency exists; or

(c) there is in force a resolution of both Houses of Parliament supported by the votes of not less than two-thirds

of all the members of each House declaring that democratic institutions in Trinidad and Tobago are threatened by subversion.

Power to make laws.

36. Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Trinidad and Tobago.

The Trade Unions Ordinance, c. 22. No. 9 of 1933.

Section 3(1) "The purposes of any trade union duly registered under this Ordinance shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to render any member of such trade union liable to prosecution for conspiracy or otherwise." 10

(2) "The purpose of any trade union duly registered under this Ordinance shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust." 20

The Industrial Stabilisation Act, 1965.

Representative recognition Collective bargaining.

3. (1) For the purpose of ensuring the preservation of collective bargaining, every employer shall recognise a trade union or other organisation that is representative of fifty-one or a greater per centum of the workers employed by him and shall, subject to the provisions of this Act, treat and enter into such negotiations with any such trade union or organisation as may be necessary or expedient for the prevention or settlement of trade disputes. 30

Establishment of Industrial Court.

5. (1) For the purposes of this Act, there shall be established an Industrial Court.

(2) The Court shall have jurisdiction: 40

- (a) to hear and determine trade disputes;
- (b) to register industrial agreements and to hear and determine matters relating to the registration of such agreements;
- (c) to hear and determine complaints relating to the price of goods and commodities;
- (d) to hear and determine any complaint brought in accordance with this Act as well as such matters as may from time to time be referred to it under this Act.

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6. (1) The Court shall consist of -

Constitution
of Court.

(a) a President who shall be a Judge of the Supreme Court of Judicature, designated by the Chief Justice after consultation with the Prime Minister; and

(b) four other members appointed by the Governor General for such period and on such terms and conditions as he thinks fit, as follows:

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(i) one member who shall be a barrister or solicitor of at least ten years standing and who shall be Vice-President of the Court;

(ii) one member who shall be a duly qualified accountant;

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(iii) one member who shall be a duly qualified economist; and

(iv) one member who may be either a duly qualified accountant, a duly qualified economist or a person experienced in industrial relations.

(2) Subject to subsection (3), the jurisdiction of the Court shall be exercised by the President and two of the members of the Court selected by him for that purpose.

(3) Where for any reason the President of the Court is unable to carry out his functions under this Act, the Vice-President shall act in his place until the President is again able to carry out such functions or until another Judge of the Supreme Court of Judicature is designated as President. 10

(4) The Court may appoint one or more assessors who, in the opinion of the Court, are qualified by reason of their knowledge and experience to assist in the determination of any matter over which it has jurisdiction.

(5) In appointing assessors, the Court shall have regard to any submissions or objections that may be put forward by any party or parties appearing before it. 20

(6) The members of the Court other than the President shall be full time members and may be paid such salaries as the Governor-General may determine. The members of the Court including the President may also be paid such allowance as the Governor-General may fix.

Decisions of court.

8. (1) All matters brought before the Court shall be determined by a majority of the members thereof.

(2) Subject to subsection 3, a judgment, order or award of the Court in any proceedings under this Act - 30

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

(b) shall not be subject to prohibition, mandamus or injunction in any Court on any account whatever. 40

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

(a) from any judgment or order under Section 33; and

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

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9. (1) The Court shall expeditiously hear, inquire into and investigate every trade dispute which is before it and all matters affecting the merits of such dispute, and without limiting the generality of the foregoing, shall in particular hear, receive and consider submissions, arguments and evidence made, presented or tendered -

Scope of hearing by and matters to be considered in judgments, awards or orders of Court.

(a) by or on behalf of the employer concerned;

(b) by or on behalf of the worker concerned; and

(c) in the name of the Attorney General, on behalf of the People of Trinidad and Tobago (whether or not the dispute relates to employees of the Government) who for such purpose may instruct such persons as he thinks fit to present the case for the People of Trinidad and Tobago; and any expense thereby incurred shall be met out of the public funds of Trinidad and Tobago.

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(2) In accordance with the principle set out in the preamble to the Constitution of Trinidad and Tobago that the operation of the economic system should result in the material resources of the community being so distributed as to subserve the common good, the Court in its judgments shall, in addition to taking into account

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any submissions, arguments and evidence presented or tendered by or on behalf of the employers concerned and the workers concerned and the People of Trinidad and Tobago, be guided by the following considerations:-

- (a) the necessity to maintain a high level of domestic capital accumulation with a view to increasing the rate of economic growth and to providing greater employment opportunities; 10
- (b) the necessity to maintain and expand the level of employment;
- (c) the necessity to ensure to workers a fair share of increases in productivity in enterprises;
- (d) the necessity to prevent gains in the wages of workers from being affected adversely by unnecessary and unjustified increases; 20
- (e) the necessity to preserve and promote the competitive position of products of Trinidad and Tobago in the domestic market as well as in overseas markets;
- (f) the necessity for the establishment and maintenance of reasonable differentials in rewards between different categories of skills;
- (g) the need to maintain for Trinidad and Tobago a favourable balance of trade and balance of payments; 30
- (h) the need to ensure the continued ability of the Government of Trinidad and Tobago to finance development programmes in the public sector.

(3) The Court shall make all such suggestions and do all such things as appear to

it to be right and proper for reconciling the parties and for inducing the settlement of the dispute by amicable agreement.

(4) The Court shall determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties to the trade dispute and require that those cases be presented within the respective periods so determined.

10 (5) The Court may require evidence or argument to be presented in writing and may decide the matters upon which it will hear oral evidence or argument. Submission etc. on behalf of the People, ascertainment of information.

10. (1) The case on behalf of the People of Trinidad and Tobago shall include the presentation of arguments, submissions and evidence generally reflecting the public interest in the issues involved in such dispute.

20 (2) For the purpose of collecting such information, statistics and other materials as may be required for the case of the People of Trinidad and Tobago, the Attorney General may: authorise a public officer -

30 (a) to enter upon the business premises of any employee, trade union or other organisation at any reasonable time and to require the production of any books, documents, accounts, returns or other material relevant to any trade dispute existing or anticipated;

(b) to inspect any building, factory or works where workers are employed and to examine any material, machinery, or other article therein;

(c) to interview any worker employed by any such employer.

40 (3) Any public officer authorised as

aforesaid or any other person to whom such officer has submitted information obtained in pursuance of subsection (2) who discloses any such information is guilty of an offence and liable on summary conviction to a fine of one thousand dollars or to imprisonment for one year or to both such fine and such imprisonment.

(4) Any person who obstructs a public officer in the performance of his duties under subsection (2) is guilty of an offence and liable on summary conviction to a fine of two hundred and fifty dollars or to imprisonment for six months. 10

(5) Notwithstanding the provisions of the Income Tax Ordinance, the Commissioner of Inland Revenue is authorised to forward to the Attorney General under confidential cover such information as the Attorney General may require for the purpose of preparing the case for the People of Trinidad and Tobago. 20

(6) The Attorney General may, on his own motion or at the request of the Court submit to the Court any information obtained pursuant to the provisions of subsection (5), and where any such information is submitted to the Court, the Court may, in its discretion, prohibit the publication thereof.

11. (1) For the purposes of dealing with any matter brought before it, the Court shall have all the powers as are vested in the High Court of Justice on the occasion of an action to enforce the attendance of witnesses and examine them on oath, affirmation or otherwise, to compel the production of documents and to enforce its orders; but if any witness objects to answer any question or produce any document on the grounds that it will tend to incriminate him, or any other lawful grounds, he shall not be required to answer such questions or to produce such document, nor shall he be liable to any penalties for refusing to do so. 30 40

(2) Notwithstanding anything contained in the Income Tax Ordinance or in any other law,

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

10 (3) A summons signed by the Registrar may be substituted for and shall be equivalent to any formal process capable of being issued in any action taken in the High Court of Justice for enforcing the attendance of witnesses and compelling the production of documents.

(4) In addition to the powers conferred on it by subsections (1) and (2), the Court may in relation to a trade dispute -

- 20 (a) make an order or award (including a provisional or interim order or award relating to any or all of the matters in dispute) or give a direction in pursuance of the hearing or determination;
- 30 (b) fix maximum penalties for any breach or non-observance of any term of an order or award, not exceeding ten thousand dollars in the case of an employer, two thousand five hundred dollars in the case of a trade union or five hundred dollars in the case of a worker who is bound by the order or award.
- 40 (c) dismiss any matter or part of a matter or refrain from further hearing or from determining the dispute or part of the dispute if it appears that the dispute or part is trivial, or that further proceedings are not necessary or desirable in the public interest;
- (d) order any party to the trade

dispute to pay to any other party such costs and expenses (including expenses of witnesses) as are specified in the order;

- (e) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the trade dispute.

Trade dispute procedure.

16. (1) Subject to this section, if any trade dispute exists or is apprehended in any industry or section of any industry, that dispute, if not otherwise determined, may be reported to the Minister by - 10

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

- (b) an organisation of employers, where the dispute is between the employers and workers in the employment of those employers; 20

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

- (d) a trade union, on behalf of workers who are parties to the dispute and are members of that trade union, 30

and the Minister shall certify receipt of such report.

(2) The Minister shall consider any dispute so reported to him as aforesaid and, if in his opinion suitable means for settling the dispute already exist by virtue of the provisions of any agreement to which organisations representative of employers and workers respectively are parties, he shall refer the matter for settlement within two days from the date of such report in 40

accordance with those provisions; so however, that where a matter has been referred for settlement in accordance with the provisions of this section and there is a failure to reach a settlement within seven days of such referral, the parties to whom the trade dispute was referred shall inform the Minister of such failure and the Minister may cancel the reference and may -

- 10 (a) take any steps which seem to him expedient to promote a settlement of the dispute; or
- (b) refer the dispute to the Court for settlement.

(3) Where, in his opinion, no such suitable means of settlement exists as are mentioned in subsection (2), the Minister may:-

- 20 (a) take any steps which seem to him expedient to promote a settlement of the dispute;
- (b) refer the dispute to the Court for settlement.

30 (4) Where steps to promote a settlement of the dispute have been taken by the Minister under subsection (2) or subsection (3) (otherwise than by means of a reference to the Court) and those steps have not resulted in a settlement, the Minister shall refer the dispute for settlement to the Court and shall do so within twenty-one days from the date on which the trade dispute was first reported to him.

(5) Where steps to promote a settlement have been taken by the Minister under subsection (2) or subsection (3) (otherwise than a reference to the Court) and those steps have resulted in a settlement, the parties shall inform the Minister in writing of the terms of the settlement.

40 (6) On the receipt of the information referred to in subsection (5), the Minister

shall consider the terms of the settlement and shall refer such settlement to the Court for confirmation with such recommendations as he may think necessary.

(7) The Court shall, on such referral, deal with such settlement in the same manner as if it were an industrial agreement to which the provisions of Part IV apply; and such settlement, when confirmed by the Court, shall have the same effect as an industrial agreement registered by the Court. 10

(8) Any settlement effected under this section shall be binding on the employers and workers to whom the settlement relates and, as from the date of such settlement or as from such date as may be specified therein not being earlier than the date on which the dispute or question to which the settlement relates first arose, it shall be an implied term of the contract between such employers and such workers that the rate of wages to be paid and the conditions or employment to be observed under the contract shall be in accordance with such settlement until varied by a subsequent agreement. 20

Notice of agreement to be given to Minister.

19. (1) A trade union or other organisation or employer that proposes to enter an industrial agreement shall give thirty days notice in writing of their intention so to do to the Minister and shall set out in such notice particulars of the several matters and things on which agreement is to be sought. 30

(2) On the receipt of a notice under subsection (1), if in his opinion the public interest so requires, the Minister may cause to be prepared a statement based on the principles mentioned in subsection (2) of section 9 and shall forward copies of such statement to each of the parties to the proposed agreement.

Lockouts and strikes.

34. (1) An employer shall not declare or take part in a lockout and a worker shall not take part in a strike in connection with any trade dispute unless - 40

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

(2) An employer who declares or takes part in a lockout in contravention of subsection (1) is guilty of an offence and liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for three years or to both such fine or such imprisonment.

30 (3) Any trade union or organisation which calls a strike in contravention of subsection (1) shall be guilty of an offence and liable on summary conviction to a fine of ten thousand dollars or to imprisonment for two years or to both such fine and such imprisonment, and the court shall, in the case of a trade union, notwithstanding the provisions of section 21 of the Trade Unions Ordinance, cancel the

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registration of such trade union.

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

- 40 (a) if he is a member of the Executive of a trade union or other organisation, liable on summary

conviction to a fine of two thousand five hundred dollars or to imprisonment for twelve months or to both such fine and imprisonment;

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

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

(6) A prosecution for any contravention of any provision of this section shall not be instituted save by or with the consent of the Attorney General.

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Strikes or lockouts prohibited during hearing etc.

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

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

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

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

36. (1) Subject to subsection (2), this Act applies to employers and workers engaged in essential services.

Strikes and lockouts in essential services prohibited.

(2) An employer or a worker carrying on or engaged in essential services shall not declare a lockout or take part in a strike in connection with any such essential service.

10 37. (3) An official of a trade union or other organisation who calls a strike in any of the services mentioned in paragraphs (a) to (e) of subsection (1) is guilty of an offence and is liable on summary conviction to a fine of ten thousand dollars or imprisonment for two years or to both such fine and such imprisonment and the court shall in the case of a trade union, if it is satisfied that such strike was authorised by the Executive of such trade union, notwithstanding the provisions of section 21 of the Trade Unions Ordinance, cancel the registration of such trade union.

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Public Officers prohibited from striking.

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41. (1) Where any trade union, organisation or person bound by an order or award of the Court commits any breach of the order or award, that trade union, organisation or person shall be liable to such penalty as the Court shall have fixed for the breach thereof, and if no such penalty has been fixed, then to a penalty not exceeding such penalty as the Court could have fixed in relation thereto.

Imposition and recovery of penalties

30 (2) Penalties may be sued for and recovered summarily as a civil debt in any court of summary jurisdiction by the following persons:

(a) where the person guilty of the breach is an employer or an organisation of employers, by a trade union or organisation bound by the award or by a worker personally affected by the breach;

40 (b) where the person guilty of the breach is a trade union or other organisation or a worker, by the

employer or an organisation of employers;

(c) by the Registrar of the Court.

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

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Company or trade union guilty of an offence.

52. (1) Where the person guilty of an offence against this Act is a Company, every director, manager, secretary and other officer of the company shall be guilty of the like offence and shall be liable to the like punishment unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

(2) Where a trade union or other organisation is convicted of an offence against this Act, every member of the Executive shall be guilty of a like offence and liable to a like punishment unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

20

No. 26 of 1967

IN THE PRIVY COUNCIL

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

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

- and -

IN THE MATTER of the Application of
Learie Collymore and John Abraham
(Persons alleging that certain
Provisions of Sections 1, 2, 3,
4, 5 and 7 of the said
Constitution have been and are
being and are likely to be
contravened in relation to them
by Reason of the Enactment of
The Industrial Stabilisation Act,
1965) for Reasons in accordance
with Section 6 of the said
Constitution

B E T W E E N :

LEARIE COLLYMORE and JOHN ABRAHAM
Appellants

- and -

THE ATTORNEY GENERAL
Respondent

C A S E FOR THE RESPONDENT

CHARLES RUSSELL AND CO.,
37, Norfolk Street,
Strand, W.C.2.

Solicitors for the Respondent