In the Supreme Court

Suit No. C.L. 1981/A064

B E T W E E N — The Attorney General — Plaintiff

A N D — National Workers Union — Defendant

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R. Lampin and N.L. Fraser for the Plaintiff/Respondent

P.J. Patterson for the Defendant/Applicant

28 July, 1981

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SMITH, C.J.

On July 10, 1981 the writ in this action was filed by the Director of State Proceedings and named the Attorney General as plaintiff and the National Workers Union as Defendant. In the endorsement there was the following claim -

> " Plaintiff's claim is for an injunction that the threatened action of the defendant on the 10th day of July, 1981 in causing the workers represented by the National Workers Union to withdraw their services from Alcan Jamaica Company, Alumina Partners of Jamaica, Alcon Minerals of Jamaica Incorporated, Kaiser Bauxite Company, and Reynolds Jamaica Mines Limited, is illegal and contrary to section 11A of the Labour Relations and Industrial Disputes Act, also the national interest; and for an injunction to restrain the defendant from carrying out strike action. "

On the same day, on the application of the plaintiff, an interim injunction limited for ten days was granted by Parrison, J. There was an order in these terms -: "The defendant is restrained from inducing the workers from withdrawing their services from the bauxite and alumina companies on the ground that this would be in breach of the defendant's statutory duty under section 11A(1) of the Labour Relations and Industrial Disputes Act, and would be against the national interest."

Appearance was entered to the writ on July 16, 1981 and on the same day a summons was taken out, directed to the Director of State Proceedings, applying for an order that the writ and subsequent proceedings be struck out on the ground that the writ disclosed no reasonable cause of action.

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On July 17 a statement of claim was filed. After referring to the history of the matter in the first three paragraphs, which included the fact of the reference of a dispute to the Industrial Disputes Tribunal (the Tribunal) in accordance with the provisions of section 11.(1) of the Labour Relations and Industrial Disputes Act, the statement of claim continued in paragraph 4 as follows :-

> " The defendant on or about July 3, 1981 served on the aforesaid Bauxite and Alumina companies a strike notice indicating, that the workers would withdraw their labour effective 72 hours after 4 p.m. Friday July 10, 1981. Further, that on Friday July 10, 1981 about 1.20 p.m. the Industrial Disputes Tribunal made an order consonant with section 12(3)(a) of the said Act, stating that industrial action must cease with immediate effect. It was only after the interlocutory injunction herein was granted by the Court, and during the hearing of an ex parte summons for leave to apply for an order of prohibition, that an undertaking on behalf of the defendant was given to the Court that the strike notice is withdrawn. "

Paragraph 5 is as follows :-

> " Plaintiff contends that the Act imposes a duty on the defendant, having regard to the aforesaid circumstances, to refrain from industrial action in breach of the order issued by the Industrial Disputes Tribunal and/or while a dispute remains undetermined by the said Tribunal. This created at the same time a right vested in the public, infringement of which may cause irreparable damage to the national interest.

Then paragraph 6 :-

> " The defendant threatens an intends, unless restrained by this honourable Court, to continue and repeat the wrongful acts above complained of, and the plaintiff claims :- (i) an injunction to restrain the defendant by himself, his servants or agents or otherwise howsoever, from carrying out strike action; (ii) a declaration that the action of the Union was illegal and a breach of its statutory duty, and therefore contrary to the Labour Relations and Industrial Disputes Act. "

Since yesterday I have heard argument in chambers on the defendant's application and I have adjourned the matter into court this afternoon for judgment in view of the public interest which this and other related proceedings have aroused and because what I have to say is, hopefully, of some general public interest in the field of industrial relations. I would also wish to say as an aside that it always offends me when full details of proceedings in chambers are published, whether on the radio or in the press, in circumstances where they are held in camera. Perhaps it is not well known that it can be a contempt of court to publish matters which occur in chambers without authority. So to avoid that, it is better that in matters like this reasons should be stated in court so that everyone may hear and we will

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not have the rule regarding publication of matters in chambers being openly breached.

During the proceedings in chambers Mr. Langrin, who led for the plaintiff, said that the plaintiff was not at this time saying that the defendant is in breach of the order of the Tribunal. He said that had the application to strike out the writ not been filed the statement of claim would not have been filed; instead he would have filed a notice of discontinuance. He said that the injunction had expired when the summons was served and he had no intention of pursuing the matter, having regard to the withdrawal of the strike notice; he went on to say that he was only defending the application of the defendant to strike out on the ground that when the action was filed it had a good basis in law. Of course, if he is right, that would be a valid ground for contesting the application. So these proceedings are largely academic; but because of the importance of the proceedings themselves it is right that I should deal with the issues and the argument and make such comments as I think appropriate in the circumstances, in the hope that this may be of some guidance in the future.

The action taken by the Attorney General in this matter is the first of its kind in the history of these Courts, and it was taken in pursuance of the Attorney General's right to invoke the assistance of the civil court in aid of the criminal law in the public interest. The right of the Attorney General to bring this action is not contested by the defendant, but it is contended that when the Attorney General brings such an action he is in the same position as any plaintiff and must be able to show a cause of action which is known to the law. That is the submission of Mr. Patterson for the defendant union. Mr. Langrin maintains that the endorsement to the writ discloses a reasonable cause of action as it is clear that a threatened breach of the criminal law was alleged.

The jurisdiction to strike out an action on the ground that it discloses no reasonable cause of action is one to be exercised only in obvious cases and where a question of general importance or a serious question of law arises on the pleadings the Court will not [illegible]

out unless it is clear and obvious that the action will not lie. For this statement see Halsbury's Laws of England, 3rd edition, Volume 30, paragraph 76. It is clear that in support of an application to strike out on this ground it is not permissible to adduce any evidence, so if the action is to be struck out it has to be clear on the face of the pleadings that there is no reasonable cause of action.

As the matter stood when the summons was taken out, that is to say before the statement of claim was filed, it is clear in my opinion that the right of the Attorney General to bring the action was not shown. In the circumstances of the case he had to show that the commission of a criminal offence was threatened. In the allegation made on the writ, in the endorsement, it is stated that the action of the defendant in causing workers represented by the defendant union to withdraw their services from the bauxite and alumina companies was illegal and contrary to section 11A of the Labour Relations and Industrial Disputes Act. Reference to section 11A of the Act shows quite clearly that there is no duty imposed on any one by the section and there is nothing in the section itself to which anyone could be said to be acting in breach. As regards the allegation about the national interest, it is not suggested or stated anywhere that there is any statutory duty on the defendant not to act contrary to the national interest in doing what is alleged in the endorsement.

If the matter stood thus when it came before me there could, in my opinion, have been no answer to the application. However, a statement of claim was filed and, as Mr. Langrin pointed out, and this was not contradicted, a statement of claim when filed within the time limited for its filing cures any defect which may appear in the endorsement on the writ. So for the purpose of the application now we look to the statement of claim. I should mention that the defendant's summons was not without blemish; it needed amendment and an amendment was granted at the hearing.

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The action taken by the Attorney General is on the basis that there was a threatened breach of the criminal law which he wished to restrain by the issue of an injunction by the court. The particular criminal offence identified is that created by section 12(9) of the Labour Relations and Industrial Disputes Act, which provides as follows: "Any person who fails to comply with any order or requirement of the Tribunal made pursuant to subsection (5), or with any other decision or any award of the Tribunal, shall be guilty of an offence."

It is not contested that there was a reference by the Minister to the Tribunal under section 11A of the Act. Once there is any such reference, section 12(5) provides as follows: "Notwithstanding anything to the contrary, where any industrial dispute has been referred to the Tribunal" - and only paragraph (a) is relevant - "it may at any time after such reference order that any industrial action which has begun in contemplation or furtherance of that dispute shall cease from such time as the Tribunal may specify." Paragraph 3 of the statement of claim states that an order pursuant to those provisions was made by the Tribunal on Friday July 10, 1981 about 1.20 p.m. and the order stated that industrial action must cease with immediate effect. It is a breach, or a threatened breach, of that order which the Attorney General sought to restrain.

The validity of the order has been attacked by counsel for the union. If the order was not a valid order it follows that there can be no legal breach of it. Another question, which of course would be a matter of evidence, is whether the order after it was made was brought to the notice of the union, and whether there was a failure by the union to obey the order, because it is only when there is a failure to obey the order that an offence is committed. But, as is quite clear from the authorities, the Attorney General need not wait for an offence to be committed: he can intervene to prevent the commission of an offence.

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A reference to section 12(5)(a) of the Act shows that for an order to be made by the Tribunal there has, first of all, to be a

reference of a dispute to the Tribunal and, as I have said, there is no contest that there was such a reference made by the Minister under section 11A. Secondly, there must be an industrial action which has begun - emphasis on the word 'begun' - in contemplation or furtherance of that dispute, and if this is satisfied the Tribunal may order that that industrial action shall cease from such time as the Tribunal may specify. When asked to identify the industrial action which the Attorney General says had begun, thus giving the Tribunal the power to make the order, Mr. Longrin stated that the strike notice to which reference is made in paragraph 4 of the statement of claim was the industrial action, and he added that the industrial action began when the strike notice was served on July 8, 1981. He said that this notice would give rise to certain behavioural patterns by persons on whom the notice was served, that the consequences would cause disastrous effects against the national interest and that it was against that background that the Attorney General acted to prevent the consequences flowing from the notice which affected the public interest.

One turns next to the definition of "industrial action", which must have begun when the order is made. Section 2 of the Act defines it as follows: "(a) any lock-out, or (b) any strike, or (c) any course of conduct (other than a lock-out or strike) which, in contemplation or furtherance of an industrial dispute, is carried on by one or more employers or by one or more groups of workers, whether they are parties to the dispute or not, with the intention of preventing or reducing the production of goods or the provision of services." It is the provisions in paragraph (c) with which we are here concerned. Mr. Patterson submitted, firstly, that the strike notice is not within paragraph (c) of the definition as it does not amount to a "course of conduct". He submitted that "course of conduct" must involve the doing of acts more than one. Two things at least in sequence may establish a course of conduct, he said, one does not - for example, go-slows, sick-outs; but not a single act like the issue of a strike notice. Mr. Longrin submitted, in answer, that the strike notice was within the definition and he saw nothing in the definition

to indicate that it needed more than one act to constitute a course of conduct.

Mr. Patterson submitted, secondly, that the strike notice was not within the definition insofar as his client, the union, was concerned because, he said, the conduct which is within the definition of "industrial action" must be by one or more groups of workers, and that the action of a trade union is not action by a group of workers. He submitted that it is a group of workers who must take the action and it is they, as distinct from trade unions, who are subject to penalties under the statute. Mr. Langrin answered that submission by stating that one would have to look at the strike notice to ascertain who are the persons on whose behalf the strike notice was served and who in fact served it; that in order to test the validity of the order of the Tribunal one would have to look at the evidence, which is not permissible on an application to strike out.

I hold that the order made by the Tribunal was not a valid order as, in my judgment, it is clear and obvious that the strike notice by itself would not provide a proper basis for the order. The strike notice was served on July 3, as stated in the statement of claim, and it is clear that it cannot be said that there was, on July 10, any "course of conduct" begun by workers as provided in section 12(5)(a) combined with the definition of "industrial action". Before an order under section 12(5)(a) can properly be made by a Tribunal there has to be, as the statute provides, action begun, whether by employers or by workers, which is either a lock-out or strike, or a course of conduct (other than lock-out or strike) which is carried on by them, and it seems to me impossible to find that a strike notice which was issued once and for all can be said to be a course of conduct which is carried on; more so when on the face of it, as is alleged, that strike notice was issued by the union and not by the workers and had not yet even become effective when the order was made.

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If it was intended to make trade unions, as distinct from workers, liable for penalties it would have been easy to say so, but nowhere in the statute is there any penalty imposed on trade unions for breaches of its provisions. Anyway, insofar as this particular provision is concerned, the industrial action had to be taken by the workers as distinct from the union. It may be, of course, if there is any such industrial action properly coming within the definition and an order is made by the Tribunal, that an officer of the union, even if not the union itself, would be liable for penalties under section 12(9)(b) if he is proved to have aided and abetted the continuance of the industrial action in breach of the order.

The result of what I have said is that the pleadings do not disclose that any criminal offence was threatened which would give the Attorney General the authority to intervene since the order which, it is conceded, is the genesis of a criminal offence under section 12(9)(b) was not, as I have held, validly made by the Tribunal. The result is that the application to strike out the pleadings is granted and the statement of claim is accordingly struck out with costs to the defendant.

As I said earlier, this whole exercise is, in all the circumstances, academic, but I wish to comment on the proceedings which were instituted by the Attorney General in view of the recent history of industrial relations in this Country, which is notorious. I should like to quote some passages from the opinions of the members of the House of Lords who presided at the hearing of the appeal in Gouriet v. The Attorney General and Union of Post Office Workers and Others. I am reading from the report in (1978) A.C. 435. At page 482 Lord Wilberforce said this -

> " The Attorney-General's right to seek, in the civil courts, anticipatory prevention of a breach of the law, is a part or aspect of his general power to enforce, in the public interest, public rights".

And Lord Edmund-Davies, at page 507, said that since the Attorney General "can act on his own account to prevent breaches of a criminal law which has proved ineffective in the past, he can surely also take

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steps of his own volition to prevent widespread breaches or to avert dire danger". Then Lord Edmund-Davies, at p. 511, quoted a passage which I find very relevant to our circumstances in this Country at this time. That passage is from Attorney-General v. Harris (1961) 1. Q.B. 74 from the judgment of Pearce, L.J., who is quoted as saying:

> " It is now firmly established that where an individual or public body persistently breaks the law, and where there is no person or no sufficient sanction to prevent the breaches, these courts in an action by the Attorney-General may lend their aid to secure obedience to the law. They may do so whether the breaches be an invasion of public rights of property or merely an invasion of the community's general right to have the laws of the land obeyed.... the Attorney-General represents the community, which has a larger and wider interest in seeing that the laws are obeyed and order maintained. "

And at page 512 Lord Edmund-Davies quoted from the judgment of Bagallay, L.J. in Attorney-General v. Great Eastern Railway Co., (1879) 11 Ch.D. 449 where the Lord Justice said at p. 500:

> " It is in the interest of the public that the law should in all respects be respected and observed, and if the law is transgressed or threatened to be transgressed .....it is the duty of the Attorney-General to take the necessary steps to enforce it, nor does it make any difference whether he sues ex officio, or at the instance of relators. "

It is right that those concerned with industrial relations should know that this power of the Attorney General exists. It is pointed out in the authorities that the power should be exercised only in exceptional circumstances, and with caution, but it is clear that the power can be exercised where criminal sanctions are treated with contempt by those against whom they are directed. The authorities indicate the guidelines within which the Attorney General should exercise his authority. This power when properly invoked has three advantages over the ordinary criminal process :

(1) the Attorney General can intervene to prevent an offence being committed ;

(2) the procedure can be put into effect without the delay which normally accompanies steps to bring criminal proceedings: and

(3) the sanctions for disobedience of an injunction validly issued can be much more severe than the criminal sanctions provided.

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Moreover proceedings can always be brought, as was done in the Gouriet case, against a trade union or any of its officers where any conduct on their part can be said to incite workers to commit a criminal offence.

It is hoped, certainly by me, that the knowledge of these powers of the Attorney General may have a salutary effect on the industrial relations in this Country.