1961 *Present :* **Tambiah, J.**

HAYLEYS LTD., Petitioner, *and* R. W. CROSSETTE-THAMBIAH and others, Respondents

S. C. 430—Application for the issue of a Mandate in the nature of a Writ of Certiorari in terms of section 42 of the Courts Ordinance (Cap. 6)

Certiorari—Scope of writ—Error on face of record —"Speaking orders"—Extraneous considerations taken into account by inferior tribunal—Availability of writ—"Duty to act judicially"—Courts Ordinance (Cap. 6), ss. 3, 42—Industrial dispute—Illegality of a "stay-in-strike"—Industrial Disputes Act, No. 43 of 1950, ss. 4, 22, 23, 24 (1)—Industrial Disputes Regulations, 1958, Regulations 9, 20—Stay-in-Strikes Act, No. 12 of 1955, s. 2—Stay-in-Strikes (Repeal) Act, No. 23 of 1958—Penal Code, ss. 427, 433.

A writ of certiorari would be granted against an inferior Tribunal if such Tribunal has posed a particular irrelevant and extraneous question of law as the main and only question and has completely misdirected itself on that point and made that the basis of its decision. provided that the error appears on the face of the record.

An industrial dispute arose between the petitioner-Company and a trade union in consequence of the dismissal by the Company of 17 out of 198 labourers who had staged a "stay-in-strike". The dispute was referred to an Industrial Court for a settlement in terms of the Industrial Disputes Act No. 43 of 1950. The Industrial Court made award in favour of the trade union, stating, as chief reason, that a stay-in-strike was not illegal in Ceylon by virtue of the provisions of the Stay-in-Strikes (Repeal) Act No. 23 of 1958. They held that the dismissal of the 17 labourers was not justified. The Company, thereupon, applied for certiorari to quash the Industrial Court's decision.

Held, that certiorari should be granted for the following reasons :—

(i) The Industrial Court had gravely misdirected itself on the law when it stated that "the law of the land as it now stands has declared that a stay-in-strike is not illegal". Merely because a special provision dealing with stay-in-strikes has been repealed by the Stay-in-Strikes (Repeal) Act No. 23 of 1958, it does not follow that a stay-in-strike is not illegal in Ceylon.

(ii) Under section 42 of the Courts Ordinance certiorari would lie against all tribunals which have a duty to act judicially.

(iii) An Industrial Court constituted under the Industrial Disputes Act No. 43 of 1950 is a tribunal which is under a duty to act judicially.

(iv) Certiorari may be granted not only when an inferior tribunal has acted without or in excess of its jurisdiction, but also in the case of a "speaking order", when an error of law appears on the face of the record or when the tribunal bases its decision on extraneous considerations which it ought not to have taken into account. One cannot, however, import into the tribunal's order reasons which are not set out by the tribunal.

(v) The members of the Industrial Court misdirected themselves in the present case, not only on what they termed as the main question, but also because they failed to act justly and equitably as required by section 24 of the Industrial Disputes Act. In that view, therefore, they exceeded their jurisdiction.

APPLICATION for a Writ of Certiorari to quash the proceedings held by an Industrial Court constituted under the Industrial Disputes Act, No. 43 of 1950.

H. V. Perera, Q.C., with *S. J. Kadirgamar* and *K. Viknarajah*, for the petitioner.

Nimal Senanayake, with *Desmond Fernando*, for the respondents.

Cur. adv. vult.

May 5, 1961. TAMBIAH, J.—

This is an application for a Writ of Certiorari to inspect and examine the record of the Industrial Court and to quash the proceedings held by them and their award, dated 25.7.60 and published in the *Government Gazette* No. 1,218 of 12.8.60, and to make an order that the payment ordered in the said award to the workers referred to therein be not made by the petitioner-Company.

The facts leading to this award may be summarised as follows : Hayleys Ltd. were running a fibre business in Deans Road and a rubber business in Darley Road. Each business had its own separate establishments and factory committee. The two factory committees were under a parent trade union called the Eksath Engineru Saha Samanya Kamkaru Samithiya, the 4th Respondent in this application.

The Company introduced machinery in the twisting section of the fibre business and therefore decided to retrench as from September, 1959, 35 labourers from the fibre stores. This was objected to by the workers in the fibre stores who wished that these workers should be re-employed in the fibre stores in some capacity or other. Matters were represented to the parent Union which referred this dispute to the Department of Labour. There appears to have been a joint Conference between the Union and the Company to consider this matter and, as a result of their deliberations, an agreement was signed on 1.9.59 to employ twenty-eight of them (the other seven did not seek re-employment) in the rubber section. At the conference, which was held in the Labour Department, the Union was represented by Mr. T. S. Kulasekera, the President of the parent Union, and seven workers, all from the fibre section. No members from the rubber factory committee were present at this Conference nor were any invitations extended to them to attend this meeting.

When the rubber factory committee came to know on 1.9.59 of the decision to send to their stores twenty-eight workers from the fibre stores, they met and decided to protest. On 2.9.59, the Secretary of the rubber committee informed Mr. V. Weerasinghe, the Labour Relations Officer of the Company, that they were not a party to any agreement and that they objected to the twenty-eight workers coming and that

they would strike if they were brought in. On 1.9.59, the Company discontinued some casual labourers engaged in the rubber stores to make way for the labourers proposed to be brought from the fibre stores. There was resentment on the part of some of these labourers who demonstrated in front of the rubber stores and some had to be bodily removed by the Police who were called in by the Company.

The Company went ahead with its plans to bring in the twenty-eight workers from the fibre stores on 3.9.59. In order to prevent this action, all the labourers in the rubber stores, numbering one hundred and ninety-eight, staged what has been described as a " stay-in-strike " in the rubber stores. The labourers in the fibre stores also struck work from 2.9.59 to 5.9.59. In the meantime, Mr. Kulasekera, the President of the parent Union, after negotiation, was able to persuade both sections to call off the strike. Resumption of work was decided on by the workers in both sections on 5.9.59 and the Company was duly informed of this decision. Accordingly, the workers discontinued the " stay-in-strike " on 5.9.59, went home and came back to work on Monday, the 7th of September. On the following day, the Company picked out 17 members of the rubber factory committee and served " show cause notices " on them and then suspended them. This provoked the Committee members, in view of the fact that, although one hundred and ninety-eight workers had struck work, these seventeen members were sought out because they were committee members. Another " stay-in-strike " was staged.

These events led to the development of an industrial dispute between these workers and the petitioner-Company. The Minister of Labour, acting in terms of section 4 of the Industrial Disputes Act, No. 43 of 1950, by order in writing, referred the said dispute to an Industrial Court consisting of Respondents 1–3, for a settlement in terms of the said Act. The Minister's Order, as required by section 23 of the said Act, was accompanied by statement dated 13.11.59, prepared by the Deputy Commissioner of Labour, the 6th Respondent, setting out the matters which, to his knowledge, were in dispute between the parties, and which he expressed as follows :

> " The matter in dispute between the Eksath Engineru Saha Samanya Kamkaru Samithiya and Messrs. Hayleys Ltd., is whether the non-employment of the following 17 workers is justified and to what relief each of them is entitled. "

In terms of Regulation 9 of the Industrial Disputes Regulations, 1958, the reference to the said dispute was transmitted to the 7th Respondent, who was the Registrar of the Industrial Court. The Registrar called upon the petitioner Company and the 4th Respondent, in terms of Regulation 20 of the said Regulations, for a statement of their respective cases and answers.

The 4th Respondent, in his statement, averred that the 17 workers who were members of the factory committee of this Union along with the rest of the members of the said branch of the Union, resorted to

strike action on the 3rd, 4th and 5th of September, 1959, as a result of which the petitioner Company served notice of suspension and dismissed from service the 17 workers who participated in the said strike and the 4th Respondent, therefore, prayed that the 17 workers be re-instated with back wages and other privileges.

At the inquiry before the Industrial Court, it was contended on behalf of the petitioner that there was a finding of a domestic tribunal justifying the dismissal of the 17 workers and, therefore, the 4th Respondent cannot complain. The Commissioners, in the course of their order, accepted the principle that the findings of a domestic inquiry should not be disturbed unless :—

(*a*) there has been want of *bona fides*,

(*b*) it is a case of victimisation or unfair labour practice or violation of principles of natural justice,

(*c*) there is a basic error on the facts, or

(*d*) there has been a perverse finding on the materials.

The Court held that there has been no want of *bona fides*, no basic error on the facts, no perverse findings on the material before it and, further, that the inquiry before the domestic tribunal was conducted to the satisfaction of the Union. However, it stated that, while recognising the powers of the management to direct its own internal administration and discipline, yet it was not an unlimited power and Industrial Tribunals are free to inquire into the justification or otherwise of a dismissal. The Court stated that it desired to ascertain for itself whether it was proper for the company to have singled out the rubber factory committee members for suspension and served " show cause " notices on 8.9.59, when all the workers had stayed in from the 3rd to the 6th of December. The Court heard evidence and delivered order that is sought to be quashed in these proceedings.

In the course of their order, the Court said as follows :—

" The main question for determination is whether or not a ' stay-in-strike ' is legal in this country. Two pieces of legislation have dealt with this question and we must confine ourselves within those bounds. The first is the Stay-in-Strikes Act, No. 12 of 1955, which came into operation on April 12, 1955. Section 2 thereof reads thus—' Where any person taking part in a strike in any industry remains in furtherance of that strike in the premises in which the industry is carried on, he (*a*) shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to imprisonment of either description for a term not exceeding three months, or to a fine not exceeding one hundred rupees, or to both such imprisonment and such fine, and (*b*) may be arrested without warrant and be ejected from those premises by any police officer not below the rank of Inspector of Police '. In promulgating this piece of labour legislation, the ' objects and reasons '

set out are to prohibit stay-in-strikes. As there have been a number of stay-in-strikes and it was, therefore, necessary to prohibit such strikes. Side by side with this, should be read section 427 of the Penal Code which defines criminal trespass as follows: 'Whoever enters into or upon property in the occupation of another with intent to commit an offence, or to intimidate, insult or annoy any person in occupation of such property or having lawfully entered into or upon such property unlawfully remains there with intent to commit an offence is said to commit 'criminal trespass'.

The penal section is section 433 of the Penal Code where the punishment specified is identically the same as that stated by section 2 of the Act No. 12 of 1955."

"We are unable to subscribe to the view that the Penal Code and this Act conferred concurrent jurisdiction on our Courts. It is clear that the element of 'mens rea' is a necessary ingredient of an offence under section 427 of the Penal Code whereas under section 2 of the Act it is not so. When charged with the offence of criminal trespass, the burden of proving intent to insult, intimidate or annoy or to commit an offence always rests on the prosecution, but in a charge under section 2 of the Act this burden shifts inasmuch as it is for the accused to show that he remained on the premises for a lawful purpose. If a 'stay-in-strike' was intended to be synonymous with criminal trespass, it is difficult to understand the necessity to have introduced new legislation. Had this Act remained on the Statute Book in September 1959, the Police could have arrested the offenders without a warrant and ejected them from the premises. But, on May 9, 1958, came into force the Stay-in-Strikes (Repeal) Act, No. 23 of 1958, whereby the earlier Act was repealed in its entirety, and the only manner in which 'stay-in-strikers' could be dealt with thereafter is by charging them for criminal trespass under the Penal Code; and this was the action taken by the Company. We are not impressed with the argument that all that the Act No. 2 of 1955 did was to give the Police the power to eject 'stay-in-strikers' and the repeal in effect was in that regard alone. Those committee members of the rubber factory who had been convicted and fined Rs. 25 each in M. C., Colombo No. 23183/A (production marked D. 3) were rightly charged under the Penal Code and convicted. There has been no appeal on the law against it nor have papers in revision been filed in the Supreme Court and the Union cannot be heard to complain about it at this stage. But, this conviction cannot, by itself, affect the legality or otherwise of a 'stay-in-strike'. Whatever may be this Court's personal view on the desirability or otherwise of 'stay-in-strikes', it is of the opinion that the law of the land as it now stands has declared that a 'stay-in-strike' is not illegal . . . . ."

After referring to certain decisions of the Industrial Court in India, cited by the petitioner's counsel, the Court stated as follows :—

> " The quotation seems to indicate that that country had for a considerable time been afflicted with ' stay-in-strikes ' of a violent type. And the hope expressed by Teller, is in that context. It does not seem to apply to this country which, as we have stated before, has, by statute, declared ' stay-in-strikes ' no longer illegal. "

The 1st to the 3rd Respondents, who were the members of the Industrial Court, in the course of their Order, also stated as follows :—

> " In spite of the dereliction of duty on the part of Mr. Kulasekera, President of the parent Union, we are satisfied that the rubber factory committee was not included in the negotiations which led to the agreement signed on September 1, 1959, and particularly in view of the fact that they were not a party to this agreement, there seems to be no valid reason for taking disciplinary action against this committee for not implementing the agreement. "
>
> " In view of the circumstances of this case, this Court holds that the non-employment of the seventeen listed workers was not justified. Had the rubber stores not been closed, we would have ordered re-instatement with back pay. In view of the fact that the rubber stores were closed down on December 19, 1959, we order that these 17 workers be paid their basic salary and any other allowances to which they normally would have been entitled, from such date as they ceased to be paid to December 18, 1959, and to retrenchment relief as in the case of the other workers who were discontinued when the rubber stores closed down. "

It was contended on behalf of the petitioner that the 1st to the 3rd Respondents had seriously misdirected themselves on what they described as " the main question for determination " and, therefore, this Court should interfere by quashing the proceedings, since the Industrial Court has, by a misdirection of law, based its decision on an extraneous matter.

The counsel for the 4th Respondent did not contest the position that the 1st to the 3rd Respondents had misdirected themselves on a question of law when they stated that " the law of the land as it now stands has declared that a ' stay-in-strike ' is not illegal ". But he contended that this Court cannot issue a mandate in the matter of a Writ of Certiorari to quash the order of the Industrial Court for the following reasons :—

(1) The Supreme Court has no jurisdiction to issue a Writ of Certiorari against the Industrial Court as it is not an inferior Court.

(2) The Writ only lies where there is either lack of jurisdiction or excess of jurisdiction and does not lie where the tribunal acts within the jurisdiction but commits an error of law.

(3) A mere error of law does not justify the grant of a Writ of Certiorari to quash the proceedings, unless it went to the root of the jurisdiction.

(4) Even assuming that the Writ does lie, it cannot be availed of in the circumstances of this case, since a wrong decision on the law was not the only ground on which the tribunal came to a finding. The tribunal has also come to a finding that there has been victimisation in that the 17 members who were committee members have been issued notices to quit although 118 people took part in the strike.

Before examining these submissions made by counsel for the appellant and respondents on the availability of the Writ of Certiorari, the question as to whether the Tribunal had gravely misdirected itself on the law when it stated that " the law of the land as it now stands has declared that a ' stay-in-strike ' is not illegal ", has to be examined.

According to Ludwig Teller[1], " sitting down strikes " occur whenever " a group of employees or others interested in obtaining a certain objective in a particular business forcibly take over possession of the property of such business, establish themselves within the plant, stop its production, and refuse access to the owners or to others desiring to work." Teller adds that " sit down strikes should more accurately be described as a strike in the traditional sense to which is added the element of trespass that the strikers squat on the property of the employer. " The propriety of such a strike when one deals with labour disputes was considered by the Supreme Court of the United States in the *Fansteel Case* (U. S. A. Supreme Court in 1939, pp. 305–307). In this case, the Supreme Court of the United States said " The employees had the right to strike, but they had no licence to commit acts of violence or to seize their employer's plant. The seizure and holding of the building was itself wrong, apart from any act of sabotage. But in the legal aspect the ousting of the owner from lawful possession is not essentially different from an assault upon the offices of an employing company or the seizure and conversion of its goods, or the despoiling of its property or other unlawful acts in order to force compliance with demands. To justify such conduct because of the existence of a labour dispute or of an unfair labour practice would be to put a premium on resort to force instead of legal remedies and to subvert the principles of law and order which lie on the foundations of society ".

Commenting on this decision, Teller states (vide " Labour Disputes and Collective Bargaining ", Vol. 1 at p. 313) as follows :—

" It is to be hoped that the *Fansteel decision* has placed a quietus upon further indulgence by labour in the sit-down-strike. The case marks what is hoped to be the end of an unfortunate chapter in the history of American labour activity ;"

[1] " *Labour Disputes and Collective Bargaining* ", *Vol. 1 at p. 311.*

In India, " sit-down-strike " was considered to be illegal (vide *Bally Municipality v. Sri Modan Mohan Banerjee* (Labour Law Journal of India 1954, Vol. 11, p. 500 at p. 505). In spite of the settled view on this question in other countries, a practice appears to have developed in Ceylon to resort to this method of redress in settling labour disputes. If labourers stage a " sit-down-strike " in the premises of the employer and prevent the latter from operating his machinery, in most cases, the provisions of the Penal Code relating to criminal trespass are quite sufficient to bring such strikers within the ambit of the Penal Code since, in such cases, it will not only be trespass, but there will also be intention to annoy or intimidate.

The object of the Stay-in-Strikes Act No. 12 of 1955 was to prohibit " stay-in-strikes ". This Act provided an additional offence which differed from criminal trespass in that there was no burden on the prosecution to prove intent to insult, intimidate or annoy or to commit an offence. It also gives the police power to seize such persons and to eject them. This Act was repealed by the Stay-in-Strikes (Repeal) Act No. 23 of 1958. The Legislature may have had various reasons for the repeal of the Stay-in-Strikes Act. It may be that it was the intention of the Legislature that the provisions of the Penal Code set out in section 433, which defines criminal trespass, were quite sufficient and adequate to deal with labourers who participate in a stay-in-strike. It may be that the Legislature thought that the drastic powers given to the police to eject such strikers may not be conducive to peace and order. But nowhere has the Legislature stated that a stay-in-strike is not illegal. Merely because a special provision dealing with stay-in-strikes has been repealed, it does not follow that the Legislature has stated that a stay-in-strike is not illegal in this country. Therefore, the Industrial Court gravely misdirected itself on what they termed as the main question for determination in holding that it is of the opinion " that the law as it now stands, has declared that a stay-in-strike is not illegal ".

The counsel for the Respondents has rightly conceded that he cannot support the finding of the Industrial Court that the law of the land, as it now stands, has declared that a stay-in-strike is not illegal.

The grounds relied on by the counsel for the appellants and by the counsel for the respondents may now be examined. The preliminary question is whether this Court has the jurisdiction to issue writs, in the nature of Certiorari, to the Industrial Court. The High Courts of England have an undoubted and undisputed jurisdiction to issue writs in the nature of Certiorari by virtue of its supervisory jurisdiction to control the proceedings of Tribunals which are under statutory obligations to act judicially. This jurisdiction was conferred on the Supreme Court of Ceylon by the Charter of 1801 which constituted the Supreme Court of Judicature in Ceylon as the Superior Court of record. The Charter of 1833, which repealed the earlier provisions on this matter, conferred the same jurisdiction on the Supreme Court to issue writs in the nature of Certiorari. The next landmark in the history of legal institutions in

Ceylon was the passing of the Courts Ordinance, No. 1 of 1899, which abolished the Charter of 1833. Section 42 of this Ordinance conferred on the Supreme Court the power and authority to inspect and examine the records of any Court and to grant and issue, according to law, mandates in the nature of writs of Mandamus, Quo Warranto, Certiorari, Procedendo and Prohibition against any District Judge, Commissioner, Magistrate or *other person or tribunal.* The meaning of the words " other person or tribunal " was authoritatively construed by a Divisional Bench of five judges in the case of *Abdul Thassim v. Edmund Rodrigo*[1]. It was held in this case that the *ejusdem generis* rule cannot be applied in the interpretation of the words " or other person or tribunal " in section 42 of the Courts Ordinance, and therefore, the Writ of Certiorari would lie against all tribunals which have a duty to act judicially. Counsel for the Respondent sought to re-agitate this question by citing the case of *Re Field General Court Martial*[2]. This was a case decided by three judges and was fully considered by the Divisional Bench in *Abdul Thassim's* case (supra). Counsel for the Respondent contended that the effect of the proviso to section 3 of the Courts Ordinance is to take away any jurisdiction which the Supreme Court might have had over tribunal created by statute. This contention, however, is not tenable. Section 3, whereby the Supreme Court, District Court, Court of Requests and Magistrates' Courts are constituted, states in the proviso that nothing contained in this section will be held to take away or alter the jurisdiction vested in any Court created by Imperial statute or by any other statute now in force or any special tribunal legally constituted, for any special purpose to try any special case or class of cases.

The effect of this proviso is merely to conserve the jurisdiction conferred on statutory tribunals. But section 42 of the Courts Ordinance expressly confers on the Supreme Court the power to issue writs in the nature of Certiorari in order to control the proceedings of persons and tribunals referred to in that section. So far as this Court is concerned, it is too late now to re-open a question that has been settled by a binding decision of five judges.

The next question which warrants consideration is what is meant by a tribunal which is under a duty to act judicially ? This question is often not an easy one to answer. A body is under a duty to act judicially only if it was bound by statute to decide on evidence between a proposal and an opposition (vide *Rex v. L. C. C.*[3]). The Judicial Committee of the Privy Council has held that the only relevant criterion was the nature of the process by which the decision was to be reached. " When it is a judicial process or a process analogous to a judicial process, Certiorari can be granted." (*Nakuda Ali v. Jayaratne* [4]). The Industrial Court created by the Industrial Disputes Act, has a duty to act judicially. Section 22 of the Industrial Disputes Act, No. 43 of 1950, empowers the Governor-General to appoint a panel of not less than five persons from

[1] *(1947) 48 N. L. R. 121 at 127.* [2] *(1915) 18 N. L. R. 334.*
[3] *(1931) 3 K. B. 215 at 233.*
[4] *(1951) A. C. 66 at p. 75; 51 N. L. R. 457 at 461.*

whom the Industrial Court is constituted. Section 4 of the same Act enables the Minister of Labour to make an Order referring a dispute for settlement by an Industrial Court. By section 23 of the Act, such an order has to be accompanied by a statement prepared by the Commissioner of Labour setting out each of the matters which, to his knowledge, is in dispute between the parties. Section 24 (1) of the Act reads as follows :—" It shall be the duty of an Industrial Court to which any dispute, application or question or other matter is referred to or made under this Act, as soon as may be, to make inquiries and hear all such evidence as it may consider necessary, and therefore to take such decisions or make such award as may appear to the Court *just* and *equitable* ".

On reading these sections, there can be no doubt that the Industrial Court has a duty to act judicially and therefore, it is a tribunal against whom a Writ of Certiorari could issue from this Court in appropriate cases. In issuing the Writ of Certiorari the Supreme Court follows the relevant provisions of the English Law. In view of the large number of statutory tribunals which exist in this country, with a possibility of a substantial increase of these statutory bodies, the words of Lord Denning are apposite when he said " There is nothing more important to my mind than that the vast number of tribunals now in being should be subject to the supervision of the Queen's Courts. " (vide per Lord Denning in *Baldwin v. Francis Ltd. v. Patents Appeal Tribunal and Others*[1].) Hence the Writ of Certiorari will lie against the decision of the Industrial Court in appropriate cases.

The question whether this Court can issue a Writ of Certiorari if the Industrial Court has erred on a point of law which does not affect the jurisdiction of the Court may now be dealt with. In the *Northumberland* case[2], the King's Bench Division held, for the first time, that the Writ of Certiorari would issue to quash the decision of a statutory administrative tribunal, for error of law on the face of the " record ", although such a tribunal was not a court of record and although the error did not go to the jurisdiction of the tribunal. This decision may be regarded as a landmark in the development of administrative law, and it has already led to a modest extension of the scope of judicial review both in England and in other common law jurisdictions. (See Judicial Review of Administrative Action by S. A. de Smith (Stevens) p. 295.) It cannot be regarded as a new piece of judicial legislation ; it was rather a new application of a long established principle. The King's Bench Division in England always exercised the jurisdiction to quash convictional orders made by courts *stricto sensu* in cases where the error of law was apparent on the face of the record. In the tussle between Parliament and the Courts, the former retaliated by taking away the right to issue Writs of Certiorari by a number of statutes creating summary offences, and finally, by The Summary Jurisdiction Act of 1848, a standard form of conviction, which omitted all mention of the evidence or the reasoning by which the decision had been reached, was devised, but this, however,

[1] *(1959) 2 A. E. R. 433 at 449 H.*
[2] *(1951) 1 K. B. 711, affirmed in (1952) 1 K. B. 338 C. A.*

was not a success. This Act did not alter the law relating to Certiorari but it made it virtually impossible for the Courts to correct errors of law other than those which went to jurisdiction, for affidavits or oral evidence to show lack of evidence or concealed errors of law on a matter within the jurisdiction were, and are, inadmissible. In many cases, " the face of the record ' spoke ' no longer ; it was the inscrutable face of the sphinx ". The King's Bench Division did not require the justices to set out the evidence and grounds of decision in orders in civil matters, as distinct from summary convictions. However, when they were " speaking orders ", that is, those orders which told their own story, then the justices were at liberty to examine the reasons which were set out in the order and to issue Certiorari to quash it if the reasons were bad in law (vide Judicial Review of Administrative Action—de Smith at page 296).

The principle enunciated in the *Northumberland* case (supra), that the Writ of Certiorari is not a remedy which could be granted only when an inferior tribunal had acted without, or in excess of, its jurisdiction, was further elaborated by Lord Denning in *Baldwin and Francis Ltd. v. Patents Appeal Tribunal et al.*[1] In this case, one of the specifications of an invention, of which the appellants had been granted a patent, defined the scope of the invention and contained four alternatives referred to as A, B, C and D. The respondents, having subsequently applied for a patent for their own invention, the superintending examiner ordered that the respondents' patent should be sealed with a reference to the appellants' patent on the ground that the respondents' invention could not be performed without substantial risk of infringing the appellants' patent. This decision was based on the risk of infringing alternative D of the appellants' patent. The Patents Appeal Tribunal reversed the decision of the superintending examiner and the Tribunal's written decision set out an extract of the appellant's specification, but made no reference to alternative D in the specification and referred only to alternative B of the claim. The House of Lords held that a Certiorari did not lie for various reasons. The majority view was that the order was not a speaking order and, therefore, Certiorari did not lie. Lord Denning, however, after stating that if any alternative remedy was available in the case, Certiorari would lie, dismissed the application on the ground that there was no alternative remedy. But, in his speech, Lord Denning set out the scope of the Writ of Certiorari as follows :—" We have only the written reasons of the judge to go on, and we cannot presume that he went by any other. It has long been decided that ' where a reason is assigned as the foundation of a judgment, all presumption or intendment that the Court went upon better ground is excluded '. See Burns Justice of the Peace (30th Edn.), Vol. V, p. 374. That statement rests on the authority of Lord Mansfield himself, supported by Willes and Buller, JJ.. who sat beside him : see *R. v. Upton Gray (Inhabitants)* (1783) Cald. Mag. Cas. 308) ; and if it is correct, as I think it is, it forbids us from presuming that the judge took alternative (D) into account."

[1] *(1959) 2 A. E. R. 433 at 444.*

" Excluding, therefore, all presumption or intendment, it appears to me that the written decision of the tribunal is based on what was, in the circumstances, an extraneous consideration (namely, that there was no substantial risk of infringing alternative (B)), and fails to take into account a very relevant and, indeed, vital consideration (namely, whether there was any substantial risk of infringing alternative (D)). Is that error of law ? I have no doubt that it is ; and it is an error of such a kind as to entitle the Queen's Bench to interfere. There are many cases in the books which show that, if a tribunal bases its decision on extraneous considerations which it ought not to have taken into account, or fails to take into account a vital consideration which it ought to have taken into account, then its decision may be quashed on Certiorari and a Mandamus issued for it to hear the case afresh. The cases on mandamus are clear enough ; and if mandamus will go to a tribunal for such a cause, then it must follow that certiorari will also go ; for when a mandamus is issued to the tribunal, it must hear and determine the case afresh, and it cannot well do this if its previous order is still standing. The previous order must either be quashed on certiorari or ignored ; and it is better for it to be quashed . . . . ". (at pages 446 et seq.).

In discussing the question whether Certiorari lies to quash the order of a tribunal which has taken into account irrelevant circumstances, Lord Denning stated as follows (Ibid. at page 448) :—

" In *R. v. Fulham, Hammersmith and Kensington Rent Tribunal, Ex p. Hierowski* (1953 2 A.E.R. 4 at p. 6), the tribunal, in reducing the rent, took into account afresh the reasonableness of the amount charged, which was an extraneous consideration as they would only have had regard to the change in circumstances. In *Re Gimore's Application* (1957 1 A.E.R.796) the tribunal. in assessing compensation for industrial injury, took into consideration only the injury to the left eye and failed to take into account the prior injury to the right eye. In *R. v. Head* (1957 3 A.E.R. 426 at 428), the Secretary of State, in ordering the girl to be detained, failed to consider whether it was required for the protection of others. In *R. v. City of Liverpool JJ., Ex p. W.* (1959 1 A.E.R. 337), the justices, in making the adoption order, failed to consider whether there were special circumstances justifying it. In all those several cases it was held or accepted that certiorari lay to quash the decisions. In a case in the Privy Council *Seereelal Jhuggroo v. Centrak Arbitration and Control Board* (1953 A.C. 151 at 161), the principle was accepted, but certiorari was refused because the Board was held not to have taken in extraneous matters into account.

" In some of those cases it has been said that the tribunal in falling into an error of this particular kind, has exceeded its jurisdiction. No tribunal, it is said, has the jurisdiction to be influenced by extraneous considerations or to disregard vital matters. This is good sense and enables the Court of Queen's Bench to receive evidence to prove the

error. But an *excess* of jurisdiction in this sense is very different from *want* of jurisdiction altogether which is, of course, 'determinable on the commencement, not at the conclusion, of the inquiry' (see *R. v. Bolton* 1841 1 Q.B. 66 at p. 74). Whereas an excess of jurisdiction is determinable in the course of, or at the end of, the inquiry. But allowing that a tribunal which falls into an error of this particular kind does exceed its jurisdiction, which I am prepared to do, nevertheless I am quite clear that, at the same time, it falls into an error of law too; for the simple reason that it has 'not determined according to law'. That is, indeed, how Blackburn J., put it in *R. v. De Rutzen* (1875 1 Q.B.D. 55 at 57). And the decision in the *Northumberland case* (supra) itself shows that, even though no evidence is given, nevertheless if such an error appears from the documents properly before the Courts, or by legitimate inference therefrom, then certiorari can properly be said to be for error of law on the face of the proceedings. It may be excess of jurisdiction as well, but it is certainly error of law.

"In the present case, it is I think, a legitimate inference from the documents properly before the court, that the tribunal, when it came to give its written and only decision, failed to take into consideration alternative (D) which was a vital matter for consideration. It was the sole ground on which the superintending examiner had decided the case; and, before reversing his decision, the tribunal ought to have considered it. The failure to take into consideration is, I think, a ground on which certiorari *may be* granted . . . ."

The observations of Lord Denning dispose the contention of the counsel for the Respondent that a Writ of Certiorari does not lie unless the tribunal has either exceeded the jurisdiction or has acted in excess of its jurisdiction. But it may be said, on the facts of this case, that the duty of the tribunal was to act justly and equitably, in view of section 24 of the Industrial Disputes Act, and the members of the Tribunal have misdirected themselves on the law, not only in what they termed as the main question, but also on the question on which they came to any conclusion. Hence, it cannot, therefore, be said that they acted justly and equitably as required by the statute. In that view of the matter, they exceeded their jurisdiction.

The counsel for the respondents also strenuously contended that this Court can ignore the misdirection on the law referred to, as the Industrial Court has also held that there had been victimisation by the petitioner in selecting 17 out of the 198 members who struck, to discontinue their services. In the first place, the Industrial Court has not used the term "victimisation" and, secondly, although mention is made of the selective attitude of the petitioner, no conclusion is reached by the Tribunal giving this as a reason for their decision. To adopt the words of Denning L.J. "All presumption or intendment must be excluded when a tribunal bases its decision on an extraneous consideration". In the instant case, the order of the Tribunal is a "speaking order". It says

that the main question for consideration is that, in this country, 'stay-in-strikes' are not illegal and, on this matter, the Tribunal has seriously misdirected itself. One cannot import into their order other reasons which are not set out by the Tribunal.

The counsel for the Respondents also urged that here there was no duty on the part of the Tribunal to follow the provisions of law, and therefore, any misdirection on the law cannot be corrected by this Court. It is indeed a strange proposition to state that, when section 24 of the Industrial Disputes Act conferred jurisdiction on the Industrial Court to make such award as may appear to the Court to be just and equitable such a Tribunal can completely disregard the law of the country and act in an arbitrary manner. In my opinion, the Industrial Court should take into account the law of the country, and, in particular, the law governing contracts. It is not, however, obliged to give reliefs which a Court of Law has to give; it is free to award such reliefs as are just and equitable. But it must be emphasised that the freedom to give reliefs which cannot be given by a Court of Law, does not permit the Industrial Court to misdirect itself on an extraneous matter which formed the main reason for its decision.

The principles that should be gathered from the cases and dicta referred to, establish the rule that a Writ of Certiorari would lie to an inferior Tribunal if such a Tribunal has posed a particular irrelevant and extraneous question of law as the main and only question and has completely misdirected itself on that point and made that the basis of its decision, provided that the error appears on the face of the award.

The Industrial Court posed, as the main question for determination, whether or not a "stay-in-strike" is legal in this country. I think that it has seriously misdirected itself when it came to the conclusion that the law of the country, as it now stands, has declared that a "stay-in-strike" is not illegal. It is not possible to read into their Order an alternative finding to which they have come, and state that they also held that the 17 labourers have been subject of victimisation.

For these reasons, the order of the Industrial Court cannot stand. It is no fault of the 4th Respondent that Respondents 1–3 have misdirected themselves on the law. It is a matter of regret that the members of the Industrial Court, by misdirecting themselves, have not inquired into the grievances of 17 persons who were members of the Union. The 4th Respondent represented a number of labourers who are in indigent circumstances.

Counsel for the appellant quite properly stated that he would not ask for costs in this case. The Writ of Certiorari is allowed and the order of the Industrial Court is quashed without costs.

Application allowed.