NMS

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATES COURT CRIMINAL APPEAL No. 17/99

BEFORE: **THE HON. MR. JUSTICE DOWNER, J.A.**
THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MR. JUSTICE LANGRIN, J.A.

R. v. MARK McCONNELL
UNITED ESTATES

Frank Phipps, Q.C. and **Kathryn Phipps**
for the appellants

Kentry Pantry Q.C. Director of Public Prosecutions
and **Mrs. Marjorie Moyston, Crown Counsel** for the Crown.

February 23,24, 2000, January 29, 30, and July 31, 2001

DOWNER, J.A.:

Langrin J.A. will deliver the first judgment.

LANGRIN, J.A. :

The Appellants United Estates Ltd. and Mark McConnell were tried and convicted in the St. Catherine Resident Magistrates Court for breaches of Section 4 (2) (a) and (b) of the Labour Relations and Industrial Disputes Act. ("LRIDA").

Both United Estates Ltd. and Mark McConnell were each convicted on three informations for breaches of the LRIDA:

United Estates Ltd.

(1) On information 4207/95: United Estates Ltd. was convicted for having prevented and deterred Rudyard Robinson, a worker at United Estates Ltd. from exercising his rights to be a member of a trade union or to take part in the activities of the trade union; Contrary to section 4 (2) (a) of the Labour Relations and Industrial Disputes Act.

(2) On information 4205/95 United Estates Ltd. was convicted for having dismissed, penalized and otherwise discriminated against Gary Smith, a worker of United Estates Ltd. by reason of the said Gary Smith exercising his rights to be a member of a trade union or to take part in the activities of a trade union; Contrary to section 4 (2) (b) of the Labour Relations and Industrial Disputes Act.

(3) On information 4203/95 United Estates Ltd. was convicted for having dismissed, penalized and otherwise discriminated against Alfred Palmer, a worker of United Estates Ltd. by reason of the said Alfred Palmer exercising his rights to be a member of a trade union; Contrary to section 4 (2) (b) of the Labour Relations and Industrial Disputes Act.

Mark McConnell

(1) Information 4188/95: Mark McConnell was convicted for having prevented and deterred Rudyard Robinson a worker at the United Estates Ltd. from exercising his rights to be a member of a trade Union or to take part in the activities of a trade union; Contrary to section 4(2) (a) of the Labour Relations and Industrial Disputes Act.

(2) On Information 4206/95 Mark McConnell was convicted for having dismissed, penalized and otherwise discriminated against Gary Smith, a worker at the United Estates Ltd. by reason of the said Gary Smith exercising his rights to be a member of a trade union or take part in the activities of a trade union; Contrary to section 4 (2) (b) of the Labour Relations and Industrial Disputes Act.

(3) On Information 4194/95 Mark McConnell was convicted for having Dismissed, penalized and otherwise discriminated against Alfred Palmer, a worker at the United Estates Ltd. by reason of the said Alfred Palmer exercising his rights to be a member of a trade union or to take part in the activities of a trade union. Contrary to section 4(2) (b) of the Labour Relations and Industrial Disputes Act.

In the result both United Estates Ltd. and Mark McConnell were convicted for breach of section 4(2) (a) in relation to Rudyard Robinson, and, both United Estates Ltd. and Mark McConnell were convicted for breach of section 4 (2) (b) in relation to Gary Smith and Alfred Palmer.

United Estates was fined $2,000.00 to be recovered by distress if not paid, for each offence, while Mark McConnell was fined $2,000 or 30 days imprisonment for each offence. They have appealed against their respective convictions and sentences on the following grounds:

(1) Each information was bad for duplicity in that it charged more than one offence. The ruling of the learned Resident Magistrate against the submission of duplicity was wrong in law.

(2) The finding of guilt on information 4188 for a breach of section 4 (2) (a) of the Labour Relations and Industrial Disputes Act was inconsistent with the finding of guilt on informations 4206 and 4194 for breach of section 4 (2) (b) of the Act. The facts in support of the allegations of the respective breaches were similar and indistinguishable.

(3) The learned Resident Magistrate erred in law in allowing inadmissible evidence to be adduced at the trial.

(4) The verdicts were unreasonable and cannot be supported having regard to the evidence.

The grounds of appeal in respect of both appellants are similar.

The case for the prosecution was cast in the following manner. Between February and June, 1994 a number of workers employed to United Estates

Limited sought to organise themselves by seeking union membership in order to improve their working conditions. They joined the National Workers Union . After being unionized they were harassed by Mark McConnell and threatened with dismissal. These union members were asked to sign a document disassociating themselves from the Union.

On June 16, 1994, some of the workers had staged a demonstration at the entrance of United Estates during lunch hours. They then tried to enter the gate to resume work and were prevented from doing so. Subsequently they were escorted into the premises in order to retrieve their belongings and change their clothes. On reporting for work the following day the workers were refused entry by a security guard who informed them of instructions he had received from Mark McConnell. Some of the workers spoke directly to Mark McConnell who informed them that they were being laid off for various reasons including the fact that they were involving themselves in the Union. Other workers were informed that production was low and that they would be laid off but would be contacted when things got better. However, they were never contacted. There were still other workers who were told they were being laid off because of union activity. The defence was in essence a denial of the case for the prosecution.

It will be useful at this point to set out the relevant provisions of the statute which state the rights of workers in respect of Trade Union membership.

> "**4. –** (1)Every worker shall , as between himself and his employer, have the right –
>
> (a) to be a member of such trade union as he may choose;
>
> (b) to take part, at any appropriate time, in the activities of any trade union of which he is a member;

(2) Any person who –

(a) Prevents or deters a worker from exercising any of the rights conferred on him by subsection (1) or;

(b) Dismisses, penalises or otherwise discriminates against a worker by reason of his exercising any such right;

shall be guilty of an offence, and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two thousand dollars".

The appeal turned firstly on the jurisdiction of the Resident Magistrate to try together the informations charging the same person for two different offences. Mr. Phipps Q.C. submitted that such a situation was prohibited by Section 9 of the Justices of the Peace Jurisdiction Act which reads:

"**9.** Every such complaint upon which a Justice or Justices is or are or shall be authorized by law to make an order and every information for any offence or act punishable upon summary conviction, unless some particular enactment of this Island shall otherwise require, may respectively be made or laid without any oath or affirmation being made of the truth thereof, except in cases of information where the Justice or Justices receiving the same shall thereupon issue his or their warrant in the first instance to apprehend the defendant as aforesaid; and in every such case where the Justice or Justices shall issue his or their warrant in the first instance, the matter of such informations shall be substantiated by oath or affirmation of the informant, or by some witness or witnesses on his behalf, before any such warrant shall be issued; and every such complaint shall be for one matter of complaint only, and not for two or more matters of complaint, and every such information shall be for one offence only, and not for two or more offences; and every such complaint or information may be laid or made by the complainant or informant in person, or by his counsel or solicitor, or other person authorized."

Mr. Phipps Q.C. for the appellants submitted that each information as laid was bad for duplicity in that each information charged more than one offence. He contended that there is a world of difference to a worker having a right to be a member of a trade union on the one hand and on the other hand taking part in the activities of a trade union. Where both are charged in the same information the allegation is that there are two offences in one information. A worker he contended can become a member of a Union and not take part in the activities but the converse is not the same. A worker cannot take part in activities of the Union without being a member. A number of authorities were cited in support of his contention. I have considered them but it is not necessary for me to refer to all of them.

1. ***Mallon v Allon*** [1963] 3 All ER 843

   There the Divisional Court held that an enactment providing that "no person ... under the age of 18 years shall be admitted or allowed to remain... on premises, created two offences, on the ground that (i) admitting and (ii) allowing to remain were separate acts.

2. ***Ware v Fox, Fox v Dingley & Another.*** [1967] 1 All ER 100

   Here the Court held that an enactment providing that "if a person being the occupier of any premises, permits those premises to be used for the purpose of smoking cannabis or cannabis resin or of dealing in cannabis or cannabis resin..." created two offences, one of permitting use for the purpose of smoking and the other ,permitting use for the purpose of dealing etc.

3. ***Thompson v Knight*** [1947] 1 All ER 112

The appellant was convicted of being "unlawfully in charge of a motor vehicle whilst under the influence of drink or drugs. It was held that the conviction was not bad for uncertainty since the subsection by the words quoted created one offence namely; being in charge of a motor vehicle while in a state of self-induced incapacity , whether that incapacity was due to drink or a drug, and not the two offences of being in charge of a vehicle (1) while under the influence of drink and (2) while under the influence of a drug.

4. ***Jemmison v Priddle*** [1972] 1 All ER 539

An information charging the unlawful taking and killing of two red deer without licence was held by the Divisional Court not to be bad for duplicity because it is legitimate to charge in a single charge one activity even though that activity may involve more than one act. Lord Widgery C.J. who delivered the judgment of the court had this to say, at page 544:

> "One looks at this case and asks oneself what was the activity with which this man was being charged? It was the activity of shooting red deer without a game licence, and although as a nice debating point it might well be contended that each shot was a separate act, indeed each killing was a separate offence, I find that all these matters, occurring as they must have done within a very few seconds of time and all in the same geographical location, are fairly to be described as components of a single activity, and that made it proper for the prosecution in this instance to join them in a single charge. I would find, therefore, that the information was not bad for duplicity."

I agree with the conclusions by Lord Justice Widgery and find that it is applicable to the question raised in the instant appeal.

Mr. Kent Pantry, Q.C. submitted that section 4(2) creates two offences namely: to prevent or deter, and to dismiss, penalize or otherwise discriminate. He argued that "prevents and deters" is merely descriptive, meaning to hinder, while dismisses, penalizes or otherwise discriminates is descriptive of discrimination by the employer. Since ***Jemmison*** established the principle contended for by Mr. Pantry, Q.C. it would be difficult to see how Section 4 could be construed as establishing more than two offences. To suggest that section 4 creates more than two offences would be to emasculate the section and defeat the purpose of the Act. I do not think that the draftsman intended to create an offence in relation to membership and another for activities concerning membership. They are fairly described as components of a single activity and therefore it is proper for the prosecution to join them in a single charge. Section 4 (1) lists the rights of workers while sub-section (2) creates offences concerning interference with these rights. There are two offences- Section 4 (2) (a) creates one and Section 4(2) (b) creates the other. Section 4 (2) (a) is directed at the conduct of the employer towards his worker in relation to the latter's rights under sub-section (1) of the section. Section 4 (2) (a) relates to an employer who seeks to prevent or impede the worker from exercising his rights under sub-section (1), whereas section 4 (2) (b) is directed towards the discriminatory conduct of an employer towards his worker as a consequence of his joining a union. It is the single activity of discriminating conduct.

Furthermore, the charges under section 4 (2) (b) are drafted in the conjunctive, that is "dismisses, penalizes and otherwise discriminates..." which reinforces the fact that one activity only is attributable to the appellants. Similarly, under Section 4 (2) (a) the charges are drafted conjunctively. I therefore conclude that the informations do not disclose more than one offence relating to a single activity of the employer and are in conformity with Section 9 of the Justices of the Peace Jurisdiction Act.

Turning to the second ground, Mr. Phipps, Q.C. submitted that the convictions in respect of Alfred Palmer and Gary Smith were inconsistent and irreconcilable with the acquittals in respect of Elora Johnson and Yvette Brown.

Insofar as Palmer and Smith are concerned the Learned Resident Magistrate made the following findings:

> "I find that Alfred Palmer is a credible witness and that although there may have been genuine cases of workers being laid off between February and April due to decreased production; that in Palmer's case, based on his conversation with Mr. Mark McConnell, I make the inference that he was laid off because of his union activities.
>
> I, therefore, find both Mark McConnell and United Estates guilty on Information 4194/95 and 4203/95, respectively.
>
> I accept also that Gary Smith was also a worker at United Estates in February, 1994; that he joined N.W.U. on February 17, 1994; that on February 26, 1994, he was told by his Supervisor, Mr. Headley, that he was laid off but that Mr. Headley could not tell him why.
>
> I accept that on February 28, 1994, Smith saw and spoke to Mr. Mark McConnell about his status; that Mr. McConnell told him... 'The whole a oonu stand up down there and plan up union pon mi'; also told him that the workers had told him about the union; that

> Mr. McConnell continued to make disparaging remarks about the union.
>
> I find that Gary Smith is a credible witness and based on all the circumstances, I draw the inescapable inference that Mr. Smith was not laid off for a genuine reason but because of his union activities".

When one compares the evidence of Johnson and Brown it appears that the quality of the evidence given by them did not reach the same standard as obtained in the case of Palmer and Smith.

Elora Johnson testified that when she went to the production manager and told him that she was fired, he said "not really because fruit going down and they have to let off some of the people". In relation to Yvette Brown it appears doubtful that her termination did not relate to crop failure. She admits to be told by management that, "I don't have any work now, when it start, I have a few chosen people I am going to call back". The following finding of the Resident Magistrate confirms this:

> "I accept that the Citrus operation is a seasonal one and that during the ' low' season, the work force is reduced at United Estates.
>
> I do not accept beyond a reasonable doubt that Elora Johnson and Yvette Brown were discriminated against and dismissed by United Estates in February and April, 1994 respectively because of their union activities. In relation to Information 4195/95 and 4216/95, concerning Alfred Palmer, I find that since Mr. McConnell and United Estates had already been found guilty under Section 4 (2) (b) of the Labour Relations and Industrial Disputes Act, it would be duplicitious to find both guilty on the same set of facts for a Breach against Section 4 (2)(a)".

It is to be observed that the witness Yvette Brown under cross examination admitted that she was 'mixed up' which would create some doubt in the mind of the learned trial judge.

It is evident that the Resident Magistrate considered the evidence of Palmer and Smith to be different from the evidence of both Johnson and Brown although they were laid off the same day. In my view there is therefore no inconsistency between the evidence. It remains a question of credibility which is entirely within the province of the magistrate.

I now turn to the submission relating to inadmissible evidence. Mr. Phipps Q.C. submitted that the learned Resident Magistrate was in error when she admitted in evidence exhibits 24 and 25 which are the two letters addressed to the Permanent Secretary. The evidence, he argued, was based on hearsay, made to a person not a party to the proceedings and alleged misconduct by the appellants. This allowed highly prejudicial evidence that must have resulted in a miscarriage of justice.

On May 17, 1994 a letter was addressed to the Permanent Secretary , Ministry of Labour in the following terms:

> "Re: NWU's Claim for Represenational Rights
> Served on the Management of United Estates
>
> The National Workers Union served claim for representational rights for two (2) groups of employees at the abovenamed Company in March 1994.
>
> Since that time,we have not had any response from the Company, and subsequent correspondence to the Ministry of Labour requesting that a ballot be conducted among the employees seems not to have made any headway in terms of the Company responding to the Ministry's request.

In the meantime, the Company continues to coerce, intimidate, victimize and harass the employees. A number of the employees have been laid off, others have been threatened and some have expressed total disgust at the Company's behaviour since the Union served claim on their behalf.

This therefore, is to bring to your attention the above violation of the law by the Management of the United Estates and to request that your Ministry move urgently in assisting us to protect the workers against the Management whose record is quite clear when it comes to certain anti union tendencies.

Yours truly
NATIONAL WORKERS UNION

VINCENT MORRISON"

And again on June 21,1994 a second letter was sent to the same Permanent Secretary. The terms of the letter were stated as follows:

"Re: Bargaining Rights Claim–United Estates Limited

We have written to the Ministry of Labour previously with respect to the campaign of intimidation and harassment being conducted by the management of the abovenamed company against certain employees of the company who have chosen the National Workers Union to represent them on matters pertaining to their wages and conditions of employment.

The most recent case of harassment against the employees occurred on the 16th of June, 1994, when a group of employees who was laid off by the management because of their union connection assembled in the vicinity of the Factory. These employees were later joined by other employees who were on their lunch time. The company refused to allow the employees back to work at the end of their lunch break.

The workers turned out on the following morning and the company again refused to allow them to work. We are of the view that the workers did not commit

> any breach of the company's Rules, and should all be allowed to continue their employment with United Estates Limited.
>
> In the meantime, we are concerned that our claims for Bargaining Rights served in February, 1994, has not been addressed by your Ministry.
>
> We wish therefore to request that in light of the clear breaches of the Labour Relations and Industrial Disputes Act by the company in this matter that the Ministry will immediately and urgently cause the matter to be pursued legally in an effort to ensure that the workers' rights to join a trade union of their choice are protected.
>
> We await your prompt response.
>
> Yours truly
> NATIONAL WORKERS UNION
>
> VINCENT MORRISON
> ISLAND SUPERVISOR".

Mr. Pantry, Q.C. argued on behalf of the Crown that the making of an out of court assertion may be admissible evidence in its own right, and that the truth or falsity of the assertion may be irrelevant. He cited ***Subramaniam v Public Prosecutor*** (1956) 1WLR 965 to illustrate the position where the truth or falsity of the assertion is irrelevant. The appellant had been charged with the unlawful possession of ammunition, contrary to emergency regulations then in force in Malaya. At his trial,he admitted the possession, but pleaded duress and sought to prove what had been said to him by certain terrorists. The trial judge peremptorily excluded this as hearsay, but the Privy Council allowed the appellant's appeal against conviction. Giving judgment, Mr. L.M. deSilva said at p. 970:

> "The fact that a statement was made quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made... statements could have been made to the appellant by the terrorists which, whether true or not, if they had been believed by the appellant, might reasonably have induced in him an apprehension of instant death if he failed to conform to their wishes".

It is to be noted that the learned Resident Magistrate did not make use of the letters in her findings adverse to the defendants. In demonstrating the evidence on which the learned magistrate relied as proof of the charges in the informations there was no mention of any of these letters. These two letters written by the Union Supervisor to the Ministry of Labour although reciting a great majority of what the witnesses said in their oral testimony are clearly inadmissible as evidence against the appellants. However, despite the wrongful admission of the letters there was abundant evidence otherwise on which the learned magistrate did rely. In the circumstances we find that no prejudice would have been caused by the wrongful admission of such evidence.

Lastly it was submitted on behalf of both appellants that the verdicts were unreasonable and cannot be supported having regard to the evidence.

The following findings of the learned Resident Magistrate demonstrate quite clearly an appreciation of the evidence required for the conviction of the appellants on the charges as stated in the informations. The relevant findings are stated:

> "I accept that sometime between March and April 1994, Mr. Mark McConnell authorized the making of a Form to be signed by the workers who wished to state that they had not joined a union, that several workers signed these forms including Phillip Bulli, Levi Palmer,

Rudyard Robinson, Michael Brown and Anthony Dennis.

I accept that on February 25, 1994, Alfred Palmer had a conversation with Mark McConnell; that McConnell accused him of planning union, inside his place; that he told Palmer that he wanted no union; as the union did not help him to build his place and that he would have to make the union find work for him.

I accept that on February 26, 1994, when Palmer returned to work, he was told by his Supervisor, Mr. Robinson, that if there was no new card made up for him, he had been laid off; that there was no new card for him.

I accept that on March 3, 1994, when Palmer attended at United Estates, he again had a further conversation with Mark McConnell about his union; that Palmer expressed that he did not think he was laid off because of reduced production.

I find that Alfred Palmer is a credible witness and that although there may have been genuine cases of workers being laid off between February and April due to decreased production; that in Palmer's case, based on his conversation with Mr. Mark McConnell, I make the inference that he was laid off because of his union activities.

I accept that on February 26, 1994, Smith saw and spoke to Mr. Mark McConnell about his status; that Mr. McConnell told him... "The whole a oonu stand up down there and plan up union pon mi'; that Mr. McConnell also told him that the workers had told him about the union; that Mr. McConnell continued to make disparaging remarks about the union.

I find that Gary Smith is a credible witness and based on all the circumstances, I draw the inescapable inference that Mr. Smith was not laid off for a genuine reason but because of his union activities.

I accept that after the N.W.U. served claims on United Estates for Bargaining Rights, that Mr. Mark McConnell called a meeting with the workers in the Juicing Plant in March, 1994; that as a result of Mr. McConnell's negative attitude towards the union

> and the acquiescence of other Managers, Mr. Robinson was forced to sign Exhibit 20 in April 1994; that at the time he signed it, he feared losing his job.
>
> I accept Levi Palmer as a credible witness and find that in April, 1994, Mr. McConnell spoke with him after he had been laid off for a few days; that Mr. McConnell made negative remarks about the union and told him to go back to work and not to get involved with the union. Although Mr. Palmer had joined N.W.U. in February, 1994, I find that he felt compelled to sign Exhibit 20, stating he was not a member of any union, for fear of losing his job".

The argument that the appellant McConnell did not authorize the relevant form since he got it from his lawyers cannot bear any reasonable objective analysis. Mr. McConnell was the major force in the company and so the inescapable inference is that the document was authorized by him.

Finally on the question of delay, the trial commenced on 26th March, 1996 and the hearing was completed on 8th January, 1997. The judgment was delivered on 14th April, 1997. There were 31 informations, 21 witnesses, and 25 documentary exhibits. Mr. Phipps Q.C. brought to our attention the case of ***Sambasivam v Secretary of State for Home Department*** The Times Law Report published November 10, 1999, delivered October 28,1999. (Roch and Potter, L.JJ & Wilson J). Court of Appeal. It was held that:

> "In immigration cases heard by the special adjudicator, where important issues of credibility arose, a delay of over three months between hearing and determination would merit remittance for re-hearing, unless, by reason of particular circumstances, it was clear that the eventual outcome would be the same".

It is to be noted that the court was dealing with immigration cases which fall within a special category. The workload of the Resident Magistrate in the parish

of St. Catherine is phenomenal. While the delay in the instant case is unacceptable , I find that no injustice was done to the appellants.

For the foregoing reasons I would dismiss the appeal.

HARRISON, J.A:

I agree with the reasoning and conclusion of Langrin, J.A. I also having read in draft the judgment of Downer, J.A. agree with the reasoning and conclusion in respect of ground 3, that the letters, exhibits 24 and 25, though inadmissible, were not relied on by the learned Resident Magistrate in her findings and therefore that ground fails.

My comments however, concern my views on ground 1, that the informations on which the appellants were convicted were bad for duplicity in that they each contain more than one offence.

Section 9 of the Justices of the Peace Jurisdiction Act governs the restriction in the drafting of offences in an information. It reads inter alia:

> " ... every information shall be for one offence only, and not for two or more offences ..."

This stipulation clearly shows that if more than one offence is contained in an information, such information is bad for duplicity.

Each appellant was convicted on three informations for offences under the Labour Relations and Industrial Disputes Act as hereunder:

> **(1)** United Estates Limited and Mark McConnell were charged and convicted on informations 4207/94 and 4188/94 respectively, in respect of worker Rudyard Robinson contrary to section 4(2)(a), in that each:
>
> > "prevented and deterred Rudyard Robinson, a worker at the United Estates Ltd from exercising his rights to be a member of a trade union or to take part in the activities of a trade union."
>
> **(2)** United Estates and Mark McConnell were charged and convicted on informations:
>
> > **(a)** 4205/94 and 4206/94, respectively, in respect of Gary Smith, and

(b) 4203/94 and 4194/94 respectively, in respect of Alfred Palmer contrary to section 4(2)(b), in that each:

"... dismissed, penalized and otherwise discriminated against ... a worker of the United Estates Ltd. by reason of the said ... exercising his right to be a member of a trade union or take part in the activities of a trade union."

Section 4(2) of the Act, which sub-section creates the offences reads:

"(2) Any person who

(a) prevents or deters a worker from exercising any of the rights conferred on him by subsection (1); or

(b) dismisses, penalizes or otherwise discriminates against a worker by reason of his exercising any such right,

shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two thousand dollars."

It is observed that although the sub-section is worded disjunctively, namely, "prevents or deters ..." and "... dismisses, penalises or otherwise discriminates ...," the offences recited in the informations are charged conjunctively, namely, "... prevented and deterred ..." and "...dismissed penalized and otherwise discriminated ..."

The rights of the worker as they relate to his employer in respect of his membership in a trade union are recited in section 4(1) of the Act, which reads:

> **"4 - (1)** Every worker shall, as between himself and his employer, have the right –
>
> **(a)** to be a member of such trade union as he may choose;
>
> **(b)** to take part, at any appropriate time, in the activities of any trade union of which he is a member."

Counsel for the appellants, Mr. Phipps, Q.C. argued that section 4(2) creates four (4) offences, that is, two offences in each of sub-sections (2)(a) and (2)(b) and is therefore bad for duplicity in that the two rights in sub-section (1)(a) and (1)(b), if infringed, would create two distinct offences. He seemed to have conceded that sub-sections (2)(a) and (b) create two offences, probably cognizant of the fact that the charges were in the conjunctive.

The Director of Public Prosecutions, Mr. Pantry, Q.C. submitted that one offence only is created by sub-section 2(a) which could have been described by the draftsman as "to hinder" a worker, and one offence in subsection (2)(b) which deals with discrimination. The draftsman used two descriptive terms and enlarged on "discriminates," in the formulation of the offences.

It seems to me that section 4(1) of the Act is merely a restatement of the right of a worker, a right already guaranteed by section 23 of the Constitution. Section 23 reads, inter alia:

> **"23-(1)** ... no person shall be hindered in the enjoyment of his freedom of ... association, that is to say, his right peacefully to assemble freely and associate with other persons and in particular to

> form or belong to trade unions ..." (Emphasis added)

Consequently, where in section 4(1) of the Act the "worker" is stated as having "the right to be a member" and "to take part in the activities of any trade union ...," the section does not thereby create multiple rights of the worker but merely recites a detailed description of the "right" originally recognized by the Constitution. It is a single indivisible right. No duplicity can therefore arise where the act or conduct of the offender infringes the right of the victim, even if the consequences result in the infringement of multiple rights, which multiple rights do not arise in the instant case.

Section 4(2), the penal section, creates two offences only, that is:

(i) to "prevent or deter" and

(ii) to "dismiss, penalize or otherwise discriminate."

I agree with Mr. Pantry that "prevents and deters" is merely descriptive, meaning to hinder, and "dismisses, penalizes or <u>otherwise discriminates</u>" (emphasis added) is descriptive of discrimination by the employer. In the case of **Sookdeo v R** (1963) 6 WIR 450, the appellant and one other were charged with attempted robbery with aggravation, that is, "being armed with offensive weapons to wit, two revolvers, together attempted to rob ..." It was argued that because both species of aggravation were included in the particulars, it was bad for duplicity. Dismissing the appeal, the **Court of Appeal of Trinidad and Tobago** held that the indictment was not bad for duplicity, as the two species of aggravation were

grouped together and not charged in the alternative. In delivering the judgment of the Court, **Hyatali, J.A.**, said, at page 452:

> "... the law as now settled by the recent case of **R v Clow** [1963] 2 All E.R. 216 is, that it is permissible in such circumstances to charge separate offences in one count of an indictment provided that they relate to one single incident and are charged conjunctively. There the indictment charged the defendant with causing the death of a certain person by driving a motor car at a speed and in a manner dangerous to the public having regard to all the circumstances, contrary to s. 1 of the English Road Traffic Act, 1960. It was contended that the indictment was bad for duplicity but, after reviewing a number of previous decisions on the subject, the Court of Criminal Appeal held that it was not, since the different offences charged in the indictment related to a single incident and were charged conjunctively. We not only accept the decision but welcome the principle enunciated therein as it narrows the opportunities for taking highly technical objections and makes for greater clarity of the law."

In the instant case the employer committed a single act of hindering, as contemplated in sub-section (2)(a), and a single act of discrimination as contemplated in sub-section (2)(b). In any event, the activity of each appellant is described conjunctively, that is,

(a) prevented and deterred and

(b) dismissed, penalized and otherwise discriminated,

creating in each case no charge in the alternative, no disjunctive conduct. The employer deliberately sought to hinder Rudyard Robinson in the exercise of his right to become a member of the trade union and to take part in its activities as recited in section 4(1) of the Act, by Mark McConnell telling him

inter alia that "... he did not want any Union in his place..." and "forced ..." Robinson "to sign a paper... He said if we did not sign it, we had no job."

In addition, the employer pointedly dismissed worker Alfred Palmer and Gary Smith, thereby discriminating against them, for having exercised their rights recited in the said section 4(1). These acts and conduct of Mark McConnell were precisely what the Labour Relations and Industrial Disputes Act was designed to guard against in protection of the worker's right.

In **Jemmison v Priddle** [1972] 1 All ER 539, the appellant was convicted on an information charging that he "... unlawfully did take and kill and pursue certain game, to wit, two red deer, without a licence. The appellant had fired three shots, in reasonably quick succession, and killed the deer. The appeal was dismissed. The headnote to the case reads.

> **"Held- (1)** The information was not bad for duplicity; a charge was only bad for duplicity when it alleged facts constituting two different activities; it was legitimate to charge in a single charge one activity even though that activity might involve more than one act; although the firing of each shot could be regarded as a separate act, they had occurred within a very few seconds all in the same geographical location and therefore could be fairly described as components of a single activity, i.e. shooting red deer without a game licence: accordingly it was proper to join them in a single charge."

It is significant to note that the section of the statute (section 4 of the Game Licences Act 1860) under which the charge was laid, is worded inter alia:

> "Every person before he shall in Great Britain take kill or pursue ... any game ... or any deer, shall take out a proper licence ..." (Emphasis added)

The statute was worded in the disjunctive but the information was drafted in the conjunctive, without challenge. The author in Stone's Justices' Manual 1974 Vol. 1 at page 355, commenting on the decision in **Jemmison v Priddle** (supra) to illustrate the test to determine duplicity, said:

> "A charge is bad for duplicity when it alleges facts constituting two different activities: it is proper to include in a single charge facts indicating more than one act provided that they can be collectively described as components of a single activity."

In **Ware v Fox , Fox v Dingley et al** [1967] 1 All ER 100, the appellant in each case was charged, respectively with:

> **(i)** being concerned in the management of certain premises which were used for the purpose of smoking cannabis or cannabis resin or for the purpose of dealing in cannabis resin, and
>
> **(ii)** being concerned in the management of certain premises which were used for the purpose of smoking and dealing in cannabis and cannabis resin (Emphasis added)

The Court held that being concerned in the management of premises for the purpose of smoking is a different activity from being concerned in the management of premises for the purpose of dealing in cannabis or cannabis resin, and therefore for that reason the informations were bad for duplicity. The fact that in **(ii)** the charge was laid in the conjunctive, did not cure what was distinctly two activities of the appellant. In **Thompson v Knights** [1947] 1 All ER 112, it was held that a charge of " ... unlawfully (being) in charge of a motor vehicle. ... whilst under the influence of drink or a drug ..." was not bad for duplicity. Lord Goddard, C.J. said at page 113:

> "I think that counsel for the respondent is right when he says that the words "under the influence of drink or a drug " are merely adjectival. The offence is driving or attempting to drive or being in charge of a vehicle when incapable of having proper control of the vehicle and that incapacity is caused by drink or a drug. I do not think that Parliament meant to create one offence of being incapable by reason of a drug and another offence of being incapable by reason of drink. What is meant to provide for was that a man who drove, or attempted to drive, or was in charge of, a car when in a self-induced incapacity, whether it was due to drink or drugs, committed the offence. There is no question of an alternative offence or two offences."

It is therefore clearly understandable that the Court in **Mallon et al v Allon** [1963] 3 All ER 843, held that the informations charging each of, the manager, and the company, owner of a betting office, that he "... unlawfully (did) admit and allow to remain on the betting office premises, a person ... under the age of eighteen years ..." were bad for duplicity. It was clearly two different and separate acts. One was permitting him to enter and the other was permitting him, having entered, to remain on the betting premises.

The purport and intent of the Labour Relations and Industrial Disputes Act is to protect the rights of the worker, and particularly in these circumstances to re-inforce his freedom to be involved with a union of his choice, despite a reluctant employer's subtle entreaty or brazen resistance to the contrary; section 4(1) restates the details of that right.

"Dismissed, penalized and otherwise discriminated ..." are words all descriptive of the acts of discrimination. The employment of the phrase "... and otherwise discriminates ..." demonstrates that the draughtsman intended that the words previously used be so construed. The dismissal of the worker

was one single act of each appellant, the actus reus which infringed the detailed right of the worker/victim as recited in sub-section (1)(a) and (1)(b). It cannot be duplication merely because the effect of the discriminatory act of the employer, is to cause several adverse consequences to the right of the worker. The mens rea of the appellants was properly inferred from the evidence by the learned Resident Magistrate.

Counsel would be regarded as less than ingenious and quite idle to argue, in this day, that an indictment charging wounding with intent is bad for duplicity, if the specific intent alleged is, "to main, disfigure or disable."

It is my further view that ground 1, as drafted, namely:

> **"Duplicity**
>
> The difference between, on the one hand, exercising the right to be a member of a Trade Union and, on the other hand, taking part in the activities of a Trade Union. Where both are charged in the same Information the allegation is of two offences in one Information. A worker can become a member of Union and not take part in activities but converse not the same - a worker cannot take part in activities of Union without being a member."

and as argued, is misconceived. The ground is directed entirely at the right of the worker and his activity. It then proceeds to seek to mount an argument, "Where both are charged in the same Information ..." No such right of the worker is charged in any information! All the cases on duplicity referred to above, focus on the conduct of the defendant, and his unlawful conduct alleged, to ascertain whether or not he is charged in one information with more than one offence. In the instant case the focus of the arguments

on appeal is on the consequences to the worker/victim, that is, the infringement of his right as recited in section 4(1) to base a complaint of duplicity. With this approach, I entirely disagree. For the above reasons, it is my humble opinion that the several grounds are without merit and the appeals should be dismissed.

DOWNER, J.A.

PART (1) – DUPLICITY

The statutory provision prohibiting more Than one offence charged in an information

In this appeal Mark McConnell, a member of the Committee of Management of United Estates Ltd, a registered Industrial and Provident Society, and the said Society, (the appellants) were convicted on six informations. These informations charged the appellants with breaches of the Labour Relations and Industrial Disputes Act ("the Act") before Her Honour Ms. J. Straw in the Resident Magistrate's Court for St. Catherine. The informations were tried together and for ease of exposition it is convenient to take the case of Mark McConnell initially in each instance and then examine the case of United Estates, because the Crown did not follow the time honoured practice of joining both offenders. Then it will be appropriate to proceed to ascertain if it was proper for the informations to have been tried together. By virtue of the averments, Mark McConnell and United Estates Limited, should have been charged jointly in one information. Such informations and trials are envisaged pursuant to Section 6 of the Justices of the Peace Jurisdiction Act. **Stone's Justice Manual** (1970) One Hundred and Second Edition Vol. 1 has the following statement at page 357:

> "**Joinder of Offenders.** Several offenders may be joined in the same information and convicted in separate penalties, if the act complained of admits of the participation of several persons as trespass, assault damage etc."

If this statement had been accepted by the Crown there would have been three informations before this Court.

It is convenient to refer to the findings of the learned Resident Magistrate in respect of the charges on which she returned verdicts of guilty. They are as follows at pages 296, 297 and 298 of the record:

> "11. I therefore, find both Mark McConnell and United Estates guilty on Informations 4194/95 and 4203/95, respectively.
>
> ...
>
> 15. I find, therefore, both Mark McConnell and United Estates guilty on informations 4205/95 and 4206/95
>
> ...
>
> 21. I reject the evidence of Mr. Mark McConnell and the other defence witnesses, that there was no pressure on any of the workers to sign Exhibit 20 and that there was no negative remarks being expressed by Management concerning the Union.
>
> The court accepts the evidence of the above witnesses who spoke of the attitude of Mr. Mark McConnell and the complicity of other officials of the Company towards the Union.
>
> The only reasonable inference for the fact that the five (5) workers signed a Form indicating that they were not members of the Union when they were actually so, was because they were under some pressure to do so.
>
> As a result I find both Mark McConnell and United Estates guilty on Informations 4188/95 4207/95. Mr. Robinson was discouraged from exercising his rights as a member of a Trade Union." (Emphasis supplied)

Be it noted that sixteen informations were laid in respect of United Estates Ltd. and fourteen in respect of Mark McConnell. The learned Resident

Magistrate returned findings of not guilty, on twenty-four informations, thus findings of guilt, were returned on only six informations.

In this appeal against findings of guilt, Mr. Phipps Q.C., contends that all six informations were bad for duplicity. This was the first and most important ground of appeal. Additionally, he has contended that the convictions cannot be supported having regard to the evidence. It appears from the backing on the informations that the matter was first before the Resident Magistrate on 4th May 1995, and tried over several days commencing 27th March 1996. The findings were made on 14th April, 1997. It was therefore before the Court nearly two years.

Section 4(2)(a) and (b) of the the Act imposes the criminal sanctions and governs all the informations with respect to the appellants. Section 4(1)(a) and (b) of the Act stipulates the rights of the worker with respect to his employer. This section reads:

> "4.-(1) Every worker shall, as between himself and his employer, have the right –
>
> (a) to be a member of such trade union as he may choose;
>
> (b) to take part, at any <u>appropriate time</u>, in the activities of any trade union of which he is a member."[Emphasis supplied]

Be it noted that Freedom of Association is enshrined in Chapter III, section 23 of the Constitution, and Trade Unions are specifically mentioned. So the Legislature could not by ordinary legislation prevent a worker from joining a trade union. What the statute has done is to recognize the constitutional right and enhance it, by providing for new statutory rights, which recognizes

contractual rights between trade unions and employers. It also makes provisions for criminal sanctions.

This case is concerned with the offence of contravening those rights. In adjudicating on this, the appellants have the 'protection of law' enshrined in section 20 of the Constitution. Section 23 of the Constitution which enshrines Freedom of Association reads:

> "23.-(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his right peacefully to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.
>
> (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -
>
> (a) which is reasonably required –
>
> (i) in the interests of defence, public safety, public order, public morality or public health; or
>
> (ii) for the purpose of protecting the rights or freedoms of other persons; or
>
> (b) which imposes restrictions upon public officers, police officers or upon members of a defence force." (Emphasis supplied)

Then the criminal sanctions in the Act reads:

> "4(2) Any person who –
>
> (a) prevents or deters a worker from exercising any of the rights conferred on him by subsection (1); or

(b) dismisses, penalises or otherwise discriminates against a worker by reason of his exercising any such right,

shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two thousand dollars." (Emphasis supplied)

It is this sub-section which should guide the prosecutor in drafting the appropriate informations to avoid duplicity.

"Prevents" and "deters" in Section 4(2)(a) of the Act are synonyms . There may be slight distinctions but the core meanings are the same. The Constitution uses "hinder" which is also synonymous with prevent or deter. So to prevent or deter is one offence and whether the information uses the language of the statute or joins prevent and deter in the information, it still speaks of one activity. As language does not have the precision of mathematical symbols, there are instances where deter has been defined as to discourage (from acting) or prevent (from occurring) usually by instilling fear doubt or anxiety. See Collins Dictionary 1979. What is significant for this case is that any employer interfering with the rights of the worker may either prevent or deter or hinder him from exercising those rights. The act of interfering is one offence with the intention to prevent or deter or hinder.

Dismiss, penalize or to confer or withdraw benefits on/from a worker are instances of discrimination. The gist of the offence is to discriminate against a worker. To dismiss is the most serious, and to penalize or to confer on or withdraw benefits from are lesser forms of discrimination. One offence is contemplated in Section 4(2)(b) of the Act, so it matters not whether the

information follows the wording of the statute or joins two forms of discrimination - dismiss and penalize. It is still one activity and one offence.

Section 9 of the Justices of the Peace Jurisdiction Act prohibits more than one offence being charged in one information. It reads:

> "9. Every such complaint upon which a Justice or Justices is or are or shall be authorized by law to make an order and every information for any offence or act punishable upon summary conviction, unless some particular enactment of this Island shall otherwise require, may respectively be made or laid without any oath or affirmation being made of the truth thereof, except in cases of information where the Justice or Justices receiving the same shall thereupon issue his or their warrant in the first instance to apprehend the defendant as aforesaid; and in every such case where the Justice or Justices shall issue his or their warrant in the first instance, the matter of such informations shall be substantiated by the oath or affirmation of the informant, or by some witness or witnesses on his behalf, before any such warrant shall be issued; and every such complaint shall be for one matter of complaint only, and not for two or more matters of complaint, and every such information shall be for one offence only, and not for two or more offences; and every such complaint or information may be laid or made by the complainant or informant in person, or by his counsel or solicitor, or other person authorized in that behalf." (Emphasis supplied)

It is now appropriate to cite the three informations laid against Mark McConnell. They are information 4188 of 1995 at page 97 of the Record:

> "On the 11th day of March, 1994, Mark McConnell, in the parish of St. Catherine Prevented and Deterred Rudyard Robinson, a worker at the United Estates Ltd. from exercising his rights to be a member of a trade union or to take part in the activities of a trade union contrary to Sec. 4(2)(a) of the Labour Relations and Industrial Disputes Act." (Emphasis supplied)

Then information 4206 of 1995 at page 41 of the Record reads:

> "Mark McConnell on the 28th day of February 1994 Dismissed, Penalised and Otherwise Discriminated against Gary Smith a worker at the United Estates Limited by reason of the said Gary Smith exercising his rights to be a member of a Trade Union or take part in the Activities of a Trade Union.
>
> Contrary to Section 4(2)(b) of the Industrial Disputes and Labour Relations Act." (Emphasis supplied)

The third information 4194 of 1995 at page 19 of the Record reads:

> 'Mark McConnell dismissed penalised and otherwise discriminated against Alfred Palmer a worker at the United Estates Limited by reason of the said Alfred Palmer exercising his rights to be a member of a trade union or to take part in the activities of a trade union, contrary to section 4(2) (b) of the Labour Relations and Indutrial Disputes Act.'." (Emphasis supplied)

There are two points to note at this stage. Firstly, there are three corresponding informations laid against United Estates, similarly worded as the three informations against Mark McConnel. They are 4207/95 to be found at page 43 of the Record, information 4205 of 1995 to be found at page 39 of the Record and information 4203 of 1995 at page 35 of the Record. Secondly "otherwise discriminates" stated in Section 4(2)(b) of the Act is defined thus:

> "4(3) Where an employer offers a benefit of any kind to any workers as an inducement to refrain from exercising a right conferred on them by subsection (1) and the employer –
>
> (a) confers that benefit on one or more of those workers who agree to refrain from exercising that right; and
>
> (b) withholds it from one or more of them who do not agree to do so,

> the employer shall for the purposes of this section be regarded, in relation to any such worker as is mentioned in paragraph (b), as having thereby discriminated against him by reason of his exercising that right."

The prohibition delineated in section 4(2)(a) to prevent or deter and then to dismiss penalise or otherwise discriminate stated in Section 4(2)(b) are to protect the worker in the exercise of his constitutional and statutory rights in Section 4(1)(a) and (b) of the Act. Section 4(1)(a) as previously stated is the legislative recognition of the constitutional right enshrined in section 23 of the Constitution. In Section 4(1)(b) of the Act the legislation extends those rights to enable the worker to take part in trade union activities at any appropriate time. This provision recognizes the realities of industrial relations in that worker delegates will need to take part in trade union activities at "any appropriate time". So this is defined in section 4(4) of the Act thus:

> "4(4) In this section "appropriate time", in relation to a worker taking part in any activities of a trade union, means time which either –
>
> (a) is outside his working hours; or
>
> (b) is a time within his working hours at which, in accordance with arrangements agreed with, or consent given on behalf of, his employer, it is permissible for him to take part in those activities,
>
> and in this subsection "working hours', in relation to a worker, means any time when, in accordance with his contract with his employer, he is required to be at work."

This subsection recognizes the existence of collective agreements or arrangements between Unions and employers to promote harmonious relations between Union and management. The importance of this sub-section is

that if the interference is with the legislative right particulars may be requested if it is not supplied in the information.

Duplicity is jurisdictional

The authorities emphasise that the issue of duplicity is jurisdictional. Here is how Lord Parker stated it in **Ware v. Fox** [1967] 1 All E.R. 100 at p. 102:

> "...Before this court the point is taken, and, as I understand it, is taken for the first time, that this information was bad for duplicity. The fact that it has not been taken before is clearly not conclusive, because this is a matter which goes to jurisdiction."

Earlier in **Mallon and another v. Allon** [1963] 3 All E.R. 843 Lord Parker had stated the same view. At page 846 His Lordship said:

> "In those circumstances it seems to me that these informations were bad for duplicity. It is, of course, unfortunate that the point was never taken at the very outset before the justices, and indeed was never taken before them at all, but only in this court. It is however, a point which, as it seems to me, goes to jurisdiction, and if it is a good point, it is good whenever it is taken. In support of that I would refer to **Hargreaves v. Alderson [1962] 3 All E.R. 1019.** It follows, therefore, that this appeal must be allowed and these convictions quashed on that highly technical ground that the informations were bad for duplicity."

Then in **Jemmison v Priddle** [1972] 1 All E.R. 539, a misunderstood case, Lord Widgery with obvious reluctance said at page 543:

> "That brings us, however, to the third and last point taken by counsel for the appellant, and indeed perhaps the point which has given the court the most trouble, because now at the eleventh hour counsel for the appellant submits that the information was in any event bad for duplicity. He maintains that although no word of this was said in the court below, and therefore no opportunity was given to the prosecution to amend this information if it wished, he submits nevertheless that in this court, it being a

> matter going to jurisdiction, he is entitled to raise it, and that it is conclusive of the appeal in his favour. With some reluctance on my part I feel bound to accept that it is open to counsel for the appellant to raise this matter in this court notwithstanding the history of the case."

The test for duplicity must always be to measure the averments in the information against the charging section of the Act. If the information is bad for duplicity the invalidity is shown on the face of the information. The information in **Jemmison's** case at page 542 reads:

> "that he on 6th February, 1971, at Lower Sheepsbyre farm, Chulmleigh in the County of Devon unlawfully did take and kill and pursue certain game to wit, two red deer without having duly taken out and having in force such a Licence as was and is required by the Game Licences Act, 1860."

The justification for this wording is that take, kill and pursue any game without a licence is one activity. To pursue this activity without a licence is the gist of the offence.

The charging section as stated in the judgment at page 539 reads:

> "Section 4, so far as material, provides: Every person, before he shall in Great Britain take, kill, or pursue,... any game... or any deer, shall take out a proper licence to kill game under this Act ... and if any person shall do **any such act** as herein-before mentioned in Great Britain without having duly taken out and having in force such licence as aforesaid, he shall forfeit the sum of twenty pounds." (Emphasis supplied)

On the true construction of section 4 of the Game Licences Act 1860, take, kill or pursue any game is one activity. it was permissible to use the conjunctive 'and' in the information as indicating one offence. The concept of duplicity is also applicable to indictments. But there it is a matter not of

jurisdiction but of practice and procedure pursuant to section 3 of the Indictments Act. See **R v. Ballysingh**(1953) 37 Cr. App. Rep. 28 and **D.P.P. v. Merriman** 56 Cr. App. Rep. 766 at 796.

Duplicity illustrated through the cases

Some of the following authorities were previously cited to illustrate the point that duplicity was jurisdictional. They are now adverted to as instances of duplicity. Tests have been suggested in the authorities but to my mind there is one golden rule. It is to construe the Act correctly, bearing in mind in this instance that we are dealing with the turbulent area of industrial relations. The object of section 4 of the Act is to prohibit certain acts by employers and make those prohibited acts criminal. Employers so accused must be entitled to the protection of the law. The particular protection is that they ought not to be adjudged guilty on the basis of duplicitous informations.

An early case is **Edwards v. Jones** cited thus in **Clayton v. Chief Constable of Norfolk** [1983] 1 All E.R. 984 at 986-987, where Lord Roskill said:

> "In **Edwards v Jones** [1947] 1 All ER 830, [1947] KB 659 the appellant had been charged in a single information with both dangerous and careless driving. Before the justices a submission had been made that the information was bad for duplicity in that it charged two offences in a single information contrary to s 10 of the Summary Jurisdiction Act 1848 and that the prosecution should elect on which charge to proceed. The prosecutor declined so to elect and the justices heard the information as it stood and convicted of careless driving only. The appellant appealed by way of case stated. The appeal succeeded and the conviction was quashed on the ground that the information was bad for duplicity contrary to s 10, as indeed it plainly was."

Since there is also an issue whether the informations in the instant case should have been tried together, the following passage which continued thus is also cited:

> "But in giving judgment Lord Goddard CJ went on to say ([1947] KB 659 at 662; cf [1947] 1 All ER 830 at 832):
>
> > 'If there are two informations or summonses against a defendant, in which the facts are very much the same, of course it is quite open to the defendant to say that he will agree to their being heard at once. That is constantly done and there is no reason why it should not be done. In this case the defendant did not agree to anything of the sort. He took the objection that the information was bad, and so it was. No agreement by the defendant would put that right'."

There will be a further comment on this case.

Then in **Ware v Fox** (supra) the headnote tells the story. It reads:

> **"Held**: being concerned in the management of premises used for the purpose of smoking cannabis or cannabis resin, and being concerned in the management of premises used for the purpose of dealing in cannabis or cannabis resin, were offences relating to two different activities and thus were separate offences; accordingly the information had been bad for duplicity and the conviction would be quashed."

And in **Mallon and Another v. Allon** (supra) again the headnote gives the reasons applicable to the instant case. At p. 843 it reads:

> **"Held**: the prohibition of r. 2 of Sch. 2 to the Betting and Gaming Act, 1960, that 'no person... shall be admitted to or allowed to remain' on the premises referred to two separate acts or incidents, that of admitting and that of allowing to remain, and thus constituted two separate offences; notwithstanding that the information charged these two separate offences conjunctively, viz., by the words 'unlawfully

> admit and allow', they were bad for duplicity, and the convictions must be quashed."

The learned Director relied on **Thompson and Knights** [1947] 1 All E.R. 112 and **Jemmison v Priddle** (supra) where in the case of the latter the headnote reads:

> **"Held –(i)** The information was not bad for duplicity; a charge was only bad for duplicity when it alleged facts constituting two different activities; it was legitimate to charge in a single charge one activity even though that activity might involve more than one act; although the firing of each shot could be regarded as a separate act, they had occurred within a very few seconds and all in the same geographical location and therefore could be fairly described as components of a single activity, i.e. shooting red deer without a game licence; accordingly it was proper to join them in a single charge (see p. 544 d and e, post); dictum of Lord Parker CJ in **Ware v Fox** [1967] 1 All ER 100 at 102 applied."

This headnote has an element of ambiguity as it does not emphasise that the absence of duplicity was determined on the basis of the averments in the information, not on the evidence which emerged. This issue was adverted to earlier where the information was cited as well as section 4 of the Game Licences Act 1860 and it was on the basis of the correct construction of the relevant Act that decided the outcome of that case. Here is the essential reasoning by Lord Widgery CJ. At page 544:

> "One looks at this case and asks oneself what was the activity with which this man was being charged? It was the activity of shooting red deer without a game licence, ..."

It is true that Lord Widgery went on to reinforce the ratio of the case by adverting to the evidence but this was not strictly necessary as he had earlier

concluded that the point was jurisdictional. Hence the information and the statute were all that was necessary to prove that this information was not bad for duplicity.

In **Thompson v Knights** the headnote reads:

> **"Held:** the conviction was not bad for uncertainty, since the sub-section, by the words quoted, created one offence, namely, being in charge of a motor vehicle while in a state of self-induced incapacity, whether that incapacity was due to drink or a drug and not the two offences of being in charge of a vehicle (1) while under the influence of drink and (2) while under the influence of drug."

The information reads as follows at page 113:

> "...unlawfully in charge of a motor vehicle ... whilst under the influence of drink or a drug to such extent as to be incapable of having proper control of the vehicle, contrary to s. 15 of the Road Traffic Act, 1930."

The judgment of Lord Goddard is instructive. It reads, in so far as is material:

> "...I think the section creates one offence. I paid great attention to the argument of counsel for the appellant and at first I was rather attracted by it, but I think counsel for the respondent provided the correct answer. In my opinion, the section creates three offences, and not six. These offences are: Driving a motor vehicle while under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle; or attempting to drive in those circumstances; or being in charge of a motor vehicle while under the influence of drink or a drug. I think that counsel for the respondent is right when he says that the words 'under the influence of drink or drug' are merely adjectival. The offence is driving or attempting to drive or being in charge of a vehicle when incapable of having proper control of the vehicle and that incapacity is caused by drink or a drug. I do not think that Parliament meant to create one offence of being incapable by reason of a drug and another offence of being incapable by reason of drink. What it meant to provide for was that a man

> who drove or attempted to drive, or was in charge of, a car when in a self-induced incapacity, whether it was due to drink or drugs committed the offence. There is no question of an alternative offence or two offences. The appeal, in my view, fails and should be dismissed."

The case of **Chiltern District Council v Hodgetts and another** [1983] 1 All E.R. 1057, a decision of the House of Lords although not cited is relevant. The headnote reads:

> **"Held –**It was not an essential characteristic of a single criminal offence that the prohibited act or omission took place once and for all on a single day, since it could take place continuously or intermittently over a period of time and still remain a single offence. Section 89 of the 1971 Act created two types of offence arising out of non-compliance with an enforcement notice requiring either that the owner of the land do something on it (a 'do notice') or that the user of the land desist from doing something on it (a 'desist notice']. Those two offences were the initial offence of not complying with the notice within the period allowed, contrary to s 89(1) and the first part of s 89(5), and the further offence of continuing to refuse to comply with the notice, contrary to s 89 (4) and the second part of s 89(5). Both offences were single offences. In particular, the initial and further offences arising out of a 'desist notice' and the further offence arising out of a 'do notice' were all single offences and not a series of separate offences even though they might take place over a period of time. It followed that an information which alleged that the respondent failed to comply with an enforcement notice 'on and since' a certain date was not bad for duplicity, since it only alleged a single offence. The appeal would accordingly be allowed."

All these examples are useful in illustrating the concept of duplicity. However when it comes to application, the correct approach is to construe the statute correctly and this depends on the words used and the purpose of the Act. Above all the informations must not be void for uncertainty.

Lord Roskill put it this way in the above case at page 1059:

> "My Lords, whether or not **Parry's** case was rightly decided depends on the true construction of s 89(5) of the 1971 Act. The question is a short one and, in common with all your Lordships, I am of clear opinion that **Parry's** case was wrongly decided. Your Lordships were told that the decision had caused considerable practical difficulty to planning authorities when carrying out their statutory duty of securing compliance with enforcement notices. As is not uncommon with decisions which cause practical difficulty, attempts, often unsatisfactory, are subsequently made to distinguish them. As a result fine distinctions are drawn and the law becomes uncertain and even obscure. Your Lordships' House now has the opportunity of removing the obscurities and simplifying the administration of this branch of the law."

Here is section 89(5) referred to above:

> "(5) Where, by virtue of an enforcement notice, a use of land is required to be discontinued, or any conditions or limitations are required to be complied with in respect of a use of land or in respect of the carrying out of operations thereon, then if any person uses the land or causes or permits it to be used, or carries out those operations or causes or permits them to be carried out, in contravention to the notice, he shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding £400, or on conviction on indictment to a fine; and if the use is continued after the conviction he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £50 for each day of which the use is so continued, or on conviction on indictment to a fine..."

Lord Roskill stated on the same page:

> "For ease of reference I set out the relevant parts of s 89(1),(4) and (5) for it seems clear that sub-s (5) cannot be construed in isolation from the rest of the section"

Section 89(1) and (4) state:

> "(1) Subject to the provisions of this section, where an enforcement notice has been served on the person who, at the time when the notice was served on him, was the owner of the land to which it relates, then, if any steps required by the notice to be taken (other than the discontinuance of use of land) have not been taken within the period allowed for compliance with the notice, that person shall be liable on summary conviction to a fine not exceeding £400 or on conviction on indictment to a fine.
>
> ...
>
> (4) If, after a person has been convicted under the preceding provisions of this section, he does not as soon as practicable do everything in his power to secure compliance with the enforcement notice, he shall be guilty of a further offence and liable – (a) on summary conviction to a fine not exceeding £150 for each day following his first conviction on which any of the requirements of the enforcement notice (other than the discontinuance of the use of land) remain unfulfilled; or (b) on conviction on indictment to a fine."

Then the ratio of the case is stated in the following three paragraphs:

> "Section 89 deals with penalties for non-compliance with two classes of enforcement notices: (a) those, dealt with in sub-ss (1) to (4),which require the owner of land to do something on it (do notices), and (b)those, dealt with in sub-s (5), which require the user of land to stop doing something on it (desist notices). As respects each of these classes of notice the section creates two types of offences: (i) an initial offence created by sub-s (1) and by the first limb of sub-s (5) down to the semi-colon, respectively; and (ii) what is described as a 'further offence' which is created by sub-s (4) and by the second limb of sub-s (5) after the semi-colon, respectively and can only be committed by a person who has already been convicted on the corresponding initial offence.
>
> It is not an essential characteristic of a criminal offence that any prohibited act or omission, in order to constitute a single offence, should take place once and for all on a single day. It may take place, whether continuously or intermittently, over a period of time. The initial offence created by sub-s (1) in the case of non-compliance with a 'do notice' is complete once

> and for all when the period for compliance with the notice expires; but it is plainly contemplated that the further offence of non-compliance with a 'do notice' created by sub-s (4), though it too is a single offence, may take place over a period of time, since the penalty for it is made dependent on the number of days on which it takes place.
>
> Similarly, as respects non-compliance with a 'desist notice'. It is in my view clear that the initial offence (as well as the further offence), though it too may take place over a period, whether continuously or intermittently (eg holding a Sunday market), is a single offence and not a series of separate offences committed each day that the non-compliance prior to the first conviction for non-compliance continues. If it were otherwise it would have the bizarre consequence that on summary conviction a fine of £400 per diem could be imposed for each such separate offence committed before the offender received his first conviction, whereas for any further offence committed after the offender against a 'desist notice' had been convicted a daily fine of £50 could be inflicted. Uniquely a previous conviction would be a positive advantage to the offender. This can hardly have been Parliament's intention."

After examining Section 4 of the Act, the six informations in issue and the above authorities I find that the informations are not bad for duplicity. This finding is in accordance with submissions of the learned Director of Public Prosecutions.

Before proceeding to deal with the merits of the case I would point out that it was appropriate to try the informations together. This is a matter of practice and procedure within the inherent power of the Resident Magistrate to decide. This was so decided in **Clayton v. Chief Constable of Norfolk and another appeal** [1983] 2 A.C. 473; [1983] 2 W.L.R. 555 or [1983] 1 All E.R. 984. The

ratio of this case was followed in **Regina v. Richard King and Leo Cox** (1992) 29 J.L.R. 334 at 338 and that concludes the matter.

PART (II) THE MERITS

Ground 2 – Inconsistent verdicts

> "The convictions in respect of Alfred Palmer and Gary Smith were inconsistent and irreconcilable with the acquittals in respect of Elora Johnson (p.207) and Yvette Brown (p.220). The allegations in the evidence of Palmer and Smith against UE and MM were identical in important aspects with the evidence of Johnson and Brown. The learned Resident Magistrate was in error when she accepted Palmer and Smith's evidence but rejected Johnson and Brown, especially where each admitted the others were present at the time of the relevant statements by MM."

With respect to this ground I would have thought that an alternative wording ought to be as follows:

> The evidence of the Crown witnesses Alfred Palmer and Gary Smith were almost identical with that of Elora Johnson and Yvette Brown and having regard to inconsistencies between them in their evidence on the relevant issues, the standard of proof was not discharged with respect to the relevant informations.

The real issue however, is whether the evidence of Alfred Palmer and Gary Smith can support the informations 4203 of 95, 4194 of 95, (Alfred Palmer) 4205 of 95 and 4206 of 95 (Gary Smith). It was open to the Resident Magistrate to accept the evidence of Elora Johnson and Yvette Brown and acquit, and then examine the evidence of Alfred Palmer and Gary Smith and find that their evidence did or did not meet the standard of proof and return findings of guilty or not on the above informations.

Here are the Resident Magistrate's Findings of Fact with respect to Alfred Palmer at page 295 of the record:

> "1. I accept that United Estates is registered as an Industrial and Provident Society and that Mark McConnell is a member of The Committee of Management.
>
> 2. I accept that N.W.U. has, for several years prior to 1994, attempted to gain representational rights for the Citrus workers at United Estates without any success.
>
> 3. I accept that in early 1994, they succeeded in gaining the membership of some of the Citrus workers and served two (2) claims dated March 4, 1994 and March 16, 1994, on United Estates to initiate the process gaining representational rights.
>
> 4. I accept that the Citrus operations is a seasonal one and that during the 'low season,' the work force is reduced at United Estates.
>
> 5. I accept that sometime between March and April 1994, Mr. Mark McConnell authorized the making of a Form to be signed by the workers who wished to state that they had not joined a union, that several workers signed these Forms including Phillip Bulli, Levi Palmer, Rudyard Robinson, Michael Brown and Anthony Dennis.
>
> 6. I accept that Alfred Palmer was employed to United Estates up to February, 1994.
>
> 7. I accept that he and other workers had met with Union Officials in February, 1994 concerning union representation for workers at United Estates, that he was distributing Forms to workers during that month." (Emphasis supplied)

Then she continued thus:

> "8 I accept that on February 25, 1994, Alfred Palmer had a conversation with Mark McConnell, that McConnell accused him of

planning union inside his place; that he told Palmer that he wanted no union, as the union did not help him to build his place and that he would have to make the union find work for him.

9. I accept that on February 26, 1994, when Palmer returned to work, he was told by his Supervisor, Mr. Robinson, that if there was no new card made up for him, he had been laid off; that there was no new card for him.

I accept that on March 3, 1994, when Palmer attended at United Estates, he again had a further conversation with Mark McConnel about the Union; that Palmer expressed that he did not think he was laid off because of reduced production.

10. I find that Alfred Palmer is a credible witness and that although there may have been genuine cases of workers being laid off between February and April due to decreased production; that in Palmer's case, based on his conversation with Mr. Mark McConnel, I make the inference that he was laid off because of his union activities.

11. I, therefore find both Mark McConnell and United Estates guilty on Informations 4194/95 and 4203/95, respectively." (Emphasis supplied)

On these findings the appellants were convicted in contravention of section 4(2)(b) of the Act which speaks of 'dismissed or penalised'. It should be stated that in Palmer's own words he said he was offered work on the farm when he was laid off and he refused the offer. There was no evidence that work on the farm was regarded as penalising. There is clear evidence that workers in the factory were laid off because of decreased production and the learned Resident Magistrate accepted this at paragraph 10. The fact that he was offered alternative employment was not taken into account by the

learned Resident Magistrate in drawing the inference that he was penalised. Information 4194 laid against Mark McConnell is similarly worded.

I would allow the appeal on the basis that the inference drawn by the learned Resident Magistrate at paragraphs 10 and 11 of her Findings of Fact was not inescapable and so did not meet the standard of proof required in a criminal case.

I will set out informations 4205 of 1995 and 4206 of 1995 at page 39 and 41 of the Record respectively, for easy reference. The Informations read:

> "United Estates Limited on the 28th day of February Dismissed Penalised and Otherwise Discriminated against Gary Smith a worker of the United Estates Limited by reason of the said Gary Smith exercising his rights to be a member of a Trade Union or to take part in the activities of a Trade Union contrary to section 4(2)(b) of the Industrial Disputes and Labour Relations Act."

As regards Gary Smith, the learned Resident Magistrate found:

> "12. I accept also that Gary Smith was also a worker at United Estates in February, 1994; that he joined N.W.U. on February 17, 1994, that on February 26, 1994, he was told by his Supervisor, Mr. Headley, that he was laid off but that Mr. Headley could not tell him why.
>
> 13. I accept that on February 28, 1994, Smith saw and spoke to Mr. Mark McConnell about his status; that Mr. McConnell told him...'the whole a oonu stand up down there and plan up union pon mi'; that Mr. McConnell also told him that the workers told him about the union; that Mr. McConnell continued to make disparaging remarks about the union.
>
> 14. I find that Gary Smith is a credible witness and based on all the circumstances, I draw the inescapable inference that Mr. Smith was not laid off for a genuine reason but because of his union activities.

> 15. I find, therefore, both Mark McConnell and United Estates guilty on informations 4205/95 and 4206/95."

These findings were also, in respect of "Dismissed" or "Penalised" contrary to section 4(2)(b) of the Act. Then, the evidence of Gary Smith at pages 222 –223 of the Record showed that he was laid off on 26th February by Sergeant Headley a supervisor. He was told that he was laid off by the appellant Mark McConnell because he and others planned to form a Union on the Estate. To demonstrate the importance of a clear finding of fact, it is pertinent to cite the following words of Lord Widgery in **Jemmison v Priddle** (supra) at 342 where he said:

> "...The case stated is not, I am bound to say, quite as clear as it might be. It is not the first time today that this court has been faced with a case stated which does not clearly set out the facts proved. One cannot overstress the importance of clear findings of fact as the basis of an appeal by case stated."

In this instance, there are clear findings of fact by the Resident Magistrate and the verdicts of guilty on informations 4205 and 4206 of 95 with respect to section 4(2)(b) of the Act are affirmed.

Ground 3 – Inadmissible evidence

> "3. The learned Resident Magistrate was in error when she admitted in evidence exhibits 24 (p.194) and exhibit 25 (p.195) over the objection of the defence (p.234). This evidence was based on hearsay, was made to a person not a party to the proceedings and alleged misconduct by the appellants. The ruling at page 234 was wrong in law and allowed highly prejudicial evidence that must have resulted in a miscarriage of justice."

Exhibit 24 is a letter from the National Workers Union to the Permanent Secretary, Ministry of Labour. It reads at page 195 of the Record:

"NATIONAL WORKERS UNION

May 17, 1994

Attention: Mr. Gresford Smith

Permanent Secretary
Ministry of Labour
1f North Street
Kingston

Dear Sir:

Re: NWU's Claim for Representation Rights
Served on the management of United Estates

The National Workers Union served claim for representational rights for two (2) groups of employees at the abovenamed Company in March 1994.

Since that time, we have not had any response from the Company, and subsequent correspondence to the Ministry of Labour requesting that a ballot be conducted among the employees seems not to have made any headway in terms of the Company responding to the Ministry's request.

In the meantime, the Company continues to coerce, intimidate, victimize and harass the employees. A number of the employees have been laid off, others have been threatened and some have expressed total disgust at the Company's behaviour since the Union served claim on their behalf.

This therefore, is to bring to your attention the above violation of the law by the Management of the United Estates and to request that your Ministry move urgently in assisting us to protect the workers against the management whose record is quite clear when it comes to certain anti union tendencies.

Yours truly
NATIONAL WORKERS UNION

VINCENT MORRISON"

Exhibit 25 is a further letter to the Permanent Secretary, Ministry of Labour, which stated:

"June 21, 1994

The Permanent Secretary
Ministry of Labour
1f North Street

Kingston

ATTENTION; MR CLAUDE THOMPSON

Dear Sir:

Re: Bargaining Rights Claim – United Estates Limited

We have written to the Ministry of Labour previously with respect to the campaign of intimidation and harassment being conducted by the management of the abovementioned company against certain employees of the company who have chosen the National Workers Union to represent them on matters pertaining to their wages and conditions of employment.

The most recent case of harassment against the employees occurred on the 16th of June, 1994, when a group of employees who was laid off by the management because of their union connection assembled in the vicinity of the Factory. These employees were later joined by other employees who were on their lunch time. The company refused to allow the employees back to work at the end of their lunch break.

The workers turned out on the following morning and the company again refused to allow them to work. We are of the view that the workers did not commit any breach of the company's Rules and should all be allowed to continue their employment with United Estates Limited.

In the meantime, we are concerned that our claims for Bargaining Rights as served in February 1994, has not been addressed by your Ministry.

We wish therefore to request that in the light of the clear breaches of the Labour Relations and Industrial

> Disputes Act by the company in this matter that the Ministry will immediately and urgently cause the matter to be pursued legally in an effort to ensure that the workers' rights to join a trade union of their choice are protected.
>
> We await your prompt response.
>
> Yours truly,
> NATIONAL WORKERS UNION
>
> VINCENT MORRISON
> ISLAND SUPERVISOR
>
> c.c. Rattray, Patterson, Rattray – Attorneys-at-Law
> Knight, Pickersgill, Dowding & Samuels
>
> United Estates Limited"

Before evaluating the learned Magistrate's ruling on these letters it is pertinent to refer to a passage in the evidence of Vincent Morrison, the Island Supervisor of the National Workers Union, who figures prominently in the disputes between the workers, Mark McConnell and United Estates Limited. It reads at page 231-232 of the Record:

> "... Gone to IDT with BITU re management between 4-5 times. Management was taken to IDT on one occasion for four (4) watchmen who had been dismissed because of a ganja find. IDT ruled they were properly dismissed. Incorrect that a second time management taken to IDT over dismissal of two (2) workers who had beaten up a Supervisor. Joint letter written to company signed by myself and representative of BITU requesting meeting over the matter."

Another passage of importance on page 232 reads:

> "Sometimes United Estates employs more workers than at other times. One consideration is demand of product. Also inflow of raw material. Did speak to number of workers laid off in 1994. Gary Thompson, Vincent Williams, Merlene Dear and others. Some laid off before 1994. Some still at U.E."

As for the letters, they were introduced during re-examination on page 234 of the record which was unusually lengthy and, it seems, beyond the limit usually permitted for re-examination. They ought not to have been admitted as indeed they were at page 254 of the record. However, the learned Resident Magistrate made no use of them in her Findings of Fact, so she must have had prudent second thoughts. So there was no point to this ground of appeal.

Ground 4 – Verdicts unreasonable

There are five subheads and those relevant to the evidence of Rudyard Robinson will be noted. The first reads:

> "The trial commenced on March 27, 1996, and ended on April 4, 1997, the date on which judgment was delivered. The prosecution called fifteen witnesses and the defence called six. Twenty-five documents were admitted in evidence. This must have had a severe strain on the judge to retain and give due consideration to all this evidence over a period of more than one year, especially when other cases were being tried during the period."

The second sub-head reads:

> "The learned Resident Magistrate was in error when she convicted the appellants for 'preventing' Rudyard Robinson, contrary to section 4(2)(a). Robinson's evidence was that he was dismissed for involvement in the demonstration on June 16. The finding of fact # 24 indicates that the learned Resident Magistrate did not accept the prosecution case for the demonstration on June 16."

It is instructive to set out information 4207 of 95. It reads:

> "United Estates Limited in March 1994 prevented and deterred Rudyard Robinson a worker at United Estates Limited from exercising his rights to be a member of trade union or to take part in the activities of a trade

> union contrary to Sect. 4(2)(b) of the Labour Relations and Industrial Disputes Act."

The Courts at all levels in this jurisdiction have a backlog of cases, some of which are lengthy and difficult. Improvements are being made, but it takes time for these improvements to be made manifest. The Executive and the Legislative branches of Government have a difficult balancing act in allocating scarce resources between rival claims on the budget. So we must make do with what we have and continue to make representations for improvement. The economic solution of increasing resources is not within the competence of the judiciary. We should realise our limitations. **Sambasivam v Secretary of State for the Home Department** Times Newspaper, November 10, 1999 was cited in this context. The headnote reads:

> "In immigration cases heard by the special adjudicator, where important issues of credibility arose, a delay of over three months between hearing and determination would merit remittance for re-hearing, unless, by reason of particular circumstances, it was clear that the eventual outcome would be the same."

Regrettably we do not have the resources of the English so as to insist on the promptitude which enables them to lay down stringent standards for their special adjudication in Immigration Appeal Tribunals. Consequently, I do not find this case helpful. Nor, would it be appropriate to remit these cases for a rehearing. Such a course would entail even more serious problems. We propose to do our best in solving the difficult legal and factual problems which arose in this case despite the fact that the listing of this Appeal was on February 23 and 24, 2000, and the second session was on January 29 and 30

of this year. We too in this Court have a heavy backlog, and we also have to write difficult judgments while hearing other cases.

The evidence of Rudyard Robinson at pages 203-207 of the record must be examined to ascertain its effect. He said in evidence:

> "...Used to work in United Estates until 16th June, 1994. Started working there April 4, 1988."

Then he continued thus:

> "...We organize to join a trade union. I joined the N.W.U. on 16th February. Paid twenty dollars ($20.00) and signed a form. Recall March '94 claims served on management by Union delegate Mr. Duncan, management was Mr. Mark McConnell. Also Mr. David McConnell. The McConnells called a meeting with the workers at the juicing plant. I was there. Mr. Mark McConnell said he did not want any Union in his place as is not the Union built it and he did not want any Union to tell him how to run his place. Mr. Mark forced me to sign a paper that he said he got from lawyer. He said if we did not sign it, we had no job. Read paper, don't remember what is on it. He said we were to tell the nasty dirty Union man that he is not coming on his place. He told me also if I did not sign paper, I would have to look another job." (Emphasis supplied)

Then he stated:

> "On another date in March, Mr. Mark had another meeting with us at juicing plant. He started to lay off workers. He did so because they had joined the Union. He told us that he would get rid of all of us who join Union and employ a set of new people. That is what he did. He laid off a portion of workers including Errol Cole and Easton Bryan. "

Then he added:

> "He called a next meeting on June 16, at 10:35 a.m. I was present. He said anyone of us who went through gate would be fired. He said none of us should go through the gate. The workers who had been laid off had organized a demonstration at the main gate on

> 16th June, 1994. He said anyone of us who went through the gate would be fired."

On this evidence, bearing in mind the appellants were charged with "preventing" and "deterring" Rudyard Robinson from being a member of a trade union of his choice, the Crown has proved its case. The convictions and sentences have been affirmed.

It is imperative to refer to the document which Rudyard Robinson signed. Exhibit 20 signed by Phillips Bulli is included in the record. The learned Resident Magistrate refers to the exhibit several times and in relation to Rudyard Robinson she stated in paragraph 17 of her Findings of Fact:

> "17. I accept that after the N.W.U. served claims on United Estates for Bargaining Rights, that Mr. Mark McConnell called a meeting with the workers in the Juicing Plant in March, 1994; that as a result of Mr. McConnell's negative attitude towards the union and the acquiescence of other Managers, Mr. Robinson was forced to sign Exhibit 20 in April 1994; that at the time he signed it, he feared losing his job."

Here is Exhibit 20:

> "This is to certify that during the past six (6) months, I have not signed or authorized anyone to sign on my behalf any document to join any Trade Union to represent me at United Estates Limited.
>
> Any document showing my name as having joined any such Union would be false and therefore regarded as a forgery
>
> Name: Phillipo Bulli
> Signed: 14/4/94
> Witness: P. Kattick"

By using the power of both appellants to secure signatures to this document they interfered with the right of Rudyard Robinson to be a member

of the trade union of his choice. They did not prevent him as he remained a member but they deterred him as defined earlier in this judgment. For ease of reference deterred was defined as discourage (from acting) or prevent (from occurring).

Conclusion

On the important issue of law as to whether the informations were bad for duplicity, I found initially the submissions of Mr. Phipps, Q.C. attractive. However on second thoughts, I have been persuaded that the learned Director of Public Prosecutions was correct. Section 4 of the Labour Relations and Industrial Disputes Act was designed to impose criminal sanctions on employers who interfere with the rights of workers to belong to a trade union or who takes part in the activities of his trade union at the appropriate time. Since the informations charged one offence only, they were not bad for duplicity. Of thirty informations laid against the appellants the learned Resident Magistrate found the appellants not guilty on twenty-four. Of the six on which she found the appellants guilty, I have found the appellants guilty on four. The evidence reveals that the relationship between the National Workers Union and United Estates Ltd was hostile.

So the result on my reckoning is that the appeal is allowed in part. The convictions and sentences on four of the informations, namely 4188 of 95 against Mark McConnell and 4207 of 95 against United Estates based on the evidence of Rudyard Robinson were affirmed, so too were informations 4205 of 95 and 4206 of 95 against United Estates and Mark McConnell respectively based on the evidence of Gary Smith. Of the other two informations on

appeal namely 4194 of 95 and 4203 of 95 against Mark McConnell and United States Limited respectively, based on the evidence of Alfred Palmer, the convictions and sentences must be set aside and verdicts of acquittal entered.

ORDER

DOWNER, J.A.

(1) Appeal dismissed, convictions and sentences affirmed with respect to informations 4207/95, 4205/95 laid against United Estates Ltd. Sentence of $2000 or recoverable by distress in respect of each information.

(2) Appeal dismissed convictions and sentences affirmed with respect to Informations 4188/95 and 4206/95 laid against Mark McConnell. Sentence of $2000 or 30 days imprisonment with respect to each information.

(3) By majority (Downer, J.A. dissenting, Harrison & Langrin JJA) appeal dismissed convictions and sentences affirmed. With respect to Information 4203/95 laid against United Estates Ltd. Sentence of $2000 or recoverable by distress.

(4) By majority (Downer, J.A. dissenting Harrison & Langrin, JJA) appeal dismissed conviction and sentence affirmed with respect to Information 4194/95 laid against Mark McConnel. Sentence of $2000 or 30 days imprisonment.