1963 *Present :* **Weerasooriya, S.P.J.**

VIRAKESARI LTD., Petitioner, *and* P. O. FERNANDO and 4 others, Respondents

S. C. 567/61—Application for a Mandate in the nature of a Writ of Certiorari

Certiorari—" *Error of law appearing on the face of the record* "—*Legal position as to what constitutes* " *the record* "—*Delay as a ground for refusal of writ—Scope—Industrial dispute—*" *Lock-out* "—*Industrial Disputes Act (Cap. 131), ss. 3 (1) (c), 4 (2)—Trade Unions Ordinance, s. 2.*

In an application for a writ of *certiorari* to quash an award of an Industrial Court in an industrial dispute which was referred for settlement under section 4 (2) of the Industrial Disputes Act—

Held : (i) The order of an inferior tribunal having a duty to act judicially in determining the rights of parties is liable to be quashed by a writ of *certiorari* for an error of law on the face of the record. In this connection, the " record " includes not only the formal order, but also all the documents which form the basis of the decision.

(ii) The omission of an inferior tribunal to take into consideration a relevant document forming part of the record, or a misconstruction of such document, is an error of law appearing on the face of the record.

(iii) An application for a writ of *certiorari* will not be refused on the ground of delay if the delay is not attributable to the petitioner. Even if the position be otherwise, where notice on the respondent has already issued and at the subsequent hearing of the application the petitioner, as a party aggrieved, is able to establish an error of law on the face of the record, and there is no other remedy, *certiorari* should be granted *ex debito justitiae.*

APPLICATION for a writ of *certiorari* to quash an award given by an Industrial Court in respect of an industrial dispute in which the points in dispute were (1) whether the non-employment of two employees in a printing and publishing establishment (Virakesari Ltd.) was justified, and (2) whether a stoppage of work at the establishment was a strike or a lock-out.

H. V. Perera, Q.C., with *S. J. Kadirgamar, Izadeen Mohamed* and *H. D. Tambiah*, for Petitioner.

Colvin R. de Silva, with *P. B. Tampoe, P. K. Liyanage, Prins Rajasooriya, U. C. B. Ratnayake* and *R. Weerakoon*, for 2nd and 3rd respondents.

No appearance for 1st, 4th and 5th respondents.

Cur. adv. vult.

2—R 19077—1,855 (7/64)

December 20, 1963. WEERASOORIYA, S.P.J.—

This is an application for a mandate in the nature of a writ of certiorari to quash an award made by the 1st respondent in his capacity as an Industrial Court constituted under the provisions of the Industrial Disputes Act (Cap. 131).

The petitioner is a limited liability company and was at the relevant time carrying on the business of printing and publishing a Tamil daily newspaper called the Virakesari. Among the employees of the petitioner in the printing section were A. Pius Fernando and Z. A. M. Hussain, an Assistant News Editor and a Cashier respectively. The former was the Secretary of the Virakesari branch of the Ceylon Mercantile Union, the 2nd respondent, while the latter was the President of the branch. There was also a Virakesari branch of the All-Ceylon United Printing Employees' Union, the 3rd respondent. The majority of the employees of the petitioner were members of one branch or the other of these two Unions.

For some time prior to the 1st February, 1960, the employees had been agitating for the payment of annual increments, but as there was no definite response from the petitioner to their demands, it was decided at a meeting of the executive committee of the branch of the 2nd respondent Union held on the 31st January, 1960, to organise a "go-slow" at the petitioner's place of business. As a result of the activities of Pius Fernando and Hussain in that connection, the management of the petitioner-Company came to investigate allegations against them of intimidation of Mr. Venkataraman the News Editor of the Virakesari, and instigating the employees to go slow with their work. After holding a preliminary inquiry the management framed charges of misconduct against them on the 8th February, 1960, and also interdicted them pending further inquiry. On the 9th February, 1960, those employees of the petitioner who were members of the 2nd and 3rd respondent-Unions went on strike as a protest against the interdiction.

On the 15th February, 1960, while the strike was on, Mr. Venkataraman was waylaid and assaulted by three of the workmen on strike. The workmen concerned were later dismissed by the petitioner. According to the management, the further inquiry into the charges against Pius Fernando and Hussain could not be proceeded with owing to the strike. The strikers, on the other hand, were not prepared to call off the strike until the interdiction was withdrawn. The Commissioner of Labour sought to end the deadlock by making an order on the 21st February, 1960, under section 3 (1) (c) of the Industrial Disputes Act referring to an Authorised Officer for settlement by conciliation the question whether the two interdicted employees were guilty of the charges laid against them and what punishment should be imposed on, or relief granted to, them. This reference was made without the concurrence of the petitioner company, which had been urging the authorities to

refer the dispute to an Industrial Court for settlement. The petitioner-Company nevertheless took part in the inquiry held by the Authorised Officer, but claimed it did so without prejudice to its rights to decide, after an independent inquiry into the conduct of Pius Fernando and Hussain, what action should be taken against them. In view of the reference to the Authorised Officer the strike was called off on the 28th February, 1960.

The Authorised Officer, after a lengthy inquiry at which evidence was led, held that Pius Fernando had intimidated Mr. Venkataraman on the 1st February, 1960, and that Pius Fernando and Hussain had, on the 1st and 2nd February, 1960, instigated other employees to go slow or not to attend to certain types of work which they had been called upon by the management of the petitioner-Company to do. The Authorised Officer recommended that the punishment to be awarded to Pius Fernando and Hussain for the acts of misconduct which he held they had committed was that they should be suspended from employment for a period of three months from the 9th February to the 8th May, 1960, and that during the period of suspension Pius Fernando be paid half, and Hussain one-third, their respective normal salaries. He also recommended that they should give a written acknowledgment that what they did was wrong and an undertaking not to indulge in such conduct again, and that Pius Fernando should, in addition, tender an apology to Mr. Venkataraman. These recommendations of the Authorised Officer were accepted by the 2nd and 3rd respondent-Unions, but not by the petitioner-Company which rejected them on the ground that the punishment recommended was disproportionate to the acts of misconduct which Pius Fernando and Hussain were found guilty of.

On the 22nd March, 1960, while the inquiry before the Authorised Officer was pending, there appeared in the Virakesari of that date a publication of which the following is an English translation :

> "*Great Injustice*
>
> The public are informed that the proprietors of the Virakesari are giving immense trouble to the employees by withholding the monthly advances which they ought to give."

In connection with this publication, which obviously was unauthorised, one Maharoof, an employee in the printing section who was in charge of composition, was called upon by the petitioner-Company to show cause why "serious disciplinary action" should not be taken against him.

As a result of the rejection by the petitioner Company of the recommendations of the Authorised Officer, the members of the 2nd and 3rd respondent-Unions who were employees of the petitioner Company again struck work. This strike actually commenced on the 23rd May, 1960, at 4 p.m., but at 5.10 p.m. the General Secretary of the 2nd respondent-Union informed the management of the petitioner Company that the

strike had mistakenly commenced on that day and requested the management to allow the strikers to resume work. The General Secretary also informed the management at the same time that the strike would commence at 4 p.m. on the 24th May, 1960. The management acceded to the request that the strikers should be allowed to resume work on the 23rd May, and the night shift worked as usual on that day. But on the morning of the 24th May, 1960, when the employees of the petitioner reported for duty, they found the gates locked. None of them, except for three watchers, were allowed inside the premises. The reason for the closure of the premises is contained in a complaint made by Mr. Pais, the Administrative Secretary of the petitioner Company, at the Grandpass Police Station at 7.55 a.m. on the 24th May, viz., that although the management had no objection on the evening of the 23rd May to the strikers resuming work, it had since learnt that they intended, after coming to work on the 24th May, to damage the machines before they went on strike again at 4 p.m. on that day as previously notified.

On the 26th of May, 1960, while the premises were still closed, the petitioner Company sent a letter to each of its employees appealing to them " to agree to resume work immediately and not to strike " and to have the matters in difference referred to an Industrial Court for settlement.

With reference to this letter the 2nd and 3rd respondent-Unions sent a joint communication to the Commissioner of Labour on the 28th May, 1960, taking up the position that the closing of the premises of the petitioner-Company on the morning of the 24th May was a lock-out, that the lock-out still continued and that the conditions laid down in the Company's letter of the 26th May for resumption of work by the strikers were " completely unacceptable ".

Thereafter some of the employees came back to work and the petitioner was able to publish an issue of the Virakesari on the 31st May, 1960. On the 1st June, 1960, bombs were thrown at the Works Manager and two other employees, who sustained injuries. As a result of this incident the publication of the paper again stopped as from the 3rd June, 1960.

On the 11th June, 1960, the petitioner-Company, after further inquiry into the alleged misconduct of Pius Fernando and Hussain, terminated their services with effect from the 8th February, 1960, being the date on which they were interdicted from work. On the same day (11th June, 1960), a second letter in terms more peremptory than the letter of the 26th May was sent by the petitioner-Company to all the employees calling upon them, on pain of dismissal, to report for work on or before the 15th June, 1960, subject, however, to their agreeing to certain conditions specified therein. As the employees to whom the letter was addressed were not agreeable to these conditions they did not return to work, and the premises of the petitioner-Company remained closed until the 11th July, 1960, when publication of the Virakesari was resumed

after new hands had been engaged by the petitioner. This move appears to have induced some of the old employees to decide to go back to work. Presumably they agreed to abide by the terms set out in the letters of the 26th May and the 11th June, 1960.

On the 16th August, 1960, the Minister of Labour and Nationalised Services, by Order made under section 4 (2) of the Industrial Disputes Act, referred the dispute between the petitioner-Company and the 2nd and 3rd respondent-Unions to the 1st respondent for settlement. Five points in dispute are set out in the order of reference. The award of the 1st respondent on the third point in dispute was in favour of the petitioner. The fifth point in dispute was whether the non-payment of the annual increments to the employees from the 1st January, 1958, was justified, and to what relief they were entitled. The award of the 1st respondent on this dispute, which was the cause of all the trouble that subsequently arose between the petitioner-Company and its employees, was also in favour of the petitioner. On the fourth point in dispute the award was in some respects adverse to the petitioner. But at the hearing before me the objections to this part of the award which had been taken in the petition were abandoned by Mr. H. V. Perera who appeared for the petitioner. The first and second points in dispute were—

"(1) whether the non-employment of Messrs A. Pius Fernando and Z. A. M. Hussain is justified and to what relief they are entitled ;

(2) whether the stoppage of work at the Virakesari Press which commenced on the 24th May, 1960, was a strike or a lock-out and to what relief the employees were entitled. "

The events which gave rise to these two points in dispute are as outlined in the preceding paragraphs. At the inquiry before the 1st respondent it was agreed between the parties that no oral evidence would be led on the first point in dispute, and that he would arrive at his finding after reading the evidence recorded by the Authorised Officer and his recommendations.

The report of the Authorised Officer shows that the charges against Pius Fernando and Hussain which he investigated were that Pius Fernando intimidated Mr. Venkataraman on the 1st February, 1960, and that Pius Fernando and Hussain instigated other employees to go slow and not do certain types of work. As stated earlier, the Authorised Officer held that the charges were proved. His findings appear to be amply borne out by the evidence.

The 1st respondent held that the only charge established against Pius Fernando and Hussain was that they had threatened Venkataraman on the 1st February, 1960. He expressed the view that in all the circumstances a warning to them by the management not to act similarly in the future would have been a sufficient punishment. Accordingly, he held

that Pius Fernando and Hussain should be re-instated within one month of the publication of the award, and also that each of them was entitled to six months' wages. Learned counsel for the petitioner complained that in arriving at these findings the 1st respondent had entirely overlooked the evidence recorded by the Authorised Officer on the charge against Pius Fernando and Hussain of having instigated the other employees to go slow with their work. From the following observations of the 1st respondent contained in this part of the award it would seem that the complaint of learned counsel is well-founded :

" The evidence before the Authorised Officer was only with regard to intimidation. Apparently there was no evidence whatever with regard to the other charges."

At the inquiry held by the Authorised Officer, both Pius Fernando and Hussain admitted in their evidence that on the 1st and 2nd February, 1960, they did go about the premises of the petitioner-Company during working hours instigating the other employees to go slow with their work. Their excuse was that they did so in their capacity as officials of the 2nd respondent-Union. There was also evidence of instigation from at least one other witness which the Authorised Officer accepted. No reason appears for the 1st respondent to have disregarded this evidence except that it was through inadvertence. Had he considered such evidence, his direction that these two employees should be re-instated and also given six months' wages may well have been different, especially if he took the view—as it was open to him to do—that the charge of having instigated a go-slow, which is generally regarded as an unfair labour practice, was the more serious of the two charges.

It is well settled that the order of an inferior tribunal having a duty to act judicially in determining the rights of parties is liable to be quashed by writ of certiorari for an error of law appearing on the face of the record. But the legal position as to what constitutes the record of an inferior tribunal is uncertain. The question came up before the House of Lords in *Baldwin & Francis Ltd. v. Patents Appeal Tribunal and Others* [1] but was not decided. Lord Denning, one of the members of the House who took part in the decision of that case, observed, however, that the Courts have proceeded on the footing that " there should be included in the record, not only the formal order, but all those documents which appear therefrom to be the basis of the decision—that on which it is grounded ". In that connection he referred to the well known case of *R. v. Northumberland Compensation Appeal Tribunal, Ex parte Shaw* [2] and also *Re Gilmore's Application.*[3] The evidence taken at the inquiry held by the Authorised Officer is a document forming part of the record, for the award on the first point in dispute refers to, and purports to be made on the basis of, such evidence. The omission of the

[1] *(1959) 2 A. E. R. 433.* [2] *(1952) 1 A. E. R. 122.*
[3] *(1957) 1 A. E. R. 796.*

1st respondent to take into consideration the evidence touching the charge of having instigated a go-slow is, in my opinion, a misdirection amounting to an error of law on the face of the record.

Learned counsel for the 2nd and 3rd respondent-Unions raised the point that even if there is a misdirection as held by me, this being an application for a writ of certiorari the grant of which is discretionary, the Court would not interfere, having regard to the time that has elapsed since the making of the award. I do not think that the delay which has occurred in this case is attributable to the petitioner. But even had the position been otherwise, where notice on the respondent has already issued and at the subsequent hearing of the application the petitioner, as a party aggrieved, is able to establish an error of law on the face of the record, and there is no other remedy, certiorari should be granted *ex debito justitiae*—See *R. v. Manchester Legal Aid Committee Ex parte Brand & Co. Ltd.*[1] There can be no question that the petitioner in the present application is a party aggrieved. I therefore quash so much of the award of the 1st respondent as directs the re-instatement of Pius Fernando and Hussain and that they be paid six months' wages.

The next question is whether the award on the second point in dispute should be quashed for any error of law on the face of the record. The 1st respondent held that the stoppage of work at the Virakesari Press commencing on the 24th May, 1960, was a lock-out and not a strike, and that the employees affected by the lock-out should be re-instated within one month of the publication of the award and each of them paid " six months' gross wages ". Mr. H. V. Perera submitted that this portion of the award too should be quashed for the following misdirections amounting to errors of law—

(a) misdirection as to a conference with the parties in dispute which the Minister of Labour and Nationalised Services was alleged to have summoned for the morning of the 24th May, 1960;

(b) misdirection as to the proper construction of the letter dated the 26th May, 1960, sent by the petitioner to the employees;

(c) misdirection as to the proper construction of the letter dated the 11th June, 1960, sent by the petitioner to the employees.

In discussing the abortive strike which commenced on the afternoon of the 23rd May, 1960, the 1st respondent stated that it was called off soon afterwards in view of a conference of representatives of the 2nd and 3rd respondent-Unions and the management of the petitioner-Company which the Minister had summoned for the morning of the 24th May in order that he might explore the possibility of a settlement of the matters in dispute. The 1st respondent also stated :

" Instead of attending this conference the management closed down the factory on the 24th morning, and therefore no amicable settlement

[1] *(1952) 1 A. E. R. 480, at 490.*

was possible. Although the prospect of a settlement was very dim, yet the possibility of a settlement cannot (*sic*) be ruled out altogether if, as requested by the Minister, there was a conference where the Minister himself would have tried to effect a settlement."

Mr. H. V. Perera submitted on the strength of certain documents annexed to the petitioner's application for a writ that the " conference " was not one to which all the parties had been summoned to attend, but was in the nature of an interview given by the Minister to the management of the petitioner-Company, which had been pressing for a reference of the matters in dispute to the decision of an Industrial Court. Mr. Perera also submitted that these documents refute the suggestion of evasion on the part of the petitioner-Company which is implied in the 1st respondent's observation that " instead of attending this conference the management closed down the factory " on the 24th May, and they show that the petitioner-Company, through its representatives, did meet the Minister as arranged on the morning of the 24th May, 1960, but failed to convince him of the need for a reference of the dispute to an Industrial Court at that stage.

The 1st respondent rejected the contention of the petitioner that the reason for the stoppage of work on the morning of the 24th May, 1960, was a genuine apprehension that certain of the employees intended to damage the machinery if they were allowed access to the petitioner's premises. He held that the stoppage of work on that day amounted to a lock-out. This finding, no doubt, proceeded from the views he had already formed of the supposed " conference " and the petitioner-Company's attitude of evasion towards it. The documents to which Mr. H. V. Perera referred, taken by themselves, point to those views being erroneous. The question, however, is whether they are not supported by the evidence adduced at the inquiry held by the 1st respondent. No submission was made by Mr. Perera that they are not, nor was the nature and content of such evidence adverted to at the hearing before me. At any rate, no error of law on the face of the record appears to be disclosed in respect of the 1st respondent's finding that the stoppage of work on the morning of the 24th May, 1960, amounted to a lock-out.

The 1st respondent held, further, that the continued stoppage of work after the 24th May also amounted to a lock-out. The reasons for this finding are contained in the following part of the award :

" The letter sent out on the 26th May to the employees clearly indicated that they would be taken back to work only if they undertook not to go on strike. Every employee has at present a fundamental right to go on strike if an industrial dispute exists between himself and the management, to obtain a valid demand from the employer and a peaceful settlement is not possible. He loses this right if, according to the terms of employment accepted by him, he undertakes not to go on strike in furtherance of an industrial dispute. Thus when the management wrote to the employees that they should return to work and give

an undertaking not to go on strike the management attempted to compel the workers to give up one of their fundamental rights. By the letter sent on the 11th June the management laid down further conditions which the workers had to accept if they wished to return to work. In closing down the business and in attempting to alter the conditions of service, the management clearly intended to compel the employees to accept terms and conditions of service affecting employment which were different from the terms and conditions under which they had worked previously. I, therefore, hold that the closure on the 24th of May was in fact a lock-out as defined in the Trade Union Act . . . . . "

In dealing with the submission made on behalf of the petitioner-Company that even if the stoppage of work on the 24th May was a lock-out, the refusal of the employees to return to work after the letter of the 26th May amounted, at any rate, to a strike, the 1st respondent held :

" If the letter sent out on the 26th May to the employees was an unconditional offer requesting them to return to work and the employees had rejected that offer, then the employees would have been regarded as on strike. But in view of the conditions attached to the letter to return to work, conditions which the employer was not entitled to lay down with regard to the employees who were already working under him, I consider that the employees were justified in refusing the offer of the management, and that the lock-out continued from the 24th May."

From the above quoted portions of the award it is clear that the construction given by the 1st respondent to the letters of the 26th May and 11th June, 1960, sent by the management to the employees decisively influenced him in arriving at the finding that the continued stoppage of work *after* the 24th May amounted to a lock-out.

The letter of the 26th May contains the following appeal addressed to the employees :

" In the circumstances we appeal to your good sense to agree to

(1) resume work immediately and not to strike.

(2) to have the cases of Messrs Hussain and Pius Fernando referred to the Industrial Court which is the proper authority established by law in this country to give a just and enforceable award when conciliation proceedings by the Labour Department under the same Act fail, as those did in this case. You will appreciate that no one can carry on any business under mob rule and the Laws of the land should be respected by all parties for the good of all concerned ".

It will be recalled that this letter was written after the General Secretary of the 2nd respondent-Union had informed the management of the Union decision to go on strike from the 24th May, and that the reason for the strike was the management's insistence that, notwithstanding the recommendations of the Authorised Officer, the dispute relating to Hussain and Pius Fernando should be referred to an Industrial Court. When in these circumstances the management addressed the letter to the employees (whom they, rightly or wrongly, regarded as on strike in terms of the notice given by the General Secretary) appealing to their " good sense " to resume work immediately, was it prompted by any sinister motive as imputed to the management by the 1st respondent? Had the employees responded to this appeal and returned to work, it would, no doubt, have meant their calling off the strike (i.e. if they were on strike at the time) and also that they were agreeable to a reference of the dispute regarding Hussain and Pius Fernando to an Industrial Court. But it by no means followed that by returning to work at that juncture they were committing themselves irrevocably to such a reference or that they would have been precluded in law from going on strike again in connection with the same dispute or any other which may have subsequently arisen between them and the petitioner-Company. I am unable, therefore, to accept as valid the reasoning of the 1st respondent that the letter of the 26th May amounted to an attempt by the management of the petitioner-Company " to compel the workers to give up one of their fundamental rights " or to impose on them new terms and conditions of employment.

The letter of the 11th June is as follows :

" Dear Sir,

By our letter of the 26th May, 1960, we appealed to you to report for work immediately but you failed to do so up to date.

Some of the strikers have circulated among our readers and the general public a leaflet along with our paper of the 24th May, 1960, before they struck work defaming the Management by various false allegations and some of them have even visited several of our customers and told them not to pay their dues to us. Since then some of the strikers have threatened to assault our directors and other employees of the Company and some of them, as you are aware, have even made a dastardly attempt to murder our Works Manager and two other employees of the Company on the 1st instant at about 10 a.m. on the public road.

In the circumstances, while reserving our right to take suitable action against the culprits directly or indirectly involved in such despicable and atrocious crimes, we give you notice to report for duty on or before the 15th instant on your agreeing to the following

code of conduct failing which your employment with us will remain terminated with effect from that date without further notice.

1. No employee unless specially sent by a superior officer may enter any part of the Company's premises other than that in which he is normally employed, nor may he loiter about entrances or corridors.

2. No employee shall leave his department during working hours without the permission of the head of his department or in his absence of the next senior officer.

3. Employees are at all times to conduct themselves in a quiet and orderly manner in all parts of the premises and their vicinity including the adjacent public highways.

4. No employee shall treat the reasonable orders of a superior officer with disobedience or insolence nor shall he neglect his work, nor shall he sleep while on duty.

5. No employee shall whether with fellow workers or outsiders hold or participate in any meeting in any part of the Company's premises unless the Company's previous sanction in writing has been obtained for such a meeting.

6. No employee shall display or assist in displaying upon the Company's premises any notice, poster, emblem, device or slogan without the previous sanction in writing of the Administrative Secretary.

7. No employee shall assault, abuse, hoot or threaten any other persons in the employment of the Company or connected therewith.

8. No employee shall commit any act which will cause damage to the Company in any manner.

9. Any action, even a single instance of such action, by any employee contrary to these specific prohibitions shall of itself constitute a ground for disciplinary action, including dismissal when the circumstances are grave.

Yours faithfully,
Sgd. J. V. PAIS.
Adm. Secretary."

The 1st respondent held that by this letter the management of the petitioner-Company " clearly intended to compel the employees to accept terms and conditions of employment which were different from

the terms and conditions under which they had worked previously ". This appears to be a sweeping statement to make of a communication a part of which, at least, seeks to emphasise the need for the employees not to commit various acts which *per se* amount to misconduct (or even criminal offences) such as assaulting, abusing, hooting or threatening other employees of the petitioner, disobedience or insolence towards superior officers, neglect of duty including sleeping during working hours, and noisy or disorderly behaviour within, and in the vicinity of, the petitioner's premises. These acts of misconduct are classified under items 3, 4 and 7 of paragraph 3. If any exception may be taken to this part of the letter, it is that the fact that the management considered it necessary to refer to such matters was itself a reflection on the employees, the presumption being that any decent minded employee would abhor such conduct without having to be reminded that he should not be guilty of it.

Items 1, 2, 5 and 6 refer to a different class of acts, which do not *per se* amount to misconduct but which the employees were prohibited from doing in future, such as, being found in various parts of the petitioner's premises where they had no business, leaving the place of work without obtaining permission, participating in or being present at meetings held in the premises of the petitioner without the sanction of the management and the displaying or assisting in the displaying, within the premises, of unauthorised notices, posters, emblems, devices or slogans. Learned counsel for the 2nd and 3rd respondent-Unions submitted that it had been a long standing practice for the petitioner's premises being used as the venue of Union meetings and for notices, posters, etc., connected therewith being displayed within the premises, for employees who were Union officials being allowed access to all parts of the premises irrespective of where they worked, and even to be absent from their place of work during office hours without the need for obtaining leave. There is, however, nothing in the award to show that the 1st respondent accepted the position that there was such a practice. In the absence of evidence that such practice, even if it existed, formed a term or condition of the contract of service between the petitioner-Company and its employees, the continuance of it would have depended on the goodwill of the management. Things had come to such a pass in the Company's affairs that the management may well have taken the view that if the Company was to survive it was essential that such practice should be stopped in the interests of discipline and the better functioning of the Company's business.

Item 8 is in the nature of an omnibus clause. It does not seem to add to anything stated under the preceding items. The word " damage " in the context should, I think, be construed as wrongful damage and not damage howsoever caused. In dealing with the letter of the

11th June the 1st respondent has not specifically referred to this item or to item 9, which deals with the disciplinary action that may be taken on a breach of the prohibitions enumerated in the earlier items. His finding that this letter constituted an attempt on the part of the management to compel the employees to accept terms and conditions of employment which were different from the terms and conditions under which they had worked previously appears to have been arrived at on a consideration of the contents of it as a whole. In my opinion, this finding is based on a misconstruction of the letter.

A lock-out is defined in the Trade Unions Ordinance (Cap. 138) as "the closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment".

The 1st respondent adopted this definition for the purpose of his finding that the stoppage of work which commenced on the 24th May, 1960, was a lock-out and not a strike. In my opinion, this finding is vitiated by his misconstruction of the letters dated the 26th May and 11th June, 1960. A misconstruction of a document is an error of law. It was so held by the Court of Appeal in England in *Baldwin & Francis Ltd. v. Patents Appeal Tribunal and Others* [1]. In dealing with the question of what constitutes the record of an inferior tribunal I have had occasion to refer to the appeal which came up before the House of Lords in the same case. For the reasons stated by me earlier, the two letters in questions are, in my opinion, documents which form part of the record of the 1st respondent. I quash so much of the award of the 1st respondent as relates to the second point in dispute. This includes the order made by the 1st respondent for the re-instatement of the employees referred to in the second point in dispute and that they be paid six months' gross wages.

The 2nd and 3rd respondent-Unions will pay the petitioner's costs of this application, which I fix at Rs. 525.

Application allowed.

[1] *(1958) 2 A. E. R. 368, at 371.*