Parliament, it will not be very difficult for Parliament to put it right in a suitable statute hereafter. The appeal is, therefore, dismissed.

Appeal dismissed.

Solicitors: *Hewitt, Woollacott & Chown*, agents for *M D Shaffner*, Wakefield (for the appellant); *Drabble & Co*, Huddersfield (for the respondent).

N P Metcalfe Esq Barrister.

Stock v Frank Jones (Tipton) Ltd

HOUSE OF LORDS
VISCOUNT DILHORNE, LORD SIMON OF GLAISDALE, LORD EDMUND-DAVIES, LORD FRASER OF TULLYBELTON AND LORD SCARMAN
13th DECEMBER 1977, 2nd FEBRUARY 1978

Unfair dismissal – Dismissal in connection with strike or other industrial action – Dismissal not unfair unless one or more employees of the same employer who also took part in the action were not dismissed – Relevance of dates when other employees took part in action – Two of the employees on strike returning to work before end of strike – All other employees dismissed – Whether employees who returned to work before others were dismissed to be treated as 'employees . . . who also took part in that action' – Whether dismissal of other employees unfair – Trade Union and Labour Relations Act 1974, Sch 1, para 8(2)(a).

Statute – Construction – Anomalies – Words of statute leading to anomalous results – Words of statute plain – Circumstances in which court justified in departing from plain meaning of words of statute.

A company employed over 60 workers. In November 1974 53 of its employees joined a trade union which the company did not recognise. On 29th November two employees who had been active in seeking recognition for the trade union were dismissed and S and a number of other employees went on strike, seeking the reinstatement of the two dismissed workers. On 6th January 1975 the company notified the strikers that if they did not return to work by 13th January they would be regarded as having terminated their employment with the company. Two of the strikers returned to work but S and others did not do so and were dismissed on 13th January. S brought proceedings against the company claiming that she had been unfairly dismissed on the ground, inter alia, that although para 8(1)[a] of Sch 1 to the Trade Union and Labour Relations Act 1974 applied, since at the date of her dismissal she had been taking part in a strike, the dismissal was, by virtue of para 8(2)(a), unfair because the company had not also dismissed those strikers who had returned to work. The tribunal rejected S's claim on the ground that since the employees who had been re-engaged were not taking part in the strike at the date of S's dismissal para 8(2)(a) did not apply. An appeal[b] by S against the tribunal's decision was allowed. The company appealed to the Court of Appeal[c] which dismissed the appeal. The company thereupon appealed to the House of Lords.

a Paragraph 8, so far as material, is set out at p 950, post
b [1976] 3 All ER 218
c Page 58, ante

Held – The intention of the 1974 Act, implicit in para 8 of Sch 1 thereto, was to prevent victimisation by an employer of persons who had taken part in a strike or other industrial action. Accordingly, where an employer dismissed all those taking part in a strike or other industrial action at the time of the dismissal and did not dismiss at the same time all persons who had taken part but who had come back to work before the dismissals took place, para 8(2)(*a*) of Sch 1 to the 1974 Act, on its natural and ordinary meaning, rendered him guilty of unfair dismissal since that paragraph extended to all who had taken part in such action. Moreover, the existence of anomalies, if such there were, could not limit the meaning to be attached to the clear language of the Act which was consistent with the Act's intention of preventing victimisation of strikers. The appeal would therefore be dismissed (see p 951 *c d*, p 952 *c* to *e*, p 954 *d e* and *j*, p 955 *a b* and p 956 *a b*, post).

Per Lord Simon of Glaisdale. A court is only justified in departing from the plain words of a statute if it is satisfied (1) that there is clear and gross balance of anomaly, (2) that Parliament, the legislative promoters and the draftsman could not have envisaged such anomaly and could not have been prepared to accept it in the interest of a supervening legislative objective, (3) that the anomaly can be obviated without detriment to such legislative objective and (4) that the language of the statute is susceptible of the modification required to obviate the anomaly (see p 954 *b c*, post).

Per Lord Scarman. If the words used by Parliament are plain, there is no room for the 'anomalies' test unless it can be demonstrated that the anomalies are such that they produce an absurdity which Parliament could not have intended, or destroy the remedy established by Parliament to deal with the mischief which the Act is designed to combat (see p 955 *b* to *d* and *g* to *j*, post).

Decision of the Court of Appeal p 58, ante, affirmed.

Notes

For fair and unfair dismissal in connection with industrial action, see 16 Halsbury's Laws (4th Edn) paras 633, 633:1.

For the construction of words in a statute, see 36 Halsbury's Laws (3rd Edn) 391-398, paras 585-600, and for cases on the subject, see 44 Digest (Repl) 204-220, *159-366*.

For the Trade Union and Labour Relations Act 1974, Sch 1, para 8, see 44 Halsbury's Statutes (3rd Edn) 1792.

Cases referred to in opinions

Brandling v Barrington (1827) 6 B & C 467, 9 Dow & Ry KB 609, 5 LJOSKB 181, 108 ER 523, 44 Digest (Repl) 272, *992*.

Heydon's Case (1584) 3 Co Rep 7a, 76 ER 637, 44 Digest (Repl) 203, *149*.

London (City of) v Wood (1701) 12 Mod Rep 669, 88 ER 1592, 13 Digest (Reissue) 258, *2293*.

R v City of London Court Judge [1892] 1 QB 273, 61 LJQB 337, 66 LT 135, 7 Asp MLC 140, CA, 1 Digest (Repl) 288, *1912*.

River Wear Comrs v Adamson (1877) 2 App Cas 743, [1874-80] All ER Rep 1, 47 LJQB 193, 37 LT 543, 42 JP 244, 3 MLC 521, HL, 44 Digest (Repl) 198, *109*.

Sutherland Publishing Co Ltd v Caxton Publishing Co Ltd (No 2) [1937] 4 All ER 405, [1938] Ch 174, 107 LJCh 99, 158 LT 17, CA; *rvsd* [1938] 4 All ER 389, [1939] AC 178, 108 LJCh 5, 160 LT 17, HL, 13 Digest (Reissue) 146, *1201*.

Thomson v Goold & Co [1910] AC 409, 79 LJKB 905, 103 LT 81, 3 BWCC 392, HL, 34 Digest (Repl) 652, *4494*.

Vacher & Sons Ltd v London Society of Compositors [1913] AC 107, [1911-13] All ER Rep 241, 82 LJKB 232, 107 LT 722, HL, 44 Digest (Repl) 193, *56*.

Vickers, Sons & Maxim Ltd v Evans [1910] AC 444, HL.

Appeal

Frank Jones (Tipton) Ltd appealed by leave of the Court of Appeal against the decision of the court[1] (Lord Denning MR, Stephenson and Waller LJJ) on 2nd February 1977

1 Page 58, ante

dismissing their appeal against the decision of Phillips J[1] given on 5th March 1976 whereby he allowed the appeal of the respondent, Miss C Stock, against the decision of an industrial tribunal sitting at Birmingham dated 30th April 1975 dismissing her complaint of unfair dismissal. The facts are set out in the opinion of Viscount Dilhorne.

Richard Yorke QC and *John Fletcher* for the appellants.
James Mitchell and *Andrew Hillier* for the respondent.

Their Lordships took time for consideration.

2nd February. The following opinions were delivered.

VISCOUNT DILHORNE. My Lords, in November 1974, 53 out of over 60 women employees of the appellants joined the Transport and General Workers Union. On 21st November the district officer of the union wrote to the appellants saying that 90 per cent of their employees had joined it and asking for a meeting to discuss the setting up of a procedure agreement, negotiating rights and recognition of workers' representatives. This letter was answered by the appellants on 28th November in which it was said that action would not be taken without a full board meeting, that the chairman was away and that a meeting would be held as soon as possible after his return. The next day, 29th November, two women who had been instrumental in the concerted move to join the union were dismissed. As a result, on 9th December some 35 of the appellants' employees went on strike seeking reinstatement of these two women. On 13th January 1975 the respondent was sent her cards and there is now no dispute that she was dismissed by the appellants.

Before her dismissal two women, or at least one (there being some doubt about the second), who had taken part in the strike, decided to return to work and were allowed to do so. The respondent then claimed that she had been unfairly dismissed and sought compensation under the Trade Union and Labour Relations Act 1974. The industrial tribunal found against her but on appeal Phillips J[1] did not. The appellants' appeal to the Court of Appeal[2] was dismissed and the appellants now appeal to this House.

The matter is governed by para 8 of Sch 1 to the 1974 Act which, so far as material, reads as follows:

> '(1) The provisions of this paragraph shall have effect in relation to an employee who claims that he has been unfairly dismissed by his employer, where on the date of dismissal he was taking part in a strike or other industrial action.
>
> '(2) If the reason or principal reason for the dismissal was that an employee took part in the strike or other industrial action, the dismissal shall not be regarded as unfair unless it is shown—(*a*) that one or more employees of the same employer (in this paragraph referred to as "the original employer"), who also took part in that action, were not dismissed for taking part in it, or (*b*) that one or more such employees, who were dismissed for taking part in it, were offered re-engagement on the termination of the industrial action and that the employee was not offered such re-engagement, and that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal or not offered re-engagement was an inadmissible reason . . .'

Paragraph 6(4) and (6) provide that if the reason or principal reason for the dismissal was that the employee 'had taken . . . part at any appropriate time in the activities of an independent trade union', that was an inadmissible reason.

1 [1976] 3 All ER 218, [1976] 1 WLR 694
2 Page 58, ante

Counsel for the appellants did not suggest that any other part of the 1974 Act threw any light on the meaning to be given to para 8. That paragraph replaced without material amendment s 26 of the Industrial Relations Act 1971. It is not disputed that the respondent was an employee who was covered by para 8(1). That sub-paragraph defines the class to whom para 8 applies. She claimed, and there is no dispute about this, that one or more of the appellants' employees who also took part in the strike were not dismissed for taking part in it, and that the reason for her dismissal was an inadmissible reason, namely, that she had taken part in the activities of an independent trade union. She thus claimed that the two conditions precedent stipulated in para 8(2) were satisfied and that her dismissal was consequently to be regarded as unfair.

The intention of Parliament when enacting s 26 of the 1971 Act and re-enacting that in para 8 of the 1974 Act is clear beyond all doubt from its terms. It was to prevent victimisation by an employer of persons who took part in a strike or other industrial action. The dismissal of all who took part in such action was not to be regarded as unfair, but discrimination between those who took part either by not dismissing some of those who took part or by re-engaging some, but not the claimant for compensation, of those who had been dismissed rendered the dismissal unfair if it was for an inadmissible reason.

The appellants contend that while they recognise that the intention of Parliament was to prevent victimisation, Parliament cannot have intended to render an employer guilty of unfair dismissal if he dismissed all those taking part in a strike or other industrial action at the time of the dismissal, and did not dismiss at the same time all persons who had taken part but who had come back to work before the dismissals took place. Parliament cannot, it was urged, have meant that employers should be liable to pay compensation to all those taking part in a strike at the date of dismissal if they had allowed one person who had taken part to return to work. If that was the meaning, to avoid liability to pay compensation to those taking part in such action at the time of dismissal the employer would also have to dismiss those whom he had allowed to return to work and render himself liable to pay them compensation for unfair dismissal.

It is now fashionable to talk of a purposive construction of a statute, but it has been recognised since the 17th century that it is the task of the judiciary in interpreting an Act to seek to interpret it 'according to the intent of them that made it'[1]. If it were the case that it appeared that an Act might have been better drafted, or that amendment to it might be less productive of anomalies, it is not open to the court to remedy the defect. That must be left to the legislature.

The appellants contend that in view of the anomalies which they say would result from the interpretation the respondent seeks to have placed on the paragraph, para 8(2) should read as if it said: 'who also took part and at the date of the dismissal were taking part in that action'. As Stephenson LJ said in the Court of Appeal[2], the paragraph does not so provide.

'It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do' said Lord Mersey in *Thompson v Goold & Co*[3]. 'We are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself' said Lord Loreburn LC in *Vickers, Sons & Maxim Ltd v Evans*[4].

I can see no justification for reading the words 'and at the date of the dismissal were taking part' into para 8(2)(*a*). So to do would be to limit the scope of the protection against victimisation given by the paragraph. Its language is clear and un-

1 4 Co Inst 330
2 See p 62, ante
3 [1910] AC 409 at 420
4 [1910] AC 444 at 445

ambiguous. Criticisms are not infrequently made of draftsmen. I can see no ground for criticising the drafting of this paragraph or for concluding that the use of the past tense in para 8(2)(*a*) was not deliberate and was an error in drafting. Parliament might if it had wished, have limited the protection against victimisation to those taking part in the strike or other industrial action, at the time of dismissal. It did not do so. Paragraph 8(2)(*a*) extends to all who took part in such action.

Much weight was sought to be placed on the anomalies which it was said would result from giving effect to the words used by Parliament. I am by no means satisfied that all the anomalies lie on one side, nor am I satisfied that dismissal of those allowed to return to work before the others engaged in industrial action were dismissed would necessarily render an employer liable to pay compensation, for under para 17 of Sch 1 a tribunal can only make an award of compensation if it does not recommend reinstatement or re-engagement, or if it does so recommend and its recommendation is not complied with. It was also said that it will be difficult for an employer to dismiss all who took part in such industrial action. Some whom he thought were absent through illness might have taken part. A similar difficulty may arise if the appellants' interpretation was correct though perhaps not to the same degree. The existence of anomalies, if they exist, cannot limit the meaning to be attached to clear language in a statute.

In my opinion the Court of Appeal and Phillips J came to the right decision in this case and this appeal should be dismissed.

LORD SIMON OF GLAISDALE. My Lords, I have had the privilege of reading in draft the speech just delivered by my noble and learned friend, Viscount Dilhorne. I agree with it, and I would therefore dismiss the appeal. I have also been privileged to read the speeches about to be delivered by my noble and learned friends, Lord Edmund-Davies and Lord Scarman. They have prompted me to add some additional observations of my own.

In his argument based on alleged anomaly counsel for the appellants was founding himself on the rider in what has become to be known as 'Lord Wensleydale's golden rule'[1] of statutory construction, namely one is to apply statutory words and phrases according to their natural and ordinary meaning without addition or subtraction, unless that meaning produces injustice, absurdity, anomaly or contradiction, in which case one may modify the natural and ordinary meaning so as to obviate such injustice etc but no further. (Nowadays we should add to 'natural and ordinary meaning' the words 'in their context and according to the appropriate linguistic register.)' Counsel for the appellants urged your Lordships, as he did the Court of Appeal, to modify the natural and ordinary meaning of the statutory language, in effect, to add words which are not in the statute in order to obviate what he claimed were the absurd and anomalous consequences of taking the words literally.

The rider to Lord Wensleydale's golden rule may seem to be at variance with the citations of high authority contained in the speeches of my noble and learned friends. But this is not really so. The clue to their reconciliation is to be found in the frequently cited passage on statutory construction in Lord Blackburn's speech in *River Wear Comrs v Adamson*[2]:

> 'In all cases the object is to see what is the intention expressed by the words used. But, from the imperfection of language, it is impossible to know what that intention is without inquiring farther, and seeing what the circumstances were with reference to which the words were used, and what was the object, appearing from those circumstances, which the person using them had in view . . .'

1 *Caledonian Railway Co v North British Railway Co* (1881) 6 App Cas 114 at 131, per Lord Blackburn

2 (1877) 2 App Cas 743 at 763, [1874-80] All ER Rep 1 at 11

Words and phrases of the English language have an extraordinary range of meaning. This has been a rich resource in English poetry (which makes fruitful use of the resonances, overtones and ambiguities), but it has a concomitant disadvantage in English law (which seeks unambiguous precision, with the aim that every citizen shall know, as exactly as possible, where he stands under the law). The first way, says Lord Blackburn, of eliminating legally irrelevant meanings is to look to the statutory objective. This is the well-known canon of construction referred to by my noble and learned friend, Viscount Dilhorne, which goes by the name of 'the rule in *Heydon's Case*[1]'. (Nowadays we speak of the 'purposive' or 'functional' construction of a statute.)

But it is essential to bear in mind what the court is doing. It is not declaring 'Parliament has said X: but it obviously meant Y; so we will take Y as the effect of the statute'. Nor is it declaring 'Parliament has said X, having situation A in mind', but if Parliament had had our own forensic situation, B, in mind, the legislative objective indicates that it would have said Y; so we will take Y as the effect of the statute as regards B'. What the court is declaring is 'Parliament has used words which are capable of meaning either X or Y; although X may be the primary, natural and ordinary meaning of the words, the purpose of the provision shows that the secondary sense, Y, should be given to the words'. So too when X produces injustice, absurdity, anomaly or contradiction. The final task of construction is still, as always, to ascertain the meaning of what the draftsman has said, rather than to ascertain what the draftsman meant to say. But if the draftsmanship is correct these should coincide. So that if the words are capable of more than one meaning it is a perfectly legitimate intermediate step in construction to choose between potential meanings by various tests (statutory, objective, justice, anomaly etc) which throw light on what the draftsman meant to say.

It is idle to debate whether, in so acting, the court is making law. As has been cogently observed, it depends on what you mean by 'make' and 'law' in this context. What is incontestible is that the court is a mediating influence between the executive and the legislature on the one hand and the citizen on the other. Nevertheless it is essential to the proper judicial function in the constitution to bear in mind: (1) that modern legislation is a difficult and complicated process, in which, even before a bill is introduced in a House of Parliament, successive drafts are considered and their possible repercussions on all envisageable situations are weighed by people bringing to bear a very wide range of experience; the judge cannot match such experience or envisage all such repercussions, either by training or by specific forensic aid; (2) that the bill is liable to be modified in a Parliament dominated by a House of Commons whose members are answerable to the citizens who will be affected by the legislation; an English judge is not so answerable; (3) that in a society living under the rule of law citizens are entitled to regulate their conduct according to what a statute has said, rather than by what it was meant to say or by what it would have otherwise said if a newly considered situation had been envisaged; (4) that a stark contradistinction between the letter and the spirit of the law may be very well in the sphere of ethics, but in the forensic process St John is a safer guide than St Paul, the logos being the informing spirit; and it should be left to peoples' courts in totalitarian regimes to stretch the law to meet the forensic situation in response to a gut reaction; (5) that Parliament may well be prepared to tolerate some anomaly in the interest of an overriding objective; (6) that what strikes the lawyer as an injustice may well have seemed to the legislature as no more than the correction of a now unjustifiable privilege or as a particular misfortune necessarily or acceptably involved in the vindication of some supervening general social benefit; (7) that the Parliamentary draftsmen knows what objective the legislative promotor wishes to attain, and he will normally and desirably try to achieve that objective by using language

1 (1584) 3 Co Rep 7a at 7b

of the appropriate register in its natural, ordinary and primary sense; to reject such an approach on the ground that it gives rise to an anomaly is liable to encourage complication and anfractuosity in drafting; (8) that Parliament is nowadays in continuous session, so that an unlooked-for and unsupportable injustice or anomaly can be readily rectified by legislation; this is far preferable to judicial contortion of the law to meet apparently hard cases with the result that ordinary citizens and their advisers hardly know where they stand.

All this is not to advocate judicial supineness: it is merely respectfully to commend a self-knowledge of judicial limitations, both personal and constitutional. To apply it to the argument on behalf of the appellant based on anomaly, a court would only be justified in departing from the plain words of the statute were it satisfied that: (1) there is clear and gross balance of anomaly; (2) Parliament, the legislative promoters and the draftsman could not have envisaged such anomaly and could not have been prepared to accept it in the interest of a supervening legislative objective; (3) the anomaly can be obviated without detriment to such legislative objective; (4) the language of the statute is susceptible of the modification required to obviate the anomaly.

In the instant case I do not think that these conditions were satisfied. I respectfully agree with the judgments of Phillips J and the members of the Court of Appeal, as well as with the speeches of my noble and learned friends.

LORD EDMUND-DAVIES. My Lords, despite the obvious care taken by the industrial tribunal and notwithstanding what Stephenson LJ rightly described as the 'powerful' submissions of counsel for the appellants, the decision of Phillips J and the Court of Appeal were so clearly right that this appeal, during the hearing of which your Lordships did not deem it necessary to call on the respondent's counsel, was foredoomed to failure. As Stephenson LJ put the matter[1]:

> '... the words of para 8(2)(*a*) mean what they say. The draftsman of the sub-paragraph did not use the imperfect tense. He did not say "who also took part in that action *and were still taking part in it at the date of dismissal*". It is really what he should have said if the paragraph means what counsel for the employers submits it means ... I agree with Phillips J that it was not really a question of giving those words [of the sub-paragraph] their *strict* meaning. Phillips J said[2]: "That is not reading it in any very technical, restricted or tortured sense; it is just reading it in its ordinary, straightforward sense".' (My italics.)

Counsel for the appellants put forward several points aimed at persuading your Lordships that to give the words of the sub-paragraph their obvious meaning would lead to results so anomalous that another interpretation should, and indeed must, be placed on the statutory language. But, in my judgment, he did not succeed. To quote Stephenson LJ again[1]:

> 'Paragraph 8 plainly prohibits selective dismissal or re-engagement, that is discrimination or victimisation against strikers by giving favourable treatment to some of them.'

It may be that not everyone favours such a prohibition. But dislike of the effect of a statute has never been an accepted reason for departing from its plain language. Holt CJ said nearly three centuries ago: 'An Act of Parliament can do no wrong, though it may do several things that look pretty odd' (*City of London v Wood*[3]). Accordingly, even if one regarded the policy implicit in Sch 1, para 8(2)(*a*), to the 1974 Act as open to criticism, the statutory language is clear beyond doubt and must prevail.

I therefore concur in holding that the appeal should be dismissed.

1 See p 62, ante

2 [1976] 3 All ER 218 at 222, [1976] 1 WLR 694 at 698

3 (1701) 12 Mod Rep 669 at 687

LORD FRASER OF TULLYBELTON. My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend, Viscount Dilhorne. I entirely agree with it and for the reasons given by him I would dismiss this appeal.

LORD SCARMAN. My Lords, I also have had the advantage of reading in draft the speech of my noble and learned friend, Viscount Dilhorne. I agree with it. The words used by Parliament admit of no ambiguity, and, for the reasons given by him, I would dismiss this appeal.

I wish, however, to add a few words of my own on the 'anomalies' argument. Counsel for the appellants sought to give the words a meaning other than their plain meaning by drawing attention to what he called the 'anomalies' which would result from giving effect to the words used by Parliament. If the words used be plain, this is, I think, an illegitimate method of statutory interpretation unless it can be demonstrated that the anomalies are such that they produce an absurdity which Parliament could not have intended, or destroy the remedy established by Parliament to deal with the mischief which the Act is designed to combat.

It is not enough that the words, though clear, lead to a 'manifest absurdity': per Lord Esher MR in *R v City of London Court Judge*[1]. Lord Atkinson put the point starkly in *Vacher & Sons Ltd v London Society of Compositors*[2]:

> 'If the language of a statute be plain, admitting of only one meaning, the Legislature must be taken to have meant and intended what it has plainly expressed, and whatever it has in clear terms enacted must be enforced though it should lead to absurd or mischievous results.'

The reason for the rule was given by Lord Tenterden CJ in *Brandling v Barrington*[3] in a passage in which he was considering the so-called 'equity of a statute'; he commented—

> '... that is so much safer and better to rely on and abide by the plain words, although the Legislature might possibly have provided for other cases had their attention been directed to them.'

As Lord Moulton said in *Vacher's* case[4]:

> 'The argument ab inconvenienti is one which requires to be used with great caution. There is a danger that it may degrade into mere judicial criticism of the propriety of the acts of the Legislature.'

If the words used by Parliament are plain, there is no room for the 'anomalies' test, unless the consequences are so absurd that, without going outside the statute, one can see that Parliament must have made a drafting mistake. If words 'have been inadvertently used', it is legitimate for the court to substitute what is apt to avoid the intention of the legislature being defeated: per MacKinnon LJ in *Sutherland Publishing Co Ltd v Caxton Publishing Co Ltd (No 2)*[5]. This is an acceptable exception to the general rule that plain language excludes a consideration of 'anomalies', i e mischievous or absurd consequences. If a study of the statute as a whole leads inexorably to the conclusion that Parliament has erred in its choice of words, e g used 'and' when 'or' was clearly intended, the courts can, and must, eliminate the error by interpretation. But mere 'manifest absurdity' is not enough: it must be an error (of commission or omission) which in its context defeats the intention of the Act.

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1 [1892] 1 QB 273 at 290
2 [1913] AC 107 at 121, [1911-13] All ER Rep 241 at 248
3 (1827) 6 B & C 467 at 475
4 [1913] AC 107 at 130, [1911-13] All ER Rep 241 at 252
5 [1937] 4 All ER 405 at 421, [1938] Ch 174 at 201

Nothing of the sort has been demonstrated in this case. One may doubt whether the challenged para 8 of Sch 1 to the 1974 Act has covered all possible consequences. I should be surprised if it has. But undeniably its plain terms are wholly consistent with the Act's intention to prevent victimisation of workers on strike; and it matters not that this purpose could have been fulfilled in other ways and with different consequences.

Appeal dismissed.

Solicitors: *Allan Jay & Co*, agents for *William F Hatton & Co*, Dudley (for the appellants); *Pattinson & Brewer* (for the respondent).

Mary Rose Plummer Barrister.

Bhoomidas v Port of Singapore Authority

PRIVY COUNCIL
LORD SIMON OF GLAISDALE, LORD SALMON, LORD KEITH OF KINKEL, SIR GARFIELD BARWICK AND SIR RICHARD WILD
18th, 19th JULY, 8th NOVEMBER 1977

Vicarious liability – Loan of servant – Transfer of entire and absolute control of servant – Port authority rendering stevedoring services by hiring out stevedores in its regular employment – Hire of stevedores to load ship – Harbour byelaw providing that stevedores to be under superintendence of ship's officers and port authority not to be responsible as stevedores – Member of stevedoring gang injured in loading operation due to negligence of another member of the gang – Accident occurring when cargo being transferred from wharfside to ship by ship's winch – Whether liability for negligence of stevedore transferred from port authority to ship – Whether effect of byelaw to transfer entire and absolute control of stevedores to ship – Singapore Harbour Board Byelaws, byelaw 26.

A gang of stevedores including a winchman and a signalman was in the regular employment of the defendant, the port authority of Singapore, which engaged them, paid them, prescribed the jobs they were to undertake and alone had power to dismiss them. Shipowners paid the defendant for the stevedoring services which it rendered. The gang was undertaking the loading of a cargo of planks from the wharfside into the holds of a ship when, due to the negligence of the winchman and/or the signalman, another member of the gang, V, whose job was to secure the planks on to the ship's winch by a chain, was hoisted with a load of planks to a height of 40 feet above the ground from where he fell and was fatally injured. The plaintiff, the administrator of V's estate, brought an action against the defendant as V's employer claiming damages for the injuries sustained by V. Byelaw 26 of the Singapore Harbour Board byelaws provided that 'labourers employed in . . . loading vessels shall be under the superintendence of the ship's officers; the [defendant] undertake[s] no responsibility as stevedores'. The defendant, whilst admitting at the trial that the cause of the accident was, substantially, due to the negligence of the winchman and/or the signalman, contended that it was exempted from vicarious liability for V's injuries by virtue of byelaw 26. The High Court of Singapore upheld that contention and dismissed the plaintiff's claim. On appeal the Court of Appeal of Singapore affirmed the decision. The plaintiff appealed to the Privy Council.

Held – For a port authority to establish that liability for the negligence of a servant in its regular employment whose services had been hired out to a ship had been