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THE TRADE DISPUTES
AND
TRADE UNIONS BILL

AN ANALYSIS AND COMMENTARY

BY

WILLIAM A. ROBSON

Ph.D. Barrister-at-Law.

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THE remarkable measure entitled the Trade Disputes and Trade Unions Bill in which the Government has given tangible expression to their contempt for the Prime Minister's plea for peace in our time, presents on the surface a series of prohibitions on Trade Union action covering a wide field and possessing little unity. Thus, Clause one declares certain kinds of strikes to be unlawful, Clause two gives support to those who refuse to strike "unlawfully," and Clause seven enables the Attorney-General to intervene in the domestic affairs of a Union by applying to a Court to restrain the use of its funds. The right of a Union to levy political contributions on its members is curtailed by clause four; while other provisions prohibit civil servants from joining trade unions in company with their fellow workers outside the service, and forbid local authorities to stipulate that their employees shall or shall not belong to a Trade Union.

All these provisions, which we shall deal with in greater detail later, are in effect a challenge and a menace to two main principles of social organisation: the Right of Association and the Right to Strike, concerning which we may say a few words by way of a brief introduction.

The Right of Association arises as a natural and almost inevitable consequence from the position of contractual freedom which is one of the special characteristics of the modern world. The much-vaunted freedom of contract, which removes from the shoulders of the wealthy all obligations other than those which they voluntarily undertake, and frees the worker from the burden of forced labour, has no significance if it excludes the right to combine with others for the promotion of a common end. The whole machinery of Joint Stock Company enterprise, the vast hierarchy of social and athletic clubs, of religious congregations and scientific bodies, of co-operative societies, professional organisations and other voluntary associations, all spring from the Right of Association. It is a right like other rights; it may not be directed towards unlawful ends, nor may unlawful means be employed in the exercise of it. The essence of its nature is the proposition that what one may do many may do; that there is no unlawfulness in the mere fact of combination; and that I may employ concerted action to achieve a lawful end.

It is on this foundation that Trade Unionism stands. Freedom of contract presupposes an approximate equality of bargaining power. To assert that a weekly wage-earner, standing alone and unaided, is "free" to contract for his labour in any save a purely nominal sense is a misuse of words. The Right of Association must be invoked merely to secure the equality of bargaining power which is essential to real contractual freedom.

An analysis of the practical results which combined action has brought to the Trade Unionist clearly shows the benefit which the worker derives from the Right of Association. The maintenance of the standard rate and the standard day, the restriction of entry into the occupation to those of suitable capacity and training, and the consequent maintenance of standards of skill, the building up of a huge system of mutual insurance, ranging from out-of-work pay to funeral benefit, the elimination of unnecessary discord and bickering by means of a recognised representative organ of the workers and employers, the saving of time and trouble through combined bargaining—these and many other advantages have accrued to the employers no less than to the workers from associated action. If Trade Unionism is to be put on its trial, it will have no difficulty in justifying its life and work during the past century in terms of solid

achievements. Even the activities of the successive Governments which have introduced legislation compelling employers to preserve a minimum of sanitation, of safety, of leisure for their workers, have been inspired and sometimes compelled by the Trade Unions in which those workers have banded themselves.

Closely allied to the Right of Association is the Right to Strike. The Right to Strike is merely a special aspect of contractual freedom. If I am to be free to work under such conditions as I choose, or to buy such goods as I choose, I must also be negatively free to refuse to work when I prefer to remain idle, or to refrain from buying goods which displease me. Freedom of choice postulates an ability to refuse an offer, a possibility of choosing between available alternatives. No one would dare to suggest that a single individual should not be permitted to leave his work, after giving due notice, when he desires to quit it, for any reason whatsoever, political, industrial, social or domestic. The Right to Strike is merely that right exercised by many in combination just as the lock-out is the employer's right to dismiss exercised in concert. So far as Trade Unions are concerned, the Right to Strike is not merely a fundamental weapon in their armoury, it is their only weapon when persuasion fails. It is a weapon which is powerful; a weapon which sometimes inflicts injury on the worker as well as the employer; and most trade union leaders seek to avoid using it whenever possible. But anyone who imagines that Trade Unions would retain any influence or power if they were deprived of the contingent use of their one effective weapon, is living in a fool's paradise. It is possible that at some future date society may come to see that in the Socialist Commonwealth the Right to Strike should be replaced by an Obligation to Work : but that obligation will fall on the shoulders of all, and there will be no leisured class to eat without working. The Right to Strike is the right to be idle; and that right is the corner stone of the present organisation of society. It cannot be enjoyed by the inhabitants of Park Lane and refused to the workers in South Wales.

We may now pass to a more detailed examination of the Bill.

The Bill is divided into eight clauses, the provisions of which are described as follows :

1. Illegal strikes.
2. Protection of persons refusing to take part in illegal strikes.
3. Prevention of intimidation, etc.
4. Provisions as to political fund.
5. Regulations as to organisations of which established Civil Servants may be members.
6. Provisions as to persons employed by local and other public authorities.
7. Restraint of application of funds of trade unions, etc., in contravention of Act.
8. Short title, construction, interpretation, extent and repeal.

The first clause is by far the most important. It declares (as amended) that " any strike having any object besides the furtherance of a trade dispute within the trade or industry in which the strikers are engaged, is an illegal strike if it is a strike designed or calculated to coerce the Government either directly or by inflicting hardship upon the community; and it is further declared that it is illegal to commence, or continue, or to apply any sums in furtherance or support of any such illegal strike." Anyone who declares, instigates, furthers or takes part in a strike thus made illegal is to be liable on conviction before the magistrates to a fine of £10 or to three months imprisonment, or on conviction on indictment to imprisonment for a period up to two years. The provisions of the Trade Disputes Act, 1906, which protect trade unions from actions for tort, authorise peaceful picketing, and remove liability arising from acts which induce others to break their contracts or which interfere with other people's business, are not to apply to any act done in contemplation or furtherance of a strike which is illegal under the Bill.

The effect of this clause is that a strike becomes illegal if it fulfils two

conditions. In the first place, it must have as an object something other than, or in addition to, the furtherance of a trade dispute within the trade or industry in which the strikers are engaged. A trade dispute for this purpose must be a dispute between employers and workmen, or between workmen and workmen, in the trade or industry in which it occurs, concerning the conditions of labour or employment in that trade. In the second place, it must be designed or calculated to coerce the Government directly or through hardship to the Community.

Whether or not this clause was intended only to outlaw a General Strike is not known. What it apparently does is to make unlawful the greater part of all sympathetic strikes in the basic industries. It goes, indeed, even further than that, because *any* strike for better conditions for the strikers which also has an "ulterior" object would satisfy the first limb of the clause. If the engineers, for example, were to strike for better wages and to include in their demands a request that the employers should stop sending munitions to China, the first condition would be satisfied. It is clear, however, that sympathetic strikes are the ones which will be most frequently branded as unlawful, because any combined cessation of work in one trade brought about to assist the workers in another industry is a strike which has an object other than the furtherance of a trade dispute within the trade in which the strikers are engaged.

That, however, is not sufficient in itself to bring the strikers within the criminal law. The second condition mentioned above must also be satisfied. But the wording is so ambiguous, so vague, so subtle, that there should normally be no difficulty about that. A sympathetic strike must be "designed" or "calculated" to "coerce" the Government, or to "inflict hardship" on the community. Let any reasonable man consider the import of these words. The strike need not have the slightest chance of successfully coercing the Government: It suffices to make it illegal if it is "designed" or "calculated" so to do; and the fell design or calculation may be quite unknown to the strikers, who are, of course, always assumed to be honest men who are reluctantly dragged from a paradise of work and prosperity and benevolent employers by a handful of diabolically clever agitators in close touch with Moscow. What, again, are we to understand by "coercing" the Government? Did the Conservative party conference "coerce" the Government into bringing in this Bill? Does the daily press ever "coerce" the Government? Did the panel doctors "coerce" the Government when they demanded a larger capitation fee under the National Health Insurance Scheme? Do City bankers "coerce" the Chancellor of the Exchequer when they demand that Government loans shall comply with certain terms? It's a poor public that can't coerce its own Government! On what else does the whole theory of democracy rest? But combinations of working men are alone to be precluded from using their influence.

As an alternative to coercing the Government directly, the future striker is to be given a second choice. He may, if he prefers to become a criminal by that method "inflict hardship" on the community and thereby coerce the Government indirectly. Here, again, we may well ask what "hardship" means in this clause, and whether it would be possible for a strike to take place in any important industry without causing hardship to the community and thereby indirectly coercing the Government? For the first time in history the law is to make a distinction between Trade Unions of employers and trade unions of workers; strikes are to be penalised and crushed and forbidden, while lock-outs, sympathetic, coercive, intimidatory or merely malicious, are to be left untouched. This omission is so flagrant that the Government will scarcely be able to maintain its attitude; but the drafting of the Bill on this point is extremely significant of the spirit in which the measure was conceived. A lock-out can in no circumstances become unlawful under the Bill; the whole question is ignored; but a strike to support workers locked-out may easily become criminally unlawful. Employers may without liability bring about an industrial crisis of a national character; they may take action intended to coerce the Gov-

ernment, and successfully achieve that object. They may intimidate the community. But they are quite safe. Only the workers are to be treated as criminals. Even Sir John Simon has raised the question of why no unlawfulness would attach to the mineowners if, in order to extract a further subsidy from the taxpayer, they combined with employers in other vital industries to suspend work until it were granted.

The criminal punishment is to fall not merely on those who "instigate" the strike—that is, on the leaders—but also on those who take part in it. And a strike is defined as the cessation of work by a body of employees acting in combination, or a concerted refusal of persons who are or have been employed *to continue to work or to accept employment!* This last sentence introduces a new and grotesque principle into the realm of England. For the first time since the break-up of the feudal system the Right to be Idle, so highly cherished among the inhabitants of Mayfair and Kensington and Harrogate and Bath and Bournemouth, so zealously guarded among the country dwellers in the stately homes of England, is definitely taken away in certain vital circumstances from the workers in factory and mine and warehouse. *A mere concerted refusal on their part to accept employment, no matter how bad the wages which are offered nor how long the hours may be* constitutes a strike and can become punishable if the strike is unlawful. And in order to avoid criminal punishment the worker may be bound to remain at work after his contract has expired. The fact that his contract of service has terminated is immaterial: he is apparently to be kept at work in a sort of servile status which is certainly not related to any position of contractual freedom known to civilised nations.

Clause two of the Bill enacts that a person refusing to take part in an illegal strike shall not be fined or expelled by his Union or penalised in any way, and deprived of any right or benefit to which he would otherwise be entitled. In order to ensure this the Bill gives the Court power to intervene in the domestic arrangements of the Union in a most unfair manner. Under the existing law, a Trade Union has no power to enforce agreements of membership, and cannot, for example, sue a member for subscriptions or penalties, etc., which he has undertaken to pay. Conversely, a member cannot sue the union for benefit. The rights of the parties are normally contained in the rules, in which the union has usually a right of expulsion or may impose a fine for blacklegging or other offences. Now under the new Bill Clause two takes away from the Union this right to expel or fine a member who refuses to take part in a strike which turns out to be unlawful, even though he has broken the rules to which he subscribed. Thus, the Trade Union is forbidden to enforce its contract with a member even when it is broken by the latter; but no right is given to the Union to enforce the contracts with members in other cases. Thus the Trade Union Act of 1871 (S. 4) and the Common Law are both altered to the detriment of the Trade Unions, with no corresponding advantages in return. Furthermore, the Court may order damages of unlimited amount to be paid by a Trade Union to one of its members under this Clause; and the whole provision is made retrospective so as to include every strike which ever took place in the past.

Clause three deals with picketing, and its contents are described by the side-note, modestly and not without a touch of humour, as "Prevention of Intimidation, etc." The "etc." is intended to cover a field of newly-manufactured criminal offences so vast that it was beyond the wit of even the Parliamentary draughtsman to describe it more concisely.

The Conspiracy and Protection of Property Act, 1875, laid down certain strong penalties for the intimidation or annoyance by violence or otherwise—and in particular by means of "watching or besetting"—of a person with the object of compelling him to do something which he has a legal right to refrain from doing: such as taking part in a strike or lock-out.

Sir John Walton, then the Attorney-General, in introducing the Trade Disputes Act into the House of Commons, said "The Right of peaceful persuasion is an essential part of the right to strike. The law at present is in an absurd position. It is held to be perfectly lawful to point out to

the men what are the points in difference. You may either ask for information with regard to the strike or you may give them information with regard to the reason of the conflict between the workmen and the employer. But, if you go one step further and so present the information you give them as to make your appeal in the nature of persuasion, you are then violating the law." To remedy this the Trade Disputes Act, 1906, declared that it is lawful for one or more persons, acting either on their own behalf or for a trade union, in contemplation or furtherance of a trade dispute, to attend at or near the house or workplace of an individual merely for the purpose of peacefully communicating information or of peacefully persuading him to work or to abstain from work. The Common Law prohibitions against any sort of violence were left untouched, and the special liabilities created by the Conspiracy Act remained intact.

Now, however, the present Bill virtually makes most kinds of picketing or peaceful persuasion potentially unlawful. It is not mere mass picketing that is struck at by Clause three. It is unlawful for *one or more persons* to attend at or near the dwelling or workplace of a man to communicate information or persuade him to stop work if in so doing he is likely to be "intimidated." To "intimidate" in this clause means not merely to produce fear of violence or damage to property, but also "to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family." The term "injury" expressly includes injury other than physical or material injury, and the expression "apprehension of injury" includes specifically *an apprehension of boycott, or loss of any kind, or of exposure to hatred, ridicule or contempt.* These words make one gasp. It is impossible to think of any reasoned argument which might be put before a workman as to the consequences which may ensue if he does not throw in his lot with the strikers, which cannot be made to fall within the net. Tell him that if he does not stop work the strike will fail and wages will be lowered. You are causing him a "reasonable apprehension of injury." Point out to him that there is a strong feeling among the strikers that this is a time when every man worth his salt should help the common good. You are intimidating him with fear of exposure to hatred and contempt. Ask him how he can expect to be elected to the local council of his town if he does not support the strike. You are threatening him with fear of "loss of any kind." Furthermore, it may be noted that the test of criminality is the state of mind of the person who is picketed: the conduct of the picket may be beyond reproach, but if it produces apprehension of injury, he will be liable to a fine of £20 or three months imprisonment.

Clause four contains provisions as to the political funds of trade unionists, and is one of the meanest attempts to torpedo a constitutional working-class movement by striking at the basis of its financial resources which is to be found in the whole history of politics.

Under the Trade Union Act, 1913, which was passed to change the state of the law laid down by the House of Lords in the Osborne Judgment, the funds of a Trade Union may not be applied to specified political purposes unless the furtherance of those political objects has been approved by a majority vote of the members taken on a ballot. Even then, the Union must have rules in force (to be approved by the Registrar) enabling members who do not wish to contribute to the political fund to claim exemption without suffering any disadvantage or being excluded from the benefits of the Union, and there are elaborate safeguards to protect such members. This is the so-called "contracting-out" arrangement.

Clause four of the present Bill provides that, instead of dissenting members being required to claim exemption, those who wish to contribute to the political fund must signify their willingness to do so. At first sight it might appear that the Bill is a mere change of machinery which throws the weight of the inertia or apathy from one side of the scale to the other, so as to deprive the unions of the benefit of receiving contributions from those members who are too indifferent to claim exemption, and who

will similarly be too indifferent to give notice of their desire to contribute. But actually the Bill goes much further. If ten or ten thousand individuals desire to contribute money to a political fund, no legal authority, statutory or otherwise, is required to enable them to do so. I can raise a fund for political objects with any number of people who are willing to contribute without infringing the law in any way. So that what the new Bill actually does is to deprive the Trade Unions of their existing right to collect the political levy from all their members (save those who claim exemption) without giving the Unions any right whatsoever in exchange.

The number of complaints under the existing arrangements which have been made to the Registrar of Friendly Societies is almost negligible; the intention to upset the present system comes badly from a Conservative Government whose party funds are received from secret sources of the most objectionable kind: the drink trade and *parvenu* members of the beerage and brewerage being among its most notorious financial supporters.

The only other clause which we need notice here at any length is Clause seven, which enables the Attorney-General to apply for an injunction to restrain the application of the funds of a trade union in contravention of the Bill. This constitutes an invasion of the right to restrain unauthorised expenditure which is enjoyed exclusively by the members, and by no one else, of voluntary associations of all kinds. A new principle is again introduced into English law. The clause is clearly designed to bolster up the first clause. It enables the Attorney-General to move the Court to restrain the application of Union funds to an alleged illegal strike; and he might intervene successfully in this way long before the strike had been actually proved to be unlawful. The Attorney-General, coming into Court with all the prestige of Counsel for the Crown, might well secure an injunction in advance. Even if he was subsequently proved to be wrong in alleging the strike to be unlawful, the delay and frustration of financial effort resulting from the injunction would probably have sufficed by then to deprive it of any chance of success.

This, briefly, is a descriptive analysis of the apple of industrial discord which goes by the name of the Trade Disputes and Trade Unions Bill. It is a measure which is to be administered and interpreted in regard to its most difficult and dangerous provisions by the local justices of the peace and the stipendiary magistrates. It is a Bill which, though malevolent in intention towards organised labour, may nevertheless be unenforceable in practice were a great industrial dispute to arise which transgressed the narrow limits of concerted action which it permits to the wage-earning masses of the nation. It is a legislative proposal which, unlike the Trade Union Act of 1871, the Conspiracy and Protection of Property Act, 1875, and the Trade Disputes Act of 1906, has not been prefaced by even the most cursory inquiry into the facts by an impartial Commission, a select Committee, or even a chosen group of Ministers. It is an indictment against the whole Trade Union Movement in its industrial manifestations no less than in its political aspirations. It is an attempt to deprive the Labour Party of the modest contributions on which its financial stability avowedly rests, and thus to drive underground the constitutional expression of the working-class movement. It is a measure which discriminates in the most flagrant manner associations of workers from all other types of voluntary organisations. It is a Bill which endeavours to separate State Servants from all other types of worker and to segregate the Civil Service and Municipal Officials from their fellows in private enterprise. Above all, it is a Bill which sets at nought every effort to bring into existence a better spirit in industry, and crystallises in concrete form all the most bitter suspicions which have hung like a cloud over factory and mine and workshop during the post-war period. Nothing but evil can possibly come from the Bill. It must be resisted to the uttermost.