[1978] 1 W.L.R. 302 [1978] 3 All E.R. 449 (1978) 122 S.J. 162 [1978] 1 W.L.R. 302 [1978] 3 All E.R. 449 (1978) 122 S.J. 162
(Cite as: [1978] 1 W.L.R. 302)

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***302 Greig and Others v Insole and Others**

1977 G. No. 22461977 J. No. 4876

Chancery Division

Slade J.

1977 Sept. 26–30; Oct. 3–7, 10–14, 17–21, 24–28, 31; Nov. 1–4, 7, 8; 25

Restraint of Trade—Employment—Cricketers—International and national associations organising playing of cricket—Cricketers contracting with promoter to play in private series of matches—Validity of contracts—Alteration of rules to ban cricketers from playing in associations' matches—Whether action reasonable—Whether justification for ban—Whether alteration of rules inducement to cricketers to break contracts with promoter.

Industrial Relations—Employers' association—Action in tort—Unincorporated associations controlling playing of cricket—Alteration of rules to encourage cricketers to break contracts with private promoter—Alteration of rules in restraint of trade—Whether associations consisting of employers—Whether regulating relations between employers and employees—Whether "employers' association" immune from legal proceedings— Trade Union and Labour Relations Act 1974 (c. 52), ss. 14, 28 (2)

The ICC controlled international Test cricket matches defined in its constitution as matches played between teams selected by the countries, which were foundation and full members of the ICC, as their respective representatives. It had exclusive power to make the qualification rules for cricketers for Test Matches and to arrange the tours between member countries. Each member country had a governing body for cricket and such governing bodies appointed representatives of their respective countries on the ICC.

In the United Kingdom an unincorporated association, the Cricket Council, was the governing body but another unincorporated association, the TCCB, actually organised and administered Test Matches and organised overseas tours of the MCC. the UK cricket team. The TCCB also administered and promoted the first class county championships and was responsible for rules governing the registration and qualification of cricketers in county cricket. The membership of the TCCB consisted of the MCC, each of the 17 first class counties and the Minor Counties Cricket Association. The TCCB, like the ICC, had no authority beyond that conferred by the consent of its members and the plaintiff cricketers were not members of either body.

In the United Kingdom the cricketing season ran from early May to mid-September, while the seasons of the other Test-playing countries ran between October and March. In general no country other than the United Kingdom was in a position to offer even their most successful players the opportunity to make a living out of cricket. In the United Kingdom at present approximately 230 cricketers played for first class county clubs and most of them earned their living largely ***303** from cricket. A number of cricketers from the other Test-playing countries came here to take part in the county cricket season, for which, subject to certain conditions, they were now eligible. Although a career was open to a man as a professional cricketer in the United Kingdom, no regular employment was available to professional cricketers for longer than two years at county club level. Neither the ICC nor TCCB offered any employment other than selection for Test Matches and overseas tours. Cricketers regarded themselves as substantially under paid.

During January to April 1977 a private sports promoter, an Australian company engaged some 34 of

the world's leading cricketers from Test-playing countries under contracts which bound the cricketers to make themselves available to play in a series of test matches to be organised by the promoter in Australia and possibly elsewhere during the season beginning on September 1 and ending on March 30. The duration of the contracts varied from one to five years. The contracts did not make it obligatory for the promoter to organise such matches but, by clause 4, the promoter undertook and agreed that during the period the matches were played the cricketers would be paid a certain allowance. Clause 5 entitled the promoter to require a cricketer to play in matches outside Australia. Clause 6 set out the scale of payments payable to the cricketers for participating in matches organised in Australia and outside it. The contracts were entered into in conditions of secrecy, so as to facilitate recruitment. The news became public on May 9, 1977.

The ICC resolved on July 26, to change its rules relating to qualifications for Test Matches to the effect that any player who, after October 1, 1977, should play or make himself available to play in a match previously disapproved by the ICC should thereafter be disqualified from playing in any Test Match without the express consent of the ICC, such consent to be given only on the application of the governing body for cricket of the player's country. The ICC then passed a resolution specifically disapproving any match arranged or to be arranged by the promoter in Australia or elsewhere between October 1, 1977, and March 31, 1979. Further, the ICC strongly recommended each member country to implement the ICC resolutions. Prior to the ICC resolution, the TCCB on July 15, 1977, had resolved to introduce a similar ban at county level subject to the Cricket Council supporting its proposals and the ICC taking the expected decision in regard to a Test Match ban. In order to implement those proposals, following the ICC meetings, the TCCB held a meeting on August 5, and issued a press release announcing the resolution that (subject to the court's decision in the present proceedings) the rules would be amended to implement the ICC decision and effectively disqualifying from playing in any competitive county cricket any cricketer who should for the time being be subject to the Test Match ban. Such county cricket ban was proposed to operate for a period of two years immediately following the date of the last day of the last match previously disapproved by the ICC in which the player concerned had played or made himself available to play.

On August 3 three cricketers, who had contracted with the promoter, issued a writ seeking against the ICC and TCCB a declaration that the changes of rules by the ICC and proposed changes of rules by the TCCB would be ultra vires and an unlawful restraint of trade. Further or in the alternative, they claimed that the changes or proposed changes of rules were void as denying them the freedom to practice their profession when, where and how they wished. On the same day the promoter also issued a writ claiming against the defendants not only declarations that the changes of rules were void but also a ***304** declaration that they were an unlawful inducement to the players involved to break their contracts with it. Both the actions were heard together. The defendants, ICC and TCCB, alleged that the contracts between the plaintiff cricketers and the promoter were void and that both defendants were an “employers' association” within the meaning of section 28 (2) of the Trade Union and Labour Relations Act 1974[1] and, therefore, under section 14 , legal proceedings in tort could not be brought against them: —

Held, giving judgment for the plaintiffs, (1) that, although under the terms of their contracts with the plaintiff cricketers, the promoter was under no express obligation to provide work for the cricketers by arranging a tour in each season during the period of the contract and under no obligation to arrange a tour outside Australia, it was under an obligation to pay the cricketers for a tour in Australia

during each season; that, accordingly, there could be no implied term that the promoter would arrange a tour outside Australia but to give the contract business efficacy such a term would be implied for a tour in Australia and, therefore, it could not be said that the contracts were void as being in restraint of trade and contrary to public policy and, as there were no grounds for an allegation that the contracts were voidable, the contracts were to be treated as valid and enforceable (post, pp. 326E–327A).

Aspdin v. Austin (1844) 5 Q.B. 671 and Devonald v. Rosser & Sons [1906] 2 K.B. 728, C.A. applied .

(2) That by altering (and, in the case of the TCCB, showing its firm intention to alter) the rules so that the plaintiff cricketers were banned from playing in future Test Matches and county cricket and by deferring the effect of that alteration until October 1, 1977, the ICC and the TCCB had directly interfered with the promoter's contracts with the cricketers and they had done so at a time when they had knowledge of the relevant contracts and with intent to apply pressure on the plaintiff cricketers to withdraw from their contracts (whether or not they might have lawful rights to withdraw) in circumstances in which there was a likelihood that the promoter might suffer damage; that in those circumstances the defendants had committed the tortious act of inducing a breach of contract and, although they had acted in good faith and without malice, they were liable unless they could justify their actions as against the promoter; that, since the defendants had failed to prove that the relevant contracts were void or voidable and there were no other factors that could be material to the defence of justification, they were liable unless they were immune from legal proceedings under section 14 of the Trade Union and Labour Relations Act 1974 (post, pp. 334B–E, 336E–F, 338B–E, 340C–D, 341B–E, 342D–E, G–H, 343B–D, E–F, 344C–F, H–345A).

Rookes v. Barnard [1964] A.C. 1129, H.L.(E.) ; Emerald Construction Co. Ltd. v. Lowthian [1966] 1 W.L.R. 691, C.A. and Torquay Hotel Co. Ltd. v. Cousins [1969] 2 Ch. 106, C.A. applied .

(3) That the ICC had a legitimate interest to ensure that international cricket was properly organised and administered albeit most cricketers were not professional players in the sense that they earned their living by playing cricket; that the TCCB also had a legitimate interest in ensuring that cricket was properly administered and organised; but that the defendants had to show that they had acted reasonably in imposing the bans which were prima facie in restraint of trade; that neither the ICC nor the TCCB had shown that the bans were reasonable in the circumstances and, therefore, unless they were employers' associations protected from legal suit by section 14 of the Act, ***305** the plaintiff cricketers were entitled to declarations that the alteration of the rules were ultra vires and void (post, pp. 346C, 347G–H, 354H–355A).

Nordenfelt v. Maxim Nordenfelt Guns and Ammunition Co. Ltd. [1894] A.C. 535, H.L.(E.) and Eastham v. Newcastle United Football Club Ltd. [1964] Ch. 413 applied .

(4) That, since under the rules of the ICC the member countries themselves, rather than their governing bodies for cricket, were treated as being the members and the rules drew a clear distinction between a country and such governing body, the ICC had failed to show that it was an organisation consisting “wholly or mainly” of employers, and therefore it could not be an employers' association within the meaning of section 28 (2) (a) of the Trade Union and Labour Relations Act 1974 ; that, although the TCCB was an organisation consisting wholly or mainly of employers of one or more descriptions, it also was not an employers' association within the definition in section 28 (2) (a) because it was not constituted for the purpose of regulating relations

between the employers and employees and, under its rules, it was not responsible to its members but to the Cricket Council; and that, since the defendants were not protected from liability in tort by section 14 of the Act, the plaintiffs were entitled to declarations that the alterations made to the rules were ultra vires and void (post, pp. 359E–360B, E–F, 361B–H).

The following cases are referred to in the judgment:

- Aspdin v. Austin (1844) 5 Q.B. 671 .
- Blackler v. New Zealand Rugby Football League (Incorporated) [1968] N.Z.L.R. 547 .
- Boulting v. Association of Cinematograph, Television and Allied Technicians [1963] 2 Q.B. 606; [1963] 2 W.L.R. 529; [1963] 1 All E.R. 716, C.A.
- Buckley v. Tutty (1971) 125 C.L.R. 353 .
- Devonald v. Rosser & Sons [1906] 2 K.B. 728, C.A.
- Eastham v. Newcastle United Football Club Ltd. [1964] Ch. 413; [1963] 3 W.L.R. 574; [1963] 3 All E.R. 139 .
- Emerald Construction Co. Ltd. v. Lowthian [1966] 1 W.L.R. 691; [1966] 1 All E.R. 1013, C.A.
- Glamorgan Coal Co. Ltd. v. South Wales Miners' Federation [1903] 2 K.B. 545, C.A. ; sub nom. South Wales Miners' Federation v. Glamorgan Coal Co. Ltd. [1905] A.C. 239, H.L.(E.) .
- Instone v. A. Schroeder Music Publishing Co. Ltd. [1974] 1 W.L.R. 1308; [1974] 3 All E.R. 616, H.L.(E.) .
- Keane v. Boycott (1795) 2 H.B1. 511 .
- Kores Manufacturing Co. Ltd. v. Kolok Manufacturing Co. Ltd. [1959] Ch. 108; [1958] 2 W.L.R. 858; [1958] 2 All E.R. 65, C.A.
- Lee (Joe) Ltd. v. Lord Dalmeny [1927] 1 Ch. 300 .
- Mogul Steamship Co. Ltd. v. McGregor, Gow & Co. (1889) 23 Q.B.D. 598, C.A.
- Nagle v. Feilden [1966] 2 Q.B. 633; [1966] 2 W.L.R. 1027; [1966] 1 All E.R. 689, C.A.
- Nordenfelt v. Maxim Nordenfelt Guns and Ammunition Co. Ltd. [1894] A.C. 535, H.L.(E.) .
- Posluns v. Toronto Stock Exchange and Gardiner (1965) 46 D.L.R. 210 .
- Rookes v. Barnard [1964] A.C. 1129; [1964] 2 W.L.R. 269; [1964] 1 All E.R. 367, H.L.(E.) .
- Russell v. Amalgamated Society of Carpenters and Joiners [1910] 1 K.B. 506, C.A.
- Stratford (J. T.) & Son Ltd. v. Lindley [1965] A.C. 269; [1964] 3 W.L.R. 541; [1964] 3 All E.R. 102, H.L.(E.) .

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- Thomson (D. C.) & Co. Ltd. v. Deakin [1952] Ch. 646; [1952] 2 All E.R. 361, C.A.
- Torquay Hotel Co. Ltd. v. Cousins [1969] 2 Ch. 106; [1969] 2 W.L.R. 289; [1969] 1 All E.R. 522, C.A.

The following additional cases were cited in argument:

- Bennett v. Bennett [1952] 1 K.B. 249; [1952] 1 All E.R. 413, C.A.
- Birmingham and Midland Motor Omnibus Co. Ltd, v. Worcestershire County Council [1967] 1 W.L.R. 409; [1967] 1 All E.R. 544, C.A.
- Birtley and District Co-operative Society Ltd. v. Windy Nook & District Industrial Co-operative Society Ltd. (No. 2) [1960] 2 Q.B. 1; [l959] 2 W.L.R.415; [1959] 1 All E.R. 623 .
- Causton v. Mann Egerton (Johnsons) Ltd. [1974] 1 W.L.R. 162; [1974] 1 All E.R. 453, C.A.
- Dickson v. Pharmaceutical Society of Great Britain [1970] A.C. 403; [1968] 3 W.L.R. 286; [1968] 2 All E.R. 686, H.L.(E.) .
- Edwards v. Society of Graphical and Allied Trades [1971] Ch. 354; [1970] 3 W.L.R. 713; [1970] 3 All E.R. 689, C.A.
- Gledhow Autoparts Ltd. v. Delaney [1965] 1 W.L.R. 1366; [1965] 3 All E.R. 228, C.A.
- Global Plant Ltd. v. Secretary of State for Social Services [1972] 1 Q.B. 139; [1971] 3 W.L.R. 269; [1971] 3 All E.R. 385 .
- McWilliam v. William Collins, Sons & Co. Ltd. [1974] I.C.R. 226, N.I.R.C .
- Market Investigations Ltd. v. Minister of Social Security [1969] 2 Q.B. 173; [1969] 2 W.L.R. 1; [1968] 3 All E.R. 732 .
- Midland Cold Storage Ltd. v. Turner [1972] I.C.R. 230; [1972] 3 All E.R. 773, N.I.R.C .
- Morgan v. Fry [1968] 2 Q.B. 710; [1968] 3 W.L.R. 506; [1968] 3 All E.R. 452, C.A.
- National Union of General and Municipal Workers v. Gillian [1946] K.B. 81; [1945] 2 All E.R. 593, C.A.
- Northern Messenger (Calgary) Ltd. v. Frost (1966) 56 W.W.R. 412; 57 D.L.R. 456 .
- Saxone Shoe Co. Ltd.'s Trust Deed, In re [1962] 1 W.L.R. 943; [1962] 2 All E.R. 904 .
- Sefton v, Tophams Ltd. [1965] Ch. 1140 ; [1964] 1 W.L.R. 1408; [1964] 3 All E.R. 876 .

ActionsOn August 3, 1977, three well known first class cricketers, Anthony William Greig John Augustine Snow and Michael John Procter, issued a writ against Douglas John Insole and Donald Bryce Carr, as representatives of the Test and County Cricket Board ("TCCB"), and William Hugh Webster and Jack Arthur Bailey, as representatives of the International Cricket Conference ("ICC"). The plaintiffs claimed, inter alia, a declaration that purported change of rules by the ICC, and implementation of the change by the TCCB, banning the plaintiffs, if they played in cricket matches other than conventional Test Matches, from playing Test Matches and first class county cricket in England was an unlawful restraint of their right to play professional cricket and was ultra vires and void. Further, they sought an injunction restraining the TCCB from implementing the decision to ban the plaintiffs from playing Test cricket or county cricket in England.

On August 3, J.P. Sport Pty. Ltd., which changed its name to World Series Cricket Pty. Ltd., issued a writ against the representatives of the ICC seeking, inter alia, an injunction restraining them from implementing, or from recommending the TCCB, or any of its members, to implement ***307** their purported change of rules banning cricketers from playing Test Matches, if they played in matches organised by World Series Cricket, on the ground that the change was an inducement to cricketers, who had contracted with World Series Cricket, to break their contracts.

World Series Cricket also sought an injunction restraining the TCCB from taking, at its meeting due

to be held on August 5, 1977, or at any other time, any decision which was made, or was calculated, to induce cricketers, who had contracted to play for World Series Cricket, to break their contracts.

Both the actions were heard together.

The facts are stated in the judgment.

Representation

- Robert Alexander Q.C., Andrew Morritt Q.C., J. G. Phillips and Jonathan Hirst for the plaintiffs.
- Michael Kempster Q.C., Patrick Milmo and James Price for the defendants.

Cur. adv. vult.

SLADE J.

November 25. SLADE J. read the following judgment.

I The background to the two actions

These two actions raise issues which are of importance to all persons who play or aspire to play the game of cricket at first-class level and are indeed of concern to all persons interested in the game. These issues have already produced an acute division of opinion throughout the cricketing world and may perhaps continue to be debated hereafter so long as the game is played. The trial of the actions has lasted for 31 days. They have raised many issues of law and the evidence has touched on almost every aspect of the organisation and structure of first class cricket. I have been greatly assisted by counsel on both sides.

In the first action there are three individual plaintiffs, Mr. Greig, Mr. Snow and Mr. Procter, who are well known and talented professional cricketers. All three have played for English county clubs for some years. Mr. Greig and Mr. Snow have played in many Test Matches for England and indeed Mr. Greig has recently captained the English team. Mr. Procter has in the past played for South Africa. In the second action, the plaintiff is an Australian company which was formerly known as J.P. Sport Pty. Ltd., but has recently changed its name to World Series Cricket Pty. Ltd. This company, which I will call "World Series Cricket," promotes sporting events of various kinds and has recently engaged Messrs. Greig, Snow and Procter, among other persons, to play in a series of cricket matches to be organised by it in Australia and possibly elsewhere.

The first defendants in each action are Mr. Insole and Mr. Carr. They are sued on behalf of all members of an unincorporated association known as the Test and County Cricket Board, which I will call "the TCCB" and of which they are respectively the chairman and secretary. The second defendants in each action are Mr. Webster and Mr. Bailey, who are sued on behalf of all members of another unincorporated association known as the International Cricket Conference, which I will call "the ICC." They are respectively the chairman and secretary of that body.

As a result of the recent entry of World Series Cricket into the field of cricket promotion, the ICC in July 1977 changed its rules in a manner ***308** which, if implemented, is likely effectively to disqualify any of the three individual plaintiffs from playing in official international Test cricket for an indefinite period of time, if he plays in any cricket match organised by World Series Cricket. The TCCB proposes, subject to the decision of the court in the present proceedings, to change its rules in a manner which is likely to disqualify any of these three plaintiffs from playing in English county cricket for at least several years, if

he plays in any such match. The plaintiffs in both actions claim that these new or proposed new rules will be legally invalid and seek orders which will effectively prevent the ICC and TCCB from implementing them. In the second action, World Series Cricket further claims that the new or proposed new rules are or would be an unlawful inducement to a number of players who have entered into contracts with it, including the three individual plaintiffs, to break such contracts; it seeks appropriate relief on this basis.

For many years, the ICC has effectively exercised sole control over the promotion of first class cricket matches played at international level. Under its constitution it has two "foundation members," namely, the United Kingdom and Australia, four "full members," namely, India, New Zealand, West Indies and Pakistan and some 16 "associate members." Its chairman is the president of the Marylebone Cricket Club ("the MCC") for the time being or his nominee. Its secretary is the secretary of the MCC. Under its auspices are played official Test Matches, which are defined in its constitution as matches played between teams selected by foundation and full members as representative of their countries. The functions assigned to the ICC by its constitution include responsibility for the status of official Test Matches, the qualification rules for cricketers for Test Matches and the confirmation of tours in the programme for visits of official teams between foundation and full member countries; it has duly laid down certain minimum qualification rules that apply to all countries which participate in Test Matches. It is further empowered in conjunction with the recognised governing body of cricket of any country to impose more stringent qualification rules for that country. This power also has been exercised. The effect of the ICC's constitution therefore is such that it claims the exclusive power to decide the qualifications which any cricketer must possess, if he is to be eligible to play for any country in official Test Matches.

The governing body of cricket of the United Kingdom recognised by the ICC is an unincorporated association known as "the Cricket Council." Under its constitution, it is to

"act as the governing body for cricket in the United Kingdom and be responsible for the conduct and organisation of cricket throughout the United Kingdom and for official tours overseas recognised by the council."

It also appoints representatives for the United Kingdom to the ICC.

The task of actually organising and administering Test Matches in the United Kingdom and also MCC overseas tours is performed not by the ICC or the Cricket Council but by another unincorporated body, the TCCB. The membership of the TCCB consists of the MCC, each of the 17 first class counties and the Minor Counties Cricket Association. Under its constitution, it is responsible to the Cricket Council for a number of matters, including the organisation and administration of Test Matches in the United Kingdom and MCC overseas tours and also the administration ***309** and promotion of the First Class County Championship, and the rules governing the registration and qualification of cricketers in county cricket. It also administers sponsored one day matches between the Test-playing countries known as "Prudential Trophy" matches, and other sponsored competitions involving the first class counties such as the "Gillette Cup," "John Player League" and "Benson and Hedges Cup" competitions. Under the rules of the TCCB any cricketer has to be registered with the TCCB if he is still to be eligible to play county cricket. Subject to its overriding responsibility to the Cricket Council, the TCCB thus claims the exclusive right to regulate the qualifications which must be possessed by a cricketer if he is to be eligible to play in county cricket matches. It is to be observed, however, that the TCCB, like the ICC itself, has no authority beyond that conferred by the consent of its members and the plaintiff cricketers are not members of either body.

In at least two respects, the United Kingdom finds itself in an exceptional position among the six foundation and full members of the ICC, which I will describe as the "Test-playing countries." First, its cricketing season runs from early May to mid-September, while the seasons of the other five countries run somewhere between October and March. Secondly, while in general terms none of the other five countries are in a position to offer even their most successful players the opportunity to make a living out of cricket, there are at present approximately 230 cricketers in this country, who play for one or other of the 17 first class county clubs and most of whom earn their living largely from cricket. A number of cricketers from the other Test-playing countries come to the United Kingdom to take part in the county cricket season, for which, subject to certain conditions, they are now eligible. It can thus be said that a career is open to a man as a professional cricketer in the United Kingdom, where indeed amateur status, as such, was formally abolished some years ago. The evidence before the court, however, shows that, at least until very recently, professional cricketers in the United Kingdom have in general, rightly or wrongly, regarded themselves as substantially under paid for the cricket which they play.

Most years will see visits by official touring teams of one or more of the Test-playing countries to others of such countries. The differences in the dates of their cricket season enable such tours by United Kingdom teams always to take place during their own "close" season, which puts the United Kingdom in an especially favourable position. These tours offer opportunities to cricketers to play the game at first class level for remuneration at times of the year when they will not be able to play in their own country. Such opportunities are much sought after by many, but necessarily open only to a very few.

I have seen giving evidence on behalf of the defendants a number of persons who are among the top administrators of cricket in one or other of the Test-playing countries. Without any exception, I have been impressed by their obvious, disinterested dedication to and concern for the game. If they can be regarded as fairly representative of it, I am not surprised that cricket has traditionally been regarded by many as embodying some of the highest professional standards in sport. These witnesses all clearly regard the official Test-match structure as something which should represent the pinnacle of any cricketer's ambition. They thus find it difficult to understand how any cricketer could, even for good commercial reasons, bring himself to do anything which could be thought likely ***310** directly or indirectly to damage the structure of international cricket of which Test Matches at present form the all-important part.

The importance of Test Match cricket to the authorities in the Test-playing countries, however, is far from being based solely on sentimental or emotional grounds. They are in general an extremely profitable concern. To take one example at random, the Test Matches played by the Australian touring team in England during the summer of 1977 are together likely to produce a net profit for United Kingdom cricket of not far short of £1m. Cricket, however, according to the evidence has one peculiar feature. As Mr. Steele, a member of the Australian Cricket Board, said in evidence, except at Test Match level it is not really a spectators' sport; it is basically a players' sport. The evidence from the various Test-playing countries before me all suggests that in general there is no very substantial spectator attendance except at Test Matches and correspondingly that these are generally the only matches likely to produce any substantial profit. In all the Test-playing countries, the county sides or state associations or the equivalent necessarily constitute the breeding ground in which players are trained and the source on which Test selectors largely, if not exclusively, rely in choosing their Test teams. In the situation just described, however, county clubs and state associations are themselves very dependent for their solvency on subventions from Test Match receipts.

The structure and finances of cricket in the Test-playing countries are thus vulnerable, in the sense that they are dependent to a considerable degree on the continued popular attraction and profitability of Test Matches. Anything which is likely to prejudice such attraction or profitability must be of concern to those organising cricket in those countries.

The very size of the profits which can be made out of cricket matches involving star players, however, must for some years have carried with it the risk that a private promoter would appear on the scene and seek to make money by promoting cricket matches involving world-class cricketers. The risk might perhaps have been a more limited one, if the structure of official cricket in the Test-playing countries had been such as to offer the most talented cricketers a secure and remunerative career structure. In this event, a private promoter might perhaps have had few attractions to present to those used to playing in conventionally organised cricket. In a world situation, however, where no country save the United Kingdom offers any real career structure for an aspiring professional cricketer, and the United Kingdom itself only offers rewards which many professional cricketers have considered inadequate, the path open to an aspiring commercial promoter of cricket is a much easier one. It is perhaps surprising that, so far as the evidence shows, until the beginning of 1977 there had never appeared any private promoter of cricket matches who offered any real challenge to the conventional structure of first class cricket. Nevertheless, against the background which I have described from a bird's eye viewpoint, such a challenge to the conventional structure of cricket headed by the ICC was bound to come sooner rather than later, and this was what actually happened in the early months of 1977.

During the period January to April 1977, World Series Cricket engaged some 34 of the world's leading cricketers (including four from England, four from South Africa, four from the West Indies, four from Pakistan and 18 from Australia) under contracts which bound or purported to bind these players to make themselves available to play in a series of matches, described in the contracts as “test matches,” to be organised by the company ***311** in Australia and possibly elsewhere. The duration of the contracts varied from one to three years (or in one case five years). They were entered into in conditions of secrecy, so as to facilitate recruitment. The news, however, became public on May 9 and caused great consternation among the governing bodies for cricket of all the Test-playing countries. No one could reasonably be surprised at such consternation in the circumstances which have been summarised. The decision for the court, however, will be whether the particular steps which the ICC and TCCB took in order to deal with the situation were justifiable in law.

Briefly, the steps taken were the following. On July 26, the ICC, after anxious and protracted consideration, passed a resolution changing its rules relating to qualifications for Test Matches. The effect of this change was that any player who, after October 1, 1977, should play or make himself available to play in a match previously disapproved by the ICC should thereafter be disqualified from playing in any Test Match without the express consent of the ICC, such consent to be given only on the application of the governing body for cricket of the player's country. The ICC then proceeded to pass a resolution specifically disapproving for the purpose of its rules, inter alia, any match arranged or to be arranged by World Series Cricket to take place in Australia or elsewhere between October 1, 1977, and March 31, 1979. One of the effects of this disapproval, coupled with the previous change of rule, if valid, would thus be to disqualify from Test cricket any cricketer, such as the individual plaintiffs in these actions, who might after October 1, 1977, carry out his contract with World Series Cricket by playing in a match arranged by it during the period October 1, 1977, to March 31, 1979. Finally, at its meeting on July 26, the ICC passed a resolution strongly recommending that each mem-

ber country should pursue as soon as possible, in first class and other domestic cricket activities, the implementation of the decisions made in regard to Test Matches.

Following this meeting of the ICC held on July 26, a meeting of the TCCB was due to be held on August 5, at which it was anticipated that a resolution would be proposed and passed effectively disqualifying from playing in any competitive county cricket match any cricketer who should for the time being be subject to the newly introduced Test Match ban. Such county cricket ban was proposed to operate for a period of two years immediately following the date of the last day of the last match previously disapproved by the ICC in which the player concerned had played or made himself available to play.

The ICC Test Match ban by its very nature imposed a serious restriction on the fields in which those players who had contracted with World Series Cricket might thereafter seek employment as professional cricketers. The TCCB ban, if implemented, will be still more drastic in its effect. Of the players who have now entered into contracts with World Series Cricket, about 20 play English county cricket. Though there are certain other fields of employment possibly available to them, such as English league cricket (which does not enjoy first class status), English county cricket provides by far the most attractive form of regular employment for any cricketer who wishes to make his living out of playing cricket during the English summer. All three individual plaintiffs wish to continue playing county cricket and, in the absence of bans, will not be prevented from so doing by the arrangements which they have made with World Series Cricket. Furthermore, irrespective of any bans, Test Match cricket is probably no longer open to Mr. Snow, who is a fast bowler aged ***312** 35 years or to Mr. Procter, who is disqualified by reason of his South African nationality. Effectively, therefore, the proposed TCCB ban would prevent them from playing in first class cricket at all; and at least Mr. Procter has no qualifications to make his living in any other way. Mr. Alexander, in opening the case on behalf of the plaintiffs, described the county ban as illogical, because it deprives English cricket of leading players whose presence is important to the success of the game, dictatorial, because the TCCB is asserting the right to monopolise control over cricket and to stifle all competition, penal, because the TCCB is seeking to deprive those who play in World Series matches of the opportunity to make their living in the summer by playing first class cricket, and as challenging an elementary freedom, because by it the TCCB seeks drastically to restrict the way in which cricketers can earn their livings. The substantial financial rewards which the three individual plaintiffs will receive from World Series Cricket would no doubt compensate them to some extent for the loss of opportunities in other fields. There can, however, be no doubt as to the seriousness of the proposed bans so far as they are concerned and indeed in relation to many of the other players not parties to this action who have contracted with World Series Cricket.

II The issue of proceedings, the relief sought and the amendment of the defences

Against this background, the individual plaintiffs issued their writ in the first action on August 3, 1977. In this action they seek a declaration that the changes of rules by the ICC and proposed changes of rules by the TCCB would be ultra vires and an unlawful restraint of trade. Their claim in this action, however, is not one based solely on alleged restraint of trade. Further or in the alternative, they claim that the changes or proposed changes of rules are void as denying them “the right to work,” that is the freedom to practise their profession when, where and how they wish. This alternative plea becomes rather more significant in the light of the form of the amended defence to this action, to which I will shortly refer. Also on August 3 World Series Cricket issued its writ. The statement of claim in that action seeks not only declarations that the changes of rules are or would be void on the al-

ternative grounds which I have stated, but also a declaration that they are or would be an unlawful inducement to the players involved to break their contracts with World Series Cricket.

When the trial began, it was, I think, assumed by all parties to both actions (including the defendants themselves) that the claims involved and the defences to them would fall to be argued and decided without reference to any statutory legislation. By the fourth day of the trial, however, a possible new line of defence had occurred to the defendants' advisers. On that day they gave notice to the plaintiffs in both actions that they intended to apply for leave to amend their defences by pleading that each of them is an "employers' association" within the meaning of section 28 (2) of the Trade Union and Labour Relations Act 1974 , and relying on section 3 (5) in both actions and also, in the second action, on section 14 of that Act. In due course, in the face of some adverse comment but no opposition from the plaintiffs' counsel, the defendants were duly given such leave. Though I shall have to refer later to the statutory definition of "employers' association," this will be a convenient moment to explain how the Act of 1974 may be relevant.

Subject to certain immaterial exceptions, section 14 of the Act provides:

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"(1)… no action in tort shall lie in respect of any act —(a)alleged to have been done … by or on behalf of an unincorporated employers' association; or …(c) alleged to be threatened or to be intended to be done as mentioned in paragraph (*a*) … above; against the … association in its own name … or against any members or officials of the … association on behalf of themselves and all other members of the … association."

By their alternative plea based on section 14 of the Act, the defendants in the second action in effect say that since, first, they are "employers' associations" and, secondly, an action for inducement of breach of contract is an action in tort, the claim based on inducement of breach of contract, however proved and justified it would otherwise be, is not maintainable, because the defendants enjoy a statutory immunity from this class of claim. If the defendants are correct in their assertion that they constitute "employers' associations," such immunity must indisputably follow.

Section 3 (5) of the Act confers on unincorporated "employers' associations" certain further, far-reaching immunities from the ordinary processes of the law. So far as material for present purposes, it provides:

"… nor shall any rule of an unincorporated employers' association … be unlawful or unenforceable by reason only that it is in restraint of trade."

The defendants in both actions assert in effect that, if contrary to their contention, their new rules or proposed new rules would otherwise be unlawful as being in restraint of trade, section 3 (5) operates to render the new rules lawful. In this instance, however, the plaintiffs in each action have countered this assertion in argument not only by a refusal to accept that either of the defendants is an "employers' association," but also by a submission that, in any event, the unlawfulness of the new or proposed new rules does not arise by reason only of their being "in restraint of trade" within the wording of the subsection. They submit in the alternative that the rules are invalid as denying the players involved the right to work and that invalidity arising on these particular grounds is not removed by section 3 (5) , when it is properly construed.

It is common ground that, if the plaintiffs are to succeed on any cause of action, they must establish that all the essential elements necessary to establish such cause of action were present at the date when the writs were issued, August 3, 1977. This point of date has particular relevance in relation to the

claims based on alleged inducement of breach of contract. In the latter context it is relevant, inasmuch as these particular claims have from the beginning been quia timet claims, that is to say claims based merely on apprehended injury; it is not claimed that any attempted inducement by the defendants has as yet actually resulted in any of the players involved withdrawing from their contracts.

In the context of inducement of breach of contract, a further point will arise for decision. The defendants, having since the issue of proceedings for the first time seen copies of typical contracts entered into between World Series Cricket and the players involved, now assert that they are on the face of them not merely voidable but void for reasons which I will explain later. The relevance of this assertion is that it does not constitute a tort to induce the breach or termination of a void contract.***314**

III The nine principal questions to be decided

In all the circumstances, Mr. Kempster on behalf of the defendants suggested that there were 14 questions which the court will have to decide in these two actions. Mr. Morritt on behalf of the plaintiffs suggested that there were 20. Though many other subsidiary points will fall to be dealt with, including all those referred to by counsel, I regard the following as being the nine principal questions that will arise for ultimate decision of the court in these two actions:

- (A) Are the contracts between World Series Cricket and its players void?
- (B) Has World Series Cricket established that as at August 3, 1977, and subject to any statutory immunity conferred by the Act of 1974, it had a good cause of action in tort against the ICC, based on inducement of breach of contract?
- (C) Has World Series Cricket established that as at August 3, 1977, and subject as aforesaid, it had a good cause of action in tort against the TCCB based on the same grounds?
- (D) Subject to the provisions of the Act of 1974, are the new rules of the ICC void as being in restraint of trade?
- (E) Subject as aforesaid, are the proposed new rules of the TCCB void as being in restraint of trade?
- (F) Is the ICC an “employers' association” within the meaning of the Act of 1974?
- (G) Is the TCCB an “employers' association” within the meaning of the Act?
- (H) If either or both of the ICC and the TCCB be “employers' associations,” does this itself bar any cause of action that would otherwise exist?
- (I) In the light of the answers to the eight preceding questions, what relief (if any) should be given to — (i) the individual plaintiffs and (ii) World Series Cricket?

I shall attempt to answer the last eight of these nine questions at the end of my judgment and in the same order. For convenience, however, I shall interpose my answer to question (A) in the course of the detailed recital of the facts of the case. Before embarking on such recital, however, I think it will be helpful at this stage first to summarise briefly some of the voluminous evidence as to the organisation and finances of cricket at first class level in the Test-playing countries and secondly to summarise the conditions under which cricketers in these countries work.

IV [His Lordship considered the organisation and finances of cricket at domestic first class level in five of the Test-playing countries, i.e., United Kingdom, Australia, India, New Zealand and West

Indies, the defendants having called no evidence in relation to Pakistan, and concluded:] (a) Cricket (by which I mean conventional first class cricket) in the United Kingdom depends for its financial viability considerably on the profits from Test Matches played in England against overseas touring teams from the other five Test-playing countries. It does not depend for this purpose on profits from tours overseas, though presumably it would have to send teams to those countries with whom the "reciprocal guarantee" system operates (Australia, India and Pakistan), if it was to persuade them to send their own teams to this country.

- (b) Cricket (in the same sense) in Australia depends considerably for ***315** its financial viability on the profits made by it from Test Matches played in Australia against the United Kingdom, the West Indies and Pakistan. It does not depend for this purpose on matches played against New Zealand or India, whether in or out of Australia. Nor does it depend for this purpose on tours to the United Kingdom, the West Indies or Pakistan, though it might have to send teams to those countries, if it was to persuade them to send their own teams in return.
- (c) Cricket in India depends for its financial viability considerably on the profits made by it from Test Matches played in India against the other Test-playing countries. It does not depend for this purpose on tours made by it to the other countries, though it might have to visit them in order to persuade them to send their own teams in return.
- (d) Cricket in New Zealand depends for its financial viability considerably on the profits made by it from Test Matches played both in New Zealand and on overseas tours.
- (e) Cricket in the West Indies depends for its financial viability considerably on the profits made by it from Test Matches whether played in England or the West Indies against the United Kingdom or Australia. It does not depend on profits made by it from Test Matches played against India, New Zealand or Pakistan.

V [Dealing with the evidence of the conditions of work of cricketers in the Test-playing countries, his Lordship observed that in the United Kingdom first class county cricket provided the principal source of their livelihood. Apart from Test Matches, the only other way in which they might earn money by playing cricket was by playing in league cricket. Most county players were not offered contracts for more than a year's duration. The period during which they would be actually working for their clubs would normally be from April to about mid-September. Their schedule over that period was an arduous one, involving a great deal of travel, as well as cricket, with considerable interruptions to domestic life. After a player had been with his county for about 10 years or more, his county club might, if it saw fit, award him what was called a "benefit" year. For a popular player, that might bring in a substantial and welcome capital sum but no player had the certainty that he would be awarded a "benefit" year. While the figures varied the remuneration received by Mr. Snow in the 1977 season (£3,500 including "win money" and money for appearances) seemed reasonably typical of a county player's remuneration and might not be thought large. It would be open to a professional cricketer to supplement his income as best he could during the winter months, but that might be difficult for him, particularly if he had no qualifications outside cricket. Two points clearly emerged, (i) neither the Cricket Council nor the TCCB on its behalf had themselves entered into any kind of commitment, legal or otherwise, ever to offer employment to any of the players again; and (ii) the players themselves had entered into no contractual commitment with the Cricket Council or the TCCB precluding them from playing cricket for a private pro-

moter. His Lordship continued:]

In these circumstances, so far as it is relevant, I do not accept the force of any criticism on moral grounds that may have been levelled against players such as Mr. Snow and Mr. Procter for entering into contracts with World Series Cricket. I do not see that it was reasonable for the defendants, who had placed themselves under no kind of commitment to the plaintiff players for the future, to expect these players to ***316** subject themselves to a self-imposed embargo against playing for any private promoter during the winter months, merely because such promoter might be organising matches which would in certain circumstances compete with official Test Matches. If cricketing authorities employ a player to go on a tour or indeed perhaps even if they employ him to play in one or more Test Matches at home, it may be open to them, as a matter of fair negotiation, to demand from him, as a price for the privileges which he himself will derive from participating in the match, a limited covenant precluding him from playing for competitors. If such covenant represents no more than is reasonably required for the authorities' protection, in terms of duration place and otherwise and is reasonable in the interests of the public, it may perhaps be enforceable according to its terms. I do not, however, think that such authorities can regard a player as being in breach of a moral commitment to them merely because he has failed to treat himself as being under a covenant not to play for a competitor, which they have not chosen to exact from him. A professional cricketer needs to make his living as much as any other professional man. I think it is straining the concept of loyalty too far for authorities such as the defendants to expect him to enter into a self-denying ordinance not to play cricket for a private promoter during the winter months, merely because the matches promoted could detract from the future profits made by the authorities, who are not themselves willing or in a position to offer him employment over the winter or to guarantee him employment for the future. It follows from this that I can likewise see no sufficient grounds why the players concerned, with the possible exception of Mr. Greig, can justifiably be criticised on moral grounds for having entered into contracts with World Series Cricket in conditions of secrecy. The subsequent actions of the defendants have made it abundantly clear that, had they been informed in advance of the World Series project, they would have done their utmost to prevent it from taking root and thus to prevent the players involved from enjoying the advantages offered to them by World Series Cricket.

For all these reasons, to anticipate a little, I reject any suggestions that the retrospective imposition of the bans in question on those players who had already contracted with World Series Cricket, can be justified on the grounds that it constituted a well-merited punishment. The penal aspect of the bans featured prominently, though not exclusively, in the evidence of a number of the defendants' witnesses, such as Mr. Steele and Mr. Hadlee. If the bans are to be justified at all, they must in my judgment be justified on grounds other than this. I should emphasise, however, that their possible merits as punishment were not in any way relied on in argument by the defendants' counsel, who relied on quite different grounds to justify them. What has been said in the present context therefore does not come near to disposing of any part of the case. [His Lordship then dealt with the evidence regarding conditions of work of cricketers in Australia, India, New Zealand, West Indies and Pakistan.]

VI Mr. Kerry Packer, the Australian Cricket Board and Australian television

Against this background, I must now embark on a more detailed history of the facts of this case, which must begin in Australia with Mr. Kerry Packer. Mr. Packer is an Australian national, who has been engaged all his adult life in business activities of one kind or another. These activities include television and publishing. He has a particular ***317** association with a company known as Television Corporation Ltd., which forms part of a large group of companies in which he is a

dominating influence. His company has prospered and its prosperity has enabled him, through it, to sponsor Australian sport in two significant ways. For the past three or four years, his company has sponsored the Australian Open Golf Championship, which has involved it in significant expenditure, including a sum of A$600,000 incurred in redesigning a golf course. It has derived no profit from the sponsorship. From about the beginning of this year, 1977, he has also been involved in sponsoring an ambitious and imaginative cricket coaching scheme, under which large numbers of boys will from time to time be invited to a boarding school in New South Wales, where they will receive the benefit of one week's intensive tuition from high class cricketers. They will pay nothing to come and his evidence was that the school will cost him or his company about A$200,000 with no recoupment. I accept his evidence that, contrary perhaps to some popular belief, he likes cricket and originally embarked on this pilot coaching scheme, which he hopes may extend to other states, quite independently from the project involving World Series Cricket matches.

Mr. Packer had not been involved in promoting cricket matches in Australia before the end of 1976, but had been involved earlier that year in an unsuccessful attempt to acquire certain television rights from the Australian Cricket Board.

Television started in Australia in 1956. At all material times, there have been one national network run by the Australian Broadcasting Commission, which has outlets over substantially the whole country, and three competing commercial networks, each of which has outlets more restricted in area. One of these commercial networks is known as the Nine Network and is controlled by a company which is part of the Packer group of companies. The network has facilities for transmission more restricted in area than those of the commission, but it can on occasion make arrangements, if it thinks fit, to cover the whole of Australia by means of subcontracts.

Until about 12 years ago, there operated a specific agreement or understanding between the Australian Broadcasting Commission and the commercial networks that none of them would negotiate individually for exclusive rights in respect of a sporting event. This agreement then broke down. Even after that, however, the Australian Cricket Board has never sold exclusive rights in relation to cricket played in Australia. Its practice has been first to reach an agreement with the Australian Broadcasting Commission, under which non-exclusive rights are granted to the commission, and then to negotiate individually with the commercial networks, with a view in due course to reaching agreement with the network which makes what it regards as the most satisfactory offer. In the result, Test Matches played in Australia have in the past generally been transmitted in Australia both by the commission and one or perhaps two commercial channels. On the other hand, rights to televise cricket overseas have always been sold by the board on an exclusive basis to the B.B.C.

[His Lordship considered the negotiations by Mr. Packer for the rights to televise Test Matches and continued:]

Having seen Mr. Packer in the witness box, I am satisfied that his unsuccessful dealings with the Australian Cricket Board in the summer of 1976, in his attempt to acquire the exclusive rights to televise Test Matches in Australia over the next five years, coupled with that board's subsequent attempts to prevent him from acquiring the television rights ***318** in Australia to the 1977 England/Australia Test series, had left him, reasonably or unreasonably, with a profound distrust of the Australian Cricket Board. Rightly or wrongly, he considered it in general a reactionary body which was not prepared to take all the sensible steps necessary to inject money badly needed by Australian cricket. Rightly or wrongly, he also considered that he personally had been unfairly treated by it and was likely to be subjected to discriminatory treatment in any future attempt on his part to

acquire television rights. These beliefs, in my judgment, motivated and explain a number of his subsequent actions.

VII The origin of the World Series Cricket project and the enlistment of the plaintiff cricketers

At the end of 1976, Mr. Packer, who had previously had nothing to do with the promotion of cricket, was approached by a Mr. John Cornell, a director of the plaintiff company, which was then known as J.P. Sport Pty. Ltd. and was concerned with the promotion of sport. At that time Mr. Packer had no shareholding or other interest in it, but he subsequently acquired this. Mr. Cornell or his company had been asked for advice and help by Mr. Dennis Lillee, a distinguished Australian cricketer who was dissatisfied with the financial rewards available to cricketers in Australia. Mr. Cornell put to Mr. Packer the idea of promoting a "world series" of cricket matches to be played principally in Australia in the Australian summer, in which many or most of the world's best players would take part. The idea interested Mr. Packer because, according to his evidence, he thought that it would be attractive to cricketers and to the public and would produce lucrative profits for his organisation.

Personally, or by his agents, Mr. Packer invited in secrecy the reactions to the world series project of a number of top class cricketers of various nationalities. If he had been rebuffed, the project would never have got off the ground. Instead, the cricketers responded with what he described as frightening alacrity. The project attracted them, he said in evidence, and I have no reason to doubt this, for two principal reasons: first, because they were excited at the prospect of playing cricket with the best international players, selected on grounds solely of ability and without any regard to political considerations, and secondly, because it would offer them security and high financial reward. He commented that their reactions in response to his invitation by themselves indicated their dissatisfaction with the financial conditions under which they had previously been working.

Between January 10, 1977, and April 29, 1977, Mr. Packer or other representatives of World Series Cricket signed on in secrecy 18 Australian cricketers under written contracts. The evidence before me suggests that these cricketers included all, or almost all, of the persons who would then have been regarded as the best cricketers eligible to represent Australia.

One of them, Mr. Ross Edwards, has given evidence in these proceedings. Having for some years played in the Western Australia side, he was selected to come to England with the Australian touring team in the 1972 English summer. In the winter 1972–73 he then took part in an Australian home series against Pakistan and at the end of March 1973 he went on an overseas tour to West Indies. The following year the Australians took a team to New Zealand for which Mr. Edwards was not selected. He was however selected for the visit of the Australians to England in the summer of 1975. Later in 1975 he carried out a decision he had made in December 1974 by retiring from Test and inter-state cricket. He explained ***319** in evidence the reasons for his retirement. He was and is a qualified chartered accountant and for some years had attempted to run cricket and his accountancy career in double harness. The financial rewards which he had derived from Australian cricket, however, were insignificant in comparison with the money which he had received from his other professional career. He had a wife and young family from whom cricket often kept him apart. He decided that there was no sufficient future for him in the game, which had already prejudiced his accountancy career, and that, despite his own enjoyment of it, he must give more priority to the interests of his family. Money was the primary reason why he retired from Test and inter-state cricket in 1975. Money was also the main reason which made him decide to return to the top class game, when he had the offer to play in World Series Cricket. He referred in his evidence to two other leading Australian cricketers who had retired from first class cricket but have been brought back into the game

by signing contracts with World Series Cricket. One is Mr. Ian Redpath; another is Mr. Ian Chappell, whom he described as one of the best cricketers that Australia has ever produced. Mr. Edwards considers that the increased level of payment offered by World Series Cricket will have a two fold effect on the interest in and development of cricket in Australia. First, it will enable players like Mr. Chappell to continue playing in the game and to show their skills and cultivate interest in it, secondly, it will provide a goal for younger players to aim for at the end of their cricketing careers.

After signing on Mr. Lillee and a number of the other Australian players, Mr. Packer saw Mr. Greig, who is now the first plaintiff in the first action. Against the background of his general evidence as to the life of any professional cricketer in England, Mr. Greig described in evidence his own frame of mind as at March 1977, after the Centenary Test Match had just been played between England and Australia. He is 30 years of age. He did not want to find himself playing cricket for too long and planned finally to leave the game at the age of 35, to leave time to establish himself in another employment and maintain his standard of living, which I infer is a fairly high one. Before his retirement, however, he hoped to play Test cricket for one or perhaps two more years and, as a swan song, to play full time cricket for his county, Sussex, for two years. He accepted under cross-examination that, in view of the success of the team which he had captained in the Test series just completed in Australia, he had a good chance of being invited to captain the England team in the next Test series. He had pointed out in chief, however, that he had seen a number of past captains replaced, including one in the middle of a quite recent Test series, and that he knew his captaincy could never be secure.

With these thoughts in mind, Mr. Greig went to Mr. Packer's house on March 20, 1977, with a view to offering himself as a television commentator for his organisation for a few months beginning in September 1977. On his arrival, however, Mr. Packer more or less immediately indicated that he had a different proposition to put to him. Before putting it, he demanded and obtained from him an undertaking that he would keep it secret. He then outlined to him the world series project and told him that the plaintiff company had already secured the services of a number of Australians. Having left this meeting Mr. Greig thought over the proposals put to him and consulted his solicitors and accountants about it. On March 25, 1977, he signed a three-year written contract with the plaintiff company, effectively at a stated yearly remuneration of $30,000, though I understand that some further benefits to him were orally agreed. I shall ***320** refer hereafter to the provisions of this contract, from which it will be seen that World Series Cricket would on the face of it have certain rights to prevent him from playing cricket in England in the English summer. However, the evidence of Mr. Greig and Mr. Packer, which I accept on this point, was, that despite the provisions of the written contract, Mr. Packer had made it plain, when Mr. Greig met him, that he had no intention of preventing him or any other English county players from playing in the English county cricket season. Mr. Greig therefore signed under the clear impression that, in absence of a ban, he would be able to continue playing for Sussex, which he wishes to do.

Mr. Greig knew, when signing, that there was a possibility that the defendants would try to impose a complete ban preventing him from playing in first class cricket. He decided, however, that he would take this risk in the light of the potential benefits to him and his family. He thought that he would be well paid over the three year term of the contract and that it would offer him not only security for this period, but also an opportunity to play very high class cricket in a country which he enjoys, with some of the best players in the world, and before large crowds which he also enjoys. He knew the contract would render him unavailable to captain or play for the MCC team which was due to tour Pakistan in the winter 1977–78, but recognised that

the substantial advantages to him and his family from the contract would only be obtained at the price of abandoning this tour. During the week before he signed the contract, he considered whether he should inform the TCCB of what he was proposing to do but decided not to do so. One factor in his mind in making this decision was that if the TCCB had known of the existence of the world series project, it would have doubtless communicated with the Australian Cricket Board in Australia and this might have jeopardised the opportunities of those Australians, who had already contracted with World Series Cricket, of being sent to England for the Test series due to take place in the summer of 1977. Furthermore, according to his evidence, his experience of 10 years in English county cricket had led him to the conclusion that in any event the English cricket establishment needed what he described as a "good shake-up," which would compel them to look at the way cricket was being administered, both in this country and abroad, and at what he regarded as the financial plight of its players. He thought that results for the general benefit of cricket and cricketers could well ensue, if only the emergence of the world series project could force the cricketing authorities throughout the world and World Series Cricket to get together. To use his own words he knew there would be a "blow-up" but felt that "sanity would prevail" and he fully intends to perform his contract himself.

Having finally decided to contract with World Series Cricket and not to inform the TCCB of this decision, Mr. Greig threw in his lot completely with World Series Cricket, in the sense that he undertook to assist in recruiting other top class players. Mr. Packer asked him to accompany Mr. Austin Robertson to speak to players whom he wished to enlist. Mr. Greig, at the company's expense, went with Mr. Robertson to the West Indies and England for this purpose. His evidence, which I accept, was that he tried to explain the relevant points and also to demonstrate the possible repercussions, including those of bans. He told all his recruits, however, that Mr. Packer had no intention of preventing them from playing during the English summer. In due course he witnessed the signature of about 15 players to their contracts. When he explained their terms, he met with no resistance.***321**

Among the players approached by Mr. Robertson and Mr. Greig was the second plaintiff, Mr. Snow. By that time his career as a fast bowler in official Test cricket was in all probability over by reason of his age (35). He was, however, still extremely active in the field of county cricket. In early April 1976 Mr. Robertson and Mr. Greig approached him at his county cricket ground and informed him of the proposed world series. He was supplied with a copy of his proposed contract and, as he put it in evidence, Mr. Greig filled in the background. He took it away and received solicitors' advice on it. Before signing it, he also met Mr. Packer, who assured him that he had no intention to prevent him from playing for Sussex in the English cricket season. He knew that his chances of ever being selected again to play for England were slender, but he wanted to continue playing for Sussex; this assurance was therefore important to him. He was delighted with this offer of winter employment from a financial and cricketing point of view. He signed a contract with World Series Cricket substantially similar to that of Mr. Greig, save that it was for a rather lesser remuneration and was only for a one year period. According to his evidence, he knew from past experience that the result of so signing might well result in a ban both at Test and county level; he intends nevertheless to perform his contract with World Series Cricket because it provides him with the opportunity to play once again in a highly competitive game, when Test cricket is no longer open to him, and also a substantial amount of money.

Mr. Greig on behalf of World Series Cricket also approached the third plaintiff, Mr. Procter. He is a cricketer aged 31, who had represented South Africa in three seasons before 1971, when South Africa was debarred from playing in Test Matches by a ruling of the ICC. He therefore is ineligible to

play for England in Test Matches and at present has no opportunity to play Test cricket at all. He has played for the Gloucestershire County Club since 1968, and is now its captain. He is an all-round cricketer of great ability. Under his leadership, Gloucestershire in 1977 completed one of the most successful seasons in its history. For that season he earned in all about £7,500, a substantial part of which represented expenses and bonuses accruing from his county's various victories. Like Mr. Greig and Mr. Snow, he regards the remuneration paid to English cricketers as inadequate. Like many other professional cricketers, he has no other qualifications apart from cricket. Since 1968, he has spent the winters in South Africa either playing or coaching, but financial rewards for playing or coaching in South Africa, according to his evidence, are very small. Though about 12 English cricketers get the opportunity of coaching in South Africa, their average remuneration is about £200 per month, plus the use of a car and accommodation, which leaves them little to bring home.

Mr. Procter first heard of the world series in March when he was in South Africa. On his return to England at about the end of that month, he was told more details by Mr. Greig and Mr. Robertson, who offered him a three year contract on behalf of World Series Cricket. He signed it on April 11, 1977, having talked about it to several other players, but without having taken legal advice. He very much wished and still wishes to continue playing for Gloucestershire for another four or five years at least. He was told by Mr. Robertson or Mr. Greig before he signed it that it would not affect his playing for his county. Unlike Mr. Greig or Mr. Snow, he never thought it a real likelihood that he would be banned from playing for his county if he signed on for World Cricket. The contract offered not surprisingly appealed to him, because it gave him the opportunity of playing ***322** cricket at the higher level of which he was otherwise deprived and also offered some financial security for himself and his family. He intends to perform it.

VIII The form and the validity or otherwise of the World Series Cricket contracts: Question (A) above

By April 29, 1977, World Series Cricket had concluded contracts with four players from the United Kingdom, four from South Africa, four from the West Indies, four from Pakistan and 18 from Australia. So far as the evidence shows, these contracts were all in substantially the same form, subject to differences in the contract term, which varied from one to three years (or five years in one case) and in the contract fee, which varied from about A$20,000 to about A$35,000 for each “tour” for which the player concerned was involved.

As has been indicated, it has been submitted on behalf of the defendants that the form of the contracts is such that they are, on the face of them, void. Since it is not suggested that any of them contain differences in form relevant for the purpose of this present submission, I will refer to the terms of Mr. Greig's contract for the purpose of dealing with this particular submission, which I think it convenient to deal with at this point. This submission raises what has been described earlier as question (A).

Mr. Greig's contract is dated March 25, 1977, and expressed to be made between J.P. Sport Pty. Ltd., which is defined as “the promoter,” of the one part and Mr. Greig, who is defined as “the player,” of the other part. The recitals and first two clauses of the contract read as follows:

“Whereas: A. The promoter is engaged in the business of promoting organising and conducting professional sporting events and plans to promote organise and conduct a number of series of professional cricket matches in Australia and elsewhere in the seasons as hereinafter defined. B. Each series will comprise up to 55 play days devoted to five matches described as ‘test matches’ (and each being of up to five days duration) four limited-over matches (each being of two days duration) and as yet an undecided number of other matches all of which matches in a series shall together constitute a tour. C. The player has offered to play in matches

of the tours hereinafter specified and as the promoter hereafter may from time to time require and generally to participate as a playing member in each of those tours.

"Whereby it is agreed and declared that the promoter engages the player to provide his services and the player agrees to provide his services to the promoter for the purposes for the term and on and subject to the terms and conditions herein set forth, that is to say: 1. Where herein appearing the expression: 'season' shall mean the period commencing on September 1 of a year and ending on March 30 in the next calendar year and each season shall be identified by the year in which the month of September falls. 'Tour' shall mean and include the duration of that part or parts of a season as shall be specified by the promoter from time to time and the matches to be played in that period. 'Venue' shall mean the cricket ground selected by the promoter for the playing of a match of a tour. 2. The term of this agreement shall be for 36 calendar months commencing on September 1, 1977 (hereinafter referred to as 'the said term')."

Clause 3, omitting certain sub-paragraphs, then reads: ***323**

"The player undertakes and agrees that during the said term: (a) he will in each tour in the 1977, 1978 and 1979 seasons: (i) on the direction of the promoter unless prevented by illness or accident or for any other reason satisfactory to the promoter play in the matches of a tour for which he is chosen by the promoter and will at all times play to the best of his ability and skill provided however that the player shall not be required to play for more than 55 days in the aggregate in any one tour (apart from the two days referred to in clause 4 (b) hereof) but subject always to the provisions of clause 5 hereof, (ii) punctually attend at such times and places as the promoter may direct for the purpose of playing the aforesaid matches or for practice or otherwise as the promoter may require … (b) he will not: (i) play in any cricket match other than a match of a tour without the consent in writing of the promoter first had and obtained, (ii) appear on radio or television nor grant interviews for nor write nor submit articles for publication in any newspaper magazine or periodical except in each case as first authorised in writing by the promoter, (iii) give endorsements for goods of any nature nor allow his name or photograph to be used for promotional or advertising purposes except as first authorised in writing by the promoter."

I mention in passing that the starting date of "the season" in Mr. Greig's contract is said to be September 1 and the ending date is said to be March 30. On June 23, however, Mr. Packer informed the ICC that, while the starting and finishing dates of the contracts varied, his aim was to play cricket from the end of November until the middle of February. He then repeated this statement in evidence and it has not been disputed that it represents his intentions. Clauses 4 and 5 then read:

"4.The promoter undertakes and agrees that during each tour it will: (a) pay to the player an allowance of $30 per each day of the tour to cover his cost of accommodation and meals and will pay economy class air travel between venues and transportation between accommodation and venue but excluding freight or charges on luggage in excess of that determined by the promoter and the player undertakes to pay any such excess; (b) organise and conduct a two day limited-over match in Australia and pay the whole of the cash receipts from that game (after deduction of all reasonable and actual expenses) to a players provident fund to be established by a committee to be constituted by a nominee of the promoter and two nominees to be appointed by the majority of those players who take part in the 1977 season tour and being generally for the benefit of those players and of players in future tours and being more particularly for the purposes and to the extent and on and subject to such rules as regards membership of the fund entitlements thereunder and the nature of the benefits to be provided by that fund as that committee as then or thereafter consti-

tuted shall from time to time decide but so that the moneys paid to that fund shall not be or be deemed to be assets of the promoter.

"5. The player acknowledges that he is aware that the promoter plans to promote organise and conduct from time to time series of matches outside Australia and he undertakes and agrees at the direction of the promoter to participate as a player in all or any of those series as shall be conducted during the said term subject to the promoter: (a) providing economy class air travel from and ***324** on return to his normal place of residence and (b) the other provisions of this agreement where applicable being applied to that tour."

Clause 5 thus, according to its terms, entitles World Series Cricket, if it thinks fit, to require a player to play in matches outside Australia. On June 23 1977, however, Mr. Packer informed the ICC that it was not his intention to make use of the clause unless the actions of the cricketing authorities forced him in self-defence to go elsewhere and the truth of this statement of his intentions has not been challenged in evidence. Clause 6 of Mr. Greig's contract provides:

"The promoter will pay to the player as the full and only moneys payable to him under or pursuant to this agreement: (a) for his participation in each tour in Australia a total fee of $30,000 being at the day rate of $545.45 for each of the aforesaid 55 play days. The said fee shall be payable as to $10,000 on the day of the signing of this agreement, as to a further $10,000 immediately following the completion of the third test match or on January 5 in that season (whichever shall be the earlier) and as to $10,000, on completion of the tour; (b) for each tour outside Australia a total fee in the same amount and payable in the same way as set out in paragraph (a) above provided however that if the number of play days in that tour differs from 55 then the said total fee shall be reduced or increased by deducting therefrom or adding thereto an amount to be calculated at the rate of 2 per cent. of the said total fee for each day of difference as the case may be."

Clauses 7, 8, 9 of Mr. Greig's contract confer rights or impose obligations on the parties which are in terms limited to the duration of a "tour" or are at least dependent upon a "tour" taking place. Clause 10 provides that the benefit of the contract shall be assignable by the promoter. Clauses 11 declares in effect that the law of the State of New South Wales shall be the proper law of the contract.

The defendants never saw a copy of any of the World Series contracts until after the issue of the present proceedings. Having now seen samples, however, their counsel submit that they are on the face of them wholly void, substantially on the following grounds. Though clause 1 defines a "season" as meaning the period commencing on September 1 of a year and ending on March 30 in the next calendar year and "tour" as meaning and including the duration of that part or parts of a "season" as shall be "specified" by the promoter from time to time and the matches to be played in that period, the clause in terms imposes no obligation on the promoter actually to "specify" any part or parts of a "season" so as to constitute a "tour." Clause 2 does no more than define the term of duration of the contract. Under clause 3 (a) the player undertakes during such term to do a number of specified things in each "tour" in the 1977, 1978 and 1979 seasons, in particular on the direction of the promoter, to play in the matches of a "tour" for which he is chosen by the promoter, subject to the 55 days' limit of time referred to in the proviso to sub-clause (i) Under clause 3 (b), the player undertakes not to do a number of specified things during the whole of the term of the contract, his obligations in this instance not being limited to the subsistence of the various "tours." None of the provisions of clause 3, however, expressly impose any obligation on the promoter to specify or arrange a "tour" and the same ***325** observation applies to clause 4, which, though it imposes certain obligations on the promoter towards the player,

expressly limits the operation of such obligations to the respective period of each "tour." Likewise, while clause 5 obliges the player, if directed by the promoter, to participate as a player in any series of matches outside Australia which may be promoted and conducted by the promoter during the term, it leaves the promoter free to promote or not to promote a series of matches outside Australia as he pleases. Clause 6 (a) entitles the player to receive a stated sum payable by three stated instalments for his participation in each "tour" in Australia, the first to be payable on the date of the contract; but, once again, neither that sub-clause nor the immediately succeeding clause 6 (b), which defines the rights of the player to remuneration in respect of "tours" outside Australia, in terms imposes any obligation on the promoter to arrange any "tour" whatever, whether inside or outside Australia.

In the result, the defendants contended, the contracts in such form on their true construction really do no more than confer on the promoter the option to call on the player to provide his services for one or more "tours" on the stated terms as to remuneration and otherwise, if, but only if, the promoter sees fit to arrange one or more "tours." If the promoter does not so see fit, so it was submitted, the player is left entirely without rights or remedies and indeed is bound to repay the first instalment of his remuneration paid to him on the signing of the contract. The player, however, on this construction, for the whole of the term of the contract is left subject to the full force of the restrictive provisions contained in clause 3 (b) of the contract, in particular those of sub-clause (i), which preclude him from playing in any other cricket match without the promoter's written consent.

Such being their construction of the players' contracts with World Series Cricket, the defendants submitted that the contracts are on their face unduly restrictive, having regard to (i) their likely duration, (ii) the right to assign given to the promoter by clause 10, which made it impossible to assume that other persons for the time being holding the benefit of the contract would always act reasonably; (iii) the fact that the promoter was not bound to promote any tour at all; (iv) the absence of any provision entitling the players to terminate the contracts. The defendants relied on the decision of the House of Lords in Instone v. A. Schroeder Music Publishing Co. Ltd. [1974] 1 W.L.R. 1308, in which an agreement between a song writer aged 21 and music publishers was held contrary to public policy and void, as being in unreasonable restraint of trade, substantially on four grounds very similar, mutatis mutandis, to those just mentioned.

I accept the defendants' further submission that the appropriate time to consider the validity of the players' contracts is at the date of their signature and that it is not legitimate to construe them by reference to the way in which the parties thereto have acted under them, for example, subsequent statements by Mr. Packer as to the manner in which he intended to operate them: see Russell v. Amalgamated Society of Carpenters and Joiners [1910] 1 K.B. 506, 522, per Farwell L.J. If I accepted their construction of the contracts, I would also see considerable force in their submission that the contracts were void, in as much as they would on this footing subject the players to the theoretical risk of their cricketing talents being sterilised for the whole term of the contracts, without any ***326** right to monetary compensation. Possibly even such an apparently one-sided agreement could be justified on particular facts, but I would think this difficult.

However, without purporting to decide the point as between the promoter and the players who are not parties to these proceedings, I do not accept the defendants' basic construction of the contracts for this reason. A number of authorities set out in *Halsbury's Laws of England*, 4th ed., vol. 16 (1976), p. 356, para. 557, illustrate that, where a contract of employment by its terms imposes on an employee a binding obligation to work, without expressly imposing on the employer a corresponding obligation to provide work, the court

will in an appropriate case readily imply such an obligation on the part of the employer, if it is satisfied that such implication is the proper way of giving to the transaction the business efficacy which both parties must have intended it should have: see, for example, Devonald v. Rosser & Sons [1906] 2 K.B. 728 . In a case where the agreement of service manifestly and on its face contains an exhaustive catalogue of all the terms that the parties have agreed upon, the court may find it impossible to make any such implication: see per Farwell L.J., at p. 745, and Aspdin v. Austin (1844) 5 Q.B. 671 , 684. Save in such a case, however, the court will not be reluctant to imply an obligation binding the employer either to provide work, so as to enable the employee to perform his part of an otherwise one-sided arrangement, or at least to pay him the specified remuneration so long as the employee is ready and willing to perform the services contracted for and is prevented only by the employer from performing them.

These being the relevant principles, I revert to the actual terms of the players' contracts in the present case. The wording of clause 5, coupled with that of clause 6 (b), in my judgment makes it clear that the promoter is to be under no obligation in any year to arrange “tours” outside Australia and that, if he does arrange such a “tour,” he is to be obliged to pay the player merely pro rata for the number of actual “play days” in such “tour,” according to the formula set out in clause 6 (b). In these circumstances there is in my judgment no room for any implication of terms in regard to “tours” outside Australia. The position in regard to “tours” in Australia seems to me quite different. Under clause 6 (a) of Mr. Greig's contract, the player is to be remunerated for his participation in each “tour” in Australia by way of a fixed stated sum, which is to be paid as to a stated part of the date of the contract, as to a further stated part “following the completion of the third test match or on January 5 in that season (whichever shall be earlier) and as to $10,000 on completion of the tour.” Clause 6 (a) states the “day rate” of remuneration, but the sub-clause is so drafted that even if, in the event, a “tour” in Australia arranged by the promoter is less than 55 days, a player, who has participated in the “tour” and otherwise performed his part of the contract, is entitled to the total agreed fee in respect of that “tour,” without any pro rata reduction. In these circumstances, in my judgment the clear inference is that if, during the term of such contract, whereby the promoter was expressed to “engage the player to provide his services,” the promoter in any year failed to arrange any “tour” in Australia, a player, who demonstrated his willingness to play on such a “tour” if arranged and had otherwise observed his part of the contract, would be entitled to the full “tour” fee. Such implication is in my judgment the only way of giving reasonable effect to the presumed intention of the parties, particularly ***327** when the restrictions imposed on this player by clause 3 (b) for the term of the contract are taken into account.

I therefore reject the defendants' submission that the players' contracts are void, either on the ground of public policy or on any other grounds. I should perhaps add that the defences in the two actions add a plea that such contracts are unenforceable. Of the 50 or so players who had entered into such contracts by the time that proceedings were begun, some (such as Mr. Procter) did not receive legal advice on them and most, if not all, were not immediately supplied with copies for them to retain. It may be — I put it no higher — that, on these or other grounds, some individual players would in the particular circumstances of their respective cases have the right to rescind their contracts as against World Series Cricket. For present purposes it will suffice to say that no attempt was made on behalf of the defendants, either by adduction of evidence or otherwise, to show that the contracts were all voidable by the players on the grounds of misrepresentation, undue influence, unconscionable bargain or similar grounds. In this context the only submission put forward was that they were wholly void, on the grounds which I have considered and rejected.

In the rest of this judgment I must therefore proceed on the footing that the players' contracts with World Series Cricket are agreements which according to their terms are valid agreements and that it has not been proved that any one of them is even voidable at the option of the player concerned.

IX [His Lordship then dealt with the reaction of the defendants to the announcement of the World Series Cricket project, the events between May 9 and 13, 1977, the meeting dated May 13 of the emergency executive committee of the Cricket Council, the events between May 13 and 19, the meeting dated May 19 of the chairman's advisory committee of the TCCB, the meeting on May 31 of the TCCB, the meeting on June 2 of the emergency executive committee of the Cricket Council, the meeting of the Cricket Council on June 8, the meeting on June 14 of the ICC, the meeting on June 23 between the ICC and Mr. Packer, and continued:] This will be a convenient moment to set out the relevant rules as they then stood. As at June 1977, Appendix 1 of the rules of the ICC read as follows:

“Qualification Rules for Test Matches

“(a)A cricketer can be qualified to play in a Test Match either by birth or residence.(b)(i)Qualification by birth. A cricketer, unless debarred by the conference, is always eligible to play for the country of his birth.(ii)Qualification by residence. A cricketer, unless debarred by the conference, shall be entitled to play for any country in which he is residing and has been residing during the four immediately preceding years, provided that he has not played for the country of his birth during that period.(c)Notwithstanding anything hereinbefore contained, any player who has once played in a Test Match for any country shall not afterwards be eligible to play in a Test Match against that country, without the consent of its governing body.(d) Members shall be responsible for submitting, in reasonable time for the approval of the conference, the names of any cricketers whose qualifications are in doubt, and who are likely to be selected to play in any approaching series of Test Matches, furnishing their qualifications and stating if any player has during the four immediately preceding years played for the country of his birth. In the case of ***328** cricketers qualified by residence, they shall further state the periods of residence upon which such qualifications are founded. (e)The ICC in conjunction with the governing body of any country may impose more stringent qualification rules for that country.”

As at June 1977 rules 1 and 2 of the rules governing the qualification and registration of cricketers in Test and competitive county cricket (being the only rules relevant for present purposes) set out in Appendix B to the rules of the TCCB, read as follows:

“Rule 1 Qualifications for England

“Subject to the overriding discretion of the board, acting with the consent of the [ICC] the qualifications for playing for England shall be: —(a)that the cricketer was born in the British Isles, or(b)that the cricketer's father was born in the British Isles and that the cricketer is residing and has been resident therein during the preceding four consecutive years and has not played in a Test Match for the country of his birth during that period, or(c)that the cricketer is residing and has been resident in the British Isles during the preceding 10 consecutive years and has not played in a Test Match for the country of his birth during that period, or(d)that the cricketer is residing and has been resident in the British Isles since the day before his 14th birthday and has not played in a Test Match for the country of his birth during that period.

“ Rule 2 Playing and registering cricketers

“(a)No cricketer may play in a competitive county cricket match unless he is registered with the board for the county for which it is desired that he shall play during the current season.(b)No cricketer may

be registered for more than one county in one season without the approval of the board.(c)Subject to the overriding discretion of the board, no county shall be entitled to play in any competitive county cricket match more than two cricketers who are not qualified to play for England."

At the end of Appendix B to the rules of the TCCB, there followed and still follow some notes to the rules governing qualification and registration contained earlier in the appendix.

[His Lordship then dealt with leading counsel's opinion dated July 5 to the TCCB in respect of its proposed change of rules, the subsequent meeting of the chairman's advisory committee and its report. He continued:]

X *The resolutions introducing bans*

Meeting of the TCCB: July 15, 1977

On July 15, 1977, a special meeting of the TCCB was held. This is of importance for the purpose of these proceedings because, as the formal minutes show, the TCCB there reached a firm decision in principle to introduce a ban at county level, subject only to the Cricket Council supporting its proposals and the ICC taking the expected decision in regard to a Test Match ban. Such support was subsequently given by the Cricket Council and the ICC took the expected decision. In due course, therefore, when the TCCB on August 5 came to pass formal resolutions implementing the proposals, it was merely carrying out a policy on which a firm decision had already been reached in principle on July 15. In view of the claim that the proposal for a ban constituted an inducement to ***329** breach of contract, it therefore becomes important to examine, so far as the evidence reveals this, the intentions of the meeting of July 15, when it decided in principle on the desirability of a county ban.

[His Lordship considered that evidence in detail and the meetings on July 19 of the Cricket Council and on July 26 of the ICC at which latter meeting the West Indies delegate expressed strong reservations as to the retroactive nature of the proposed ICC ban. He continued:] The four specific decisions reached by the ICC at this important meeting of July 26 were, after an introductory explanation, recorded in the press statement issued by it later that day:

"In order to give effect to these views, the ICC passed unanimously: —

1.A change in the ICC rules relating to qualification for Test Matches, as follows 'Notwithstanding anything hereinbefore contained no player who after October 1, 1977, has played or has made himself available to play in a match previously disapproved by the conference shall thereafter be eligible to play in any Test Match without the express consent of the conference to be given only on the application of the governing body for cricket of the country for which, but for this subrule, the player would be eligible to play.'

"2.Pursuant to this new subrule (f), the conference then passed unanimously a resolution in the following terms disapproving certain matches 'It is hereby resolved for the purposes of Appendix I (f) that any match arranged or to be arranged by J.P. Sports (Pty.) Ltd., Mr. Kerry Packer, Mr. Richie Benaud or associated companies or persons to take place in Australia or elsewhere between October 1, 1977, and March 31, 1979, is disapproved.'

"3.In addition the conference passed a guidance resolution in the following terms 'For future guidance the conference records and minutes that matches are liable to be disapproved if so arranged, whether by reference to date or otherwise, as to have the probable result that invitations to play in such matches will conflict with invitations which have been or may be received to play in first class matches subject to the jurisdiction of the governing bodies of foundation and full members of the conference.'

"Finally, it was resolved that the conference strongly recommended that each member country pursue as soon as possible at first class level and in other domestic cricket activities the implementation of decisions made in regard to Test Matches."

The reservations of the West Indies delegates which had been strongly expressed at this ICC meeting of July 26 were not in any way reflected in this press statement.

XI *Events subsequent to July 26, 1977*(1)

The application by the plaintiffs for interlocutory relief

The recommendation of the ICC made on July 26 that each member country should pursue the implementation of the ICC's policy in regard to Test Matches made it more or less inevitable that the TCCB would introduce a ban at county level, affecting World Series Cricket players, at its meeting due to be held on August 5. It had already agreed in ***330** principle on such a ban at its meeting of July 15 and had obtained the requisite authority of the Cricket Council on July 19.

In the light of what the ICC had already done and what it was anticipated the TCCB would do when it met on August 5, the respective plaintiffs on August 3 issued their writs in the two actions. Originally the defendants to both actions were named as the MCC and all other members of the TCCB and the members of the Australian Cricket Board sued on their behalf and on behalf of all the other members of the ICC.

Immediately after the issue of the writs, the plaintiffs applied to Slynn J. ex parte for interlocutory injunctions restraining the TCCB from taking any decision at the meeting which it was due to hold on August 5, which might be made or calculated to induce players who had contracted to play cricket for World Series Cricket to break their contracts. At the hearing, however, undertakings were given to the court on behalf of the TCCB to the effect that any decision which was taken concerning the banning of players from county cricket would be expressed to be subject to the decision of the court in the present proceedings and would not in any event be implemented until April 1978. On this basis Slynn J. ordered a speedy trial of the actions but granted no further interlocutory relief against the TCCB. During the course of the hearing, the plaintiffs' advisers were given the names of two individual representative defendants on behalf of the TCCB and two other individual representative defendants on behalf of the ICC. This in due course led to an amendment of the writs so as to delete the reference to the MCC and the Australian Cricket Board and to show the names of Mr. Insole and Mr. Carr as sued on behalf of all members of the TCCB and the names of Mr. Webster and Mr. Bailey as sued on behalf of all members of the ICC.(2)

The plaintiffs' solicitors' letter to the defendants' solicitors dated August 4, 1977, and Mr. Packer's letters to players of the same date.

During the course of the hearing before Slynn J., the defendants' counsel made certain criticisms of the contracts entered into by players with World Series Cricket (which the defendants had not previously seen) and suggested that they might conflict with the playing of English county cricket during the domestic season. On August 4, the plaintiffs' solicitors wrote to the defendants' solicitors referring to this criticism and suggestion, saying:

"… This suggestion was made despite the fact that it was made unequivocally clear that this was not the intention of the agreement, and that it was well known that the tours arranged by our clients would not begin until the autumn and would terminate before the English domestic season. As stated in our evidence, our clients had fully explained this position to any players who had inquired. In view of the suggestions which were made, however, our clients are writing a letter to the players in the terms of the

enclosed draft. Our clients are conscious that no individual county has yet, so far as we know, made the suggestions which were put forward on behalf of your clients, and we would not like them to attend the meeting under any false impression that the players would in any way be restricted or prevented from participating to the full in their county programmes …."

On or about the same day, August 4, Mr. Packer wrote a letter to each of the players contracted to World Series Cricket informing them in effect ***331** to the full in any English county programmes with which they might be involved. The letter added that no matter what happened in the action, World Series Cricket would honour the contract and expect the player to do the same. A copy of this letter was sent to the TCCB so as to arrive before its meeting about to be held on August 5. (3)

The TCCB meeting of August 5

In due course at this meeting, the members of the TCCB passed a number of resolutions, providing for amendment to the TCCB's rules governing the qualification and registration of cricketers in Test and competitive county cricket. They decided, however, that the proposed amendments should be considered by leading counsel. Counsel in due course considered these. Having received his advice, the TCCB on or about August 9, issued the following press release which represented its final decision:

"At the meeting of the board on August 5, 1977, consideration was given (a) to the recommendation of the [ICC] made on July 26, 1977, that each member country should pursue as soon as possible at first class level, and in other domestic cricket activities, the implementation of the decision made at Test Match level, and (b) generally to the situation which gave rise to the ICC recommendation. The members of the board agreed upon the undermentioned draft amendments to the rules governing the qualification and registration of cricketers in Test and competitive county cricket, which have been discussed with the board's legal advisers. These draft amendments are subject to the ruling of the High Court at the speedy trial ordered by Slynn J. on August 4, 1977. It must therefore be emphasised that there is no question of the draft amendments being incorporated into the rules or in any manner implemented until after this trial.

"1.Rule 1 Qualifications for England

"An additional sub-rule (e) be added 'and (e) that the cricketer is not precluded from playing in a Test Match by reason of the terms of sub-rule (f) of Appendix 1 of the rules of the [ICC] which sub-rule reads as follows: (f) Notwithstanding anything hereinbefore contained, no player who after October 1, 1977, has played or made himself available to play in a match previously disapproved by the conference shall thereafter be eligible to play any Test Match without the express consent of the conference to be given only on the application of the governing body for cricket of the country for which, but for this sub-rule, the player would be eligible to play.'

"2.Rule 2 Playing and registering cricketers

"The existing rule 2 (c) be deleted and the following new rule 2 (c) be substituted: '2 (c) Subject to the overriding discretion of the board, no county shall be entitled to play in any competitive county cricket match: (i) Any cricketer who is and remains precluded from playing in a Test Match on the grounds set out in rule 1 (e) (whether or not he is otherwise qualified to play in a Test Match) prior to the expiration of a period of two years immediately following the date of the last day of the last match previously disapproved by the [ICC] in which he has played or made himself available to play; (ii) More than two cricketers who are not qualified to play for England by reason of their inability to satisfy rule 1 (a) (b) (c) or (d).'***332**

"3.At the end of existing rule (2) (a) the following words be added 'and except in exceptional circum-

stances (which are subject to the discretion of the discipline sub-committee) has entered into a written contract current during the ensuing cricket season with his county cricket club incorporating a clause acknowledging the board's rules, regulations or directives.'"

By the time that these proposed new rules were approved by the TCCB at least 49 cricketers had entered into contracts with World Series Cricket (including five from the United Kingdom, five from Pakistan, five from South Africa, 19 from Australia and 15 from the West Indies); 21 of these played English county cricket and would therefore be affected by the proposed county cricket ban.

XII *The claim of World Series Cricket against the ICC based on alleged inducement of breach of contract: question (B) above*(1)

The basic principles of law

I am now in a position to deal with the second of the nine principal questions that fall to be decided. This relates to the claims of World Series Cricket against the ICC based on alleged inducement of breach of contract. In this context, I take the basic principles of law to be as follows. At common law, it constitutes a tort for a third person deliberately to interfere in the execution of a valid contract which has been concluded between two or more other parties, if five conditions are fulfilled. First, there must be either (a) "direct" interference or (b) "indirect" interference coupled with the use of unlawful means: see per Lord Denning M.R. in Torquay Hotel Co. Ltd. v. Cousins [1969] 2 Ch. 106 , 138. In the present case, it has not been suggested that either the ICC or the TCCB has used unlawful means. World Series Cricket relies only on "direct" interference; I shall revert later to the meaning of the word "direct" in this context. As to the meaning of "interference," this is not confined to the actual procurement or inducement of a breach of contract, it can cover the case where the third person prevents or hinders one party from performing his contract even though this be not a breach: see per Lord Denning M.R. Secondly, the defendant must be shown to have had knowledge of the relevant contract. Thirdly, he must be shown to have had the intent to interfere with it. Fourthly, in bringing an action, other than a quia timet action, the plaintiff must show that he has suffered special damage, that is more than nominal damage: see Rookes v. Barnard [1964] A.C. 1129 , 1212, per Lord Devlin. In any quia timet action, the plaintiff must show the likelihood of damage to him resulting if the act of interference is successful: see Emerald Construction Co. Ltd. v. Lowthian [1966] 1 W.L.R. 691 , 703 per Diplock L.J. Fifthly, so far as is necessary, the plaintiff must successfully rebut any defence based on justification which the defendant may put forward. I shall revert later to the meaning of "justification" in this context.

One point, however, requires to be emphasised. If these five conditions are fulfilled and the defendant is shown to have had that intention to interfere with the relevant contract which is necessary to constitute the tort, it is quite irrelevant that he may have acted in good faith and without malice or under a mistaken understanding as to his legal rights; good faith, as such, provides no defence whatever to a claim based on this tort: see, for example, South Wales Miners' Federation v. Glamorgan Coal Co. Ltd. [1905] A.C. 239 , 246, per Lord Macnaghten. ***333**

I think that this latter point is common ground between the parties, as is the fact that it is no tort to interfere with a void contract: see Joe Lee Ltd. v. Lord Dalmeny [1927] 1 Ch. 300 . A question that has been the subject of some argument before me is whether it could be a tort to induce the breach of a merely voidable agreement. Mr. Kempster on behalf of the defendants submitted that it could not constitute a tort for a third party to induce a person who had a lawful

right to rescind a contract to exercise such right. Mr. Morritt, on behalf of World Series Cricket, submitted to the contrary and referred me in this context to the decision in Keane v. Boycott (1795) 2 H. B1. 511 . In that case, the plaintiff brought an action against the defendant for enticing away from his service his servant who was an infant. Eyre C.J. held that the contract between the servant and his master was voidable, not void, and that the voidability of this contract provided no defence to the action. As he said, at p. 515:

"For this is the case of a stranger and a wrong-doer interfering between the master and servant, and now seeking to take advantage of the infant's privilege of avoiding his contracts, a privilege which is personal to the infant, and which no one can exercise for him."

In reliance on this decision, Mr. Morritt submitted that, if the other elements of the tort are present, it matters not that the contract interfered with was voidable. More recent judicial dicta, however, suggest that the tort is not committed, if the interference in question results not in any breach of the relevant contract, but merely in a party exercising a lawful right to terminate it.

Thus in D. C. Thomson & Co. Ltd. v. Deakin [1952] Ch. 646 , 702, Morris L.J. said:

"If A has a contract with B, the tort will be committed by X if there is a violation of the right B has under his contract by the intentional interference of X. If the contract between A and B is lawfully terminated, there is no violation."

A passage from the judgment of Diplock L.J. in Emerald Construction Co. Ltd. v. Lowthian [1966] 1 W.L.R. 691 , 703–704, can be read in much the same way.

In the two last mentioned cases the court was not, in terms, considering the situation where a contract could be lawfully terminated not so much because of rights given by the contract as because one of the parties had a right to rescind it on the grounds of misrepresentation or undue influence. Nevertheless the dicta cited appear to be of general application. For the purpose of this judgment, therefore, so far as it is relevant at all, I propose to assume in favour of the defendants, without deciding, that it does not constitute a tort for a third party to induce a person to exercise a lawful right to rescind a contract.

In the light of this introduction, I now turn to consider whether the five essential ingredients of the tort of interference with contractual relations are present in relation to the ICC.(2)

"Direct interference

First, has there been interference by the ICC with the players' contracts with World Series Cricket and, if so, has that interference been of a "direct" nature? Though there have been many decisions indicating whether particular stated sets of facts constitute "direct," as opposed to "indirect," interference, I have been referred to no statement of principle ***334** which specifically defines the difference between the two types of interference. I take it, however, that the phrase "direct interference" covers the case where the intervener, either by himself or his agents, speaks, writes or publishes words or does other acts which communicate pressure or persuasion to the mind or person of one of the contracting parties themselves, while "indirect interference" refers to the case where, without actually doing any of these things, the intervener nevertheless procures or attempts to procure a situation which will result or may result in a breach of the contract see, for example, J. T. Stratford & Son Ltd. v. Lindley [1965] A.C. 269 , 333, per Lord Pearce: D. C. Thomson & Co. Ltd. v. Deakin [1952] Ch. 646 , 678, per Evershed M.R.

Has there been direct interference in this sense by the ICC with the contracts of World Series Cricket

and its players? In my judgment, beyond doubt there has. The very terms of the ICC resolutions of July 26, 1977, by imposing a Test Match ban on any players who should play or make themselves available to play in World Series Cricket matches after October 1, 1977, were calculated to cause and doubtless did cause those players who had already contracted with World Series Cricket, but were otherwise eligible to play in Test cricket and wished to remain eligible for Test selection, to consider whether they should take advantage of the period of grace granted them and attempt to withdraw from their contracts with World Series Cricket before October 1. The resolutions, by necessary implication, contained a threat of a ban directed at the players who had so contracted, coupled with a suggestion that they could escape from its operation by terminating their contractual relations with World Series Cricket before the stated date. Thus in my judgment the resolutions constituted an inducement to those players to terminate such relationships as much as if they had contained express words urging them to take this course.

A number of the plaintiffs' witnesses, such as Mr. Greig and Mr. Underwood, accepted in evidence that they realised the possible risk of a ban of this nature being imposed, when they signed their contracts with World Series Cricket. It was submitted on behalf of the defendants by Mr. Kempster, in his opening speech, that the reason why there have, so far, been no defections from World Series Cricket consequent on the ICC and TCCB bans is that they were fully anticipated and discounted by all the players when they entered into their contracts with it. In such circumstances, it was submitted that the ICC and TCCB resolutions or proposed resolutions presented no real threat of interference with the relevant contracts. I find this line of argument on behalf of the defendants unconvincing. First, in the case of many of the 50 or so players involved, there is no evidence whatever that they actually anticipated the imposition of the bans in question. Secondly, it is no answer to a person who has deliberately attempted to interfere with the contractual relations of another to plead that his attempts were in all the circumstances of the case likely to be unsuccessful. In a quia timet action it suffices for the plaintiff to show that the attempt, *if* successful, is likely to cause him more than nominal damage.

The ICC when it published its press statement of July 26, in my judgment, was applying pressure or persuasion to the minds of all cricketers like Mr. Greig, Mr. Knott and Mr. Underwood, who had contracted with World Series Cricket but wished to remain eligible to play official Test cricket for their country, as directly as if it had written to each of such ***335** players and told them that if they played or made themselves available to play for World Series Cricket after October 1, they would be disqualified from official Test cricket. The implicit threat contained in the terms of the press statement was directly aimed at the minds of such persons, who, the ICC could reasonably have assumed, would very soon read or hear of it. In these circumstances "direct interference" on the part of the ICC, in the relevant sense has been proved. (3)

Knowledge

The degree of knowledge on the part of a defendant which is required as an essential ingredient of the tort of inducement of breach of contract in my judgment adequately appears from the judgments of Lord Denning M.R. and Diplock L.J. in Emerald Construction Co. Ltd. v. Lowthian [1966] 1 W.L.R. 691 . In that case, the defendants, who were officers of a building workers' trade union, having learned of a contract made between the main contractors of a new power station and the plaintiff sub-contractors, though not of the precise terms of the contract, informed the main contractors that, unless all bricklayers on the project were directly employed by them and the sub-contract terminated by specific dates, the union members would be advised not to work. The plaintiff sub-contractors obtained from the Court of Appeal an interlocutory injunction to restrain the

defendants from attempting to bring about a termination of the contractual relations between the main contractors and themselves. Lord Denning M.R. said, at pp. 700–701:

"This 'labour only' sub-contract was disliked intensely by this trade union and its officers. But nevertheless it was a perfectly lawful contract. The parties to it had a right to have their contractual relations preserved inviolate without unlawful interference by others: see Quinn v. Leathem, by Lord Macnaghten [1901] A.C. 495, 510. If the officers of the trade union, knowing of the contract, deliberately sought to procure a breach of it, they would do wrong: see Lumley v. Gye (1853) 2 E. & B. 216. Even if they did not know of the actual terms of the contract, but had the means of knowledge — which they deliberately disregarded — that would be enough. Like the man who turns a blind eye. So here, if the officers deliberately sought to get this contract terminated, heedless of its terms, regardless whether it was terminated by breach or not, they would do wrong. For it is unlawful for a third person to procure a breach of contract knowingly, or recklessly, indifferent whether it is a breach or not. Some would go further and hold that it is unlawful for a third person deliberately and directly to interfere with the execution of a contract, even though he does not cause any breach. The point was left open by Lord Reid in J. T. Stratford & Son Ltd. v. Lindley [1965] A.C. 269, 324. It is unnecessary to pursue this today. Suffice it that if the intention of the defendants was to get this contract terminated at all events, breach or no breach, they were prima facie in the wrong."

Diplock L.J. said, at pp. 703–704:

"The plaintiffs claim that the acts of the defendants which they threaten to continue were and are intended to procure a breach by the main contractors of their 'labour only' sub-contract with the plaintiffs. Upon the claim framed in this way, there is no real dispute as to the law applicable. There are three essential elements in the ***336** tort of unlawful procurement of a breach of contract: the act, the intent and the resulting damage. In a quia timet action such as this, it is sufficient to prove the act and the intent and the likelihood of damage resulting if the act is successful in procuring a breach of contract. The only issue on this part of the case is one of fact as to the defendants' intent. At all relevant times they knew of the existence of a 'labour only' sub-contract for brickwork between the main contractors and the plaintiffs, but until it was disclosed to them on the interlocutory application to the judge in chambers for an injunction, they did not know its precise terms. They say in somewhat equivocal language that they assumed that it could be lawfully terminated by the main contractors on short notice and that such lawful termination was all that they insisted on. But ignorance of the precise terms of the contract is not enough to show absence of intent to procure its breach. The element of intent needed to constitute the tort of unlawful procurement of a breach of contract, is, in my view, sufficiently established if it be proved that the defendants intended the party procured to bring the contract to an end by breach of it if there were no way of bringing it to an end lawfully."

These two judgments are, I think, sufficient authority for the proposition that, in an action for inducement of breach of contract, it is not necessary for the plaintiff to show that the defendant knew of the precise terms of the relevant contract, it will suffice for the plaintiff to prove that he knew of the existence of the contract, provided that he can prove also that he intended to procure a breach of it. A defendant's ignorance of the precise terms of the contract may in particular circumstances enable him to satisfy the court that he did not have such intent; ignorance of this nature, however, does not alone suffice to show absence of intent to procure breach.

On the facts of the present case, there can be no doubt that at all material times the ICC knew of the

existence of the players' contracts with World Series Cricket and indeed had known of them since about May 17, 1977, when the secretary of the ICC wrote to all members of the ICC informing them that 35 players had signed contracts, which were said to be "tight contracts." The whole of the discussion on July 26, 1977, was based on the premise that a number of players had already signed contracts with World Series Cricket. This was the reason why the West Indies were anxious about the retroactive nature of the ban. In my judgment the requisite knowledge on the part of the ICC is proved.(4)

Intent

I now turn to consider the ICC's intent, which is all important in the present context, and will begin by referring to a little of the evidence.

Speaking in Melbourne on July 27, 1977, after the ICC decision of the previous day, Mr. Steele of the Australian Cricket Board said that he hoped the proposed World Series Cricket matches would not "get off the ground," that he still had doubts if they would go ahead and that he was confident that the players concerned would have every opportunity to "reconsider their position"; he further said he was hopeful that some players would reconsider. Under cross examination, Mr. Steele admitted that, in expressing this hope, he had included players who had already signed contracts with World Series Cricket. He further admitted that it would be the ICC resolution which would make them reconsider their ***337** position. Mr. Steele added, however, that he was aware that it was an offence to induce a breach of contract and that he did not support the ban in order to induce anyone to break his contract. He said he was hopeful that some of the players would not be bound by their contracts.

Mr. Hadlee of New Zealand accepted (in chief) that, though he was not skilled in the law, he had at the ICC meeting of July 26 referred to a probability that those players who had contracted with World Series Cricket, but had not "part performed" their contracts, would be able to withdraw from them. He admitted in cross examination that he hoped they would withdraw, but did not accept that he personally ever regarded the ICC ban as a means of attempting to procure them to withdraw. In his mind, according to his evidence, the sole objects of applying the ICC ban to those who had already contracted with World Series Cricket were as a penalty and to deter, by example, other players who might think of doing likewise.

Mr. Bailey, in the course of cross examination, was asked about the two-headed proposals put forward by the United Kingdom representatives at the special meeting of the ICC held on June 14, 1977, that World Series Cricket players should be given the opportunity to "draw back from the brink," but that failing agreement with Mr. Packer, such players should be banned from Test cricket. Mr. Bailey replied that the basic question at that time was linked solely with giving everybody a chance to continue to play Test cricket, if it was at all possible. In other words players were to be given the choice either to "draw back from the brink" and remain qualified to play in Test cricket, or to be disqualified from Test cricket. Later, under cross examination, he accepted that one of the reasons why the date October 1, 1977, was chosen, was to give players "who could legally have a change of heart," the opportunity to assess the alternatives open to them, namely to play for Mr. Packer or to be banned. In his evidence, however, Mr. Bailey had already stated that it was "certainly not" the view of the ICC that it was entitled to try and persuade cricketers to resile from valid contracts. He had emphasised that he and the representatives of the ICC had no knowledge of the terms of the players' contracts with World Series Cricket.

I accept Mr. Steele, Mr. Hadlee, representative of New Zealand on the ICC, and Mr. Bailey as honest witnesses and have no doubt that they did not think that the course which the ICC was proposing to adopt on July 26 would involve the tort of inducement

of breach of contract or any infringement of the legal rights of World Series Cricket. I am satisfied that they were acting in good faith and, on the available evidence, have no reason to suppose that the other delegates present at the ICC meeting of July 26 were not acting similarly.

As has already been pointed out, however, good faith as such in the present context has no legal relevance. There were some 26 delegates of the various Test-playing countries present when the relevant ICC resolutions of July 26, 1977, were passed, the majority of whom have not given evidence and many of whom are not reported as having said anything relevant for the present purposes at the meeting. In these circumstances any attempt subjectively to assess the innermost minds of all the representatives present would not only in my judgment be legally incorrect, but would be impossible to carry out. In my judgment, the intentions of the ICC as at July 26, 1977, can only be judged by what it did that day and subsequently said to the outside world in its press statement of that day. As Lord Halsbury L.C. said in South Wales Miners' Federation v. Glamorgan Coal Co. Ltd. [1905] A.C. 239, 244, it is a principle of the law that "people are presumed to intend the reasonable consequences of their acts." The same principle must in my judgment apply a fortiori when judging the intentions of a large unincorporated association.

Applying this objective test, how then are the intentions of the ICC as at July 26 in imposing and announcing to the world the Test Match ban, but deferring the date of its operation until October 1 to be assessed? In my judgment there can be only one answer to the question. This is that the ICC, by imposing and announcing the ban in this form, intended to apply pressure or persuasion to all players who had entered into contracts with World Series Cricket and were otherwise eligible for Test cricket to withdraw from their contracts by October 1. In my judgment it is no answer for the ICC to plead that in truth it only intended to apply pressure or persuasion to those players, if any, who might have lawful rights of withdrawal. Nothing in the terms of its resolutions or of its press statement or of any other communication made by it to players gave any indication of such limitations on its intentions or drew any distinction between those players who might be fully legally committed to World Series Cricket and those who might have lawful rights of withdrawal. The pressure was, on the face of things, being applied by it as much to players who had fully binding contracts, as to those who had not; and this, I think, is how the ICC's intentions must be judged.

On this basis, I find as a fact that the ICC, in passing its resolution of July 26 intended to apply pressure or persuasion to all players, who had contracts with World Series Cricket and were otherwise eligible for Test cricket, to withdraw from such contracts, whether or not they had lawful rights to withdraw. In the case of a number of persons present at the meeting, such intention was motivated by a belief that most of the players' contracts probably were not legally enforceable. The requisite intention to constitute the tort being present, however, the belief which motivated it, and the good faith of the persons who held such belief, in my judgment have no legal relevance.

I should, perhaps, add that I appear to be by no means alone in interpreting the ICC's intentions in this manner. A number of the persons who spoke at the ICC meeting of July 26 spoke in terms which showed that they contemplated that the proposed ban might have the general effect of causing a number of players to withdraw from their contracts with World Series Cricket, without drawing any distinction between those players who might have a right so to withdraw and those who might not. On August 22 the Board of Control for Cricket in Pakistan wrote to a Pakistan player, Mr. Iqbal, saying, inter alia:

"The BCCP [the board of control] has also decided to abide by the decision taken alt the last ICC meet-

ing regarding the Packer series of matches. According to this decision, players who have made a contract with Packer are required to rescind such contracts by October 1, 1977, failing which such players will render themselves ineligible to play in the Test matches."

Finally, Mr. Chidambaram who gave evidence on behalf of the Board of Control for Cricket in India was asked under cross examination, "Are we agreed on this? The only purpose of a retroactive ban was to try to persuade those who had already signed not to play for World Series Cricket?" To which he replied, simply, "Yes, I agree."***339** (5)

Damage

World Series Cricket, as has been indicated, must show that, as at August 3 there was the likelihood that it would suffer more than nominal damage if the ICC resolutions of July 26 were successful in procuring breaches of one or more of the players' contracts with World Series Cricket. There were two principal submissions put forward on behalf of the defendants in this context.

First, it was said, the players who had contracted with World Series Cricket had all done so in the knowledge that this course would probably result in the imposition on them of a ban broadly on the lines of that actually imposed, in the event, by the ICC. Mr. Kempster referred to the evidence of a number of players, who acknowledged that they had foreseen the possibility of a ban of this nature. He referred also to a press release from Mr. Kerry Packer's office dated July 27, 1977, in which it was said:

"It is regrettable, though predictable, that the ICC have taken this stand. All of the players signed for the super-tests were aware of the possibility of such an eventuality, but were prepared to sign on for the series."

It was submitted on behalf of the defendants that such evidence showed that the ICC ban was not likely in the event to have the effect of persuading any players to break their contracts with World Series Cricket and correspondingly that World Series Cricket was never likely to suffer any damage as a result of the intervention of the ICC. In my judgment, however, this submission has no substance; as has already been stated, it is not open to a person who deliberately attempts to procure the breach of a contract between two other parties to plead that his attempts are unlikely to succeed. It is enough for the plaintiff in such a case as this to show the likelihood of more than nominal damage resulting if the attempt is successful.

Secondly, Mr. Kempster pointed out the immense complexity of the company group structure of which, according to the evidence, World Series Cricket forms a part. He pointed out, correctly, that there is no clear evidence that World Series Cricket will itself be in a position to exploit or will be exploiting the benefit of its contracts with its players. Indeed, the rather inconclusive evidence adduced by the plaintiffs as to the manner in which the contracts are going to be exploited, suggests that they are likely to be exploited by other companies within the group, such as Television Corporation Ltd., to which World Series Cricket says it has sold the television rights during the period since the issue of the writs. For these reasons, the defendants submitted, it has not been proved that as at August 3, 1977, World Series Cricket was likely to suffer any damage, even if any attempts to induce players to break their contracts succeeded. I do not feel able to accept this submission. Apart from any other consideration, the simple fact seems to me to be that, as at August 3 World Series Cricket was the owner of contracts which entitled it to the benefit of the services of about 50 of the best cricketers in the world. It has not been suggested that such contracts would not have had potential value if and when they were exploited. May be World Series Cricket (which had a small nominal capital) as at August 3 would not have been in a financial position to exploit those contracts itself. Nevertheless the contracts (coupled with the television and merchand-

ising rights attached thereto which were still vested in it) would still have constituted ***340** assets in its hands which were valuable assets, in the sense that it could reasonably have expected to be able to sell, lease or licence them to one or more companies, inside or outside its own group, which would be in a better financial position to exploit them. The contracts in question were fully assignable. If the defendants had succeeded in persuading merely one or two of the players to withdraw from their contracts, this could have cast doubts on the viability of the whole World Series Cricket project, with consequent risks of incalculable loss to the company which had entered into substantial commitments both with the players involved and to other persons in connection with the project.

In the circumstances World Series Cricket has, in my judgment, established the likelihood of more than nominal damage resulting to it, if the ICC's acts of interference with its contracts with players are successful.(6)

Justification

I have already made it plain that good faith and absence of malice on the part of a defendant do not as such provide any defence to an action based on inducement of breach of contract. The authorities, however, show that, even if all the other ingredients of the tort are present in a given case, the defendant may still escape liability, if he can in the particular circumstances show sufficient "justification" in law for what he did.

Romer L.J. in Glamorgan Coal Co. Ltd. v. South Wales Miners' Federation [1903] 2 K.B. 545 , 573, pointed out that it would be extremely difficult, even if it were possible, to give a complete and satisfactory definition of "sufficient justification" and that most attempts to do so would probably be mischievous. He agreed with what Bowen L.J. had said in Mogul Steamship Co. Ltd. v. McGregor, Gow & Co. (1889) 23 Q.B.D. 598 , 618, namely, that when difficulty might arise in deciding whether there was sufficient justification or not, "the good sense of the tribunal which had to decide would have to analyse the circumstances and to discover on which side of the line each case fell" Romer L.J. continued, at p. 574:

"I will only add that, in analysing or considering the circumstances, I think that regard might be had to the nature of the contract broken; the position of the parties to the contract; the grounds for the breach; the means employed to procure the breach; the relation of the person procuring the breach to the person who breaks the contract; and I think also to the object of the person in procuring the breach. But, though I deprecate the attempt to define justification, I think it right to express my opinion on certain points in connection with breaches of contract procured where the contract is one of master and servant. In my opinion, a defendant sued for knowingly procuring such a breach is not justified of necessity merely by his showing that he had no personal animus against the employer, or that it was to the advantage or interest of both the defendant and the workman that the contract should be broken. I take the following simple case to illustrate my view. If A wants to get a specially good workman, who is under contract with B, as A knows, and A gets the workman to break his contract to B's injury by giving him higher wages, it would not, in my opinion, afford A a defence to an action against him by B that he could establish he had no personal ***341** animus against B, and that it was both in the interest of himself and of the workman that the contract with B should be broken. I think that the principle involved in this simple case, taken by me by way of illustration, really governs the present case. For it is to be remembered that what A has to justify is his action, not as between him and the workman, but as regards the employer B."

Romer L.J., on the facts of that particular case went on to hold, at p. 576, that there was no sufficient

justification for the acts of the defendant federation "as against the plaintiffs" and it was accordingly liable to them.

In my judgment, therefore, it is clear that the ICC has to justify as against World Series Cricket the actions which it took in regard to players with a view to inducing them to withdraw from their contracts with that company. For this reason, I do not regard a number of matters which are pleaded by the defendants as constituting justification, as affording any valid basis for the plea. They plead, for example, a large number of alleged facts relating to the terms of the contracts and the circumstances in which they were entered (such as secrecy and the failure to provide copies to the players). If the defendants had shown that all the contracts in question were void or voidable, I would have regarded this as highly material, not because this would have provided a defence of justification as such, but because I am prepared to assume that the tort is not committed if the alleged contract interfered with is shown to be voidable or void. The defendants, however, in my judgment have not proved either of these things. Accordingly, I think that the terms of the contracts and the circumstances in which they were concluded do not found a defence of justification.

In his closing speech on behalf of the defendants, Mr. Kempster emphasised the impersonal and disinterested motives of the ICC in doing what it did and referred me to the decision of Gale J. in the Ontario High Court, Posluns v. Toronto Stock Exchange and Gardiner (1965) 46 D.L.R. 210 , see particularly at p. 270. In my judgment, however, motives of this nature do not, as such, give rise to a defence of justification either generally under English law or on the particular facts of this case.

In the context of English county cricketers, Mr. Kempster mentioned that in accordance with the discipline sub-committee regulations of the rules of the TCCB (Appendix J, paragraph A), every registered county cricketer, before the beginning of each cricket season, is required to sign an undertaking with the TCCB to abide by its rules. All county players who have contracted with World Series Cricket would have signed such an undertaking before the start of the 1977 season. It was submitted that, by so signing, they had sufficiently agreed to submit to any proper exercise of their functions by the governing bodies of cricket, namely, the ICC and the TCCB, including changes of their qualification rules. This submission, however, even if correct, would, in my judgment, at most confer certain rights on the ICC and the TCCB as against the players concerned. It could afford no justification to either of those bodies for attempting to interfere with contracts concluded between players and third parties.

Much the same comment would, in my judgment, apply to the defendants' submission that the ICC or the TCCB was entitled to interfere with World Series Cricket contracts on the grounds that some of the players concerned, by entering into such contracts or alternatively by ***342** playing in World Series matches, have been or will be in breach of contractual obligations previously entered into by them either with their county clubs (in the case of some English county cricketers) or with their national governing bodies for cricket (in the case of some other players). This could be a point which the county clubs or governing bodies would be entitled to take. In my judgment, however, it does not avail the ICC or the TCCB in the present proceedings, as against World Series Cricket.

I accept Mr. Kempster's submission that the plea of justification nowadays is a flexible one and should not be regarded as confined to narrow straitjackets. In general terms, however the weakness of the ICC's plea of justification as against World Series Cricket is, in my judgment, illustrated by the fact that, according to the evidence, neither it nor its legal advisers made any attempt to obtain from Mr. Packer or World Series Cricket copies of the relevant contracts, either at the meeting of June 23,

1977, or subsequently. If there had been an active desire on the part of the ICC not to interfere with such contracts more than was justifiable, it might reasonably have been expected to ask for copies of the contracts from World Series Cricket or its solicitors, explaining why it required them. Its failure to do so provides a further indication that, prompted by an optimistic (but unsubstantiated) belief on the part of some of its members that the contracts were probably voidable, the ICC thought it unnecessary to give very much thought to the possibility that, in passing the proposed resolutions, it might be infringing the rights of World Series Cricket.

In my judgment the defence of justification fails. Accordingly, I answer question (B) above by finding that, subject to any statutory immunity which may be conferred on the ICC by the Trade Union and Labour Relations Act 1974, World Series Cricket had as at August 3, 1977, and still has a good cause of action in tort against the ICC based on inducement of breach of contract.

XIII *The claim of World Series Cricket against the TCCB based on alleged inducement of breach of contract: question (C) above*

I shall now consider the claims of World Series Cricket against the TCCB based on alleged inducement of breach of contract. I need not repeat the basic principles of law applicable in this context, but will proceed straight away to the five ingredients of the tort.(1)

"Direct interference"

In my judgment there has been direct interference by the TCCB with the contracts of World Series Cricket and its players. Apart from the other earlier resolutions of that body, the very terms of the resolutions passed by it at its meeting of July 15, 1977, made it plain that in principle the TCCB contemplated and intended that (i) any player who did not withdraw from his contract with World Series Cricket before October 1, should be disqualified from Test cricket; (ii) any such player, who should be thus disqualified, should also be disqualified from county cricket as from the beginning of the 1979 season. The one year's moratorium attached to this proposed county ban was removed when the proposed change of rules of the TCCB took its final form in August 1977, but this is immaterial for present purposes.

Though these resolutions were not followed by an immediate press announcement, the TCCB could reasonably have assumed that many of ***343** the players concerned would learn of them through the representatives of their counties. Furthermore, at the subsequent ICC meeting on July 26, the chairman of the TCCB himself advocated the policy which had been formulated by the TCCB.

These actions of the TCCB, by proposing (i) a Test Match ban on the players who had contracted with World Series Cricket, the operation of which was to be deferred until October 1, and (ii) a deferred ban at county level on players who should fall under the Test Match ban, were calculated to cause all and doubtless did cause at least some of those players who were otherwise eligible to play in Test cricket and/or county cricket to consider withdrawing from their contracts with World Series Cricket. In my judgment, the TCCB in passing the resolutions which it passed on July 15, and forwarding their implementation through the medium of their chairman at the ICC meeting on July 26, was applying pressure or persuasion to the minds of all cricketers who had contracted with World Series Cricket but wished to remain eligible to play official Test and/or county cricket, to withdraw from their contracts. It faced and was calculated to face the players concerned with an acute dilemma, "Get out of your contracts by October 1, 1977, or be banned." This offer of an opportunity to the players to withdraw from their contracts, coupled with a sanction if they failed to do so, in my judgment, amounted to an attempted inducement to them to withdraw.

Direct interference with such contracts by the

TCCB as at August 3, has, I think, been proved. Furthermore in my judgment as at August 3 there was a clear threat of further direct interference by the TCCB at its impending meeting of August 5, when, it could reasonably have been assumed, it would, unless restrained by the court, actually implement its own proposal for a deferred ban at county level affecting World Series Cricket players.(2)

Knowledge

The TCCB had acquired knowledge of the existence of at least three of the relevant contracts as early as May 12, 1977, after Mr. Insole, or Mr. Carr, had seen Mr. Greig, Mr. Knott and Mr. Underwood. By July 15, it knew of the existence of many more such contracts. Its ignorance of their precise terms does not alone suffice to show absence of intent to procure a breach. In my judgment, the requisite knowledge on the part of the TCCB is proved.(3)

Intent

Mutatis mutandis, much the same comments and conclusions relating to intent apply to the TCCB as those which have been made concerning the ICC. Mr. Insole, who is clearly a powerful and respected figure at any meeting of the TCCB or of the ICC, which he attends, made it plain in his evidence that, in advocating deferred bans at Test and county level coupled with an opportunity to players to "withdraw from the brink," he never at any time contemplated that players under contract to World Series Cricket might thereby be induced to break such contracts or to act in any way in breach of the law; the most he contemplated and hoped was that the terms of the bans or proposed bans would give players an opportunity to withdraw from their contracts, if they found that they could lawfully do so.

I accept such evidence as an honest statement of Mr. Insole's frame ***344**
of mind at the relevant times. I accept that he and Mr. Carr, who also gave full evidence in the proceedings, did not contemplate that the course which they proposed that the ICC should adopt on July 26 and that the TCCB should adopt on August 5 would involve the tort of inducement of breach of contract or any infringement of the legal rights of World Series Cricket. I have no reason to suppose that any of the delegates present at the meeting of the TCCB on July 15 were not acting in good faith. They may well have been reassured by the terms of counsel's opinion written for the TCCB on July 5, copies of which were available to them. This opinion, as has already been mentioned, contained important caveats, but I suspect that their force was inadequately appreciated. Mr. Insole pointed out in evidence, and I accept, that a number of extracts from the minutes and transcribed notes indicate a concern on the part of persons present at the relevant TCCB meetings to act lawfully and obtain legal advice.

However that may be, honest misunderstanding of the legal position and good faith as such, are once again irrelevant. In my judgment the intention of the TCCB as at August 3 can only be judged by what it did and what it said, in particular on July 15.

Applying this objective test, I find as a fact that in passing the resolutions which it did pass on July 15, the TCCB intended to apply pressure or persuasion to all players who had entered into contracts with World Series Cricket and were otherwise eligible for Test or county cricket to withdraw from such contracts before October 1, whether or not they had lawful rights to withdraw. I find also as a fact that as at August 3, World Series Cricket had good grounds for apprehending that the TCCB intended to pass at its meeting of August 5, and subsequently publicise, further resolutions which would be calculated to apply further such pressure or persuasion. In my judgment it is no answer for the TCCB to submit that in truth it intended to apply such pressure or persuasion only to those players, if any, who might have lawful rights to withdraw from their contracts with World Series Cricket. Nothing

in the terms of its resolutions or of any public announcement or communication to players made by it gave any indication of such limitation on its intentions; the players could reasonably have assumed that it was a matter of indifference to the TCCB whether or not they had such rights of withdrawal.

In my judgment the requisite intent on the part of the TCCB is proved. The course of the TCCB meetings of May 31, the course of the meeting of the chairman's advisory committee of July 5, the report of the chairman's advisory committee of the TCCB of July 8 and the course of the meeting of the TCCB of July 15, which I have already attempted to summarise, in my judgment provide ample corroboration for this conclusion.(4)

Damage and justification

In my judgment, for reasons already given in relation to the ICC, World Series Cricket has shown sufficient grounds for apprehending as at August 3 the likelihood of substantial damage, if the TCCB's acts of interference with World Series Cricket contracts were successful. In my judgment also, for reasons given in relation to the ICC, the defence of justification is not open to the TCCB in this context.

Accordingly I answer question (C) above by finding that, subject to any statutory immunity which may be conferred on the TCCB by the ***345** Act of 1974, World Series Cricket had as at August 3 and still has a good cause of action in tort against the TCCB based on inducement of breach of conduct.

XIV *The new rule of the ICC and restraint of trade: question (D) above*(1)

General principles relating to restraint of trade

There can be no doubt that the changes of rules effected by the ICC and the changes of rules intended to be effected by the TCCB will, if implemented, substantially restrict the area in which it will be open to professional cricketers to earn their livings. It is common ground that the rules of an association, which seek substantially to restrict the area in which a person may earn his living in the capacity in which he is qualified to do so, are in restraint of trade. Likewise it is common ground that, subject to any statutory defence that may be open to the defendants, the new rules are prima facie void as being contrary to public policy, and can be justified as valid rules only if each of the restrictions which they respectively embody is, to quote the words of Lord Macnaghten in Nordenfelt v. Maxim Nordenfelt Guns and Ammunition Co. Ltd. [1894] A.C. 535 , 565:

"… reasonable … in reference to the interests of the parties concerned and reasonable in reference to the interests of the public, so framed and so guarded as to afford adequate protection to the party in whose favour it is imposed, while at the same time it is in no way injurious to the public."(2)

Have the plaintiffs a locus standi to attack the new or proposed new rules?

The three cricketers who are seeking declarations that the changes or proposed changes of rules of the ICC and the TCCB are invalid are not themselves in any contractual relationship with either body. In Eastham v. Newcastle United Football Club Ltd. [1964] Ch. 413 , to which I shall refer in greater detail hereafter, Wilberforce J. held that the court had jurisdiction to grant a declaratory judgment at the instance of an employee, not only against an employer who was in contractual relationship with him, but also against an association of employers, whose rules or regulations placed an unjustifiable restraint on his liberty of employment. In the light of this authority, Mr. Kempster, on behalf of the defendants accepted that, if the court were to hold that the new rules of the ICC and proposed new rules of the TCCB placed an unjustifiable restraint on the individual plaintiffs' liberty of employment, it would have jurisdiction to grant them a declaratory judgment in the first action. This, therefore, establishes the

locus standi of those plaintiffs to bring the first action. I should, however, mention that, while Mr. Kempster naturally accepted that World Series Cricket had a locus standi to put forward a claim based on inducement of breach of contract in the second action, he did not accept that it would have any locus standi to seek a declaration in regard to the validity or otherwise of the rules. I will revert to this point, so far as necessary, hereafter. (3)

What (if any) interests are the ICC and TCCB entitled to protect?

Lord Macnaghten's formulation of the principles relating to restraint of trade and other similar judicial formulations all presuppose that, if ***346** arrangements in restraint of trade are to be held valid, the party seeking to justify them must have an interest which he is entitled to have protected by the courts. There are certain categories of interest, such as goodwill, trade secrets and other confidential information, which are well recognised as constituting interests entitled to protection. On the other side of the line, there are a number of judicial dicta which suggest that the mere protection of an employer against competition would not be a legitimate subject for protection: see, for example, Kores Manufacturing Co. Ltd. v. Kolok Manufacturing Co. Ltd [1959] Ch. 108 , 125, per Jenkins L.J. and Eastham v. Newcastle United Football Club Ltd. [1964] Ch. 413 , 431, per Wilberforce J. I have not, however, been referred to any comprehensive judicial statement of the principles defining which interests are and which are not entitled to protection by the law.

I do not, however, propose to attempt to formulate any such statement, because I think it unnecessary for present purposes. In my judgment, the judgment of Wilberforce J. in the Eastham case provides sufficient authority for the proposition that both the ICC and the TCCB have legitimate interests, which are entitled to protection by appropriate restraints. In that case, the plaintiff was a professional footballer registered with a league club, Newcastle United. He had asked to be transferred but his club had given him notice of retention and refused to release him. He refused to sign again with his club and sought, inter alia, declarations that the rules of the Football Association relating to the retention and transfer of football players, including the plaintiff, and the regulations of the Football League relating to retention and transfer were not binding on him, as being in unreasonable restraint of trade. He also claimed a declaration that the refusal of the directors of Newcastle United to release him from its retention list or alternatively to put him on its transfer list was unreasonable. Wilberforce J. held, among other things, first, that the retention provisions, which operated after the end of the employee's employment, substantially interfered with his right to seek employment and therefore operated in restraint of trade; secondly, that the transfer system and the retention system, when combined, were in restraint of trade and that, since the defendants had not discharged the onus of showing that the restraints were no more than was reasonable to protect their interests, they were in unjustifiable restraint of trade and ultra vires; thirdly, that the court could examine a contract between employers only and declare it void on grounds on which such a contract would be declared void, if it had been a contract between an employer and employee, and that it was open to an employee to bring an action for a declaration that such a contract was in restraint of trade, in as much as it threatened his liberty of action in seeking employment, which was a matter of public interest; and, fourthly, that it was a case in which the court could and should grant the plaintiff the declarations sought. Wilberforce J. in the course of his judgment specifically asked the question of principle, at p. 432:

"Is there, then, any interest for which protection can legitimately be claimed if none of the categories of interest which have been defined in the leading cases on restraint of trade are found to exist?"

He continued:

"I think that it would be wrong to pass straight to the conclusion that no such interest — and, therefore, no possible justification for the restraints — exists. Regard must be had to the special character of ***347** the area in which the restraints operate — different from that of industrial employment — and to the special interests of those concerned with the organisation of professional football. These are essentially common to the employing clubs and the two organising bodies …."

Wilberforce J. did not in explicit terms answer the question of principle which he had asked. However, having examined the evidence relating to the retention system, he said, at p. 437:

"I reach the conclusion that the legitimate interests of the association, the league and the employing club cannot justify it in its present form."

I think that these passages from his judgment, together with subsequent passages, make it clear that Wilberforce J. regarded the Football Association and the Football League as having legitimate interests, which they were entitled to protect by proper means, such interests being the organisation of professional football.

The Eastham decision [1964] Ch. 413 was applied by the High Court of Australia in Buckley v. Tutty (1971) 125 C.L.R. 353 , but this was a case again dealing solely with professional football. Mr. Morritt, on behalf of the plaintiffs, submitted that, at least in relation to the ICC, these two cases were distinguishable from the present case, on the grounds that they dealt solely with professional sport. He pointed out that a number of the Test-playing countries have no professional cricket as such. He drew my attention to the judgment of North P. in Blackler v. New Zealand Rugby Football League (Incorporated) [1968] N.Z.L.R. 547 , 556, in which he expressly left open the question whether a body governing an amateur sport has any legitimate interest to protect.

In my judgment, however, on the facts of the present case, the distinction urged by Mr. Morritt is one without an essential difference. I take it that in Eastham's case, Wilberforce J. regarded the Football League and the Football Association as having interests which were entitled to protection, not because all the footballers with which those bodies were concerned were professional footballers, but because the two bodies were in a sense custodians of the public interest. I cannot see any rational grounds for holding that the ICC does not have the requisite interest, merely because some (but far from all) of the players from the various countries who participate in Test Matches expect and obtain no greater reward for doing so than their expenses. The public interest in my judgment no less requires that the game should be properly organised and administered.

For these reasons I conclude that both the ICC and a fortiori the TCCB, which is directly concerned more or less exclusively with professional cricketers, have legitimate interests which are entitled to protection for the purpose of the doctrine of restraint of trade. It is now necessary to consider whether, on the facts, their changes of rule are no more than is reasonably necessary for the protection of the organisation and administration of the game. Since both sides accept and contend that, subject to any applicability of a defence based on the Trade Union and Labour Relations Act 1974 , the interests of both the ICC and the TCCB and of cricketers and of the public are relevant in this action, the floodgates have been opened to an enormous volume of evidence in regard to the organisation of first class cricket, the structure and finances of its organising bodies and the lives of its players in this country and ***348** many other countries. Little, if any, of the comprehensive evidence adduced can be said to have been positively irrelevant, though inevitably

from time to time issues have been ventilated which proved to have only the most marginal relevance. I shall now attempt to extract those matters which seem to me most material in the present context.

(4)

Some pleaded justifications for the ICC ban

I shall first examine the reasonableness or otherwise of the ICC ban. The first premise on which Mr. Kempster founded his final submissions on this point on behalf of the defendants was that World Series Cricket constitutes a very grave threat to the economic viability of cricket throughout the world. Test Match cricket, he submitted, is essential to the successful continuance of the game economically at all levels. World Series Cricket, he submitted, will diminish the income from Test cricket and thus threaten the game as a whole. These points are well and succinctly put in one or two extracts from the further and better particulars of the defences in the two actions. There, it is alleged that the players' contracts with World Series Cricket are calculated to diminish the interest, prestige and attraction of touring and Test Matches in and between various countries, the income to be derived from their promotion and attendance and the benefit in terms of experience, fame and improvement of skills to be enjoyed by their participants. Diminution of income from touring and Test Matches, it is pleaded, will adversely affect the playing and provision of cricket at all levels.

In another passage, relating to cricket in the United Kingdom, the further and better particulars continue:

"Cricket at first class and Test level are linked and inter-dependent; … The maintenance of high standards in, and the welfare and prosperity of, first class cricket in the United Kingdom are substantially dependent upon the participation of those players, who are available to play and/or have played for their countries in touring and Test Matches and are therefore or in any event a popular attraction and in the training and/or development of whom counties have incurred substantial expense. Furthermore a substantial proportion of the cost of county cricket is met from income derived from touring and Test Matches. Diminution of such income is likely to affect the remuneration of cricketers, result in fewer cricketers being recruited and employed, and cause less money to be available for the coaching and development of young players …."

The further and better particulars of the defences repeat the particulars relating to the United Kingdom, which I have just read, so as to refer them to the other five Test-playing countries and state that in each such country: "… the money available for cricket generally is principally derived from Test Matches and otherwise from first class matches."

Mr. Bailey eloquently made much the same point, when, under cross examination, it was put to him that the sole reason why the bans at Test and county level were proposed was "as part of the opposition to Mr. Packer." He replied:

"I would say that possibly the opposition to Mr. Packer formed a part of their thinking; much wider than that were the inherent dangers of somebody like Mr. Packer promoting cricket, possibly for commercial gain — possibly even for philanthropy, but doing it in direct ***349** opposition to the heart of the finances of the game, in almost deliberate opposition, in fact deliberate opposition, with the players who had been nurtured by that game, with the players who had made their name through county cricket and Test cricket and who, by their opposition to established Test cricket, stood in very strong danger of destroying not only the game at Test level but the game which Test level provided the funds for, which was county cricket and beyond that, cricket in schools, cricket throughout the world at all levels."

I have considerable sympathy with this point of view. Under present circumstances, there is much force in Mr. Kempster's description of the World Series Cricket organisation as being "parasitic." For

it is creaming off from conventional first class cricket the star players whom it has itself incurred no expense in training and preparing for stardom, with a view to exploiting their talents for commercial profit.

Furthermore, as I have already made clear, I accept as a matter of fact that (i) conventional first class cricket in the United Kingdom at all levels depends for its financial viability considerably on the profits from Test Matches played in England against overseas teams from the other five Test-playing countries; (ii) cricket in Australia depends considerably on the profits from Test Matches played in Australia against the United Kingdom, West Indies and Pakistan; (iii) cricket in India depends considerably on the profits from Test Matches played in India against the other Test-playing countries; (iv) cricket in New Zealand depends considerably on the profits made by it from Test Matches played both in New Zealand and on overseas tours; (v) cricket in the West Indies depends considerably on the profits made by it from Test Matches played in England or the West Indies against the United Kingdom or Australia.

On the evidence, I also accept in general terms Mr. Bailey's thesis that in most or all of the Test-playing countries some of the profits from Test Matches find their way directly or indirectly to levels of the game lower than first class level, for example, by providing coaching facilities for persons at schools or universities. Consequently I further accept his and the defendants' thesis that anything likely substantially to diminish the income from Test Match cricket would be likely to present a substantial threat to the financial viability of conventional cricket as at present organised throughout the world.(5)

The extent of the immediate threat of World Series Cricket to the Test-playing countries.

At this point, however, it will be convenient io consider how far the World Series Cricket project, as it appeared at July 26, 1977, did in truth present a substantial immediate threat in this sense to the finances of the respective Test-playing countries who were members of the ICC. In this context, it is necessary to refer to the international cricket tours of the Test-playing countries which have been arranged over the next three years, being the proposed duration of the World Series Cricket project. In stating the dates of those tours involving visits to the West Indies, I shall state them as beginning in mid-February, because Mr. Short indicated that the West Indies usually try to get their Shell Shield competition fixtures completed before entertaining a visiting team. The approximate dates of the 13 international tours so arranged, according to the evidence, are (i) October 1977 to February 1978: India to Australia. (ii) November 1977 to March 1978: United Kingdom to Pakistan ***350** and New Zealand. (iii) Mid-February 1978 to May 1978: Australia to West Indies. (iv) April 1978 to July 1978: Pakistan to United Kingdom. (v) June to September 1978: New Zealand to United Kingdom. (vi) September to October 1978: New Zealand to Pakistan and India. (vii) October 1978 to January 1979: West Indies to India. (viii) November 1978 to January 1979: United Kingdom to Australia. (ix) Mid-February to March 1979: India to West Indies. (x) June to September 1979: India to United Kingdom. (xi) October 1979 to January 1980: Australia to India and Pakistan. (xii) October 1979 to January 1980: West Indies to Pakistan and New Zealand. (xiii) May 1980 to September 1980: West Indies to United Kingdom.

Mr. Packer at the ICC meeting of June 23, 1977, had stated his intention that World Series Cricket should be played from the end of November until the middle of February and his sincerity in making this statement has not been challenged. Accordingly when it met on July 26, the ICC could reasonably have anticipated that clashes would occur between World Series Cricket matches and only six of the 13 official tours that had been arranged, namely, numbers (i), (ii), (vii), (viii), (xi) and (xii). As regards tour (i), however, India never reckons to make profits out of its tours to Australia; nor does

Australia reckon to make profits from such tours. As regards tour (ii), the United Kingdom never reckons to make profits out of its tours to Pakistan and New Zealand. As regards tour (vii), the West Indies never reckon to make profits out of their tours to India. As regards tour (viii), the United Kingdom never reckons to make profits out of its tours to Australia. As regards tour (xi), Australia never reckons to make profits out of its tours to India and Pakistan. As regards tour (xii), the West Indies never reckon to make profits out of their tours to Pakistan and New Zealand.

No New Zealand or Indian players are involved in the World Series project. Accordingly, I conclude that the immediate threat to the Test-playing countries as at July 1977 really amounted to this, namely that, because of competition from World Series Cricket, (a) greater losses might be incurred by Australia on the visit from India in 1977–78 than would otherwise have been incurred by it because World Series Cricket matches would be being played in Australia at the same time and because of the unavailability of most of the present star Australian players; (b) New Zealand and Pakistan might make smaller profits from the visits of the United Kingdom in 1977–78 than they would otherwise have done because of the unavailability of perhaps four or five of the present star United Kingdom players and (in the case of Pakistan) because of the unavailability of perhaps four of its present star players; (c) India might make smaller profits than it would otherwise have done from the visit of the West Indies in 1978–79 because of the unavailability of many of the present star West Indian players; (d) Australia might make smaller profits than it would otherwise have done from the visit of the United Kingdom in 1978–79 both because World Series Cricket matches would be being played in Australia at the same time and because of the unavailability of most of the present star Australian players and four of five of the present star United Kingdom players; (e) India and Pakistan might make smaller profits that they would otherwise have done from the visit of Australia in 1979 — so because of the unavailability of most of the present star Australian players and (in the case of Pakistan) of perhaps four of the present star Pakistan players; (f) New Zealand and Pakistan might make smaller profits than they would otherwise have done from ***351** the visit of the West Indies in 1979–80 because of the unavailability of many of the present star West Indies players and (in the case of Pakistan) perhaps four of its own players.

I cannot, however, on the evidence attach a great deal of weight to any of these risks, except those run by Australia. There is no evidence from any representative from Pakistan. As to India, Mr. Chidambaram expressed apprehensions that the absence of star players might affect gates when visiting teams come here. Under cross-examination, however, he accepted that in general in India there has been tremendous enthusiasm for the visit of any international team and the evidence is the same in relation to Pakistan. Since no players from India itself have joined World Series Cricket, I do not think it would be right to assume that it poses any serious immediate threat to the finances of Indian cricket over the next three years provided that no Indian players join it. As regards New Zealand, though Mr. Hadlee expressed apprehensions that the absences of star players might affect gates in New Zealand when visiting teams come there, the evidence suggests that United Kingdom touring teams have in the past seldom included all the current leading English players. By the time that the West Indies visit New Zealand in 1979–80, other attractive West Indies players will no doubt have emerged. New Zealand itself has no players under contract to World Series Cricket. In all the circumstances I am not convinced that World Series Cricket presents any serious immediate threat to the finances of New Zealand cricket. The same observation applies a fortiori to the West Indies and the United Kingdom, neither of whom are due to take part in any official Test series during the next three years which is both likely to be substantially profitable to them and also to clash with World Series

matches.

It is theoretically possible that World Series Cricket could have some indirect effect on the guarantees which touring teams were able to arrange when visiting another country, but I am not satisfied that this factor at present poses any real threat to any of the Test-playing countries.

In all the circumstances, on a close analysis of the situation, I regard Australia as being the only Test-playing country whose finances are effectively presented with any real and immediate threat by World Series Cricket. Australia is in a special position, not only because about 20 of its best players are under contract to World Series Cricket, hut also because, as at present anticipated, all the World Series Cricket matches will be played on its soil. I think, however, that the extent of the threat to it is somewhat imponderable. Mr. Ross Edwards expressed the view in evidence that, on balance, the impact of World Series Cricket on Australia might be a financially beneficial one. He thought, for example, that in the immediately impending official Test series, the Indian team would not be a very strong side and that the fielding of an Australian team comprising younger, less experienced players might well produce more exciting matches that would attract greater public interest and be more likely to run their full five-day schedule, to the advantage of the gate receipts. He considered that the World Series Cricket project could operate to stimulate greater general interest in cricket; and of course, such increased interest can bring financial benefits to the game in the form of more sponsorship and so forth. Nevertheless, there are many factors on the other side. Not only are so many of Australia's own star players involved and thus likely to be unavailable, both for the visit from India now in progress and for the tour by the United Kingdom in 1978–79 but a number of the well-known United Kingdom players are also likely to ***352** be unavailable for the latter tour. Furthermore, both these two Test series will be being played at a time when World Series Cricket matches, involving Australian and United Kingdom players, will be taking place on Australian soil and being televised by Channel Nine. The evidence shows that at present it is not the intention that any World Series Cricket matches will be played in the same state as official Test Matches. Nevertheless, the strong possibility must exist that the counter-attraction of World Series matches may result in a number of people choosing to watch these matches on their television sets (on Channel Nine) rather than going in person to see official Test Matches. Accordingly, I accept that World Series Cricket, both by removing star players and by providing a competing attraction, is on the balance of probabilities likely to diminish the receipts of the Australian Cricket Board from the two Test series mentioned and thus to be detrimental to the financial interests of official Australian cricket as at present organised. (6)

The reasonableness or otherwise of the ICC ban

I thus arrive at the conclusion that as at July 26, 1977, World Series Cricket, taking into account the 50 or so players who were then under contract to it, presented an immediate threat to the finances of Australian cricket, but no serious immediate threat to the other Test-playing countries. In the longer term, it did present further serious threats to all the Test-playing countries in three ways, first because other players might thereafter join World Series Cricket, secondly because it was theoretically possible that its programme might be extended beyond the projected three years and thirdly because other private promoters might conceivably be encouraged to follow Mr. Packer's example. These three threats, however, could have been adequately met by merely imposing a prospective disqualification from Test cricket on all players who should *thereafter* contract with or play for World Series Cricket or other unapproved private promoters. I do not say that a merely prospective ban of this nature would necessarily have been valid. However, being narrower than the ban, both prospective and retrospective, which was in

fact imposed, it would clearly have been more easy to justify. In general terms I see the force of the proposition that official Test-players should not for the future be permitted to make themselves available to official Test cricket and to privately promoted international cricket in turn and from time to time, as and when they please. There would, I think, have been much to be said for the reasonableness and thus for the validity of a resolution passed on July 26, 1977, of which the effect had been merely to inform cricketers in clear terms that any of them who thereafter contracted with and elected to play cricket for a private promoter, such as World Series Cricket, could not subsequently expect to be engaged to play in official Test Matches by any of the cricketing authorities of the Test-playing countries.

Despite the representations of the West Indies, however, this was not the form of the resolution which the ICC chose to adopt on July 26. The resolutions which, in fact, have to be justified are ones which applied indiscriminately both to those who had contracted with World Series Cricket before July 26 and those who might thereafter contract with it. When the position is carefully analysed, I find it impossible to see how resolutions in this extended and wider form can be adequately justified on any rational and objective grounds.***353**

As a matter of fact, according to my findings, one principal reason why the resolutions took this extended form was because the ICC hoped that this would induce players to withdraw from their contracts with World Series Cricket. I have, however, already held that such attempted inducement constituted a tort as against that company. This cannot therefore, in my judgment, and indeed is not, urged as a justification for the resolutions taking the extended form which they took. Another consideration which, on the evidence, I do not doubt influenced the minds of a number of those representatives who were parties to the resolutions was that they thought that the players who had contracted with World Series Cricket deserved the ban. I have, however, already expressed the view that such players had committed no wrong of which the law can take account and, in any event, this again was not a consideration relied on in argument. I have also no doubt on the evidence that a perhaps understandable desire generally to make things as difficult as possible for Mr. Packer actuated the minds of a number of the representatives at the ICC meeting on July 26. Once again, however, this is not a factor on which the defendants are entitled to rely or have relied in argument in the present context.

Faced with this dilemma, Mr. Kempster sought to justify the imposition of the ICC ban on this extended, retrospective basis on what, I think, were logically the only substantially arguable grounds. He submitted that the imposition of the ban alike both on players who had contracted and might contract thereafter with World Series Cricket was necessary in order to provide the essential effective deterrent against further recruitment to World Series Cricket. He reminded me of the evidence of a number of his witnesses in the context. Mr. Hadlee, for example, under cross-examination said that the purpose of applying the ban to those who had already signed was both to penalise them and afford an example to those who might consider signing in the future. Mr. Chidambaram, under cross-examination, said that a ban on persons who might in future sign for World Series Cricket would be "better and more forceful" as a deterrent, if it included persons who had already signed. Mr. Short, making much the same point, said, under cross-examination, that if the ban had been applied merely to those who might sign in the future and had not been extended retroactively to persons who had already signed, this would not have been equitable in that "those who had signed too quickly, as it were, would get off scot-free." Likewise, Mr Bailey said under cross-examination:

"I think that the problem here was that retroactive action was felt to be the only possible course, for the reason that those who had already signed would otherwise have been in a more advantageous posi-

tion than those who had not and would thus have been able to play county cricket, whereas those who had not yet signed would not have been. I think I said that this could create in the close-knit world of cricket — which is essentially a game where you have to play as a team and live together — a reasonably certain amount of friction which could not at all be in the best interests of either county or test cricket, had there not been a retroactive ban."

I appreciate the force of the point that if the ICC ban was to be introduced at all, it might have been thought desirable to make it retrospective, in the sense already indicated, in order to lend credibility to the deterrent afforded by it and to make that deterrent appear equitable as between the players involved. However, this particular possible ***354** advantage of introducing a ban in retrospective form had to be set against what are, in my judgment, an overwhelming number of factors going the other way.

First and foremost, to deprive, by a form of retrospective legislation, a professional cricketer of the opportunity of making his living in a very important field of his professional life, is in my judgment prima facie both a serious and unjust step to take. Though many persons on the defendants' side have taken a contrary view, I have already indicated the reasons why I do not think that, on any fair and objective basis, players who had already contracted with World Series Cricket can be said to have deserved the sanction that was imposed against them, and if they did not deserve it, it is no answer to say that many of them may have expected it.

Secondly, the public will be deprived of a great deal of pleasure, if it is to be deprived of the opportunity of watching these talented cricketers play in those many official Test Matches which do not clash with World Series Cricket matches, and for which they would otherwise be available. Of the 13 Test series planned for the next three years, it is probable that seven will not clash with World Series Cricket matches at all, so that World Series cricketers will be available to play in them. The ICC ban by disqualifying them from playing even in these matches would be aggravating any deprivation that World Series Cricket might already be causing the public in the various Test-playing countries.

Thirdly, if, as is implicity alleged in the defendants' pleadings, the absence of such players from official Test and other first class matches will affect gate receipts, a rigid rule preventing the selectors of a particular country from selecting a particular player who is available to play in a Test Match, merely because he has played for World Series Cricket, is likely to result in an actual diminution of the receipts of such Test Matches. The plaintiffs' counsel expressly recognised that Test selectors, in exercise of their discretionary functions, will always be entitled to prefer a player who has not elected to play for a private promoter to one who has. No one suggested that a cricketer's involvement with World Series Cricket would be an improper factor for such selectors to take into account. This, however, is a very different matter from placing the selectors under inflexible restrictions in regard to their field of selection. Mr. Short of the West Indies, a frank and excellent witness, agreed under cross-examination that the West Indies would be making a "considerable sacrifice" in denying themselves the opportunity of playing World Series Cricket players, when they were available. All the other Test-playing countries would be making a similar sacrifice. Mr. Short said, in effect, that it was necessary to make that sacrifice to safeguard the present and long term interests of international cricket. With all respect to him and the other witnesses called on behalf of the defendants who said much the same thing, I do not think that they had given sufficient thought to the specific positive benefits, if any, to be derived from a ban. In my judgment the positive benefits that might follow from a retrospective ban of the nature introduced by the ICC at its meeting of July 26, 1977, are, at most, speculative and not nearly sufficient to outweigh the certain injustices to the players involved and the certain detriment to the world public interested in cricket, which would

result from the ban.

In my judgment, therefore, the ICC has not discharged the onus which falls upon it of showing that the ban is reasonable and justifiable. Accordingly I answer question (D) above by holding that subject to the provisions ***355** of the Act of 1974 the new rules of the ICC are ultra vires and void as being in unreasonable restraint of trade.

XV *The proposed new rules of the TCCB and restraint of trade: question (E) above*

Mr. Kempster, on behalf of the defendants, accepted that any finding that the relevant ICC rules are in unreasonable restraint of trade would inevitably involve, a fortiori, a conclusion that the relevant proposed new rules of the TCCB would be void for similar reasons. This, I think, must follow, but I should perhaps state the principal reasons why I regard the proposed TCCB rules as representing an a fortiori case.

First, while Test cricket presents a valuable opportunity to cricketers who are eligible and sufficiently talented to supplement their income from time to time by playing in Test Matches and going on official tours, county cricket offers an opportunity, indeed the only opportunity, available to those who are qualified to earn their living by playing full time cricket throughout the English summer. The denial of the opportunity to play in English county cricket is therefore a much more serious deprivation to players such as the three plaintiff cricketers who wish to play it than the deprivation of more speculative opportunities of playing Test cricket in the future.

Secondly, in the case of players such as Mr. Snow and Mr. Procter, who are in any event out of the running for official Test cricket, the proposed TCCB rules would effectively prevent them from playing any first class cricket whatever for the period of its duration. Since its duration, in the case of Mr. Snow, would be at least three years and in the case of Mr. Procter at least five years, it would, in view of their ages, probably have the effect of driving these two cricketers permanently out of first class cricket. Mr. Procter's evidence was that he had never conceived the possibility of such a drastic restriction when he contracted with World Series Cricket.

Thirdly, to drive talented players such as Mr. Greig, Mr. Snow and Mr. Procter out of first class cricket, either temporarily or permanently, is bound to deprive the cricket-going public in the United Kingdom counties concerned of a great deal of pleasure to be derived from watching star players whom it is accustomed to watch and thus is liable, in at least one sense, to do positive injury to cricket in this country by reducing gate receipts.

Fourthly, the principal threat of World Series Cricket was aimed not at the United Kingdom but at Australia. While a feeling of loyalty to or solidarity with Australia may well have been one factor which influenced the United Kingdom representatives to support the ban at Test level at the ICC meeting of July 26, 1977, no such feeling could reasonably have actuated the TCCB. It is true that on July 26 the ICC had recommended member countries to implement the Test Match ban at domestic level. The first originator of this recommendation, however, as of the first proposals for the bans at two levels, had been the TCCB itself. So far as the evidence reveals, the Australian Cricket Board itself has not yet taken any effective step to implement the ban at state level, though some individual states in Australia are electing to do so themselves. I understand that the Australian Cricket Board is deferring its own decision until after judgment in these present proceedings. In relation to the arrangement of its affairs, however, the TCCB in my judgment was entitled and indeed ***356** bound under its constitution to look more or less exclusively to the interests of United Kingdom cricket.

I accept that, as a number of the defendants' wit-

nesses have pointed out, the presence of some World Series Cricket players could, in the case of some county clubs, cause dissension among the teams and even, perhaps, the loss of financial support from some subscribers to the club. As Mr. Boycott and other witnesses for the defendants observed, it could cause real difficulties if and when World Series Cricket players from time to time returned to conventional cricket and sought to regain their places. It will, however, be a matter for each club to decide for itself whether or not it wishes hereafter to re-engage players who have engaged themselves to Mr. Packer. It will then be open to them to take into account, among other things, the possible difficulties referred to by Mr. Boycott. Significantly, however, there is no evidence before me that any of the clubs concerned actually wish to cease employing such players. The evidence of all the plaintiff cricketers was that, so far as they were aware, their respective county clubs would wish to re-employ them in 1978, unless they were prevented from so doing by the TCCB ban. I can see no sufficient reason or justification for imposing on them an arbitrary rule which prevents them from so doing, whether they wish to do so or not.

Accordingly I answer question (E) above by holding that, subject to the provisions of the Act of 1974, the proposed new rules of the TCCB are or would be ultra vires and void as being in unreasonable restraint of trade.

XVI *Is the ICC an "employers' association"? Question (F) above*

I now turn to consider whether the ICC is an "employers' association" within the meaning of the Trade Union and Labour Relations Act 1974. This first necessitates looking at its constitution and referring to the relevant provisions of the Act.

Rule 4 of the Rules of the ICC sets out its functions in the following terms:

"4.Functions. The conference shall be responsible for:(i)The status of official Test Matches, which are defined as matches played between teams selected by foundation and full members as representative of their countries. Each such member country shall regard itself as responsible for maintaining the official Test Match status at the highest possible level having regard to the standard of cricket in its country at the particular time.(ii)The confirmation of tours in the programme for visits of official teams between foundation and full member countries. The conditions for any tour shall be a matter for direct negotiation between the members concerned, and failure to reach agreement leading to the cancellation of an approved official tour shall be reported to the conference.(iii)The qualification rules for cricketers for Test Matches. (Appendix 1).(iv)Rules of general application, including the appointment of umpires, in Test Matches. (Appendix II and III).(v)Discussion of matters of common interest to all members.(vi)Alteration of and addition to the rules of the conference as may be necessary from time to time.(vii)The allocation to foundation and full members of their 'spheres of assistance' with a view to the extention, encouragement and improvement of cricket throughout the world and the organisation of minor tours."***357**

Section 28 (2) of the Act of 1974 contains the statutory definition of an "employers' association." Omitting those words which can have no possible materiality for present purposes, it reads:

"(2)In this Act, except so far as the context otherwise requires, 'employers' association' means an organisation (whether permanent or temporary) which either —(a)consists wholly or mainly of employers … of one or more descriptions and is an organisation whose principal purposes include the regulation of relations between employers of that description or those descriptions and workers … or(b)consists wholly or mainly of —(i) constituent or affiliated organisations which fulfil the conditions specified in paragraph (*a*) above (or them-

selves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions), or (ii)representatives of such constituent or affiliated organisations; and in either case is an organisation whose principal purposes include the regulation of relations between employers and workers … or include the regulation of relations between its constitutent or affiliated organisations."

Section 30 (1) of the Act contains a definition of "worker" which omitting words that are immaterial for present purposes, reads as follows:

"'Worker' (subject to the following provisions of this section) means an individual regarded in whichever (if any) of the following capacities is applicable to him, that is to say, as a person who works or normally works or seeks to work —(a)under a contract of employment; or(b)under any other contract (whether express or implied, and, if express, whether oral or in writing) whereby he undertakes to do or perform personally any work or services for another party to the contract who is not a professional client of his; …"

Section 30 (6) provides:

"For the purposes of this Act it is immaterial whether the law which (apart from this Act) governs any persons' employment is the law of the United Kingdom, or of a part of the United Kingdom, or not."

The ICC claims that it is an "employers' association" within limb (*a*) of the statutory definition contained in section 28 (2) . It does not rely on limb (*b*). It follows that if the ICC is to prove that it is an "employers' association" within the statutory definition, it must surmount two hurdles. First, it must show that it is an organisation which "consists wholly or mainly of employers … of one or more descriptions." Secondly, it must show that it is an "organisation whose principal purposes include the regulation of relations between employers of that description or those descriptions and workers."

In relation to this first hurdle, the ICC was requested to give further and better particulars of its allegation that it is an "employers' association," by stating whether it was alleged that its membership consists wholly or mainly of employers and if so identifying such members and giving full particulars of the employees of each such member. Its answer to this request took the following form:

"It is so alleged, the employers who are members being: The Australian Cricket Board, The New Zealand Cricket Council, The Board of Control for Cricket for Pakistan, Indian Cricket Board, West Indies Cricket Board of Control. Their employees are those ***358** who, having satisfied the conditions for eligibility aforesaid, are selected to play in Test or touring matches."

There are, in my judgment, at least two reasons why this plea cannot on any footing succeed. First, under the rules of the ICC, the five bodies to which I have just referred are not themselves even members of the ICC. I need only refer to a few of these rules to demonstrate that throughout the rules, the member countries themselves, rather than their governing bodies for cricket, are treated as being the members. Thus, for example, rule 1 reads: "1.

Constitution

"Chairman — The president of M.C.C. for the time being or his nominee. Foundation Members — United Kingdom and Australia. Full Members — India, New Zealand, West Indies and Pakistan. Associate Members — Argentina, Bermuda, Canada, Denmark, East Africa, Fiji, Gibraltar, Holland, Hongkong, Israel, Malaysia, Papua New Guinea, Singapore, Sri Lanka, United States of America and West Africa. Secretary — The secretary of M.C.C."

Rules 2 (a) and 2 (b) relating to membership read: "2.

Membership

"(a)General. The following shall be eligible for election: —(i)Full members. A country, or countries associated for cricket purposes, with a governing body for cricket recognised by the conference of which the representative teams are accepted as qualified to play official Test Matches:(ii)Associate members. A country or countries associated for cricket purposes with a governing body for cricket recognised by the conference not qualifying as full members, but where cricket is firmly established and organised.

"(b)Up-grading or election. A proposal for the up-grading of an associate member or the election of a new full member or associate member shall be made and seconded in writing by foundation or full members only and included on the agenda for a meeting of the conference. No up-grading or election shall be made except by a majority vote of those foundation and full members present and voting, which must include the supporting votes of foundation members. In the event of a foundation member country not being represented at the conference, no resolution shall be effective unless confirmed in writing by the controlling body of such foundation member country."

Rule 3 (b) , dealing with representation at meetings, reads:

"(b)Representation. The governing bodies of cricket recognised by the conference in all member countries shall nominate representatives as follows: —(i)Foundation and full members — not more than two representatives.(ii)Associate members — not more than one representative. Members will notify the secretary at least 14 days in advance of the meeting of the names of their appointed representatives. In the event of a nominated representative being unable to attend, a substitute may be allowed."

The final sentence of rule 7 , dealing with the amendment of rules, reads:

"In the event of a foundation member country not being represented at the conference, no resolution shall be effective unless confirmed in writing by the controlling body of such foundation member country."***359**

Mr. Kempster submitted that, to give meaning and efficacy to the rules, the only way they can properly be construed is by treating the respective governing bodies for cricket, rather than the countries themselves, as the members. In this context he referred me to the preamble to the rules which includes the following sentences:

"The Board of Control for Cricket in Ceylon (now Sri Lanka), Fiji Cricket Association and United States Cricket Association were elected associate members on July 15, 1965. The Bermuda Cricket Board of Control, Danish Cricket Association, East African Cricket Conference and Royal Dutch Cricket Association were elected associate members on July 14, 1966. The Malaysian Cricket Association was elected an associate member on July 12, 1967. The Canadian Cricket Association was elected an associate member on July 10, 1968. The Gibraltar and Hongkong Cricket Associations were elected associate members on June 10, 1969. The Papua New Guinea Cricket Board of Control was elected an associate member on July 24, 1973. The Argentine, Israel and Singapore Cricket Associations were elected associate members on July 23, 1974. The West Africa Cricket Association was elected an associate member on July 20, 1976."

I accept that the wording of this preamble indicates some possible confusion of thought on the part of the draftsman. The inconsistency in the language used by him is illustrated by an earlier sentence in the very same preamble to the rules which reads: "South Africa [sic] ceased to be a member of the conference on leaving the British Commonwealth in May 1961." I also accept that for practical

purposes the governing bodies for cricket may well be regarded by those concerned with the ICC as the "members," particularly since rule 3 gives those bodies the power to nominate representatives to the ICC. Nevertheless, the wording of the body of the rules seems to me to be quite clear. Under the rules it is the country and not its governing body for cricket, which is the member. The wording of rules 2 (a), (b), 3 (b) and 7 , for example, draws a clear distinction between a country and such governing body. In these circumstances I do not think that the court, in construing the rules, would be justified in doing violence to the clear language which the ICC has chosen to adopt, particularly if the purpose and result of so doing is merely to enable the ICC to take advantage of the very far-reaching immunity given to "employers' association" by the Act of 1974. If the ICC wishes to seek to take advantage of such immunity, it must first, at least, amend its rules so as to make it plain that its members are in truth the relevant "employer" bodies; and I do not say that, even then, there will not be many further obstacles in its path.

However, even if, contrary to my view, by some very strained construction of the ICC rules, it were possible to treat the five governing bodies for cricket mentioned in the further and better particulars of the ICC's amended defences as being members of the ICC, the ICC still has to show that it is an organisation consisting "wholly or mainly" of employers.

The ICC, however, consists not of five but of 22 members, all of whom have voting rights, though in the case of "associate members," such voting rights are not exercisable in relation to one or two specified matters, such as the "up-grading" of an associate member or the amendment of the rules. Of the remaining 17 members, it is not alleged that the Cricket Council, which is the governing body for cricket in the United Kingdom, ***360** is an "employer"; and there is no evidence whatever as to the organisation or structure of cricket in the 16 countries which are expressed to be "associate members." For all that the evidence shows, none of the respective governing bodies for cricket in these countries may be "employers."

For these reasons, in answer to question (F) above, the ICC in my judgment fails to surmount the first of the two hurdles which it must surmount if it is to show that it is an "employers' association" within section 28 (2) (a) of the Act of 1974. For it has not shown that it is an organisation which consists "wholly or mainly of employers." In these circumstances it is unnecessary to consider whether it could show that it is "an organisation whose principal purposes include the regulation of relations between employers … and workers."

XVII *Is the TCCB an "employers' association"? Question (G) above*

The TCCB, like the ICC, now claims that it is an "employers' association" within the definition contained in section 28 (2) (a) of the Act of 1974. It does not rely on section 28 (2) (b) . Like the ICC, therefore, it has to show, first, that it is an organisation which "consists wholly or mainly of employers of one or more descriptions" and, secondly, that it is "an organisation whose principal purposes include the regulation of relations between employers of that description or those descriptions and workers."

Rule 1 of the Rules of the TCCB provides as follows: "1.

Constitution

"Chairman — To be appointed annually by the board. Members — M.C.C. Each of the 17 first class counties. The Minor Counties Cricket Association. Secretary — To be appointed by the board."

In the context of these rules, the expression "the 17 first class counties" in my judgment

clearly means "the 17 first class county clubs," since in this instance there is nothing in the wording of the subsequent rules to prevent such a construction. The 17 first class county clubs are "employers" within a definition contained in section 30 (1) of the Act of 1974. Accordingly the TCCB has in my judgment shown that it is an "organisation … which … consists wholly or mainly of employers … of one or more descriptions." It thus surmounts the first hurdle which it must surmount if it is to show that it is an "employers' association," within the statutory definition.

Turning to the second hurdle, however, it is faced with far greater difficulties. Rule 2 of its rules which sets out its functions provides as follows: "2.

Functions

"The board shall be responsible to the Cricket Council for:(a)The organisation and administration of all Test and trial matches in the United Kingdom.(b)The organisation and administration of M.C.C. overseas tours.(c)The negotiation of financial and playing conditions with the overseas governing body concerned for tours to and from the United Kingdom.(d)The receipt, as agent for the various bodies detailed in Appendix 'A,' of moneys derived directly or indirectly from Test Matches at home, from overseas tours and from any other matches or competitions organised by the board and for the payment of the relevant expenses and for the distribution of the net receipts, in accordance with Appendix 'A.'(e) The administration ***361** and promotion of the first class county championship and any other competition concerning the first class counties. (f)The rules governing the registration and qualification of cricketers in county cricket (Appendix 'B')."

Mr. Kempster, by a careful analysis of the subsequent rules of the TCCB and the appendices to those rules, and of the evidence relating to what it actually does in practice, has sought to show that its "principal purposes include the regulation of relations between employers … and workers." I think, however, that there is at least one fatal flaw in this proposition.

In my judgment, the wording of the statutory definition of an "employers' association" contained in section 28 (2) (a) of the Act of 1974 in its context clearly shows that, if an organisation is to fall within this definition, it must comprise a number of employers, who by virtue of their common characteristic as employers of a certain description or descriptions, have associated themselves for purposes among the most important of which is included the regulation of relations between employers of such description or descriptions and workers. In my judgment it follows from this that the very wording of the definition contemplates that, if an organisation is to fall within the statutory definition, it must be responsible to the members who have associated themselves for such purposes . If, under the terms of its constitution, it were made responsible for the exercise of its functions not to its members but to other persons, this would in my judgment be quite inconsistent with its being an "employers' association." For on this footing its members would not have the full right collectively to supervise and control the activities of the association, which they could have been expected to demand if they had joined together in the association for a principal purpose, albeit among other principal purposes, of regulating their relations as employers with their workers.

Under the express terms of rule 2 of the Rules of the TCCB , it is made responsible in the exercise of its functions not to its members but to the Cricket Council. Furthermore that this is no accident of drafting and that the Cricket Council indeed has the ultimate control over the activities of the TCCB is illustrated by two further provisions of the TCCB rules. Under rule 3 (d) , which relates to meetings of the TCCB, a straight majority is expressed

to suffice to carry a resolution but "subject to confirmation by the Cricket Council." Under rule 7, any appeal from a decision from a number of specified sub-committees of the TCCB has to be referred not to the TCCB but "to the Cricket Council." The realisation of the TCCB that it is indeed responsible to the Cricket Council in the exercise of its functions is well illustrated by the fact that the important decisions of policy taken by it at its meeting of July 15, 1977, were all made subject to the Cricket Council's supporting the TCCB's recommendations. If the Cricket Council had reversed the recommendations, the TCCB would have had no authority whatever to act on them, save by the unanimous consent of all its members.

In these circumstances, in answer to question (G) above, I hold that the TCCB is not an "employers' association" within the statutory definition on the narrow, but to my mind conclusive, ground that, in exercising its functions, it is responsible not to its members but to an entirely different body, the Cricket Council. It has not been submitted, ***362** and I think could not be submitted on the facts, that the Cricket Council is itself an "employers' association."

XVIII "*The right to work": question (H) above*

The grounds on which I have decided that neither of the defendant bodies is an "employers' association" within the meaning of the Act of 1974 have made it unnecessary to deal with a number of broader questions that were canvassed in argument in relation to that Act. One very important such question is whether it can be properly claimed that the "principal purposes of an organisation" include the "regulation of relations between employers … and workers" for the purpose of section 28 (2) (a), merely because one of its principal purposes includes the ordaining of rules setting out the qualifications which a person must possess if he is to enter or remain in a specified field of employment. The defendants have submitted that the answer to this question is in the affirmative and in this context pointed to the definition of a "worker" in section 30 (1) of the Act of 1974 as including a person who works "or seeks to work" as therein mentioned.

If this construction of the Act of 1974 be correct, it would appear to have the most far reaching consequences. On this interpretation, it would seem, it would be open to a number of employers deliberately to associate themselves for the purpose of agreeing that specified persons or categories of persons should be disqualified from seeking or remaining in employment with any of them. The association having been founded, it would seem that they could then claim that it constituted an "employers' association," and that, being such, it enjoyed the immunities conferred by sections 3 and 14 of the Act of 1974, so that its rules, however unreasonable, could not be attacked as being in restraint of trade and it would enjoy general immunity from liability in tort.

There are at least two possible answers to this, at least to me, rather unattractive submission on the part of the defendants. First, it may be that, as the plaintiffs submit, the phrase "regulation of relations between employers … and workers" in the context of section 28 (2) (a) is apt only to include the regulation of relations during the subsistence of the period of employment and thus cannot extend to rules which are designed to prevent employment from ever arising.

Secondly, it is possible that, even if a hypothetical association formed for the purposes to which I have referred constituted an "employers' association" within the statutory definition, its rules could still be successfully attacked, not so much on the grounds that they were in "restraint of trade," as on the broader grounds that they were contrary to public policy as preventing persons' right to work. A number of dicta of members of the Court of Appeal in Nagle v. Feilden [1966] 2 Q.B.

633 suggest that, where an association exercises a virtual monopoly in an important field of human professional activity and seeks to exclude classes of men or women from such activity, the courts may intervene on broad grounds of public policy if the power is abused, without relying on the narrower doctrine of restraint of trade: see, for example, per Lord Denning M.R., at p. 644, and per Danckwerts L.J., at p. 650. As Danckwerts L.J. said:

"… the courts have the right to protect the right of a person to work when it is being prevented by the dictatorial exercise of powers by a body which holds a monopoly."***363**

Though section 3 (5) of the Act provides a defence to a claim that rules of an "employers' association" are void "by reason only that they are in restraint of trade," it may well be that the subsection would provide no defence to a claim that they were void on the broader ground of general public policy. The broader the construction which the court felt compelled to place on the statutory definition of "employers' association," surely the narrower would be the construction which it would incline to place on the phrase "restraint of trade" in the context of section 3 (5) . I need, however, express no conclusion on these points. In the event question (H) above does not arise for decision.

XIX *The relief to be granted: question (I) above*

In the light of my foregoing decisions, it is now necessary to consider the relief that should appropriately be granted. Only one outstanding question of law falls to be decided in this context — that is, whether World Series Cricket is entitled to a declaration in the second action relating to the invalidity of the rules or proposed rules on the grounds of unreasonable restraint of trade. I can deal with this very shortly. Lord Denning M.R. in Boulting v. Association of Cinematograph, Television and Allied Technicians [1963] 2 Q.B. 606 , 629, referred to "the power of the court in its discretion to make a declaration of right whenever the interest of the plaintiff is sufficient to justify it." Following this and other judicial dicta, Wilberforce J. in Eastham v. Newcastle United Football Club Ltd. [1964] Ch. 413 , 446, held that the court had jurisdiction to grant to the employee a declaratory judgment not only against the employer who was in contractual relationship with the employee, but also against the Football Association and the Football League whose rules or regulations placed an unjustifiable restraint on his liberty of employment. Wilberforce J. in due course in exercise of his discretion further proceeded to grant appropriate declarations. I feel no doubt that in accordance with the principles applied in that decision, the court has jurisdiction to grant declarations relating to the invalidity of the relevant rules not only in favour of the individual plaintiff cricketers, but also to World Series Cricket. For these rules, according to my findings of fact, are specifically directed against that company, in the sense that one of their principal objects is to persuade cricketers not to perform their existing contracts with it and to prevent others from contracting with it in the future; indeed, the resolution of "disapproval" passed by the ICC specifically named it. In these circumstances, appropriate declarations can and should in my judgment be granted both to the individual plaintiffs and to World Series Cricket.

Mr. Kempster, on behalf of the defendants, indicated that, subject to any appeal, they would abide by any declaration which the court saw fit to make in either action. I know of no reason to doubt that they will faithfully do so and correspondingly think that no grant of any immediate injunction is called for.

In the result, subject to any discussion as to the precise form of the order, I propose in the first action to grant to the three plaintiffs (i) a declaration that all the changes of the rules of the ICC

and all the resolutions of the ICC respectively referred to and set out in the press statement of the ICC issued on July 26, 1977, are ultra vires and void as being in unreasonable restraint of trade; and (ii) a declaration that the new or proposed new rule 1 (e) and (f) of the rules of the TCCB governing the qualification and registration of cricketers in Test and ***364** competitive and county cricket and the new or proposed new rule 2 (c) (i) of the said rules are or would be ultra vires and void as being in unreasonable restraint of trade.

Subject as aforesaid, I propose to grant to the plaintiff company in the second action. (i) a declaration that all the changes of the rules of the ICC and all the resolutions of the ICC respectively referred to and set out in the press statement of the ICC issued on July 26, 1977, are (a) ultra vires and void as being in unreasonable restraint of trade and (b) an unlawful inducement to the cricketers referred to in the statement of claim in this action to break their contracts with the plaintiff company referred to in the said statement of claim; (ii) a declaration that the new or proposed new rule 1 (e) and (f) of the rules of the TCCB governing the qualification and registration of cricketers in Test and competitive and county cricket and the new or proposed new rule 2 (e) (i) of the said rules are or would be (a) ultra vires and void as being in unreasonable restraint of trade; and (b) an unlawful inducement to the said cricketers to break their said contracts.

I also propose to grant the plaintiffs in each action liberty to apply for an injunction.

I make these observations in conclusion. Mr. Kempster, in his opening speech for the defendants, generously but correctly, acknowledged five positive beneficial effects which, on the evidence, have already been produced by the emergence of World Series Cricket as a promoter of cricket. First, as he said, it has offered the promise of much greater rewards for star cricketers. Indeed, it has gone further than this; it has offered secure, regular remunerative employment in cricket to more than 50 cricketers, in most cases for three English winter seasons, at a time when most of them would otherwise have had no guarantee of regular employment in the game. Secondly, it has already stimulated new sponsors for traditional cricket. Thirdly, it has brought back to the game in Australia several talented players. Fourthly, it, or the group of companies of which it forms part, has initiated a useful coaching scheme for young players in New South Wales. Fifthly, it has increased public interest in the game.

For all these acknowledged benefits, the defendants have held the strong opinion that the effective monopoly of the ICC in the promotion of first class cricket at international level has been good for the game and that the emergence of World Series Cricket into the promotion field is bad for it. However, whether or not this opinion is correct has not been the question for this court. The question for decision has been whether the particular steps which the ICC and the TCCB took to combat what they regarded as the threat from World Series Cricket were legally justified. This long investigation has satisfied me that the positive demonstrable benefits that might be achieved by introducing the ICC and TCCB bans and applying them to players who had already committed themselves to contracts with World Series Cricket were at best somewhat speculative. On the other hand there were, as has been mentioned, a number of demonstrable disadvantages if the bans were to be applied in this way. They would preclude the players concerned from entry into important fields of professional livelihood. They would subject them to the hardships and injustice of essentially retrospective legislation. They would deprive the public of any opportunity of seeing the players concerned playing in conventional cricket, either at Test or at English county level, for at least a number of years.***365**

By so depriving the public, they would carry with them an appreciable risk of diminishing both public

[1978] 1 W.L.R. 302 [1978] 3 All E.R. 449 (1978) 122 S.J. 162 [1978] 1 W.L.R. 302 [1978] 3 All E.R. 449 (1978) 122 S.J. 162
(Cite as: [1978] 1 W.L.R. 302)

enthusiasm for conventional cricket and the receipts to be derived from it. Furthermore, the defendants by imposing the hans, in the form which they took and with the intentions which prompted them, acted without adequate regard to the fact that World Series Cricket had contractual rights with the players concerned, which were entitled to the protection of the law. The defendants acted in good faith and in what they considered to be the best interests of cricket. That, however, is not enough to justify in law the course which they have taken.

In the result, I find for the plaintiffs in both actions, with the consequences which have been stated.Declarations accordingly. Plaintiffs' costs save WSC costs connected with material relative to special damage.

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1. Trade Union and Labour Relations Act 1974, s. 14 : see post, p. 313A. S. 28 (2) : see post, p. 357A–C.

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