18,1951

1/51

In the Privy Council

ON APPEAL FROM THE COURT OF APPEAL FOR THE PROVINCE OF BRITISH COLUMBIA

BETWEEN:

W. L. WHITE, W. SCHWARTZ, J. NUTTALL, W. GEE, C. W. CARON and S. JENKINS, sued on behalf of and as representing BOILERMAKERS' and IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1 (otherwise known as Boilermakers' and Iron Shipbuilders' Union, Local No. 1) and IRON AND SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1, and THE EXECUTIVE COMMITTEE TO WHICH THEY RESPECTIVELY BELONG, and W. RENWICK, W. McGAW and ROY AQUINO, sued as trustees of the said BOILERMAKERS' AND IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1, and G. FARRINGTON, DAVE CLARK, FRED DUNCAN, K. GARRISON, ORVILLE BRAATEN, SIDNEY BELT and DAVID PEARSON sued on behalf of and representing THE PRESS AND INVESTIGATING COMMITTEE of the said BOILERMAKERS' AND IRON SHIPBUILDERS' UNION OF CANADA, LOCAL No. 1.

(Defendants) Appellants,

AND:

MYRON KUZYCH,

(Plaintiff) Respondent.

CASE FOR THE RESPONDENT

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1. This is an appeal from the judgment of the Court of Appeal for British Columbia dated the 3rd day of May, 1950, affirming the judgment of the Supreme Court of British Columbia made by Whittaker, J., the 22nd day of September, 1949, and entered on the 6th day of October, 1949, whereby a resolution of the Boilermakers' & Iron Shipbuilders' Union of Canada, Local

No. 1 (hereinafter referred to as the Union) allegedly passed on the 19th of March, 1945, which purported to expel the Plaintiff (Respondent) from the said Union was declared to be and to
p. 663-4. have been since its alleged passing illegal and void and whereby it was also declared that the Plaintiff since his alleged expulsion was and remains a member in good standing of the said Union and the Defendants, their and each of their servants and agents were enjoined and restrained from giving effect to the said resolution and the Plaintiff was awarded $5,000.00 damages and costs. 10

2. The Respondent went to work in November, 1942 as a
p. 44, l. 36. welder at a shipyard in the Vancouver district known as the North Van Ship Repairs Limited.

3. The Union had a contract with the management at the
p. 755, l. 34. North Van Ship Repairs Limited yard one of the terms of which was that the management would employ only members of the Union.

p. 398, l. 40 to p. 399, l. 6. 4. The Respondent became a member of the Union in April, 1943.

5. The Union first purported to expel the Respondent in 20
p. 705 and p. 706. December, 1943. mainly on account of his testimony before a Board of Arbitration set up in October, 1943, to inquire into the advisability of introducing a "closed shop" in another Vancouver Ship Yard called the West Coast Shipyards Limited.

6. The Respondent sued the Union in a representative action
p. 57, l. 10. in respect of his expulsion therefrom in December, 1943, and before that action came to trial in October, 1944, the Union voluntarily reinstated the Respondent as a member in good stand-
p. 707. ing of the Union and notified him to that effect. The date of the reinstatement was the 21st of June, 1944. 30

7. The Respondent's action against the Union continued
p. 57, l. 37 to l. 42. and at trial on the 31st of October, 1944, the Respondent was awarded $1,000.00 damages and costs by the Chief Justice of the Supreme Court of British Columbia.

8. Although the Union had voluntarily reinstated the re-
p. 54, l. 27 to p. 57, l. 10. spondent to membership in good standing on the 21st June, 1944, it did not allow him to attend any of the regular fortnightly Union meetings although he repeatedly turned up at them.
p. 400, l. 12 to p. 407, l. 36. Sometimes he would be seen at a meeting before it began and advised by the Secretary or some other official to leave. At 40

other times a motion would be passed as the first item of business that he be excluded from the meeting. On the 21st of August, 1944, a motion was passed excluding the Respondent from all meetings until after his action was concluded. p. 211, l. 17 to l. 25.

9. Notwithstanding the Judgment of the Chief Justice referred to above, and contrary to Article 7(5) of its own bylaws, the Union continued to exclude the Respondent from its meetings by one means or another. p. 57, l. 44 to p. 58, l. 14. p. 405, l. 31 to p. 406, l. 2.

10. The Union had until late in 1942 been a chartered local of the Canadian Congress of Labour (C.C.L.) and bound by the Constitution of that body (Ex. 3). Internal difficulties and dissensions within the Union brought about its suspension by the parent body which continued until December, 1943, when by agreement with the C.C.L. (Ex. 5) the Shipyard General Workers Federation was established and the Union became one of several unions comprising the Federation and was chartered by the Federation. p. 381-2. p. 830. p. 31 & 32.

11. In accordance with that agreement the Union set up a Bylaws Committee and in August, 1944, purported to pass bylaws (Ex. 14). p. 774.

12. Incidentally, the Union in spite of this change of status, still felt free to and did in fact invoke the provisions of the Closed Shop Contract (Ex. 2) into which it had entered in 1940, to bring about dismissal of the Respondent from the North Van Ship Repair Yards. p. 385.

13. These Bylaws provided inter alia for an annual election of officers of the Union with nominations in November and elections in December in each year. p. 792, l. 43. p. 793, l. 33.

14. The Respondent was nominated in November, 1944 for the Presidency of the Union. This nomination was accepted. By Article 18A(2) (a) of the Bylaws only members in good standing with an uninterrupted membership of not less than one year prior to the nomination were eligible. p. 407, l. 10 to l. 24. p. 793, l. 4.

15. At the election of Union officers held in December, 1944, a keen battle developed between the Executive then in office which sought re-election and a group of members under the leadership of one Henderson, who challenged them for office. This executive was headed by its President, W. A. Stewart, who in that year had been a candidate in the federal election in the North Vancouver constituency in the interest of the Labour Progressive Party, the communist political arm in Canada. Evidence was given that before the 1944 Union election the Union Executive p. 556, l. 15. p. 59, l. 14 to l. 20. p. 408, l. 5-9. p. 220, l. 22-31. p. 260, l. 1-8.

p. 92, l. 38. p. 101, l. 39 to p. 102, l. 38. p. 539 and 540. p. 569, l. 44 to p. 570, l. 11. p. 552.

was dominated by Communists. The Defendant W. L. White who became President of the Union in 1945 and was in 1943 and 1944 its business agent, a full-time salaried position, thought he was not called on to answer when asked in cross-examination whether he was a communist. The result of the Union election was the defeat of Stewart and several members of the Executive.

16. Standing Committees of the Union were elected in January, 1945. It was said for the Appellants that one of the elected members of the Press and Investigating Committee was a man named Hendry, who was no longer qualified to sit as he had left the industry, and that the Union officials took legal advice about it and as a result obtained the resignations of the rest of the Committee and went about holding a new election; that on February 5th, 1945. nominations for this committee were called for and eight names were placed in nomination and that on February 19th, at the next regular meeting of the Union, two nominees withdrew and the other six were then declared elected.

p. 477, l. 11 to p. 494, l. 3. p. 559 to p. 565. p. 579, l. 35 to p. 582, l. 24. p. 585, l. 20 to p. 590 end.

17. The trial judge agreed with the view that this Standing Committee was not elected according to the requirements of the Bylaws of the Union but it received no support from any of the Judges on appeal.

p. 657, l. 5 to l. 30.

18. The trial judge was of the opinion that the Committee was clearly without jurisdiction. He found—

p. 657.

> "The twenty-three members properly nominated on January 5th had never withdrawn their names from nomination. If the election held on January 22nd was abortive, as it admittedly was, any further election would necessarily be confined to those members whose names were already properly in nomination in accordance with the by-laws. The resignation of those elected on January 22nd, had no effect. They could not resign from a body which did not exist. The subsequent nomination of other members over the heads of those already nominated, had no sanction in the by-laws. The election by acclamation of those members and the purported exercise by them of the powers of a Trial Committee, had equally no validity.
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> "Even assuming that the members of the committee which tried the plaintiff had been properly nominated for election, such committee was still in my opinion, not constituted in accordance with the by-laws. A secretary, chosen in accordance with the by-laws is a necessary officer of each standing committee. In the case of the Press and Investigating Committee the most successful candidate assumes the office of secretary. In other words, the secretary is chosen

by the Union membership as a whole. Balloting is therefore necessary. No balloting took place and the so-called committee chose their own secretary. There was. therefore, no secretary chosen in accordance with the by-laws and consequently no validly constituted Trial Committee."

and concluded this phase of his judgment by holding "that the plaintiff was not expelled in conformity with the by-laws of the defendant Union in that the tribunal which purported to try him had no authority to act under the by-laws." "This disposes," the judge said "of the defence that the plaintiff was obliged to exercise his right of appeal within the Union before taking civil action. It follows also, that the plaintiff is entitled to succeed in this action." p. 657, l. 34. l. 37.

19. Charges were preferred against the Respondent in January, 1945, but were not proceeded with for some unexplained reason, perhaps because there was thought to be no Press and Investigating Committee in existence. p. 60, l. 14 to p. 61, l. 37. p. 477, l. 1-10.

20. On the 2nd of February, 1945, an article attacking the Respondent was published in the Main Deck, the official organ of the Shipyard General Workers Federation under the signature of C. W. Caron, the Secretary-Treasurer of the Union. p. 812. p. 362, l. 12-14. p. 472 to p. 476.

21. At the regular Union meeting of 19th February, 1945, identical charges to those preferred and dropped in January, 1945, were preferred and the Secretary-Treasurer, Caron, handed these charges to the Chairman or Secretary of the alleged Press and Investigating Committee. The Respondent was tried on these charges on the 13th of March, 1945, by that committee, constituted as above described. p. 61, l. 19.

22. At the regular Union meeting of 19th March. 1945, the recommendation of the Trial Committee was presented to the meeting. The Plaintiff was invited to appear and given an opportunity to speak but not without interruption. Before the vote on the motion for expulsion was taken, the acting Chairman, one Nuttall, who was 2nd Vice-President and acting President, (the President and first Vice-President having resigned leaving those offices vacant), addressed the meeting and directed derogatory untrue and damaging remarks at the Respondent calculated to deprive the Respondent of a fair vote. p. 67, l. 1 to p. 68, l. 15. p. 211, l. 39. p. 212, l. 21 to l. 24. p. 277, l. 3-28. p. 212, l. 6 to l. 14. p. 277, l. 3 to p. 278, l. 22. p. 283, l. 3 to p. 284, l. 25.

23. There was also proven intimidation and threats which prevented the vote on the resolution to expel the Respondent from the Union from being free and impartial. The resolution was passed.

p. 499, l. 3 to l. 38. p. 712. p. 713. p. 714.

24. The Secretary-Treasurer of the Union then advised the Respondent of his expulsion and also informed the management at the Yard, bringing to the management's attention the provisions of the Shop contract. As a result of this communication, the management discontinued the Respondent's employment.

25. The Respondent brought action claiming reinstatement for wrongful expulsion and damages. His action came to trial before Mr. Justice Macfarlane and was dismissed.

26. The Respondent appealed to the Court of Appeal for British Columbia and on the hearing of the appeal, counsel for the Union having alleged that the Union was an illegal Association on account of its objects being in restraint of trade, the Court of Appeal directed a new trial and authorized the defendants to amend their Statement of Defence to set up a plea of the Union's illegality.

27. On the second trial of the action coming before Whittaker, J. the defence was accordingly amended. The Respondent during the course of the trial also found it necessary to amend paragraphs 34 and 35 of the Statement of Claim and an amendment was allowed to enable the Respondent to plead that the Press and Investigating Committee, which tried the Respondent, was invalidly constituted and that the Union lacked jurisdiction to expel the Respondent "by reason of the fact that the plaintiff had not prior thereto been tried by a duly constituted tribunal or committee of the defendant Union."

p. 441.

28. Judgment was reserved and delivered on the 22nd of September. 1949, and entered on the 6th day of October, 1949, in favour of the Plaintiff. The formal judgment contains declarations that the Plaintiff is and remains a member in good standing of the Boilermakers' Union and an injunction prohibiting and restraining the Defendants, their agents and servants from acting on the resolution of expulsion passed on the 19th of March, 1945; also damages of $5,000.00 and costs.

p. 663.

29. In his Reasons for Judgment the learned trial judge first disposed of the plea contained in the amended Statement of Defence that the Boilermakers' & Iron Shipbuilders Union of Canada, Local No. 1 is and was an illegal association. But as this defence was abandoned in the B. C. Court of Appeal, it has become unnecessary to refer to the remarks of the trial judge upon it.

p. 649 to p. 654.

And for the same reason there is no occasion to deal with the defence that the Plaintiff did not have vested in him rights

p. 655.

of property sufficient to give the Court jurisdiction to entertain the action.

It has already been mentioned in paragraph 18, supra, that the trial judge found that the union trial committee was clearly without jurisdiction.

The learned trial judge also found the plaintiff entitled to succeed on the merits. He pointed out that evidence was given by witnesses who had not been called at the first trial and there was some additional evidence by witnesses who testified at that trial and that in the light of this additional evidence it could not by any stretch of the imagination be said that the trial within the Union was one that was free from prejudice and bias. p. 657-8.

The learned judge then proceeded to discuss the facts leading up to the purported expulsion of the plaintiff from the Union. He adverted to the exclusion of the plaintiff from Union meetings, to the threats made to the plaintiff's witnesses McPheator and Mole, to the article published in the Main Deck, the official organ of the Shipyard General Workers Federation, and widely circulated to the membership of the Union; and made the following comment— p. 54 to p. 58, l. 14. pp. 400 to 407. pp. 464 to 470. p. 210, l. 22 to p. 211, l. 12. p. 252, l. 25 to l. 29. p. 472, l. 30 to p. 476, l. 6. p. 172, l. 11 to l. 35. p. 659.

> "The members as a whole were to be the plaintiff's final judges. It is almost inconceivable that so determined an effort should have been made to influence the members against the plaintiff while the charges were pending and before the plaintiff had been tried."

The learned Judge said that the purported expulsion of the Plaintiff was in his opinion contrary to natural justice. He found it unnecessary to enquire (as he did not rest his decision on the sufficiency or otherwise of the charges or the evidence taken before the Trial Committee) as to whether the charges against the Plaintiff were with respect to matters which could be construed as violations of the Constitution and By-laws. p. 660.

30. The Defendants appealed to the Court of Appeal for British Columbia.

31. At the hearing before the Court of Appeal, Counsel for the Appellants abandoned the plea that the Boilermakers' Union was an illegal association. Counsel also stated that it would not be argued that the Respondent had no right of property sufficient to found his action. Neither did counsel for the Appellants put in issue the right of the Respondent to damages but confined his argument on damages to quantum and argued that

the Respondent should have mitigated them by taking non-union employment.

32. There was a division of opinion in the Court of Appeal, the majority. consisting of O'Halloran, Robertson and Smith, JJ.A., affirmed the judgment of the learned trial judge. The Chief Justice of British Columbia, and Bird, J.A., dissented.

33. All three judges forming the majority of the Court agreed that the expulsion of the Respondent could not stand.

p. 668, l. 22. O'Halloran, J.A. referring to the Respondent said, "The true cause of his expulsion undoubtedly was the Respondent's persistent advocacy of the open shop principle within and without the Union. This led leaders of the Union unjustifiably to the conclusion that he was an enemy of organized labour; they even described him as 'anti-working class.' Through it all the Respondent asserted his firm support of the labour movement and also relied on his constitutional right of legitimate freedom of speech and action . . ." O'Halloran, J.A. then went on to state that in his judgment the Union Trial Committee was inexorably biased against the Respondent. He continued. "But more than that, the vigorous campaign of the influential men who formulated the Union's policy and guided its conduct, had persuaded the majority of the Union membership to accept the doctrine that any member who openly questioned the closed shop policy was so anti-Union that he should not be allowed to remain a member of the Union. In such circumstances it was obviously impossible for the Respondent to receive a fair trial on the merits. Once it was proven he was against the closed shop policy and in favour of the open shop policy (as he readily conceded he was) it was obvious the verdict would be for his expulsion from the Union."

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l. 38.

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p. 669, l. 7. "There could be in that trial committee as constituted no opportunity for judicial consideration of the question on its merits. The verdict for expulsion was inevitably prejudiced and virtually decided before the trial was held. In essence there was no trial at all. The Trial Committee was simply carrying out the declared policy of the Union as announced by its leaders at the time."

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p. 670, l. 4. O'Halloran, J.A. also felt that expulsion from a powerful Union could not compare with expulsion from a club, social, fraternal or other organization, and pointed out the serious consequences ensuing to a workman expelled from a closed shop.

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p. 674, l. 20. l. 24. Robertson, J.A. pointed out that if the proper procedure provided by the Bylaws was not followed, the expulsion was null and void and proceeded, "The learned judge held the purported

expulsion of the Respondent was contrary to natural justice. I think the facts mentioned by him fully support his conclusion. In addition, I think the committee was not competent to hear the charges against the Respondent for the reason taken by the Respondent, viz., that Dave Clark, a member of the committee was so biased against the Respondent as to render him unfit to act. Clark, although not an officer of the Union, had taken an active part in the Union such as acting as a Shop Steward and Union delegate." Robertson, J.A. went on to say that the result of Clark being disqualified to sit was to render the proceedings of the Committee void in accordance with the principle laid down in *R. v. Allan* (1864) 4 B. & S. 915, *Leeson v. General Council of Medical Education and Registration,* (1889) 43 Ch. D. 366, *Allinson v. General Medical Council* (1894) 1 Q.B. 750 and other cases and referred particularly to the statement of Lord Wright in *General Council of Medical Education v. Spackman* (1943) 59 T.L.R. 412 at p. 416—"If the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision." l. 43.

Sidney Smith, J.A. stated that the Respondent's action by no means justified the conduct that some of the committee and some of the main executive had been guilty of. No resentment, however just, could excuse it. He referred to the threats made by Clark to supporters of the Respondent and dealt at some length with the general meeting of the Union at which the resolution of expulsion was passed and what transpired at that meeting with particular reference amongst other things, to the remarks of the Chairman as related by the witnesses at the trial. As to that he said, "If this speech had been made by a mere private member, I should not make too much of it. But here we have a meeting specially called to exercise quasi-judicial functions, and the chief officer of the union does his best to prevent its functioning. If he had addressed himself to the matters on which the plaintiff was being tried, then even harsh and biased criticism of the conduct charged might have been justifiable; but Nuttall calls upon the meeting to expel the plaintiff upon new charges which had never been before the committee, which the plaintiff had had no chance to answer. and which were not even grounds for expulsion under the by-laws." A little later in his judgment Sidney Smith, J.A. states, "The conduct of the committee-man Clark and the proceedings at the meeting for review seem to me, however, to go far beyond what can be excused as merely expressions of honest and justfiable resentment. They disclose attempts to prevent anything like a fair trial by either the committee or the general meeting." p. 678, l. 29. p. 680, l. 4. p. 681, l. 4.

(1929) 1 Ch. 602.

"The case of *Maclean v. The Workers' Union* goes farther than any other case in countenancing misconduct in these domestic tribunals; but it does not go far enough for what was done here; and I decline to hold that the abuses practised here are without remedy. I think the expulsion resolution was invalid and bad in law."

p. 682.

34. The reasons for Judgment of Bird, J.A.. who with the Chief Justice of British Columbia formed the minority of the Court of Appeal, in which reasons the Chief Justice concurred, proceeded wholly on the view that the Respondent was in law bound to exhaust his remedies within the Union before applying to the Courts for relief and referred to the Union Constitution which provided for an appeal to the executive of the Shipyard General Workers' Federation.

35. The contention that the Respondent should have exhausted his remedies within the Union before resorting to the Courts was dealt with in all three of the majority Judgments.

p. 669, l. 16.

O'Halloran, J.A. stated that the so-called trial being no trial at all and hence a nullity, there was nothing to appeal against. "Furthermore, the appellate tribunal itself was in no sense a judicial or even an impartial body removed from the dust of the arena wherein the policy struggle 'open shop versus closed shop' was then being fought by the Respondent. The Respondent had no occasion whatever to believe that the appellate tribunal either could or would interfere with the declared policy of the powerful Union that expelled him. Its verdict would be a foregone conclusion." O'Halloran, J.A. also pointed out that by

l. 25.

Article 4(5) of the Constitution of the Shipyard General Workers' Federation local unions, of which the Boilermakers' Union was one, had complete autonomy over their members when working under local contracts or agreements or otherwise. The learned judge concluded that an appeal to the Shipyard appellate tribunal would have been futile, not only because there was no trial as such, but also because it had no power to interfere with the Boilermakers' Union closed-shop policy over which it acknowl-

p. 671, l. 40.

edged the Boilermakers' Union itself had complete autonomy. Later in his reasons for judgment, O'Halloran, J.A. declared that the civil liberties of the subject cannot be decided by a Trial Committee set up by a labour union; that that was the prerogative of the constituted Courts of the country and was another reason why the Respondent was justified in not going through the form of appealing to a Union-constituted appellate tribunal. He distinguished *Caven v. C.P.R.* (1926) 95 L.J.P.C. 24 in that there was there no bias or violation of the essentials of justice.

Robertson, J.A. agreed that the rule relating to exhaustion of remedies before the Court would entertain the action for wrongful expulsion had no application when the Union had failed to hold a conventional investigation as it did here by failure of a proper committee to hear a complaint against the Respondent, and refers to the words of Lord Shaw in the Caven case that "had the conventional investigation been successfully attacked, then a judicial investigation on the issue of wrongful dismissal might naturally follow."

Sidney Smith, J.A. said on this point, "One of the points argued for the Appellants was that the Respondent could not have recourse to the Courts because he did not first take an appeal from the general meeting to the Shipyard General Workers' Federation, as is authorized by the Union's By-laws. The argument is that until the Respondent had exhausted his domestic remedies, he had no right to go to the Courts. This defence, if well raised, would undoubtedly bring up some difficult points. The principle relied on has been applied to fraternal orders and their members and on occasion to unions too. Whether it would apply to a union that is a statutory bargaining agent and is, moreover, maintaining the closed shop principle, is another matter. There is also a serious question whether the principle would apply where the plaintiff establishes grievances such as are shown here. I am far from satisfied that this would be so; there are quite a few dicta to the contrary, and there is no clear line of cases supporting the view. I am unable to give effect to it now." p. 677, l. 9.

36. Although the minority judgments proceeded solely on the basis that the Respondent should have exhausted the obligatory remedies available to him under the constitution and bylaws of the Union before resorting to the Courts, that ground of defence was not pleaded and there was no such issue between the parties. On the contrary, the defendants pleaded as follows—

> "63. The defendants further say that the Constitution and By-laws aforesaid provide that the decisions in respect to the matters herein of the membership of the Union by majority vote shall be final and conclusive and the plaintiff has no recourse to this Honourable Court in respect thereto." p. 22.

37. On the question of damages the majority of the Court affirmed the award of $5,000.00 given by the learned trial judge. p. 676, l. 39.
Robertson, J.A. agreed that the Respondent was not bound to take any work he could find but he was entitled to work as a union man and was debarred by the action of the Appellants, a view incidentally which seems to have been shared by the Secretary-Treasurer of the Union. O'Halloran, J.A. and Sidney Smith, p. 812, l. 35.

p. 672, l. 19. J.A. were of opinion that the damages were of a punitive nature. O'Halloran, J.A. stated "It is for that highly irregular expulsion I would award punitive damages, even if he had been unable to
p. 681, l. 29. show actual financial loss as the result." Sidney Smith, J.A. said he did not know if he was prepared to subscribe to the view that a union man wrongfully expelled is entitled to sit back indefinitely without taking such work as he can get. On the whole however he did not feel inclined to interfere with the damages awarded. He stated that vindictive damages can be given in actions for tort and in view of the threats of violence and other intimidation resorted to by the defendants he felt justified in letting the award stand on that basis.

38. The Respondent therefore humbly submits that the Judgment appealed from was correct and ought to be affirmed for the following among other

REASONS—

(1) Because the Respondent's purported expulsion from the Union was unlawful.

(2) Because in bringing about the Respondent's purported expulsion the Union and its officers, committees and agents did not act according to its rules.

(3) Because the Union and its officers, committees and agents in bringing about the Respondent's purported expulsion did not act honestly and in good faith.

(4) Because the charges on which the Respondent was purportedly tried had previously been preferred to the detriment of the Respondent and had been dropped, and the right to try the Respondent on identical charges was thereby waived and could not be revived by again preferring them.

(5) Because the Press & Investigating Committee of the Union was not properly constituted not having been elected in accordance with the Rules of the Union and therefore, its deliberations, decisions and recommendations relating to the charges against the Respondent were unconstitutional and invalid.

(6) Because the Press & Investigating Committee which purported to try the Respondent included one Clark proven to have had such a bias against the Respondent as to dis-

qualify him from acting thereon in respect of the charges against the Respondent.

(7) Because the Union as a whole is answerable to the Respondent for the injury he sustained by the wrongful acts of its members in regular meeting assembled and for the wrongful acts of the Union's agents acting in their official capacity and within their authority as officers of the Union.

(8) Because by their course of conduct in excluding the Respondent from Union meetings and in other ways the responsible officers of the Union had so stirred up the feelings of the Union members against the Respondent as to make it impossible for him to receive a fair trial within the Union.

(9) Because the action of the Secretary-Treasurer of the Union in publishing an article hostile to the Respondent in the Main Deck (the widely-circulated official organ of the Shipyard General Workers Federation) shortly before the Respondent was to be tried on charges then pending prejudiced his fair trial and the general vote of the Union's members, following trial, which resulted in his expulsion.

(10) Because the Chairman of the Union meeting at which the Respondent was purportedly expelled made damaging and untrue statements against the Respondent before the members voted on the resolution of expulsion.

(11) Because the Respondent was not bound in law to take an appeal to the domestic tribunal namely, the executive of the Shipyard General Workers Federation before commencing action in the Courts.

(12) Because an appeal to the Shipyard General Workers Federation executive would have been futile as that body had given autonomy over its members to the Union.

(13) Because there is no issue on the pleadings arising from the failure of the Respondent to appeal from his expulsion to any domestic tribunal but on the contrary the Pleading, paragraph 63 of the Statement of Defence, states—

> "The defendants further say that the Constitution and By-laws aforesaid provide that the decisions in respect to the matters herein of the membership of the Union by majority vote shall be final and conclusive and the plaintiff has no recourse to this Honourable Court in respect thereto."

(14) Because there are concurrent findings of fact in the Courts below in favour of the Respondent on all the essential issues.

(15) Because the Judgment below in the Respondent's favour is right and should be affirmed.

"A. W. JOHNSON,"
of Counsel for the Respondent.

1/51

In the Privy Council

On Appeal from the Court of Appeal for British Columbia

BETWEEN:

W. L. WHITE, et al
(Defendants) Appellants,

AND

MYRON KUZYCH
(Plaintiff) Respondent.

Case for Respondent

Agents for

SUTTON, BRAIDWOOD & MORRIS
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