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Mass Picketing and the 1875 Act

by Francis Bennion

This article explores in some depth a relatively narrow area of the criminal law relating to picketing.[*] The treatment is confined to section 7 of the Conspiracy, and Protection of Property Act 1875 as amended ('section 7'). Section 7 is the only provision in our criminal law specifically directed against unlawful picketing. It or its predecessors have been present in the law right from the time trade unions were first legalised. I examine section 7 only so far as it creates the offence of mass picketing at a workplace.[1] Nevertheless much of the analysis is applicable to the overall operation of section 7.

The justification for this narrow in-depth treatment is that mass picketing at workplaces now constitutes an industrial tactic of major national importance. In particular it enabled the National Union of Mineworkers to carry on the prolonged coal strike of 1984. The N.U.M. methods appear even to its sympathizers as blatantly unlawful, yet the organizers are not prosecuted. The law as administered thus appears far removed from the public sense of what the law must surely enjoin. Such divergence can be socially dangerous, for the public's idea of the law needs to conform broadly to what the law actually is.

Mass picketing at a workplace may be defined as the organizing, by the executive committee or other governing body of a trade union or branch of a trade union, of the congregating of large numbers of union members outside a place at which they, or other workers, normally work or attend.[2] The object is physically to prevent working employees, with or without vehicles or other equipment, from entering or leaving the workplace. More precisely, the object is that they shall be physically prevented (as opposed to peacefully persuaded) from crossing the union's picket line. The pickets may congregate on the highway, or they may congregate on adjacent land without the permission of its occupier. In theory they might rely solely on weight of numbers to achieve the intended object. In practice they are likely also to use hostile written or shouted words, coupled with hostile gestures, in order to deter non-striking workers from attempting to defy them.

Mass pickets may, and often do, carry out other unlawful acts such as inflicting personal injury, damaging property or obstructing the police. These are not however of the essence of the tactic, and can be prosecuted under provisions other than section 7 (though some fall within section 7 as well). So for the purpose of this article it is assumed that the pickets do no more than attend in large numbers and employ hostile words and gestures. The question examined is whether this in itself constitutes an offence against section 7. The answer arrived at is that it clearly does.

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[*] The opening paragraphs, down to the first heading 'The two offences', are different to those in the published version.

[1] s.7 renders the offence punishable on summary conviction by a fine not exceeding £100 or imprisonment for up to three months. The fine limit was raised from £20 by the combined effect of the Criminal Law Act 1977, s. 31(5)(a) and (6)(b), the Criminal Justice Act 1982, s. 46(1) and the Criminal Penalties, etc. (Increase) Order 1984 (S.I. 1984 No. 447), art. 2(4), Sched. 4 The right to a jury trial was abolished by the Criminal Law Act 1977, ss. 15(2)(3) and 65 and Sched. 13.

[2] In the remainder of this article 'executive committee' is used to denote any organizing person or body, and references to a union include a union branch.

The two offences

Section 7 creates various offences, of which two are relevant to mass picketing at a workplace [3] They are respectively founded on the concepts of *intimidation* and *watching or besetting*, and can be separately restated by using the technique of selective comminution[4] A restatement of the intimidation offence runs—

(1) Every person who
(2) with a view to compel any other person to abstain from doing any act which such other person has a legal right to do
(3) wrongfully and without legal authority
(4) intimidates such other person
(5) shall be guilty of an offence

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A selective comminution of the watching or besetting offence is conveniently divided into two parts, the first stating the offence and the second setting out the exemption for peaceful picketing. This produces the following—

Part I

(1) Every person who
(2) with a view to compel any other person to abstain from doing any act which such other person has a legal right to do
(3) wrongfully and without legal authority
(4) watches or besets the place where such other person works, or the approach to such place
(5) shall be guilty of an offence.

Part II

(6) It shall be lawful for a person
(7) in contemplation or furtherance of a trade dispute
(8) to attend at or near his own place of work OR
(9) if he is an official of a trade union, to attend at or near the place of work of a member of that union whom he is accompanying and whom he represents
(10) for the purpose only of peacefully
(11) obtaining or communicating information OR
(12) persuading any person to work or abstain from working.

In the remainder of this article the discussion is conducted by reference to the numbered clauses of the above restatements. We begin by looking at the history of section 7 so far as it relates to these provisions.

[3] It has been held that s 7 creates one offence only (see *Clarkson* v *Stuart* (1894) 32 S L R 4, *Wilson v Renton* (1909) 47 S L R 209, *Attorney-General* v *O'Bnen* (1936) 70 I L T R 101, *Hardy* v *O Flynn* (1948) I R 343) This however is from a procedural viewpoint There are many different types of act that may constitute offences under the section, and so in practical terms it makes sense to speak of different offences see Bennion, *Statutory Interpretation,* pp 744-746

[4] This adheres to the language of the legislative provisions, but selects and rearranges it see Bennion *Statute Law* (2nd ed 1983), p 140, Bennion, *Statutory Interpretation,* s 74

History of section 7

The 1875 Act was passed in consequence of the report of a Royal Commission headed by Sir Alexander Cockburn C.J.[5] The old laws against combination of workmen having been repealed by section 1 of the statute 5 Geo. 4 (1824) c. 95, section 2 of the statute went on to say that persons engaging in specified industrial practices, including inducing workers to strike, were not liable to any criminal punishment. Section 5 contained the provisions against violence, threats and intimidation.

Scarcely had the 1824 Act become law than mischievous consequences arose. As the Cockburn Commission put it—

> 'Extensive associations were found to exist with an elaborate and effective organisation, the avowed purpose of which, going far beyond the protection of their own interests with reference to wages or conditions of labour, was to control the masters in the conduct of their business, and to ruin such of them as refused to submit to their dictation . . .' [6]

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A Select Committee was immediately appointed to recommend changes in the 1824 Act. It proposed that a more restricted authorisation of trade unions should be substituted, and that this should ensure that workers could 'continue their service or engage their industry on whatever terms or to whatever master they may choose, in perfect security against molestation, insult, or personal danger of any kind whatsoever.' [7]

The resulting Act was 6 Geo. 4 (1825) c. 129. Section 3 of this preserved, in a more stringent form, the provisions against violence, threats and intimidation formerly contained in section 5 of the 1824 Act. Even so many of the new unions made 'undisguised attempts . . . by incessant molestation to compel persons not belonging to the association to act under its dictation.' These were felt to amount to 'an unendurable tyranny which must be put down by the law.' [8]

The report of a Royal Commission set up in 1867 led to the passing of the Criminal Law Amendment Act 1871. Section 1 of this was designed to cure the vagueness of references in the 1825 Act to intimidation, molestation and similar acts, which were felt to cause undue latitude in administering the Act.[9]

The lack of success achieved by section 1 in this respect was described in evidence to the Cockburn Commission. Representatives of workers testified that the concept of intimidation was still vague, and gave the judges too much discretion. Many acts were held to be picketing when they were little more than the communication to union men of the existence of a strike.[10]

The Cockburn Commission recommended that the acts prohibited by section 1 of the 1871 Act should continue to be proscribed, not only in defence of personal freedom but on economic grounds. They pointed out that the demands of a body of men acting in combination may be excessive, and that the employer's remedy 'is to be found in the possible willingness of others to accept employment on more reasonable terms.' [11]

When Assheton Cross, the Conservative Home Secretary, moved to insert in the Bill for the 1875 Act the new clause intended to replace section 1, it was found to follow the wording of that section except in relation to watching and besetting. Here a provision was inserted limiting coverage to acts done 'with a view

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[5] *C.* 1157 (1875). The report is published in Sessional Papers, Vol. 30.
[6] Cockburn Report, p. 16.
[7] Ibid.
[8] Cockburn Report, p. 17.
[9] Cockburn Report, p. 18.
[10] Cockburn Report, p. 19.
[11] Cockburn Report, *p. 20.*

seriously to annoy or intimidate any other person.' [12]Replying to criticism of this drafting, the Home Secretary said that in relation to picketing —

> 'What they wanted was to prevent one man worrying another man's life out. That was what they wanted, if it could only be put into an Act of Parliament . . . His object was to secure perfect freedom of individual action on the part of the workmen against all-comers whether masters or fellow-workmen.' [13]

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When the Bill reached the House of Lords Lord Cairns L C said the intention was to reproduce the effect of the charge to the grand jury in *Hibbert* [14] This made the gist of the offence picketing which consisted of—

obstructing and rendering difficult of access the prosecutor's place of business, or

acts calculated to deter or intimidate those who were passing to and fro, or

an exhibition of force calculated to produce fear in the minds of ordinary men, or

a combination (that is conspiracy) for any of those purposes [15]

The Government later moved to strike out the clause based on section 1 of the 1871 Act and replace it by a clause in the form subsequently enacted as section 7 Lord Cairns pointed out that in addition, although the law of criminal conspiracy would not be available for breaches of contract, combined action to carry out intimidation would continue to be subject to it [16]

Provisions common to the two offences

Clauses (1) and (2) of the restatements given above, which are the same for both offences, are in practice concerned mainly with stopping non-striking workers from working and stopping movement of goods and materials to or from a workplace No problem arises as to their construction [17]

In *J Lyons & Sons* v *Wilkins*[18] the Court of Appeal held that the phrase 'such other person' in clauses (2) and (4) of each restatement should be construed as 'any other person' This is a strained reading, and considerably widens the scope of section 7 without apparent justification It is submitted that it is incorrect, though it must of course stand as law until overruled [19]

Clause (3), which is again common to both offences, raises the question of the meaning of the phrase 'wrongfully and without legal authority' The last four words cause no problem, the difficulty lies in the meaning of 'wrongfully'

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[12] Parl. Deb., Vol. 225, ser. 3, col. 1580 (1875).
[13] *Ibid.* col. 1588
[14] *Ibid* col 716 *Hibbert* (The Cabinet Makers' Case) is reported at (1875) 13 Cox's C C 82 See also *Sheppard* (1869) 9 Cox's C C 325 The law as laid down by Lush J in the latter case was commended by the Cockburn Commission (*loc cit*, pp 23-24)
[15] *Ibid* col 38 For a full citation of the charge see [1899] 1 Ch 255, at pp 262-263 (note 1)
[16] Parl Deb , Vol 226, Ser 3, col 164 (1875)
[17] The argument that the use of the word *compel* requires them to be given a narrow application was rejected by the Court of Appeal in *J Lyons & Sons v Wilkins* [1899] 1 Ch 255, *per* Lindley M R at p 268 It is immaterial whether or not the compulsion succeeds *Agnew* v *Munro* (1891) 28 S L R 335
[18] [1899] 1 Ch 255, *per* Lindley M R at p 268
[19] The arguments for its incorrectness are fully deployed in Citrine's *Trade Union Law* (3rd ed , 1967), p 537

Meaning of 'wrongfully'

We may take 'wrongfully' as limited to what is in some sense *legally* wrongful, *i e* unlawful [20] Here there are broadly two possible positions—

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1. It only covers an act which is unlawful quite apart from section 7.
2. It also covers an act which, though not unlawful apart from section 7, nevertheless is the kind of act at which section 7 is directed and has no legally-acceptable justification.

In relation to mass picketing at a workplace, with which this article is solely concerned, there is no problem. As will appear, it is a form of industrial action which necessarily involves the commission of acts falling within the first category.[21] This is admitted even by commentators who favour militant picketing and believe it should be allowed to prevail.[22]

The position will now be examined in relation to (1) mass picketing on the highway, and (2) mass picketing on private land without the consent of the occupier.

(1) Mass picketing on the highway is likely to constitute a public or private nuisance (or both)[23] and also an act of trespass against the owner of the subsoil.[24] Furthermore it will almost certainly amount to an offence under section 137 of the Highways Act 1980, which states that if a person, without lawful authority or

[20] The idea that it may also include acts which though immoral are not in any way unlawful can probably be dismissed, s 7 being a penal provision (but *cf Chapman* [1959] 1 Q B 100, where it was held that sexual intercourse outside matrimony with a willing girl of sixteen was 'unlawful' within the meaning of the Sexual Offences Act 1956, s.19(l))

[21] The validity of the second category was attested in the leading case on s.7, *J. Lyons & Sons v. Wilkins* [1896] 1 Ch. 811. Lindley L.J. said (p.825) that it would be wrong to post pickets under the pretence of passing information in any case where the object and effect were to compel the person picketed not to do that which he had a perfect right to do. Kay L.J. (pp.830-832) strongly supported this view, which was confirmed by the Court of Appeal in its second decision in *J. Lyons & Sons* v, *Wilkins* on appeal from the grant of a perpetual injunction ([1899] 1 Ch. 255; note the remarks by Lindley M.R. at pp.266-267). It is submitted that the later Court of Appeal decisions in *Ward, Lock & Co. Ltd.* v. *The Operative Printers' Assistants' Society* (1906) 22 T.L.R. 327 and *Fowler* v. *Kibble* [1922] 1 Ch. 487 should be treated as wrongly decided in so far as they depart from *J. Lyons & Sons* v. *Wilkins,* which was binding on the court. In *Fowler* v. *Kibble* it was not even referred to in the judgments. *Cf. Hunt* v. *Broome* (1973) 1 Q.B. 691 at p.697 (where Lord Widgery C.J. said that under s.7 activity which could fairly be described as merely 'attending' is made a criminal offence if not within the peaceful exemption); *Broome* v. *Director of Public Prosecutions* [1974] A.C. 587, at p.603 (where Lord Salmon said that but for the peaceful picketing exemption the 'mere attendance' of pickets might constitute an offence under s.7). In *Elsey* v. *Smith* [1983] I.R.L.R. 292 the High Court of Justiciary held that conduct which merely harassed and annoyed the victim was wrongful and without legal authority within s.7. See also *Hubbard* v. *Pitt* [1976] 1 Q.B. 142; J. Finkelman, 'The Law of Picketing in Canada' (1937) 2 *University of Toronto Law Journal* 67, 344, at pp.85-102.

[22] See *e.g.* Brian Bercusson, 'One Hundred Years of Conspiracy and Protection of Property: Time for a Change' (1977) 40 M.L.R. 268, at pp.275-276; J. Finkelman, 'The Law of Picketing in Canada' (1937) 2 *University of Toronto Law Journal* 67, 344. Although sympathetic to labour, Finkelman concludes after an exhaustive analysis that under Canadian law, which follows s.7 of our 1875 Act, 'it is unlawful by physical force or obstruction to prevent [workers] from going to work' (p.102).

[23] *Hubbard* v. *Pitt* [1976] 1 Q.B. 142. See also *Bird* v. *O'Neal* [1960] A.C. 907 at p.922 (continuous shouting for sustained periods may constitute a nuisance).

[24] *Hickman* v. *Maisey* [1900] 1 Q.B. 752.

excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence[25]. In many instances of mass . . .

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. . . picketing on the highway there is no need to gather the intention by inference, since the object of stopping the passage of persons or vehicles is expressly proclaimed by the union organisers.[26]

(2) As mass pickets must stand somewhere they are likely to be on private land if not on the highway. This may be land occupied by the employer or other party to the dispute, or by a stranger. Where, as will usually be the case, the occupier of the land has not given his consent this will constitute the tort of trespass.[27] Criminal damage to buildings, fixtures or crops is also very likely to be committed.

Whether mass picketing takes place on the highway or on private land, it is almost certain to give rise to a reasonable apprehension of breaches of the peace.[28] Its overt object is to prevent people from doing something the law allows them to do. They are likely to object, and the seeds of disorder are therefore present. This means that the mass picket constitutes an unlawful assembly, and is thus clearly 'wrongful.'[29]

Meaning of 'intimidates'

Clause (4) of the intimidation offence uses the wording 'intimidates such other person.' In the full version of section 7 we find this placed alongside references to violence to the person and injury to property. Under the canon of construction *noscitur a sociis*, it may be thought to gain colour from being so placed. This perhaps suggests that intimidation by threat of force is intended.[30]

In *Gibson* v. *Lawson*[31] the court reserved the question whether Cave J. had been right to direct an assize jury in a case the previous year that for an act to amount to intimidation under section 7 personal violence must be

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[25] In *Broome* v. *Director of Public Prosecutions* [1974] A.C. 587 the House of Lords held that a single picket who obstructed a vehicle so that he could seek to persuade its driver not to proceed was guilty of an offence against the predecessor of this provision (Highways Act 1959, s.121). The argument that the defendant was within the peaceful picketing exemption was rejected, since this does not permit the stopping of vehicles or pedestrians (see *Kavanagh* v. *Hiscock* [1974] Q.B. 600). Of the suggestion that the stopping of vehicles would be permissible if it arose merely because of the large number of pickets present Lord Reid said (pp.597-598) that if it can be inferred that a picket has a purpose beyond those set out in the peaceful picketing exemption (for example to prevent free passage) his presence becomes unlawful. See also Lord Salmon at p.604, and *cf. Tynan* v. *Chief Constable of Liverpool* [1965] 3 All E.R. 99 (pickets moving in continuous circle on highway constituted a wilful obstruction).

[26] For an example see note 49 below.

[27] See *e.g. Norbrook Laboratories Ltd.* v. *King* [1982] I.R.L.R. 456, where it was held that the peaceful picketing exemption conferred no immunity from the law of trespass.

[28] In *Piddington* v. *Bates* [1960] 3 All E.R. 660 the Divisional Court held that a police officer reasonably anticipated a breach of the peace if one more than the existing two pickets was allowed to be stationed at the entrance to a workplace where eight people were working. *Cf. Moss* v. *McLachlan, The Times* November 29, 1984 (police reasonably apprehended breach of peace where intending pickets driving along motorway towards collieries).

[29] s.13 of the Trade Union and Labour Relations Act 1974 as amended (which relieves certain acts done in contemplation or furtherance of a trade dispute from being actionable in tort) has been held to be irrelevant in determining whether picketing is 'wrongful' within the meaning of section 7 since it 'does not provide that the wrongful acts with which it is concerned shall be deemed to be lawful acts or shall not be treated as wrongful acts': *Galt* v. *Philip* [1984] 1 I.R.L.R. 156, 159.

[30] The suggestion was advanced in argument in *Gibson* v. *Lawson* [1891] 2 Q.B. 545, at p.552 but ignored in the judgment delivered by Lord Coleridge C.J. However Lord Coleridge did express the view that the word 'intimidate' could not reasonably be construed in a wider and severer sense than the same word in s.l of the 1871 Act.

[31] [1891] 2 Q.B. 545.

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threatened.[32] The House of Lords decision in ***Rookes*** v. ***Barnard:***'[33] that the tort of intimidation comprehends not only threats of criminal or tortious acts but also threats of breaches of contract shows that this reservation was justified.

Two 1891 cases held that it was not necessarily intimidation within section 7 to threaten to deprive a worker of his means of livelihood[34] or black an employer's business.[35] However in the 1974 case of ***Jones***[36] the Court of Appeal upheld a direction that 'intimidation' in section 7 does not necessarily involve threatening a person with personal violence: 'There are a multitude of different ways in which he can be intimidated.'

In *Young* v. ***Peck***[37] the defendants were accused on a police prosecution of intimidation contravening section 7. The charge was that, with a view to compelling J. W. Alien to abstain from working at certain works, where he had a legal right to work, the defendants intimidated him by assembling in large numbers and throwing eggs at him when he was on his way from work. The alleged 'large numbers' proved to consist of a mere thirteen men, but they were nevertheless convicted. Only two of the defendants were proved to have been throwing eggs, but all thirteen were held to have been rightly convicted of intimidation. Lord Alverstone C.J. pointed out that 'all were part of a body of men who were calling out 'Blacklegs' and 'Dirty Scabs,' though it was not found that they were actually taking part in what was done in throwing eggs.' [38]

The question of intimidation is essentially a jury one (though usually falling to be decided by magistrates). As Lord Coleridge C.J. said in ***Gibson*** v. ***Lawson,***[39] 'intimidate' is not a term of art. Being a word of common speech and everyday use, it must be given 'a reasonable and sensible interpretation.'

On this test there can be no doubt that mass picketing as commonly practised is intimidatory in relation to those workers against whom it is directed.[40]

Watching or besetting

Clause (4) of the watching or besetting offence runs 'watches or besets the place where such other person works, or the approach to such place.' There is nothing here to indicate that even a solitary picket cannot commit the offence. In ***J. Lyons & Sons*** v. ***Wilkins***[41] the Court of Appeal held that picketing by a mere two persons fell within this wording, and constituted an offence if not saved by the peaceful picketing exemption.[42]

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It follows a ***fortiori*** that the presence of mass pickets at a workplace constitutes watching or besetting. Nor does it seem possible for it to be excepted by the peaceful picketing exemption. For information to be genuinely communicated or lawful persuasion to be exercised it is requisite that only a few pickets be present.

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[32] ***McKeevit*** Liverpool Assizes, December 16, 1890 (unreported). See [1891] 2 Q.B. 545, at pp.550 and 562.
[33] [1964] A.C. 1129
[34] ***Gibson*** v. ***Lawson*** [1891] 2 Q.B. 545.
[35] ***Curran*** v. ***Treleaven*** [1891] 2 Q.B. 545.
[36] (1974) 59 Cr.App.R. 120.
[37] (1912) 29 T.L.R. 31.
[38] P.32.
[39] [1891] 2 Q.B. 545, at p.559.
[40] See also ***Norbrook Laboratories Ltd.*** v. ***King*** [1982] I.R.L.R. 456 (intimidation where worker told by picket he would be 'remembered').
[41] [1896] 1 Ch. 811.
[42] Kay L.J. remarked (p.827) that the question involved 'is of the highest possible importance, because by this case the long struggle which has been going on between trade unions and employers and workmen is brought exactly to the point.'

Where hundreds are brought to a workplace by the union organisers, this can only indicate an intention *not* to attempt to communicate or lawfully persuade, and *not* to observe the requirement of 'peacefulness.'

Space limitations require the peaceful picketing exemption (Part II of the restatement) to be discussed only briefly. It began as a paragraph at the end of section 7. This was repealed and replaced by the Trade Disputes Act 1906, s. 2, which introduced the requirement that passing of information must be peaceful and added the reference to peaceful *persuasion.* The version substituted by section 134 of the Industrial Relations Act 1971 disapplied the exemption in the case of picketing a person's home.[43]

Section 134 was repealed and replaced by the Labour Government's Trade Union and Labour Relations Act 1974.[44] The substituted provision set out in section 15, was not significantly different.[45] The Conservative retort came in the Employment Act 1980, s. 16, which substitutes a new version of section 15.[46] This severely restricts the previous exemption, limiting the picket to his own place of work and thus giving no protection to secondary picketing.

Liability under section 7

The foregoing analysis shows that in practice mass picketing at a workplace invariably involves the commission of offences under section 7. These may be committed (1) by the individual pickets; (2) by the members of any union executive committee which organises the mass picket[47]; and (3) by the union itself.[48] In addition any of these may be guilty of conspiracy to contravene the

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section[49] How then has such picketing become established as a successful industrial tactic?

Space does not permit a detailed answer to this question. There have been relatively few prosecutions under section 7 in recent years.[50] The actual or supposed difficulties as to its meaning, discussed above, may have

[43] This has continued to be the case. S.134(2)(a) is of interest in referring expressly to s.7 of the 1875 Act, thus confirming Parliament's view of its continued relevance.

[44] ss.l(l), 15 and 25(3) and Sched.5.

[45] The change can be explained only by the Government's desire wholly to repeal the 1971 Act: see Bennion, *Statute Law* (2nd ed., 1983), pp.159-160.

[46] s.16 consists of four subsections, of which subs.(l) only is used as the basis for Part II of the restatement. The remaining subsections merely elaborate the meaning of subs. (1) in minor ways.

[47] s.44(l) of the Magistrates' Courts Act 1980 provides that each person who aids, abets, counsels or procures the commission by another of a summary offence is guilty of the like offence and may be prosecuted accordingly. The effect is 'to make anybody who aids, abets, counsels or procures liable to be proceeded against in every respect as if hewere a principal offender': *Benford* v. *Sims* [1898] 2 Q.B. 641, *per* Channell J. at p.644.

[48] Proceedings for any offence alleged to have been committed by a trade union or on its behalf may be brought against the union in its own name (Trade Union and Labour Relations Act 1974, s.2(l)(d): it seems that the union should be treated as a corporation for this limited purpose, so that for example s.46 of the Magistrates' Courts Act 1980 would apply in relation to an indictable offence: see *H. Sherman Ltd.* [1949] 2 K.B. 674). There can be no doubt that illegal mass picketing organised by a union's executive committee falls within this provision (in *Heatons Transport (St. Helens) Ltd.* v. *Transport and General Workers Union* [1973] A.C. 15 the House of Lords held a trade union legally responsible even for so-called unofficial action by its members).

[49] See Criminal Law Act 1977, s.l(l). Since s.7 offences are punishable with imprisonment, the exception in s.l(3) for trade dispute offences does not apply. The Law Commission hold that the only justification for indicting as conspiracy an agreement to commit summary offences is 'the social danger involved in the deliberate planning of offences on a widespread scale' (report on Conspiracy and Criminal Reform (1976) LAW COM. No. 76, para. 1.85; *cf.* para. 1.128). In the 1984 miners' strike the N.U.M. is reported to have set up at its Sheffield headquarters a National Control Centre, manned24 hours a day, to organise the mass picketing *(The Times,* October 20, 1984: the report reproduced part of an alleged minute of the National Co-ordinating Committee of the N.U.M. recording a decision on July 4, 1984 that '24 hour picketing of Power Stations be maintained and that no fuel or other materials be permitted to cross our Picket Lines'). See also the extensive catalogue of incidents published in *The Times* of October 6, 1984.

[50] Out of 7,658 arrests made in the 1984 miners' strike between March 13 and November 8, only 226, or less than 3 per cent., were made for alleged offences under s.7 *(The Times,* November 14, 1984).

led some prosecuting authorities to ignore it.[51] Furthermore some commentators have tended to belittle the section; it is submitted unjustifiably.[52] A third possible reason is that prosecuting authorities may be afraid of exacerbating labour disputes if they enforce a criminal provision directed specifically against pickets.

Should we therefore accept that section 7 is virtually obsolete, and no longer of practical relevance in industrial disputes? It is submitted that this would be an error. English law has no doctrine of the desuetude of statutes.[53] Even if it had, the legislative history of section 7 shows that the mischief at which it was aimed is precisely the same as the mischief caused in modern times by intimidatory mass picketing. It follows that the remedy provided by the section should still be applied if the continuing legislative intention is to be implemented.[54] Otherwise the law as administered may appear to be removed from the public sense of what the law must surely enjoin. Such divergence can be socially dangerous, for the public's idea of the law needs to conform broadly to what the law actually is.

The de facto success of illegal mass picketing may be achieved at too great a national cost. The daily occurrence for months on end of incidents in which hundreds of illegal pickets are seen to achieve their aim of forcibly stopping people from doing their work must ultimately have a deleterious effect on law as a social tool. Ordinary criminal offences become 'devalued,' and by comparison are perceived as less grave. There is a shift for the worse in society's tolerance of criminality.

[51] See Richard Kidner, 'Picketing and the Criminal Law' [1975] Crim.L.R. 256, at p.264.
[52] Thus Richard Kidner strangely says that it is 'difficult to see what actions of peaceful mass pickets would . . . allow section 7 to operate' (*loc. cit.*, p.266). See also note 22 above.
[53] See Bennion, Statutory Interpretation, s.188.
[54] As to the doctrine of tacit legislation, effected by Parliament's suffering an enactment to remain on the statute book, see Bennion, *Statutory Interpretation*, p.358.