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11/10/1960

IN THE PRIVY COUNCIL

No.22 of 1958

ON APPEAL

FROM THE WEST INDIAN COURT OF APPEAL

B E T W E E N

VERE CORNWALL BIRD ... Defendants-Appellants
EDMUND HAWKINS LAKE
NOVELLE RICHARDS
ERNEST WILLIAMS
BRADLEY CARROTT
JOHN IRELAND
LEVI JOSEPH
JOSEPH SAMUEL
LIONEL HURST

- and -

JOSEPH REYNOLD O'NEAL ... Plaintiffs-Respondents
GERTRUDE O'NEAL

RECORD OF PROCEEDINGS

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Solicitor for the
Appellants

Zeffertt Heard and Morley
Lawson,
7 Devonshire Square,
LONDON, E.C.2.
Solicitors for the
Respondents.

50944

UNIVERSITY OF LONDON
W.C.1.
- 7 FEB 1958
INSTITUTE OF ADVANCED
LEGAL STUDIES No. 22 of 1958

IN THE PRIVY COUNCIL

ON APPEAL

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RECORD OF PROCEEDINGS
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LIST OF EXHIBITS NOT TRANSMITTED TO THE PRIVY COUNCIL

Exhibit Mark	Description of Document
"F"	Book of Credit Sales
"G"	Book of daily Credit Sales
"H"	Cash Sales Book for 1953 and 1954
"I"	Cash Sales Book March to November 1955
"J"	Account Books showing summary of all sales up to 1953

LIST OF EXHIBITS TRANSMITTED TO PRIVY COUNCIL
BUT NOT COPIED

Exhibit Mark	Description of Document
"K"	Batch of audited statements and accounts including Profit and Loss Account for 1953.
"L"	Worker's Voice issue of 18th September 1955.
"M"	Minute Book of Executive Committee of Antigua Trades and Labour Union from November 1954 to November 1955.
"N"	Affidavit of V.C.Bird and others dated 1st October 1955.

IN THE PRIVY COUNCIL

No. 22 of 1958

ON APPEAL

FROM THE WEST INDIAN COURT OF APPEAL

B E T W E E N

VERE CORNWALL BIRD Defendants-Appellants
 EDMUND HAWKINS LAKE
 NOVELLE RICHARDS
 ERNEST WILLIAMS
 BRADLEY CARROTT
 10 JOHN IRELAND
 LEVI JOSEPH
 JOSEPH SAMUEL
 LIONEL HURST

- and -

JOSEPH REYNOLD O'NEAL ... Plaintiffs-Respondents
 GERTRUDE O'NEAL

RECORD OF PROCEEDINGS

No. 1.

WRIT OF SUMMONS

20 1955 "O" No. 45

In the Supreme
 Court of the
 Windward
 Islands and
 Leeward Islands
 Antigua Circuit

IN THE SUPREME COURT OF THE WINDWARD ISLANDS
AND LEEWARD ISLANDS. ANTIGUA CIRCUIT.

No.1

Writ of Summons
 19th September
 1955

BETWEEN:

JOSEPH REYNOLD O'NEAL
 GERTRUDE O'NEAL ... Plaintiffs

- and -

VERE CORNWALL BIRD
 EDMUND HAWKINS LAKE
 NOVELLE RICHARDS
 ERNEST WILLIAMS
 BRADLEY CARROTT
 JOHN IRELAND
 LEVI JOSEPH
 JOSEPH SAMUEL
 LIONEL HURST ... Defendants

30

ELIZABETH THE SECOND, by the Grace of

In the Supreme
Court of the
Windward
Islands and
Leeward Islands
Antigua Circuit

God, of the United Kingdom of Great Britain and
Northern Ireland, and of Her other Realms and
Territories Queen, Head of the Commonwealth, De-
fender of the Faith.

To:

No.1
Writ of Summons
19th September
1955
continued

VERE CORNWALL BIRD of Ottos Lane, St. John's
Antigua
EDMUND HAWKINS LAKE of Newgate Street, St. John's
Antigua
NOVELLE RICHARDS of Bishopsgate Street, St. John's
Antigua
ERNEST WILLIAMS of Swetes Village in the Island
of Antigua
BRADLEY CARROTT of Grays Farm in the Island of
Antigua
JOHN IRELAND c/o Antigua Trades & Labour Union
Office St. John's Antigua.
LEVI JOSEPH of Ottos Lane, St. John's Antigua
JOSEPH SAMUEL of St. Johnston Village, Antigua
and
LIONEL HURST of Bishopsgate Street, St. John's
Antigua.

10

20

WE COMMAND YOU, that within eight days
after the service of the Writ on you, inclusive
of the day of such service, you do cause an
appearance to be entered for you in an action at
the suit of JOSEPH REYNOLD O'NEAL of Road Town,
Tortola, and GERTRUDE O'NEAL of St. John's
Antigua AND TAKE NOTICE, that in default of
your so doing, the Plaintiff may proceed therein,
and judgment be given in your absence.

30

WITNESS, The Honourable William Adrian Date,
Esq., Acting Chief Justice of the Supreme Court
of the Windward Islands and Leeward Islands, the
19th day of September in the year of our Lord
One thousand nine hundred and fifty-five.

N.B. This Writ is to be served within Twelve
Calendar Months from the date thereof, or, if
renewed, within Six Calendar Months from the
date of the last renewal, including the day of
such date, and not afterwards.

40

The Defendant may appear hereto by entering
an appearance either personally or by their

Solicitor at the Registrar's Office, the Court House, in the City of Saint John.

In the Supreme Court of the Windward Islands and Leeward Islands Antigua Circuit

INDORSEMENT OF CLAIM

The Plaintiffs' claim is for :-

- 1. An injunction restraining the defendants, their servants and agents from unlawfully, watching and besetting the business places of the plaintiffs situate at the corner of Long and Thames Streets and High and Thames Streets in the City of Saint John in the Island of Antigua.
- 2. Damages for injury to the Plaintiffs trade by conspiracy in pursuance of which unlawful means were used.
- 3. Costs.
- 4. Further or other relief.

No.1
Writ of Summons
19th September
1955
continued

10

E. Ewart Harney

Solicitor for Plaintiffs.

20

THIS WRIT was issued by EDBERT EWART HARNEY Chambers, Church Street, St. John's in the City of Saint John in the Antigua Circuit, whose address for service is the same.

Solicitor for the said Plaintiffs who reside at Road Town Tortola, and St. John's Antigua respectively.

THIS WRIT WAS SERVED BY
me aton the Defendant
.....on.....
the.....day of19
indorsed the.....day of.....19 .

30

In the Supreme
Court of the
Windward
Islands and
Leeward Islands
Antigua Circuit

NOTICE OF MOTION FOR INTERLOCUTORY INJUNCTION

1955

"0"

No.45

IN THE SUPREME COURT OF THE WINDWARD ISLANDS
AND LEEWARD ISLANDS. ANTIGUA CIRCUIT.

No.2

BETWEEN:

Notice of
Motion for
Interlocutory
Injunction

28th September
1955.

JOSEPH REYNOLD O'NEAL
GERTRUDE O'NEAL

Plaintiffs

- and -

VERE CORNWALL BIRD
EDMUND HAWKINS LAKE
NOVELLE RICHARDS
ERNEST WILLIAMS
BRADLEY CARROTT
JOHN IRELAND
LEVI JOSEPH and
JOSEPH SAMUEL

10

Defendants

TAKE NOTICE that this Honourable Court will be moved before His Lordship Mr. William Adrian Date, Acting Chief Justice on Monday the 3rd day of October, 1955, at 10 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Counsel on behalf of the above-named plaintiffs that the defendants their servants and agents may be restrained until judgment or until further order from watching and besetting the business places of the plaintiffs situate at the corners of Long and Thames Streets and High and Thames Streets in the City of Saint John and Island aforesaid.

20

AND FURTHER TAKE NOTICE that special leave to serve this notice of motion during the Court's vacation has this day been obtained from His Lordship the Acting Chief Justice Mr. William Adrian Date.

30

Dated this 28th day of September, 1955.

(Sgd). E. Ewart Harney

Solicitor for the Plaintiffs

AFFIDAVIT IN SUPPORT OF MOTION FOR
INTERLOCUTORY INJUNCTION

1955

"O"

No.45

IN THE SUPREME COURT OF THE WINDWARD ISLANDS AND
LEEWARD ISLANDS. ANTIGUA CIRCUIT.

In the Supreme
Court of the
Windward
Islands and
Leeward Islands
Antigua Circuit

No.3

BETWEEN:

JOSEPH REYNOLD O'NEAL
GERTRUDE O'NEAL

Plaintiffs

- and -

VERE CORNWALL BIRD
EDMUND HAWKINS LAKE
NOVELLE RICHARDS
ERNEST WILLIAMS
BRADLEY CARROTT
JOHN IRELAND
LEVI JOSEPH
JOSEPH SAMUEL

Defendants

Affidavit in
Support of
Motion for
Interlocutory
Injunction

28th September
1955

10

20

I GERTRUDE O'NEAL of East Street in the City of Saint John in the Island of Antigua, Merchant, make oath and say as follows :-

1. I in partnership with my brother Joseph Reynold O'Neal carry on business under the style and name of O'Neal's Drug Store at the corner of Long and Thames Streets and I also carry on business at the corner of High and Thames Streets in the said City,

30

2. That as a result of my refusing to re-instate or to pay compensation to a certain clerk who was lawfully dismissed by me some time about the middle of June last from O'Neal's Drug Store, Vere Cornwall Bird and other officers of the Antigua Trades and Labour Union on Saturday the 17th instant and since then stationed pickets on all business days at the said business places and threaten to continue so to station pickets at the said business places until I submit to their demand.

40

3. That the said pickets carry flags and placards which are the property of the Antigua Trades and Labour Union for the purpose of preventing

In the Supreme Court of the Windward Islands and Leeward Islands Antigua Circuit

customers from entering the said business places and purchasing therein.

4. That the defendants have themselves attended outside the said business places and witnessed the results of the picketing.

5. That the defendants Levi Joseph and Joseph Samuel have themselves picketed the said businesses together with other persons who are servants and agents of the above-named defendants.

6. That as a result much damage is being done to the said businesses.

10

No.3

Affidavit in support of Motion for Interlocutory Injunction

28th September 1955 continued

SWORN AT the Court House } in the City of Saint John in the Island of Antigua this 28th day of September, 1955.

(Sgd) Gertrude O'Neal

Before me :-

(Sgd). Evan Creque

A Commissioner for Oaths

Antigua.

20

No.4

Affidavit in reply on Motion for Interlocutory Injunction

1st October 1955.

No.4

AFFIDAVIT IN REPLY ON MOTION FOR INTERLOCUTORY INJUNCTION

1955

"O"

No.45

IN THE SUPREME COURT OF THE WINDWARD ISLANDS AND LEEWARD ISLANDS. ANTIGUA CIRCUIT.

BETWEEN:

JOSEPH REYNOLD O'NEAL
GERTRUDE O'NEAL

Plaintiffs

- and -

VERE CORNWALL BIRD
EDMUND HAWKINS LAKE
NOVELLE RICHARDS
ERNEST WILLIAMS
BRADLEY CARROTT
JOHN IRELAND
LEVI JOSEPH
JOSEPH SAMUEL

Defendants

30

We Vere Cornwall Bird, Edmund Hawkins Lake,

Novelle Richards, Ernest Williams, Bradley Carrott, John Ireland, Levi Joseph and Joseph Samuel make oath and say as follows:

In the Supreme
Court of the
Windward
Islands and
Leeward Islands
Antigua Circuit

10 1. We have not at any time picketed or caused to be picketed the business places of the plaintiffs for the purposes alleged by the deponent Gertrude O'Neal in paragraphs 2, 3 and 5 of her affidavit herein filed on the 28th day of September 1955 or for any unlawful purpose or purposes whatsoever.

2. We have not at any time made to the plaintiff or to any other person any threat or demand as alleged or at all.

20 3. A trade dispute exists and has since the 11th day of June 1955 existed between the Antigua Trades and Labour Union in respect of the wrongful and/or unjust dismissal by the plaintiffs of a member of the said Union and in respect of the accrued rights of the said clerk and member of the Union one Averyl Winter during her employment with the plaintiffs.

30 4. In furtherance and in respect of the said dispute the business premises of the plaintiffs have been picketed but such picketing has been carried out in a peaceful manner and for the purpose of informing members of the public of the dispute and the facts thereof and with a view to inviting such persons and particularly members of the Union to refrain from accepting employment with the plaintiffs in place of the said member of the Union wrongfully dismissed by the plaintiffs.

5. We deny that the said pickets have carried flags and/or placards for the purpose alleged in paragraph 3 of the affidavit of the said deponent Gertrude O'Neal or for any other purpose than those set out in paragraph 4 thereof.

40 6. Even if the said flags and placards were carried for the purpose alleged in paragraph 3, which is denied, the defendants never consented to or authorised such carrying for such purpose and even if the defendants had so authorised or consented such acts were and would be in furtherance of the dispute herein before mentioned.

7. The defendants further state that far from

No.4

Affidavit in
reply on
Motion for
Interlocutory
Injunction

1st October
1955
continued.

In the Supreme Court of the Windward Islands and Leeward Islands Antigua Circuit

preventing persons from entering and purchasing from the business places of the plaintiffs that members of the public have at all times from the 17th day of September 1955 and at all material times thereafter without let or hindrance entered the plaintiffs places of business and purchased therefrom.

No.4

Affidavit in reply on Motion for Interlocutory Injunction

1st October 1955 continued.

8. Neither the defendants Levi Joseph, Joseph Samuel nor any of the persons mentioned in paragraph 2 to 6 inclusive of the said affidavit are the servants or agents of the first six named defendants or of any of them.

10

9. The First six named defendants have at no time picketed the said premises.

10. The defendants deny that the plaintiffs have suffered any damage as alleged in paragraph 6 or at all as a result of any act of the defendants their servants or agents.

SWORN to by the said defendants:-
At the Court House
St. John's Antigua.
This 1st day of October, 1955
Before me
Cecil O Byron
Ag.Registrar.

V.C.BIRD
E.H.LAKE
NOVELLE H.RICHARDS
E.E.WILLIAMS
N.T.CARROTT
JOHN IRELAND
LEVI JOSEPH
JOSEPH H.B.SAMUEL

20

No.5

Judge's Notes and Order, on Motion for Interlocutory Injunction

3rd October 1955

No.5

JUDGE'S NOTES AND ORDER ON MOTION FOR INTERLOCUTORY INJUNCTION

1955

"0"

45

JOSEPH REYNOLD O'NEAL
GERTRUDE O'NEAL
Plaintiffs

- and -
VERE CORNWALL BIRD
EDMUND HAWKINS LAKE
NOVELLE RICHARDS
ERNEST WILLIAMS
BRADLEY CARROTT
JOHN IRELAND
LEVI JOSEPH and
JOSEPH SAMUEL

30

40

Defendants

MOTION for Interlocutory Injunction.

Mr. E. E. Harney and Mr. H. Harney for

plaintiffs.

Mr. Barrow for defendants.

Mr. E. E. Harney: Refers to documents filed, including affidavits by plaintiff Gertrude O'Neal and by the defendants. Asks leave to call evidence.

Mr. Barrow: De Francesco v. Barham, 1889 43 Ch. D. 165 per Chitty J. at p.172: Right to injunction depends on legal right to sue.

10 Court not here to inquire into rights of dispute. If necessary to take evidence it is clear prima facie right to injunction does not exist. O.50 r. 6: Court has to be satisfied on facts that plaintiffs entitled to relief.

No prima facie right visible on the affidavits

20 Mr. Harney: Watching and besetting is a common law nuisance - Lyons v Wilkins (1899) 1 Ch. D. 255. In respect of this plaintiffs entitled to injunction "Watching and besetting" same thing as picketing. Passing of Trade Unions Act 1939 section 7 (as replaced) merely made exception if watching and besetting was in furtherance of trade dispute and for certain purposes and under certain conditions - one being it must be peaceful. Purposes for which it may be employed: obtaining or communicating information or peacefully persuading persons to ... If they watch for any other purposes they are outside protection of this section.

30 Here it is alleged picketing for purposes of compelling plaintiffs to take back into employment dismissed clerk or pay compensation.

Wilson v. Renton. 15 Digest 766 Case 8212 (Scottish).

R. v. Wall, 21 Cox Criminal Cases 401. If the acts of defendants are for purposes of compelling to take back the dismissed employee defendants ought to be found guilty.

40 Further question is whether or not there was a trade dispute. Paragraph 3 of defendants' affidavit alleges trade dispute exists. Difficult to argue that before evidence. Plaintiffs contend t

In the Supreme
Court of the
Windward
Islands and
Leeward Islands
Antigua Circuit

No. 5

Judge's Notes
and Orders, on
Motion for
Interlocutory
Injunction

3rd October
1955
continued

In the Supreme
Court of the
Windward
Islands and
Leeward Islands
Antigua Circuit

No. 5

Judge's Notes
and Orders, on
Motion for
Interlocutory
Injunction

3rd October
1955
continued

that no trade dispute exists on ground that clerk in question was lawfully dismissed and at time of dismissal there had been no difference of opinion concerning employment or otherwise and the relationship of employee and employer having been determined before any difference arose a trade dispute cannot now be said to have arisen. In R.V. National Arbitration Tribunal, Ex parte Horatio Crowther (1947) 2 All E.R. 693, there had been disturbances with regard to employment before dismissal. Our definition of "trade dispute" same as English definition. See Doran v. Lennon at p.476 of Citrine's Trade Union Law (Irish Case) - 1945 Irish Reports 315. Once proper notice given or payment in lieu made there cannot be a trade dispute with respect to that payment or notice - there may be trade dispute with respect to something which had cropped up before. In R. v. National Arbitration Tribunal (supra) see last line of p.695 and top of p.696.

10

20

Adjourned to 1.30 p.m.

1.30 p.m. Court resumes.

Following documents put in by consent -

(1) Copy of minutes of meetings convened at instance of Trade Union under Chairmanship of Labour Commissioner on 23.6.55 and 7.7.55 (put in and marked Exhibit A).

(2) Report of Board of Inquiry held under Trade Disputes (Arbitration and Inquiry) Act with covering letter dated 6.9.55 from Administrator to both parties to dispute (put in as Exhibit B).

30

Mr. Barrow: No reason was given for dismissal of clerk at time of dismissal. 2 days later representations made. Negotiations unsuccessful and matter referred to Labour Commissioner. No settlement. Matter referred to Governor who appointed Board of Inquiry. Recommendation was made by Board of Inquiry (Mr. Harney had objected to jurisdiction of Board of Inquiry on ground no trade dispute existed, then withdrew from inquiry on behalf of clients) We are not going into the enforceability of recommendations made by Board (2 different bodies may be set up under the 1939 Act). But there was a dispute and plaintiffs are estopped by

40

their conduct in going before Labour Commissioner from denying that trade dispute existed. In Minutes before Labour Commissioner certain allegations were made by plaintiffs against clerk and plaintiffs were asking Labour Commissioner to rule against clerk. Same question raised before Board of Inquiry. My 2 submissions not mutually exclusive.

In the Supreme
Court of the
Windward
Islands and
Leeward Islands
Antigua Circuit

No.5

10 As to what trade dispute is see section 2 of Act 17/1949. Definition clear. But if there was any doubt judgment of Goddard L.C.J. in ex parte Crowther (supra) removes all doubt.

Judge's Notes
and Orders, on
Motion for
Interlocutory
Injunction

Trade dispute may be between employers and workmen over non-employment of person who had never been employed by employer or as to continuation of employment of a person.

3rd October
1955
continued

20 Ex parte Crowther (supra) p.695: "It was submitted by Counsel for the Company....". Lord Goddard did not rule that unless there was a dispute before dismissal there cannot be a trade dispute. It is not an authority for the submission made on the other side. He held that simply because person dismissed it does not necessarily follow there cannot be a trade dispute.

The clerk was summarily dismissed. (I am not saying clerk was not entitled to more than she got).

30 Reference to Doran v. Lennon by Harney in our favour. See p.478 Citrine - Dispute may be concerned with future employment. A fortiori, with past employment.

As to Mr. Harney's other point that picketing was for purpose of compelling plaintiffs to take back clerk into employment or pay compensation, I submit that everything set out in affidavit of female plaintiff is matter of opinion (not even inference).

40 See paragraph 2 of affidavit which begins "As a result of my refusing" It should have read "on such and such a day so and so did....." Affidavit should state facts, not inferences or emotional....

No allegation as to conspiracy, nuisance, intimidation or the like in the affidavit.

In the Supreme
Court of the
Windward
Islands and
Leeward Islands
Antigua Circuit

No. 5

Judge's Notes
and Orders, on
Motion for
Interlocutory
Injunction

3rd October
1955
continued

There must be something in affidavit which should show on face of it that action taken which would give right to redress in court of law.

We deny the allegations in paragraphs 2 & 3 of plaintiffs' affidavit. But it is not actionable merely to dissuade a person from dealing with another person - not since 1939 Trade Unions Act (as amended). See Section 3 of Act 1/1942 and Section 2 of Act 2/1947. Both the crime and tort of conspiracy liquidated by these Acts.

10

The communications referred to in Section need not be restricted to communications as to facts of the dispute. They may extend to persuading persons not to deal with Plaintiffs' business. That would not give rise to civil action or criminal prosecution.

Citrine p.440.

There is no legal right infringed: *Damnum absque injuria*.

Per Vaughan Williams L.J. in Ward, Lock & Co.Ltd. v. Operative Printers Assistants Society and another, 22 T.L.R. 327. Interesting generally, but cited mainly re information being passed on which causes damage. See particularly p.330 (about half way down): "The right of the Plaintiffs to try to persuade so long as the means employed are lawful.....it must be shown that the Defendants or one of them were guilty of a wrongful act." No such allegation in affidavit.

20

30

To make averments that Defendants have committed certain acts which are prima facie legal or to which there is a statutory defence is insufficient to ground a claim for an injunction (interlocutory or otherwise).

The law is no longer obscure on the points raised in the affidavit.

Application for interlocutory injunction cannot go beyond the application in the writ itself. In his argument this morning Harney talked about nuisance but that is not claimed in writ which spoke of conspiracy. In any case there is no common law nuisance of picketing.

40

Further, nuisance not alleged in affidavit; no particulars given as to what words employed in connection with picketing alleged. Whether words amount to threat is matter of inference for Court.

In the Supreme Court of the Windward Islands and Leeward Islands Antigua Circuit

Nothing in affidavit as to conspiracy.

There can be no presumption of illegality in these matters.

No.5

10 Atkins' Encyclopaedia Forms and Precedents Vol.9 p.622. The Court should direct that motion should stand over when not satisfied plaintiff has established a prima facie right. Affidavit filed has not shown plaintiffs have established prima facie right.

Judge's Notes and Orders, on Motion for Interlocutory Injunction

3rd October 1955

continued

Wood v. Barrow (1866) 2 Q.B. 21, referred to in 32 Hals. 510: illegality and peaceful persuasion.

20 It is not patent on face of affidavit that any legal right infringed; even if infringed, doubtful if it would give rise to cause of action; and even if it does, no great hardship would ensue to the plaintiffs at this stage which could not be resolved in the outcome by liquidated amount of damages if plaintiffs successful.

Beddow v. Beddow (1879) 9 Ch.89-91, especially p.93 per Jessel M.R.: the discretion of the court must be exercised judicially.

Adjourned to 1.30 p.m. tomorrow.

4th October, 1955.

Continued from 3rd October.

30 As before.

Mr. Harney: As to whether there is a trade dispute; Section 2 Act 17/49. Omission of "dismissal" significant. Definition must be construed strictly: statute restricts the rights of a person (employer). Further, straightforward dismissal as here cannot give rise to trade dispute.

Refers to para. 2 of Defendant's affidavit.

40 Attendance of Plaintiff at Labour Commissioner's office cannot convert into a trade

In the Supreme Court of the Windward Islands and Leeward Islands Antigua Circuit

dispute what in law was not a trade dispute.

The court is not restricted to the affidavit.

Para. 2 of Plaintiff's affidavit sets out infringement of legal right; Act 1/42.

Ruling

No.5

Court rules that Mr.Harney's submission in regard to "trade dispute" cannot stand.

Judge's Notes and Orders, on Motion for Interlocutory Injunction

Onus on plaintiffs to show at least a strong prima facie case in support of the right which they assert. If they do this the Court will consider whether the case is so clear and free from objection on equitable grounds that it ought to interfere without waiting for the right to be finally established.

10

3rd October 1955 continued

In my opinion the affidavit filed in support of motion does not disclose any such infringement of legal right as to justify grant of interim injunction, and Plaintiffs are not now at liberty to go outside ambit of affidavit and raise complaint of a nature different from that asserted in the affidavit.

20

Court directs that motion stand over to the trial of the action.

W. A. DATE
Ag. C.J.

No.6

Statement of Claim
21st October 1955.

No.6

STATEMENT OF CLAIM

1955 "0" No.45
IN THE SUPREME COURT OF THE WINDWARD ISLANDS AND
LEEWARD ISLANDS. ANTIGUA CIRCUIT.

30

BETWEEN :

JOSEPH REYNOLD O'NEAL: GERTRUDE O'NEAL..Plaintiffs

- and -

VERE CORNWALL BIRD: EDMUND HAWKINS LAKE:

NOVELLE RICHARDS: ERNEST WILLIAMS:

BRADLEY CARROTT: JOHN IRELAND: LEVI

JOSEPH: and JOSEPH SAMUEL: and

LIONEL HURST

...Defendants

STATEMENT OF CLAIM

Dated the 21st day of October 1955.

40

1. The first-named Plaintiff resides at Roadtown

in the Island of Tortola in the British Virgin Islands and is a merchant.

2. The second-named Plaintiff resides at East Street in the City of Saint John in the Island of Antigua.

3. Both the Plaintiffs carry on business in partnership under the name of O'Neal's Drug Store at the corner of Long and High Streets and the second-named Plaintiff carries on a business of her own at the corner of High and Thames Streets both in the City of Saint John in the said Island of Antigua and they have for many years carried on the said businesses.

4. The first seven-named and the last named Defendants are members of the Executive Committee of the Antigua Trades & Labour Union.

5. The first seven-named and the last named Defendants and each of them wrongfully and maliciously conspired and combined amongst themselves (with intent to injure the Plaintiffs and thereby compel them to submit to the demand of the Antigua Trades and Labour Union to pay compensation to one Averyl Winter a former clerk in O'Neal's Drug Store who had recently been lawfully dismissed from her employment by the Plaintiffs) wrongfully and without legal authority to watch and beset or cause or procure to be watched and beset the said business places of the Plaintiffs and the approaches and entrances thereto in such a manner as was calculated to intimidate customers and prospective purchasers.

6. In furtherance and execution of their said conspiracy and combination the said first seven named and the last named Defendants and each of them wrongfully and without legal authority caused or procured the Defendant Joseph Samuel and other persons to the number of 12 or thereabouts (hereinafter referred to as the pickets) wrongfully and without legal authority to watch and beset the said business places of the Plaintiffs daily from the 17th day of September, 1955 in such a manner as is calculated to intimidate customers and prospective purchasers and to obstruct the approaches thereto. The first seven-named and the last-named Defendants and each of them in acting as in this paragraph stated acted for the purpose of intimidating and preventing customers and prospective purchasers from entering the said

In the Supreme Court of the Windward Islands and Leeward Islands. Antigua Circuit

No.6

Statement of Claim.

21st October 1955
continued

In the Supreme Court of the Windward Islands and Leeward Islands Antigua Circuit

No. 6

Statement of Claim
21st October 1955
continued

business places and purchasing therein.

7: The first seven-named and the last-named Defendants on several occasions on the 17th day of September, 1955, and on divers other occasions thereafter attended outside the said business places of the Plaintiffs or in the vicinity thereof and gave encouragement to the said pickets.

8. The Defendant Levi Joseph and the pickets have by threats and acts of violence and intimidation and coercion prevented divers customers and prospective purchasers from entering the said business places and purchasing therein.

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PARTICULARS.

(1) On the 17th day of September, 1955, the Defendant Levi Joseph led a Steel Band and a number of pickets carrying placards to the said business places of the Plaintiffs and surrounded same blocking the approaches and entrances thereto and shouting in a threatening manner to persons who attempted to enter the said business places "Don't buy from O'Neal's Drug Store, A Strike is on".

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(2) On the said 17th day of September, 1955 and on several days thereafter the defendant Joseph Samuel who is well known to the general public as a Local Constable paraded up and down outside the said business places ringing a bell and shouting "Dont buy from O'Neal's Drug Store people. You no hear you no foo buy from this Drug Store." And when people asked why not, Defendant Samuel told them that the Police will lock them up.

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(3) The said Defendant Joseph Samuel on the 19th day of September, 1955, assaulted a person whose name is unknown who was attempting to enter one of the business places for the purpose of purchasing therein.

(4) The said pickets carrying flags and placards with slogans such as "Hold the Line the workers security is challenged" written thereon attend daily around the said business places and in a menacing and threatening manner surround and obstruct persons especially old men women and children who attempt to enter the said business places shouting at them "Hold the Line."

40

(5) The Defendant Levi Joseph on the morning of the 24th September, 1955, and other pickets conducted themselves in a boisterous and disorderly manner marching up and down in front of the said business places shouting "Hold the Line - Don't buy from this Drug Store, Workers must be respected."

In the Supreme
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No.6

Statement of
Claim

21st October
1955
continued

10 (9) In the alternative the Defendants and each of them wrongfully and maliciously conspired with intent to injure the Plaintiffs to create a nuisance and did in pursuance of the conspiracy create a nuisance by the continuous shouts and other noises of the pickets and by obstructing the approaches to the said business places of the Plaintiffs thereby seriously interfering with the comfort of the Plaintiffs and the ordinary enjoyment of the said premises by them.

20 (10) By reason of the premises the plaintiffs have suffered damage - Loss estimated at \$500.00 up to this date has thereby been incurred.

The Plaintiffs claim against the Defendants and each of them :

(1) Damages

30 (2) An injunction restraining the Defendants their servants and agents from unlawfully watching and besetting the business places of the Plaintiffs situate at the corners of Long and Thames Streets and High and Thames Streets in the City of Saint John in the Island of Antigua.

E. EWART HARNEY

Solicitor for Plaintiffs.

Delivered this 21st day of October, 1955.

In the Supreme
Court of the
Windward
Islands and
Leeward Islands
Antigua Circuit

No.7

D E F E N C E

1955

"0"

No.45

IN THE SUPREME COURT OF THE WINDWARD ISLANDS

AND LEEWARD ISLANDS. ANTIGUA CIRCUIT.

No.7

Defence

2nd November
1955

BETWEEN :

JOSEPH REYNOLD O'NEAL (et al)

Plaintiffs

- and -

VERE CORNWALL BIRD (et al)

Defendants

DEFENCE

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1. The Defendants admit the matters set out in paragraphs 1 to 4 inclusive of the Statement of Claim.

2. The first seven-named Defendants and the last named Defendant deny that they or any of them wrongfully or maliciously conspired or combined amongst themselves or with any other person or persons to do any of the acts complained of in the Statement of Claim with the intention or in the manner alleged in paragraph 5 thereof or with any such intention or in any such manner as alleged or at all.

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3. The first seven-named Defendants and the last-named Defendant deny that they or any of them caused or procured the Defendant Joseph Samuel or any other person to act in the manner alleged in paragraph 6 of the Statement of Claim or in any other such manner or for any such purposes as alleged or at all.

4. The first seven-named Defendants and the last-named Defendant deny that they or any of them attended at any time or at all outside the business premises of the Plaintiffs or in the vicinity thereof to give encouragement to pickets or to any person or persons to act in

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any manner as alleged or any unlawful manner whatsoever or at all.

(5) The Defendant Levi Joseph denies that he has at any time either by himself or with any other person threatened or used violence to or intimidated or coerced any person or prevented any person whatsoever from entering the business premises of the Plaintiffs or from purchasing therefrom.

10 (6) The Defendant Levi Joseph denies that he at any time either by himself or with any other person or persons acted in the manner or manners alleged in paragraph 8 (1) & (5) or at all.

(7) The Defendant Joseph Samuel denies that he at any time acted in the manner or manners alleged in paragraphs 8 (2) & (3) of the Statement of Claim or at all.

20 8. The Defendants deny that they or any of them conspired either with themselves or with any other person or persons to do any of the acts complained of in paragraph 9 of the Statement of Claim, or at all.

30 If any of the Defendants or any other person did any of the acts complained of in the Statement of Claim and particularly in paragraphs 5 to 9 inclusive thereof in pursuance of any conspiracy or unlawful purpose or in any unlawful manner as alleged (which the Plaintiffs do not admit) or at all, then each and every Defendant for himself denies that such acts if any were done with his knowledge or consent or that he authorised in any way or connived at the same.

40 9. A Trade Dispute has since the 11th day of June, 1955, existed between the Antigua Trades and Labour Union mentioned in paragraph 4 of the Statement of Claim and the Plaintiffs. In furtherance and in respect of the said dispute the premises of the Plaintiffs have been picketed. Such picketing has been at all times carried out in a lawful and peaceful manner.

None of the said pickets or other persons

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No.7

Defence

2nd November
1955
continued

In the Supreme Court of the Windward Islands and Leeward Islands Antigua Circuit

No.7

Defence
2nd November 1955
continued

mentioned in paragraphs 6 to 9 inclusive of the Statement of Claim are the servants or agents of the Defendants or any of them. If any of the pickets or persons so mentioned acted in any of the unlawful manners alleged (which is not admitted) the Defendants deny that they or any of them authorised or connived at or consented to or permitted such acts to be done.

(10) Save and except those matters expressly admitted herein, the Defendants and each and every one of them denies each and every allegation contained in the Statement of Claim.

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Sgd. Errol W. Barrow

Solicitor for Defendants.

Served this 2nd day of November, 1955.

No.8

Request for further and better particulars of Defence
11th November 1955

No. 8

REQUEST FOR FURTHER AND BETTER PARTICULARS OF DEFENCE

11th November, 1955.

E.W.Barrow, Esq., 46 North Street, St.John's.

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Dear Sir:

Joseph Reynold O'Neal and Anor.
vs. Vere Cornwall Bird and Others.

In Paragraph 9 of the Defence delivered by the Defendants in the above suit it is alleged that since the 11th day of June, 1955, a trade dispute has existed between the Antigua Trades and Labour Union and the Plaintiffs, and in this connection I would be obliged if you would furnish me with the following particulars :-

30

- 1. The names of the person or persons on

whose behalf the Antigua Trades & Labour Union is acting.

- 2. The particular business in respect of which the alleged dispute exists.
- 3. Full particulars of the dispute including particulars of every claim or demand which has been made on the Plaintiffs by the Antigua Trades & Labour Union.

Yours faithfully,

E. Ewart Harney.

Solicitor for the Plaintiffs

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In the Supreme Court of the Windward Islands and Leeward Islands Antigua Circuit

No.8

Request for further and better particulars of Defence
11th November 1955
continued

No.9

FURTHER AND BETTER PARTICULARS
OF DEFENCE

25th November, 1955.

E. E. Harney Esq., Church Street,
St. John's Antigua.

No.9

Further and Better Particulars of Defence
25th November 1955

Dear Sir:

Joseph Reynold O'Neal & Anor.

vs.

Vere Cornwall Bird and Others

20

In reply to your request of 11th November for particulars in the above suit I am to inform you :-

- 1. That the name of the person on whose behalf the Antigua Trades and Labour Union is acting is Miss Averyl Winter a former employee of the Plaintiffs.
- 2. The dispute exists in respect of the employment,

In the Supreme Court of the Windward Islands and Leeward Islands Antigua Circuit

No.9
Further and Better Particulars of Defence
25th November 1955
continued

terms of employment or non-employment by the Plaintiffs of the said Miss Winter.

- 3. Full particulars of the matters requested in paragraph 3 are set out in the documents and marked exhibits A & B admitted in evidence in proceedings between the same parties on the third day of October, 1955.

Yours faithfully

Errol W. Barrow
Solicitor for Defendants.

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No.10

Request for further and better particulars of Statement of Claim
28th November 1955

No.10

REQUEST FOR FURTHER AND BETTER PARTICULARS OF STATEMENT OF CLAIM

28th November, 1955.

E.E.Harney Esq., Church Street,
St. John's Antigua.

Dear Sir:

Joseph Reynold O'Neal & Anor.
vs.
Vere Cornwall Bird and Others

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I would be glad if you would furnish me as soon as possible with particulars of the following allegations set out in your Statement of Claim.

This request is intended to rescind and to stand in place of my former request of the 25th November date.

As to paragraph 5 (five) thereof :-

(a) The date time and place of the alleged conspiracy and the precise terms and nature of the agreement therein.

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(b) The terms of the alleged demand; by

whom made and the date on which made.

As to paragraph 6 (six) thereof :-

- (c) The names of the pickets so caused or procured and the express manner in which the said pickets were procured or caused to act in the illegal manner alleged.

- (d) The name or names of the customer or customers or prospective purchasers who were intimidated and/or prevented from entering the business places of the Plaintiffs.

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As to paragraph 7 thereof :-

- (e) The precise nature of the encouragement alleged to have been given by any and all of the named Defendants to the said pickets.

As to paragraph 8 (eight) thereof:-

- (1) The names of the persons who attempted to enter the business places of the Plaintiffs.
- (2) The name or names of the person or persons who were told by the Defendants that the Police would lock them up.
- (3) The nature of the alleged assault.
- (4) The names of the persons so surrounded and or obstructed.

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As to paragraph 9 (nine) thereof:-

- (f) The date on which the alleged conspiracy was made and the precise nature of the instructions given (if any) in pursuance thereof and the nature of the nuisance complained of.

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I would be glad if you would let me have these particulars before the trial itself.

Sgd. Errol W. Barrow
Solicitor for the Defendants.

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No.10

Request for further and better particulars of Statement of Claim

28th November 1955
continued

In the Supreme Court of the Windward Islands and Leeward Islands Antigua Circuit

No.11

FURTHER AND BETTER PARTICULARS OF STATEMENT OF CLAIM

29th November, 1955.

E.W.Barrow Esq., 46 North Street, St.John's, Antigua.

No.11

Further and Better Particulars of Statement of Claim.

29th November 1955

Dear Sir:

Joseph Reynold O'Neal & Anor. vs. Vere Cornwall Bird and Others.

In reply to your request of the 28th November for particulars in the above Suit I have to inform you :-

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(1) With regard to paragraph (6) (c) that the names of the pickets are:- Edgar James, Charles Carrott, Leonard Daniel, Joseph Samuel, Malcolm Daniel, Starrett Joseph, George Tanner, Garfield Walling, Joseph Miller and Stilton Theophile.

(2) With regard to the other particulars requested please see Annual Practice Ord.19 Rule 6 note "Particulars."

20

Yours faithfully

E.Ewart Harney, Solicitor for the Plaintiffs.

No.12

Judge's Notes on Trial of Action.

30th November 1955.

No.12

JUDGE'S NOTES ON TRIAL OF ACTION

45/1955.

30th November, 1955.

JOSEPH REYNOLD O'NEAL
GERTRUDE O'NEAL

Plaintiffs

- and -

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VERE CORNWALL BIRD
EDMUND HAWKINS LAKE
NOVELLE RICHARDS
ERNEST WILLIAMS
BRADLEY CARROTT
JOHN IRELAND
LEVI JOSEPH and JOSEPH SAMUEL
and LIONEL HURST

Defendants

Mr.E.E.Harney and Mr. Harold Harney for Plaintiffs.

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Defendants present except Defendants Lake,

Richards, Williams, Samuel and Hurst.

9.40 a.m.

Mr. E. E. Harney opens case: Refers to pleadings. I asked for certain particulars. They have been supplied; but as pleadings were closed the reply has not been put on file. Same applies to request for particulars by Mr. Barrow, for Defendants.

10 Mr. Barrow now appears and says he appears for Defendants; he apologises for not being here at appointed time.

On application of both Counsel, leave is given now to file requests for particulars and replies thereto. Requests and replies read. The documents referred to in Mr. Barrow's reply are Exhibits A. & B. on hearing of motion for interlocutory injunction on 3rd Oct., 1955.

20 Gertrude O'Neal sworn saith: I am partner in Plaintiff's drug business at corner of Long and Thames Streets. I also carry on my own business (curio shop) at corner of High and Thames Streets.

I engage clerks in Drug Store. On 11/6/55 I dismissed Averyl Winter, a clerk in the store. Prior to that there had been no difference between us with regard to terms of employment, increase of salary or otherwise.

30 On 13/6/55 Defendant Ireland came and wanted to know reason for the dismissal. I gave him none. He told me she was not a domestic servant and he demanded 1 year's pay. I refused. He told me I would hear more about it.

40 Later in week I received letter from Mr. Odle, Labour Commissioner, asking me to meet Antigua Trades & Labour Union to discuss the matter. I agreed and meeting fixed for next Thursday. At the meeting Defendant Hurst attended along with Defendant Ireland and the dismissed clerk Miss Winter. I attended with Mr. Harold Harney. At the meeting Hurst asked for reinstatement. I refused. As we could come to no agreement I left the meeting.

Sometime later I received letter from Administrator. This is it dated 26/7/55 (letter put in

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Judge's Notes
on Trial of
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1955
continued

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continued

as Exhibit A). I did not reply to the letter.

2 meetings were held at Labour Office. At both the claim was reinstatement.

Administrator by letter dated 16/8/55 inform me of the appointment of a Board of Inquiry. This is the letter (put in as Exhibit B.)

Board of Inquiry was held. I consulted a solicitor. I did not attend. He (Mr.E.E.Harmey) attended.

A Copy of the report of the Board was sent me and a notification it would be published at certain date - from Administrator. This is copy of report I received, together with covering letter from Administrator dated 6/9/55 (Report and covering letter put in as Exhibit C.)

10

I received this letter dated 14/9/55 from Administrator (put in as Exhibit D.)

The Report was published on 16/9/55.

On 17/9/55 I heard a terrific report and boisterous conduct in the street outside Drug Store. I heard steel band and I saw a number of men with flags in their hands led by Defendant Joseph. They surrounded the Drug Store shouting as loudly as they could "Hold the line. Strike on here. Don't buy from O'Neal's Drug Store. Workers must be respected." These pickets had placards with the same words written on the boards. They surrounded people trying to enter the Drug Store and shouted at them and told some of them (when they asked what harm they could do to them) they would knock them down. Tilton Theophile was a picket who threatened to knock down many persons who were attempting to enter the Drug Store.

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They (the pickets) were stationed along Long Street, Thames Street, and at corner of High Street and Thames Street. They were there the whole day, parading up and down. On 17/9/55 Defendant Joseph was one of the pickets - the most noisy one.

That afternoon I saw Defendant Ireland standing under the Post Office, just opposite the Drug

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Store. I did not see any of the other Defendants.

The pickets have been there since 17/9/55 up to the present time - on working days. Not all; some were removed. Some have always been there throughout working hours. First day there were 6 of them. That continued till some time in October; then the number was reduced to 3.

There are 3 up to now.

10 As result of the shouting by these pickets some people were scared and ran away. I am referring to customers of the Drug Store.

On 15/10/55 a young lady came to the door of the Drug Store almost in a state of collapse, almost staggering, and said something. Pickets were there and shouted at her loudly and surrounded her - just in front the door. The lady was surrounded by the pickets outside the store and came inside the store afterwards. I do not know the name of the lady.

20 On 19/9/55 Defendant Samuel stood outside the Drug Store and when people asked him if they could go in - he is known as a local constable - the people wanted to come in to buy - when they asked him if they would get in trouble he said yes. There were policemen standing around, and people who buy from Drug Store wanted to come in to buy medicine. Some said in presence and hearing of Defendant Samuel: "I would like to come in to buy but I don't want to get in trouble with police." They asked Samuel if they would get in trouble with police if they came in, he said yes they would.

40 I have missed customers from my business. One Mrs. Scouten, since the picketing has been on, has stopped coming. I have seen her approaching my business place. She was stopped by the pickets (cannot say which) and could not come in. I heard the pickets tell her that she was not supposed to go in. Since that incident (which was soon after the picketing started) Mrs. Scouten has not returned to the Store. Prior to the incident she used to come to the Store at least once a week.

I employ other clerks in Drug Store - 4 others,

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Judge's Notes
on Trial of
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continued

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Judge's Notes
on Trial of
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1955
continued.

besides myself. They are still in my employment. There has been no difference between us.

While Miss Winter was with me Mr. Laurent was in my employ. He resigned on 15/6/55. He gave me notice that day. There has been no difference between him and me. I estimate loss in trade at O'Neal's Drug Store and my own shop as result of the picketing at \$500 per month.

My sales per month at Drug Store were about \$3,000; at my own shop (curio shop) \$300 a month. Government permits me profit of 33 1/3% for certain items; 50% for others. My net profit is about 25% of sales.

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My sales at present are about 50% of \$3,000 and \$300 mentioned.

To Mr. Barrow: I now have 4 clerks in the Drug Store. As far as I know they are not members of the Union. Don't know if Miss Winter or Mr. Laurent were. It does not matter to me whether my clerks are members or not. I don't take the trouble to find out whether they are. Miss Winter's dismissal had no connection whatsoever with her being a member of the Union. As far as I know none of my present clerks are members. I asked them only today. What I meant by what I said before was that I never ask them such questions when they come for employment.

20

I do not disapprove of Trade Unions. I do not approve of the Antigua Trades & Labour Union. I feel that in some things they are the proper persons to run the Country and in others they are not; I am referring to first five named Defendants and last named. I know them to be members of the Legislative and Executive Councils. In the good things they do I consider them fit; but unfit in other things e.g. by making people afraid of the things the Union will do. People fear the Union, even without a dispute. I am certainly not afraid of the Union. I am trying to secure my rights; I have no desire to put anyone in their place.

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People are afraid; people have come and told me they are afraid to buy from me because of the Union.

When I say people are afraid of the Union even without a dispute what I mean is I am not opposed to the Union asking for higher wages for employees. I give higher wages without being asked.

Not afraid that the Union would run the Country; it is their country. I do not seriously consider that people of my income bracket are better qualified to run the country.

10 People are afraid of their crops being damaged - afraid that Union would discipline them in some way if they don't do as the Union would like them to do.

20 Defendant Ireland demanded one year's pay for Miss Winter on 13/6/55. He brought Miss Winter and asked me what I told her when I dismissed her. I told him her services were no longer required and that I had given her two weeks wages in lieu of notice. Ireland told me that she could not be dismissed like that because she was not a domestic servant, that he was demanding one year's wages.

Miss Winter was the only person present at conversation between Ireland and me. My sister also works in the Drug Store, besides the 4 clerks. My sister was there; don't know if she heard. I told her about it. Ireland did say what I have said.

30 I attended meeting at Labour Office because I wanted to hear what the Union's point of view was. I went to hear what they were going to say: didn't know what they were going to offer. I went there with open mind on question of Miss Winter's dismissal; but never to take her back - any other thing that might have been suggested that met with my approval. I was not prepared to negotiate unless it was a just or right thing I was asked to do. I did not make any suggestion towards a compromise or as to what I considered right or just. I did assist. I made certain allegations against Miss Winter at Labour Commissioner's Office. I had not communicated these statements to Miss Winter or to Union before that occasion. She had knowledge of the matters - not communicated by me or anyone in

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30th November
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Judge's Notes on Trial of Action.

30th November 1955 continued

my employ. Some of the allegations are in the Report at Exhibit C (Board of Inquiry).

I received from Labour Commissioner copies of the minutes of the meetings held in his office. This is copy received and copy of covering letter dated 2/8/55 (minutes and covering letter put in as Exhibit E.) The letter I received was similar to that.

I knew if I had asked Miss Winter about her conduct she was going to deny it. I know it is customary for such people to deny such things. I had a few years ago received an anonymous letter - 1953. Just before I dismissed her I received another. I did not confront her with them because she would deny it; a lady in my employ saw her taking goods too; the lady told me so. The person who told me so is a neighbour of mine, Miss Belle Haddock. I did not take her to the Labour Commissioner. I received the anonymous letter some weeks before I dismissed Miss Winter. Information I received was that Miss Winter was taking and giving things away - cardboard boxes containing valuable things. I had evidence. I wanted to spare Miss Haddock litigation - she is an old lady, with high blood pressure. She is about 62 years. She does not suffer from hallucinations. I did not tell Labour Commissioner about Miss Haddock or about the second anonymous letter I received. After receiving the second letter I started to take notice of Miss Winter's behaviour - for about 3 weeks before I dismissed her.

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The last specific incident I mentioned to Labour Commissioner was about the vaseline, an incident which took place this year, while I was on vacation.

There was no dispute between Miss Winter and myself. I did think that there was a question of her fitness to continue as an employee of mine before she was actually dismissed. Don't know whether she would have gone to Union if I had communicated question to her; didn't know whether she was a member of the Union. I was not afraid she would go to Union; it didn't matter to me to whom she went. I did not tell her because she would have denied it. There could have been a possibility that she could have gone to the Union; that is among my reasons for not communicating the matter to Miss Winter.

40

Miss Winter came to work with me in May 1949. Holidays were available to her. She had holiday once. She was entitled to 2 weeks a year. She only requested leave once. She knew what she was entitled to. I did not remind her.

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10 As to para.5 of Statement of Claim, I say Defendants demanded that Miss Winter be paid 13 weeks' wages as compensation. They did not make any such demand on me, but their paper had something about it. They personally did not make any demand on me or send anyone with such demand. Before the picketing the paper had something about it.

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continued

20 If Defendants had made such a demand I would have considered it unreasonable. Don't agree I owed Miss Winter some 10 weeks' wages in lieu of vacation. If clerks are going to another island I let the 2 weeks' leave per year accumulate; if she lived in another island I would have allowed her to accumulate her leave. Miss Winter asked me in September 1954 if she could get leave. I told her I would give her holidays. I was ill myself and had to go away in January. That prevented me from giving her her holidays.

30 In September 1954 Miss Winter got 2 weeks' leave. She asked me if since she had been there, as she had not taken any leave before, she could get some more leave. I promised her leave in 1955. She would get accumulated leave. I do not remember using the words that she would get the leave "all in one". I don't think I used those words. By telling her she would get accumulated leave I meant she could have got 4 weeks or 6 weeks - something decided on by us. There was no talk about any such matter when I engaged Miss Winter. Question did not come up until she asked for leave. I then made her understand she could get leave.

40 I don't know on what basis Mr. Browne, the Commissioner, calculated the Board's recommendation for compensation.

(Cross-examination not completed).

Adjourned to 2 p.m.

2 p.m. Court resumes and witness continues on

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continued

oath in reply to Mr. Barrow. I did not attend meeting of Board of Inquiry. I took my solicitor's advice. I did resent the Inquiry into dismissal of Miss Winter. I do not agree Union did everything they could to get amicable settlement of this dispute. Meeting at Labour Commissioner's was at their initiation. They attended Board of Inquiry meeting. They did nothing while matter was under consideration by Board.

Do not remember seeing letter from Governor that he approved findings of Board of Inquiry.

10

When I say that on 17/9/55 the men were led by Defendant Joseph I mean he was very conspicuous as a leader; he was dressed in peculiar outstanding garment and was in front band as a leader. There could have been people in front of Levi Joseph. Joseph was not conducting the band. Joseph came on a motor cycle. Band was there before he arrived. Joseph made the most noise - even louder than the steel band. He was walking up and down before the pickets.

20

I now say that Levi Joseph arrived before either the band or the pickets. He was immediately in front of them all. My final statement is that Joseph came before everybody i.e. his motor cycle with him on it arrived before everybody - the others were immediately behind him: about 6ft. from Joseph: a mass of people. I am sure I saw Joseph. I saw him arrive. I saw when the other people arrived. I cannot explain how I came to say that the band was there before Joseph arrived.

30

As to para.8 (2) of Statement of Claim, I did not hear the ringing of bell. I was not on premises all the time on 17/9/55. I did not hear Samuel ring bell on any other day. I heard him say "Don't buy from O'Neal's Drug Store" and other things. Almost every day he said "you no hear you no foo buy from the Drug Store?"

As to para.8 (3) of Statement of Claim, I was in the Drug Store but did not see the incident complained of. My sister was also in Drug Store. Neville Lowen was at the door. No others present that I can recollect.

40

The words "Don't buy from O'Neal's Drug Store"

were not written on any placards. I was not trying to mislead the Court.

I do object to the placards. None refer to me by name, but they refer to me just the same. The placard "Join the fight against injustice" infers that something unjust is going on, that I am an unjust person.

10 On placard was "workers must be respected". I do not disagree with that; if they merit respect they have every right to demand it.

As to para.8 (4), I mean by "surround and obstruct persons" that many of pickets cluster around persons and bar their way from entering the shop. I am quite certain about that.

Question: Can you name any of the persons who have been so barred?

20 Answer: A little girl by the name of Harris. A lady by the name of Sarah Dorsett; they surrounded her as well. Positive. There was also Ann Simon; pickets surrounded her; she abused them and entered the Store. Sarah Dorsett also abused the pickets and entered the Store.

As to para.8 (5) of Statement of Claim, I heard and saw what happened on 24/9/55. Levi Joseph was there. A.S.P. Blaize came. After Blaize left Joseph called on the men to make more noise saying "this is the way it should be done" and showed them.

30 For whole time pickets have been stationed at my place there have always been at least 2 policemen at the corner of Long and Thames Streets; sometimes more than 2. On 17th and 24th September there were many more than 2. Drug Store is opposite Magistrate's Court building. There is usually a policeman there within earshot.

40 Noises pickets were making amounted to a disturbance. Surprisingly, no arrests were made - even when people were surrounded and intimidated. High-ranking officers of police Force were down there on 17th and 24th September.

I know the faces but not the names of the

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people who were coming to buy from Store but were turned back.

Pickets spoke to people in street. People in street came up and spoke to pickets. Many times. Heard Samuel say the Union put him there. Never heard any of them discussing the dispute. I did not always hear their conversations with people in street.

Originally there were 6 pickets; now there are 3. At no time were there 12 pickets. 10

If it is peaceful, quiet picketing, I would not have any objection to picketing. I object to the reasons for which the pickets were sent. I believe I know why they were sent. I really don't know why they were sent; I'll let it pass at that.

Pickets are not now as aggressive and annoying as they were at first; it isn't anything as it was. But I do not regard it as a joke now.

I do not myself sing "Hold the line" but I know the tune. When people ask me how I am I sometimes say I am holding the line. We sing "Hold the line" sometimes at home. When the pickets sing out "Hold the line", we in Store sometimes repeat it, but not in the manner in which they say it. I do object to the way they say "Hold the line". I object to their presence there at all. 20

There is Salvation Army in Antigua. I have a concertina. Bought it since the picketing. I brought it to the Drug Store; while it was there I learned to play "Hold the line" on it. It is now at home. "Hold the line" is the only tune I can play on it. The pickets do sing "Hold the line," but not to my accompaniment. 30

I speak to the picket Tilton - tell him "good morning". Samuel is known as "Papa Bonnum". I do not make any remarks to him. When Tilton says "Hold the line" I hold a line. I do not speak to the others. 40

I have heard people come into Store and say in patois "Hold the line". I say it quietly also in patois.

People have come to my shop even since the picketing, but not in volume they used to come.

I find the picketing embarrassing. I would bother with it even if I did not find it embarrassing.

Salvation Army would not annoy me if they played outside my Store. But it would annoy me if they played "Hold the Fort" in bad spirit; and I would speak to the Commander; he wouldn't persist. I don't know what I would do if he persisted.

I have never told any of the pickets: "You see people are still coming in".

When I speak of profit of 33 1/3% and 50% I mean "mark up". I keep books. It does happen that there are seasonal fluctuations. I would not say off-hand what my sales in September and October last year were but I have compared them with this year and they were less this year. I would be prepared to produce my books for Court's inspection. I will bring them tomorrow.

At end of the year the Drug Store normally shows clear profit of \$6,000. Sometimes it is more. I estimate profit for first 8 1/2 months of 1955 at I would have to check. I would say that \$500 is the normal average monthly profit the Drug Store makes. In that I include the profits from my Curio Shop.

Referring to para.10 of Statement of Claim and my statement this morning that I estimate loss as result of picketing at \$500 a month, I say I do not believe I am making any profits at all at present. I sell a few perishable goods in my business such as drugs. What I have left on my shelves can be sold at some time.

I know Mrs. Scouten's reasons for not coming to buy. Her husband spoke to me. I saw her chased away from the Store. She might be afraid to come to give evidence.

I cannot think of any other of my regular customers who have refused or declined to come to buy since the picketing.

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I did not ask police to get the names of any of the people who were being prevented from coming into the Drug Store.

On 19th and 20th September I took out about 28 summonses against members of Union and pickets. Don't remember making any efforts to get names of persons prevented from entering Store to get them as witnesses. Summonses in respect of Defendants Joseph and Samuel were in respect of same dates as complaints made against them in this case. 10

Don't remember the name of the person who came into Store staggering (almost collapsed); I think she told us her name. I took note of date.

(Cross-examination completed subject to production of books by witness and examination thereon).

To Mr. Harney: As to 17.9.55, Defendant Joseph had on red cap and red shirt; was riding motor cycle. Joseph was in charge of the pickets. He led them around the building; he shouted more vociferously than the others. They started at Long Street, then went to Thames Street, then to corner of High Street; walking up and down; they did not stop walking up and down. Joseph was backwards and forwards but after a while he left. When he left pickets were still around the Drug Store. 20

As to 24.9.55 one policeman was at the corner - not high official. I rang A.S.P. Blaize and he came.

As to profits, I told Mr. Barrow my net profit was \$500 a month. 25% is my net profit on sales. 25% of \$3,300 is \$800 odd. Since picketing my profits have been reduced by half. 30

Adjourned to 9.30 a.m. tomorrow.

1st December, 1955.

Continued from 30th November, 1955

As before.

Gertrude O'Neal recalled states on oath in reply to Mr. Barrow: I have brought the books of the

firm of O'Neal's Drug Store.

This is the ledger showing credit sales (ledger put in as Exhibit F). Summary of all sales would be in another book. I have not brought it this morning because I have not had enough time to look for it. Miss Catherine O'Reilly, a friend helps me to keep that book. She is a teacher.

This is summary of daily credit sales from 1953 (put in as Exhibit G).

10 I have an audited statement for 1953 but not yet for 1954 and 1955. This is my cash sales book for 1953 and 1954 (book put in as Exhibit H). Auditing was done by Fitzgerald Williams.

To Mr. Harney: I have a book in which I enter Drug Store daily cash sales. Sales for September 1955 are written up - but not fully - certain omissions I can see.

20 On a separate piece of paper I ascertained how much money I was supposed to have taken in from 1st to 30th September, 1955. Some of the information was obtained from the books kept in ordinary course of business. I now say all of the information was obtained from the books kept in the ordinary course of business.

30 This is my cash sales book for period March - November, 1955. That does not contain all cash sales during that period (book put in as Exhibit I). I look at entry for 10th September, 1955. Sales that day were \$203. I look at entry for 17th September 1955; \$95.68.

I look at Exhibit H and say total of my cash sales for 1953 was \$36,911.22, made up for respective months as \$2,624.15, \$2,585.47, \$2,970.14, \$3,068.53, \$3,037.35, \$2,765.60, \$3,178.30, \$3,016.16, \$2,882.01, \$3,336.54, \$2,971.71, \$4,475.26.

40 I look at Exhibit G and say my credit sales in 1953 for respective months were \$438.81, \$383.71, \$465.41, \$516.74, \$411.61, \$410.12, \$436.84, \$387.82, \$519.71, \$526.13, \$425.32, \$806.51 - making total credit sales for 1953 \$5,728.73. There are a few items to be deducted (e.g. where

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persons took goods on account and returned some of the goods so taken). These are noted separately and amount to \$25.29.

1953 was a good year. My profits would have been about \$10,500.

1954 was a better year than 1953.

1955 up to August was better than 1953 or 1954. (Mr. Harney asks leave for witness to be recalled later to produce book showing summary of all sales, which she did not bring this morning.

10

Mr. Barrow: I agree. I would also appreciate audited statement for 1953 and profit and loss account for 1953, 1954 and up to the middle of September 1955.

Witness states profit and loss account for 1954 and 1955 not yet made up.

Judge: Leave granted to recall witness to produce book showing summary of all sales and audited statement for 1953 and profit and loss account for 1953).

20

Victoria Frederick sworn saith: New Street, St. John's Clerk at O'Neal's Drug Store.

I remember the Board of Inquiry held into this matter. I was on the Court gallery when Inquiry was being held. I saw Defendant Bird, Defendant Hurst, Defendant Ireland, Defendant Joseph, Defendant Williams, Defendant Lake at the Inquiry. Bird is President, Ireland Field Officer, Hurst General Secretary, Lake first or second Vice-President, Joseph Organizer, Williams a Vice-President, of the Antigua Trades & Labour Union.

30

On 17/9/55 I was at the lower bus station and saw a crowd - steel band - placards - coming from the direction of Bird's house. Defendant Joseph was in front with another man - both on same motor cycle. Joseph was guiding cycle and other man behind him. Joseph was wearing a red satin suit and other man had on a red shirt, Joseph saying "Hold the Line. A strike is on at O'Neal's Drug Store. Workers must be respected." Joseph patrolled in front of placards and steel

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band coming up Market Street towards the Drug Store. I came on to work behind the crowd. Joseph was riding on a little in front of crowd then he would circle back to the crowd saying "Strike is on at O'Neal's Drug Store. Hold the Line."

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10 They reached corner of O'Neals Drug Store before I did. When I reached there I saw Joseph place some men with some banners towards the Drug Store and he told them they must stand there for the fight is on. He told them "Hold the line. Fight is on. Read the board, people." Later in the day Joseph told one of the pickets he must shout behind people while they are going in the Drug Store. The pickets shouted "Hold the line people; strike is on; striking against injustice." They were shouting that to the people going in to the Drug Store. The people did not go in. None of the clerks at O'Neal's Drug Store were on strike; not to my knowledge.

20 Defendant Joseph came back later in day. Defendant Ireland was stationed there practically for the day. After lunch around 2 p.m. Defendants Bird, Lake, Carrott, and at one time Williams came by the Drug Store and Curio Shop. Bird was walking. Lake drove and got out of car. Pickets were there circling towards the Drug Store. Bird spoke to them as he met them. Bird told one of the pickets that the Curio Shop was also included. The pickets moved towards the Curio Shop.

30 Defendants Carrott, Williams, Lake were in car. At that time, in the afternoon, none of them came out of the car. After 3 p.m. I again saw Bird, Lake and Joseph walking; every time they passed they went to the pickets and said something to them.

40 The following Saturday 24/9/55 I saw Bird, Lake, Hurst, Williams, Carrott, Joseph and Ireland at corner of Thames Street and Long Street. Joseph not in car, but others were. Joseph went to pickets and then went to other Defendants. They stood there for a long time. At that time the pickets were behaving very noisy, because Joseph told them to shout. The noise was very confusing.

To Mr. Barrow: I know Defendants very well.

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I used to work at the Antigua Trades & Labour Union. I had a job at the Head Office from about 1949. I was transferred to their Co-operative Store which is run by the Union. I liked the job. It was not as good as the job I have. I did not leave. I was dismissed. I was told why; whenever the Union is dismissing a person they say why. Hurst told me Executive said to stop me and Miss Francis because we had closed down on Merchants' holiday which we should not have. That was only reason given to me for my dismissal. I considered that unfair to me. I do not resent the members of the Union because of that. I like them.

10

When I was transferred to Co-operative Store I was not told not to credit goods to anyone. There never was any discussion about my crediting goods to anyone. I know nothing about Miss Francis and myself crediting goods to one Mrs. Williams of Market Street to amount of £6.10. I know Mrs. Williams. I was never told it was rule of Store not to credit goods. I was never told I was selling goods above price. I heard that said after my dismissal - about a week after my dismissal. I was never accused of putting difference in price in my pocket: I heard that afterwards. Miss Francis was in charge; she kept the keys. Both of us were dismissed for closing on Merchant's Holiday. I told Mr. Hurst I could hardly be blamed for that.

20

30

Linda O'Neal sworn saith: East Street, Clerk at O'Neal's Drug Store.

17/9/55 when I was going to work I heard steel band when I reached opposite Court House. When I reached Drug Store I saw crowds on streets around Drug Store. People were shouting and cursing us. Soon after I got there band stopped and Defendant Joseph shouted "Don't buy from O'Neal's Drug Store, people. Don't go in there to buy. Workers must be respected. Protest against unjust dismissal. Strike is on here." Joseph had on a red cap, red coat (long tunic like "men out of Space" in the comics). Malcolm Daniel was in the midst. Joseph and Daniel were shouting in the crowd. The men were holding placards. After a long while police came and cleared crowd. People with placards remained and Defendant Joseph

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remained a while longer and Daniel spent practically the whole day on Post Office gallery opposite Store - also Defendant Ireland.

The placards had on the words "Strike is on here"; on another "Protest against unjust dismissal"; "Hold the line" Cannot remember what written on others.

10 Tilton Theophile, Staret Joseph, Edgar James. Garfield Walling and a boy called Daniel were 5 of the pickets.

Later in day of 17/9/55 I saw Joseph Samuel at Long Street corner with bell ringing it and shouting "Don't buy from O'Neal's Drug Store, people. Don't go in there to buy."

20 24/9/55 as I was approaching Drug Store in the morning I saw Defendant Joseph going "Hell bent" around the corner shouting "Don't buy from O'Neal's Drug Store. Workers must be respected. Strike is on. Don't go there to buy, people". All the other pickets were shouting the same thing. A few brave people came into the store and the pickets would go at them in a menacing fashion. Some threatened to beat the people if they went in.

30 Pickets have been there from 17/9/55 up to now. They have been threatening people and telling them not to go into the store. For past 3 Saturdays Defendant Joseph has been out in a car with loud speaker telling the people the dispute is still on.

Last Saturday Defendant Joseph was outside by the Store and told Mrs. Allen of Mill Reef something. She asked him what "Hold the line" meant. He told her that it meant nobody is supposed to go in there (the Drug Store) to buy. She asked why. He said "Because Miss O'Neal would not pay the girl the money; she is unfair."

40 To Mr. Barrow: I missed one or two days at the Drug Store since picketing began. A few people come in every day. There has been no day on which no person has come into the Store. Not many domestic servants come. All sorts of people have come in since 17/9/55.

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17/9/55 I saw Joseph Samuel standing at corner of Long and Thames Streets ringing a bell. It was about 2 p.m. I cannot say who were in Drug Store at the time. Where I sit I cannot see inside Drug Store. I do not know if my sister Gertrude was in the store at the time. I saw and heard Samuel shouting to the people not to buy at the Store.

It was Joseph Samuel who told Mrs. Allen of Mill Reef what "Hold the line" meant, etc. I may have made a mistake but I am quite certain it was Joseph Samuel who spoke to Mrs. Allen.

10

It is not true that within past few weeks relationship between us and pickets has been amicable.

Concertina was sent to my sister some time ago. I have heard her play but cannot say what she played. I have heard her play "Hold the line", but not while pickets were singing.

I hear "Hold the line" so often and continuously that I repeat it myself.

20

Cardigan Stevens sworn saith: I am a civil servant. I live at Factory Road. I am Comptroller of Customs, Antigua.

17/9/55 our offices were at corner of Thames Street and High Street, opposite the Post Office. That morning on arrival at office which faces on to I found I could not hear anyone I was speaking to in the office. There was a lot of noise in Street. I looked out and saw some people with flags and slogans on cardboard - placards Saw steel band pass up and down. There were other people in street. After about one hour - the noise was so awful I couldn't hear people with whom I was speaking - so I telephoned police.

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The men with placards were making tremendous noise shouting "Hold the line" - That's chief thing I heard them saying. In that crowd I cannot say on that day I recognised any individual.

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24/9/55. I was at my office, which was still in same place. Don't remember anything in

particular happening that day.

On the Monday or Tuesday - the 19th or 20th September - I noticed Defendants Bird and Williams come from direction of east down High Street, then go into Thames Street and speak to one of the pickets.

10 I have been into O'Neal's Drug Store several times since picketing on. One day I was going into the Store, coming from the Government Warehouse - I had passed the Post Office corner and come into Thames Street, and was about to go into the first door of the Drug Store; there was a woman (elderly, about 55-60, labouring class, no shoes on) who was directly ahead of me, going into same door of Drug Store; two pickets converged on her (one a Dominica man - don't know his name) shouting at top of their voices "Hold the Line". She didn't bother with them. They closed in behind her as she went into the door and the Dominica man shouted out (loudly) "You don't hear what I say. I say Hold the line." His manner and style was most threatening and intimidating.

20

30 My office is now at corner of Long and Thames Streets - the north-eastern corner - directly north of O'Neal's Drug Store. We went there on 1/10/55. Since going there I noticed on 22/10/55, I was passing from my office and passed through O'Neal's Store, to avoid traffic round the corner, and as I walked into the Store I heard loud noise outside and I saw the same Dominica man shouting out slogans. As I went to the street I saw him and two others approaching a woman who was in act of going into the Store; the attitude of the pickets - especially the Dominica man - was most threatening - hands shaking as he (Dominica man) told the woman "You don't hear what I tell you" - as if he was going to strike the woman. The woman got confused and frightened - she was trembling and stepped off the sidewalk and went to the street. She did not go into the Store.

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My present office is at the back of our building, away from street. From my office sometimes I hear noise - in mornings between 8.15 and 8.30 - chant being sung by pickets; but it doesn't really annoy me because I am so far away.

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To Mr. Barrow: As Collector of Customs I have not got a great deal of spare time.

I am a personal friend of proprietors of the Drug Store. One is very good friend of mine. Since the picketing I have passed through the store frequently, but I would not say every day. It is possible I may have been in there every day.

I have a little knowledge of the law. I have some idea of the things which have to be proved to constitute legal picketing. I have looked at the Trade Unions Act - not sure whether before or after this picketing - I may have done so since this picketing - but not for the purpose of advising or inciting anyone to file a case. I have not advised any of the Drug Store people on this matter.

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My present office is width of the block away from the Drug Store. Present office 150 to 175 ft. away from where old office was. My present building faces Drug Store, but my own office is at back of building. I am at back of my clerk's office. I go into that office sometimes.

20

I kept no diary of these events. One of the incidents made me very angry and I made a note of these incidents in a diary. I had not the faintest idea I would have to come to give evidence. I normally keep diary.

I did tell the Dominica man I would take pleasure in "tumping" him.

30

First incident with the Dominica man (with a woman who went into the Drug Store) resulted in my being sandwiched between that man and another. He didn't appear to know I was there. His shouts were at my ear. He was not more than 12 inches from me. I made complaint to Mr. Samuel who I believe is head picket. When I went to my office I rang General Secretary, Mr. Hurst, and made my complaint. This was not the occasion on which I told the Dominica man I would take pleasure in "tumping" him. That was on a Saturday about 1.15 p.m. I went to Drug Store to pay a bill for my wife. While there the same Dominican, who

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appeared to be away from the vicinity, came up shouting: "the bully come the bully here. I is here, the bully come." I took him to be referring to himself. He was then between Drug Store and Post Office. Another picket, Samuel, was outside the northern door of Drug Store. Soon after the Dominica man came to northern door, shouting some of the slogans. Miss Linda O'Neal peeped around the door and said "Hold the Line" in a low tone but he (Dominica man) could hear her. Dominica man got annoyed and said what he would do with her if he caught her out after dark. I turned to picket Samuel (head picket) and told him he should tell the Dominica man he should not do that sort of thing, this sort of thing does the Union no good. The Dominica man cursed me and Samuel, said Samuel was no boss, that he was the boss and I was interfering in politics and he was not afraid of me, etc. it was then I told him I would take pleasure in kicking him - it was "kicking" not "tumping" I told him. I never told him I would take pleasure in "tumping" him.

I said I had recorded these incidents in diary. First incident was of woman going into shop; second of woman attempting to go into shop and turning away. The third is of 1/11/55 when I heard A.S.P. reprimanding Dominica man for interfering with some person. I did not carry around diary with me. Blaize told Dominica man "I am warning you this sort of thing has to stop; you cannot treat people like that" - words to that effect. I do not know what the incident was; I did not see it.

The day I telephoned police (17/9/55) I spoke to the Commissioner. I had telephoned to Superintendent in charge and could not get him.

My interest in matter is only as a citizen. I have to pass by the Drug Store not less than 10 times a day.

I have passed through the Drug Store during office hours, on such occasions I sometimes spoke to Miss O'Neal. She might call out to me about something.

I did not take any steps to ascertain the names of any of the people who were interfered with, or of pickets.

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I was angry to see, particularly on one occasion, how a poor woman was treated. I did not take the trouble to find out her reactions to incident.

I know defendant Ireland well. He has approached me on several occasions on matters pertaining to my work. On one occasion we had a little verbal "set to" in the course of my business. Next time he met me we were quite friendly. With regard to the question we were discussing, I told Ireland the Union did things that I considered to be wrong. That is my personal opinion. I am not concerned with taking people down a peg or putting them in their places.

10

I never used the expression that anyone should be locked up.

Adjourned to 10 a.m. tomorrow.

2nd December, 1955.

Continued from 1st December, 1955.

As before.

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Gertrude O'Neal recalled stated on oath in reply to Mr. Harney: This is the book containing the summary of all sales, written up to 1953. (Book put in as Exhibit J).

This is profit and loss account for 1953, with receipt from Auditor and a similar account checked by Timothy O'Reilly of St. John's (for Income Tax Department). (Documents put in as Exhibit K).

To Mr. Barrow: I have not got similar documents for years 1954 and 1955.

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Clarine Knight sworn saith: Ottos. Clerk, O'Neal's Drug Store - for nearly 10 years. I know various customers who used to visit Store up to September, 1955. I have missed regular customers - Major Smith (Salvation Army Officer) who used to buy newspapers 3 times a week and drugs regularly. Price of newspapers - Sunday Guardian 20¢. daily 13¢. Sometimes he bought an extra paper.

Mr. Weston also used to come in to buy drugs and patent medicines and consult dispenser. He

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used to buy around \$3.00 worth of goods per week. He has stopped coming. They have stopped coming since the pickets have been outside Store.

To Mr. Barrow: There is a qualified Druggist in employ of Store. Joseph O'Neal is, but he does not live in Antigua.

10 One time Laurent worked there - up to about June 1955 - from 1948 or 1949. Except for sickness or holidays he was the only druggist there during that period.

When I want holiday I ask and get - 2 weeks every year.

Laurent has opened his own Drug Store. I cannot say that none of our customers went over to Laurent's.

Iris Barrow sworn saith: Clerk at Jos. Dew & Son, which is in Long Street - about 200 ft. from O'Neal's Drug Store.

20 17/9/55 in morning I was sitting at office of Joseph Dew & Son and hear terrific noise - I looked out and saw steel band and crowd shouting "The fight is on. Hold the line, workers must be respected." There was a gentleman in red cap and coat - Defendant Joseph on a motor cycle. Great crowd under Post Office. Some policemen were there chasing the crowd - getting them away. Saw some men with banners - red flags - right in front of O'Neal's premises.

30 Little later in day I happened to go to O'Neal's Store to purchase something. One of the men with flags shouted at me "Hold the Line. Don't go in."

Other days I heard the pickets shouting "Hold the line." From my office I heard them.

40 Morning of 24/9/55 I went into O'Neal's Drug Store little after 8 and the pickets with flags and banners were making terrible noise. They were in the street by door of store. They shouted at me: "Hold the line. Don't go into O'Neal's." They had been doing that to me all the week - i.e. any time I went there. I did not go there every day.

On 24/9/55 after I left office at 4 p.m. I saw

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a woman on steps of Drug Store. One of the pickets said "Don't go in there. Don't go in. Hold the line," The woman came off the steps and went away.

To Mr. Barrow: I have been working at Dews for 35 years. I am a good personal friend of the Misses O'Neal.

Some years ago there was picketing at our Firm. The dispute was not in my department - but in my brother's. I do not know much about it but it was over the dismissal of a clerk. My brother is the Manager who effected the dismissal. Haven't the foggiest whether it was rightful or wrongful dismissal. In that case picketing lasted about 5 weeks. Pickets disturbed me. They shouted "Hold the line. Don't buy from Dew's." etc. Don't remember steel bands then; there were tins being beaten, very annoying, not like steel bands. If you play music it must be pleasant. Noise went on right outside my office. Sometimes I had to stop work. Same trade union was involved. They worried me. I told them not to make so much noise and they said "All right missis," etc. There was no animosity between Union and me as far as I know. It didn't embarrass me. I wouldn't say picketing in this case embarrasses me. I go in there and they trouble me but I don't worry with them. I haven't got time for all that.

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Veronica Harris sworn saith: Ottos Lane, School girl. 25/10/55 I went to Red Cross Department in Long Street. From there I went to O'Neal's Drug Store - not inside - because I didn't get chance to go in. I was going to Store with a note. There were 4 of us - 4 girls. As we approached the Store one of the pickets said "Hold the line." We took it as a joke and ran off laughing. As we did that we "butt" on each other and fell down. I bruised my knee in the gutter.

30

40

Don't know which of the pickets told us "Hold the line".

Last Monday I went to Red Cross Department. I went to Mr.E.Harney's Chambers and made a statement there. It was taken down in writing and

read over to me. I signed it. (At this stage Mr. Harney applies for leave to treat witness as hostile. Leave refused).

To Mr. Barrow: I was not going to the Drug Store to buy anything. By "note" I mean message - a note to receive a forceps. I was sent for a forcep from O'Neal's Drug Store. It is from there she (Mrs. Herbert) receives her stock.

10 We are not in habit of passing and teasing the pickets. We don't shout "Hold the line."

To Judge: The Red Cross gets first aid equipment from O'Neal's Drug Store.

Neville Lowen sworn saith: Wood Carver, I go to O'Neal's Drug Store all the time. Miss O'Neal buys from me.

20 19/9/55 I was at Store. While I was there, standing at north entrance, a man came from east going west; he turned to come into Store. Don't know his name - but that man in jury box (witness points to Defendant Samuel) went to the man and chucked him with his hand (Touched him). Policeman was in street - came and asked Samuel why he molested the man. Samuel said it was a friend of his. This time the man was still there. Don't know what is name of the man; he did not look pleased.

To Judge: Don't remember if the man came into the store afterwards. When Samuel went up to man he said "Hold the line."

30 To Mr. Barrow: I do a good deal of my business with the O'Neals. I go to both of their businesses nearly every day.

When Samuel chucked the man I was inside the Drug Store, at North entrance. I was waiting on Miss O'Neal. I was looking outside. I saw the man come from east. (Witness demonstrates how Samuel with open palm touched - pushed slightly - the man on his shoulder when he said "Hold the line").

40 Samuel, I think, told the policeman he was a constable.

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The policeman was a sergeant. I am not certain of his name - I think Roberts. I saw him a while ago in the street.

I don't know the man's name. I did not make any effort to find out his name. Miss O'Neal was there; I didn't inform her.

I don't know if the man made any report to police. He didn't have to. The policeman saw; he came up and asked Samuel why he did that.

I know all the pickets - but not by name.

10

I have never had any trouble with the pickets. I have never been convicted for stealing sheep. I have been convicted of larceny.

George Matthias Roberts sworn saith: I live in Newgate Street. I am Sergeant of Leeward Island Police Force, stationed at St. John's.

19/9/55 I was on duty at corner of Long and Thames Streets about 2.30 p.m. I saw Defendant Samuel attempt to hold a man who was going into O'Neal's Drug Store. I walked quickly to him. The man went into the Store. I asked Samuel why he should interfere with people going into the Store. He said they were friends, both from Clare Hall and the man had tickled him. They were just making joke. I did not see the tickling.

20

I just saw the man "sheer away" from Samuel. I did not hear any words used by either party at the time.

I did not speak to the man. He was not present. He had already gone into the store and when I looked for him he had gone through another door.

30

To Mr. Barrow: have known Samuel long time. He is a local constable. Don't know if he is ticklish. There was nothing hostile in Samuel's attitude to the man. Man made no complaint to me. The man did not appear to be annoyed or worried. I accepted Samuel's explanation.

Samuel had no placard; he might have had his walking stick but I am not sure.

40

Since 17/9/55 I have frequently carried out inspection at O'Neal's Store. Policemen have been stationed there at all times - at each corner - and in between - during working hours. The block is about 100 ft. long. 17/9/55 - I cannot remember if I was by O'Neal's. The 17th was a Saturday. I definitely was there that day but cannot say the exact time. No public disturbance took place in my presence.

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10 Recently I have not been visiting there every day. First month of picketing I went there every day - i.e. visited scene of picketing - to see if everything was in order. Some days I went there more than once. I never discovered any cause for alarm.

I never witnessed nor did I receive any report of any incident in which I considered I would be justified in taking criminal proceedings against any of the pickets.

20 To Mr. Harney: I have received reports - one report - in connection with the pickets but I did not consider it necessary to take action.

To Judge: I used to visit on duty - in uniform.

Edmund Joseph Blaize sworn saith: Asst. Supt. of Police Leeward Islands Police Force stationed at Antigua.

30 24/9/55 in morning I was at my office. I left and went to Thames Street opposite O'Neal's Drug Store - between Long and Thames Streets. I went there as result of a telephone report. When I got there I saw people standing on sidewalk and underneath Jose Anjo's gallery in High Street. I saw two or three pickets holding flags or placards and saying "Hold the line". I did not see any disorder. Defendant Joseph was there. I spoke to him. Told him Miss O'Neal reported to me that he had been very noisy. He asked me whether he was committing any offence because it is said that pickets must not stand up or they would be watching and besetting so he had to keep on walking. I told him he wasn't committing any offence in my presence but I was only informing him of what Miss O'Neal told me. He said the same thing I saw him do - e.g. walking and saying "Hold the line" - is that he had been doing; that he was

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only substituting for somebody who had gone down the street.

I spoke to Defendant Bird about the incident: what Miss O'Neal told me and what I told Joseph. Bird was opposite telephone exchange travelling south to north on Thames Street when I stopped his car and spoke to him. Joseph had already left. It was about 5 minutes after the incident.

I saw about 3 or less pickets while I was there on morning of 24th. Pickets were walking to and fro. I was at corner of Long and Thames Streets. 10

To Mr.Barrow: To my knowledge the Commissioner of Police has complimented the pickets for the manner in which the picketing was carried on.

To Judge: That was on 17/9/55. That was done through me. I spoke to Defendant Bird between 5 and 6 p.m.

To Mr.Harney: The message was given to me by Commissioner between 3 and 4 p.m. that day. Cannot say off hand when next after that Commissioner left Antigua. I can find out. 20

Clement Ishmael Nelson sworn saith: St.John's Street. Master Carpenter.

11/11/55 I went to O'Neal's Drug Store. I went to south door which opens on Thames Street. In approaching door there was a man standing in the street with placard and flag - I know him as Samuel. He was one of the pickets. In my going to the Drug Store he said to me: "Nelson don't you hear you must not go in there to buy. You is a dog." I went and bought a small phial of phosphorine for 1s.8d. Then I proceeded north and went out north door which opens on Thames Street. Samuel followed me and told me I went in there to buy, "You going to want the Union and you burning your own coals." I went to northern end of building. There was policeman by name Walcott standing there. 30

To Mr.Barrow: I often go in to Drug Store, even since picketing. I do not like the policy of the officials of the Union. 40

I used to be Chairman of the General Municipal Workers' Section. At another time - before that - my son was General Secretary of the Union. He was dismissed.

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10 I had no dispute with the Executive of the Union. They removed me from office. I have a letter which shows about my dismissal. They removed me telling me they were going to promote me as District Steward, to look after all sections in St. John's. They said they would pay me to do that job.

I put claim before them for \$2.00 for making trip to settle a dispute. I put in claim on instructions of President - he forced me to do it. Executive Committee turned it down; said I should have charged before I went. It is not the general thing for officers to be paid for such work.

20 I refused the office of District Steward, although it was a higher office. I saw tricks in it. I have never had any dispute with any of the pickets - except Samuel, the most reckless man.

There are two Dominica boys. One is called Tilton. I know the other one by face; I never threatened to kick him. I never passed remarks to the pickets when I was passing going to the Store. Never had any dispute with the picket called Dominica.

30 Defendant Samuel always speaks to me. Last thing I remember he begged me for a 6d. I gave him. I will do all in my power to destroy the policy of the Antigua Trades & Labour Union. But long live the Antigua Trades & Labour Union.

CASE FOR PLAINTIFFS

Adjourned to 1.30 p.m.

1.43 p.m. Court resumes.

40 Mr. Barrow: I will draw Court's attention to certain material defects in Statement of Claim of Plaintiffs due to which Plaintiffs not entitled to succeed in claim for injunction or in their claim for damages arising out of nuisance. It is

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not the kind of objection which must necessarily be raised in limine because had evidence been led to prove the matter which should have been proved the Plaintiffs may properly have made an application to amend the Statement of Claim before closing their case. I use the word "may" advisedly. The substance of the objection is that the claim for injunction is not supported either by allegation or evidence that there was a threat or fear of continuation of acts complained of. See p.41 Bullen and Leake (7th edition): id.pp.336 and 337. I draw this to the Court's attention at this stage. As to question of election, see Cleghon and Saddler (1945) 1 K.B. 325. The Court can listen to Counsel's submission but need not make ruling on it until the end of the case.

10

Laurie v. Raglan Building Co. (1942) 1 K.B. 152. Court intimates to Mr.Barrow that while it cannot stop him making the submission at this stage it will decline to rule upon the submission until he makes his election whether or not he will call evidence.

20

Mr.Barrow opens defence: Para.5 of Statement of Claim: Evidence will be called to show that no such agreement was ever made between Defendants or any of them Same applies to para.6.

As to paras.7 and 8: I intend to call Defendants there named to prove that none of the allegations is true.

30

Lionel Hurst sworn saith: General Secretary Antigua Trades & Labour Union. As such I am chief Executive Officer of Union. I do not know Plaintiff Joseph O'Neal. Averyl Winter is member of the Union. She was member in May 1955 and before. The Union is registered under the Trades Unions Act 1939.

Miss Winter reported to us her dismissal on 13/6/55. I sent Field Officer John Ireland to find out from Miss O'Neal reasons of her Dismissal; whether or not she would be prepared to discuss the matter. He returned with certain information. I reported matter to Labour Commissioner with view to his convening a meeting. Meeting convened 23/6/55 under Chairmanship of

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Labour Commissioner. No decision was reached at that meeting, which was attended by female Plaintiff accompanied by Mr. Harold Harney. I represented Union with John Ireland. Miss Winter was there. Mr. Harney and female Plaintiff made it most difficult. They demanded undertaking re libel. Undertaking was given in writing. 7/7/55 a further meeting was held. At this meeting female Plaintiff and Mr. H. Harney refused to discuss the matter fully and decided not to give consideration to our request. Several allegations were made. I requested that as allegations were unfounded Miss Winter be reinstated. Plaintiff refused. I reported to Executive. The Union approached Government for establishment of Board of Inquiry. This was done. Board met in August. After the Inquiry I received copy of Exhibit C. Copy of Exhibit E was given to me by Labour Commissioner. I also received copy of covering letter re publication of report of Board of Inquiry.

At no time did I or anyone on behalf of the Union make any demand for compensation. That was a recommendation made by Board of Inquiry.

Prior to publication of Report Executive Committee met and discussed matter. It was decided that if before and up to the date of publication of report the matter was not settled I should take necessary steps to picket the business places with view of passing on information to the public as to the exact position regarding the dispute.

Pickets were sent on 17/9/55 under my instructions. This is not the first time I have picketed a business place. I give specific instructions as to what they should do, directing them to conduct themselves in an orderly manner and that their duty is to pass on information to members of the public with regard to the dispute but they must not molest anyone. I have been telling them that whenever I see them.

No decision was made at the meeting held on 9/9/55 as to duration of picketing.

Couple days after commencement of picketing we received certain summonses.

I never gave pickets instructions to behave in

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boisterous manner. From time to time I passed to make sure it was done in orderly fashion according to my instructions. I never saw any pickets behaving in disorderly or boisterous manner. No instructions were given to pickets to intimidate or obstruct public; my instructions were to the contrary.

I never told pickets to tell people not to buy from O'Neal's Drug Store.

To Mr. Harney: When no decision was reached at second meeting at Labour Commissioner's Office I reported to my Executive. That was on 10/7/55. Present at that meeting - I cannot remember everybody - but I have minute book in which that would be recorded. I will produce it.

10

I attended Board of Inquiry. Bird was in Court room so was Lake, Ireland. Cannot remember if other Defendants were there but many of the Executive Committee were there. I sent Ireland to Miss O'Neal. I am not aware he demanded a year's wages. That was not mentioned at meeting at Labour Commissioner's office.

20

Report of Board of Inquiry was considered by Executive Committee. We were prepared to accept recommendation of Board. Report was published according to law. I did not ask for publication. We had a meeting of Executive Committee just before publication. The picketing came immediately after publication. Up to the time we held meeting we did not know publication would have been on 16/9/55.

30

When I say it was decided by Executive that if dispute not settled up to time of publication we would picket what I mean by "settled" is reaching an agreement. I do not mean payment of the award. The Report was sent to us with a view to settlement on basis of recommendation of Board. By "settlement" I did not mean payment of compensation.

At Labour Commissioner's meeting I did not at any time suggest any compensation should be paid. Labour Commissioner suggested a settlement on some basis other than reinstatement, but I was not present when that suggestion was made. That fact was relayed back to me.

40

I engaged the pickets myself. I sent them to their station. The Organiser (Levi Joseph) was detailed to take them. They are paid. The Union provided the placards; also the slogans. "Hold the line" is a local term meaning support the cause. In minute book are names of persons present who instructed picketing.

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10 Union publishes a newspaper called "The Workers' Voice". It is the organ of the Trade Union. I look at issue of 18/9/55 (put in by consent as Exhibit L). I read headlines "The Fight is on. Justice or be damned. People must decide. The Executive of the Antigua Trades and Labour Union have broken off trade relationship with O'Neal's Drug Store and open conflict now wages." I am not responsible for publication of the Workers' Voice. By "broken off trade relationship" I understand there is a trade dispute and relationship is broken. I do not agree that it meant to insinuate that Union intended to damage O'Neal's in their trade.

20

Picketing commenced 17/9/55 and is still on. I do not know how long it is going to go on; that is a decision for the Executive. Up to now the Executive have taken no decision.

If the 13 weeks' wages were paid there would be no dispute. If the wages are paid now the Executive would have to decide that.

30 If the 13 weeks' wages had been paid before publication of the report there would have been no picketing; it would not have been necessary to pass on any information. I gave pickets instructions to pass on information that the dispute was not settled, a woman was dismissed and no one should accept a job at O'Neal's.

I don't know Mrs. Allen of Mill Reef. She may have been seeking a job for someone else. She might have been an agent. There is settlement at East of Island called Mill Reef. Very wealthy people live there.

40

I know Major Medhurst. He had never reported to me any incident concerning the pickets. Never heard of any incident reported by Major Medhurst.

I have never heard that pickets have been

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saying "Don't buy from O'Neal's." In this Court it's first time I have heard that being said. I don't know that the pickets gathered at Bird's house. Saturday is the busy marketing day in Antigua. I am not aware of Defendant Joseph going around with loud speaker on Saturday shouting "Hold the line", but I know he does go around doing that - not necessarily on Saturday mornings - but it has been done on Saturday mornings. I cannot say whether he goes as far as the Bridge. He travels in motor car. Union pays costs of car under instructions of Executive. I will produce minute book of Union this afternoon.

10

(Cross-examination concluded subject to production of book).

To Mr. Barrow: We had no placards to effect that people were not to buy at O'Neal's. The placards used were ones which had been in possession of the Union some time.

20

We used to buy newspapers from O'Neal's. They have not sent us any papers since the dispute.

(Later) To Mr. Harney: This is the minute book (put in as Exhibit M). It starts from 26/11/54 and runs up to present time. It contains minutes of meetings of Executive up to 25/11/55. Meeting which requested appointment of Board of Inquiry was held on 8/7/55. General Secretary was then instructed to take steps to get matter settled. On those instructions I applied for Board of Inquiry: Executive told me to apply for Board of Inquiry. Present were: Bird, Williams, Lake, Carrott, D.Hurst, E.Oliver, M.Daniel, D.Sheppard, J.Lawrence, L.Joseph, N.Richards, R.Roberts, T. Shaw and myself. At meeting on 9/9/55 I was instructed to take steps to picket the place. That meeting directed that Administrator be "inquired" about report. At same meeting resolution passed re picketing. Present at that meeting were Bird, Lake, Carrott, D.Hurst, M.Daniel, E.Peters, E. Oliver, J.Lawrence, L.Joseph, N.Richards and myself.

30

40

Joseph Earl Hughes sworn saith: Ottos Road. Civil Servant, Clerk in Magistrate's Court. That Court is on Thames Street directly opposite business place of O'Neal's Drug Store. Length of building is about same as O'Neal's premises.

I was working as clerk in Magistrate's Court during September, October and November 1955 and up to now. I work there two days a week (I am concerned with the country courts). I know there is picketing going on opposite. I have heard shouting - at all times. Have heard people going up and down making noise, saying all sorts of things. I know some of the people. It's a business section.

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10 To Mr. Harney: I have heard "Hold the line."

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Ernest Athill sworn saith: Carpenter, Sea View Farm. I go to O'Neal's Drug Store several times. I have been there since picketing. Never been obstructed or prevented from going in by any of the pickets.

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20 To Mr. Harney: I was a member of the Union but I became non-financial and I am not now a member. Over 3 years since I became non-financial. Don't know if my name is still in their books. I have not been notified that my name has been taken off.

Levi Joseph sworn saith: Ottos. I was instructed to get pickets to picket premises of O'Neal's Drug Store. I selected 6 pickets. I did not block approaches or entrances of Store, nor did I give pickets instruction to do that. They did not block approaches and entrances.

17/9/55 I did not shout in threatening manner to persons going into store.

30 24/9/55 I picketed for 10 mins. I did not behave in boisterous manner; nor did other pickets. Never heard any of pickets say to anyone he would knock them down.

17/9/55 I was there outside O'Neal's about 15 mins. before pickets arrived. Store was not yet opened. That day I stayed there about 20 mins. in all only about 5 mins. after the pickets arrived.

40 24/9/55 I never instructed any picket to shout. I know Victoria Frederick. She used to work at Union. She hated me. She was dismissed. ... As a member of the Executive I know what she was dismissed for. She had been told not to give credit. She did and Mr. Hurst himself had

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to collect the money. She also sold goods more than what Union valued the goods for and collected the difference for herself, etc.

To Mr. Harney: I engaged the pickets by Mr. Hurst's instruction. I got 6.

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17/9/55 I had on my red shirt and red cap, tweed pants. During the week I told pickets to come to my home at 7.30 on Saturday. Placards etc. are there. I don't know why Saturday 17th was selected. I carried out my instructions. The Executive Committee decided that the place should be picketed on 17th. I was present at the meeting when decision to picket was taken. The date fixed was 17/9/55. I gave pickets the placards. I then rode to O'Neals and reached there 15 minutes before them. While I was by O'Neal's about 15 mins. before pickets arrived. Don't know who engaged steel band. Pickets came together with the band. I did not pass Bird's house on way to O'Neal's. Pickets walked down Ottos Road. Bird lives in Ottos Road. I remained outside O'Neal's until pickets came. I did not ride off. Pickets came exactly at 8 a.m. I placed pickets in their positions. I kept 6 pickets there from 17/9/55 for a week - don't quite remember. Cannot remember when number was reduced. The same 6 pickets remained there whole day 17/9/55. Not true 6 others relieved them.

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(Cross-examination not completed).

Adjourned to 9.30 a.m. tomorrow.

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3rd December, 1955.

Continued from yesterday.

As before.

Levi Joseph continues on oath in reply to Mr. Harney: I am organiser in the Union. I don't know that I am called "Rommel".

I know nothing about the steel band. The band arrived at O'Neal's with the pickets - at 8 a.m. Sometimes steel bands are out at 4 a.m. - holiday or not. Several Saturday mornings there are steel bands playing in St. John's - from 1950 to present time. Don't know if band was paid.

40

On the Tuesday before the Saturday 17/9/55 the General Secretary told me to get 6 men ready for picketing in case no settlement reached.

I took no steps to inquire how it came about that the steel band arrived in company with the pickets whom I had instructed to be at O'Neal's at 8 a.m. I did nothing about the steel band. They did not stop. They simply passed and the pickets remained. Had band remained I would have tried to find out under what conditions they were there. Don't know if the band returned that day. I engaged Edgar Samuel as a picket; not Charles Carrott; not Leonard or Malcolm Daniel - I did not see Malcolm Daniel. Joseph Lawrence was man who rode behind me on my motor-bike. I did not engage Carrott Joseph or George Tanner. I engaged Garfield Walling and Joseph Miller and Tilton Theophile. Joseph Samuel was not engaged as pick-
 10 et till 19/9/55. The 6 I engaged on 17/9/55
 20 were: T.Theophile, Wm.Garner, Joseph Miller, Edgar Samuel, one Knowles and Garfield Walling. Those 6 pickets remained at their stations all day except when store closed for lunch and in afternoon. There was no change of those men by us. If anyone of them wanted to go to relieve nature one among the 6 would substitute for him. I have visited pickets daily. They were instructed by General Secretary how to picket. At no
 30 stage did I give any pickets any instructions as to how they were to picket. Only on one occasion did I substitute for one - for 10 mins. - on morning of 24/9/55. I have not since acted as picket. When I visited pickets I had talks with them. Often they called to me. Once they told me Mr. Stevens threatened to kick them. I told them I would report it. On another occasion they told me Nelson interfered with them. When they made such reports I told them to take it easy. That's
 40 all the talks we had. Sometimes I asked them if all things were correct, and they would say yes.

At one time I used to go with loud speaker - on two Saturdays only - to the two bus stations and around public market - not to the country - informing the people that the dispute is still on. I never added "Don't buy from O'Neal's or words to that effect. The object of informing people in these places is that from the country section of the Union messages were sent. (I don't know by whom) that the dispute was settled and they

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wanted us to come into all the sections to let them know whether it was true or not. The purpose was merely that they should know that the dispute was on. The intention was not that they should not go to O'Neal's to buy.

I don't remember ever going to the Point in connection with this matter. I have a very powerful voice. Don't know if people down at the Point may have heard me.

Pickets carried placards: "Workers must be respected"; "Strike on here. Protest against unjust dismissal"; "Hold the line. The workers security is challenged"; "Join the fight against injustice." 10

I would say there is a strike on. I call a trade dispute a strike. As far as my knowledge goes I call a trade dispute a strike. Because I consider this the last resort I considered it a strike. I have been organiser for last 7 years. During that period I have never called a strike. I have never arranged or assisted in arranging a strike on instructions received. There have been several strikes. I don't know who arranged them. When there is a strike on I have duties to do; according as I am directed. I organise meetings when Executive is to speak to workers to pass out information to them if there is a strike. When there is a strike people stop working. Strike is cessation of work by workers - I agree with that. I don't know if there is a cessation of work by workers in O'Neal's. As to placard "Workers must be respected" - the disrespect is that a worker was stopped from work and accused of various things; many accusations were made against her. 20

Instructions to pickets were given by General Secretary that they were to carry placards and to pass on information that a trade dispute exists between O'Neal's Drug Store and the Trade Union. The information passed on was that a trade dispute exists - that's all - and calling on the workers to unite to pass out the information - not to unite in not buying from O'Neal's Drug Store. 30

I would be prepared to tell the people that 40

is not the object of the picketing. On 3rd October, 1955, at hearing of motion for interim injunction was first time I heard it said that the object of the picketing was to cause people to stop buying from O'Neal's. I told several people the intention is not that - people who generally speak with me. I have on several occasions told the pickets so. I have not said so on my loud speaker.

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10 Never heard song "Keep it lovely. Keep it sweet. Keep it clean" - except in Court yesterday. Never heard that being sung when the store was empty.

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20 I have for 7 years been endeavouring to get more clerks to join the Union. This picketing is not being done to stimulate more clerks to join the Union. Miss Frederick was dismissed from the Union Store for dishonesty - don't remember the month. This was about 3 or 4 years ago - maybe more. I was not at Executive Committee meeting but I heard she was informed why she was being dismissed. Don't know what her wages were. The Trade Union gives clerks Merchants' Holiday - don't know whether that was so at time when she was dismissed. Her dishonesty - for which she was dismissed - was selling goods for higher prices than she should and pocketing the difference. She was not caught red-handed by me. Don't know if she was by any other officer. I did not
30 hear whether she was.

To Mr. Barrow: On 17/9/55 steel band did not stop outside O'Neal's Drug Store. Not unusual for steel bands to pass along streets of St. John's on Saturdays.

The placards were not made especially for this occasion. They have been there for years. We have not got a placard with only the words "Protest against unjust dismissal."

40 Joseph Laurent sworn saith: Qualified Druggist - for about 9 years. I used to work as dispensing druggist at O'Neal's - for about 6½ years. Miss Averyl Winter was employed there during my period of service. I got to know customers very well. I left the store in June 1955 - voluntarily - for opening my own business in St. John's - about

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$\frac{1}{4}$ mile away. I am doing well so far. I have variety of customers. Quite a few of the customers who dealt with O'Neal's when I was there now deal with me. I did not entice them away.

When I worked at O'Neal's I got vacations. When I left I got more than 10 weeks' accumulated vacation. I got it willingly. I did not have to go to Labour Commissioner.

My business was opened very late in July 1955.

10

To Mr. Harney: I was granted the 10 weeks' leave before I resigned. I resumed duty after my vacation. I worked for over a year after resumption before I resigned.

In August, 1955 at my store I did normal business - for a new business. Things slowed down around September. They improved slightly around October and November. I have not been doing a booming trade.

Norris Abbott sworn saith: Estate Manager, Antigua Syndicate. I have business dealings with O'Neal's Drug Store. There have been pickets outside from about middle September - I have been there frequently. I have never been obstructed or molested in any way by the pickets. Never noticed anything offensive or intimidating about the manner in which picketing is being carried on.

20

No question by Mr. Harney.

Edmund Hawkins Lake sworn saith: I live at corner of North and Wilkinson Streets, St. John's. I am a member of the Executive of the Union. I am Second Vice-President of the Union. I am also elected member of Legislative Council, Antigua, and member of Executive Council, Antigua.

30

Have been associated with the Union for 14 years.

I was present at meeting of the Executive Committee of the Union held in September, 1955. I look at Exhibit M:

40

I was at meeting of 9/9/55. What is recorded

10 in the minutes took place - all of it. In the course of the discussion no one suggested that anything should be done to injure the O'Neal's. The resolution was discussed before it was acted on. The object of the picketing was discussed. The object of it - according to the concensus of opinion - was to make known to the public that a trade dispute exists between the Union and O'Neal's and to bring public opinion to bear on the matter. The General Secretary was given an idea of what the duties of the pickets should be if it became necessary to place pickets there; duties of pickets were outlined to the General Secretary: duties being that they were to hold the placards, to pass on information to the public. The General Secretary was further instructed to take steps to ensure that the picketing was carried on in a peaceful manner. We have had picketing before. I was aware of the difficulties connected with picketing. We have had litigation before. I have attended picketing specifically on two occasions to ensure that there was no disorderly conduct by the pickets. There was none either on these occasions or when I passed there on other business. Up to time picketing started the other side, apart from meeting at Labour Commissioner's Office, had refused to negotiate with us. By bringing public opinion to bear on the matter, I mean that members of the public might even encourage O'Neal's to negotiate.

20

30

I have no malice or ill-will against any of the people connected with O'Neal's. I am not at variance - personally - with anyone connected with the Store.

To Mr. Harney: Any dispute arising would first go to the General Secretary. He would detail the Field Officer who would refer the matter back to the General Secretary - notifying him if settlement reached. No settlement in this case; General Secretary went to Labour Commissioner. No settlement reached. Application then made by him for Board of Inquiry. Intention was to hear what a neutral party had to say in the matter. The next step would be to examine the report. It was Board of Inquiry - not arbitration.

40

The Executive Committee considered the Report. They would have accepted the recommendation as a means of settlement: we were prepared

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to accept it. I would say they accepted the recommendation We were informed by Administrator that letter was written to you similar to the one written to us. The Administrator was requested by the Union to publish the Report in the normal way as laid down by the law - don't remember exact date of request. The Report was published on 16/9/55; I may have received letter to that effect. No decision was taken to picket on any particular date: decision was to picket if no settlement reached by time of publication. By settlement I mean an agreement reached between two parties in a dispute. "Settlement" in this particular case did not necessarily mean the payment of the amount recommended by the Board - it might have been any other settlement if they were willing to negotiate. We have never felt at any time that we had passed the stage of negotiation.

10

It was because we had made every attempt possible up to that stage to reach a settlement and we felt that there was still another means of providing a recommendation which might form the basis for negotiations - that was why we applied for appointment of Board of Inquiry - coupled with fact we wanted a neutral opinion.

20

When we decided to picket the intention was not to enforce payment of the amount recommended by the Board.

I look at Exhibit L. I am not responsible for this publication. By the words "People must decide if O'Neal's are above the right and privileges of the workers" I would understand, there is a feud on; the O'Neal's have dismissed a worker and so far as they are concerned it rests there despite the fact that there is a Union. Pickets were put to bring public opinion to bear on the matter. We did not mean that people must compel O'Neal's. I do not accept that the paper meant that people must cease to buy at O'Neal's.

30

By breaking off trade relations, I understand that to mean there was a trade dispute between the Union and O'Neal's and we had broken off trade relationships. I did not write this item: what I am saying is only what I understand.

40

On 1/10/55 I swore affidavit in the previous

proceedings in the Supreme Court in this matter. This is the affidavit (marked as Exhibit N). (At request of counsel witness reads paragraphs 3 and 4 of Exhibit N). The Board of Inquiry dealt entirely with the dispute arising out of the dismissal of Averyl Winter. I was not at the Board of Inquiry. I did hear about leave due to Miss Winter which she did not get. That may have been raised with O'Neal's: I don't know.

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10 I would accept that the dismissal was on 11/6/55. Picketing started on 17/9/55. Don't know if Miss Winter's post has been filled. Part of the information to be passed on by pickets was to get people to refrain from accepting employment with Plaintiffs.

I pass by the pickets daily. I have spoken with them.

20 17/9/55 I visited pickets specifically. That day I passed there several times and spoke with pickets. I had no suspicions as to the conduct of the pickets. As a responsible person I went to see that the thing was being done in accordance with the law. There was no shouting.

CASE FOR DEFENCE

Adjourned to 1.45 p.m.

1.50 p.m. Court resumes and Mr.Barrow addresses:

30 I would refer particularly to unsatisfactory nature of the Statement of Claim and to lack of clear indication as to issues Court called upon to decide. See Annual Practice 1946 p.7.O.19r. 6, notes under heading "Particulars", "Conspiracy", "Nuisance", "Special Damage".

On question of damage especially, which is essential to cause of action, Plaintiffs have neither alleged nor proved special damage (if any) with that particularity which is essential to this cause of action.

40 As to the Indorsement of Claim and Statement of Claim - see p.41 Bullen & Leake (7th edition) - Injunction: "An injunction should be claimed whenever there is any apprehension of repetition of Defendants' unlawful act. In

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such a case it must be averred that Defendant threatens and intends to repeat the unlawful act unless such an intention is already apparent from the nature of the case and the facts pleaded." No such allegation is made. This is not case e.g. where wall is being erected and intention that wall should remain can be inferred. Here the allegations are of transitory nature and particulars are given of only two days.

id. p.338 (my ed. p. 357). Atkin's Encyclopaedia Forms and Precedents Vol. 9 p. 631 para.5 of precedent No.3 All precedents show what must be alleged.

10

Inclusion of that allegation is vital to claim for injunction. Court cannot itself import it into the Statement of Claim. I have an open mind on the General Indorsement, but Bullen and Leake makes it clear that that allegation must be contained in the Statement of Claim.

Para. 4 of Statement of Claim raises doubt as to whether Defendants are being sued in their representative capacity.

20

(Mr. Harney here states that Defendants are not being sued in their representative capacity).

It is being contended that the pickets are not the servants or agents of any individual Defendant - they are servants of the Union.

I would refer to particulars requested and replies thereto.

There are two principal torts alleged. The first is Conspiracy, particulars of which are given in para. 5 of Statement of Claim. Term "wrongfully" does not add anything. "Maliciously" is important: see Harris Tweed Co. case (1942) 1 All E.R. 142.

30

That case has settled the law on the matter. "If damage ensues incidentally as a result of any agreement of the members of the Union....."

Salmond on Torts (8th edition) p. 629:
"Conspiracy"

40

10 Significant factor in this case is complete lack of evidence that Plaintiffs were ever threatened at any time by any of Defendants (or by any other persons). At no time had anybody demanded what Plaintiffs themselves set out in para. 5 of Statement of Claim - i.e. demand re payment of compensation. Only evidence was that at the beginning of negotiations (i.e. prior to alleged conspiracy) Ireland suggested that Miss O'Neal pay compensation.

As regards the matters alleged in para. 5 - no evidence that any illegal agreement ever entered into or that decision to picket was motivated by malice. (See Harris Tweed case).

Salmond p.631 deals with Allen v. Flood, Sorrell v. Smith, etc.

20 On question of conspiracy: even if there was evidence to satisfy Court that Defendants (their servants or agents) had threatened any person in such a way as to interfere with the business no action would lie. Ware & de Freville v. Motor Traders Association (1921) 3 K.B. 40.

Salmond pp.632-34 (see bottom of p.634).

As to unlawful means - see Salmond p.638.

30 Para. 9 Defence alleges "trade dispute." Local Act 17/49 defines "trade dispute". Female Plaintiff admits she never gave Miss Winter opportunity to refute or reform. Reasons: (1) that employee would deny the allegations; (2) that she was afraid Miss Winter would go to the Union. See Ex parte Crowther per Lord Goddard at p.695.

Relevant date is not date of dismissal: it is date when picketing started.

Wood v. Barrow (1866) 2 Q.B. 21: as to how action of pickets should be interpreted.

Adjourned to Monday 5th December at 1.30p.m.

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Continued from 3rd December.

40 As before.

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1.35 p.m. Mr. Barrow continues: Significant that Mr. Harney asked in request for particulars re place of business when dispute existed. A dispute does not exist in relation to a place; it relates to the matters set out in Section 2 of the Act.

See p.472 Citrine: This definition first to be found in 1906 Act. Defendants have abundantly proved trade dispute. Miss O'Neal herself said that in her mind dispute might have been anticipated if she had taken normal course of drawing to attention of employee alleged dissatisfaction. Further she went to Labour Office with open mind to consider the dispute. One cannot frustrate intention of Legislature by his own act.

10

I am not saying there was here no dispute on date of dismissal: at least in mind of employer there was difference between employer and employee, which, had it been brought to attention of employee, she (plaintiff) feared might have caused Union to intervene.

20

Nothing to show that dispute need exist before the improper act alleged.

No authority for saying the dispute must not arise out of the dismissal.

"Non-employment" presupposes no subsisting contract.

See pp. 474-5 Citrine.

Even if difference had been a personal difference, it did reach the stage in which sides taken and it had character of trade dispute when the unlawful acts alleged took place.

30

pp. 476-7 id. Doran v. Lennon had its own peculiar facts. No Irish Reports available. In that case there was no question of picketing for negotiating. On the other side is Ex parte Crowther.

In the Harris Tweed case there was no trade dispute. Dealt purely with conspiracy. When there is a trade dispute and court finds trade dispute existed at relevant date court does not

40

have to inquire into motives or objects of their acts.

Harris Tweed case p. 142.

Plaintiff herself said she did not know what the object of the picketing was.

There must be evidence of intention to do unlawful act or to do lawful act by unlawful means - evidence that people are procured.

id. p. 162.

10 id. p. 171 Fitzgerald J's dictum: (2) when the object is lawful but the means to be resorted to are unlawful. The unlawful means must be a necessary part of the conspiracy. If not so, but Defendants actively connived at, or approved or ratified by their conduct, the unlawful means employed, they would be liable. But here Defendants go to extent of seeing that no unlawful acts resorted to. That's why Plaintiff's Counsel
20 found it necessary to allege that Defendants actually went there to encourage the pickets.

If Court finds Defendants did not encourage the unlawful acts (if they were unlawful) - the Defendants would not be responsible. The pickets would be acting outside scope of their authority.

30 Dennis Lloyd (1938) on the Law of Unincorporated Associations p.164: "The Act does nothing to exempt the individual member or official who actually committed the wrongful act. "Here no agreement to do unlawful act or lawful act by unlawful means. Court not entitled to draw relationship of master and servant making it one of vicarious liability.

Only torts alleged here are conspiracy and nuisance (see para. 9 of Statement of Claim).

40 If the unlawful means alleged is that the pickets themselves acted in a wrongful way by telling people not to shop at O'Neal's - that has not been proved. But that anyhow would not be an actionable wrong: not even to induce to break an existing contract; a fortiori, prohibiting or restraining persons from entering into

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a contract. Ward Lock & Co. (1906) 22 T.L.R.330,
per Moulton L.J.

As to obstruction and intimidation alleged:
Cardigan Stevens, Iris Barrow, Lowen Nelson.
Quite apart from question of bias - and each had
a bias - in no case is person who is alleged to
have been prevented from entering the Store
brought as a witness. Compulsion means driving
somebody to do something - in which there could
be no freedom of action. All the Plaintiffs'
witnesses go into the Store frequently. Defend-
ants have brought cross-section - including
Athill who is non-financial member - to show
people go into the Store freely.

10

See "misfire" - evidence of Lowen and
Sergeant Roberts. That was closest Plaintiffs
came to alleged acts of violence. No one but
Plaintiffs have complained to police. Word
"threats, intimidation, compulsion" - - such
as would entitle a justice of the peace to bind
a person over - such as would raise apprehension
in normal person.

20

With picketing one does not jump at every
straw - see Citrine.

Pearce and Meeston on Law of Nuisance (1926)
pp.28-34 p.30 for definition of nuisance.

Citrine p.50 - mere threat does not give cause
of action. Here no allegation of threats which
have been substantiated.

Complete lack of any allegation of unlawful
means used or proof thereof.

30

Even if one isolated incident of unlawful
act, that would not be sufficient to entitle
Court to grant injunction or award damages
against Defendants.

On question of damages: not proved with
that sufficient particularity or clarity as
would found action. Unsatisfactory evidence.
Admitted there are omissions in books of Plain-
tiffs. Plaintiffs would further have to prove
that damage suffered is direct result of what
Defendants did. There is evidence of Laurent;

40

no clear indication as to seasonal fluctuations.

Mere fact that some people have not come to patronise Store would not be sufficient. They are free to go where they wish.

Harris Tweed Case p.175: "The true position is..." (to the end of the judgment.)

3.15 p.m.

Mr.E.E.Harney addresses:

10 As to allegation that Statement of Claim omits to aver that Defendants threatened to continue wrongful acts - see Bullen & Leake (9th edition) p.41: "unless such an intention....." See para.6 Statement of Claim - "daily". The pleading was delivered on 21/10/55. See volume 7 Atkins' Forms and Precedents (dealing with conspiracy and trade disputes p.38 Form 13 on which this particular pleading is based). That was case of watching and besetting. No such averment is there. Form 13 deals particularly with watch-
20 ing and besetting (cf. Form 12)..

4 Claims under this writ -

- (1) Conspiracy to injure the Plaintiffs in their business.
- (2) Actual watching and besetting (in pursuance of the conspiracy);
- (3) Conspiracy to create nuisance;
- (4) Actually creating a nuisance in pursuance of said conspiracy.

30 (3) and (4) arise out of para.9 of Statement of Claim. Conspiracy not easy of proof. In some cases it has to be established from the conduct of the parties and other surrounding circumstances See Bullen & Leake (9th Edn.) p.506: "It is naturally impossible in a conspiracy action..... He should however give particulars of the overt acts...."

In this case it was impossible until hearing of case to discover any particulars as to how and

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when the agreement in respect of conspiracy was made. But we have in evidence minutes of meeting of Executive Committee of Union -

Exhibit M - 9th September, when this conspiracy actually took place. At that meeting or sometime afterwards the object of the picketing was decided upon. To establish that the object was to injure Plaintiffs in their business some further evidence is necessary. That evidence is forthcoming in the publication of "Workers' Voice" of 18/9/55 - Exhibit L. Newspaper is admitted to be the Official organ of the Union. In this connection consider evidence of Levi Joseph: object of his going to market place and bus stations to inform people dispute still on, to invite them to unite. He was asked, to unite for what purpose?

10

First day of picketing pickets shouted out "Don't buy from O'Neal's" Joseph also. There you have clear indication of object for which pickets placed there.

20

What is meant by breaking off "trade relationship" in Workers' Voice? That relates to object for which picketing was initiated - damaging Plaintiffs until they would pay compensation.

Sorrell v. Smith, 41 T.L.R.530: "A combination of two or more persons....."

Plaintiffs allege conspiracy was to injure them with sole purpose of compelling them to pay compensation. That was real purpose of conspiracy.

30

Defendants say a trade dispute exists and what they did was in furtherance of that trade dispute.

Trade Unions Act Section 6A (2) and 7.

Watching and besetting is common law nuisance and is actionable whether done by combination or not. Therefore Defendants not protected by Section 6A (2).

40

Section 7 deals with second charge of

watching and besetting Pickets were not there for the purpose of obtaining or communicating information or of persuading any person to work or abstain from working. If they were there for that purpose they were not carrying out their duties peacefully. They were there for the purpose of persuading and preventing people from going into the Drug Store to purchase. People were told not to go in there to buy. Plaintiffs also complain that pickets converge on people shouting "Hold the line", etc. They carry placards conveying false information: "Strike on."

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Adjourned to 1.30 p.m. tomorrow.

6th December, 1955.

Continued from 5th December.

As before.

1.30 p.m. Mr. Harney continues to address:

Claims (3) and (4) are in the alternative to (1) and (2) Agency: 22 Hals. (2nd edition) p.221: not necessary to prove servant acting under express authority of master. I say that Defendants intended the acts to be done which were done. I also say that Defendants are ipso facto responsible even if the pickets were not sent there to do anything unlawful or to do anything lawful by unlawful means. Defendants are responsible as masters for any wrongs committed by their pickets. That is covered by para.9 of Statement of Claim.

There is no separate claim for nuisance unattached to conspiracy, but under para.9 of Statement of Claim if Court finds nuisance actually committed without conspiracy to injure by persons who sent the pickets, these persons would still be liable in nuisance.

"Trade dispute" - if no trade dispute exists, then whatever has been done in connection with this case is free from protection of sections 6A (2) and 7 of Trade Unions Act.

History as follows: Section 3 Conspiracy and Protection of Property Act 1875. (p.505

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Citrine). No definition of "Trade dispute" in the Act.

Section 5 (3) Trade Disputes Act 1906 (p.531 Citrine) contains definition of "trade dispute"; the definition is substantially the same as in our Act 17/49, but definition of "Workmen" is quite different from that in Section 2(1) of our Trade Disputes Act 1939 (No.17/1939) Before passing of 1906 Act it was held in Quinn v. Leathem and Lyons v. Wilkins (p.481 Citrine) that a trade dispute was a dispute between an employer and his own workmen. 10

Definition of workmen in 1906 Act remains unchanged, but in 1919 the Industrial Courts Act was passed. In it "trade dispute" is again defined: it adopts definition of "trade dispute" in 1906 Act except that it says "Any dispute or difference"; but the expression "workmen" has same definition as in our Trade Disputes Act.

In 1940, emergency legislation was passed (p.566 Citrine) - S.R.& O. 1940, 1305. That adopted the definitions of Industrial Courts Act - same as ours. 20

Citrine p.481 deals with portion of definition from the 1906 Act: "whether or not in the employment of the employer with whom a trade dispute arose".

He does not deal with the definition in the Industrial Courts Act at all.

Therefore one has to be careful in dealing with Citrine; his comments are comments on the 1906 Act in which the definition is entirely different from the definition in our laws. 30

In the U.K., prior to the 1906 Act "workmen" was interpreted as meaning people working with the particular employer in question - see Quinn v. Leathem (supra). Workman does not include a dismissed person.

Doran v. Lennon (1945) I.R.315. At that time in U.K. definition of workman same as ours. 40

Lyons v. Wilkins (1896) 1 Ch.834. Quinn v.

Leathem (1901) A.C.511. Ex parte Crowther (1947)
 2 All E.R. 693 - this is case under S.R. & O.
 1940, 1305.

10 Once person dismissed and at time of dismissal there was no difference there cannot be a trade dispute. If workman take up the question of the dismissal, then a trade dispute can arise. Same would apply to refusal to employ a particular person. And when there is such a difference involving workmen still actually in employment of employer Union can take up matter.

20 R.V.National Arbitration Tribunal, Ex parte Keable Press Ltd. (1943) 2 All. E.R.633. This case sets out the principles to be applied though it was held on particular facts there was a trade dispute. Per Lord Greene: "The principal question....." See especially p.634 (bottom).
R. v National Arbitration Tribunal, Ex parte Bolton Corporation (1941) 2 All E.R.800 at p.814:
 "A difference between a trade union and an employer cannot be a trade dispute."

30 As to damages, see 11 Hals, (3rd edition) p.222: "Prospective Damages." Loss which is reasonably contemplated in future. This is case in which of necessity it is impossible to establish what the damages suffered are or will be. Effects of watching and besetting over period of time cannot be estimated fully at hearing of the case. Effects of acts done may continue indefinitely - for years anyhow. That factor should be taken into consideration.

Exemplary damages - p.223 id.

id. p.227: Damages assessed once and for all.

Cur Adv. vult.

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JUDGMENT OF TRIAL JUDGEW.A.DATE PUISNE JUDGE

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IN THE SUPREME COURT OF THE WINDWARD ISLANDS
AND LEEWARD ISLANDS. ANTIGUA CIRCUIT.

Suit No.45/1955

B E T W E E N:

JOSEPH REYNOLD O'NEAL and GERTRUDE
O'NEAL

Plaintiffs

10

- and -

VERE CORNWALL BIRD, EDMUND HAWKINS
LAKE, NOVELLE RICHARDS, ERNEST
WILLIAMS, BRADLEY CARROTT, JOHN
IRELAND, LEVI JOSEPH, JOSEPH SAMUEL
and LIONEL HURST

Defendants

Before:- Date J.

E.E.Harney and H.L.Harney for Plaintiffs.

E. Barrow for Defendants.

JUDGMENT.

20

The two Plaintiffs carry on business in partnership under the name of O'Neal's Drug Store at the corner of Long and Thames Streets in the City of St.John; in the adjacent building, at the corner of High and Thames Streets, the Plaintiff Gertrude O'Neal also runs a curio shop.

All the Defendants, with the exception of Joseph Samuel, are members of the Executive Committee of the Antigua Trades and Labour Union, a union registered under the Trade Unions Act,1939.

30

The Plaintiffs' Indorsement of Claim is for (1) an injunction restraining the Defendants, their servants and agents from unlawfully watching and besetting the business places of the

Plaintiffs; (2) damages for injury to the Plaintiffs' trade by conspiracy in pursuance of which unlawful means were used.

Before coming to the other pleadings I will set out a general history of the case to provide the appropriate background to the issues which have now been joined between the parties to this suit.

10 In May 1949 one Averyl Winter was employed as a clerk at the Drug Store on a weekly basis. She continued working there until Saturday 11th June, 1955, when she was summarily dismissed by the Plaintiff Gertrude O'Neal and paid one week's wages in lieu of notice; no reason was given for the dismissal.

Sunday 12th June, was, of course, a dies non.

20 On Monday 13th June the Defendant Ireland, a Field Officer of the Antigua Trades & Labour Union of which Miss Winter is a member, went to Miss O'Neal and asked for the reasons for Miss Winter's dismissal. Miss O'Neal refused to give any. Thereupon, according to Miss O'Neal, Mr. Ireland demanded one year's pay for Miss Winter, and this also was refused.

30 Representations were then made by the Union to the Labour Commissioner of Antigua about Miss Winter's dismissal, and conciliation meetings under his Chairmanship were held at the Labour Department between representatives of the Drug Store and representatives of the Union on 23rd June and 7th July. At both meetings the Union's representatives asked for the reinstatement of Miss Winter. The representatives of the Drug Store said that in dismissing Miss Winter without giving reasons and paying her a week's wages in lieu of notice they were acting within their legal rights, and that they were not prepared to consider the claim for reinstatement. At the second meeting a written undertaking was signed by Miss Winter to the effect that nothing said there would be used by her in any case of slander or libel; the representatives of the Drug Store then stated five reasons which they said were the only reasons for the dismissal. These were examined and severely criticised by the Union's representatives, who expressed the view that they

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proved nothing against Miss Winter and did not justify her dismissal. As the representatives of the Drug Store persisted in their refusal to reinstate Miss Winter, the Chairman inquired whether they would be prepared to consider settling the matter on a basis other than reinstatement, to which they replied in the negative.

The voluntary negotiations having broken down, the Union approached Government for the appointment of a Board of Inquiry under the Trade Disputes (Arbitration and Inquiry) Act, 1939, Section 8 (1) of which reads thus:

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"8 (1) Where any trade dispute exists or is apprehended the Governor may, whether or not the dispute is reported to him under this Act, inquire into the causes and circumstances of the dispute, and, if he thinks fit, refer any matter appearing to him to be connected with or relevant to the dispute to a Board of Inquiry (hereinafter referred to as the Board) appointed by him for the purpose of such reference, and the Board shall inquire into the matters referred to it and report thereon to the Governor."

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By instrument dated 16th August, 1955, the then Acting Governor of the Leeward Islands appointed a Board of inquiry "to inquire into the causes of the dispute that arose over the dismissal of Miss Averyl Winter by the Proprietors of O'Neal's Drug Store, St. John's, and to report thereon to the Governor and to submit to him such conclusions, recommendations and observations as the Board sees fit."

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At the Inquiry, which was held on the 24th August, Mr. E.E. Harney, representing the Plaintiffs, submitted in limine that there was no trade dispute between Miss Winter and the Drug Store and that the appointment of the Board was, consequently, invalid. The gist of his contention was that the relationship of employer and employee had been legally terminated by the giving of a week's wages to Miss Winter in lieu of notice, and that there could therefore be no trade dispute within the meaning of the Act under which the Board was operating. The Board ruled that "the terms of reference contained in the instrument dated 16th August 1955 which gave the

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Board its validity showed prima facie that there was a trade dispute existing between the proprietors of O'Neals Drug Store and Miss Averyl Winter and therefore the Board had full power and authority to inquire into the dispute." At this stage Mr. Harney sought and was granted permission to withdraw from the Inquiry, and the Plaintiffs took no further part in the proceedings, but the minutes of meetings at the Labour Department, which contained inter alia the reasons given by Miss O'Neal for the dismissal of Miss Winter, were produced in evidence and closely examined.

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In its report submitted to the Acting Governor on 31st August, 1955, the Board, after setting out its findings, expressed the opinion that there was no moral justification for the dismissal of Miss Winter and, using "as a norm one of the accepted principles of good industrial relations, that is the principle of mutual respect and tolerance of human rights between employer and workman recommended the proprietors of the Drug Store be asked to pay her a sum equivalent to thirteen weeks' wages "as a compensation for her dismissal".

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Under cover of a letter from the Administrator of Antigua dated 6th September, 1956, a copy of the report was sent to Mr. Harney for the information of his clients and himself "and such action with the view to a settlement of the dispute as may be deemed advisable." In the letter the Administrator also informed Mr. Harney and his clients that the Acting Governor agreed generally with the recommendations of the Board. The Plaintiffs ignored this communication, and on 16th September the Administrator caused the Report to be published in the local press. The following day the Plaintiffs' business premises were picketed. The pickets are still there.

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This would, I think, be a convenient stage to set out paragraphs 5 to 10 (the most important paragraphs) of the Plaintiffs' Statement of Claim dated 21st October, 1955 :-

"5. The First seven named and the last named Defendants and each of them wrongfully and maliciously conspired and combined

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amongst themselves (with intent to injure the Plaintiffs and thereby compel them to submit to the demand of the Antigua Trades and Labour Union to pay compensation to one Averyl Winter a former clerk in O'Neal's Drug Store who had recently been lawfully dismissed from her employment by the Plaintiffs) wrongfully and without legal authority to watch and beset or cause or procure to be watched and beset the said business places of the Plaintiffs and the approaches and entrances thereto in such manner as was calculated to intimidate customers and prospective purchasers.

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6. In furtherance and execution of their said conspiracy and combination the said first seven named and the last named Defendants and each of them wrongfully and without legal authority caused or procured the Defendant Joseph Samuel and other persons to the number of 12 or thereabouts (hereinafter referred to as the pickets) wrongfully and without legal authority to watch and beset the said business places of the Plaintiffs daily from the 17th day of September, 1955 in such a manner as is calculated to intimidate customers and prospective purchasers and to obstruct the approaches thereto. The first seven named and the last named Defendants and each of them in acting as in this paragraph stated acted for the purpose of intimidating and preventing customers and prospective purchasers from entering the said business places and purchasing therein.

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7. The first seven named and the last named Defendants on several occasions on the 17th day of September, 1955, and on divers other occasions thereafter attended outside the said business places of the Plaintiffs or in the vicinity thereof and gave encouragement to the said pickets.

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8. The Defendant Levi Joseph and the pickets have by threats and acts of violence and intimidation and coercion prevented divers customers and prospective purchasers from entering the said business places and purchasing therein.

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- 10 (1) On the 17th day of September, 1955, the Defendant Levi Joseph led a steel band and a number of pickets carrying placards to the said business places of the Plaintiffs and surrounded same blocking the approaches and entrances thereto and shouting in a threatening manner to persons who attempted to enter the said business places "Don't buy from O'Neal's Drug Store, a Strike is on."
- 20 (2) On the said 17th day of September, 1955, and on several days thereafter the Defendant Joseph Samuel who is well known to the general public as a local constable paraded up and down outside the said business places ringing a bell and shouting "Don't buy from O'Neal's Drug Store people. You no hear you no foo buy from this Drug Store." And when people asked why not? Defendant Samuel told them that the police will lock them up.
- (3) The said Defendant Joseph Samuel on the 19th day of September, 1955, assaulted a person whose name is unknown who was attempting to enter one of the business places for the purpose of purchasing therein.
- 30 (4) The said pickets carrying flags and placards with slogans such as "Hold the line The workers security is challenged" written thereon attend daily around the said business places and in a menacing and threatening manner surround and obstruct persons especially old men and women and children who attempt to enter the said business places shouting at them "Hold the line".
- 40 (5) The Defendant Levi Joseph on the morning of the 24th September, 1955, and other pickets conducted themselves in a boisterous and disorderly manner marching up and down in front of the said business places shouting "Hold the line" - "Don't buy from this Drug Store, workers must be respected."

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9. In the alternative the Defendants and each of them wrongfully and maliciously conspired with intent to injure the Plaintiffs to create a nuisance and did in pursuance of their conspiracy create a nuisance by the continuous shouts and other noises of the pickets and by obstructing the approaches to the said business places of the Plaintiffs thereby seriously interfering with the comfort of the Plaintiffs and the ordinary enjoyment of the said premises by them.

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10. By reason of the premises the Plaintiffs have suffered damage - Loss estimated at \$500.00 up to this date has thereby been incurred.

The Plaintiffs claim against the Defendants and each of them :-

(1) Damages

(2) An injunction restraining the Defendants their servants and agents from unlawfully watching and besetting the business places of the Plaintiffs."

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The Defence filed denies any tortious acts on the part of any of the Defendants and continues as follows :-

"8..... If any of the Defendants or any other person did any of the acts complained of in the Statement of Claim and particularly in paragraphs 5 to 9 inclusive thereof in pursuance of any conspiracy or unlawful purpose or in any unlawful manner as alleged (which the Plaintiffs do not admit) or at all then each and every Defendant for himself denies that such acts if any were done with his knowledge or consent or that he authorised in any way or connived at the same.

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9. A Trade Dispute has since the 11th day of June, 1955, existed between the Antigua Trades and Labour Union mentioned in paragraph 4 of the Statement of Claim, and the Plaintiffs. In furtherance and in respect

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of the said dispute the premises of the Plaintiffs have been picketed. Such picketing has been at all times carried out in a lawful and peaceful manner. None of the said pickets or other persons mentioned in paragraphs 6 to 9 inclusive of the Statement of Claim are the servants or agents of the Defendants or any of them. If any of the pickets or persons so mentioned acted in any of the unlawful manners alleged (which is not admitted) the Defendants deny that they or any of them authorised or connived at or consented to or permitted such acts to be done."

At the trial of this action Mr. E. E. Harney, for the Plaintiffs, repeated his submission made to the Board of Inquiry as to the non-existence of any trade dispute within the legal meaning of that term. Both in our Trade Unions Act, 1939, and Trade Disputes (Arbitration and Inquiry) Act, 1939, "trade dispute" is defined thus :-

"Trade dispute" means any dispute or difference between employers and workmen, or between workmen and workmen, connected with the employment or non-employment, or the terms of the employment, or with the conditions of labour, of any person.

Mr. Harney conceded that the expression "non-employment" in the definition embraced a dismissal, but argued that in order to constitute a trade dispute over a dismissal a dispute or difference as to the dismissal must arise between the remaining employees and the employer, and not between the dismissed employee and the employer. In the present case there is no dispute or difference between the remaining employees (none of whom are members of the Union) and the Plaintiffs.

If Mr. Harney's submission on this point is sound, the Defendants would not be entitled to the benefit of Sections 6A (2) and 7 of our Trade Unions Act, 1939, as amended, which apply only in the case of acts done in contemplation or furtherance of a trade dispute. It is important therefore to determine whether or not a trade dispute exists. Should such a dispute be found

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to exist, it would then be necessary to consider the real effect of Sections 6A (2) and 7 of our Statute on the common law relating to conspiracy and nuisance. For the time being it is sufficient to observe that at common law a combination wilfully to injure, which results in damage to another, is, with certain qualifications, actionable (Sorrell v. Smith, 1925 A.C.742; Corbett v. Canadian National Printing Trade Union, 1943 4 D.L.R.44), and that watching and besetting, if it result in damage may also be actionable as a nuisance, as an interference with the ordinary comfort of existence and the enjoyment of premises (Lyons & Sons v. Wilkins, 1899, 1 Ch.255)

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As a starting point for his submission Mr. Harney adverted first of all to the United Kingdom legislation as contained in the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict., c.86), the Trade Disputes Act, 1906 (6 EDW. 7, c.47), the Industrial Courts Act, 1919 (9 & 10 Geo.5, c.69), and the Conditions of Employment and National Arbitration Order, 1940 (S.R.& O. 1940, No.1305); he drew attention to the absence in any definition of the expressions "trade dispute" or "workmen" in the 1875 Act, and to the significant difference between the definition of "workmen" in the 1906 Act and the definition of "workmen" in the 1919 Act and 1940 S.R.& O.

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In the 1906 Act "workman" is defined as meaning "all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises." In the 1919 Act and the 1940 S.R.& O. "workman" is defined as meaning "any person who has entered into or works under a contract with an employer, whether the contract be by way of manual labour, clerical work or otherwise, be expressed or implied, oral or in writing and whether it be a contract of service or of apprenticeship or a contract personally to execute any work or labour.

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Mr. Harney next cited a number of cases to show the interpretations placed by the courts on the expression "workman" and "trade dispute" prior to the 1906 Act, and also in cases after the passing of the 1919 Act; he then submitted that the definitions of "trade dispute" and "workman" in the Leeward Islands legislation were the same

as those in the United Kingdom Act of 1919 and S.R.& O. of 1940; he hoped in this way to find support for his proposition that if a dismissal is lawful (i.e. if the period of notice required by law is given or payment in lieu thereof made) there can be no trade dispute over it between the dismissed employee and the dismissing employer.

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10 The first observation which should be made on Mr. Harney's submission is that while the definitions of "trade dispute" and "workman" in our Trade Disputes (Arbitration and Inquiry) Act, 1939, are substantially the same as the corresponding definitions in the United Kingdom Act of 1919 and S.R.& O. of 1940, no similar definition of "workman" or "workmen" is to be found in our Trade Unions Act, 1939 which, for the purposes of the present proceedings, is the relevant Act. The definitions contained in our Trade Disputes (Arbitration and Inquiry) Act, 1939, are expressly stated to be for the purposes of that Act, and I am unaware of any authority, statutory or otherwise, for incorporating them into the Trade Unions Act, 1939, which is a separate Act altogether. The only definition of "workmen" in the Trade Unions Act, 1939, is that the expression "includes labourers".

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30 The differences in these particular statutory definitions do not of course have to be taken into account in considering the cases decided prior to the passing of the 1906 Act when there were no such statutory definitions, but even so I can find nothing in any of the cases cited by Mr. Harney (whether before or after 1906) which, in my opinion, supports his broad legal proposition that a trade dispute cannot arise between a dismissed employee and his employer out of a dismissal in accordance with law. The cases on which he relied principally were Lyons v. Wilkins (1896) 1 Ch.834 Quinn v. Leatham, (1901) A.C.495, Doran v. Lennon, (1945) I.R.315, and R.V. National Arbitration Tribunal, Ex Parte Horatio Crowther & Company Ltd., (1947) 2 All. E.R. 693.

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Now, in Lyons v. Wilkins (supra) the Defendants, officers of a Trade Union, after unsuccessfully attempting to induce the Plaintiffs,

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who were leather bag and portmanteau manufacturers, to raise the wages of their work-people, ordered a strike against the Plaintiffs and picketed their works. They also endeavoured to get one Schoenthal, who was a sub-manufacturer for the Plaintiffs to cease to do work for the Plaintiffs, and on failing to do so they ordered a strike of and picketed his works. The Court of Appeal held that the picketing of Schoenthal's works and the strike against him for the indirect purpose of injuring the Plaintiffs were illegal acts. A.L.Smith L.J., at p.834 of the report, said :-

"Was there any trade dispute between Mr. Schoenthal's workmen and himself? None at all.. What the Union did was not done in furtherance of a trade dispute between Schoenthal and his men; but what they did was to call out Mr.Schoenthal's men in order to prevent him from working for Messrs. Lyons, and thus to compel Mr.Schoenthal who was willing to work for Messrs.Lyons not to work for him, and by this means to injure Messrs. Lyons in their trade if they did not obey the edicts of the Union."

In Quinn v. Leatham (supra) the Respondent, a flesher, carried on business in Lisburn, having as one of his constant customers Andrew Munse, who kept a butcher's shop at Belfast; and the Respondent had in his employ assistants who were not members of the trade union of which the Appellant was treasurer. The members of the union amongst themselves adopted an unregistered rule that they would not work with non-union men nor would they cut up meat that came from a place where non-union hands were employed. After unsuccessfully attempting to compel the Respondent to employ none but union men, they compelled Munse to stop taking meat from the Respondent under threat of calling out Munse's men (who were members of the union) if Munse did not cease dealing with the Respondent. Held: the words "trade dispute between employers and workmen" in Section 3 of the Conspiracy and Protection of Property Act, 1875, did not include a dispute on trade union matters between workmen who were members of a trade union and an employer of non-union workmen who refused to employ members of a trade union."

The facts and decision in Doran v. Lennon

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(supra) are summarised at pp.476 and 477 of Citrine's Trade Union Law as follows :-

10 "In Doran v. Lennon the Plaintiffs were the owners of retail drapery shops and of a boot shop. As a result of their refusal to pay statutory bonuses which the union claimed were payable to the drapery and boot employees, the union called a strike, giving inadequate notice and thus causing a breach of contract by the employees. The strike was settled after five days, but the terms of settlement did not cover the Defendants, who were boot employees and to whom the Plaintiffs maintained that the bonus Order did not apply. When the Defendants presented themselves for work the Plaintiffs refused to reinstate them, on the ground that their employment had been terminated by the breach. Four months later the Union, conceding that the bonus Order did not apply to the Defendants, demanded their reinstatement. 20 This was refused, but was repeated two months later. The request was again refused and the Defendants proceeded to picket the Plaintiffs' premises. In an action by the Plaintiffs for an injunction to restrain the Defendants from 'watching or besetting,' Overend, J. held that there was no trade dispute and that the protection of the 1906 Act (sic) did not apply. He said :

30 'If it were otherwise, then every employee of a commercial firm, who broke his contract and was dismissed for cause, would be entitled to picket his late master's premises and yet claim the protection of the statute.'

40 We now come to Ex Parte Crowther and Co.Ltd. (Supra) in which workmen employed by a company of chemical manufacturers through their trade union had for some time been pressing for changes in wages and conditions of service; the company always resisted these demands; then on 26th March, 1947, the company were told by their suppliers that their supplies of salt would be cut by 50%; on 28th March notice was given by the Company to all workmen employed on the manufacturing side of their business terminating their employment as from 4th April. No question arose as to this being in any way a notice otherwise than in accordance with the contracts of service and the men were discharged from the company's service on

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4th April. The matter was then reported to the Minister of Labour and he referred it to the National Arbitration Tribunal under the Conditions of Employment and National Arbitration Order, 1940, and they made an award. The Company then moved for a certiorari to remove the award into the King's Bench Division for the purpose of having it quashed. Lord Goddard, C.J., said :-

"It was submitted by Counsel for the Company that as at the date of the reference due notice had been given to the workmen to terminate their employment and their employment had thereby been terminated, there could be no trade dispute to refer, because there could not be a dispute or difference on any subject between these employers and workmen as the workmen were not in the service of the employers, and he reinforced this argument by reference to the definition of "workman" which he submitted contemplated an existing contract of service so, as he put it, that there must be some contract on which the reference could "bite". I cannot agree with that submission. If effect were given to it, it would mean that any employer, or, indeed, any workman, could nullify the whole provisions of the Order and the object of the regulation under which it was made by terminating the contract of service before a reference was ordered, or even after the matter was referred but before the tribunal considered it. It is, in my opinion, quite clear that there was here a trade dispute existing at any rate down to the date of the dismissal of the workmen. That is not in issue; and whether the workmen were discharged for the bona fide reason that supplies were cut down or whether they were discharged because the company were not willing to accede to their demands is, in my opinion, immaterial. If there was a trade dispute it can, in my opinion, be referred to the tribunal whether or not the dispute has resulted in workmen being dismissed or in their having discharged themselves. The object of the regulation is stated to be for preventing work being interrupted by trade disputes. If the employer locked out his workmen with a view to obliging them to submit to the terms which he wished to impose

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10 or the workmen struck in an endeavour to secure their demands, there would be, undoubtedly, a trade dispute. True it is that, unless notice was given to the workmen on strike or who were locked out, the contract of service would not determine unless and until notice was given, but because dismissal is superimposed on a dispute which has existed up to the moment of dismissal it does not seem to me to prevent the dispute being referred, because the dismissal of the workmen in no way settled the dispute which had hitherto existed. Supposing a dispute arose whether the workers in a particular industry or branch of an industry could be, as the employers contended, dismissed at an hour's notice or whether they were entitled, as the workers contended, to a week's notice. There you would have a dispute connected with the terms of employment. It appears to me clear that an employer could not avoid a reference by the Minister if the matter was reported to him by discharging his workmen and saying: "They are no longer in my service, whether I rightly or wrongly dismissed them". If an employer discharges his workmen without proper notice, although the workmen would have an action for wrongful dismissal, they are not from the moment of discharge in the employer's service, but if the contention advanced by the employers in this case be right the question of what notice workers in this industry or this factory should be given could not be settled by the tribunal. In my opinion, there was here a dispute which the Minister could refer to the tribunal and on which the tribunal could adjudicate."

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40 Each of these cases is, I think, easily distinguishable from the case with which we are now dealing. In Lyons v. Wilkins there was no dispute or difference between the person picketed and any of the people who were working or had worked for him. The same can be said of Quinn v. Leathem. In Doran v. Lennon the circumstances were peculiar; the employees' employment was terminated by their own wilful breach of contract, and the picketing that was started

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several months later was not in furtherance of the dispute which had caused the men to strike. Overend, J's dictum, quoted above, was clearly limited to "every employee.....who broke his contract" and was so dismissed for cause. In Ex parte Crowther & Co.Ltd. (which, incidentally, was also cited by Mr.Barrow, contra) a trade dispute was held to exist over differences between the employees and the company that arose long before and down to the date of the dismissal; it seems to me that Lord Goddard's remarks were not intended to apply to a case such as this; if they were, they would, anyhow, have to be treated as obiter, in view of the issues before the Court. "It is an abuse of authorities to extract from judgments general statements of the law made in relation to the facts and circumstances of particular cases and treat them as concluding cases in which the facts and circumstances are entirely different and which raise questions to which their authors were not directing their minds at all" (Martell v. Consett Iron Company, 1955, 2 W.L.R.463, per Jenkins L.J.). This same principle was emphasised by Lord Halsbury in one of the very cases cited by Mr.Harney - Quinn v. Leathem (supra) - where he said, at p.506 of the report, "every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found.....a case is only authority for what it decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it."

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In the instant case, Miss Winter had served as a clerk at O'Neal's Drug Store for six years; throughout that period the only leave she had was two weeks; she was promised long leave early in 1955 but it was postponed indefinitely by Miss Gertrude O'Neal owing to the latter's illness, and the leave was never granted. When Miss Winter was being dismissed on 11th June, 1955, she was not given the opportunity of refuting or explaining any of the things which caused Miss O'Neal to be dissatisfied with her. As regards the failure to give Miss Winter reasons for dismissing her, Miss O'Neal admitted in evidence: "There could

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10 have been a possibility that she could have gone to the Union; that is among my reasons for not communicating the matter to Miss Winter." In the event, Miss Winter did go to the Union, and on the very next working day the Union's representative visited Miss O'Neal and complained - about what? - about a difference over an act done by Miss O'Neal, as employer, against Miss Winter, as employee, on 11th June, when Miss Winter was yet at work, relative to her non-employment thereafter. Miss Winter cannot, in my opinion, be said to have acquiesced in what was done on 11th June, or to have forfeited any rights or claims, simply because she failed to protest or make a scene the moment Miss O'Neal spoke to her and handed her a week's pay in lieu of notice; she is a member of a trade union and in such matters is entitled to be represented by the union, which has, or ought to have, more knowledge than she about the rights, legal and otherwise, of employees. Miss O'Neal subsequently attended and took part in the conciliation meetings held at the Labour Department.

30 I share the view expressed by Mr. Citrine at pp. 476 and 477 of his admirable little book on Trade Union Law, that the fact that a dismissal may be lawful does not prevent a dispute over it from being a trade dispute, and that the legality or otherwise of the dismissal is no more an element for consideration than is the legality of an employer's refusal to improve wages or working conditions in the normal type of trade dispute. The words "whether or not in the employment of the employer with whom a trade dispute arises" in the definition of "workmen" in the 1906 U.K. Act - the significant absence of which from our Act formed the main plank of Mr. Harney's argument - relate, I think, to sympathetic action, that is to say, action in furtherance of a dispute not between the particular employer and his own workmen, but between the employer and workmen elsewhere - e.g. where workmen consider their own interests threatened by something being done by another employer and strike against their own employer to bring pressure to bear upon that other employer.

40 On the evidence before me I find that at all times material to this action a trade dispute

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existed between the Plaintiffs and Averyl Winter, represented by the Antigua Trades & Labour Union. That being so, it becomes necessary to keep in mind the full provisions of Sections 6A (2) and 7 of the Trade Unions Act, 1939, as amended. These sections read as follows :-

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6A (2) 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.

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7. It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.

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The classical definition of conspiracy is given by Willes J. in Mulcahy v. R. (1868) L.R. 3 H.L.306, at p.317: "A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means." Conspiracy may be both a crime and tort. The tort is constituted only if the agreed combination is carried into effect in a greater or lesser degree and damage to the Plaintiff is thereby caused.

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The law with regard to the type of conspiracy which renders actionable certain acts done by persons in combination which (acts), if done by an individual, would not be actionable, is complicated and has often been the subject of lengthy discussion in the highest courts. But it is now well settled that at common law a combination of two or more persons wilfully to injure another in his trade or business is unlawful, and if it results in injury to him is actionable. If the real or predominant purpose of the combination, however, is not to injure another, but to

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forward or defend the legitimate interests of those who enter into it, no wrong is committed and no action will lie, although damage to another ensues; there would then be what has been described as "just cause or excuse" for the action taken. The latter proposition assumes the absence of means which are in themselves unlawful, such as violence or the threats of violence (Sorrell v. Smith, supra). The following passage from the judgment of Viscount Simon L.C., in the leading case of Crofter Hand Woven Harris Tweed Co., Ltd. and Others v. Veitch and Another, (1942) 1 All. E.R.142, at p.149, shows the vital points to be considered :-

"On this question of what amounts to an actionable conspiracy 'to injure' (I am assuming that damage results from it), I would first observe that some confusion may arise from the use of such words as 'motive' and 'intention'..... There is the further difficulty that in some branches of the law, 'intention' may be understood to cover results which may reasonably flow from what is deliberately done, on the principle that a man is to be treated as intending the reasonable consequences of his acts. Nothing of the sort appears to be involved here. It is much safer to use a word like 'purpose' or 'object'. The question to be answered, in determining whether a combination to do an act which damages others is actionable even though it would not be actionable if done by a single person, is not : 'Did the combiners appreciate, or should they be treated as appreciating, that others would suffer from their action?' It is: 'What is the real reason why the combiners did it?' or as Lord Cave, L.C., puts it: 'What is the real purpose of the combination?' The test is not what is the natural result to the Plaintiffs of such combined action, or what is the resulting damage which the Defendants realise, or should realise, will follow, but what is in truth the object in the minds of the combiners when they acted as they did. It is not the 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

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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 Plaintiff 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."

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Section 6A(2) of our Trade Unions Act, 1939, provided in substance that the common law which renders actionable per se damage resulting from a conspiracy to injure shall not be applicable to acts, otherwise lawful, which are done in contemplation or furtherance of a trade dispute. The effect of the Section is, I think, to relieve persons acting in contemplation or furtherance of a trade dispute of the onus of showing that the predominant object of their combination is to forward or defend their own legitimate interests, even though there also appear to be other objects in mind. It is important to note, however, that the protection of the section does not extend to the adoption of means which are in themselves unlawful, in the carrying out of the objects of the combination.

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Section 7 of our Act is identical with Section 2 of the United Kingdom Trade Disputes Act, 1906, and its protection applies only where the watching and besetting (or the "picketing" as it is sometimes for convenience called) is for one or more of the purposes mentioned; it does not apply where there is no such purpose. The "peaceful persuasion" expressly authorised is confined to inducing any person to work or abstain from working. In this connection Mr. Citrine, at p.439 of his book, comments as follows: "For example, it is considered that it would not cover the picketing of a theatre or retail shop with the object of persuading patrons or customers to

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boycott it." At p.440 he adds :-

10 "Although the section does not, in terms, authorise picketing with the object of peacefully persuading customers to boycott, this object may in effect, be accomplished under the provisions relating to the obtaining or communicating of information. The section does not require that the information should have reference to the question of working or abstaining from working. Thus, if pickets confine themselves to publishing, by word of mouth or by means of placards or handbills, accurate information as to the nature of the dispute, the section will cover them in the normal way. It is probable also that they would still be covered by the section if they were merely to 'invite', as opposed to 'persuade', the customers not to deal with the establishment. The distinction between inviting and persuading is impossible of definition. It is a question of degree, and much will depend upon the actual conduct of the pickets and the statements made. It is, however, submitted that the mere exhibition of a notice setting out the facts and saying 'In view of these facts we invite you not to deal here' would amount to a mere invitation."

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30 Other passages from Citrine worth quoting in connexion with this section appear at p.427: "No doubt some forms of picketing, such as continually marching to and fro in front of a shop window, carrying placards or chanting in unison, might amount to common law nuisance. It is in such cases that the section is of advantage to those picketing. In Larkin v. Belfast Harbour Commissioners (1908) 2 I.R. at p.225, Madden, J., summarised the position in these words: The effect of this section, read in the light of antecedent legislation, is in my opinion perfectly clear. It legalised for the first time by positive enactment, a course of action which might otherwise, if carried out in a certain manner, have amounted to a nuisance at common law, provided that such a course of action is resorted to merely for effecting certain specified peaceful purposes'.....All that can be said is that the section may be assumed to legalise such acts as are reasonably necessary to the carrying out

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of lawful picketing, even though those acts might constitute a degree of annoyance which would otherwise be sufficient to support an action at common law."

With these general observations on the law, I will now return to the evidence in this case.

The minutes of a meeting of the Executive Committee of the Antigua Trades & Labour Union held on 9th September, 1955, show that the decision to picket the Plaintiffs' business premises was taken at that meeting, the resolution being in the following terms :-

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" Be it resolved that provided up to the time of the publication of the Board's award the dispute between Miss O'Neal and the Trade Union is not settled, the General Secretary should take the necessary steps to picket the business premises."

These minutes disclose that the Defendants Bird, Lake, Carrott, Levi Joseph, Richards and Hurst attended that meeting. The Defendant Ireland, who is also a member of the Executive Committee, was not present, but he attended subsequent meetings when the picketing was in progress and was discussed, and this case has throughout been conducted on the footing that his responsibility for the initiation and continuance of the picketing is no less than that of any of the other members of the Executive Committee of the Union. The remaining Defendant, Joseph Samuel, is not a member of the Committee and there is nothing to indicate that he attended any of its meetings.

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The witnesses called on behalf of the Plaintiffs were : Plaintiff Gertrude O'Neal; her sister, Linda O'Neal, Victoria Frederick and Clarine Knight, all of whom work as clerks in the Drug Store; Cardigan Stevens, Comptroller of Customs, Antigua, whose offices throughout the picketing have been close to the Plaintiffs' premises; Iris Barrow, a clerk at Jos. Dew & Son, a firm in the vicinity of the Plaintiffs' premises; Veronica Harris, a school girl who was sent on an errand to O'Neal's Drug Store; Neville Lowen, a wood-carver, who sells his goods to the

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Plaintiffs and visits their business premises regularly; Assistant Superintendent Blaize and Sergeant Roberts, both of the Leeward Islands Police Force; and Clement Nelson a carpenter, who deals with O'Neal's Drug Store.

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10 The witnesses for the defence were; the Defendant Hurst, General Secretary (and as such Chief Executive Officer) of the Union; Joseph Hughes, a clerk of the Magistrate's Court which occupies the upper storey of a building opposite O'Neal's Drug Store; the Defendant Levi Joseph, who holds the post of Organiser in the Union; Joseph Laurent, a former druggist of O'Neal's Drug Store; the Defendant Lake, Second Vice President of the Union; Ernest Athill, a carpenter, and Norris Abbott, Estate Manager, both of whom are customers of the Drug Store.

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20 Evidence was given by the Defendants Hurst and Levi Joseph to the effect that at some time after the meeting of the Executive Committee of the Union on 9th September, 1955, they engaged six persons to picket the Plaintiffs' business premises, and that these persons were given directions with regard to their duties by the Defendant Hurst.

30 On the morning of Saturday, 17th September, 1955, at 8 o'clock, the hour at which the Plaintiffs' business premises are normally opened, the pickets arrived outside the premises. That they were accompanied by a Steel band, playing, and a large crowd; and posted around the premises by the Defendant Levi Joseph, is beyond dispute. A good deal has been said about this steel band, for the presence of which Levi Joseph disclaims all responsibility. From the evidence before me I have no doubt that the pickets and band were led to the premises by Levi Joseph in the manner alleged by Gertrude O'Neal and Victoria Frederick and that the installation of the pickets, generally, was attended by much flourish fanfare and noise; it was apparently during this early phase of the picketing that Cardigan Stevens telephoned and complained of the din to the Commissioner of Police. I cannot accept Levi Joseph's statements that even 40 at the time of giving evidence in this Court he knew nothing at all about how the pickets (who

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had assembled at his home) happened to be accompanied by the band, and that the band simply passed by, without stopping outside the Plaintiffs' premises.

The pickets were carrying placards marked : "Workers must be respected;" "Strike on here Protest against unjust dismissal"; "Hold the line; The Workers' security is challenged; and Join the fight against injustice." As they walked to and fro outside the Plaintiffs' premises, the pickets repeated the words written on the placards, particularly the words "Hold the line." The only placard to which it seems to me any objection could seriously be taken is the one marked "Strike on here. Protest against unjust dismissal." There was, in fact, no strike on. Levi Joseph, who was cross-examined about the wording of this placard, at first tried to justify its use by saying: I call a trade dispute a strike.....Because I considered this the last resort I considered it a strike." His final explanation, which was corroborated by the Defendant Hurst, was that the placards were not made specially for this occasion; Joseph added that the Union does not possess any placard bearing only the words "Protest against unjust dismissal."

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This would be a convenient point to mention briefly, and as far as possible in their proper sequence, a number of specific allegations. I will make further comments on some of them at a later stage.

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Gertrude O'Neal states that on the morning of 17th September the pickets, in addition to repeating the words already mentioned, were shouting, "Don't buy from O'Neal's Drug Store"; she says she saw some of the pickets surround people trying to enter the store and heard Tilton Theophile, one of the pickets, threaten to knock down several persons who were attempting to enter; she did not see the Defendant Samuel with any bell, but on this, as on other days, she heard him saying "Don't buy from O'Neal's Drug Store. You no hear you no foo buy from the Drug Store"; during the afternoon, while pickets were around the premises, she saw the Defendant Ireland standing on the Post Office gallery, just opposite the Drug Store.

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Linda O'Neal asserts that on the morning of 17th September she heard Levi Joseph shouting "Don't buy from O'Neal's Drug Store, people; don't go in there to buy," and that later in the day she saw and heard the Defendant Samuel ringing a bell and shouting "Don't buy from O'Neal's Drug Store, people. Don't go in there."

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Victoria Frederick says that on the 17th September, some time after Levi Joseph had launched the picketing, he returned and told one of the pickets he must "shout behind the people while they are going in the Drug Store," and that pickets shouted accordingly and the people did not go into the store. She further states that she saw the defendant Ireland in the vicinity of the Plaintiffs' premises practically all day, and that around 2 o'clock in the afternoon the Defendants Bird, Lake, Carrott and Williams came; she saw Mr. Bird speaking to the pickets and heard him tell one of them that the Curio Shop was also included in the picketing. After 3 o'clock she saw the Defendants Bird, Lake and Joseph walking in the street; they spoke to the pickets.

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Iris Barrow testifies that on the same 17th September she went to the Drug Store to purchase something and one of the pickets shouted at her: "Hold the line. Don't go in".

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As regards the 19th September, Gertrude O'Neal says she heard some people tell the Defendant Samuel, who is a local constable, that they would like to go into the Store to buy but didn't want to get into trouble with the police, and that Samuel told them they would get into trouble if they went in; there were policemen standing around at the time.

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Another occurrence concerning the Defendant Samuel on 19th September is related by Neville Lowen and Sergeant Roberts. They say they saw Samuel go up to and touch a man who was about to enter the Drug Store, and Lowen heard him say "Hold the line". It is clear from the evidence of these very witnesses, however, that there was nothing hostile in Samuel's act. It would appear that he was, as he at the time explained to Sergeant Roberts, just making fun with a friend, who subsequently entered the store. Although

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Lowen visits the Store daily he has never been troubled by any of the pickets.

In respect of the 18th of September, one matter should be noticed, that is, an article which appeared that day under prominent headlines on the front page of "The Workers' Voice", the official organ of the Union. The newspaper itself shows that it is "Printed and published by the Antigua Trades and Labour Union at their office, 46 North Street, St. John's, Antigua", and that the Defendant Richards is its Editor. At this stage I will merely set out the article, with its headlines :-

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"THE FIGHT IS ON: JUSTICE OR BE DAMNED
People Must Decide if O'Neals Are Above
the Right And Privileges of the Worker.
The Executive of the Antigua Trades and
Labour Union have broken off trade re-
lationship with O'Neal's Drug Store and
open conflict now wages

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Early on Saturday morning pickets were stationed in the vicinity of the Drug Store in an effort to demonstrate to the public the resentment of the Union to the attitude adopted by the O'Neals in the dismissal of their clerks

Endeavoured

The Union have endeavoured right through to bring the matter to an amicable settlement and departed from former procedures by going to the extent of asking for an inquiry into the dispute. Even though the O'Neal's recognized at first a dispute existed and attended meeting under the Labour Commissioner it seemed that some last minute adviser prompted them to ignore the whole question. They insulted the government by refusing to attend the Board of Inquiry appointed by the Acting Governor. They were notified three weeks ago of the recommendations of the Board and the Government asked the matter be settled. To the present moment they have even refused to acknowledge receipt of the findings of the Board of Inquiry so adding further insult to injury.

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Principles

Public opinion has been brought to play in this case. If it is felt by the O'Neals and their advisers that injustice should stand before accepted civilized principles and that human beings and causes should be treated contemptuously the public of Antigua will decide. The Trades Union asked for no trouble only sought to right a wrong. If the O'Neals are stronger than the will of the people the coming days or even years will decide. The fight is on."

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The next day on which special incidents are alleged to have occurred is Saturday, 24th September. It was suggested that Saturday was chosen for special activities because in St. John's it is the busiest shopping day. Gertrude O'Neal, Linda O'Neal and Iris Barrow all testified that the pickets were particularly noisy that morning, shouting, among other things, "Hold the Line. Don't go into O'Neal's." Iris Barrow states they shouted that at her, and that around 4 o'clock in the afternoon she saw a woman on the steps of the Drug Store and heard a picket tell her "Don't go in there. Don't go in. Hold the Line", and the woman went away. Linda O'Neal says she heard some of the pickets threaten to beat people if they went in, and that only a few "brave ones" dared to enter. Victoria Frederick claims that the noise was so great that morning that she found it "confusing". Both she and Gertrude O'Neal say they heard the Defendant Levi Joseph egging on pickets to shout louder. At one stage Gertrude O'Neal telephoned to the Police Station and Assistant Superintendent Blaize came to the scene. Blaize found Levi Joseph there with two or three of the regular pickets, at the time merely walking up and down saying "Hold the Line", and told him of the report made by Gertrude O'Neal; Joseph said he was just substituting for a while for one of the pickets and had not done anything save what Blaize found him doing; that he understood pickets must not stand up or they would be "watching and besetting". A few minutes later, when the Defendant Bird was passing in a car, Blaize appraised him of the report made. Gertrude O'Neal says that after Assistant Superintendent Blaize left she heard Levi Joseph telling the pickets to make more noise, adding and

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demonstrating, "This is the way it should be done". Victoria Frederick says that at a certain stage on that Saturday, after the Defendant Joseph had told the pickets to shout and they were behaving very noisily, she saw the Defendants Bird, Lake, Hurst, Williams, Carrott and Ireland come to the corner of Thames and Long Streets. The Defendant Joseph went to the pickets and then to the other Defendants.

Gertrude O'Neal also alleged that one day, soon after the commencement of the picketing, a Mrs. Scouten, up to then a regular customer, was approaching the Drug Store when she was stopped by a picket and told her she was not supposed to come in; since then Mrs. Scouten never returned.

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Another incident, the precise date of which cannot be fixed, is reported by Cardigan Stevens. He says he was going to O'Neal's Drug Store, intending to enter through one of the doors facing Thames Street, and an elderly woman of the labouring class was ahead of him going into the same door when two pickets (one a Dominican), who appeared not to realise that he was behind, "converged" on the woman, shouting at the top of their voices, "Hold the line;" the woman didn't bother with them, and they closed in behind her as she went into the door, the Dominican shouting at her in a most threatening and intimidating manner; "You don't hear what I say, I say hold the line."

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Gertrude O'Neal says that on 15th October a young woman coming to the Drug Store was surrounded by pickets who shouted loudly at her, and that when the woman afterwards entered the store she was "almost in a state of collapse."

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Cardigan Stevens alleges that on 22nd October he was at the Drug Store and saw the Dominican, already referred to, and two other pickets approach "in a threatening attitude" a woman who was in the act of going into the store, the Dominican shouting "You don't hear what I tell you" as if he would strike the woman; the woman got frightened and started to tremble and went back to the street.

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Evidence is given by a schoolgirl, Veronica Harris, with respect to something that happened

on 25th October. She says she was sent from the Red Cross Depot to O'Neal's Drug Store to collect a pair of forceps, and that as she and three other girls with her were approaching the Store one of the pickets said "Hold the line;" they (the girls) "took it as a joke and ran off laughing;" as they did so they "butt on each other and fell down"; her knee got bruised in the gutter. It appears to me that this girl's evidence cannot be taken as proving anything against the pickets.

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Cardigan Stevens further states that on 1st November he heard Assistant Superintendent Blaize reprimanding the Dominican previously mentioned, but did not know what for. Assistant Superintendent Blaize, however, was asked nothing about this when he was in the witness box.

Clement Nelson's testimony is about the 11th of November; he says he was going to the Drug Store when the Defendant Samuel addressed him thus: "Nelson, don't you hear you must not go there to buy. You is a dog." He states that when he left the store Samuel followed him and added: "You going to want the Union and you burning your own coals."

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Finally, we come to an incident concerning the 26th November. Linda O'Neal alleges that on that day the Defendant Samuel said something which she did not hear to Mrs. Allen of Mill Reef, who then asked him what "Hold the line" meant, and that he replied it meant that nobody is supposed to go into the Drug Store to buy; When Mrs. Allen asked why, he said: "Miss O'Neal would not pay the girl the money. She is unfair."

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Turning now to the defence, I will first dispose of the short witnesses. The evidence of Ernest Athill and Norris Abbott was to the effect that since the inauguration of the picketing they have often been to O'Neal's Drug Store and have never been molested or in any way interfered with; they never saw any misbehaviour by the pickets. Joseph Laurent said he left O'Neal's Drug Store in June, 1955, and in late July opened his own Drug Store in St. John's, about quarter of a mile away from O'Neal's; quite a few of the customers who dealt with O'Neal's when he was there now deal with him; "things

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slowed down (at the drug store) around September; they improved slightly around October and November." Joseph Hughes, whose work requires him to be at the Magistrate's Court opposite O'Neal's Drug Store for two days of each week, testified that that section of the City is a business section and is always noisy; he has heard shouting at all times; among other things, he has heard "Hold the line."

The only persons called as witnesses by the defence besides Athill, Abbott, Laurent and Hughes, were the Defendants Hurst, Levi Joseph and Lake. They emphasised that at no time did the Union or anyone on its behalf demand payment of compensation in respect of Miss Winter's dismissal; payment of compensation was a recommendation of the Board of Inquiry; the Executive Committee of the Union were prepared to accept the recommendation as a means of settlement of the dispute, which they had done everything in their power to have settled in accordance with the legislative and other machinery provided for settling such disputes; the object of the picketing was discussed at the meeting of the Executive Committee held on 9th September, the consensus of opinion being that it was to pass on information to the public with regard to the dispute so that no one would accept employment at O'Neal's and so that public opinion might be brought to bear on the matter; the duties of the pickets were also discussed at the meeting and outlined to the General Secretary: the pickets were to hold placards and pass on information: the General Secretary was also instructed to take steps to ensure that the picketing is done in a peaceful manner; no decision has been taken as to the duration of the picketing.

In his evidence the Defendant Hurst says he instructed the pickets in accordance with the directions of the Executive Committee and frequently visited them to ensure that those instructions were being carried out; he denies having ever directed the pickets to tell people not to buy from O'Neal's Drug Store.

The Defendant Lake states that he also checked up on the pickets; on two occasions he went there specifically for that purpose; he passed

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by the pickets daily on other business. Neither he nor Hurst ever witnessed any misbehaviour.

As regards the article appearing in "The Workers' Voice" of 18th September, 1955, both Mr. Hurst and Mr. Lake disclaim responsibility for its composition; they do not agree it was intended to insinuate that damage would or should be done to O'Neal's trade; they understand the words "broken off trade relationship" in the headlines of the articles to mean that "there is a trade dispute and relationship is broken off." The Defendant Richards, who, as already mentioned, is the Editor of the newspaper, did not testify.

I have already made reference to certain portions of the evidence of the Defendant Levi Joseph. He denies all the charges levelled against him, as well as having ever given instructions to any of the pickets as to how they were to carry out their duties; that, he points out, was done by the General Secretary; he maintains that he himself acted as a picket only on one occasion - 24th September - and then for a few minutes only, in the absence of one of the regular pickets; he declares that he never encouraged the pickets to shout loudly and that he visited them daily and never saw any misbehaviour; that 3rd October, at the hearing of the motion for an interim injunction in this matter, was the first time he heard it said that the object of the picketing was to cause people to stop buying from O'Neal's, and he subsequently told the pickets and several other people that that was not the intention, but he did not mention it on his loud speaker.

Neither the Defendant Samuel - who was described by some of the Plaintiffs' witnesses as the head picket, and against whom specific charges of a serious nature were made - nor any of the other pickets, was called by the defence. The case for the Plaintiffs is not that the Defendants or any of them were heard planning to injure the Plaintiffs, or anything of the sort; the Plaintiffs seek to prove the conspiracy through overt acts alleged to have been committed by Defendants and persons employed by the Defendants. Included in the defence is a complete denial of most of these acts. It would

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seem, therefore, that the persons said to have committed the acts should be in a position to furnish valuable testimony. Altogether, this case is remarkable for the number of persons not called as witnesses. In this connexion, however, as also in considering other aspects of the case, it must be borne in mind that the onus of proof rests on the Plaintiffs. One of the main lines of attack employed by learned counsel for the defence was the failure of the Plaintiffs to call the majority of the persons said to have been interfered with, or the policeman on duty in the streets. It is common ground that throughout the picketing there have always been at least two policemen stationed in the vicinity of the Plaintiffs' premises. One explanation suggested by the Plaintiff Gertrude O'Neal is that very many people in Antigua are afraid of the Union. Another explanation advanced, in so far as the first group is concerned, is that the names and addresses of some of the persons molested are unknown. As regards the police, it was apparent from the female Plaintiff's gestures when replying to certain questions put to her in the witness box that she felt that the police attitude towards the Plaintiffs in this matter was unfavourable; and she expressed surprise that no arrests were made on 17th or 24th September. Assistant Superintendent Blaize testified that on 17th September, the first day of the picketing, the Commissioner of Police sent a message through him to the Defendant Bird complimenting the pickets "for the manner in which the picketing was carried on." Exactly what that was intended to convey, on what evidence the opinion was based, or whether the transmission of the message became known to the Plaintiffs and in any way influenced their assessment of the police attitude, is not clear.

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Another argument urged by Mr. Barrow was that the witnesses called by the Plaintiffs are biased against the Union. Victoria Frederick once worked at the Co-operative Store run by the Union and was dismissed; she admits that she considered the action of the Executive Committee of the Union in dismissing her "very unfair". Iris Barrow is a "good" personal friend of the Misses O'Neal; some years ago Joseph Dew & Sons' where she works, was picketed; the dispute in that instance was over the dismissal of a clerk by her

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brother. Clement Nelson was at one time Chairman of the Municipal Workers Section of the Union; he was removed from office with the promise, he says, that he would be promoted to the post of District Steward but declined the promotion as he "saw tricks in it;" he owns to being opposed to the policy of the officials of the Union and says he will do all in his power to destroy that policy. Cardigan Stevens is no other personal friend of the O'Neal family; on one occasion, during an altercation unconnected with this case, he told the Defendant Ireland that he considered the Union was doing things that were wrong; he further states that on a certain day, after the Dominican picket had made threats of personal violence to Linda O'Neal because she softly repeated "Hold the line," he told the picket he "would take pleasure in kicking him". That is hardly a remark that one would expect from a person in Mr. Steven's position under any circumstances; and it was urged by Mr. Barrow as indicative of animosity. It should however be remembered that the suggestion put to Stevens under cross-examination was that he had said he would take pleasure in thumping the Dominican picket; it was Stevens himself who volunteered the information that the word he used was "kick". Whatever else may be said of the matter, it does not seem to me to point to untruthfulness on the part of the witness.

Having given careful attention to these and the other arguments advanced by learned counsel for the defence, I am, nevertheless, after the fullest consideration of the evidence of all the witnesses I have had the opportunity of hearing and observing, of the opinion that the particular incidents mentioned by me as having been related by Gertrude O'Neal, Linda O'Neal, Victoria Frederick, Cardigan Stevens and Iris Barrow did take place, and that their accounts of them are substantially correct; these persons impressed me as being essentially truthful witnesses, whatever their feelings towards the Union. Their evidence shows, among other things, that from the inception of the picketing the pickets who were sent by the Defendants to carry out the objects of the picketing, and who were instructed in their duties by the Defendant Hurst and posted and supervised by the Defendant Levi Joseph

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(both of whom were present when the whole subject of the picketing was discussed in Executive Committee), have been telling people in forceful language that they must not buy from O'Neal's. The same idea appears to be insinuated by "The Workers' Voice" in the third headline to the article of 18th September.

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Although none of the clerks in the Plaintiffs' employment are members of the Union, and there is no evidence to indicate that any further clerks are required, the picketing is still on; up to the time of the hearing of this case no decision had been taken with regard to its duration. The number of pickets has been reduced to three; at a certain stage it was six, but never as many as twelve, as suggested in paragraph 6 of the Statement of Claim.

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It is clear that although the predominant object of the picketing here is the furthering by the Defendants of their own interests, there are other objects in mind and that unlawful means amounting to obstruction, coercion, intimidation and threats of personal violence have been used.

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Mr. Barrow contends that even though the pickets were employed by the Defendants other than Samuel and sent by them to picket the plaintiffs' premises, and even though the picketing be held to be outside the protection of Section 7 of the Trade Unions Act, 1939, owing to the use of illegal means, the Defendants (other than Samuel presumably) are not liable in law because they do not stand in the relationship of master and servant to the pickets and did not authorise the illegal means in question. The implications of that proposition, in the setting of the present case, appear to me to be somewhat startling. It would mean that people could employ men of straw to picket premises and could, when damage results and actions are brought for acts done in furtherance of picketing, simply themselves say, "We authorised the picketing in this way and not in that, therefore we are not liable." In my opinion the Defendants vis-a-vis the pickets do stand in the relationship of master and servant; the pickets were engaged by them and are subject to their control and may be dismissed by them; these, I think, are the essential ingredients of the

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relationship of master and servant. But even if there be no such relationship, it seems to me that on the evidence here Mr. Barrow's submission could not be sustained.

In Ward, Lock, and Co. (Ltd.) v. The Operative Printers' Assistants' Society and another, (1906) 22 T.L.R. 327, the Defendants stationed pickets to watch the Plaintiffs' printing works and to induce the workmen employed by the Plaintiff to join the union and then to determine their employment by proper notices, the object being to compel the Plaintiffs to become employers of Union men and to abstain from employing non-union men. In an action for damages for wrongfully and maliciously procuring and inducing workmen employed in the Plaintiffs' printing works to break their contracts of service with the Plaintiffs, and for nuisance and for an injunction, the Court of Appeal held unanimously that the picketing was entirely lawful both at common law and under the 1875 U.K. Act. Special attention has been asked to the following passage from the judgment of Moulton, L.J. :-

"Throughout the discussion the Defendants have been described as seeking to "compel" the Plaintiffs to pay union wages and to employ union men because they tried to get all the operatives they could into the union, so that the Plaintiffs would find no non-union men to employ. If this be a proper use of the word "compel", it certainly carried with it no wrongful character. In the year 1893 the Legislature forbade the employment of children under the age of 11 as half-timers. Supposing that prior to that Act a "public association" had been formed to induce parents not to send their children as half-timers before the age of 11. No more legitimate, and perhaps no more laudable object of an association could be imagined, and it would not lose its legitimate character by reason of its success. But its success would pro tanto, and its complete success would absolutely, prevent those masters who were desirous of employing young half-timers at, we may presume, correspondingly low wages from doing so, and would "compel" them to employ

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exclusively persons of 13 years old or upwards. Yet no wrong would have been done to such masters; and in the same way no wrong would have been done to the Plaintiffs in the present case if the Defendants had succeeded in persuading every printers' assistant in the country to join the union and they had rendered it impossible for the Plaintiffs to get men to work for them on the terms they desired. The error arises probably out of an incorrect use of language. It is inaccurate to say that the masters have a right to employ men on any specific terms. They have only a right to employ such, if any, as are willing to accept those terms, and no wrong is done them by any one who by lawful means lessens the number of those willing to accept them. The right of the Plaintiffs to try to persuade a man to accept and the right of the Defendants to try to persuade a man to refuse appear to me to be rights of freedom of individual action equally lawful and equally deserving of the protection of the law, so long as the means employed are lawful and right. Both become unlawful if the means employed are wrongful."

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Ward, Lock & Co. (although decided before the 1906 U.K. Act) is, I think, good authority for saying that even though the effect of picketing be to compel the Plaintiffs to do something they have a legal right to refrain from doing, that of itself would not render the picketing unlawful. But it would be a mistake, I think, to assume that Ward, Lock & Co. decided any more than that. In that case the pickets did nothing beyond obtaining or communicating information. The ground on which the Court allowed the appeal is indicated in a later passage of the judgment delivered by the same Lord Justice:

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"but in my view that which decided the question is that there is no evidence of any improper or illegal acts, or, indeed, of any acts whatever, by any pickets sent by the Defendants during this period. There can, therefore, be no pretence that the Plaintiffs have established anything which would give to them a good cause of action in respect of the picketing complained of. I wish

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to add that, in my opinion, there is throughout a complete absence of evidence of anything in the nature of picketing or besetting which could constitute a nuisance. It appears that the discharged workmen loitered about for a day or two after leaving work - a thing which is not unlikely to happen - and that they were at times joined by others, but there is no suggestion even by the Plaintiffs' witnesses that any annoyance or molestation took place, and the evidence to the contrary is overwhelming."

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This quotation from the judgment of Moulton, L.J.: shows the vast difference between the facts in that case and the facts as I find them here. In the present case there were acts of obstruction, coercion and intimidation and threats of violence. Furthermore, there is abundant evidence of "persuading" (as opposed to "inviting") other than persuasion of any person "to work or abstain from working" (q.v. sec. 7 Trade Unions Act), and the repeated shouts and other noises of the pickets and the degree of annoyance inflicted on the Plaintiffs by the pickets' general behaviour clearly went beyond what was reasonably necessary to the carrying out of lawful picketing; as regards this further aspect of the picketing, the evidence, in my opinion, points conclusively to at least connivance on the part of the Defendants. On the first day of the picketing one of the Defendants who had attended the Committee meeting at which the methods of picketing was discussed, instructed the pickets that they were to "shout behind" people who were about to enter the store; he himself took part in loud shouting on more than one occasion; at a certain stage he actually demonstrated how the shouting should be done and made the pickets shout more loudly than they were then doing.

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As already mentioned, the Defendant Samuel is not a member of the Executive Committee of the Union and did not attend the meetings of the Committee. It is not however disputed that he combined with the other Defendants for the purposes of the picketing of the Plaintiffs' premises.

That some damage has been caused to the Plaintiffs by the unlawful means from time to

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time used in this case is manifest. But it was argued by Mr. Barrow that the Plaintiffs having failed to aver in their pleadings that the Defendants "threaten and intend" to repeat the illegal acts complained of, are not entitled to an injunction. Mr. Harney replied that the Statement of Claim was drawn up in accordance with Form 13 at page 38 of volume 7 of Lord Atkin's Encyclopaedia of Court Forms and Precedents in Civil Proceedings and that that particular Form, which is stated to be based on the claim for conspiracy to injure by unlawful means in the well-known case of Lyons (J) & Sons v. Wilkins, (1899) 1 Ch.255, contains no such averment. Mr. Harney also invited attention to the wording of his Statement of Claim (dated 21st October 1955), and particularly to paragraph 6 thereof wherein it is alleged that the wrongful acts have been done "daily from the 17th day of September, 1955." In my opinion a pleader desiring an injunction should always, ex abundanti cautela, insert the conventional words leading to an application for an injunction, but the authorities show that failure to insert them will not be fatal where an intention to repeat the illegal acts complained of can be readily inferred from the nature of the case or the facts already pleaded. (See, for example, Stannard v. Vestry of St. Giles, 20 Ch.D. at p.195) I think the inference can here be drawn.

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In a case of the kind now before me the damages are at large; once actual financial loss is proved (and that has been done), the Court may award a sum appropriate to the whole circumstances of the tortious wrong inflicted (Pratt v. British Medical Association 1919 1 K.B.244.)

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As regards the extent of the pecuniary loss suffered by the Plaintiffs through the picketing, evidence was given by Gertrude O'Neal of a substantial decrease in the volume of their trade since the commencement of picketing. One would have thought that the Plaintiffs, who are now pressing for heavy damages, would have come prepared with properly made up account books to support their claim. Even when Mr. Barrow called for such books, however, they failed to produce satisfactory accounts to show their actual sales subsequent to and immediately preceding the institution of the picketing. The evidence of

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Clarine Knight that since the picketing she had "missed" regular customers, can hardly be regarded as impelling. She mentioned only two names, and there is no proof at all as to the real reasons of these two persons for ceasing to buy from O'Neal's. Mr. Barrow suggested that they may, for reasons altogether unconnected with the picketing, have transferred their patronage to the new drug store opened by Laurent, formerly druggist at O'Neal's. Laurent's testimony was to the effect that others have done so. I am not unmindful of yet another possibility and that is that some people, without ever having gone near to the pickets, may nevertheless feel that Miss Winter's cause merits their support and may of their own free will have taken away their patronage from the Plaintiffs' stores.

There will be judgment for the Plaintiffs against the Defendants jointly and severally for £80 and an injunction will be granted restraining the Defendants their servants and agents from watching and besetting the business places of the Plaintiffs situate at the corners of Long and Thames Streets and High and Thames Streets, St. John's. The Defendants must also pay the Plaintiffs' costs excluding the costs of and incidental to the joining of the Defendant Hurst as a Defendant, the Court having already ordered that these costs should in any event be paid by the Plaintiffs, and excluding also the costs of and incidental to the two applications for an interlocutory injunction, in respect of which each party must bear his own costs, the Plaintiffs having failed to obtain such interlocutory injunction partly through their own fault.

W.A.Date

Puisne Judge.

3rd January, 1956.

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continued

In the Supreme
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No.14

JUDGE'S NOTES ON COSTS ON DELIVERING
JUDGMENT

3rd January 1956.

E.E.Harney for Plaintiffs.

J.R.Henry (holding brief for Mr.Barrow) for
Defendants.

Written judgment delivered.

No.14

Judge's Notes
on Costs on
delivering
Judgment

3rd January
1956

Mr.Harney: I am not asking for costs incurred by
the joining of Defendant Hurst as a Defendant; an
order has already been made that the Plaintiffs
should in any event pay those costs; nor am I
asking for costs connected with the ex parte ap-
plication in Chambers for an interim injunction.
But I am asking for all other costs including
cost of and incidental to the hearing of the ap-
plication for an interlocutory injunction.

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Mr.Henry opposes grant of costs in regard to both
applications for interlocutory injunction, having
regard to ground on which second was refused.
Court orders Defendants to pay Plaintiffs' costs
excluding costs of and incidental to the joining
of the Defendant Hurst as a Defendant, the Court
having already ordered that those costs should in
any event be paid by the Plaintiffs, and exclud-
ing also the costs of and incidental to the two
applications for an interlocutory injunction, in
respect of which each party must bear his own
costs, the Plaintiffs having failed to obtain
such interlocutory injunction partly through their
own fault.

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Leave to file and serve judgment during the court
vacation.

W.A.Date

P.J.



No. 15

NOTICE OF APPEAL

In the West
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IN THE WEST INDIAN COURT OF APPEAL

No.15

ON APPEAL FROM THE SUPREME COURT OF THE WINDWARD

Notice of
Appeal

ISLANDS AND LEEWARD ISLANDS. ANTIGUA CIRCUIT.

1st February
1956

1955

"0"

No.45

BETWEEN :

JOSEPH REYNOLD O'NEAL
GERTRUDE O'NEAL Plaintiffs-Respondents

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- and -

VERE CORNWALL BIRD
EDMUND HAWKINS LAKE
NOVELLE RICHARDS
ERNEST WILLIAMS
BRADLEY CARROTT
JOHN IRELAND
LEVI JOSEPH
JOSEPH SAMUEL
LIONEL HURST Defendants-Appellants.

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TAKE NOTICE that this Honourable Court will be moved at the expiration of twenty eight days from the service upon you of this notice or as soon thereafter as Counsel can be heard by Counsel for the above-named Defendants-Appellants for an Order that the judgment herein of Mr. Justice William Adrian Date given on the trial of the above entitled action on the 3rd day of January 1956 whereby it was ordered that the Defendants their servants and agents be restrained from watching and besetting the business places of the Plaintiffs and whereby it was ordered that the Defendants pay the Plaintiffs the sum of \$384.00 by way of damages and their costs of the action may be reversed and that judgment may be entered for the Defendants with costs here and in the Court below and of the application for interlocutory injunction therein be paid by the Plaintiffs to the Defendants.

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In the West
Indian Court
of Appeal

No.15

Notice of
Appeal

1st February
1956
continued

AND FURTHER TAKE NOTICE that the Defendants appeal against the whole of the said judgment.

The grounds of this appeal are :-

(1) That the findings of the learned Judge are against the weight of the evidence.

(2) That there was no evidence given at the trial to support the findings of the learned Judge that there were other objects in mind other than the predominant object of the furthering by the Defendants of their own interests.

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(3) That on the facts the learned Judge was wrong in law in holding that "unlawful means amounting to obstruction coercion intimidation and threat of personal violence have been used."

(4) That on the inference of fact and law the learned Judge was wrong in holding that the Newspaper headline insinuated "that people must not buy from O'Neal's and that the Defendants were responsible and liable for the same."

(5) That the learned Judge was wrong in law in holding that the pickets stood in the relationship of master and servant to the Defendants.

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(6) That the learned Judge was wrong in law in holding that the Defendants were responsible for the unauthorised acts of the pickets.

(7) That the learned Judge did not direct himself or advert his mind to the law relating to nuisance.

(8) That the learned Judge misdirected himself on the law relating to conspiracy when he held that :- (a) "the evidence points conclusively to at least connivance on the part of the Defendants." (b) "It is not disputed that the Defendant Samuel combined with the other Defendants for the purposes of the picketing of the Plaintiffs' premises."

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And that those findings were against the evidence and the weight of the evidence.

(9) That the learned Judge misdirected himself as to the onus of proof and as to the true issues in the action and as to the nature and

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effect of the evidence before him and the inferences to be drawn from the evidence in regard to the issues to be tried:

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(a) In disregarding the evidence of impartial witnesses called by the Plaintiffs.

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(b) In disregarding the bias of the other witnesses for the Plaintiffs

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(c) In failing to award judgment to the Defendants at the end of the Plaintiffs' case.

1st February
1956
continued

10 (d) In disregarding the evidence given by the defence.

(e) In failing to award judgment to the defendants or any of them on the totality of the evidence.

(10) That on the inferences of fact and law the learned Judge was wrong in holding that the Plaintiffs were entitled to an injunction against the Defendants.

20 (11) That there was no evidence given at the trial to support the findings of the Judge that actual financial loss was proved.

(12) That the learned Judge exercised his discretion as to costs on wrong principles when he failed to award the Defendants the costs of the application for an interlocutory injunction.

Dated this 1st day of February 1956.

Errol W. Barrow.

Solicitor for Defendants.

30 To :- Ewart Harney Esq., Solicitor for
Plaintiffs.

And:- The Registrar of the Supreme Court.

(Antigua Circuit).

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Indian Court
of Appeal

NOTICE OF PLAINTIFFS-RESPONDENTS
CONTENTIONS ON APPEAL

No.16

Notice of
Plaintiffs-
Respondents
contentions
on Appeal
9th February
1956.

IN THE WEST INDIAN COURT OF APPEAL
ON APPEAL FROM
THE SUPREME COURT OF THE WINDWARD ISLANDS
AND LEEWARD ISLANDS, ANTIGUA CIRCUIT.

1955

"0"

No.45

BETWEEN :

JOSEPH REYNOLD O'NEAL
(et al) Plaintiffs-Respondents

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- and -

VERE CORNWALL BIRD
(et al) Defendants-Appellants.

TAKE NOTICE that the Plaintiffs-Respondents
intend upon the hearing of the appeal to contend -

- (1) That the definition of the expression
"Workmen" in the Trade Unions Act,
1939, does not include Clerk.
- (2) That the learned Judge was wrong in
law in holding that a trade dispute
existed between the Plaintiffs-Respon-
dents and Averyl Winter, represented
by the Antigua Trades & Labour Union.
- (3) That the amount awarded as damages is
inadequate.

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Dated this 9th day of February, 1956.

E.E.Harney; Solicitor for the Plaintiffs-
Respondents.

No.17

In the West
Indian Court
of Appeal.

JUDGMENT OF COURT OF APPEAL

SUPPLEMENT TO THE ANTIGUA, MONTSERRAT AND VIRGIN
ISLANDS GAZETTE

No.17

Of Thursday the 25th day of April, 1957.

Judgment of
Court of
Appeal

IN THE WEST INDIAN COURT OF APPEAL

25th April
1957.

ON APPEAL FROM

THE SUPREME COURT OF THE WINDWARD ISLANDS AND
LEEWARD ISLANDS.

10 BETWEEN

VERE CORNWALL BIRD et al Appellants
Defendants

- and -

JOSEPH REYNOLD O'NEAL } Respondents
GERTRUDE O'NEAL } Plaintiffs.

1956 No.1 ANTIGUA.

BEFORE MATHIEU-PEREZ }
JACKSON } C.JJ.
HOLDER }

20 E.Barrow for the Appellants
E.E.Harney with H.Harney for the Respondents.

March, 28,29: April 1,2,9.

J U D G M E N T.

30 The Respondents carry on business in partner-
ship under the name of O'Neal's Drug Store here-
inafter called the Drug Store and in an adjacent
building the Respondent Gertrude O'Neal carries
on a curio shop. The Appellants except Joseph
Samuel are members of the Executive Committee
of the Antigua Trades and Labour Union, a Union

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1957
continued

registered, under the Trade Unions Act, 1939, hereinafter referred to as the Union. In May, 1949, one Averyl Winter was employed by the Respondents as a clerk at the Drug Store on a weekly basis and she continued to be so employed until Saturday 11th June, 1955, when she was dismissed by the Respondent Gertrude O'Neal and paid one week's wages in lieu of notice. At the time no reason was given for the dismissal.

On Monday 13th June the Appellant John Ireland who is the Field Officer of the Union of which Miss Winter is a member, went to the Respondent Gertrude O'Neal and asked for the reasons for Miss Winter's dismissal; these Miss O'Neal declined to give; thereupon Ireland demanded one year's pay for Miss Winter. This also was refused.

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The Union made representations to the Labour Commissioner of Antigua in respect of Miss Winter's dismissal. Conciliation meetings under his chairmanship were subsequently held when representatives of the Respondents and of the Union were present. At the meetings the Union's representatives asked for the reinstatement of Miss Winter; representatives of the Drug Store contended that in dismissing Miss Winter and paying her a week's wages in lieu of notice they were acting within their legal rights and were not prepared to consider the demand for reinstatement. The Labour Commissioner expressed the view "that legally Miss O'Neal had acted within her rights but in a labour department matters were not approached from the entirely legal aspect." On that understanding the discussions continued and in the course thereof as a result of a further request the reasons for Miss Winter's dismissal were supplied; no conclusion satisfactory to the parties was reached and the negotiations broke down.

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The Union approached the Governor for the appointment of a Board of Inquiry under the Trade Disputes (Arbitration and Inquiry) Act, 1939, and by instrument dated 16th August 1955, the Governor appointed a Magistrate as a Board of Inquiry "to inquire into the cause of the dispute that arose over the dismissal of Miss Averyl Winter by the proprietor of O'Neal Drug Store, St. John's

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and to report thereon to the Governor and to submit to him such conclusions, recommendations and observations as the Board sees fit".

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of Appeal.

10 This inquiry was held on the 24th August; on behalf of the Respondents it was at the outset submitted that there was no trade dispute between Miss Winter and the Respondents and that the appointment of the Board was consequently invalid. The Board ruled that "the terms of reference contained in the instrument dated 16th August 1955, which gave the Board its validity showed prima facie that there was a trade dispute existing between the proprietors of O'Neal's Drug Store and Miss Averyl Winter and therefore the Board had full power and authority to inquire into the dispute". The Respondents thereafter took no further part and the inquiry proceeded in their absence.

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20 On the 31st August the Board submitted its report and its conclusion is expressed thus:

"I have come to the conclusion that there was no moral justification for the dismissal of Miss Winter. In reaching this conclusion I have used as a norm one of the accepted principles of good industrial relations, that is the principle of mutual respect and tolerance of human rights between employer and workman."

30 The Board was satisfied that Miss Winter should not be reinstated but "was of opinion that Miss Winter should be compensated for her dismissal by a monetary payment calculated on a basis of the number of years service she has given in the employment of O'Neal's Drug Store," and recommended "that the Proprietor of O'Neal's Drug Store be asked to pay to Miss Winter a sum of money equivalent to thirteen weeks' wages as a compensation for her dismissal". A copy of the report was sent by the Governor's Deputy to counsel for the Respondents "for the information of your clients and such action with the view to a settlement of the dispute as may be deemed advisable." No action was taken by the Respondents and on the 16th September, 40 1955, the report was published in the local press. In pursuance of an agreement reached at

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continued

a meeting of the Executive Committee of the Union held on 9th September, at which the Appellants, save Williams, Ireland and Samuel, were present, the Respondents' premises were on 17th September picketed by pickets engaged by the Appellant Lionel Hurst who gave them their instructions; they were taken to the premises by the Appellant, Levi Joseph, the Organizer. These pickets were paid for their services and the placards and slogans used were furnished by the Union. The picketing continued until 3rd January 1956 when Judgment in the action was delivered.

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In their statement of claim the Respondents allege that :

(a) the first seven named and the last named Defendants and each of them wrongfully and maliciously conspired and combined amongst themselves (with intent to injure the Plaintiffs and thereby compel them to submit to the demand of the Antigua Trades and Labour Union to pay compensation to one Averyl Winter, a former clerk in O'Neal's Drug Store who had recently been lawfully dismissed from her employment by the Plaintiffs), wrongfully and without legal authority to watch and beset or cause or procure to be watched and beset the said business places of the Plaintiffs and the approaches and entrances thereto in such a manner as was calculated to intimidate customers and prospective purchasers.

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(b) in furtherance and execution of their said conspiracy and combination the said first seven named and the last named Defendants and each of them wrongfully and without legal authority caused or procured the Defendant Joseph Samuel and other persons to the number of 12 or thereabouts (hereinafter referred to as the pickets) wrongfully and without legal authority to watch and beset the said business places of the Plaintiffs daily from the 17th day of September, 1955, in such a manner as is calculated to intimidate customers and prospective purchasers and to obstruct the approaches

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thereto. The first seven named and the last named Defendants and each of them in acting as in this paragraph stated acted for the purpose of intimidating and preventing customers and prospective purchasers from entering the said business places and purchasing therein.

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- 10 (c) the first seven named and the last named Defendants on several occasions on the 17th day of September, 1955, and on divers other occasions thereafter attended outside the said business places of the Plaintiffs or in the vicinity thereof and gave encouragement to the said pickets.
- 20 (d) the Defendant Levi Joseph and the pickets have by threats and acts of violence and intimidation and coercion prevented divers customers and prospective purchasers from entering the said business places and purchasing therein.
- 30 (e) in the alternative the Defendants and each of them wrongfully and maliciously conspired with intent to injure the Plaintiffs to create a nuisance and did in pursuance of their conspiracy create a nuisance by the continuous shouts and other noises of the pickets and by obstructing the approaches to the said business places of the Plaintiffs thereby seriously interfering with the comfort of the Plaintiffs and the ordinary enjoyment of the said premises by them.

40 The Respondents claim that as a result of the actions of the Appellants they have suffered damage and they ask for an injunction restraining the Defendants, their servants and agents from unlawfully watching and besetting the business places of the Respondents situate at the corners of Long and Thames Streets and High and Thames Streets.

The Appellants deny the conspiracy alleged and any of the tortious acts attributed to them whether jointly or severally but state that a

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trade dispute had since the 11th day of June, 1955, existed between the Union and the Respondents, and that in furtherance and in respect of the said dispute the premises of the Respondents had been picketed and that such picketing had at all times been carried out in a lawful and peaceful manner.

At the trial of the action Counsel on behalf of the Respondents again contended that there was no trade dispute within the legal meaning of that term in existence and consequently the Appellants were in no way protected. The learned trial Judge disagreed with the submission but on other grounds gave judgment for the Respondents against the Appellants jointly and severally for £80 and granted an injunction restraining the Defendants, their servants and agents from watching and besetting the business places of the Respondents in St. John's. Against this judgment the Appellants have appealed. 10 20

The Respondents by cross appeal have also given notice that they intend upon the hearing of the appeal to contend:

- (1) that the definition of the expression "workman" in the Trade Unions Act, 1939, does not include clerk;
- (2) that the learned Judge was wrong in law in holding that a trade dispute existed between the Respondents and Averyl Winter represented by the Antigua Trades and Labour Union; and 30
- (3) that the amount awarded as damages is inadequate.

It is convenient at this point to refer to the relevant statutory provisions; these are provided by Sections 2, 6 and 7 of The Trade Unions Act, 1939, as amended by the Trade Unions (Amendment) Act 1942, 1947 and 1949. Section 2 of the Trade Unions Act, 1939, hereinafter called the principal Act provides: 40

"Trade Union" means any combination whether temporary or permanent, the principal purposes of which are, under its constitution,

the regulation of the relations between workmen and masters, or between masters and masters whether such combination would or would not, if this Act 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

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continued

(a) shall affect -

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- (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 the goodwill of a business or of instruction in any profession, trade or handicraft.

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(b) shall preclude any trade union from providing benefits for its members."

"Workmen" includes labourers".

This section was amended by the Trade Unions (Amendment) Act, 1949, by the addition thereto of the following definition:

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"trade dispute' means any dispute or difference between employers and workmen, or between workmen and workmen, connected with the employment or non-employment, or the terms of employment, or with the conditions of labour, of any person."

The Trade Unions (Amendment) Act, 1942, added after Section 6 of the principal Act the following provisions;

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"6A.(1) An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute shall not be indictable as a conspiracy if such act committed by one person would not be

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continued

punishable as a crime;

(2) 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"

"6B. 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."

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By the Trade Unions (Amendment) Act of 1947 Section 7 of the principal Act was repealed and replaced as follows:

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"7. It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working."

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Section 7 of the Act permits picketing where the pickets attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working. It is therefore essential first to ascertain whether the picketing was carried on in accordance with the provisions of the Act or not. The only evidence which relates to the obtaining or communicating of any information to the public is the statement of the Appellant Hurst that it was decided by the Executive Committee of the Union that he should if, before the publication of the report the matter

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was not settled, take the necessary steps to picket the business places with a view to passing on information to the public as "to the exact position regarding the dispute." In reality the evidence discloses that on the morning of 17th September, 1955, the pickets carrying placards arrived accompanied by a steel band playing, and a large crowd. The Appellant Samuel was one of the pickets. They were installed around the premises by the Appellant Levi Joseph with much flourish, fanfare and noise. Thereafter their behaviour was of such a nature as to intimidate and prevent people from going into the store and it is clear that as found by the trial Judge, methods of obstruction, coercion, intimidation and threats of personal violence were used. On occasions the pickets kept up a continuous shouting for sustained periods to such an extent as to constitute a nuisance. The Appellant Samuel who was a local constable at all times took an active part in the picketing; in order to attract attention he rang a bell on several occasions; he told people they should not buy at O'Neal's and they would get into trouble with the Police if they went into O'Neal's Drug Store. The Appellant Bird who is the President of the Union, Lake a Vice President, Williams a Vice President and Carrott also a Vice President visited the scene of the picketing on more than one occasion and they spoke to the pickets. The Appellant Bird was heard to tell the pickets that the Curio shop was also included; thereupon the pickets moved towards the Curio shop. The Appellant Ireland was continually with the pickets, and on the first day, was stationed there practically the whole day.

The Union published a newspaper styled "The Workers' Voice, official organ of the Antigua Trades and Labour Union"; it is printed and published by the Union at its office 46 North Street, St. John's. In the issue of 18th September there appeared on the front page an article under prominent headlines:

"THE FIGHT IS ON: JUSTICE OR BE DAMNED.

People Must Decide if O'Neals are above the Right and Privileges of the Worker.

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The Executive of the Antigua Trades and Labour Union have broken off trade relationship with O'Neal's Drug Store and open conflict now wages.

Early on Saturday morning pickets were stationed in the vicinity of the Drug Store in an effort to demonstrate to the public the resentment of the Union to the attitude adopted by the O'Neals in the dismissal of their Clerks.

ENDEAVOURED

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The Union have endeavoured right through to bring the matter to an amicable settlement and departed from former procedures by going to the extent of asking for an inquiry into the Dispute. Even though the O'Neal's recognised at first a dispute existed and attended meeting under the Labour Commissioner it seemed that some last minute adviser prompted them to ignore the whole question.

They insulted the government by refusing to attend the Board of Inquiry appointed by the Acting Governor. They were notified three weeks ago of the recommendations of the Board and the Government asked the matter be settled. To the present moment they have even refused to acknowledge receipt of the findings of the Board of Inquiry so adding further insult to injury.

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PRINCIPLES

Public opinion has been brought to play in this case. If it is felt by the O'Neals and their advisers that injustice should stand before accepted civilised principles and that human beings and causes should be treated contemptuously the public of Antigua will decide. The Trades Union asked for no trouble only sought to right a wrong. If the O'Neals are stronger than the will of the people the coming days or even years will decide. The fight is on."

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The Appellant Novelle Richards, Treasurer of the Union is the Editor of this paper and one of the members present at the meeting of the Executive Committee of the Union when the resolution to picket was passed.

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We must here refer to the statement in the evidence of Edmund Joseph Blaize, Assistant Superintendent of Police that "to my knowledge the Commissioner of Police has complimented the pickets for the manner in which the picketing was carried on; that was done on 17.9.55, that was done through me. I spoke to the Defendant Bird between 5 - 6 p.m. The message was given me by the Commissioner between 3 and 4 p.m." This evidence is valueless; it is hearsay and should never have been admitted; on what his opinion is based or what prompted it is not known. It was all too previous, made on the first day of picketing. For what purpose it was elicited, save to create an aura of prejudice in favour of the Appellants at the trial, is difficult to discover. If that were the opinion of the Commissioner of Police it might have been profitable if he had given such opinion on oath and the grounds on which it was based, for then the Respondents would have had an opportunity of testing it under cross-examination; this opinion was communicated to the pickets and could only have served to encourage them in their conduct and actions. It is to be noted that there is no comment or expression of opinion attributed to him for the remaining period from 18th September, 1955 to 3rd January, 1956. It is of value to compare the above opinion attributed to the Commissioner with the sworn evidence of Cardigan Stevens, Collector of Customs who stated that on 17th September "the noise was so awful that he telephoned the Police and spoke to the Commissioner himself," and it makes readily understandable the evidence of Miss Gertrude O'Neal when she says "Surprisingly no arrests were made even when people were surrounded and intimidated."

The learned trial Judge summed up the situation in the following words:

"Having given careful attention to these and the other arguments advanced by learned counsel for the defence, I am, nevertheless, after the fullest consideration of the evidence of all the witnesses I have had the opportunity of hearing and observing, of the opinion that the particular incidents mentioned by me as having been related by Gertrude O'Neal, Linda O'Neal, Victoria

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Frederick, Cardigan Stevens and Iris Barrow did take place, and their accounts of them are substantially correct: these persons impressed me as being essentially truthful witnesses, whatever their feelings towards the Union. Their evidence shows, among other things, that from the inception of the picketing the pickets who were sent by the Defendants to carry out the objects of the picketing, and who were instructed in their duties by the Defendant Hurst and posted and supervised by the Defendant Levi Joseph (both of whom were present when the whole subject of the picketing was discussed in Executive Committee), have been telling people in forceful language that they must not buy from O'Neal's."

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There is abundant material from which the learned trial Judge could so find, and we endorse that finding. It cannot therefore be doubted that the means and measures adopted by the Appellants to carry out the object of their combination were unlawful. Moreover an agreement by two or more persons to picket or to do a wrongful act calculated as its natural and probable consequence to produce injury, and in fact producing injury, is an actionable wrong; this statement of law is modified by the Trade Unions Act, 1939, which gives immunity to the actors if the acts complained of are done in contemplation or furtherance of a trade dispute; it goes further and defined the purposes for which picketing will be permitted. The burden therefore falls on the Appellants who claim the protection of Section 7 to prove that their acts fall within the ambit of that section.

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The evidence is that the pickets carried placards bearing these slogans:- "Workers must be respected"; "Strike on here"; "Protest against unjust dismissal"; "Hold the line"; "Workers' security is challenged"; "Join the fight against injustice." It is fitting at this stage to refer to the evidence of Appellant Levi Joseph who was for seven years the Organiser of the Union, and who gave the pickets the placards; he affected at first not to know the meaning of a strike and said "I call a trade dispute a strike because I consider this the

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last resort I consider it a strike"; he was however forced later to admit that he knew what a strike was and said it was a cessation of work by workers but that he did not know if there was a cessation of work by the workers in O'Neal's. They have failed to produce evidence to show that the purpose of their picketing was peacefully to obtain or communicate information or peacefully to persuade any person to work or abstain from working; or that they acted in compliance with the requirements of the section. A guide to the real object of the picketing appears in the evidence of Appellant Edmund Lake, a member of the Executive Committee and a second Vice President of the Union, an elected member of the Legislative Council and of the Executive Council of the Government of Antigua: he said:

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"Up to time picketing started the other side apart from meeting at Labour Commissioner's Office had refused to negotiate with us: by bringing public opinion to bear on the matter I mean that members of the public might even encourage O'Neals to negotiate."

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It has been submitted by Counsel for the Appellants that the trial judge found the predominant object of the Appellants was to further their own interest and that since that is so they are absolved from blame if any harm came to the Respondents. In his judgment the learned trial Judge said "It is clear that although the predominant object of the picketing here is the furthering by Defendants of their own interests, there are other objects in mind and that unlawful means amounting to obstruction, coercion intimidation and threats of personal violence have been used". We are not satisfied that this statement contains a definite finding that the main purpose of the alleged conspiracy was to further the Appellants' legitimate interests, still less are we convinced that there is sufficient and satisfactory evidence on which a conclusion could be reached that the predominant object of the picketing was the furthering of the Appellants' own interests: even if the latter be so it would be of no avail for the word merely has a definite value and was introduced into Section 7 for a specific purpose. We

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are therefore inclined to the view that the learned Judge can only be understood to mean that since there are other objects of the picketing apart from the purposes mentioned in the section, the immunity provided by the section could not enure for the benefit and protection of the Appellants. In commenting on Section 2 (1) of the Trade Disputes Act, 1906 which is the same as Section 7 of the Trade Unions Act 1939, Sophian in his book, Trade Union Law and Practice (1927 Edition) at page 283 states :-

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"Attention must also be drawn to the word "merely" in sect.2 (1) of the Trade Disputes Act, 1906. The acts will be entitled to protection, ceteris paribus, if they were done 'merely' for the purpose of peacefully obtaining or communicating information, etc. If they are done for any other purpose, as, for example, if they are dictated by political or personal motives, they will not be protected.

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(M' Cusker v. Smith (1918) 2 I.R. 434, 439).

This expresses our view.

Proof of the existence of a conspiracy is generally a matter of inference which may be gathered from the acts of the parties alleged to be conspirators and from the circumstances of the case: evidence is seldom available of the actual plot by the persons concerned. The minutes of a meeting of the Executive Committee of the Union held on Friday 9th September, 1955, have been put in evidence; on this question it is recorded:

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"BUSINESS ARISING FROM MINS:

The report from the Board of Inquiry set up by the Acting Governor to go into the dispute with Miss O'Neal and the Trade Union was discussed, and it was agreed that the General Secretary should get in touch with His Honour the Administrator to find out if the O'Neals had replied to his letter.

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The General Secretary got in touch with His Honour and he was informed by him that he had not received a reply, but the Acting Governor will return to the Presidency on Tuesday 13th and he will discuss the matter with him, and at the same time inform him that the Trade Union is requesting that the Report should be published.

10 After receiving that information the following resolution was unanimously adopted.

"Be it resolved that provided up to the time of the publication of the Board's award the dispute between Miss O'Neal and the Trade Union is not settled, the General Secretary should take the necessary steps to picket the business premises. "

20 An examination of the evidence clearly reveals not only what was the real intention of the Appellants but also the nature of their agreement at the material time, their external acts and their conduct show that by mutual consent and acquiescence they had a common purpose, that is, to cause injury to the Respondents and bring them into subjection by employing means which were manifestly unlawful.

30 It now falls to be decided whether there was a trade dispute arising out of the dismissal of Miss Winter. Whether there is one is always a question of fact but it is a question of law whether the circumstances are such as would constitute a trade dispute. In order that a dispute may be a trade dispute at all, a workman must be a party to it on each side, or a workman on one side and an employer on the other and an act done in furtherance of a dispute is not protected unless the dispute be one of that character. Conway v. Wade: 1909 A.C. at p.517). It is common ground that previous to 11th June, 40 1955, when Miss Winter was dismissed there was no dispute or difference between the Respondents and Miss Winter or any other employer or employee but that if any did arise it could only rise out of or after the dismissal. Subsequently to the dismissal there arose a difference between the Union and the Respondents over the amount

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paid by Respondents to Miss Winter in lieu of notice, and indeed the Union later asked for her reinstatement; but none of the other employees of the Respondents took any part in it or complained, nor did any employee or employer in any way demonstrate or voice his disapproval of the Respondents' actions. The Union made no attempt at any time to ascertain the reactions of the other employees of the Respondents or of any other employees but contented themselves with making the demands to which reference has already been made. In the course of his evidence Appellant Levi Joseph, the Organiser said "Instructions to pickets were given by General Secretary - that they were to pass on information that a trade dispute exists between O'Neal's Drug Store and the Trade Union. The information passed on was that a trade dispute exists. - Appellant Lake, senior Vice President of the Union said "The resolution was discussed before it was acted on. The object of the picketing was discussed. The object of it - according to the consensus of opinion - was to make known to the public that a trade dispute exists between the Union and O'Neal's and to bring public opinion to bear on the matter." It is manifest therefore that since there was no difference subsisting at the date of the dismissal of Miss Winter, whose services apparently were legally terminated, and that no employer or employee raised any question upon it or showed any dissatisfaction over or on any terms of employment or non-employment connected therewith there was no trade dispute within the meaning of the Act. Furthermore, the evidence of two of the principal officers of the Union and members of the combination expressed clearly that a trade dispute existed between the Union and the Respondent employers. Moreover the Appellants in their statement of defence relied on and pleaded that "a trade dispute has since the 11th day of June, 1955, existed between the Antigua Trades and Labour Union and the Plaintiffs"; and it is in furtherance of this dispute that the Appellants claim justification for picketing the premises of the Respondents. In R. v National Arbitration Tribunal 1941 2 All E.R. at p.800 where the definition of "Trade Dispute", similar in terms to the definition in the Trade Unions Act 1939, under review, was discussed, Bennett J. at p.814 said: A Difference

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between a trade union and an employer of labour cannot upon any interpretation of the language of the statutory definition, be a trade dispute". We adopt these words and we are of the view that there did not and cannot within the language of the Act exist a trade dispute between the Union and the Respondents.

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10 As regards the point raised in the cross appeal as to the meaning of workman, Counsel for the Respondent submitted that Miss Winter was not a workman within the meaning of the Act and the term does not include shop assistant. He referred to Wharton's law lexicon 14th Edition which says "Workman means those earning their livelihood by manual labour". The definition in the Act simply states "Workmen includes labourers." Counsel for the Appellants urged that in order to get the real meaning of "Workman" the "associate legislation" The Trade Dispute (Arbitration and Inquiry) Act, 1939, Section 2 (1) must be considered; there, he submitted the section made it abundantly clear that clerical workers are not included. We remark that the definition of "workman" in the Trade Disputes Act is limited by the words in the section "For the purposes of this Act." If the legislature intended it to be extended to the provisions of other acts it would not have used the words of limitation. Our duty is to administer the law as we find it and not by strained interpretations to usurp the functions of the legislature which alone can amend.

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40 The test whether a person earns his living by manual labour is whether such manual labour is his real or substantial employment or whether it is incidental and accessory to such employment. Miss Winter's employment was substantially that of dealing with customers in shop; there are other duties which are incidental, for instance, she may have to show goods and if the customers purchase the goods she would have to make up the parcels. This is manual work as she has to use her hands but in our view that is not manual labour and does not bring her within the meaning of "workman" as defined in the Act.

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Cook v. North Metropolitan Trainways Co.
18 Q.B.D. p.683.

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We find that an actionable conspiracy has been proved; for the reasons hereinbefore stated we have reached the conclusion that the picketing was illegal and was carried out by unlawful means; we also hold that no trade dispute existed at the time of Miss Winter's dismissal or at the time of the agreement to picket was reached, or at all; and further that Miss Winter was not a "workman" within the meaning of the Trade Unions Act. The Appellants fail in their appeal on all issues.

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It has been argued that the damages awarded £80 are inadequate. The onus is on the Respondents to prove the actual financial loss sustained; even though the exact amount was not ascertained there cannot be any doubt that some financial loss was incurred. The Respondents had full opportunity to prove the decrease in the volume of their trade which they claimed and the actual pecuniary loss suffered as a result of the picketing; this they failed to do. Apart from that however damages are at large once actual financial loss is proved as is stated by McCardie J. in Pratt v. The British Medical Association (1919) 1 K.B. at p.281 "The Court once actual financial loss be proved may award a sum appropriate to the whole circumstances of the tortious wrong inflicted". The picketing started on 17th September, 1955 and continued until 3rd January, 1956. The Judge in coming to the conclusion that the sum of £80 was adequate must have taken into consideration the fact that in his view a trade dispute had existed and that the picketing in itself would be lawful; he however found that it was carried out in an illegal manner. It was on that basis he awarded the sum aforesaid. We have found that there was no trade dispute in existence and therefore no justification for the subsequent acts. In these circumstances we think the sum awarded is inadequate and we increase it to £100 - (£480).

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The appeal is dismissed with costs and the cross appeal is allowed. The Judgment of the learned trial judge is varied in respect of the damages which we fix at £100 - (£480). The Order in the Court below is in all other respects affirmed.

J. MATHIEU PEREZ,
Chief Justice, Trinidad and Tobago.

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DONALD JACKSON,
Chief Justice, Windward Islands.

F.W.HOLDER,
Chief Justice, British Guiana.

9th April, 1957.

EXHIBIT 'A'ExhibitsA LETTER DATED 26TH JULY 1955 FROM THE
ADMINISTRATOR TO MISS O'NEAL.

Exhibit "A"

Communications on this subject
should be addressed to -
The Administrator,
Antigua.

A letter
from the Ad-
ministrator to
Miss O'Neal.

And the following
Number quoted:
A.C.45/9

Administrator's Office,
Antigua.
26th July, 1955.

26th July 1955

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Madam,

A request has been received from the Antigua
Trades and Labour Union for the appointment of a
Board of Inquiry to endeavour to reach a settle-
ment in the dispute arising from your dismissal
of Miss Averyl Winter from your employment.

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2. I have to inform you that if a Settlement
is not arrived at by the 6th August, 1955, I pro-
pose requesting His Excellency the Acting Gover-
nor to appoint a Board of Inquiry to go into the
matter.

I have the honour to be,
Madam,
Your obedient servant,
Sgd.
Administrator.

Miss Gertrude O'Neal,
O'Neal's Drug Store,
St. John's.

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EXHIBIT 'B'

Exhibit "B"

A LETTER DATED 16TH AUGUST 1955 FROM THE
ADMINISTRATOR TO MISS O'NEAL

Communications on this subject
should be addressed to -
The Administrator,
Antigua.

A letter
from the
Administrator
to Miss O'Neal

and the following
Number quoted:
A.C.45/9.

Administrator's Office,
Antigua.
16th August, 1955.

16th August
1955

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Madam,

I have the honour to inform you that His
Excellency the Acting Governor has appointed
Mr. O.M. Browne, Acting Magistrate, Districts "A"
& "B", to be a Board of Inquiry under the pro-
visions of Section 8 of the Trade Disputes

Exhibits

Exhibit "B"

A letter from the Administrator to Miss O'Neal
16th August 1955
continued

(Arbitration and Inquiry) Act, 1939, to inquire into the dispute between the Antigua Trades and Labour Union and the Proprietor of O'Neal's Drug Store, regarding the dismissal of Miss Averyl Winter.

2. Mr. Browne will inform you of the date of the Inquiry.

I have the honour to be,
Madam,
Your obedient servant,
Sgd.

Administrator.

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Miss Gertrude O'Neal
O'Neal's Drug Store
St. John's.

Exhibit "E"

EXHIBIT "E"

Copy of a letter from the Labour Commissioner to the General Secretary of the Antigua Trades & Labour Union with copy of minutes of meeting at Labour Department.

COPY OF A LETTER DATED 22ND AUGUST 1955 FROM THE LABOUR COMMISSIONER TO THE GENERAL SECRETARY OF THE ANTIGUA TRADES & LABOUR UNION WITH COPY OF MINUTES OF MEETING AT LABOUR DEPARTMENT.

Reference No.L.D.8/3

Labour Department,
Antigua, B.W.I.
22nd August, 1955.

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22nd August 1955.

Dear Sir,

On instructions from the Board of Inquiry appointed to inquire into the causes of the dispute that has arisen over the dismissal of Miss Averyl Winter by the Proprietor of O'Neal's Drug Store, I forward herewith a copy of the minutes of two meetings held on the 23rd June, and 7th July 1955 between representatives of Messrs. O'Neal's Drug Store and representatives of the Antigua Trades and Labour Union.

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Yours faithfully,

Sgd. F.J.Odle

Labour Commissioner.

General Secretary
Antigua Trades & Labour Union.

MINUTES OF A MEETING HELD AT THE LABOUR
DEPARTMENT on the 23rd June and 7th
July, 1955

Exhibits

Exhibit "E"

Copy of a
letter from
the Labour
Commissioner
to the General
Secretary of
the Antigua
Trades & Labour
Union with copy
of minutes of
meeting at
Labour Depart-
ment.

22nd August
1955.
continued.

BETWEEN

Representatives of O'Neal's Drug Store

And

Representatives of the Antigua Trades
& Labour Union regarding

the dismissal of Miss Averyl Winter.

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Present:

Mr.F.J.Odle - Labour Commissioner - Chairman.

Representing the
Employers.

Representing the Antigua
Trades & Labour Union.

Miss G. O'Neal
Mr.Harold Harney
(Barrister at Law)

Hon. L. Hurst
Mr. J. Ireland
Miss Averyl Winter

Mrs.G.V.La Barrie of the Labour Department
Minutes Secretary.

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Mr.Hurst said it was not the normal practice
to have a legal representative at discussions
which involved industrial matters. These were
dealt with at the Labour Department under the
Chairmanship of the Labour Commissioner on a con-
ciliatory basis. In this case the Trade Union
was requesting reinstatement of the worker and he
hoped that during the discussion nothing would
occur that might make the strained relationship
between the employer and the worker more strained
and thus make the question of re-instatement more
difficult, Mr.Harney said Miss Winter was employ-
ed on a weekly basis and in accordance with the
Law she had been paid her wages for the current
week and given one week's pay in lieu of notice.
Her services had not been satisfactory. They were
under no obligation to give Miss Winter any
reasons for her dismissal.

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Exhibits

Exhibit "E"

Copy of a letter from the Labour Commissioner to the General Secretary of the Antigua Trades & Labour Union with copy of minutes of meeting at Labour Department.

22nd August 1955.
continued.

Legally, the Chairman said Miss O'Neal had acted within her rights but in a Labour Department matters were not approached from the entirely legal aspect. He did not know whether Miss O'Neal had any objections to stating why Miss Winter had been dismissed but he thought it was a good thing for an employer to let a Trade Union know the reasons which had led to the dismissal of a worker if that worker were a member of the Trade Union.

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After some discussion Mr. Harney, remained adamant that he would give no reasons for Miss Winter's dismissal except that her services were unsatisfactory. He considered it best not to go into details for the reason that if they were told they might be used to incriminate Miss O'Neal in an action for libel or slander. Miss Winter, he said had been a pet of Miss O'Neal's and in his view the trouble was all due to Miss O'Neal's placing too much confidence in her. He was quite prepared, however, to give all the reasons for dismissal in a Court of Law. If strike action was threatened his side would take action to bring the matter before the Court.

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In reply Mr. Hurst said that the Trade Union regarded this matter as a Trade dispute and they were prepared to act in accordance with the Trade Union Act. They would not accept the principle of dismissing people without good reasons.

The Chairman discussed the matter with both sides separately and on reconvening the meeting Mr. Harney said that he would be prepared to state the reasons for dismissal if Miss Winter were prepared to sign a document to the effect that anything said by Miss O'Neal at this meeting would not be used against her by Miss Winter in any case of libel or slander. He pointed out that while in a court of law or other legal tribunal, Miss O'Neal would have the privilege of free speech, such a privilege was not extended to the Labour Department.

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After a short discussion the Chairman said that he would adjourn the meeting at this stage in order that he might find out what would be the position of his Department with regard to

the question raised by Mr. Harney and in order to give the Trade Union and Miss Winter an opportunity to decide what action they would take with regard to the document requested by Mr. Harney.

The Meeting was adjourned to a date to be fixed.

On Thursday, 7th July the meeting was reconvened and the persons who attended the previous meeting were again present.

10 The Chairman said that he had discussed with the Hon. Crown Attorney the position with regard to his office and he had been informed that anything said at this meeting could be used by either side against the other in a Court of Law. He then asked both sides to state their position.

Mr. Harney said that their position was the same Miss O'Neal was not prepared to make any statement until she had received the written assurance requested since the last meeting.

20 Mr. Hurst said that he, as the General Secretary of the Trade Union was prepared to give a verbal assurance that nothing said at this meeting would be used against Miss O'Neal in a Court of Law. He said that he considered that such an assurance as he had given was all that was necessary.

30 Mr. Harney repeated that Miss O'Neal was not prepared to state the reasons for dismissal until she had received the written statement which she had requested.

At this stage the Chairman spoke separately to the Trade Union and on resumption of the meeting the following statement was signed by Miss Winter.

"I agree that anything said in discussion at the conciliation meeting under the Chairmanship of the Labour Commissioner will not be used by me against Miss O'Neal in any case of slander or libel."

40 With this written assurance Mr. Harney and Miss

Exhibits

Exhibit "E"

Copy of a letter from the Labour Commissioner to the General Secretary of the Antigua Trades & Labour Union with copy of minutes of meeting at Labour Department.

22nd August 1955.
continued.

Exhibits

Exhibit "E"

Copy of a letter from the Labour Commissioner to the General Secretary of the Antigua Trades & Labour Union with copy of minutes of meeting at Labour Department.

22nd August 1955.
continued.

O'Neal gave the following reasons for dismissing Miss Winter :-

1. Several items were being stolen from O'Neals Drug Store.
2. They had received an anonymous letter stating that Miss Winter was giving away goods from the Drug Store. The letter was shown to Miss Winter but the articles continued to disappear from the store.
3. She was guilty of carelessness. She was responsible for packing away sun shades in a particular drawer. Numerous shades were found broken in this drawer. Miss O'Neal spoke to Miss Winter and the other clerk, both of whom sold from this drawer. The other clerk Miss O'Neal said improved but Miss Winter had shown no improvement 10
4. Packets were stolen from the reserve shelves. Miss Winter did most of the packing away of these shelves. In reply to the Chairman Miss O'Neal said that the other clerks had access to these shelves. 20
5. Empty Vaseline Drum sold. When Miss O'Neal was away on holiday recently, Miss Winter took the key of the store room, opened the store room and got a porter to roll out a vaseline drum into the street. The cover of the drum was off. Miss O'Neal said that there was no rule laid down and no definite instructions issued that Miss Winter was not to sell empty vaseline drums. The occasion had never arisen before as these drums were always sold by Miss O'Neal or her sister. No clerk had ever attempted this before and Miss Winter who had been employed for approximately six years was well aware that these drums were sold by no one except Miss O'Neal or her sister. 30

The fact that Miss Winter undertook to adopt this irregular procedure led Miss O'Neal to believe that the drum was not empty but contained some vaseline. 40

A clerk in the store reported what Miss

Winter had done to Miss O'Neal's sister while the drum was in the street being rolled away by a porter but the younger Miss O'Neal was busy checking the cash and did nothing about it.

Miss Winter when asked about the sale, paid for the drum.

10 Mr. Hurst enquired whether those were the only reasons that Miss O'Neal had for dismissing Miss Winter and having been assured that they were, Mr. Hurst said that in his opinion they had proved nothing against Miss Winter. In short she had done nothing to warrant dismissal. In this connection he pointed out the following with regard to

(1) and (2) - no proof had been brought to bear that these items had been stolen by Miss Winter.

20 (3) Carelessness. Miss Winter was not the only clerk responsible for the sale of sun-shades. Other people had access to this drawer and other clerks sold sunshades from this drawer. Miss Winter could therefore not be held solely responsible for these breakages. It was also difficult for him to understand how Miss O'Neal contrived to know that the other clerk "had improved." in this respect (after she had spoken to both clerks) while Miss Winter had shown "no improvement."

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With regard to Item 4. Here again Mr. Hurst pointed out that Miss Winter was not the only person who had access to these shelves.

40 With regard to Item 5. sale of empty vaseline drums. No instructions had been issued that clerks were not to sell empty vaseline drums. Miss O'Neal was away on leave and her sister was very busy. There therefore seemed no reason why Miss Winter, the most senior of the clerks (so far as years of service were concerned) should not have assumed

Exhibits

Exhibit "E"

Copy of a letter from the Labour Commissioner to the General Secretary of the Antigua Trades & Labour Union with copy of minutes of meeting at Labour Department.

22nd August
1955
continued.

Exhibits

Exhibit "E"

that it was in order for her to have sold the empty drum.

Copy of a letter from the Labour Commissioner to the General Secretary of the Antigua Trades & Labour Union with copy of minutes of meeting at Labour Department.

A clerk reported the matter to Miss O'Neal's sister while the drum was still in the street and where it could have been easily ascertained whether it was empty or whether it had vaseline in it. Obviously Miss O'Neal's sister was not of the opinion that there was anything unduly wrong in Miss Winter's action or she would have made some attempt to protect her sister's interests.

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22nd August 1955 continued.

Mr. Hurst maintained that the employers had proved no case against Miss Winter. Clerks could not be dismissed by "hear say." There was no proof whatever from the points raised by the employer that Miss Winter had been dishonest. They had established no case against Miss Winter and in view of this Mr. Hurst said that the Trade Union were continuing to ask that she be reinstated.

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In conclusion Mr. Harney said that reinstatement was out of the question. Asked by the Chairman whether he was prepared to consider settling the matter on a basis other than reinstatement, Mr. Harney replied on behalf of Miss O'Neal, that the answer to both reinstatement and compensation was "NO". He would consider neither.

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Sgd. F. J. Odle Chairman

Sgd. N. La Barrie Secretary

12th July, 1955 Date.



EXHIBIT 'C'

Exhibits

A LETTER DATED 6TH SEPTEMBER 1955 FROM
GOVERNOR'S DEPUTY TO MR. E.E.HARNEY.WITH
REPORT OF BOARD OF INQUIRY.

Exhibit 'C'

6th September, 1955.

A letter
from
Governor's
Deputy to Mr.
E.E.Harney
with report
of Board of
Inquiry.

6th September
1955.

C.45/00033
CONFIDENTIAL

Sir:

10 I have the honour to inform you that the
Board of Inquiry into the dispute over the dis-
missal of Miss Averyl Winter has reported there-
on to the Acting Governor in accordance with the
provisions of Section 8 of the Trade Disputes
(Arbitration and Inquiry) Act, 1939, and that
His Excellency agrees generally with the recom-
mendations of the Board. I am accordingly send-
ing you a copy of the Report of the Board for
the information of yourself and your clients and
such action with a view to a settlement of the
20 dispute as may be deemed advisable.

2. As publication of the Report might hinder
a settlement, I am to request that it be treated
as sent to you in confidence and that its con-
tents be not communicated to any other person
than those directly concerned in the matter. A
similar request has been addressed to the Antigua
Trades and Labour Union, to whom a copy of the
Report is also being passed.

I have the honour to be,

Sir,

Your obedient Servant,

Sgd. Alec Lovelace

Governor's Deputy,

Leeward Islands.

E.E.Harney, Esq.,
Chambers,
St.John's.

C.C.The Antigua Trades & Labour Union.

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Exhibits

Exhibit 'C'

A letter from
Governor's
Deputy to Mr.
E.E.Harney
with report
of Board of
Inquiry.

6th September
1955.
continued.

REPORT OF BOARD OF INQUIRY INTO THE DISPUTE
BETWEEN THE ANTIGUA TRADES AND LABOUR UNION
AND THE PROPRIETORS OF O'NEAL DRUG STORE,
ST.JOHN'S, OVER THE DISMISSAL OF MISS AVERYL
WINTER.

INTRODUCTION

In exercise of the powers conferred upon him by Section (8)(1) of the Trade Disputes (Arbitration and Inquiry) Act 1939, His Excellency the Acting Governor of the Leeward Islands, by instrument dated the 16th day of August, 1955 appointed me to be a Board of Inquiry "to inquire into the causes of the dispute that arose over the dismissal of Miss Averyl Winter by the Proprietor of O'Neal Drug Store, St.John's, and to report thereon to the Governor and to submit to him such conclusions, recommendations and observations as the Board saw fit.

10

The Inquiry was held on the 24th August, 1955 at the Magistrate's Court, St. John's, Antigua.

20

The sitting was in public and Mr.E.E.Harney, Barrister-at-Law appeared on behalf of the Proprietor of O'Neal's Drug Store.

At the outset the Board of Inquiry made it clear that it was not sitting as a Court of Law to determine a legal dispute between a master and a servant, but was sitting under a Commission to hear and report on the causes of a Trade Dispute as defined by the Trade Disputes (Arbitration and Inquiry) Act 1939.

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Mr.E.E.Harney then formally objected to the Board's authority, on the grounds that there was no Trade Dispute existing between the Proprietor of O'Neal's Drug Store and Miss Averyl Winter as employee, and therefore the appointment of the Board was invalid. Mr.Harney further elaborated on this submission by stating that the Proprietor of O'Neal's Drug Store had complied with the requirements of the law by giving Miss Winter Notice of dismissal and one week's wages in lieu of notice. Since the relationship of employer and employee had been legally terminated there

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could be no trade dispute as defined by the Trade Disputes (Arbitration and Inquiry) Act 1939.

The Board of Inquiry ruled that the terms of reference contained in the instrument dated 16th August 1955 which gave the Board its validity showed prima facie that there was a Trade dispute existing between the Proprietor of O'Neal's Drug Store and Miss Averyl Winter and therefore the Board had full power and authority to inquire into the dispute.

Mr. Harney thereupon requested permission to withdraw from the inquiry on behalf of his client and left the Court.

This perhaps is an appropriate place to mention what I consider a most unsatisfactory anomaly disclosed by Section 10 of the Trade Disputes (Arbitration and Inquiry) Act 1939. This section gives the Board of Inquiry appointed under the Act "Full power by order to require any person to furnish in writing or otherwise, such particulars in relation to such matter as the Board may require, and where necessary to attend before the Board and give evidence on oath or otherwise, and to require the production of documents, so as to elicit all such information as in the circumstances may be considered necessary, without being bound by the rules of evidence in civil or criminal proceedings." There is no provision however, for a sanction if a person disobeys an order under this section. The anomaly is that a Power is given under the Act without a correlative duty of obedience.

DISPUTE

I now propose to deal with the subject matter of the dispute as a whole making references to the evidence of individual witnesses as it becomes necessary to elucidate or stress some point in issue, but in order to complete the picture, I shall first give a list of the witnesses called and the rules of procedure followed at the hearing.

The witnesses called in order were: Frank Julian Odle, Labour Commissioners, Antigua, Averyl

Exhibits

Exhibit 'C'

A letter from Governor's Deputy to Mr. E.E. Harney with report of Board of Inquiry.

6th September 1955.
continued.

Exhibits

Exhibit 'C'

A letter from
Governor's
Deputy to Mr.
E.E.Harney
with report
of Board of
Inquiry.

6th September
1955.
continued.

Winter, Joseph Laurent and Lionel Alexander Hurst. These witnesses all gave evidence on oath and were subjected to Cross-Examination and Re-Examination.

Frank Julian Odle, the Labour Commissioner of Antigua produced an original copy of the Minutes of two meetings held under his Chairmanship between the representatives of O'Neal's Drug Store and the representatives of the Antigua Trades & Labour Union. Copies of these minutes had some days previously been circulated to the Proprietor of O'Neal's Drug Store and the General Secretary of the Antigua Trades and Labour Union.

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The importance of this document was that it contained a factual history of the dispute with its deviations through the channels of attempted reconciliation up to the stage when voluntary negotiation collapsed. In the minutes were listed a number of charges made against Averyl Winter by the Proprietor of O'Neal's Drug Store, as the reasons for her dismissal, and Mr. Harold Harney who was at the time of the meeting held at the Labour Office appearing for the Proprietor of O'Neal's Drug Store assured Mr. Hurst, the General Secretary of the Union, that the charges as laid in the minutes were the only reasons that Miss O'Neal had for dismissing Miss Winter.

20

The following were the charges laid against Miss Winter:

1. Several items were being stolen from O'Neal's Drug Store.
2. They had received an anonymous letter stating that Miss Winter was giving away goods from the Drug Store. The letter was shown to Miss Winter but the articles continued to disappear from the store.
3. She was guilty of carelessness. She was responsible for packing away sunshades in a particular drawer. Numerous shades were found broken in this drawer. Miss O'Neal spoke to Miss Winter and the other clerk, both of whom sold from this drawer. The other clerk improved but Miss Winter had shown no improvement.

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4. Packets were stolen from the reserve shelves. Miss Winter did most of the packing away of the shelves.
5. Empty Vaseline Drum sold. When Miss O'Neal was away on holiday recently, Miss Winter took the key of the store room, opened the store room and got a porter to roll out a vaseline drum into the street. The cover of the drum was off. Miss O'Neal said that there was no rule laid down and no definite instructions issued that Miss Winter was not to sell empty vaseline drums. The occasion had never arisen before as these drums were always sold by Miss O'Neal or her sister. No clerk had ever attempted this before and Miss Winter who had been employed for approximately six years was well aware that these drums were sold by no one except Miss O'Neal or her sister. The fact that Miss Winter undertook to adopt this irregular procedure led Miss O'Neal to believe that the drum was not empty but contained some vaseline.

Exhibits

Exhibit 'C'

A letter from Governor's Deputy to Mr. E.E. Harney with report of Board of Inquiry.

6th September 1955.
continued.

CHARGES 1 and 2.

It is convenient to deal with these charges together as they are so inextricably bound up in each other.

In early 1953 Miss Gertrude O'Neal the Proprietor of O'Neal's Drug Store received an anonymous letter which stated in substance that Miss Winter was "living high out of her and had a boy friend who went to Curacao few weeks before and that she gave him a big present worth over twelve dollars." Miss O'Neal spoke to Miss Winter about the letter and asked her if she had an enemy whom she suspected of having written the letter. Miss O'Neal then intimated to Miss Winter that she had no fault to find with her in her work and that she was only drawing her attention to the matter. After this, Averyl Winter continued to work at O'Neal's and nothing further was said to her about the matter.

It is clear that at this period Miss O'Neal entertained no suspicion of Miss Winter's honesty

Exhibits

Exhibit 'C'

A letter from
Governor's
Deputy to Mr.
E.E.Harney
with report
of Board of
Inquiry.

6th September
1955.
continued.

in her work, and was not prepared to take action upon flimsy allegations contained in an unsigned letter. In fact, Averyl Winter was not even told about the several items which Miss O'Neal discovered were being stolen from the store.

I have no difficulty in disregarding these two charges and as a reason for dismissal they fall far below the standard of propriety.

CHARGE 3.

This is an accusation against Averyl Winter of carelessness. A specific instance is illustrated. Averyl Winter was responsible for packing away sunshades in a particular drawer. Numerous shades were found broken in this drawer. Miss O'Neal spoke to Miss Winter and the other clerk, both of whom sold from this drawer. Miss Winter in answer to this, states that as far as she can remember Miss O'Neal had never on her own initiative spoken to her about sunshades been broken. On one occasion some sunshades did get broken and she had reported the matter to Miss O'Neal. Miss O'Neal on that occasion had told her to put the broken ones aside until the agents came. Other clerks also sold sunshades from the same drawer which was not locked. Miss O'Neal had never had cause to speak to her about sunshades on any other occasion.

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This matter about the sunshades in my opinion is a trivial one which has been inflated out of all proportion for the purposes of this charge. Miss Winter was a clerk of six years standing at O'Neal's, and yet to substantiate an allegation of carelessness on her part sufficient to warrant dismissal the Proprietor gives one instance where sunshades, kept in a drawer and handled by all the clerks in the store were found broken. According to Miss Winter, on that occasion, she herself drew Miss O'Neal's attention to the breakage and the matter was never mentioned again until the day of the meeting convened by the Labour Commissioner.

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CHARGE 4.

This charge could have been coupled with the

10 first charge. It is a general allegation of suspicion against Miss Winter concerning the theft of packets from the Drug Store. It was pointed out that all the other clerks employed by O'Neal's Drug Store also had access to the store room where these packets were kept. According to Miss Winter all the other clerks used to go into the inner room for the purpose of getting replacements. It seems to me that if Averyl Winter was under suspicion with respect to the stolen packets, so to an equal degree was every other employee of O'Neal's Drug Store. This reason for Miss Winter's dismissal was given for the first time at the Labour Office on Thursday, 7th, July, 1955. I cannot accept this reason as a valid one.

Exhibits

Exhibit 'C'

A letter from Governor's Deputy to Mr. E.E. Harney with report of Board of Inquiry.

6th September 1955.
continued.

CHARGE 5.

20 I turn now to what perhaps may be considered as the most serious charge made against Miss Winter. In effect, this charge contains two allegations. In the first place that Miss Winter acting without authority took the key to the store room, opened the store room and got a porter to roll out a vaseline drum into the street. She being a clerk of six years standing was well aware that these drums were sold by no one except Miss O'Neal or her sister. Secondly, that because of the irregular procedure adopted by Miss Winter. Miss O'Neal was led to believe that the drum was not empty but contained vaseline.

30 Miss Winter in answer to this charge, said that the druggist was responsible for the sale of the drum. It was his duty to deal with empty vaseline drums. He gave instructions that she could purchase the drum. One of the store porters came and told him the drum was empty and he rolled it through the door in the back and laid it on the side walk outside. The drum remained on the pavement for 3 hours and anyone could have inspected it. This incident occurred around the month of April 1955. Miss O'Neal who was away on holiday at the time never said anything to her about the drum when she returned to the store in 40 May nor when she dismissed her. The drum was empty.

JOSEPH LAURENT, then gave evidence in connection with the drum incident. He said he was a

Exhibits

Exhibit 'C'

A letter from
Governor's
Deputy to Mr.
E.E.Harney
with report
of Board of
Inquiry.

6th September
1955.
continued

former employee of O'Neal's Drug Store. He had been the druggist and the most senior clerk. He had been employed at the store from December 1948 until he had handed in his resignation this year and left in order to open his own business. He was responsible for the sale of empty boxes and vaseline drums. Miss O'Neal had given him that authority. Whenever a person asked for an empty drum, Miss O'Neal would refer the matter to him. Miss O'Neal did not as a rule sell drums and empty things herself. Miss Winter asked for an empty vaseline drum. When one was empty, he went and told Miss Winter about the drum. He had examined the drum himself. The Porter put the drum on the sidewalk about 8.35 a.m. The drum was removed from the sidewalk about 12 noon. He gave Miss Winter a slip for \$2.00 which she paid to Miss Knight and she owed a balance of \$1.00 which was paid on the following day. He heard Mrs. H. Harney who was then in charge "querying" the drum, but she asked him nothing about it. She could have seen the drum outside.

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The evidence on this charge discloses an apparent conflict between the Proprietor and the employees as to the responsibility for selling empty drums, Miss O'Neal in the charge alleges that only she and her sister have authority to sell empty drums, while Miss Winter says and the druggist Joseph Laurent affirms that he was given the authority and responsibility to sell empty drums. In the absence of any further evidence before me it is difficult for me to arrive at an accurate consideration on this issue, but what is clear, is that the matter of her acting in an irregular manner was never put to Miss Winter as being one of the serious nature such as to warrant her likely dismissal either at the time of the incident itself or even after Miss O'Neal returned to the store in May 1955.

30

As regards the suspicion that the drum was not empty but contained vaseline this can be discounted at once. The drum was left on the pavement outside the store for a period of at least 3 hours and if the person in charge of the store at the time had any suspicions, it would have been quite easy for them to examine the drum which was at no time hidden.

40

Furthermore, Miss Winter continued working until 11th June, 1955 on apparently good relationship with her employer, a further indication

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that the drum incident was not considered by her employer as a serious breach of her contract of service. Again I cannot accept this charge as being an accredited ground for Miss Winter's dismissal.

10 From a thorough consideration of the above facts and circumstances brought out at the Inquiry and with the help of the invaluable minutes produced by the Labour Commissioner of Antigua, I have come to the conclusion that there was no moral justification for the dismissal of Miss Winter. In reaching this conclusion, I have used as a norm one of the accepted principles of good industrial relations, that is the principle of mutual respect and tolerance of human rights between employer and workman.

RECOMMENDATION.

20 It now remains for me to suggest what I consider a just and fair solution to the problem before me.

30 The question of Miss Winter's reinstatement must, in my opinion be ruled out. The contract of service between employer and employee is one of "good faith and mutual respect and confidence. "Once that respect and confidence has been disintegrated and the nature of the particular employment is such as necessitated a personal and close contact between employer and employee, then the relationship becomes untenable. It is so in this case before me.

It is my opinion however, that Miss Winter should be compensated for her dismissal by a monetary payment calculated on a basis of the number of years service she has given in the employment of O'Neal's Drug Store.

I therefore recommend that the Proprietor of O'Neal's Drug Store be asked to pay to Miss Winter a sum of money equivalent to thirteen weeks wages as a compensation for her dismissal.

40 Before concluding this report I would like to take the opportunity to commend Miss Amelia Charles of the Secretariat for the accuracy and efficiency with which the note-taking and transcribing was done at the Inquiry. Perhaps His Excellency may consider her services as worthy of some honorarium as provided for under Section 15 of the Trade Disputes (Arbitration and Inquiry) Act 1939.

Dated the 31st day of August, 1955.

50 Sgd. O.M. Browne
Acting Magistrate.

Exhibits

Exhibit 'C'

A letter from Governor's Deputy to Mr. E.E. Harney with report of Board of Inquiry

6th September 1955.

continued.

Exhibits

EXHIBIT "D"

Exhibit "D"

A LETTER DATED 14TH SEPTEMBER 1955
FROM ADMINISTRATOR TO MISS O'NEAL.

A letter from
Administrator
to Miss
O'Neal.
14th September
1955.

Communications on this
subject should be
addressed to -
The Administrator,
Antigua.

Administrator's Office,
Antigua.

14th September, 1955.

And the following
Number quoted:
A.C.45/9

10

Madam,

I have the honour to refer to my letter
A.C.45/9 of the 16th August, 1955, concerning
the appointment of a Board of Inquiry under the
Trades Disputes Act, 1939, and to inform you
that the report of the Board will be forwarded
to the local press with the request that it be
published on Friday 16th September, 1955.

I have the honour to be,

20

Madam,

Your obedient servant,

Sgd.

Administrator

Miss Gertrude O'Neal,
O'Neal's Drug Store,
St. John's.