

O P I N I O N

for petitioners

In S. & I.

THE CROFTER HAND WOVEN HARRIS TWEED
COMPANY LIMITED and OTHERS.

Against

JOHN VEITCH and ANOTHER

1939

NEWLANDS & WARNER, writers
Glasgow.

OPINION

For Petitioners
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I have anxiously considered the Lord Ordinary's Opinion in this case in light of the Notes of Evidence. I have also had the benefit of considering Mr Ross MacLean's Note. The Lord Ordinary on a full review of the facts and law has found that the allegations of conspiracy between the Respondents and the Mill interests have not been proved, but had found that the Respondents were acting in combination to impose an embargo against the Petitioners and that the Petitioner's trade was injured, thereby. When the case originally came into Court and until the proof was well advanced the only substantive defence, other than denial of the specific conspiracy alleged between the Respondents and the Mill owners, was based on the statutory immunity given by the Trade Disputes Act. An important amendment allowed during the proof permitted the Respondents to put forward an alternative ground of defence based on the contention that in any event the Respondents' acting's were directed to secure that all workers employed in the mills should be compulsorily members of the Union.

The questions at issue are largely questions of fact and of inference from proved facts. The Lord Ordinary has not decided the case on credibility, although certain strictures are made by him on the veracity or reliability of witnesses.

It is significant and, in my view, important that these criticisms are levelled at the two principal witnesses from the Respondents, Mr. Veitch and Mr. Skinner. It is therefore open to an appellate Court to review the whole evidence unhampered by any decision by the Lord Ordinary on credibility. The Lord Ordinary as already noted has held combination between the Respondents proved but conspiracy with the Mill owners not sufficiently established. He has, however, at the same time negated on the evidence the defence based on the Trade Disputes Act and has by so doing, as I think he fails fully to appreciate, left the imposition of the embargo at the time it was imposed unexplained on the pleaded case of the Respondents in either of its branches.

In my opinion the Lord Ordinary has omitted in his analysis of the evidence bearing on the Petitioners' case of conspiracy to take into account certain important elements which all point towards conspiracy between the respondents and the Mill owners as the primary motive in the laying on of the embargo. First, there is the failure of the Respondents to make good their allegation of existing or imminent Trade Dispute as pleaded on Record. This failure makes it necessary for another explanation for the action taken to be sought. None other is satisfactorily stated or pled by the Respondents on Record. The allegation that a three months' trial of wages and conditions adjustments was to be given in 1937 is demonstrated to be palpably false, and Mr. Veitch can give no explanation as to how that important blunder occurred beyond saying that he made a 'mistake'. In the next place, the embargo is alleged in the pleadings to be laid on in furtherance or contemplation of a trade dispute primarily about wages, yet Mr. Veitch states in evidence (p.410) that he laid on the embargo in virtue of plenary powers given 'to secure 100% membership at the Harris Tweed Factories Stornoway' (p.412. 113 of Pro.). It will be remembered that reference to these Plenary Powers only appeared in the pleadings by way of amendment during the actual proof and that this point was therefore never discussed at all in the pleadings that were sent to proof. This statement by Mr. Veitch appears to me important not only because it is in contradiction of the case made on Record but also because it helps to interpret the "deal" referred to in Mr. Veitch's letter No 96. of Pro. In this connection the Lord Ordinary has wholly omitted to consider what I regard as the extremely sinister mutilation of the Union's copy of the 1935 Memorandum which proffered aid by way of an embargo against the so called "price cutters", an offer of aid which was met with an embarrassed and qualified acceptance in Mr. Skinner's letter No. 36. of Pro. This unexplained fact appears to me highly significant as indicating a strong desire to conceal the truth about a promised 'deal' between the two parties. It can fairly be said that the 100% membership demand was not a workers' demand but an official's manoeuvre and something which, if granted, would not in any way improve the lot of the worker. It must be borne in mind that at no time before 1937 did any branch of the Union put forward a request or suggestion for 100% Union membership. It is only in October that the Branch Minutes No 292 of Pro. Contain references to 'compulsory membership' i.e. a parrot repetition of Buchan's original

'bargaining suggestion' of March 1937 in nos. 78 and 80 of Pro. This matter of membership was not one of the complaints of the weavers investigated by Mr. Veitch in October (see p. 474) and is never mentioned by him in oral evidence. That request for compulsory union labour came and came only from those who, as one might suspect, have a direct interest in the amount of members' contributions namely the paid officials of the Union, and not a trace can be found of any spontaneous or voluntary request from any branch to secure this object. This fact may well have a bearing on the legal issue which arises on the authorities and as to the meaning of 'legitimate interests' as a motive for interference with and injury to the trade of others. In addition, the Lord Ordinary has omitted to give weight to certain serious and inexplicable errors in Mr. Veitch's Report to Mr. Bevin. That report was taken by Mr. Bevin as an explanation of steps 'taken to protect the wages under the agreement existing with the union' (of. No. 15 of Pro.), and not as the use of an embargo under plenary powers to secure 100% membership in the Mills. In the report (no 138. of Pro.) not only is Mr. Veitch silent as to any application for 100% membership - and in the omission is not satisfactorily explained (p.542) - but he specifically states that "we have 100% organisation in the Mill". This palpable falsehood he admits he cannot "satisfactorily explain" (pp. 550, 551). In fact, a false explanation is given to Mr Bevin by Mr Veitch of the reasons which led to the imposition of the embargo. Not only so, but he accuses the Petitioners of 'price cutting': yet the only price cutter he can name is James Macdonald, and not one of the Petitioners is asked in cross-examination if he was price cutting. These additional elements, combined with the facts noted by the Lord Ordinary in his opinion, appear to me to provide not direct proof of conspiracy, because that is seldom available, but a strongly circumstantial and inferential proof of a 'deal' in which the Mill owners were to obtain the suppression of imported yarn competition, i.e. the acquisition by them of an actual spinning and potential weaving monopoly and the Respondents a 'quid pro quo' which could only be 100% membership at the mills.

This, I think, is the true interpretation of the evidence. When the acting's of the Mill owners and their authorised agent Mr. Skinner are considered a series of facts are disclosed which appear to me only explicable on the basis of such an association. There is disclosed in the proof the extraordinary suppression from Mr. Veitch by Mr. Skinner acting on the Mill owners' behalf, of the course of negotiations furtherance of their 'legitimate interests'. That may be perfectly true, but as Lord Dunedin points out in that case at p. 726 that is really no more than a piece off evidence which enables the jury to answer the questions" (which is propounded at p. 717). It is here that I think the Lord Ordinary has erred in his application of the law to the facts. Once he holds that the Respondents' combined acting's were in furtherance of the assumed interests of the Union he concluded that the issue is thereby determined against the Petitioners. For the reasons I have given I consider that is an erroneous and incomplete view of the Lord Ordinary's function. It is only by taking all the facts into account that the question of intent to injure can be decided. I fully appreciate that this is an extremely difficult question to decide, as indeed is pointed out most forcibly by Lord Sumner in his judgement in that case, and the result must be largely one of impression. I am clear, however, that the mere fact that an ultimate legitimate interest of the actors can be found as in inducing cause of actions which injure a third party is not necessarily a defence to an action such as the present. If the quid pro quo for the embargo has been payment to the Union funds by the Mill owners of a substantial sum of money, I cannot think that the court would have sustained a defence founded on Sorrell v Smith. Yet, if I am right in my analysis of the evidence this is precisely the price of the Union's aid, because increased and compulsory membership means direct financial gain to the Union. It will be noted that 100% membership at the mill was entirely unnecessary as a strengthening of the union's bargaining power with the island employers. The Union held command of the sea and not a bale of tweed could leave the island without the Union's permission, and therefore at material times from 1935 onwards the Union possesses a weapon to which the island employers had no answer, and it was not therefore in any way necessary to protect the interests of their members that 100% membership at the Mills should be achieved.

The whole evidence must therefore be considered to determine the true question as it is put by Lord Dunedin. I am of opinion that the Lord Ordinary has here misdirected himself by looking to narrowly at the issue of motive. If the whole evidence is fairly considered, I am of the opinion that it discloses sufficient evidence of a combination to injure persons against whom the Respondents had no ground of immediate quarrel and who were given no chance of considering, far less rejecting, any requests for alterations in the conditions of employment in the trade. It is not essential that personal knowledge or personal hostility should be disclosed, once the malicious motive of the acts is established: its absence may be relevant consideration along with the rest of the evidence, but I do not think that the Lord Ordinary finds any support in the authorities quoted by him for the view that its absence is fatal to the Petitioners' case or indeed that it is in any way weakens the strength of the argument put forward by them on the evidence which was led. In one sense the absence of personal knowledge or hostility assists the Petitioners as tending to show that the motive of the Respondents' action was external and that they were acting in association with others and for purposes in which they and the Petitioners were not directly interested.

In my opinion therefore the Lord Ordinary has taken too narrow a view of the true issue in law in this case and has also failed to give sufficient weight to the evidence indicative of conspiracy between the Respondents and the Mill owning interests. I consider that on a reclaiming motion for the reasons I have given the Petitioners have reasonable prospects of success.

THE OPINION OF

'John Cameron'

1 Gloucester Place,
EDINBURGH, 6th May, 1939.