THE
LAW REPORTS
1968

Queen's Bench Division

and on Appeal therefrom in the

Court of Appeal

and Decisions in the

Court of Appeal Criminal Division

Vol. 1

London

THE INCORPORATED COUNCIL OF LAW REPORTING
FOR ENGLAND AND WALES

A and treated as correct in a number of subsequent decided cases and also it seems to have formed the basis and assumption on which the legislature has proceeded in making a series of subsequent Acts extending from 1918 to 1963.

I agree that the appeal be dismissed.

B *Appeal dismissed.*

Solicitors: *Pettit & Westlake.*

C

MORGAN *v.* FRY AND OTHERS

[1964 M. No. 2911]

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Feb. 20, 21, 22, 23, 24, 27, 28; *March* 1, 2, 3, 6, 17

WIDGERY J.

D *Contract—Procuring breach—Trade union dispute—Strike—Whether strike breach.*

Contract—Procuring breach—Unlawful inducement—Justification—No reliance on Trade Disputes Act, 1906*—Conduct unlawful between defendants and employers—Whether inducement justifiable on plaintiff's claim for intimidation.*

Intimidation—Ingredients of tort—Threat to induce breach of contract—Trade dispute—Trade union official threatening to E *induce strike action by employees unless workman rejoins union —Employers dismissing workman by notice under his contract of service—Whether act of inducement actionable at suit of dismissed workman when based on intimidation—Whether protected by section* 3 *of the Trade Disputes Act,* 1906*—Trade Disputes Act,* 1906 (6 *Edw.* 7, *c.* 47), *ss.* 3, 5.

Intimidation—Ingredients of tort—Threat to induce breach of con- F *tract—Trade dispute—Unlawful act—Justification—Act unlawful between defendants and employers—Whether justifiable as against dismissed workman.*

Master and Servant—Contract of service—Implied term—Absence of condition requiring servant's membership of trade union—Whether room for implied condition authorising strike to secure employees joining one trade union.

G *Master and Servant—Contract of service—Strike—Whether strike with or without notice breach of contract of service.*

Trade Dispute—Act in furtherance of—Threat to break a contract—Threat by trade union official to employer of strike action by employees in breach of contracts of employment—Act of induce-

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[Reported by HOOSEN COOVADIA, ESQ., Barrister-at-Law.]

not a breach of contract, so that to induce a strike was not to use unlawful means for the purposes of intimidation:—

Held, (1) that the defendants acted in contemplation or furtherance of a trade dispute within section 5 of the Trade Disputes Act, 1906, and in any event their actions were not designed to injure the plaintiff but were done in a genuine belief that they were necessary to protect union A and its members, so that his dismissal had not resulted from an unlawful conspiracy (post, p. 543C).

(2) But that strike action, whether after notice or not, was a breach of contract of employment (post, p. 546D); and inasmuch as membership of a trade union was not a condition of employment among lockmen, there was no room for an implied condition of their employment making it lawful to strike to secure lockmen being members of one union (post, p. 547B); and that although the regional secretary's threat was to induce breaches of contract by other persons, the act of inducement was not protected by section 3 of the Act of 1906, for the proceedings were brought by a person not party to the contract and the cause of action was based on intimidation (post, p. 547E).

Dictum of Lord Pearce in *J. T. Stratford & Son Ltd.* v. *Lindley* [1965] A.C. 269, 336; [1964] 3 W.L.R. 541; [1964] 3 All E.R. 102, H.L.(E.) applied.

Dictum of Lord Denning M.R., [1965] A.C. 269, 284 not followed.

Dicta of Donovan L.J. and Lord Evershed in *Rookes* v. *Barnard* [1963] 1 Q.B. 623, 683; [1962] 3 W.L.R. 260; [1962] 2 All E.R. 579, C.A.; [1964] A.C. 1129, 1180; [1964] 2 W.L.R. 269; [1964] 1 All E.R. 367, H.L.(E.); and Lord Watson in *Allen* v. *Flood* [1898] A.C. 1, 99; 14 T.L.R. 125, H.L. considered.

(3) So that, since the defendants' conduct was unlawful as between them and the authority, the unlawful means could not be justified as between them and the plaintiff (post, p. 548A), and inasmuch as the district organiser had carried out instructions of his superior trade union officials he was not protected, and played a sufficiently active part to make him a joint tortfeasor with the regional secretary (post, p. 548C). Accordingly the plaintiff was entitled to recover damages from both of them.

Dictum of Viscount Simon L.C. in *Crofter Hand Woven Harris Tweed* v. *Veitch* [1942] A.C. 435, 441; 58 T.L.R. 125; [1942] 1 All E.R 142, H.L. followed.

Rookes v. *Barnard* [1964] A.C. 1129; [1964] 2 W.L.R. 269; [1964] 1 All E.R. 367, H.L.(E.) applied.

ACTION.

On June 1, 1959, the plaintiff, James Patrick Morgan, was

person to dispose of his capital or his labour as he wills."

S. 5: "(3) . . . the expression 'trade dispute' means any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment, or the terms of the employment, or with the conditions of labour, of any person . . ."

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ment unlawful between defendants and employers—Whether actionable at suit of person not party to contract in action based on intimidation—Trade Disputes Act, 1906, *s.* 3.

Trade union membership was not a condition of employment among lockmen employed by the Port of London Authority, but the authority found it convenient to be able to negotiate with a single union, A, on behalf of the lockmen, of whom most were members of that union. The plaintiff, a lockman employed by the authority, was a member of a recently formed union, B, of whom the members were formerly members of union A. The regional secretary of union A had the conviction that union B menaced union A and industrial peace and that it had to be stamped out. A district organiser of union A within his region who had no feelings or bias against the plaintiff reported, inter alia, that members of union A desired to eradicate union B and that the possibility of a dispute to obtain that result could not be dismissed. At meetings with the authority the regional secretary maintained that members of union B should rejoin union A; he did not oppose the authority trying persuasion, but insisted that, if it failed, union A would resort to strike action to enforce removal of members of union B from the port; the district organiser was present at the meetings and supported the regional secretary, whose actions he commended to branches of union A. The regional secretary obtained plenary powers from the General Executive Council to direct members of union A not to work with members of union B and other non-trade unionists, and in March, 1963, without obtaining the formal backing of the members affected, but satisfied that he could carry them with him, he notified the authority that, in April, members of union A would be instructed not to work with members of union B and non-trade unionists. The decision to give the notification was his alone, and he did not intend to injure the plaintiff or secure his removal, but did intend to secure the removal of such men as insisted on remaining in union B; he had no personal animosity against the plaintiff. On receiving the notification the authority interviewed the plaintiff but he refused to rejoin union A, and, by lawful notice in accordance with his contract of service, the authority dismissed him in order to avoid the action threatened by the regional secretary. The plaintiff brought an action for damages against, inter alia, F. and H., the regional secretary and the district organiser, claiming that his dismissal resulted from an unlawful conspiracy or unlawful intimidation by the defendants, threatening the authority that a breach of contract by the lockmen would be induced.

On the contentions that the defendants were protected by the Trade Disputes Act, 1906,[1] and that the act of striking was

[1] Trade Disputes Act, 1906, s. 3: "An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person, or with the right of some other

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employed by the Port of London Authority ("the authority") as a lockman; it was not a condition of his, or any lockman's, contract of employment that he should be a member of a or any trade union, but it was convenient for the authority to be able to negotiate with a single union on behalf of the lockmen, of whom most were members of the Transport and General Workers' Union ("the Transport union"). In or about August, 1959, the plaintiff enrolled in the No. 1/108 Poplar branch of the Transport union, which was organised in branches, districts and regions, the branches being within the districts and the districts within the regions.

The defendants were all officials or officers of the Transport union, and were Bert Fry, regional secretary of the No. 1, London and Home Counties region; Ernest Harrall, paid full-time district organiser of a district within No. 1 region; Sidney Bilson, chairman, and Leslie Mehegan, secretary, of the No. 1/108 Poplar branch within the district of which Harrall was organiser; John Crone, another district official; and Thomas J. Crispin, assistant secretary of the power workers, a group within the Transport union. Officials of the Transport union had wide powers and frequently acted on their own initiative in the expectation that they would be supported by general rank-and-file opinion if their actions were subsequently questioned, but no union official could call a strike without obtaining plenary powers from the General Executive Council through the general secretary; having obtained plenary powers, an official could take action without reference to the members affected.

In November, 1962, following a settlement by the Transport union and the authority of new wages rates and terms of service for lockmen, the Union of Port Workers ("the Port union") was formed by members of the Transport union. The plaintiff joined the Port union, and his membership of the Transport union lapsed, as did that of other members of the Port union. From time to time Harrall reported to Fry, and some reports were exaggerated by including extreme rumours which Harrall could hardly have believed; he had no feelings or bias against the plaintiff. On November 28, 1962, Harrall reported to Fry, inter alia: "I must again stress that such is the intense desire of our members to eradicate the [Port union] that the possibility of a dispute to obtain this cannot be dismissed. . . ." Fry had the conviction that the Port union menaced the Transport union and industrial peace and had to be stamped out.

In January, 1963, and the following months Fry, and Harrall who supported Fry, were present at discussions between the Transport union and the authority. At the meetings Fry maintained that it was imperative that members of the Port union should rejoin the Transport union, was not opposed to officers of the authority trying persuasion, but insisted that, if it failed, the Transport union would resort to strike action to enforce removal of Port union members from the port. Harrall communicated the terms of the proposed withdrawal of labour to the No. 1/108 Poplar branch and another branch of the Transport union, and commended Fry's actions to them.

On March 6, 1963, Fry wrote to the general secretary of the Transport union seeking plenary powers to direct members of the Transport union not to work with the Port union and other non-trade unionists, stating that the declared aims and objects of the Port union were to enroll, inter alia, all the authority's lockmen and would create a very powerful unit if successful; he based that statement on rumour and did not believe its truth. On March 8, 1963, plenary powers were granted. Fry, by his own decision, intended to secure the removal of any men who insisted on remaining in the Port union; he had no personal animosity against or intention of injuring the plaintiff.

On March 14, 1963, Fry advised the authority that, on a date in April, members of the Transport union employed at two places, including the place at which the plaintiff was employed, would be instructed not to work with members of the Port union and other non-trade unionists. Thereupon an officer of the authority interviewed the plaintiff and told him he would be dismissed unless he agreed to rejoin the Transport union. The plaintiff declined to rejoin, and by lawful notice given in accordance with his contract of service the authority dismissed him on April 6, 1963.

By his writ dated September 24, 1964, the plaintiff claimed damages for loss sustained by him as a result of the defendants conspiring with each other and others who were members or officials of the Transport union to intimidate, and wrongfully intimidating, the authority with the threat that members of the Transport union would unlawfully impede the efficient working of the port in breach of their respective contracts of employment with the authority unless he and others rejoined or acknowledged their continuing membership of the Transport union. By their defence the defendants denied that the plaintiff's dismissal resulted

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from any conspiracy or uttering of unlawful threats, denied conspiring or uttering unlawful threats, relied on sections 1 and 3 of the Trade Disputes Act, 1906, and pleaded that if any defendants conspired to or did threaten the authority and the plaintiff's dismissal was caused thereby, then the defendants' actions were justified and carried out in the reasonable belief that they were necessary to protect the lawful interests of themselves and the Transport union.

During the course of the hearing the actions against the defendants Crone and Crispin were discontinued.

Further facts are stated in the judgment.

John D. Stocker Q.C. and *M. Stuart-Smith* for the defendants. [Widgery J. indicated that he did not wish to hear him at length on conspiracy, but wished to hear argument on the question of intimidation.]

In order to determine whether there was any conspiracy one has first to ask, "did the defendants have a common aim or plan of action?" Consider first the position of the defendants each in relation to the other.

[WIDGERY J. The question here is not of a number of people coming together, but of a single person who had made up his mind to inform his subordinates on the course of action to take, and the personal action of each of them has then to be looked at from the point of view of aiding and abetting. Is that not so?]

That would not be enough to prove conspiracy or sufficient to prove civil liability. For that to be established each of the defendants must be a joint tortfeasor, and it is not easy to see how Harrall, Bilson and Mehegan could be connected and brought in with Fry.

Compare Harrall's situation. He merely came in as a district organiser. He was a link in the chain of communication between Fry and the Poplar and Tilbury branches of the Transport union. When communicating Fry's views to them he was at the same time saying no more than that he agreed with them. The local resolutions were passed unanimously, by those present at the meeting. No initiatives came from Harrall. He was not an instigator in any sense. He could be said to have been an enthusiastic link, vis-à-vis Fry, but he still was only saying that Fry's decision was a right one. He genuinely believed that that was the best course to take. That could not amount, in law, to conspiracy. This comparison was equally available when applied to the others.

Was there intimidation on Fry's part, within the meaning of *Rookes* v. *Barnard*? [2] To answer that examine, (1) whether there was a threat at all; (2) if there was, what was the threat? and (3) was that threat of such a nature as to constitute a tort?

On the face of it, it was reasonable for the plaintiff as a free citizen to choose whatever union he wished. But that was an over simplification because in a complicated industrial society, freedom of one person might involve diminution of freedom of another.

Fry in his discussions with the employers was only informing them of the Transport union members' deep resentment caused by the presence of the plaintiff and the other non-Transport union members, and that his union members were not prepared to work alongside them. That was no threat. It was only a warning of action which would follow because of the feelings of the rank and file in his union. There was a great difference between informing the employers of a state of facts as they existed and making statements to bring about a strike in the future. Looking at the situation as a whole it was no more than intimating to an interested party the prevailing state of affairs.

In *Rookes* v. *Barnard* [2] there was a specific law on strikes which made the action a breach of the terms of employment. Generally, however, there seemed little justification for saying that, after the necessary notice of the strike was given, the action would be unlawful. If there was a breach in such circumstances it was odd that one had never heard of workers being sued by their employers for such breach of their contracts, for every striker would then in the event be committing an actionable tort.

If Fry issued a threat, what was the threat? It was that his union members refused to work alongside the plaintiff and his companions, and if nothing was done by the employers, he would have to recommend a withdrawal of labour. Fry had not sought the plaintiff's dismissal by any means. One way out could have been a transfer of the plaintiff to another part of the port. The defendants did not seek to deny that the pressure under which the employers dismissed the plaintiff was the threat of a strike. But that threat was not unlawful.

If there had been a strike, would it have been unlawful? In the eyes of the law, a strike was a termination of a contract of employment. That was why, when a strike was settled, a "no

[2] [1963] 1 Q.B. 623; [1962] 3 W.L.R. 260; [1962] 2 All E.R. 579, C.A.; [1964] A.C. 1129; [1964] 2 W.L.R. 269; [1964] 1 All E.R. 367, H.L.(E.).

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intimidation" clause was included in the settlement. If it was unlawful, the employers could refuse to re-employ any of those who went on strike.

A lawful strike was a lawful determination of the contract of employment from time of the strike. The withdrawal of labour ended the contract. In legal theory that must be the situation. A strike determined the employment, and from then onwards all payment to the employees ceased.

[WIDGERY J. Could it not also be a repudiation of a contract with an option to the employers to take up or refuse a new offer?]

The truth is that a strike was part of the economic fabric of the country; but it does not fit into the law of contract.

In *Rookes* v. *Barnard*,[2] there was a question before the courts of an actual clause against strikes; and therefore any strike, any concerted withdrawal with or without notice, became a breach of that agreement. Ordinarily, a union official was entitled to recommend strike action as long as no breach of contract was involved. Threatening to do what you had a legal right to do was not threatening to do something illegal. In *White* v. *Riley*[3] it was held that a strike as such is not unlawful. Employees were entitled to inform their employers what they had in mind and they could do so, if they so wished it, by a representative chosen by them. In *Gaskell* v. *Lancashire & Cheshire Miners' Federation*,[4] it was held that the men were only saying what they were going to do. That was no threat, and there was no breach of contract. In *Riordan* v. *Butler*[5] an employer broke the contract by dismissing the plaintiff. He did so after an unlawful interference by the defendant. The employer had not given the plaintiff the required notice, but had he done so, the plaintiff would not have been able to substantiate his claim. In *Allen* v. *Flood*[6] it was held that an act lawful in itself was not made unlawful by the existence of a malicious motive.

When a union official in the position of Fry spoke of withdrawal of labour to an employer, he must be deemed to be giving notice of withdrawal only. To say that we will leave, is no breach of contract. A strike notice did not mean that work stopped then and there; nor was it meant to be construed by employers that a permanent end to labour was to follow. A strike notice is a mere invitation to negotiate, and that was not unlawful.

[2] [1964] A.C. 1129.
[3] [1921] 1 Ch. 1; 36 T.L.R. 849, C.A.
[4] (1912) 28 T.L.R. 518, C.A.
[5] [1940] Ir.R. 347.
[6] [1898] A.C. 1; 14 T.L.R. 125, H.L.

A union official who induces someone to strike is protected by section 3 of the Trade Disputes Act, 1906. If it is not actionable to induce someone to strike, it is difficult to see how a threat to strike after due notice could be deemed to be unlawful. In *Rookes* v. *Barnard* [7] the threat came from the workers themselves; whereas Fry's threat was that he would induce others to strike. From Lord Denning M.R.'s dicta in *J. T. Stratford & Son Ltd.* v. *Lindley* [8] the protection of section 3 of the Act of 1906 would be available to Fry in the circumstances; but from Lord Pearce's dicta [9] it would appear not to be so.

If the position in law be that a strike notice does not determine the contract of employment, then in these days there must be implied into a contract of service such as this (particularly where the union had sole negotiating rights with the employer) a term that in the event of dispute with the employee with regard to the terms of service, an employee could withdraw his labour, i.e., "go on strike," after giving lawful notice in accordance with the contract. Such notice was given in this case. Can it be unlawful to withdraw labour after notice when the contract expressly provides for termination of the whole contract?

Such an implied term would account for the continuance of pension rights, calculations of pensionable service, etc., after the settlement of the strike. The alternative was the argument postulated earlier, that the strike notice does terminate the contract of service, inferring either an express or an implied term of settlement that pension rights, calculations of length of service, etc., should be deemed to have been unaffected by the strike.

Unless one or other of these theories be correct, every strike must be illegal. An odd conclusion to be reached in these days.

Justification was a defence where the action was based on intimidation. That question was left open, in any case where the threat might not have been of violence, in *Rookes* v. *Barnard* [10]; but in Salmond on Torts, 14th ed. (1965), p. 593, it was stated that such a plea would be a sufficient answer. Since to induce the strike was not unlawful as between the employers and the workers, the defendants' actions were justified as between them and the plaintiff.

The claims against the defendants Crone and Crispin having been abandoned in the course of the hearing, their costs were

[7] [1964] A.C. 1129.
[8] [1965] A.C. 269, 284; [1964] 3 W.L.R. 541; [1964] 3 All E.R. 102, H.L.(E.).
[9] [1965] A.C. 269, 336.
[10] [1964] A.C. 1129.

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severable from the whole costs of the trial, and should be granted to them: *Bush* v. *Rogers* [11]; *Cinema Press Ltd.* v. *Pictures and Pleasures Ltd.*[12]

W. L. Mars-Jones Q.C. and *Jonathan Sofer* for the plaintiff. The defendants had unlawfully conspired to secure the plaintiff's dismissal, compounding their conspiracy with unlawful intimidation of the plaintiff's employers to achieve their ends. The issues before the court were identical with those which were considered by the House of Lords in *Rookes* v. *Barnard*.[13] Applying the principles there [13] stated, the plaintiff was entitled to succeed.

If the members of the Transport union had refused to work with the plaintiff, they would have committed a breach of their contracts of employment. Fry's threat of a strike was to induce that breach, and it was the threat which caused the employers to dismiss the plaintiff.

On any view strike action has the colour of intimidation. The notice itself was not illegal because of the Trade Disputes Act, 1906. But a strike following upon the notice was certainly not a termination of employment. It was simply breaking a contract of service.

In *Rookes* v. *Barnard*,[14] Donovan L.J. held that a strike threat amounted to a breach of contract. The breach was not protected by section 3 of the Act of 1906; *per* Lord Pearce in *J. T. Stratford & Son Ltd.* v. *Lindley*.[15]

The facts go further than those with which Lord Pearce was concerned in the latter case.[15] Here Fry was acting as an agent of the employees. That itself placed him outside the protection of section 3 of the Act of 1906. The formation of the new union arose out of dissatisfaction with the Transport union. No political motives inspired the move. Most members of the new union were active members of the Transport union and there were no longstanding predeterminations to break away from that union. The move was a spontaneous demonstration of the then prevailing dissatisfactions.

Since January 1963, the defendants had agreed to take action to force the plaintiff and his companions to rejoin them or to have them dismissed from their employment. Fry planned the whole operation with Harrall's active co-operation. Bilson and Mehegan assisted in the plan. The four persons acted wilfully to cause the plaintiff damage in his trade, and, being outside the protection

[11] [1915] 1 K.B. 707.
[12] [1945] K.B. 356; 61 T.L.R. 282; [1945] 1 All E.R. 440, C.A.
[13] [1964] A.C. 1129.
[14] [1963] 1 Q.B. 623, 683.
[15] [1965] A.C. 269, 336.

of the Act of 1906, their actions could not be said to be in furtherance of any trade dispute. Their acts were therefore actionable without proof of the means which, had they been employed by a single person, would have been unlawful.

There was also the second threat, the one from the Transport union itself. The Transport union realised that the formation of the new union was a set back to their strong desire to establish a closed shop for their members. They introduced the political motive which connected the closed shop resolution passed by their rank and file with the attack on the new union. Fry having failed to get a formal closed shop approved by the employers then asked for an informal agreement to obtain that end.

There was also the form of conspiracy which was in the agreement to act in furtherance of the final tort of intimidation. It was unlike the conspiracy in *Crofter Hand Woven Harris Tweed* v. *Veitch*,[16] where unlawful means were used to achieve a lawful end. Here unlawful means were used to achieve an unlawful end.

From 1919 onwards there were strong indications that self help would not be a defence in these circumstances. In *Pratt* v. *British Medical Association* [17] it was held that there was no justification for advancing one's own interests. In *Camden Nominees, Ltd.* v. *Forcey*,[18] the interference was held to be no justification. If two or three persons agreed to commit an unlawful act for the benefit of their union, there could be no justification for it. The law provided remedies for a union's grievances, and self help was not one of them. In *Scala Ballroom (Wolverhampton) Ltd.* v. *Ratcliffe*,[19] where there was no conspiracy, the acts were held not to be felonious. The predominant purpose there, however, was not in itself unlawful, and moreover lawful means were employed to achieve it. The case therefore did not take this argument any further. From *Ward* v. *Lewis* [20] it could be said that if a tort of intimidation were established, then "conspiracy added nothing when the tort [had] in fact been committed."

Harrall was from the very start a party with Fry in the conspiracy, and as long as Bilson and Mehegan knew of the agreed action that was to be taken, they were part of the conspiracy. Bilson was not acting as a mere chairman of a branch of the Transport union. He was presiding at the meeting in full agreement

[16] [1942] A.C. 435; 58 T.L.R. 125; [1942] 1 All E.R. 142, H.L.(E.).
[17] [1919] 1 K.B. 244; 35 T.L.R. 14.
[18] [1940] Ch. 352; 56 T.L.R. 445; [1940] 2 All E.R. 1.
[19] [1958] 1 W.L.R. 1057; [1958] 3 All E.R. 220, C.A.
[20] [1955] 1 W.L.R. 9; [1955] 1 All E.R. 55, C.A.

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with Fry and Harrall. He could have said that he did not want to be a party to that agreement at any time, had he wished it, but he did not. They approved the action of the officials when they knew of it. Their personal prestige involved canvassing the use of more force than required. Fry and Harrall were determined that the plaintiff would not be allowed back into their union, since they looked upon him as a political saboteur.

The proper view of section 3 of the Act of 1906 was stated by Lord Pearce in *J. T. Stratford & Son Ltd.* v. *Lindley*,[21] although what his Lordship said was not in agreement with what was said by Lord Denning M.R.,[22] in the same case. Lord Pearce's view was that no protection was available to a third party, one who was not a party to the contract, where the cause of action was based on intimidation and not on inducing a breach of that contract simpliciter.

There was an oppressive use of authority by the union officials. The plaintiff was regarded as having extreme political views which must have affected his position with his employers.

In any case it was an indignity to be called before his employers and asked to choose either to leave or to rejoin a union he had left. In the event the plaintiff was entitled to aggravation damages *per* Lord Devlin in *Rookes* v. *Barnard*.[23]

Cur. adv. vult.

1967. March 17. WIDGERY J. read the following judgment. Before I begin to read this judgment, may I express my indebtedness to counsel for the assistance which they gave me throughout a complicated case.

The plaintiff in this action was employed by the Port of London Authority (to whom I will refer as the authority) as a lockman from June, 1959, until he was dismissed on April 6, 1963. He claims damages against the defendants Fry, Harrall, Mehegan and Bilson alleging that his dismissal was the result of an unlawful conspiracy between those defendants or a consequence of unlawful intimidation exercised by them against the authority to secure a termination of the plaintiff's contract of service. Similar claims against the defendants Crispin and Crone were discontinued in the course of the trial.

The authority are responsible for the administration of the docks in the Port of London and Tilbury. They employ a total

[21] [1965] A.C. 269, 336.
[22] Ibid. 284.
[23] [1964] A.C. 1129, 1220–1233.

of some 650 lockmen to operate the gates and sluices whereby shipping enters the docks from the river. Most of the lockmen are employed in the London group of docks but about 130 work at Tilbury, which is some 15 miles away. Although a comparatively small group numerically, the lockmen fulfil a vital function and a stoppage of work amongst them could paralyse the whole port in a very short time. Their pay and conditions of service are generally regarded as good, and with one minor exception no stoppage of work has originated amongst the lockmen in living memory.

The authority do not make membership of a trade union a condition of employment amongst lockmen but at all material times the bulk of the men so employed were members of the Transport and General Workers' Union (to which I refer for brevity as the Transport union). The authority welcomed that because, although they do not wish to insist on what is popularly called a closed shop, it is a convenience to them to be able to negotiate with a single union on behalf of the lockmen as a whole. For some time the authority had had an understanding with the Transport union which may or may not have had the force of a contract that they would not recognise any body other than the Transport union for the purpose of negotiating pay and conditions of service for lockmen in their employ.

The defendants are all officials or perhaps officers of the Transport union, which is organised geographically in branches, districts and regions. Members of a particular trade may also be organised in trade groups within the union. The lockmen employed by the authority were enrolled in the Poplar branch of the Transport union, of which branch the defendant Bilson was chairman and the defendant Mehegan secretary. The Poplar branch came within a district organisation of which the defendant Harrall was paid full-time district organiser and that district in turn came under the No. 1 region of which the defendant Fry was regional secretary.

The Transport union has copious rules which contemplate that its affairs shall be largely controlled by democratic vote of the rank and file but this does not always happen in practice. The method of summoning meetings is haphazard and they are poorly attended. No proper check is made to see that only eligible members vote and the system is too cumbersome to provide quick decisions. In the result the paid officials have wide powers and frequently act on their own initiative in the expectation that they

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will be supported by general rank-and-file opinion in the union if their actions are subsequently questioned.

The official policy of the Transport union was not to press for a closed shop but in practice that policy was subjected to the important qualification that if their members in a particular locality complained strongly at being required to work with non-unionists the union would "back" them. That meant that although the officers would not normally initiate action for the removal of non-unionists they would do so in a particular shop or trade or area if feeling amongst their own members was strong enough to suggest that an unofficial strike against the non-unionists was likely.

The Transport union's ultimate weapon to secure the removal of non-unionists was, of course, to call a strike of its own members and thus bring pressure to bear upon the employer. No Transport union official could call a strike without obtaining what were called plenary powers from the General Executive Council through the general secretary, Mr. Frank Cousins. Having obtained plenary powers it was open to the official concerned to take action without reference to the members affected though, in practice, he had to be careful to see that he carried them with him and to this end he would frequently, though not invariably, call special or mass meetings of members to endorse his actions.

The plaintiff, now aged 31, joined the authority as a lockman on June 1, 1959, after service in the Merchant Navy. He was assigned to a lock called the Blackwall Entrance in the London group of docks to which the authority by agreement with the Transport union were required to assign two foremen and eight lockmen. The lock could in fact be adequately and safely manned by two foremen and six lockmen. The authority did not invite the plaintiff to join a union but he was recruited by the Transport union about two months after starting work. He says that he had no political allegiance and did not take any interest in union affairs until 1960 or 1961.

Two incidents occurred during 1961 and 1962 which throw light on the plaintiff's attitude to union membership at that time. First, the lockmen at Tilbury were dissatisfied because they said that they were too far removed from their branch headquarters at Poplar and were neglected by union officials. Unofficially they formed their own sub-branch, which met at Tilbury, and eventually about a dozen of their number set up a new union of their own called "The Port Workers Association." The authority, senior

officials of the Transport union and some of the more active members of the Poplar branch combined to persuade those men to come back to the Transport union, which they did, and the incident soon blew over. The plaintiff was not directly concerned in that incident but he told me in evidence that he approved of the action taken by the Transport union and did not then recognise the right of the breakaway members at Tilbury to set up their own union. The second incident occurred on Cup Final day in May, 1962, when the plaintiff reported for duty with his shift at the Blackwall Entrance but work could not start because only five lockmen were present. A number of barges waiting to enter the lock were kept for nearly two hours until a sixth man appeared but it was then 12.50 p.m. and the plaintiff and one Hammond insisted on going to their dinner although the waiting barges could have been handled in under half an hour. This so incensed the foreman, one Curley, that he operated the lock with the remaining men which he could safely do as the level of the water made it unnecessary to operate a swing-bridge over the lock and thus reduced the manpower required. Hammond, however, reported the men to the Poplar branch of the union and they were fined by the branch. Curley refused to pay his fine and Hammond and the plaintiff incited other men at the locks to strike in protest at Curley's continued employment. That incident is of interest in showing that in the summer of 1962 the plaintiff had no scruples about striking to obtain the dismissal of workmen who no longer belonged to the Transport union and it also helps to explain why Hammond is sometimes described as a trouble-maker.

In 1962 the Transport union was negotiating with the authority to settle new wage rates and terms of service for lockmen. Most of these terms were agreed without difficulty but the authority rejected the union's claim for a 5d.-an-hour shift allowance based on the fact that the lockmen's hours varied with the tide so that they had the irregularity of hours associated with shift-working. There had been pressure amongst the rank and file of the union to support that latter claim and on September 9, 1962, a mass meeting of the Poplar branch mustering 120 lockmen voted on a motion by Hammond in favour of an unofficial strike if it was not conceded. The union officials dissuaded the men from unofficial action and discussions between the union and the authority were resumed on a higher level with the general manager of the authority and a Mr. Henderson, who was national

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secretary of the waterways group of the union, being brought in to lead their respective teams. Those discussions led to a provisional agreement for the acceptance of a shift allowance of 3d. an hour but a mass meeting of the Poplar branch rejected that proposal by 90 votes to 55 and Hammond and another member of the Transport union called Eric Beadle canvassed the men to support an unofficial strike to secure the full allowance of 5d.

On October 25, 1962, there were further discussions between the authority, led by the general manager, and the officials of the Transport union, led by Mr. Henderson, but the authority were adamant and the union officials clearly formed the view that they should accept the offer of 3d. They accordingly called a further mass meeting of the Poplar branch for October 28, 1962, at which the recommendations to settle for 3d. an hour were accepted by 84 votes to 43. Some of the men criticised the conduct of that meeting, and when the result of the vote was announced some 20 or more, mostly from Tilbury and led by Beadle, walked out of the meeting in disgust. The plaintiff did not attend that meeting.

On November 1, 1962, a number of lockmen, mainly from Tilbury, decided to form a new breakaway union called the Union of Port Workers (to which I refer as the Port union)—Beadle was elected president, one Senior who had been active in the formation of the Port Workers Association in the previous year, was appointed secretary and Hammond also took a leading part. All the witnesses concerned say that formation of the Port union was a spontaneous expression of the men's dissatisfaction with the Transport union's failure to press the claim for a 5d. shift allowance but I am left with the impression that some of the leading spirits may have been glad of the opportunity to gain power. The strength of the Port union at that time was about 30, all of whom with five exceptions were employed at Tilbury. Four of the five exceptions worked at the Blackwall Entrance and included the plaintiff, Hammond and one Atkins. The Transport union rules make no provision for resignation from the union but provide that a failure to pay 13 weeks' subscriptions shall exclude from membership. Most of the members of the Port union, including the plaintiff, merely allowed their subscriptions to the Transport union to lapse but a few (including Beadle) wrote letters of resignation to the general secretary, Mr. Cousins.

The formation of the Port union produced a reaction amongst the members of the Transport union who remained loyal to that union. Individual members of the Transport union showed no

particular animosity towards members of the Port union and seem to have been content to work alongside them, but there is a good deal of evidence that members of the Port union toured the docks in an endeavour to secure recruits and that that led to protests from the more articulate members of the Transport union.

On November 28, 1962, the defendant Harrall reported to the defendant Fry in a strongly worded letter in which he said, and here I quote:

> "I must again stress that such is the intense desire of our members to eradicate the [Port union] that the possibility of a dispute to obtain this cannot be dismissed, indeed, so much so that as some of the defectors' [Transport union] cards are paid to the end of the quarter, the feeling of our men is that come 13 weeks into the new year, then something must be done."

On January 18, 1963, a meeting took place between the authority and the Transport union to discuss the position which had arisen. At the meeting Mr. Fry made clear his attitude which he has maintained throughout this matter, namely, that the Transport union would not contemplate any compromise with the Port union and that it was imperative that members of the Port union should abandon that body and rejoin the Transport union. Mr. Fry was not opposed to officers of the authority seeking to obtain that result by persuasion but he insisted that if persuasion failed the Transport union would resort to strike action to enforce the removal of Port union members from the port. I have had the advantage of seeing Mr. Fry and I find him to be an honest and sincere man with no feelings of personal animosity against the plaintiff. A lifetime of experience and training in the trade union movement has taught him that small breakaway unions must be stamped out immediately and his attitude in this case has been dictated by that creed. He sincerely believes that developments such as the formation of the Port union are injurious to the preservation of peace in the docks and that the interest of the Transport union, the men, the authority and the public are best served by all lockmen remaining loyal members of the Transport union.

As a result of this meeting Mr. Enderby, the staff relations officer of the authority, interviewed 10 of the lockmen who were thought to be the leading spirits in the Port union but no conclusive result emerged and on February 11, 1963, at a further meeting between Mr. Enderby and officers of the Transport union Mr. Fry

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complained of the delay and again stressed that he had in mind to direct the loyal members of his union not to work alongside members of the Port union.

Mr. Fry said that he was being "urged" to take such action by the loyal members of his union but I do not think that he needed much urging. The defendant Harrall attended these meetings and supported his superior Mr. Fry.

There were further discussions in the next three weeks but no progress was made and on March 6, 1963, Mr. Fry wrote to Mr. Frank Cousins seeking plenary powers for the withdrawal of labour. In that letter he accuses the Port union of associating with known trouble-makers in the docks and seeks authority to direct members of the Transport union "not to work with the [Port union] and other non-trade unionists." He justifies this request by saying that "the declared aims and objects of the [Port union] are to enroll all [authority] lockmen, tugmen, dredger and elevator crews and [authority] assistants which, if successful, would create a very powerful unit." Mr. Fry had no basis, other than rumour, for the allegations which he made and he did not genuinely believe the truth of what he said. Even now I do not fully understand why he was prepared to embroider his report in this way but his underlying motive was his conviction that the Port union was a menace to the Transport union and to industrial peace and that it must be stamped out accordingly. Plenary powers were duly granted by the General Executive Council of the Transport union on March 8, 1963, and on March 14, 1963, Mr. Fry communicated that decision to the authority in the following terms:

> "I have to advise you that on and from Monday, April 1, 1963, the members of this organisation employed at Blackwall and South West India Dock will be instructed not to work with the people in the above category ([Port union] and other non-trade unionists). They are to carry out their duties as far as possible without the assistance of these people."

At the time Mr. Fry had not obtained any formal authority from his union members to adopt that line, nor was there evidence of feeling against members of the Port union expressed by those colleagues who worked alongside them. Mr. Harrall, however, gave evidence, which I accept, that there was feeling against the Port union in the London group of docks caused by the action of some of the more militant members such as Hammond who were going around seeking to recruit loyal members of the Transport union to defect to the Port union. However, Mr. Fry was satisfied that he could carry the members of his union with him and he

needed no assurance beyond that. In fact the matter was raised at a meeting of the Poplar branch on March 15, 1963, and of the Tilbury sub-branch on March 19, 1963, and the respective minutes do not disclose any dissent from Mr. Fry's proposals.

On March 25, 1963, the plaintiff was interviewed by Mr. Ryland, Mr. Enderby's assistant, and told that his services would be terminated unless he agreed to rejoin the Transport union. He declined to rejoin. Meantime, someone had pointed out to Mr. Fry that if the authority were to discharge the recalcitrant members of the Port union by April 1, 1963, they would have insufficient time to give the one week's notice of dismissal required by their contracts of service, and on March 29, 1963, Mr. Fry told Mr. Harrall that no union action should be taken until April 8, 1963. On March 29, 1963, the authority gave a week's notice of dismissal to the plaintiff, Hammond and Atkins, the remaining member of the Port union employed at the Blackwall Entrance having either rejoined the Transport union or made his peace with that union in some other way.

The plaintiff's claim is based on the loss which he is alleged to have suffered consequent upon such dismissal and the subsequent history of the matter is relevant only in so far as it reflects on the state of mind of the parties at that time or upon the amount of damage suffered by the plaintiff.

On April 3, 1963, the plaintiff, Hammond and Atkins wrote a joint letter to the authority appealing against their dismissal. The plaintiff did not draft that letter, which was probably the work of Senior on behalf of all three. On April 5, 1963, Mr. Enderby replied on behalf of the authority, rejecting that appeal. Thereafter the plaintiff took legal advice.

Although Mr. Fry had achieved his object so far as eliminating the Port union in the London group of docks was concerned, the position at Tilbury was unchanged. He accordingly proceeded to bring similar pressure to bear upon the authority in respect of Port union members at Tilbury.

Meanwhile on May 1, 1963, Hammond and the plaintiff each made formal applications to Mr. Harrall for readmission to membership of the Transport union. Mr. Harrall quite properly replied that such applications must be made to the Poplar branch and that the next meeting of that branch would be held on May 17, 1963. On the same day, May 1, 1963, the plaintiff had applied to the authority for reinstatement, only to be told on May 9, 1963, that the authority did not wish to re-employ him.

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The meeting of the Poplar branch held on May 17, 1963, was attended by a number of members from Tilbury, including Eric Beadle, who had rejoined the Transport union following Mr. Fry's pressure against the Port union at that port. Beadle moved that the plaintiff, Hammond and Atkins be readmitted to membership of the Transport union and that Mr. Harrall endeavour to get them re-employed with the authority, and, at a poorly attended meeting, that proposal was carried by 10 votes to six. The defendant Mehegan thereupon wrote to Harrall "appealing" against this decision. No one suggests that the rules of the Transport union gave any such right of appeal, but Mr. Harrall, in a letter dated May 27, 1963, which in my judgment does him no credit at all, purported to rule that the resolution was invalid. He says that he did that after consultation with Mr. Lucas, the regional organiser of the Transport union, and the reasons for his decision are stated to be (a) that the three men concerned were "unemployed" and that to admit them would be contrary to established custom; (b) that the resolution rescinded an earlier resolution of April 23, 1963, and that had not been done in the orthodox manner by notice of motion; and (c) that the vote had been supported by Tilbury members, who had no right to vote at the Poplar branch.

None of those reasons bears examination for a moment. The alleged custom not to admit men not employed in the waterways group of trades could not with justice have applied to the men in question, even if the custom existed at all. The alleged earlier resolution of April 23, 1963, is a figment of someone's imagination: there is no rule requiring a notice of motion to rescind such a resolution, and it is abundantly clear that members of the Tilbury sub-branch were at that time entitled to vote at branch meetings at Poplar, even if they rarely did so in practice. Mr. Harrall's explanation is that that answer was dictated to him by Lucas and that he did not agree with it, but I do not accept that explanation. In my judgment the true explanation is that Mehegan and other Poplar members had been taken by surprise by the influx from Tilbury and were annoyed that that had led to a decision which they did not think would be favoured by the bulk of the membership. In fact Hammond took legal advice which brought the matter to the attention of Mr. Cousins, who promptly directed that the resolution must be put into effect. I do not understand why Mr. Harrall permitted himself to write that letter, still less do I understand why Mr. Fry endeavoured to support this wholly indefensible attitude as he did in a letter to Mr. Cousins on June 7, 1963.

Thanks to the intervention of Mr. Cousins the three recalcitrants were allowed to rejoin the Transport union and on June 14, 1963, Hammond paid the arrears of union contributions due for himself, the plaintiff and Atkins, thus completing their reinstatement as fully paid-up members. The plaintiff was not aware until later that that had been done and seems to have been curiously disinterested. He made no further contributions to the union and by October, 1963, was again excluded from membership by reason of this default.

Meanwhile, attempts were being made by some members of the Transport union to get the plaintiff, Hammond and Atkins reinstated in their old jobs with the authority. At a poorly attended meeting at Tilbury it was resolved by 11 votes to one on June 18, 1963, that the union take firm action to effect their reinstatement "even to the extent of a stoppage of work," but when that was passed on to the authority by Mr. Harrall it was met with a blank refusal. On September 30, 1963, it was resolved by 11 votes to nil that the Tilbury branch apply for "the same plenary powers in order to obtain the re-employment of brothers Hammond, Atkins and Morgan, as those used to obtain their dismissal," and that was duly transmitted by Mr. Harrall to Mr. Fry, who on October 17, 1963, rejected it on the ground that "plenary powers were not given to obtain the dismissal of the members concerned but to support the union's membership in refusing to work with members of the [Port union] and other non-unionists."

It was well within Mr. Fry's discretion to decline to support the ultimate weapon of strike action for the purpose of reinstating those three men and I think that that was the true reason for his refusal. He would have given less cause for suspicion as to his motives if he had frankly said so at the time. In the result the plaintiff never returned to the service of the authority and eventually obtained other employment on terms which he says were less advantageous.

I must now amplify those findings of fact on matters which are directly relevant to the issues in this case. The plaintiff was dismissed by a lawful notice given in accordance with his contract of service. The authority dismissed the plaintiff in order to avoid the action which Mr. Fry had intimated would occur on April 8, 1963, namely, a refusal of members of the Transport union to work alongside Port union members. In giving that intimation Mr. Fry had no intention of injuring the plaintiff and would have preferred that the plaintiff should have avoided dismissal by rejoining the Transport union. His intention was not to secure the removal of

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the plaintiff as such but to secure the removal of those men (if any) who insisted on remaining in the Port union. The decision so to act was Mr. Fry's decision alone.

It has been argued by Mr. Stocker that Mr. Fry did no more than communicate a decision already reached by the rank and file of the union, but that is not so. Mr. Fry has much experience of the docks and with the assistance of reports from Mr. Harrall he knew the feelings of the articulate minority of shop stewards and other keen trade unionists who might lead unofficial action and through whom the voice of the members is heard. Those men had long been pressing for a closed shop and the formation of the Port union provided a focus for that feeling. Mr. Fry was confident that the articulate minority would support him and that was all that he needed to know. It may be that if he had delayed action indefinitely the local pressures would have become overwhelming but there was no prospect in April, 1963, that the loyal lockmen at the Blackwall Entrance would walk out in defiance of the dominating influence of Hammond unless Mr. Fry gave them an official instruction to do so. Many of the Transport union members had no strong feelings on these matters and some actually signed a petition in support of Hammond and the plaintiff but Mr. Fry knew that the local leaders would support him and he acted accordingly.

Mr. Harrall's part in the affair was to keep Mr. Fry informed of the feelings of the men. He was in no sense responsible for Mr. Fry's decision. On the whole he did his work fairly, though occasionally his reports were exaggerated by including the more extreme rumours in which he could hardly have had a genuine belief. He had no feelings or bias against the plaintiff at the material time and his letter of May 27, 1963, which I have criticised, was due to a momentary annoyance which was not typical of his general behaviour. Bilson and Mehegan merely carried out their duties as branch chairman and secretary respectively. Both approved of Mr. Fry's decision when it was communicated to them but neither had any responsibility for it.

The plaintiff is a somewhat colourless personality who came under the influence of Hammond. He has shown remarkably little feeling over these matters and is certainly no lockside Hampden crusading for the liberty of the individual. Hammond was an exceedingly forceful shop steward who, as one witness put it, "knew all the rules and regulations and could tie an ordinary layman in knots in no time." He insisted on the letter of the law to the annoyance of his employers and sometimes carried that to

A extremes. He may well have gone further and fomented trouble for trouble's sake, but as I have not seen him I am unwilling to express a final view as to that.

The plaintiff puts his claim in two main ways. First, it is said that there was here a combination between the defendants wilfully to do an act causing damage to the plaintiff in his trade, thus B actionable without proof that the means employed would have been unlawful if employed by a single individual. Secondly, it is contended that the defendants procured the dismissal of the plaintiff by unlawful intimidation within the principles enunciated in *Rookes* v. *Barnard*.[1]

Of those claims the former is easily disposed of. I have no C hesitation in holding that what was done by the defendants was done in contemplation or furtherance of a trade dispute as defined by section 5 of the Trade Disputes Act, 1906, and in any event their actions were not designed to injure the plaintiff but were done in the genuine belief that they were necessary to protect the legitimate interests of the Transport union and its members. The D immediate purpose of Mr. Fry and Mr. Harrall was to put an end to the Port union so far as the Port of London and Tilbury were concerned and their action was dictated by the sincere belief that that would remove a threat to the Transport union's power to negotiate on behalf of the lockmen as a whole and the particular threat to industrial peace which can be created by small break- E away unions, particularly if they get into the control of unscrupulous people.

I turn, therefore, to the plaintiff's second submission based on *Rookes* v. *Barnard*.[1] It is common ground that the Trade Disputes Act, 1965, has no application to this case. In *Rookes* v. *Barnard* [1] the plaintiff, a skilled draughtsman employed by B.O.A.C., resigned F his membership of a trade union to which employees in the design office belonged. The union had negotiated a closed shop agreement with B.O.A.C. which precluded the recruitment of non-union labour in the design shop but it does not appear that that prevented the employers from retaining the services of a union member who resigned from the union.[2] The individual service agreements of G the design staff provided that no lockout or strike should take place but that disputes should be dealt with by a national joint council. The members of the union in the design office nevertheless resolved that if the plaintiff was not removed from the design

[1] [1964] A.C. 1129; [1964] 2 W.L.R. 269; [1964] 1 All E.R. 367, H.L.(E).

[2] [1964] A.C. 1129, 1133.

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office " a withdrawal of labour " by all union members would take place, and upon that resolution being communicated to B.O.A.C. by the defendants (who were union officials and of whom two were employees of B.O.A.C.), B.O.A.C. dismissed the plaintiff by notice. It was held in the House of Lords that the defendants had committed the tort of intimidation and were liable to the plaintiff in damages notwithstanding that the acts complained of were done in contemplation or furtherance of a trade dispute. Lord Reid stated the issue thus [3]:

> " This case, therefore, raises the question whether it is a tort to conspire to threaten an employer that his men will break their contracts with him unless he dismisses the plaintiff, with the result that he is thereby induced to dismiss the plaintiff and cause him loss. . . ."

In the present case Mr. Mars-Jones submits that if the lockmen at the Blackwall Entrance had on April 8, 1963, " refused to work with the members of the [Port union] " they would have committed a breach of their contracts of service with the authority and that Mr. Fry's threat to produce that result was a threat to the authority to induce a breach of contract by the lockmen, which threat induced the authority to dismiss the plaintiff and cause him loss. Accordingly, says Mr. Mars-Jones, the issue raised in this case is identical with that raised in *Rookes* v. *Barnard* [4] and the plaintiff must succeed.

Mr. Stocker has sought to distinguish *Rookes* v. *Barnard* [4] on a number of points. He first contends that the intimation given by Mr. Fry to the authority was not a threat but a warning of action which was liable to occur by reason of the feeling of the rank and file in the union. I have already given my grounds for rejecting that submission and in my opinion there is nothing in Mr. Stocker's further point that Mr. Fry's requirement could have been met without the dismissal of the plaintiff if the authority had chosen to transfer him to another part of the port because that, as Mr. Fry knew, was never a practical proposition. Once the plaintiff refused to rejoin the Transport union the authority were bound to dismiss him or face the consequences of Mr. Fry's threatened action.

Mr. Stocker's main submission on that aspect of the case is that the conduct of the lockmen which Mr. Fry threatened to induce would not have amounted to a breach of their contracts with the authority and therefore involved no illegality. He distinguishes *Rookes* v. *Barnard* [4] by reference to the ban on strikes which the

[3] [1964] A.C. 1129, 1166.

[4] [1964] A.C. 1129.

A contract of service in that case contained and says that in the absence of such a clause in the contract a workman who strikes after due notice does not thereby commit a breach of contract at all. He explains that result in one of two ways: (a) that the notice of intention to strike operated as a lawful determination of the contract on the day for which the strike was called so that the B withdrawal of labour did not occur until the contract was at an end, or (b) that the contract of service contained an implied term whereby the workman might lawfully strike after due notice, whereupon the employer might elect whether to determine the contract or to keep it alive pending negotiations. On either view it is submitted that the act of striking is not a breach of contract C and that to induce a strike is not to use unlawful means for the purposes of the tort of intimidation. When *Rookes* v. *Barnard* [5] was before the Court of Appeal, Donovan L.J. referred [6] to that point. He said [6]:

> "There can be few strikes which do not involve a breach of contract by the strikers. Until a proper notice is given to D terminate their contract of service, and the notice has expired, they remain liable under its terms to perform their bargain. It would, however, be affectation not to recognise that in the majority of strikes, no such notice to terminate the contract is either given or expected. The strikers do not want to give up their job, they simply want to be paid more for it or to secure some other advantage in connection with it. The em- E ployer does not want to lose his labour force; he simply wants to resist the claim. Not till the strike has lasted some time, and no settlement is in sight, does one usually read that the employers have given notice that unless the men return to work their contracts will be terminated, and they will be dismissed. If a threat to break one's own contract of service be 'unlawful,' the actual breach of it must surely be 'unlawful' too. Yet no one seems yet to have thought that a strike itself F in breach of contract is unlawful, and at this time of day I do not think it is."

The view that a threat to a strike is not "unlawful" must presumably be treated as wrong in view of the decision of the House of Lords, but Donovan L.J.'s opinion that it amounts to a breach of contract is clear and I do not think that he is referring G only to strikes which occur without prior notice.

The plaintiff, however, relies on a dictum of Lord Evershed in the House of Lords, where he said [7]:

"it has long been recognised that strike action or threats of

[5] [1963] 1 Q.B. 623; [1962] 3 W.L.R. 260; [1962] 2 All E.R. 579, C.A.

[6] [1963] 1 Q.B. 623, 682, 683.

[7] [1964] A.C. 1129, 1180.

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strike action (however those terms can be interpreted—and I have in mind what fell from Donovan L.J. in his judgment in the Court of Appeal) in the case of a trade dispute do not involve any wrongful action on the part of the employees, whose service contracts are not regarded as being or intended to be thereby terminated. So much was stated by Lord Watson in his speech in *Allen* v. *Flood* [8] and has, as I believe, been since consistently followed."

Lord Evershed then goes on to refer to the "very important fact" that the contract then in question contained the special embargo on strike action and clearly treated that as the foundation for the conclusion that the strike action threatened was a breach of contract. If Lord Evershed was equating "wrongful action" in that context with a breach of contract I have some difficulty in understanding his reference to Lord Watson. It is true that in *Allen* v. *Flood* [8] Lord Watson said [9]:

> "They were not under any continuing engagement to their employers, and, if they had left their work and gone out on strike, they would have been acting within their right,"

but as it appears,[10] the men were employed on terms that they might leave at the close of any day and that is all that they appear to have been minded to do.

I can find nothing in the authorities to which I have been referred to support the view that strike action, whether after notice or not, is other than a breach of the contract of employment, and that is confirmed by Lord Denning M.R. in *J. T. Stratford & Son Ltd.* v. *Lindley*,[11] where, in regard to the everyday case where there is no special contract forbidding a strike, he said [12]:

> "Suppose that a trade union officer gives a 'strike notice.' He says to an employer: 'We are going to call a strike on Monday week unless . . . you dismiss yonder man who is not a member of the union. . . .' Such a notice is not to be construed as if it were a week's notice on behalf of the men to terminate their employment, for that is the last thing any of the men would desire. . . . The 'strike notice' is nothing more nor less than a notice that the men will not come to work. In short, that they will break their contracts. . . ."

Mr. Stocker points out, as did Donovan L.J. in *Rookes* v. *Barnard*,[13] that if a strike after notice amounts to a breach of contract it is odd that one never hears of workmen being sued by their

[8] [1898] A.C. 1; 14 T.L.R. 125, H.L.
[9] [1898] A.C. 1, 99.
[10] Ibid. 130.
[11] [1965] A.C. 269; [1964] 3 W.L.R. 541; [1964] 3 All E.R. 102, H.L.(E.).
[12] [1965] A.C. 269, 285.
[13] [1963] 1 Q.B. 623, 683.

employers in consequence of such breach. The answer may be that such actions against individual workmen are pointless, and a union official who induces such a breach will normally be protected from action by the employer by the Trade Disputes Act, 1906.

In the result I must reject Mr. Stocker's argument that action taken by the lockmen in consequence of Mr. Fry's direction would not amount to a breach of their contracts. There may be room in some cases for the implication of a term such as he contends for, but since the lockmen had contracted on the basis of no closed shop it would be very strange to find in the same contract an implied term making it lawful to strike to secure that object.

Mr. Stocker also seeks to distinguish *Rookes* v. *Barnard* [14] on the ground that in that case the threat came from the workers themselves and amounted to a threat that they would break their contracts, whereas Mr. Fry's threat was that he would induce breaches by others. In *J. T. Stratford & Son Ltd.* v. *Lindley* [15] Lord Denning M.R. draws that distinction [16] and appears to take the view that an inducement to break a contract in those circumstances would be protected by section 3 of the Trade Disputes Act, 1906, even at the suit of a third party, but Lord Pearce in the same case takes the opposite view.[17]

In my judgment, the weight of authority is in favour of Lord Pearce's view and requires me to hold that the protection afforded by section 3 to an act which induces a breach of contract is of no avail when the proceedings are brought by someone who is not a party to the contract and whose cause of action is based on intimidation and not on inducing a breach of that contract simpliciter.

Finally, Mr. Stocker contends that the defendants can excuse their conduct as being justified in all the circumstances of the case. The possibility of a plea of justification as an answer to a claim for intimidation was not considered in *Rookes* v. *Barnard*,[18] *per* Lord Devlin.[19] A claim by a party to a contract for the unlawful inducement of its breach may be met by a plea of justification, though the circumstances in which such a plea may be raised are not precisely defined. (I refer to Salmond on The Law of Torts, 14th ed. (1965) at p. 593.) If, in the present case, the defendants could justify the inducement of a breach of the lockmen's contracts vis-à-vis the authority (otherwise than by reliance on the Trade Disputes Act, 1906), their action would not be "unlawful" so as to support a

[14] [1964] A.C. 1129.
[15] [1965] A.C. 269.
[16] Ibid. 284.
[17] Ibid. 336.
[18] [1964] A.C. 1129.
[19] Ibid. 1206.

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claim for intimidation by the plaintiff, but when once it is established that the defendants' conduct is unlawful as between the defendants and the authority, I can see no ground upon which it can be said that the use of such unlawful means can be justified vis-à-vis the plaintiff.

It follows that, in my judgment, the plaintiff is entitled to recover against Mr. Fry; but what of the other defendants? They are liable if, and only if, they are joint tortfeasors in the tort of intimidation committed by Mr. Fry. Mr. Harrall attended the meetings with the authority at which Mr. Fry first formulated his threat, and on one occasion spoke in support of Mr. Fry. He also communicated the terms of the proposed withdrawal of labour to the Poplar and Tilbury branches and clearly commended Mr. Fry's actions to those branches. The fact that he was carrying out the instructions of his superior trade union officials affords him no defence (*Crofter Hand Woven Harris Tweed* v. *Veitch* [20]), and, in my judgment, he played a sufficiently active role to make him a tortfeasor jointly with Mr. Fry. Mr. Mars-Jones argues that Bilson and Mehegan are similarly implicated, but I disagree with that. Mehegan convened and Bilson presided over a meeting of the Poplar branch on March 15, 1963, at which Mr. Fry's proposals were considered, but, although both favoured those proposals, neither voted for them and it is not clear from the minutes that any sort of resolution was carried. There was such a resolution at a later meeting on March 29, 1963, but those two defendants did not vote on it, and by that time the authority's notice to dismiss the plaintiff had already been sent. For those reasons I am not satisfied that Bilson and Mehegan were parties to Mr. Fry's action and the claims against them will be dismissed.

I turn finally to the question of damages. The plaintiff was unemployed for some six weeks, but thereafter had a number of employments and finally became a collector of receipts from prepayment gas meters under one of the gas boards. His present earnings are 6s. a week less than they would have been if he had continued his work as a lockman, and it is agreed as a matter of arithmetic that his loss of earnings up to February 20, 1967, was £340. I have to attempt an estimate of how long the plaintiff would have remained in employment as a lockman but for the defendants' interference. He was well suited to the job but once he came under the influence of Hammond the authority became dissatisfied with him. He did not seem to me to put a high value

[20] [1942] A.C. 435, 441; 58 T.L.R. 125; [1942] 1 All E.R. 142, H.L.(E.).

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on the job because if he had done so he would at least have given some thought to rejoining the Transport union to avoid dismissal. His refusal to rejoin was not due to any desire to support a moral principle but was due to the influence of Hammond, whose motives remain obscure. There is no reason whatever to suppose that he would have remained as a lockman until he retired at 65, and I think that a fair estimate of his continuance in that employment would have been five years from his dismissal. An appropriate round figure to represent his loss would be £425 and there will be judgment against Mr. Fry and Mr. Harrall for that sum.

Judgment for the plaintiff with half his costs.
Leave to appeal.

Solicitors: *Lawford & Co.; Pattinson & Brewer.*

[COURT OF APPEAL]

HELY-HUTCHINSON *v.* BRAYHEAD LTD., AND ANOTHER

[1965 H. No. 3997]

1966
Dec. 15, 16, 19, 20, 21

ROSKILL J.

C. A.

1967
June 20, 21, 22

LORD DENNING M.R., LORD WILBERFORCE and LORD PEARSON

Agency—Authority—Company—Chairman acting as managing director—Usual business transaction of company—Contract with other director of same company—Validity.

Company—Director—Authority—Power of board of directors to appoint managing director—No formal appointment—Chairman acting as de facto managing director and chief executive—Whether implied authority—Contract for company with another director.

Company—Director—Contract with—Director acting in private capacity—Validity at common law—Articles of company permitting contracts by directors subject to disclosure of interest—Interests not disclosed—Effect—Companies Act, 1948 (11 & 12 *Geo.* 6, *c.* 38), *s.* 199.

R., the chairman of the defendant company, B., acted as its de facto managing director. He was the chief executive who made the final decision on any matters concerning finance. He often committed B. to contracts without the knowledge of the board and reported the matter afterwards. The board knew of and acquiesced in that. In July, 1964, the plaintiff, the chairman and managing director of a public company, P., gave a personal guarantee to bankers for a loan of £50,000 to P. Towards the