the particular circumstances in which it finds itself in relation to the other unions, the management and the government. *Id.* at 286.

In the short-run the strength of the opposition unions, which are often communist-led, is not necessarily harmful to either economic growth or to democracy and political stability. The amount of production lost due to strikes in India is insignificant so that the economy is hardly affected (except, for example, by strikes in key industries such as iron and steel or the railways). *Id.* at 289.

See also Millen, B. H., *The Political Role of Labour in Developing Countries* (Brookings Institution, 1963).

D. TRADE UNIONS

The Trade Unions Act, 1926, recognizes the existence and protects the interests of a trade union. It deals with many aspects of the establishment and administration of a union. It does not, however, seek to ensure recognition of unions by employers or to define, prohibit and penalize unfair labour practices. Consequently, employers, especially the unscrupulous ones, all too frequently try to scuttle the unions formed by their workers by refusing to recognize them. The Trade Unions (Amendment) Act, 1947, passed to remedy these defects, was allowed to die because it was opposed by employers, both private and public.

The Act of 1926 provides for registration by trade unions.[1] Although such registration is voluntary, the statutory benefits, such as immunity from criminal conspiracy in trade disputes and from civil suits in certain cases, are made available to registered unions only.[2]

The object of registration, presumably, is to encourage the growth of permanent and stable unions. To register, a union must have an adequate written constitution, and must keep audited accounts. It must, to apply for registration, set forth in its rules, among other things, its objects and the purposes for which its general funds may be used.[3] A registered union obtains a corporate personality and also powers to contract, to take and hold property, and to sue and be sued.[4]

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1. See Chapter II of the Act.
2. See Sections 17 and 18.
3. Section 6.
4. Section 13.

Any seven members of a union can apply for registration. This facilitates the registration of unions formed by splinter groups. This may also permit proliferation of little unions, which will be entitled to all the legal rights, powers and privileges of the big ones. This is still the general rule in Indian labour relations. There is, however, one striking exception, the Bombay Industrial Relations Act, 1946. That Act, now substantially adopted for Maharashtra, Madhya Pradesh and Gujarat, gives special rights to the largest union.

The main object of a union is to better the working conditions of its members, the workers. To help enable a registered union to realize this object, its officers are authorized to represent workers in any dispute with their employers.[5]

An officer of a union skilled in negotiation and not dependent on the employer for his livelihood, is obviously in a better position than the worker or workers themselves to bargain with the employer effectively. In order that such bargaining be effective, the union must be reliable and self-reliant. In India, where the primary method of settlement of disputes is compulsory adjudication rather than collective bargaining, the conditions for the growth of such unions have not been very favourable.

From time to time a union wilfully interferes with the business of the employer—as, for example, when it leads a strike—causing it financial injury. Until 1906 such interference was held actionable in England; and until 1926, in India. In the *Quinn*[6] and *Taff Vale*[7] cases in England and in the *Buckingham and Carnatic Mills*[8] case in India the unions were held to be illegal conspiracies, and the employers were awarded damages. Dissatisfaction in England with the *Taff Vale* decision led to the Trade Disputes Act, 1906, which nullified that decision. That Act granted to the trade unions and officers and members thereof certain privileges and immunities. Some of these will be discussed in some detail in *Rookes* v. *Barnard,* below. The Indian Act of 1926, modelled to a great extent on the English Act of twenty years previous, immunizes

5. Section 36 of Industrial Disputes Act, 1947.

6. Quinn v. Leathem, [1901] A.C. 495.

7. Taff Vale Railway Co. v. Aml. Socy. of Railway Servants, [1901] A.C. 426.

8. Rustamji, *The Law of Industrial Disputes in India* 145 (1964). The suit was compromised.

registered unions and officers and members thereof from liability for acts done in furtherance of a dispute inducing a breach of contract of employment. It also grants similar immunity for acts of the agents of the union done without the knowledge or against the wishes of the union.[9] It also immunizes a registered union from the consequences of criminal conspiracy.[10]

ROHTAS INDUSTRIES STAFF UNION v. STATE OF BIHAR
Patna High Court, (1962) II L.L.J. 420

[Claiming non-payment of bonus and failure to carry out an award, two Unions of workers served strike notices on the Rohtas Industries Ltd. The Company has many units of production, namely, cement, paper, sugar, and so forth, and employs a large number of workers. The strike started on 3 September 1957, and ended on 3 October 1957, pursuant to an agreement to refer certain matters to arbitration under Section 10A* of the Industrial Disputes Act, 1947. The Government of Bihar duly published this agreement in the Bihar Gazette. It provided, among other things, for arbitration of the workers' claim for wages and salaries for the period of the strike, and for the employers' claim for compensation for loss of production. The arbitrators decided all the issues against the Unions, and held that the workers who had gone on strike should pay compensation to one Company Rs. 6,90,000 and to the other of Rs. 80,000.

The workers and their registered Unions obtained a rule from the High Court for certiorari to quash the award. The judgment of the Court, written by Sri Ramaswami, C. J., follows:]

I shall now consider the main argument, that the award of the arbitrators is illegal and *ultra vires* because they committed a mistake of law apparent on the face of the record. It was contended....that the arbitrators... [erred] in holding that the workers had committed the tort of conspiracy and were accordingly liable for paying compensation to the companies concerned. It was also submitted that the arbitrators had committed an error of law in holding that the workers were not protected

9. Section 18.

10. Section 17.

* This reads, in pertinent part, "where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may...refer the dispute to arbitration and the reference shall be to such person or persons...as may be specified in the arbitration agreement."

by the immunity granted under Sec. 18 of the Trade Unions Act... [and] that the award of the arbitrators so far as the question of compensation is concerned is vitiated by the error of law and must be quashed by grant of writ in the nature of certiorari under Art. 226 of the Constitution.

The law with regard to the tort of conspiracy is now well established. Conspiracy as a tort must arise from combination of two or more persons to do an act. It would be actionable if the real purpose of the combination is the inflicting of damage on A, as distinguished from serving the bona fide and legitimate interests of those who so combine and there is a resulting damage to A. In the leading case of *Sorrell* v. *Smith* (1925 A.C. 700) Lord Cave, L.C., remarked as follows:

> "I deduce as material for the decision of the present case two propositions of law which may be stated as follows:
>
> (1) A combination of two or more persons wilfully to injure a man in his trade is unlawful and, if it results in damage to him, is actionable.
>
> (2) If the real purpose of the combination is not to injure another, but to forward or defend the trade of those who enter into it, then no wrong is committed and no action will lie, although damage to another ensues.
>
> The difference between the two classes of cases is sometimes expressed by saying that in cases of the former class there is just cause or excuse for the action taken."

In a subsequent case, *Crofter Harris Tweed Company* v. *Veitch* (1942 A.E.L.R. 142) the House of Lords applied the principle of the *Mogul* case (1892 A.C. 25) to labour relations. It was observed by Viscount Simon, L. C., in this case as follows:

> "....the predominant object of the respondents in getting the embargo [stoppage of commerce] imposed was to benefit their trade union members by preventing undercutting and unregulated competition, and so helping to secure the economic stability of the island industry [industry of tweed cloth in the island of Lewis]. The result they aimed at achieving was to create a better basis for collective bargaining and thus directly to improve wage prospects. A combination with such an object is not unlawful, because the object is the legitimate promotion of the interests of the combiners...."

In the course of his judgment in the same case Lord Wright observed as follows:

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

In the case of a "mixed motive" or a "mixed purpose" for the conspiracy, the test is what is the dominant motive or the dominant purpose of conspiracy. The test to be applied in a case of this description is—was the dominant motive of the combiners to benefit the funds of the union or was the dominant motive to cause injury to the employer? The test is not what is the natural result to the employers of such combined action or what is the resulting damage to the employers, but what is in truth the object in the minds of the workmen when they acted as they did. It is well established that if there is more than one purpose actuating a combination, the liability must depend on ascertaining what is the predominant purpose. The matter is clearly put by Viscount Simon, L. C., in *Crofter Harris Tweed Company v. Veitch* [1942 A.E.L.R. 142] as follows:

> "The test is not what is the natural result to the plaints of such combined action, or what is the resulting damage which the defendants realize, or should realize will follow, but what is in truth the object in the minds of the combiners when they acted as they did. It is not consequence that matters, but purpose. The relevant conjunction is not, 'so that', but 'in order that'. Next, it is to be borne in mind that there may be cases where the combination has more than one 'object' or 'purpose'. The combiners may feel that they are killing two birds with one stone, and, even though their main purpose may be to protect their own legitimate interests notwithstanding that this involves damage to the plaintiffs, they may also find a further inducement to do what they are doing by feeling that it serves the plaintiffs right. The analysis of human impulses soon leads us into

> the quagmire of mixed motives, and, even if we avoid the word 'motive', there may be more than a single purpose or object. It is enough to say that, if there is more than one purpose actuating a combination, liability must depend on ascertaining the predominant purpose. If that predominant purpose is to damage another person and damage results, that is tortious conspiracy. If the predominant purpose is the lawful protection or promotion of any lawful interest of the combiners, it is not a tortious conspiracy, even though it causes damage to another person."

In the present case the arbitrators have failed to apply this principle in adjudicating the liability of the workers to pay compensation. It is conceded by the arbitrators that the workers commenced the strike because their demands for payment of bonus had not been complied with. It is also stated by the arbitrators in the award that the reason for the strike was the non-implementation of *Jeejeebhoy* award with regard to the wages of casual workmen and also non-implementation of the settlement dated 2 May 1957. But the arbitrators have said that the strike was resorted to by each of the unions "for ulterior objects of their own". The arbitrators have not found what were the "ulterior objects" for which the unions entered into a strike. Even assuming that there were "ulterior objects" impelling the unions to enter into a strike, it was the duty of the arbitrators to go into the question as to what was the dominant purpose of the strike and whether the dominant purpose was not promotion of the legitimate interests of the trade union for better wage conditions for the workers concerned. In failing to apply the principle of law laid down by the House of Lords in *Crofter Harris Tweed Company* v. *Veitch* (1942 A.E.L.R. 142) the arbitrators have misdirected themselves in law, and the award of compensation to the companies granted by the arbitrators must be quashed on this ground.

I shall then proceed to consider the argument of counsel for the petitioners that the arbitrators have committed an error of law in holding that the workers were not protected by Sec. 18(1) of the Trade Unions Act, which is to the following effect:

> "18(1) No suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any officer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the trade union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is interference with the trade, business or employment of some other person or with

> the right of some other person to dispose of his capital or of his labour as he wills."

In para 27(c) of the award the arbitrators have said that in their opinion the provisions regarding immunity under S. 18 are not attracted to the facts and circumstances of the present case where the strike was found illegal and not in furtherance of a trade dispute. It was further stated by the arbitrators that an illegal strike cannot in any event be regarded as one "in furtherance of a trade dispute." In my opinion the arbitrators misdirected themselves in law in holding that the workers cannot claim the immunity under S. 18 of the Trade Unions Act because the strike is illegal under S. 24(1) of the Industrial Disputes Act for the contravention of Ss. 23 (b) and 23 (c) of that Act. Section 23 is to the following effect:

> "23. No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer or any such workman shall declare a lockout....
>
> (*b*) during the pendency of proceedings before a labour court, tribunal or national tribunal and two months after the conclusions of such proceedings, or
>
> (*c*) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award."

Section 24(1) states as follows:

> "24(1)A strike or a lockout shall be illegal if—
> (i) it is commenced or declared in contravention of S. 22 or S. 23; or...."

Section 26(1) provides the penalty for illegal strikes and lockouts and is to the following effect:

> "26(1) Any workman who commences, continues or otherwise acts in furtherance of a strike, which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month or with a fine which may extend to fifty rupees or with both."

It is manifest that the question whether the strike was legal or illegal under S. 24(1) of the Industrial Disputes Act has no bearing on the question of immunity furnished by S. 18 of the Trade Unions Act. The view I have expressed is borne out by a comparison of the English law on this point.

Section 4 of the Trade Disputes Act, 1906, provides that no action for a tort of any kind shall lie against a trade union so as to charge the union funds. It is also provided by S. 3 of that Act that:

> "An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person, to dispose of his capital or his labour as he will."

Section 5(3) defines the expression "trade dispute" as

> "any dispute between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment or with the conditions of labour, of any person";

and the expression "workmen" means

> "All persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises."

With regard to the interpretation of S. 3 of the Trade Disputes Act it was held by the Court of Appeal in *Dollimore* v *Williams and Jessow* (30 T.L.R. 432) that if there is an existing trade dispute the act need not be done solely or even honestly in contemplation or furtherance thereof to obtain the protection of that section. It was further held in *Fowler* v *Kibble* (1922) I C.D. 457 that an act is not deprived of the protection of S. 3 of the Trade Disputes Act because it is punishable under S. 7 of the Conspiracy and Protection of Property Act 1875. It is manifest in the present case that the striking workmen are not prevented from taking recourse to the protection of S. 18 of the Trade Unions Act mainly because the strike was illegal under S. 24(1) of the Industrial Disputes Act. It was still the duty of the arbitrators to find whether the strike was undertaken by the workmen in furtherance of trade disputes within the meaning of S. 18 of the Trade Unions Act. It was pointed out by the Government Advocates on behalf of the respondents that there was a finding of the arbitrators in Paras. 21 and 27(c) of the award that the strike was not resorted to in furtherance of a trade dispute. But this finding is vitiated in law because the arbitrators do not say upon what evidence this finding is based.... It is true that in para 21 of the award the arbitrators have not mentioned anywhere as to what these ulterior objects were. The

arbitrators have not also analysed the question as to whether the predominant purpose of the workmen in resorting to the strike was not furtherance of trade dispute. As I have already pointed out, the arbitrators have misdirected themselves in law in holding that the workmen cannot claim immunity under S. 18 of the Trade Unions Act because the strike is illegal under S. 24(1) of the Industrial Disputes Act. I consider that the award of the arbitrators regarding payment of compensation to the employers is vitiated by this fundamental mistake of law. [The Court quashed the award of the arbitrators.]

SAHITYA MANDIR PRESS v STATE OF UTTAR PRADESH

Labour Appellate Tribunal, Bombay, (1951) I L.L.J. 246

[The facts sufficiently appear from the excerpts which follow from the judgment of the Appellate Tribunal. The Company contended, *inter alia,* that the Union could not represent the employees because it was not recognised. The Labour Tribunal below had so held.]

The union was registered under the Trade Unions Act on the 27th of August, 1949, but it had not been recognised by the management. One of the disputes referred to in the Government order is as to the question whether the union was to be recognised by the employers or not. That was the subject matter of the issue No. 6. That issue was decided against the union [by the Labour Tribunal]. The position, therefore, is that the union is a registered union but is not a recognised union. . . .

Section 3 clause (d) of the U.P. Industrial Disputes Act empowers the Provincial Government, for the purposes *inter alia* of maintaining employment, to refer by a special order any industrial dispute for conciliation or adjudication, in the manner provided for in that order. The Provincial Government can, therefore, in the order of reference lay down the procedure to be followed by the adjudicator. In this case, the Government order directed the adjudicator to follow the procedure as laid down in the Industrial Disputes Act (XIV of 1947). The question of appearance or representation is, in our opinion, a matter pertaining to procedure. . . . Section 36 of the Industrial Disputes Act (XIV of 1947) provides for the representation of parties. Sub-section 1 says that—

> "A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by an officer of a registered trade union of which he is a member."

In our view it is not necessary that the trade union which is entitled to represent a workman in an industrial dispute should be at the same time

a union recognised by the management. All that is required is that the union should be a union registered under the Trade Unions Act and the workman concerned in the dispute should be a member thereof. These elements are present in this case.

[The Labour Appellate Tribunal reversed the award of the Tribunal.]

ROOKES v BARNARD*

(1964) 2 *Weekly L.R.* 269 (*H.L.*); (1964) *1 All E.R.* 367

[The appellant, Rookes, was a draughtsman in the design office at London of the British Overseas Airways Corporation. He resigned his membership in the Association of Engineering and Shipbuilding Draughtsmen, a registered trade union. By an agreement between the employers and employees in the Civil Air Transport Industries which formed part of each contract of employment between B.O.A.C. and members of A.E.S.D. it was provided that no strike or lockout should take place and any disputes should be referred to arbitration. The design office was the subject of a "closed-shop" agreement (requiring every worker to be a member of the union) and on Rookes' refusal to rejoin the union, all the workers in the design office decided, by resolution, to inform the corporation that if the plaintiff was not removed from the design office within three days, the other employees of the corporation, who were union members, would withdraw their own labour. Notice was served accordingly on the B.O.A.C. The Corporation, thereupon, suspended Rookes from his work, and two months later dismissed him, giving him a week's salary in lieu of notice.

In an action for damages brought by Rookes against union officials, the jury found that a conspiracy existed to have him dismissed by threatening the Corporation with strike action by union members if he were retained; and that the threats to strike had caused his dismissal. On the basis of a direction in the summing up that any deliberate illegality might be punished by exemplary damages, the jury awarded him damages of £ 7,500. Sachs, J. held that the threat to strike in breach of the agreement was an unlawful act constituting intimidation, and actionable as a tort as it had

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* Section 18 of our Trade Unions Act, 1926, is based, substantially, on Section 3 of the English Trade Disputes Act. In the preceding case, the *Rohtas* case, the judgment of Ramaswamy, C.J. on the immunity of the trade unions has been reported. In the Rookes case, also on the immunity of trade unions, the House of Lords handed down a decision different from that in the *Rohtas* case. To enable the student to make a comparative study of these decisions and their impact on the immunity of trade unions, the Editors have included in this book the *Rookes* case.

harmed the plaintiff. He also held that the defendants were not protected by Sections 1 and 3 of the Trade Disputes Act, 1906.

The Court of Appeal reversed, holding that although the tort of intimidation existed, it did not cover the case of a threat to break a contract.

The House of Lords, in turn, reversed the Court of Appeal and held (i) that the tort of intimidation existed, and that it comprehended threats of breaches of contract; and of interference with business (ii) that Sections 1 and 3 of the Trade Disputes Act afforded no defence. Excerpts from the judgment of Lord Reid, I All E.R. 375; 380, 2 W.L.R. 280-287 follow:]

It is now necessary to consider whether the respondents are absolved from liability by any of the provisions of the Trade Disputes Act, 1906. The sections on which the respondents rely are sections 1 and 3, which are as follows:

> "1. The following paragraph shall be added as a new paragraph after the first paragraph of section 3 of the Conspiracy and Protection of Property Act, 1875:—
>
> 'An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.... 3. An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills.' "

Before dealing with these sections I must say a word about what the law was, or was thought to be, in 1906. The older law bore very heavily on workmen who combined to seek concessions from employers, and Acts passed to amend it had been strictly construed. Matters were brought to a head by two decisions of this House, the *Taff Vale Railway Co.* v *Amalgamated Society of Railway Servants*[8] and *Quinn* v *Leathem*.[9] These were followed by a Royal Commission over which Lord Dunedin presided. The main objects of the Act of 1906 are clear enough, to protect trade union funds and to exclude conspiracy from being an element in future cases. The former does not arise in the present case.

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8. [1901] A.C. 426; 17 T.L.R. 698, H.L. (E).
9. [1901] A.C. 495; 17 T.L.R. 749, H.L. (I).

One of the difficulties facing Parliament was the uncertain state of the law with regard to liability for interfering with a person's trade or employment.... [T]here were at least two theories about what the law really was. One was that an individual was free to take any steps he chose so long as he used no means to achieve his end which were not unlawful for some reason other than that they interfered with some other person trade or employment; and that a combination had the same freedom, provided that their conduct was not dictated by a desire or intention to injure the plaintiff. The other theory was that any action intended or known to be likely to interfere with the trade or employment of another person was unlawful unless it could be justified in some way.... So it is reasonable to suppose that the intention was to draft the Act of 1906 so that it would be equally effective whichever theory ultimately prevailed.

The only difficulty about section I is to discover what is meant by "unless the act, if done without any such agreement or combination, would be actionable." In the present case, and I have no doubt in many others, the precise act complained of could not have been done without previous agreement. The act complained of in this case was presenting to B.O.A.C. a resolution of all the members of the union to which the respondents were parties. There was an argument that the section requires us to suppose that each respondent merely told B.O.A.C. that he would himself cease work if they did not get rid of the appellant. But that would have been an entirely different act and probably quite ineffective as a threat. The section cannot reasonably be held to mean that no action can be brought unless the precise act complained of could have been done by an individual without previous agreement or combination. In my view, the section requires us to find the nearest equivalent act which could have been so done and see whether it would be actionable. In the present case I think we must suppose that one of the respondents had said to B.O.A.C.: "I am acting alone but I think I can and I intend to induce the men to break their contracts and strike if you do not get rid of Mr. Rookes." If the opinion which I have already expressed is right, that would have been actionable if B.O.A.C. had succumbed to that threat and got rid of the appellant in the way they did. So section I does not help the respondents.

Section 3 deals with two classes of acts done by individuals, and by virtue of section I, the immunity given by section 3 to individuals must also extend to combination or conspiracies. The classes of acts permitted (if done in contemplation or furtherance of a trade dispute) are, (1) inducing a breach of a contract of employment and (2) interfering with a person's trade, business or employment or right to dispose of his capital

or labour as he wills. The facts in this case fall within the second class: If B.O.A.C. had not safeguarded themselves by giving notice to the appellant but had dismissed him summarily, the case would have come within the first class.

In considering the proper construction of this section I think it makes for clarity to take the first class first. The first class of acts are those within the principle in *Lumley* v. *Gye*,[10] and there can be no doubt that if no more than mere persuasion is used to induce a breach of contract, this section ousts the principle in *Lumley* v. *Gye*.[10] But suppose that the defendant had to go further than mere persuasion and told deliberate lies or used intimidation to induce the breach of contract—is he then still protected by section 3? Section 3 provides that the act complained of shall not be "actionable on the ground only" that it induces a breach of contract. That is a very difficult phrase to construe. An act which induces one party to a contract to break it is never actionable at the instance of the other party to the contract merely on that ground. In addition, the plaintiff must at least allege and prove that the defendant intended to cause him loss, or at least knew that his intervention would cause him loss, and that he has suffered loss. In this context it appears to me that "actionable on the ground only" can only have one or other of two meanings. It could mean shall not be actionable if the plaintiff cannot succeed in his action without alleging and proving inducement of breach of contract. Or it could mean shall not be actionable if the act done by the defendant is only unlawful or actionable because, or "on the ground" that, it induces the breach of contract. These two meanings lead to entirely different results. Whether the weapon used to induce the third party to break his contract with the plaintiff be mere persuasion or an extreme form of deceit, slander or intimidation, the plaintiff cannot succeed without proving that it caused or induced the breach of his contract. So if the first meaning be the right one, this section gives a general immunity or licence however illegal the means used to induce the breach of contract. That was not and could not be denied by the respondents' counsel. But, on the other hand, if the second meaning is correct, then the immunity or licence only applies so long as the defendant has not used any unlawful means to induce the breach. If the defendant had used slander or intimidation which are in themselves tortious, the plaintiff would sue on that ground, although he would still have to prove the damage resulting from his dismissal.

It was argued for the respondents that Parliament must have intended to extend immunity to all ordinary methods of inducing breach of contract

10. 2 E. & B. 216.

used in strikes or other trade disputes, and that the use of methods such as these respondents used were commonplace. But it was not suggested that the use of deceit, slander or more extreme methods of intimidation were or are in general use, and it was hardly suggested that Parliament must be supposed to have intended to license them. And I cannot find any general indication of intention favourable to the respondents in other sections of the Act. Section 2 licenses picketing merely for the purpose of peacefully persuading, so there is no extensive licence there. Section 4 does give general immunity to trade unions, as distinct from their members. But there the language is very different: "(1) An action against a trade union... in respect of any tortious act... shall not be entertained by any court." The protection of individual members is left to section 3 itself without any very clear guidance either from the nature of the mischief which Parliament had to remedy by the Act or from other sections of the Act....

I would hold that what I have called the second meaning of this part of section 3 is the right one that it does not protect a person who induces a breach of contract by tortious means.... The words "on the ground only" are clearly intended to limit the scope of the section, and if the first meaning for which the respondents contend were right, there would be hardly any limit to its scope. It would give immunity in almost every case of inducing a breach of contract that seems likely to arise in connection with a strike or threatened strike. Section 4 makes it quite clear that there is complete immunity for the trade union itself, and I cannot believe that the very guarded language of section 3 would have been used if it had been intended to give in addition almost complete immunity to all individuals acting in contemplation or furtherance of a trade dispute.

I have dealt at some length with the interpretation of the first part of section 3 because I have come to think that it throws a great deal of light on the second part. The second part is much more difficult to construe. I must admit that on a consideration of the second part by itself I was inclined to think that it was applicable to the present case. If the second part of the section had to be construed in light of the law as we now know it to be and without reference to the first part I would still be inclined to construe it in the way for which the respondents contend. But I do not think that it is proper to approach the problem in that way. In construing an Act of Parliament we are attempting to find the intention of Parliament. We must find that intention from the words which Parliament has used but these words must be construed in the light of the facts known to Parliament when the Act was passed. One assumes that Parliament knows

the law, but if the law is notoriously uncertain we must not attribute to Parliament prescience of what the law will ultimately be held to be. In 1906 the law with regard to lawful and unlawful interference with a person's trade, business or employment was quite uncertain....

In 1906... there were three classes of inducement which Parliament had to consider, (i) inducement accompanied by violence or threats, (ii) inducement involving a breach of contract, and(iii) mere inducement alone. As regards (i) and (ii) the law was thought to be clear, as regards (iii) it was not. Section 3 is silent as to (i), so one might think that it leaves the existing liability unaltered. It deals with (ii) and (iii). I have stated my opinion as to how it deals with (ii); it confers immunity, provided that there is no further element of illegality, such as intimidation. The question is how it deals with (iii). Does it there go farther and confer immunity even where there is intimidation? The general plan of the section appears to be to treat (ii) and (iii) in precisely the same way, and it would seem a strange result if the liability of the present respondents depended on the method which B.O.A.C. adopted in acceding to their demands that the appellant should be removed from the design office within a few days. If they had summarily dismissed him the case would have fallen under head (ii), and the respondents would have been liable. But can it be said that the fact that B.O.A.C. chose only to suspend him and then give him notice, which puts the case within head (iii), makes all the difference and saves the respondents from any liability to him? That may be the necessary result of the way in which the section is drafted, but it could hardly have been the intention of Parliament.

I must now return to what Lord Loreburn said in *Conway* v. *Wade*.[18] It is true that all this was obiter as regards section 3, because it was held that there was no trade dispute. Until the case reached this House there were only two issues—whether the jury's findings could be supported, and what was meant by "in contemplation or furtherance of a trade dispute." Wade had acted as a mischief-maker in order to injure the plaintiff from unworthy motives (*per* Lord Loreburn)[19] by procuring his dismissal. He had threatened that he would call out the other men when he had neither the power nor the right to do that, and the employers gave way to this deceitful threat. It was argued for the first time in this House that, apart from the statute, Wade was guilty of no actionable wrong. This House had no difficulty in holding that he was, and they held, reversing the Court

18. [1909] A.C. 506.

19. *Ibid*. 509.

of Appeal, that he had not acted "in contemplation or furtherance of a trade dispute." So Conway won his appeal, Lord Loreburn, after quoting section 3, said:[20]

"Let me see how this alters the pre-existing law. It is clear that, if there be threats or violence, this section gives no protection, for then there is some other ground of action besides the ground that 'it induces some other person to break a 'contract', and so forth. So far there is no change. If the inducement be to break a contract without threat or violence, then this is no longer actionable, provided always that it was done "in contemplation or furtherance of a trade dispute'. What is the meaning of these words I will consider presently. In this respect there is a change. If there be no threat or violence, and no breach of contract, and yet there is 'an interference with the trade, business, or employment of some other 'person, or with the right of some other person to dispose of his capital or his labour as he wills' there again there is perhaps a change. It is not to be actionable, provided that it was done 'in contemplation or furtherance of a trade dispute'. So there is no longer any question in such cases, whether there was 'sufficient justification' or not. The condition contained in these words as to trade dispute is made sufficient."

Lord Loreburn had no doubt that section 3 affords no protection if there are threats or violence. If a threat to break a contract amounts to unlawful intimidation, that covers the present case, for he draws no distinction between the two classes of acts covered by section 3. His opinion was obiter and he may have been wrong, but Lord Macnaghten and Lord Gorell concurred with him and I find no suggestion in other speeches to the contrary. It can be argued that the reason which he gave is wrong in part. The argument is that, although he may have been right in saying that where there are threats or violence, there is some other ground of action when the act complained of is inducing a breach of contract, he was wrong when the act complained of is mere interference with the plaintiff's trade, business or employment.

But Parliament had to provide for the possibility that mere interference if no legal justification were proved, would be held to be a tort, and I think that what Parliament did in enacting the second part of section 3 was to put in a provision which would be necessary to achieve their object if the law should go one way but unnecessary if it went the other way. So I would hold that section 3 means that if mere interference is or can

20. *Ibid*. 511-512.

be a tort then there shall be no liability, where a trade dispute is involved, "on the ground only" of that interference.

If that is right then the protection given by section 3 is no wider in scope as regards acts within the second half than it is with regard to acts within the first half. Parliament might have enacted that the protection given by section 3 shall only apply so long as no illegal means such as intimidation are used to achieve the breach of contract or interference with trade, business or employment, or Parliament might have enacted that the protection shall extend to all cases, no matter how illegal may have been the means employed. But to draw a distinction and restrict protection of inducement of breach of contract to cases where no illegal means are employed, but extend protection of interference to all cases no matter how unlawful the means employed is something that I cannot think Parliament could have intended and therefore a construction of the section which I would only accept if its words are incapable of any other.

In my judgment, it is clear that section 3 does not protect inducement of breach of contract where that is brought about by intimidation or other illegal means and the section must be given a similar construction with regard to interference with trade, business or employment. So, in my opinion the section does not apply to this case because the interference here was brought about by unlawful intimidation. I would therefore allow this appeal.

QUESTIONS

1. At All E.R. 373; 2 W.L.R. 277 Lord Reid said, "This was not a case of the respondents merely informing B.O.A.C. that the men would strike if their terms were not accepted; no questions were put to the jury suggesting any defence based on that ground."

At All E.R. 372; 2 W.L.R. 276 the following question to the jury appears, "Was there a conspiracy to threaten strike action by the members of A.E.S.D. against B.O.A.C. to secure the withdrawal of the plaintiff from the Design Office?" Answer: "There was." [and each of the three respondents was a party.]

Is the difference between the two passages a substantial difference? or a verbal difference? or both?

2. Under Section 3 of the British Trade Disputes Act, 1966, were the acts of intimidation by the respondents, concededly done to further a trade dispute about "closed-shop", actionable by plaintiff on any other

ground than those acts interfered with his business or his right to dispose of his labour as he willed? If so, on what other ground?

3. Comment on the following paragraph.

This decision [*Rohtak Industries Staff Union* v. *Bihar,* above] was more realistic than the decision in *Rookes* v. *Barnard* at least on two grounds. *First,* the court refused to hold workers liable for conspiracy because the arbitrators had not investigated its ulterior object; the English judges on the other hand held union officials liable without investigating the cause of Rookes' quarrel with them, and the reasons for his resignation from the union membership and for his refusal to rejoin the union. *Secondly,* the Indian judge more broadly interpreted the statutory immunities for union members than his English counterparts, who chose to ignore the sociological attitude to labour law by narrowly interpreting similar statutory immunities."

[Z. M. S. Siddiqi, *Legalism and Trade Union Immunities,* J.I.L.I. 233 (1966).]

MEWAR TEXTILE MILLS v MILL MAZDOOR SANGH

Labour Appellate Tribunal, Bombay, (1954) I L.L.J. 47

[A dispute arose between the mill and its employee, Jorawar Mal, who had received a disciplinary suspension. This dispute was referred to the industrial tribunal for Rajasthan for adjudication. The employee was represented by Mill Mazdoor Sangh, Bhilwara, which is affiliated to INTUC. The issue was whether the suspension of Jorawar Mal was justified, and whether, if not, he should be reinstated. The Tribunal's award was that the suspension was not justified, and that the mill should reinstate him and pay him back wages and allowances. The mill appealed to the Labour Appellate Tribunal of India from this award, impleading Mill Mazdoor Sangh as the sole respondent. While the appeal was pending, however, Mill Mazdoor Sangh wrote to the Tribunal that they did not want to contest the appeal, and that the order of the Industrial Tribunal might be set aside and the appeal accepted. This was pursuant to an agreement reached by INTUC and the mill setting all disputes outstanding. Jorawar Mal was given an opportunity to be heard by the Appellate Tribunal. He appeared through Shri Buch.]

Shri Buch submitted that the compromise between the parties would not be binding on his client. In answer to a question from the Bench Shri Buch admitted that at the time of the agreement, namely, 5 October,

1952, the employee was a member of the Mill Mazdoor Sangh. It was stated before us by the company that the employee was still a member of the Sangh but on behalf of the employee it was represented that he had sent in his resignation some time in November 1952. We have no materials before us with regard to this matter on which the parties are not agreed. Be that as it may, the employee is bound by the terms of the agreement, dated 5 October, 1952, between the mills and the Indian National Trade Union Congress and the resolution of the Mill Mazdoor Sangh in November 1952 implementing that agreement. Shri Buch did not admit the agreement and wanted to suggest that even if there was an agreement, it must have been brought about by some undue influence. There are absolutely no materials placed before us by his client to justify his contentions. The genuineness of the agreement is unquestionable and there is no evidence of any kind to vitiate the agreement on grounds of fraud or undue influence. The employee was not able to produce any evidence before us to support these allegations.... As no evidence has been let in before us challenging the validity of the agreement and its binding character, we must hold that the employee is bound by the acts of the Mill Mazdoor Sangh. It is true that the award in favour of the employee was much earlier than the agreement and to some extent the terms of this agreement materially take away the benefits which the employee had obtained under the award.... Taken as a whole, the agreement is a perfectly *bona fide* one and protected the interests of the several employees, though with respect to some of them some concessions have been made and some advantages secured had to be surrendered.... We are satisfied that as a result of this *bona fide* compromise, this appeal has to be allowed and the award of the industrial tribunal set aside....

VISHWAKARMA v INDUSTRIAL TRIBUNAL
Supreme Court, 1961 I L.L.J. 504

[An industrial dispute, raised over the dismissal of the appellant worker, by his Union, was referred with a number of other disputes to the Industrial Tribunal, Bihar on 29 April, 1955. After getting the proceedings adjourned from time to time in view of a compromise that was likely to be reached, the parties, that is, the Management and the Union, finally filed a joint petition of compromise settling all the disputes out of court. Earlier requests of the appellant worker to be allowed to present his case himself or, through co-workers of his own choosing, instead of being represented by the Union's secretary, Fateh Singh, were turned down by the Tribunal, which made an award in the terms of the compromise. The appellant sought a writ from the Patna High Court to quash this award, but

his application was dismissed summarily. He then appealed to the Supreme Court, by special leave, from the order of the High Court. The judgment of the Court, delivered by Das Gupta, J., follows:]

On behalf of the appellant it is argued that the tribunal committed a serious error in rejecting his application to be represented by a person of his own choice instead of Fateh Singh, the secretary of the union, and thereafter in making an award on the basis of reference. It has to be noticed that on the date the application was made before the High Court the award had already been made and so there could be no direction as prayed for on the tribunal not to make the award. If, however, the appellant's contention that the tribunal erred in rejecting his application for separate representation was sound, he would have been entitled to an order giving him proper relief on the question of representation as well as regarding the award that had been made.

The sole question that arises for our determination, therefore, is whether the appellant was entitled to separate representation in spite of the fact that the union which had espoused his cause was being represented by its secretary, Fateh Singh. The appellant's contention is that he was a party to the dispute in his own right and so was entitled to representation according to his own liking. The question whether when a dispute concerning an individual workman is taken up by the union, of which the workman is a member, as a matter affecting workmen in general and on that basis a reference is made under the Industrial Disputes Act the individual workman can claim to be heard independently of the union, is undoubtedly of some importance. The question of representation of workman who is a party to a dispute is dealt with by S.36 of the Industrial Disputes Act. That section provides that... such a workman is entitled to be represented in any proceeding under the Act, by

(a) an officer of a registered trade union of which he is a member,

(b) an officer of a federation of trade unions to which the trade union of which he is a member is affiliated, and

(c) where the workman concerned is not a member of any trade industry or by any other workman employed in that industry. union, by an officer of any trade union concerned with the

The appellant was the member of a trade union; and he was actually represented in the proceedings before the tribunal by an officer of that union, its secretary, Fateh Singh. The union, through this officer, filed a written statement on his behalf. Up to 12 January 1957 when the

appellant filed his application for separate representation, this officer was in charge of the conduct of the proceedings on behalf of the appellant. Never before that date, the appellant... raised any objection to this representation. The question is, whether, when thereafter he thought his interests were being sacrificed by his representative, he could claim to cancel that representation, and claim to be represented by somebody else. In deciding this question, we have on the one hand to remember the importance of collective bargaining in the settlement of industrial disputes, and, on the other hand, the principle that the party to a dispute should have a fair hearing. In assessing the requirements of this principle, it is necessary and proper to take note also of the fact that when an individual workman becomes a party to a dispute under the Industrial Disputes Act he is a party, not independently of the union which has espoused his cause.

It is now well-settled that a dispute between an individual workman and an employer cannot be an industrial dispute as defined in S. 2(k)* of the Industrial Disputes Act unless it is taken up by a union of workmen or by a considerable number of workmen. In *Central Provinces Transport Service Ltd.* v. *Raghunath Gopal Patwardhan* (1957) I L.L.J. 27) Mr. Justice Venkatarama Ayyar, speaking for the Court, pointed out after considering numerous decisions in this matter that the preponderance of judicial opinion was clearly in favour of the view that a dispute between an employer and a single employee cannot *per se* be an industrial dispute but it may become one if it is taken up by a union or a number of workmen....

This view which has been reaffirmed by the Court in several later decisions recognises the great importance in modern industrial life of collective bargaining between the workmen and the employers. It is well-known how before the days of collective bargaining labour was at a great disadvantage in obtaining reasonable terms for contracts of service from his employer. As trade unions developed in the country and collective bargaining became the rule, the employers found it necessary and convenient to deal with the representatives of workmen, instead of individual workmen, not only for the making or modification of contracts but in the matter of taking disciplinary action against one or more workmen and as regards all other disputes.

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* Section 2(k) has since been amended so as to include individual disputes regarding dismissals, etc. Industrial Disputes (Amendment) Act, 1965. For details see chapter on industrial disputes; also Appendix. *Eds.*

The necessary corollary to this is that the individual workman is at no stage a party to the industrial dispute independently of the union. The union or those workmen who have by their sponsoring turned the individual dispute into an industrial dispute, can, therefore, claim to have a say in the conduct of the proceedings before the tribunal.

It is not unreasonable to think that S.36 of the Industrial Disputes Act recognizes this position, by providing that the workman who is a party to a dispute shall be entitled to be represented by an officer of a registered trade union of which he is a member. While it will be unwise and indeed impossible to try to lay down a general rule in the matter, the ordinary rule should, in our opinion, be that such representation by an officer of the trade union should continue throughout the proceeding in the absence of exceptional circumstances which may justify the tribunal to permit other representation of the workman concerned. We are not satisfied that in the present case there were any such exceptional circumstances. It has been suggested that the union's secretary, Fateh Singh, himself had made the complaint against the appellant which resulted in the order of dismissal. It has to be observed, however, that in spite of everything, the union did take up this appellant's case against his dismissal as its own. At that time also, Fateh Singh was the secretary of the union. If the union had not taken up his cause, there would not have been any reference. In view of all the circumstances, we are of the opinion that it cannot be said that the tribunal committed any error in refusing the appellant's prayer for representation through representatives of his own choice in preference to Fateh Singh, the secretary of the union.

As a last resort, learned counsel for the appellant wanted to urge that the secretary of the union had no authority to enter into any compromise on behalf of the union. We find that no such plea was taken either in the appellant's application before the tribunal or in his application under Arts. 226 and 227 of the Constitution to the High Court. Whether in fact the secretary had any authority to compromise is a question of fact which cannot be allowed to be raised at this stage.

In the application before the High Court a statement was also made that the compromise was collusive and *mala fide*. The terms of the compromise of the dispute regarding the appellant's dismissal were that he would not get reemployment, but, by way of "humanitarian considerations, the company agreed, without prejudice, to pay an *ex gratia* amount of Rs. 1,000 (rupees one thousand) only" to him. There is no material on the record to justify a conclusion that this compromise was not entered in what was considered to be the best interests of the workman himself.

In our opinion, there is nothing that would justify us in interfering with the order of the High Court rejecting the appellant's application for a writ. The appeal is accordingly dismissed. There will be no order as to costs.

During the hearing, Mr. Chakravarthi, learned counsel for the company, made a statement on behalf of the company that, in addition to the sum of Rs. 1,000 which the company had agreed to pay to the appellant as a term of settlement, the company will pay a further sum of Rs. 500 (rupees five hundred) only *ex gratia* and without prejudice. We trust that this statement by the counsel will be honoured by the company.

GHATGE AND PATIL COMPANY EMPLOYEES' UNION v POWAR

Bombay High Court, (1966) *II L.L.J.* 251

[A dispute between the Union and the Company was referred to the Industrial Tribunal for adjudication At the hearing the Company filed an agreement dated 23 July 1963 signed by 90 workmen, and supplement to it dated 14 August 1963 signed by 14 other workmen. At that time the Company employed 124 employees in all. It, therefore, prayed that as the great majority of the workmen were parties to the agreement, an award should be made accordingly. The Union opposed this prayer. It contended that the agreement was with the employees individually and not with the Union and that the settlement was, therefore, opposed to the principles of collective bargaining. It also argued that the agreement was signed as a result of misrepresentation, coercion, and threats of discharge. It also objected to the terms of the agreement. The Tribunal held that the agreements were signed by workers voluntarily, and after considering the objections the Tribunal made its award in terms of the agreement except in regard to privilege leave and bonus. It awarded privilege leave in accordance with the provisions of the Shops and Establishments Act. In regard to bonus, the agreement provided for the payment of one-thirtieth of the total earnings for the years 1961-62 up to 1965-66. The Tribunal limited that period so as to end 31 July 1962. The Union challenged that award in the Bombay High Court. The judgment of the Court, delivered by Chainani, C.J., follows:]

Sri Sowani, who appears on behalf of the petitioners, has urged that the award is illegal as it is based on the agreement which had been arrived at with the employees individually, contrary to the principle of collective bargaining. We do not think that we can accept this argument. The award is not a consent award. It is an award made by the tribunal itself

after considering the terms of the agreement between respondent 2 (the Company) and the great majority of their workmen in the light of the objections raised by the union. The various clauses of the agreement and the objections raised by the union have been separately considered. The tribunal came to the conclusion that the agreement gave substantial benefits to the workmen and that it was fair. The tribunal has pointed out that as a result of the agreement the wage bill alone would increase by Rs. 48,000 per year, i.e., by about 35 per cent. Having regard to this fact and to the other benefits conferred by the agreement on the workmen, the tribunal was of the opinion that it was proper and fair to make the award in accordance with the terms of the agreement and to make it applicable to all the employees concerned. As I have pointed out above, the tribunal has modified the agreement in regard to two matters, privilege leave and bonus. As, therefore, the award has been made by the tribunal itself after applying its mind to the matter and after considering the contentions, which were raised before it, the award cannot be set aside, even if we were to accept Sri Sowani's argument that the agreement between the respondents and the 104 workmen had not taken place in the manner required by law....

The other objection, which has been raised by Sri Sowani, is in regard to the period for which the award shall remain in force. The tribunal has directed that the award shall remain in force up to 31 July 1967. This direction was given as the agreement provided that it shall remain in force up to 31 July 1967. Sri Sowani has referred us to S.19(3) of the Industrial Disputes Act, which provides that

> "An award shall, subject to the provisions of this section, remain in operation for the period of one year from the date on which the award becomes enforceable under S. 17A,"

and has contended that the tribunal had no jurisdiction to make the award for a period longer than one year. This argument of Sri Sowani seems to be correct. The proviso to S. 19(3) empowers Government to extend the period of operation of the award. Unless the period is so extended, the award can only remain in force for a period of one year. Sri Phadke has urged that even assuming that Sri Sowani is right on this point, we should not interfere as justice of the case does not call for our interference. He has relied on the decision, Raipur Manufacturing Company, Ltd. v. Nagrashna (1959—II L.L.J. 837) in which the Supreme Court observed that the Court would not go into the question of jurisdiction of the lower tribunal in an appeal under Art. 136 of the Constitution unless it was satisfied that the justice of any given case required it. Sri Phadke has

urged that as the great majority of workmen—about 90 per cent—were parties to the agreement which provided for the agreement remaining in force for a period of three years, justice does not require that we should interfere with this term of the award. There is some force in this argument of Sri Phadke, but having regard to Sub-Sec. (3) of S.19 of the Act, it seems to us that the tribunal could not have directed that the award should remain in operation for a period longer than one year. It is not necessary for us to decide in this application whether the parties cannot arrive at an agreement that a settlement between them shall remain in force for a period longer than one year. That question does not arise in the present case, because, as I have observed, the award must be regarded as an award made by the tribunal itself after considering the merits of the case and it is not a consent award. Such an award can only remain in operation for a period of one year.

In the result, therefore, we direct that Cl. IX of the award, which directs that it shall remain in force up to 31 July 1967, shall be deleted from the award. Subject to this modification, the award will stand. No order as to costs.

NOTES

1. Compare *J.I. Case Co.* v. *NLRB,* Supreme Court of the United States, 321 U.S. 332, 64 Sup. Ct. 576 (1944). In that case the Company offered each employee an individual contract of employment. The contracts were uniform and for one year. They were obtained without coercion or unfair labour practice. While these contracts were in effect, The National Labor Relations Board (which administered the Wagner Act—the federal labour-relations act) certified a Union as the exclusive bargaining representative of the employees, after an election, which the Union had won. The Union then asked the Company to bargain. The Company refused to deal with the Union on matters covered by individual contracts while those remained in effect, but offered to negotiate on other matters. It also offered to negotiate on all matters upon the expiration of the individual contracts. The Board ordered the Company to bargain as the Union requested. The Circuit Court of Appeals ordered enforcement of the Board's order. The Supreme Court took the case on certiorari and, on the merits, observed:

> "The very purpose of providing by statute [The Wagner Act] for the collective agreement is to supersede the terms of separate agreements of employees with terms which reflect the strength and bargaining power and serve the welfare of the group."

It found that the contention of the Company, that individual contracts warranted refusal to bargain during their duration, was properly overruled by the Board. The Court dismissed the Company's petition.

2. In *Girjashanker Kashiram v. Gujarat Spinning and Weaving Company, Ltd.*, Supreme Court, [1962—I L.L.J. 369] the representative Union and the Company entered into an agreement on payment of bonus. The Union also agreed not to demand compensation for discharge of workers. This settlement was reached in March 1955. In July 1956, 376 discharged workers claimed compensation from the Company. No settlement could be reached. The workers then filed an application before the Labour Court. But the Union contended before the Court that the application should be dismissed in view of the earlier compromise between the Union and the Company. The Labour Court accepted this contention and dismissed the application. The workers' appeal to the Industrial Court and their subsequent petition to the High Court were also rejected. Against the decision of the High Court the workers appealed to the Supreme Court. Wanchoo, J., of the Supreme Court, held that the Act* plainly intends that where a representative Union appears on behalf of a worker in any proceeding under the Act,* it alone can represent the employee and the employee cannot appear or act in such proceeding. The Court accordingly dismissed the appeal. This was followed in *Rane* v. *Municipal Corporation* (1966) I L.L.J. 589. In that case the Bombay High Court held that where the representative Union "alone could appear... and the petitioners [workers] could not appear after the union had appeared, the labour court had necessarily to transpose the union as the applicant...."

3. In *Chowdhury v. Mcleod and Co.*, (1956) I L.L.J. 183 the Labour Appellate Tribunal of India (at Calcutta) decided that where an individual workman has a right of his own (to plead his case), and a Union takes up his case, it acts in a representative capacity. The Tribunal observed that "when the workman concerned objects to its authority to come to a compromise for his want of consent... the tribunal... should satisfy itself as to whether the compromise was by consent of that party or not and if that compromise was arrived at without his knowledge and authority, he can avoid that compromise and submit his own case before the tribunal by avoiding the proposed settlement. Even according to labour laws in our opinion, a union which acts on behalf of a workman, cannot enter into a compromise against the express wish and consent of the contending party.... The settlement may be binding between the company and the

* The Bombay Industrial Relations Act, 1947.

union, but whether this agreement is enforceable against the party concerned, i.e., the workman concerned, is another matter."

4. Compare *Elgin, Joliet & Eastern Ry.* v. *Burley,* Supreme Court of the United States, 325 U.S. 711, 65 Sup. Ct. 1282 (1945). In that case ten employees claimed back pay, under their contract, over a period of years. The Grievance Committee of their Union handled their claims. The Committee worked out a compromise of their claims with the Company. Dissatisfied with the compromise, the ten took their claim to the Railroad Adjustment Board under the Railway Labor Act. But the Board denied their claim and accepted the settlement. The ten then filed a suit in the federal district court for contract violation. That court rendered summary judgment for the Company; but the Circuit Court of Appeals reversed. The appellate court held that the district court erred in not deciding whether the employees had authorized the Union to compromise their contract claim. The Supreme Court affirmed that decision by a five-to-four vote. Rutledge, J., for the majority, observed that the "collective bargaining power . . . covers changing the terms of an existing agreement as well as making one in the first place.

But it does not cover changing them with retroactive effects upon accrued rights or claims."

The Supreme Court, however, allowed a rehearing because of a storm of protests. Many labour organizations, and the Solicitor General of the United States, filed briefs amicus curiae opposing the holding. The Court reaffirmed its previous decision, 327 U.S. 661, 66 Sup. Ct. 721 (1946).

E. "TRIPARTISM"

From independence until 1954 when Mr. V. V. Giri resigned as Labour Minister, India's labour policy presented a rather schizophrenic appearance. The "Giri Approach", and all the official pronouncements, insisted that labour become self-reliant. The opponents quietly preferred that it rely upon the government. A new direction in the Central Government's national policy replaced Mr. Giri's struggle. This was to rely upon "tripartism"; this became the central theme in the so-called "Nanda period" that began in 1957.* The word means a reliance upon the advice of the three

* Mr. Gulzarilal Nanda was Labour Minister from 1954 to 1957. This sketch of tripartism relies heavily on VAN D. KENNEDY, UNIONS, EMPLOYERS, AND GOVERNMENT (1966) 49-60. It also owes much to Mr. Joshi, Deputy Labour Commissioner, Rajasthan.

parties to industrial relations and disputes: the unions, the employers, and the government. Under tripartism, these three do not decide anything, but they try to advise about everything. Their representatives sit together, in one kind of meeting or another, and strive to reach consensus; they study problems, and when they can agree they make recommendations. Of the three, the government is the most active, for although it decides nothing as one participant, it does take the initiative in calling management and labour together; and sometimes it cracks the whip over them a bit. And of course it in nowise surrenders—although it may deprecate—its over-riding powers to take decisions even without its two partners' consent.

Ten years before 1957 tripartism had been foreshadowed by the Truce Resolution 1947. Major difficulties that sprang from the war and from partition kept that Resolution ineffectual, but its ideas are important because of what happened later on.

That truce Resolution was adopted (by an Industries Conference) in December 1947. That had been a year in which strikes caused the loss of 16,562,666 man-days of work. The Resolution extolled friendly co-operation between labour and management, with a fair day's work for a fair day's wage, and urged the settlement of disputes without work stoppages. Capital was to receive its just reward, while consumers' interests were to be guarded by taxation. The statutory machinery was to be used for settling disputes, but tripartite studies should be made upon what constitute fair wages and working conditions; works committees should settle day-to-day disputes; and better workers' housing should be built at the shared expense of all three interests.

Tripartism flowered ten years later with the beginning of the Nanda period. Its chief instruments have been the annual Indian Labour Conferences, and the permanent Standing Labour Committee, both fully tripartite in structure.

These annual conferences had begun as early as 1940 and had slowly gained in importance. The meetings had, from time to time, advocated such proposals as, for example, workers' participation in management; workers' education; works committees; and minimum wage legislation. And a veritable multitude of others. There is no room here to do more than mention a very few of the very many causes which the various conferences, and the Committee, advocated.

The Fifteenth and Sixteenth Conferences, in 1957 and 1958, were the most momentous. They, with the interim help of the Sixteenth Stand-

ing Committee, adopted the Code of Discipline in Industry, 1958. This famous document—the keystone of the tripartite arch—underscored the rights and responsibilities of labour and management, generally and under all agreements, and the need to educate management personnel and workers about those rights and responsibilities. It pledged the parties to avoid strikes and lockouts without notice, and to eschew unilateral actions; and to rely on settlement by discussion, by voluntary arbitration, or by the law's machinery. It pledged them also to avoid coercion and victimisation; to avoid partial strikes and lockouts; to establish and follow grievance procedures; and to post information about the Code's provisions for all to read.

In addition, managements and unions each agreed to a list of detailed promises, designed to implement these more general undertakings, such, for example, as for management to agree not to increase work-loads without consent; to discipline any of its officers who should provoke into precipitate breaches of discipline; and to recognize the largest union whenever one represented 15 per cent of the workers in any establishment or 25 per cent of those in any industry in the area.* Unions agreed to abjure duress; rowdy demonstrations; union activities in working time; neglect of duty or injuries to company property; interference with normal work; and insubordination. They also agreed to comply with awards, and to take action against office-bearers and members for any violations of the spirit of the Code.

In 1957 and 1958, too, the Conferences and the Standing Labour Committee promulgated a model grievance machinery and procedure, providing for negotiations at several stages. They also promulgated a Code of Conduct, 1958, approved by the four great federations, to restrain improper competition by one union with another; to forbid coercion and dual unionism; to ban favouritism on account of religion or caste; and to require democratic procedures within the unions themselves.

Of all these important documents the Code of Discipline was the most important. Its importance lay not so much in its general acceptance and its broad coverage as in its continuing influence—sustained as this has been by some sincere efforts at implementation.

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* If more than one union thus qualified, management should recognize the largest. An area-industry union should yield to an establishment union in the handling of local disputes. Provision was made for verification of union memberships.

The Code's coverage is sweeping. It applies both to the public and to the private sectors (with the exceptions, noted in the Indian Labour Year Book 1964, 118-19, of the Ministry of Railways and the Ministry of Defence). As to its acceptance, the four major labour federations, INTUC, AITUC, HMS, and UTUC each acceded to it; so also did the Employers' Federation of India, the All India Organisation of Industrial Employers, and the All India Manufacturers' Organisation.

The Indian Labour Year Book 1964 says, at page 118,

> The 16th Session of the Standing Labour Committee also recommended the setting up of special machineries at the Centre as well as in the States to ensure proper implementation of labour awards, agreements and the Code of Discipline. At the Centre the machinery consists of an Implementation and Evaluation Division and a Tripartite Implementation and Evaluation Committee consisting of 4 representatives each of the Central Employers' and Workers' Organisation with the Union Labour Minister as Chairman.

The Year Book mentions the Code of Conduct (inter-union) and the Industrial Truce Resolution—probably the later one of 1962—as other accords which the Division is charged to enforce. It is also to try to nip industrial disputes in the bud, to fix responsibilities for major disputes, strikes, and lockouts, and to evaluate labour laws and policies, and labour awards. The state governments have set up similar units and similar committees for implementation.

Also under the Code of Discipline, screening committees have been established by the Central employers, and workers' organisations to eliminate frivolous appeals in industrial disputes. In 1963 and through June 1964, such screening by management organisations allowed 40 appeals to be taken out of 44 cases screened, and successfully discouraged 4; such screening by workers' organisations in that period allowed 18 appeals, out of 54 cases, but successfully discouraged 36.

There is also some machinery for screening appeals by undertakings in the public sector.

Efforts to promote settlement of cases pending in the Supreme Court or in the High Courts succeeded, during the period 1958-64, in 26 cases out of 58. (*Id.* at 119-20).

The Central Division received in 1964, 1710 complaints of breaches of the Code of Discipline and Truce Resolution. Of these, 168 were for

its information only. Nine per cent of the rest of the complaints were found to be not well founded; 37 per cent were adjusted or resulted in warnings; and 54 per cent were being investigated at the end of the year.

Although the Year Book says nothing about implementation of the Code of Discipline at the state levels, we are informed of work by some active tripartite committees. But although our informant was enthusiastic the extent and effectiveness of these efforts are not really known.

Consider against this background the following comments voicing friendly doubts:

> The Code of Discipline is the principal instrument and symbol of Indian labour relations policy as it has emerged from the reformulation given it during the Nanda Period.... As the Third Plan put it, 'a new approach was introduced to... give a more positive orientation to industrial relations based on moral rather than legal sanctions.' The question is: How effective are moral sanctions in preventing unfair labour practices? Although it would be hard to prove, it is likely that the Code has had some effect. The extended discussions and publicity that accompanied adoption of the Code and that have attended complaints and debates over its violation and enforcement ever since, have served to crystalize and define the concept of unfair practices and put them in an unfavourable light. When employer and union organizations pledged themselves to comply... most of them presumably acquired some sense of moral responsibility by the act. These influences have probably been given their greatest impact by the... Evaluation and Implementation machinery in the Central Labour Ministry and in some of the states. This machinery does not have power to prosecute and penalize violators... but it can investigate, make public disclosure and, in effect, give public reprimands and this must have some detering effect on unfair practices. However, is the effectiveness of the Code at all equal to the seriousness of the problems at which it is aimed? On the strength of our knowledge of the realities of individual and group behaviour we can be almost certain that it is not. Strong interests prevail over moral sanctions in governing human conduct if the sanctions are not supported by deeply held moral convictions.... Van D. Kennedy, Unions, Employers and Government 74 (1966).

Tripartism is an approach which stresses the identity of interests between capital and labour: their partnership. This ideal doubtless draws