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## NOTE

### TRADE UNIONS IN COMMONWEALTH CARIBBEAN COUNTRIES: THEIR DEVELOPMENT AND LEGAL STATUS

The basic concept of Caribbean labour law has been the acceptance of the common law principle that the relationship between a master and his servant or an employer and his employee is based upon the individual contract of employment. "Everything hinges upon this individual contract of employment"<sup>1</sup> which the parties enter into freely upon terms agreed between themselves. This assumes equality between the contracting parties but tends to ignore other social and economic considerations which may make this equality, and its underlying freedom, imaginary. The bargaining power of the employee vis-à-vis his employer is negligible. Thus, if the employer is to be met squarely on his own ground, the need for workmen to pool their bargaining power by presenting a united front becomes palpable.

The common law did not provide the legal guarantee for freedom of association since such "combinations" were, in most cases, considered to be illegal as being in restraint of trade. However, in Britain, as well as in Caribbean countries, the position has been altered by legislation, and the legal basis of the freedom to organise can be found in trade union legislation.<sup>2</sup>

The Jamaica and Trinidad trade union statutes provide that the purposes of any trade union "shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise."<sup>3</sup> Furthermore, the purposes of any trade union "shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust."<sup>4</sup>

In order to comprehend the significance of the above sections it is essential to briefly examine the doctrine of restraint of trade as it affects

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trade unions. The doctrine is a common law concept based upon the idea of free enterprise. It provides that a person cannot covenant in such a way as to restrict the right of another to carry out his trade or profession.

The doctrine has been used to pronounce most trade unions as illegal combinations. Thus in *Hornby v. Close*,<sup>5</sup> a society, which had as its main objects those of a trade union and the support of its members when on strike, was held to have an illegal purpose, restraining trade, not enforceable at law. A similar conclusion was reached in *Rigby v. Connol*.<sup>6</sup>

In *Swaine v. Wilson*,<sup>7</sup> however, it was shown that trade unions were not always illegal at common law. In that case Lord Esher, M.R., said:

I think, even where some of the rules of a society are in restraint of trade and as such illegal, if the general objects of the society are not illegal, the existence of those rules, though they would not be enforced, would not prevent the enforcement of rules in favour of members which are not in restraint of trade or otherwise illegal. Therefore, as the rule on which the plaintiff founds his action is not tainted with that vice, and the society is not illegal in its fundamental object, I think he can enforce that rule.<sup>8</sup>

The uncertainty created by some trade unions being pronounced illegal at common law, while others were not, was well described by Lord Macnaghten in these words:

A trade union is merely an unincorporated society of individuals. The designation does not of itself impart illegality. There have been many and probably there may be still more trade unions lawful in every point of view, and not depending for their legality or for their immunity on the Act of 1871. . . .<sup>9</sup>

Whereas some trade unions were unlawful at common law in the sense that their agreements could not be enforced, this did not imply that they were criminal. Although in *R. v. Bykerdike*<sup>10</sup> it was held that a combination of workers for the purpose of dictating to employers what workers they must employ was indictable, and Crompton, J. expressed a similar view in *Hilton v. Eckersley*,<sup>11</sup> the better and more consistent view seems to be that while the objects of an association may be unlawful, in the sense of being void in restraint of trade and contrary to public policy, they are not unlawful as being within the criminal law.<sup>12</sup> In *Swaine v. Wilson* Lindley L.J. declared:

The general proposition, that every society which has rules in restraint of trade is unlawful, i.e., criminal, and that its members are punishable at common law, was denied by the court in *R. v. Stainer* and cannot be supported. . . . Such societies are not necessarily indictable as nuisances or as conspiracies, and their rules although in restraint of trade are not necessarily unlawful in any criminal sense. Whether such rules can be enforced by civil legal proceedings is quite another matter, and depends mainly on the reasonableness of the rules. But even if some rules of a society cannot be enforced, it by no means follows that other rules of the same society cannot. . . .<sup>13</sup>

Having briefly stated the common law position operative in Caribbean countries prior to the enactment of trade union statutes, we may now investigate what changes the foregoing sections have brought in the law.

Section 3 of the Jamaica Trade Union Act and S. 5 (1) of the Trinidad Trade Unions Ordinance exempt members of trade unions from criminal prosecution, although, as is already seen, the common law did not regard members of a trade union to be criminally responsible for having rules in restraint of trade. It is believed that these sections simply repeat the common law position and are, therefore, merely declaratory of it. However, S. 4 of the Jamaica Trade Union Act and S. 5 (2) of the Trinidad Trade Unions Ordinance have also removed the civil disability of trade unions and, by doing so, have taken care of the uncertainty of the common law position as to when a trade union would or would not be illegal as being in restraint of trade.

The Legislatures, however, while prepared to legalise the activities of trade unions within certain limits, have not been prepared to make all the rules of trade unions or any agreements which trade unions might make with one another enforceable in the courts. Nor have they been prepared to give trade unions power to sue their members for subscriptions, or to give members of trade unions power to sue their unions for benefits or similar payments. Therefore, where a trade union has to rely on S. 5 (2) of the Trinidad Trade Unions Ordinance to enforce its contracts, it is provided by S. 6<sup>14</sup> that:

Nothing in this Ordinance shall enable any court to entertain any legal proceedings instituted with the object of directly enforcing or recovering damages for the breach of any agreement:

- (a) between members of a trade union as such concerning the conditions on which any members for the time being of the union

- shall or shall not sell their goods, transact business, employ, or be employed; or
- (b) for the payment by any person of any subscription or penalty to a trade union; or
  - (c) for the application of the funds of a trade union,
    - (i) to provide benefits to members; or
    - (ii) to furnish contributions to any employer or workman not a member of that union, in consideration of the employer or workman acting in conformity with the rules or resolutions of that union; or
    - (iii) to discharge any fine imposed upon any person by sentence of a court of justice; or
  - (d) made between one trade union and another;<sup>15</sup> or
  - (e) any bond to secure the performance of any of the abovementioned agreements.

Nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful.

If it were not for this section, a trade union could successfully sue a member who refused to go on strike when required by the rules of his trade union to do so, and an employers' trade union could successfully sue an employees' trade union, and vice versa, for any breach of an agreement between them.

The foregoing section is a reproduction of S. 4 of the British Trade Union Act, 1871, which has been the subject of litigation in United Kingdom courts. It is not aimed here to scrutinize these judgments in any detail.<sup>16</sup> It seems sufficient, for our purpose, to mention that the section has been subject to a restrictive interpretation such that there must be direct enforcement of his contractual rights as opposed to an indirect enforcement for the section to be pleaded. Consequently, the wording of the section does not prevent the court from entertaining an action of a member of a trade union who claims to have been wrongfully expelled for an alleged breach of the rules, because a declaration to that effect, or an injunction preventing his wrongful expulsion, is not a direct enforcement of his contractual right to benefits under the union rules.

It is to be pointed out, once again, that it is only if a trade union is illegal at common law, as being in restraint of trade, that the section is applicable. Where a trade union is not in restraint of trade at common law, it can enforce its agreements independently of the statutory provisions.<sup>17</sup> However, where a lawful union sues or is sued in its registered name, the capacity to sue or be sued is derived entirely from the registration provisions of the Ordinance. In such a situation, S. 6 should apply to prevent such an action at least in types of agreements specified in the section. Therefore, since all trade unions in Trinidad and Tobago, and all other Caribbean countries, are required to be registered, one of the effects of registration is to prevent direct enforcements of agreements specified in S. 6, irrespective of whether or not the trade union concerned is deemed lawful at common law.

The Caribbean legislatures, after having freed trade unions from the difficulties encountered under strict application of the common law doctrine of restraint of trade to their agreements, have proceeded to provide a system of registration of trade unions.

Both the Jamaica and Trinidad trade union statutes make it compulsory for every trade union to register. Under the Jamaica statute, upon the establishment of a trade union, the committee or management, or the trustees, or other directing authority, must make application for registration within thirty days after the date of establishment,<sup>18</sup> whereas under the Trinidad Ordinance any seven or more members of a trade union may, after receiving written permission from the Registrar, register the union within six months of such permission.<sup>19</sup> In the event of failure to comply with the statutory requirements, a fine may be imposed on summary conviction so long as the union remains unregistered.<sup>20</sup> A penalty is also imposed if any person, after registration of a trade union has been refused or cancelled, takes part in any meeting or proceedings of such a trade union, knowing that such union is not registered.<sup>21</sup>

An application for registration of a trade union, which is submitted to the Registrar, must be accompanied by prints of the rules and a list of titles and names of officers of the trade union.<sup>22</sup> On receipt of the application, the Registrar must register the union if he is satisfied that the trade union has complied with the registration regulations.<sup>23</sup> Where registration is compulsory, the grounds of refusal assume importance. The wider the grounds of refusal, the more severe the conditions which a trade union is asked to fulfill in order to be registered. Also, wide grounds for refusal of registration may give the Registrar appreciable

scope to interpret. It therefore becomes necessary to narrowly define the grounds. A common ground of refusal in Caribbean countries is that the objects of the union are unlawful or that the application does not meet the statutory requirements, e.g., the applicant union bears a name identical to that of an existing registered union, or so nearly resembles such name, as to be likely to deceive members of the public.<sup>24</sup> Where a person considers himself to be aggrieved by the refusal of the Registrar to register a combination as a trade union, he has a right of appeal to the Supreme Court.<sup>25</sup>

A certificate of registration, which the Registrar issues, unless proved to have been withdrawn or cancelled, is conclusive evidence that the regulations with respect to registry have been complied with and that the combination is a trade union.<sup>26</sup> However, it is not *per se* conclusive on the subject of the validity of the rules of the union, and the court is entitled to ignore the certification and inquire *ex proprio motu* whether any of the purposes of the union is unlawful.

The Registrar may withdraw the certificate of registration if any alteration is made to the constitution of the union whereby the principal objects cease to be in compliance with the statutory purposes. The certification of registration may also be withdrawn or cancelled by the Registrar in any of the following cases:

1. At the request of the union to be evidenced in such manner as the Registrar may from time to time direct;
2. On proof to his satisfaction that
  - (i) the certification of registration was obtained by fraud or mistake;
  - (ii) any of the union's purposes is illegal;
  - (iii) the union has wilfully (after due notice given to it) violated the provisions of the trade union statute in force;
  - (iv) the union has ceased to exist.<sup>27</sup>

However, two important safeguards are provided. First, the Registrar must give two months notice to the union concerned of his intention to withdraw or cancel the certificate of registration and must specify the grounds for so doing, except where the withdrawal or cancellation is at the request of the trade union, or the Registrar is satisfied that any of the union's purposes is unlawful. In the latter circumstance it is his duty to cancel the certificate of registration forthwith.<sup>28</sup> Secondly, after such

a withdrawal or cancellation, the trade union may appeal the ruling to the Supreme Court.<sup>29</sup> When the withdrawal or cancellation becomes effective, the union concerned ceases to enjoy, as such, the privileges of a registered trade union, but liabilities incurred while the union was registered may be enforced against it as if such withdrawal or cancelling had not taken place.<sup>30</sup>

Upon completion of registration, a trade union is recognised to exist under statutory protection and consequently enjoys certain privileges. Trade union officials and members are protected, by a clause similar to S. 1 of the British Trades Disputes Act of 1906, from prosecution for criminal conspiracy where the agreements entered into, are not for the commission of an offence.<sup>31</sup> However, the greatest immunity given to a trade union is stated in the following words:

An action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any Court.<sup>32</sup>

The foregoing provisions therefore exempt trade unions from an action in tort of any kind committed by themselves or on their behalf. Similarly, the statutes seek to grant protection to individual members as follows:

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.<sup>33</sup>

It may be observed that immunity is restricted to contracts of employment. Moreover, the English courts have interpreted similar provisions in the British Trade Disputes Act of 1906,<sup>34</sup> upon which the Caribbean statutory provisions are based, in such a way as to give little practical protection. Indubitably, this is the state of affairs after *Rookes v. Barnard*,<sup>35</sup> wherein the House of Lords held that threats to break a contract can amount to the tort of intimidation in much the same way as threats of violence, and that Ss. 1 and 3 of the Trade Disputes Acts of 1906, do not provide any protection to the individual union members in case of such intimidation.



In *Rookes*, the British Overseas Airways Corporation (B.O.A.C.) had entered into an agreement in 1949 with their draughtsmen's union, the Association of Engineering & Shipbuilding Draughtsmen. This agreement banned all strikes and lockouts and also provided that any dispute not settled by the parties should be referred to arbitration. The union also had an informal agreement with the company that all employees should be union members. The plaintiff, Douglas Rookes, was employed as a draughtsman in the design office at London Airport. He had been an officer of the A.E.S.D. but had resigned his membership as a result of a disagreement over union policy. Thereupon the union, anxious to preserve its 100% membership standing, passed a resolution stating that, if Mr. Rookes was not removed from the design office, all its members would strike. The company, notified of this resolution, suspended Rookes and later dismissed him, giving him a week's pay in lieu of notice. Rookes sued the defendant union officials for damages for conspiring to threaten the company with strike action and thus inducing the company to terminate its contract with him. In a special verdict on the facts, the jury found the defendants to be party to a conspiracy to threaten strike action to procure Mr. Rookes's discharge and awarded him £7,500 damages. Sachs J., the trial judge, held that the threats to strike in breach of the agreement were unlawful acts; that as such they were acts constituting actionable intimidation; that the acts harmed Rookes; and that the union officials were not protected by the Trade Disputes Act of 1906.<sup>36</sup> The Court of Appeal reversed this decision, holding that although some kinds of intimidation can be tortious, a mere threat to break one's own contract is not such a "wrongful act" as is necessary to constitute the tort.<sup>37</sup>

The House of Lords in turn reversed the decision of the Court of Appeal.<sup>38</sup> Their Lordships, verifying the existence of the tort of intimidation, held that it was committed by threatening the breach of one's own contract and, therefore, that the union officials had conspired to commit the tort of intimidation.

The House of Lords rejected a distinction, stressed by the Court of Appeal, between a threat to commit a tort and a threat to break a contract. Lord Reid said explicitly that "there is no technical reason requiring such a distinction between different kinds of threats," and that he saw no other ground for making any such distinction.<sup>39</sup> The House of Lords relied on two Irish cases<sup>40</sup> for the proposition that a threat to call a strike in breach of contract is an unlawful act. Only on the quantum of damages did their Lordships order a new trial.

Accordingly, the right to threaten a strike action which, if taken, would be in breach of the individual contracts of the strikers, has been severely confined. Professor Rideout has summed up the effect of *Rookes v. Barnard* on S.3 of the Trade Disputes Act of 1906, (on which the Caribbean statutory provisions are based) in the following words:

The effect of this decision is to make it clear that a third party injured by pressure on an employer, at least if the injury is intended, can sue without thought of this section (S.3 of the 1906 Act), since if he has a cause of action in intimidation or inducement of breach of contract, of necessity there will be sufficient extraneous unlawful action to negative the protection. Only where employees are induced to break their contracts with their own employer without any other unlawful element and without resulting in injury to third parties will the section be effective to prevent an action which would otherwise exist.<sup>41</sup>

With the enactment of the Trade Disputes Act of 1965 (U.K.), the effect of *Rookes v. Barnard* insofar as industrial conflicts are concerned has been nullified. Even the British courts, themselves, have shown the tendency, in subsequent labour cases, to narrow down the area of application of *Rookes v. Barnard*.<sup>42</sup> It is to be hoped that in the Caribbean, where *Rookes v. Barnard* is considered to be a binding authority,<sup>43</sup> necessary steps would be taken to neutralize the effect of that case.

We may now turn to limits imposed by the Caribbean Legislatures on the legitimate functions of a trade union. A trade union is defined in the Jamaica Trade Union Act as

. . . any combination whether temporary or permanent, the principal purposes of which are, under its constitution, the regulation of the relations between workmen<sup>44</sup> and masters, or between workmen and workmen, or between masters and masters whether such combination would or would not, if this law had not been enacted, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade:

Provided that nothing in this Act —

(a) shall affect —

- (i) any agreement between partners as to their own business;
- (ii) any agreement between an employer and those employed by him as to such employment;

- (iii) any agreement in consideration of the sale of goodwill of a business or an instruction in any profession, trade or handicraft;
- (b) shall preclude any trade union from providing benefits for its members; . . . .<sup>45</sup>

In the Trinidad and Tobago Trade Unions Ordinance a trade union is defined as any combination, whether temporary or permanent, the principal objects of which are:

1. the regulation of relations between
  - (a) workmen and masters; or
  - (b) between workmen and workmen; or
  - (c) between masters and masters; or
2. the imposing of restrictive conditions on the conduct of any trade or business.<sup>46</sup> A trade union may also include the principal object of providing benefits for its members.<sup>47</sup>

These objects are described in the Ordinance and known in law as the "statutory objects" of a trade union. Excluded from the above definitions is any agreement between an employer and his employees as to such employment, and any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft.

What is necessary in the foregoing definitions is that, in order to determine whether or not a combination is a trade union, regard is to be had to the objects of such a combination and not to the members who compose it. The test of a trade union, in the words of Lord Hanworth, "is its objects, not its personnel."<sup>48</sup> Therefore, the statutory definitions are wide enough to include trade associations, such as manufacturers' associations, and trade protection societies, which are not concerned with the conduct of industrial relations at all but have the exclusively commercial object of restricting competition, limiting output or maintaining fixed wholesale or retail prices.

The principal objects which a trade union may have are limited to one or more statutory objects. If none of the principal objects of a combination is, in fact, a statutory object, then such a combination will not come within the definition of a trade union. In order to find out what the

principal objects of a combination are, the court or the Registrar is not specifically restricted to the "object clause" of the rule book. The constitution must be studied as a whole.

There is nothing in the statutory definitions to suggest that objects of trade unions as specified therein are the only legitimate objects of a trade union. In addition to its principal objects, a trade union may have other objects, provided only that they are not unlawful. A trade union may, therefore, run a journal or a newspaper, or conduct an investment business, etc. The word "unlawful" in this context means unlawful for a trade union. It does not include objects which are classified as unlawful for the sole reason that they are in restraint of trade. If any object is unlawful the registration of the union is void and the Registrar would have power to cancel the registration.

At common law, a trade union is deemed to be an unincorporated association of individuals and does not have a separate existence from its individual members. The question arises whether, with the introduction of trade union legislation, the position has changed. Trade union statutes in the Caribbean do not contain any express provision with regard to the status of a trade union. However, in most reported trade union cases which have come before the Caribbean courts, trade unions have been assumed to have the capacity to sue and be sued in their registered names.<sup>49</sup> These cases quoted with approval and relied upon *Taff Vale Ry. Co. v. Amalgamated Soc. of Ry. Servants*<sup>50</sup> and *National Union of General & Municipal Workers v. Gillian*<sup>51</sup> to arrive at this conclusion.

Asserting the union's status in *Taff Vale*, wherein it was held that a trade union may be sued in its registered name, Lord Brampton stated:

I think that a legal entity was created under the Trade Union Act, 1871, by the registration of the society in its present name in the manner prescribed and that the legal entity so created, though not perhaps in the strict sense a corporation is, nevertheless, a newly created corporate body created by statute, distinct from the unincorporated trade union, consisting of many thousands of separate individuals, which no longer exists under any other name.<sup>52</sup>

In *National Union of General & Municipal Workers v. Gillian*, in which the English Court of Appeal affirmed the right of a trade union to sue in its registered name for damages for a tort committed against the union, Scott, L. J. stated:

Counsel for the first two appellants says, justly, that a registered trade union as defined by the Trade Union (Amendment) Act, 1876, S. 16, is neither a natural person, nor a corporation; and contends that, because it is neither of those, it can have no powers, and indeed no existence, except what may have been conferred in express terms by Parliament in the relevant statutes affecting registered trade unions. But that argument is fallacious. There is a *tertium quid*. A trade union has many activities; it has some existence; and it is something. The omission of Parliament to christen it with some new generic name is immaterial; for Parliament has absolute sovereignty and can make new legal creatures if it likes. It is able, for instance, to create a *persona juridica* not previously known to law if it so chooses; or to clothe an existing association of natural persons with what I may call co-operative personality, so as to give it the status of a *persona juridica*. In my view, that is just what it did in 1871. It expressly assumed the possession by every trade union, when duly registered of so many of the main attributes of judicial personality that I find any other inference of the intention of Parliament impossible.<sup>53</sup>

From this, it follows that a trade union is a legal entity which can bring certain actions.

It seems surprising that the Caribbean trade union cases<sup>54</sup> did not refer to the conflicting views of the Court of Appeal and the House of Lords concerning the status of a trade union in *Bonsor v. Musicians' Union*.<sup>55</sup> In *Bonsor's* case, in the Court of Appeal, Lord Evershed M.R. and Jenkin L.J., while admitting that Parliament has the right and power to create an entity not previously known to the law, declared that Parliament did not intend to confer a distinct legal status upon a registered trade union. But Denning L.J. did not agree with this view when he said that "a trade union is a legal entity with a personality in law comparable to that of a corporation. It is not, perhaps, an entire corporation, but it has many of the attributes of one . . . ."

In the House of Lords both Lords Morton and Porter were of the opinion that a trade union is a legal entity distinct from its individual members. In arriving at this conclusion, both of them relied substantially on the decision of the House of Lords in *Taff Vale Ry. Co. v. Amalgamated Soc. of Ry. Servants*.<sup>56</sup>

On the other hand, Lords MacDermott, Keith and Somervell took the view that a trade union is not a distinct *persona juridica*. Lord Mac-

Dermott was of the opinion that the Legislature, in providing for registration and in conferring privileges, intended "to bestow on registered trade unions some of the gifts and attributes of legal personality but had no intention of doing more and was, indeed, averse to the idea of going the whole length and making those unions new creatures, distinct in law from their membership."<sup>57</sup> This being his view of the statutory provisions, Lord MacDermott then scrutinized the various expressions of judicial opinion<sup>58</sup> which were relied upon as supporting the view that a trade union is a judicial person. In his opinion, insofar as they recognised that the Legislature has bestowed on a trade union some of the characteristics of a judicial person or established that trade unions as such may be sued, they still fall short of establishing the proposition of a full juristic personality.

The interpretation of Lord Keith's statement<sup>59</sup> is that, while a registered trade union is not a legal entity in the sense of possessing a full corporate status, it nevertheless has many of the characteristics which would normally be assigned to a full legal entity<sup>60</sup> and which do not relate to a voluntary association. Thus, a trade union assumes, in his words, "a collective responsibility for all members past, present and future, in respect of any cause of action for which it may be liable, irrespective of the date of the cause of action. On the other hand, the judgment creditor can look only to the funds of such a trade union to satisfy his debt and to the extent to which these may be augmented from time to time by contributions of members, whether new or old, they will still be available for the unsatisfied judgment creditor."<sup>61</sup> Accordingly, it is neither right nor wrong to name it an entity; and, whereas in legal theory it may not be an entity, in practice, with regard to the subject matter of a particular action, it may be treated as a legal entity.<sup>62</sup>

Caribbean trade union statutes have given the cloak of legality to trade unions, and the Caribbean courts have granted them a quasi-corporate status. However, it may be asked whether it is prudent to leave the legal status of trade unions to the whims of courts whose future attitude cannot be foretold. Owing to this uncertainty, if not for any other reason, it is submitted that trade union statutes in the Caribbean be amended to confer corporate status on trade unions, as was done by the Ghana (then Gold Coast) Trade Union Ordinance in 1941.<sup>63</sup>

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## NOTES

<sup>1</sup>Kahn-Freund, O., "Legal Framework in Flanders," A. and Clegg, H.A. (eds.) *The System of Industrial Relations in Great Britain* [1954], p. 45.

<sup>2</sup>Trade Union Act, 1871 (U.K.); Antigua Trade Unions Act, Laws of Antigua, 1962, Ch. 376; Bahamas Industrial Relations Act No. 14 of 1970; Barbados Trade Union Act No. 2 of 1964; British Honduras (Belize) Trade Unions Ordinance, Laws of British Honduras, 1958, Ch. 142; Dominica Trade Unions & Trade Disputes Ordinance, Laws of Dominica, 1961, Ch. 120; Grenada Trade Unions & Trade Disputes Ordinance, Laws of Grenada, 1958, Ch. 297; Guyana Trades Unions Act, Laws of Guyana, 1970, Cap. 98:03; Jamaica Trade Union Act, Laws of Jamaica, 1973, Vol. XVIII; Montserrat Trade Unions Act, Laws of Montserrat, 1962, Ch. 322; St. Christopher, Nevis & Anguilla Trade Unions Act, Laws of St. Christopher, Nevis & Anguilla, 1961, Ch. 353; St. Lucia Trade Unions & Trade Disputes Ordinance, Laws of St. Lucia, 1957, Ch. 102; St. Vincent Trade Unions & Trade Disputes Ordinance, Laws of St. Vincent, 1966, Vol. 4, Ch. 12; Trinidad & Tobago Trade Unions Ordinance, 1950, Ch. 22, No. 9 and Trade Disputes & Protection of Property Ordinance, 1950, Ch. 22, No. 11; Virgin Islands Trade Unions Act, Laws of Virgin Islands, 1961, Ch. 258.

Hereafter reference will be made only to countries followed by section numbers.

<sup>3</sup>Jamaica, S. 3; Trinidad, S. 5(1). See also Antigua, S. 4(1); Barbados, S. 4(1); Belize, S. 4(1); Dominica, S. 3; Grenada, S. 3; Guyana, S. 5(1); Montserrat, S. 4(1); St. Kitts, Nevis & Anguilla, S. 4(1); St. Lucia, S. 3; St. Vincent, S. 3; Virgin Islands, S. 4(1).

<sup>4</sup>Jamaica, S. 4; Trinidad, S. 5(2); See also Antigua, S. 4(2); Barbados, S. 4(2); Belize, S. 4(2); Dominica, S. 4; Grenada, S. 4; Guyana, S. 5(2); Montserrat, S. 4(2); St. Kitts, Nevis & Anguilla, S. 4(2); St. Lucia, S. 4; St. Vincent, S. 4; Virgin Islands, S. 4(2).

<sup>5</sup>[1867] L.R. 2 Q.B. 153.

<sup>6</sup>[1880] 14 Ch.D. 482.

<sup>7</sup>[1890] 24 Q.B.D. 252.

<sup>8</sup>*Ibid.*, at pp. 257-258. See also *Gozney v. Bristol and Trade Provident Society* [1909] 1 K.B. 901; *Osborne v. Amalgamated Society of Railway Servants* [1911] 1 Ch. 540; but contrast *Russell v. Amalgamated Society of Carpenters and Joiners*, [1912] A.C. 421.

<sup>9</sup>*Russell v. Amalgamated Society of Carpenters and Joiners* [1912] A.C. 421, at p. 429.

<sup>10</sup>[1832] 174 E.R. 61.

<sup>11</sup>[1855] 119 E.R. 781, at p. 784. However, the case itself was concerned with civil illegality and Crompton J.'s dictum was doubted by the Court of Appeal in *Mogul S.S. Co. v. McGregor Gow & Co.* [1889] 23 Q.B.D. 598, per Fry, L.J. at p. 627.

<sup>12</sup>See *Mitchel v. Reynolds* [1711] 1 P. Wms. 181; *Price v. Green* [1847] 16 M. & W. 346; *Herby v. Close* [1867] L.R. 2 Q.B. 153; *R. v. Stainer* [1870] 11 Cox. 483; Lord Campbell & Erle J. in *Hilton v. Eckersley* [1855] 119 E.R. 781; *Mogul S.S. Co. v. McGregor Gow & Co.* [1889] 23 Q.B.D. 598; and *Swaine v. Wilson* [1890] 24 Q.B.D. 252.

<sup>13</sup>[1890] 24 Q.B.D. 252, at p. 260.

<sup>14</sup>It may be noted that the trade union statutes of all Commonwealth Caribbean countries except Jamaica, Grenada, Dominica, Bahamas and St. Vincent contain similar provisions to those of section 6 of the Trinidad Trade Unions Ordinance.

<sup>15</sup>This clause (i.e. S.6(d) ) does not apply any more to collective agreements registered under the Trinidad & Tobago Industrial Relations Act, 1972, which are directly enforceable in the Industrial Court.

<sup>16</sup>Compare and contrast these cases: *Rigby v. Connol* [1880] 14 Ch. D. 482; *Amalgamated Society of Carpenters, Cabinet-Makers and Joiners v. Braithwaite* [1922] 2 A.C. 440; *Miller v. Amalgamated Engineering Union* [1938] 1 Ch. 669. See also *Faramus v. Film Artistes' Federation* [1963] 2 Q.B. 527 (C.A.) and [1964] A.C. 925 (H.L.).

<sup>17</sup>Kahn-Freund, O.: "The Illegality of a Trade Union", 7 M.L.R. 192 (1944).

<sup>18</sup>Jamaica, S. 6(1). See also Antigua, S. 13(1); Montserrat, S. 13(1); St. Kitts, Nevis & Anguilla, S. 13(1); Virgin Islands, S. 13(1).

<sup>19</sup>Trinidad, S. 10(2)(3); See also Barbados, S. 12(2); Belize, S. 8(2)(3); Dominica, S. 7; Grenada, S. 7; Guyana, S. 15; St. Lucia, S. 7; St. Vincent, S. 7.

<sup>20</sup>Jamaica, S. 6(1); Trinidad, S. 10(5). See also Antigua, S. 13(4); Barbados, S. 12(4); Belize, S. 8(5); Dominica, S. 8(2); Grenada, S. 8(2); Guyana, S. 11(2); Montserrat, S. 13(4); St. Kitts, Nevis & Anguilla, S. 13(4); St. Lucia, S. 8(2); St. Vincent, S. 9(2); Virgin Islands, S. 13(4).

<sup>21</sup>Jamaica Trade Union Act, S. 6(4).

<sup>22</sup>Jamaica, S. 13(a); Trinidad, S. 18(1)(a). See also Antigua, S. 14(a); Barbados, S. 21(a); Belize, S. 16(1)(a); Dominica, S. 9(1); Grenada, S. 9(a); Guyana, S. 24(a); Montserrat, S. 14(a); St. Kitts, Nevis & Anguilla, S. 14(a); St. Lucia, S. 9(i); St. Vincent, S. 10(1); Virgin Islands, S. 14(a).

<sup>23</sup>Jamaica, S. 13(b); Trinidad, S. 18(1)(b). See also Antigua, S. 14(b); Bahamas, S. 7(2); Barbados, S. 21(b); Belize, S. 16(1)(b); Dominica, S. 9(2); Grenada, S. 9(b); Guyana, S. 24(b); Montserrat, S. 14(b); St. Kitts, Nevis & Anguilla, S. 14(b); St. Lucia, S. 9(ii); St. Vincent, S. 10(2); Virgin Islands, S. 14(b).

<sup>24</sup>Jamaica, S. 13(c); Trinidad, S. 18(1)(c). See also Antigua, S. 14(c); Barbados, S. 21(c); Belize, S. 16(1)(c); Dominica, S. 9(3); Grenada, S. 9(d); Guyana, S. 24(c); Montserrat, S. 14(c); St. Kitts, Nevis & Anguilla, S. 14(c); St. Lucia, S. 9(iii); St. Vincent, S. 10(3); Virgin Islands, S. 14(c).

<sup>25</sup>Jamaica, S. 24; Trinidad, S. 18(1)(e). See also Antigua, S. 14(e); Barbados, S. 21(e); Belize, S. 16(1)(e); Dominica, S. 10(3); Grenada, S. 10(4); Guyana, S. 24(e); Montserrat, S. 14(e); St. Kitts, Nevis & Anguilla, S. 14(e); St. Lucia, S. 10(3); St. Vincent, S. 11(3); Virgin Islands, S. 14(e).

<sup>26</sup>Jamaica, S. 13(e); Trinidad, S. 18(1)(g). See also Antigua, S. 14(f); Bahamas, S. 12; Barbados, S. 21(f); Belize, S. 16(1)(g); Dominica, S. 9(4); Grenada, S. 9(e); Guyana, S. 24(g); Montserrat, S. 14(f); St. Kitts, Nevis & Anguilla, S. 14(f); St. Lucia, S. 9(iv); St. Vincent, S. 10(4); Virgin Islands, S. 14(f).

<sup>27</sup>Jamaica, S. 22; Trinidad, S. 21(1). See also Antigua, S. 15(1); Bahamas, S. 15(1); Barbados, S. 24(1); Belize, S. 19(1); Dominica, S. 11(1); Grenada, S. 11(1); Guyana, S. 27(1); Montserrat, S. 15(1); St. Kitts, Nevis & Anguilla, S. 15(1); St. Lucia, S. 11(1); St. Vincent, S. 12(1); Virgin Islands, S. 15(1).

<sup>28</sup>Jamaica, S. 22; Trinidad, S. 21(2). See also Antigua, S. 15(2); Bahamas, S. 15(2); Barbados, S. 24(2); Belize, S. 19(2); Dominica, S. 11(2); Grenada, S. 11(2); Guyana, S. 27(2); Montserrat, S. 15(2); St. Kitts, Nevis & Anguilla, S. 15(2); St. Lucia, S. 11(2); St. Vincent, S. 12(2); Virgin Islands, S. 15(2).

<sup>29</sup>Jamaica, S. 24; Trinidad, S. 18(1)(e). See also Antigua, S. 14(e); Bahamas, S. 13; Barbados, S. 21(e); Belize, S. 16(1)(e); Dominica, S. 11(3); Grenada, S.



11(3); Guyana, S. 27(5); Montserrat, S. 14(e); St. Kitts, Nevis & Anguilla, S. 14(e); St. Lucia, S. 11(3); St. Vincent, S. 12(3); Virgin Islands, S. 14(e).

<sup>30</sup>Jamaica, S. 22; Trinidad, S. 21(3). See also Antigua, S. 15(3); Barbados, S. 24(4); Belize, S. 19(3); Guyana, S. 27(3); Montserrat, S. 15(3); St. Kitts, Nevis & Anguilla, S. 15(3); Virgin Islands, S. 15(3).

<sup>31</sup>Jamaica Protection of Property Act, Cap. 314, S. 6; Trinidad Trade Disputes & Protection of Property Ordinance, S. 7(2). See also Antigua, S. 7; Barbados, S. 5; Belize, S. 32; Dominica, S. 19; Grenada, S. 19; Guyana, S. 8; Montserrat, S. 7; St. Kitts, Nevis & Anguilla, S. 7; St. Lucia, S. 20; St. Vincent, S. 29; Virgin Islands, S. 7.

<sup>32</sup>Jamaica, S. 35(1); Trinidad Trade Disputes & Protection of Property Ordinance, S. 6. See also Antigua, S. 6(1); Barbados, S. 7(1); Belize, S. 34(1); Dominica, S. 18(1); Grenada, S. 18(1); Guyana, S. 7(1); Montserrat, S. 6(1); St. Kitts, Nevis & Anguilla, S. 6(1); St. Lucia, S. 19(1); St. Vincent, S. 28(1); Virgin Islands, S. 6(1).

<sup>33</sup>Jamaica, S. 34; Trinidad Trade Disputes & Protection of Property Ordinance, S. 5. See also Antigua, S. 8; Barbados, S. 8; Belize, S. 33; Dominica, S. 20; Grenada, S. 20; Guyana, S. 9; Montserrat, S. 8; St. Kitts, Nevis & Anguilla, S. 8; St. Lucia, S. 21; St. Vincent, S. 30; Virgin Islands, S. 8.

<sup>34</sup>S. 3.

<sup>35</sup>[1964] 2 W.L.R. 269 (H.L.)

<sup>35</sup>*Rookes v. Barnard* [1961] 3 W.L.R. 438 (T.C.)

<sup>37</sup>[1962] 3 W.L.R. 260 (C.A.)

<sup>38</sup>[1964] 2 W.L.R. 269 (H.L.)

<sup>39</sup>*Ibid.*, at p. 280.

<sup>40</sup>*Cooper v. Millea* [1938] I.R. 749; *Riordan v. Butler* [1940] I.R. 347.

<sup>41</sup>Rideout, R. W.: "Trade Unions, Some Social and Legal Problems" in *Human Relations*, (1964) Vol. 17, No. 2, p. 184.

<sup>42</sup>For example see *Stratford (J. T.) & Son. Ltd. v. Lindley* [1965] A.C. 269; *Morgan v. Fry* [1968] 2 Q.B. 710.

<sup>43</sup>*Collymore & Abraham v. The Attorney-General* [1967] 12 W.I.R. 5, per Wooding C.J. at p. 15 and per Fraser J.A., at p. 42.

<sup>44</sup>For the purposes of trade union statutes the term "workmen" means "all persons employed in trade or industry, whether or not in employment of the employer with whom a trade dispute arises."

<sup>45</sup>Jamaica, S. 2. See also Antigua, S. 2; Barbados, S. 2(1); Belize, S. 2(1); Dominica, S. 2; Grenada, S. 2; Montserrat, S. 2; St. Kitts, Nevis & Anguilla, S. 2; St. Lucia, S. 2(1); St. Vincent, S. 2; Virgin Islands, S. 2.

<sup>46</sup>Trinidad, S. 2. See also Bahamas, S. 2(1); Guyana, S. 2.

<sup>47</sup>Jamaica Trade Union Act, S. 2; Trinidad Trade Unions Ordinance, S. 2.

<sup>48</sup>*Hardie & Lane Ltd. v. Chilton* [1928] 1 K.B. 663, at p. 697.

<sup>49</sup>For example see *Caesar v. The British Guiana Mine Workers' Union* [1959] 1 W.I.R. 232; *Collymore v. Attorney-General* [1967] 12 W.I.R. 5; *Transport and Industrial Workers' Union v. Fernandes* [1968] 13 W.I.R. 310.

<sup>50</sup>[1901] A.C. 426.

<sup>51</sup>[1945] 2 All E.R. 593.

<sup>52</sup>[1901] A.C. 426, at p. 442.

<sup>53</sup>[1945] 2 All E.R. 593; at p. 603.

<sup>54</sup>See *supra*, note 49.

<sup>55</sup>[1954] 1 Ch. 479 (C.A.); [1956] A.C. 104 (H.L.)

<sup>56</sup>See *supra*, note 49. Lord Morton regarded that case as the keystone of his opinion: "In my view, the Taff Vale case goes far to decide the question now before your Lordships' House". [1956] A.C. 104, at p. 125.

<sup>57</sup>[1956] A.C. 104, at pp. 143-144.

<sup>58</sup>Specially in *Taff Vale Ry. Co. v. Amalgamated Soc. of Ry. Servants* [1901] A.C. 426; *Osborne v. A.S.R.S.* [1909] 1 Ch. 163, at p. 191; *A.S.R.S. v. Osborne* [1910] A.C. 87, at pp. 93 & 102.

<sup>59</sup>"I think that the decisions of this House show that, in a sense, a registered trade union is a legal entity, but not that it is a legal entity distinguishable at any moment of time from the members of which it is at that time composed. It remains a voluntary association of individuals, but it is capable of suing and being sued in its registered name; . . . As an association, its membership is constantly changing, but as a registered trade union, it has a permanent identity and represents its members at any moment of time. It would not, I think, be wrong to call it a legal entity." [1956] A.C. 104, at pp. 149-150.

<sup>60</sup>With regard to the entity theory of trade unions, see:— Lloyd, "Damages for Wrongful Expulsion from a Trade Union" [1956] 19 M.L.R. 121; Thomas, T.C. "Trade Unions and their Members" [1956] C.L.J. 67; Wedderburn, K.W. "The Bonsor Affair: a Postscript" [1957] 20 M.L.R. 105; Keeton, "The Legal Status of the Trade Union" [1956] 3 S.A.L. Rev. 180; Sherbaniuk, "Actions by and against Trade Unions in Contract and Tort" [1958] 12 Univ. of Toronto L.J. 151; Notes [1956] 34 Can. B.R. 70 & 188; [1958] 36 Can. B.R. 83; [1960] 13 Univ. of Toronto L.J. 278.

<sup>61</sup>[1956] A.C. 104, at p. 150.

<sup>62</sup>See further, Rideout, R.W. *The Right to Membership of a Trade Union*, 211-215 (1963).

<sup>63</sup>Laws of Gold Coast, 1951, Cap. 91, Vol. III, No. 13 of 1941.