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of the agent in the *Neibro* case was made under the old New York statute of the first type above. What effect will the *Neibro* case have when statutes of the latter type, as the present New York statute, come before the Court? Will the Court hold that designation of an official is sufficient consent to produce the "state of facts" necessary to give jurisdiction over an absent corporation? Or is this case the beginning of a recession from the heretofore consistent policy of limiting federal jurisdiction?²³

W. K.

LABOR—STATE ANTI-INJUNCTION LAWS—LABOR DISPUTE—PICKETING BY OUTSIDE UNION—[Illinois].—Plaintiffs were the owner and all the employees of a beauty shop which the defendant union was picketing in an effort to unionize. There was no dispute between the employer and the employees; unionizing efforts on the premises, with which the employer did not interfere, failed completely. The picketing was accompanied by some minor acts of violence. *Held*, all picketing enjoined since no labor dispute existed under the Illinois Anti-Injunction Act, the disputants not standing in the relation of employer and employee.¹

At the present time twenty-seven states, including Illinois, have Anti-Injunction Acts applicable to labor disputes.² In all cases arising under such acts, the determination of the existence of a labor dispute presents a difficult problem. Prior to 1939 fifteen states³ had a definition of labor

23. E. g., amendments of the Judiciary Act have increased the jurisdictional amount from five hundred dollars to three thousand dollars, and the amendment of 1887-1888 curtailed jurisdiction by restricting the venue provision.

1. *Swing v. A. F. of L.* (1939) 372 Ill. 91, 22 N. E. (2d) 857.

2. Ariz. Rev. Code (1928) c. 92, sec. 4286; Cal. Labor Code (1937) sec. 921; Colo. Stats. Ann. (1935) c. 97, secs. 78; Conn. Gen. Stats. (1939 Supp.) sec. 1420 (e); Idaho Laws of 1939, c. 215; Ill. Rev. Stats. (1937) c. 48, sec. 2 (a); Ind. Burn's Stats. (1933) tit. 40, c. 5, sec. 504; Kan. Gen. Stats. (1935) c. 60, sec. 1104; La. Gen. Stats. (1939) c. 13, sec. 4379.5; Me. Laws of 1933, c. 261, sec. 1; Md. Code (1935 Supp.) art. 100, sec. 67; Mass. Gen. Laws (1932) c. 149, sec. 24, as amended by Acts of 1935, c. 407 as added by Acts of 1938, c. 345, sec. 2; Minn. Mason's Stats. (1927) sec. 4256, as amended by Minn. Mason's Stats. (1938 Supp.) sec. 4256, as amended by Laws of 1939, c. 440, sec. 11; Mont. Rev. Code (1935) sec. 9242; N. H. Pub. Laws (1926) c. 380, sec. 27, as amended by Laws of 1935, c. 46; N. J. Rev. Stats. (1937) tit. 2, c. 29, sec. 77; N. M. Laws of 1939, c. 195, sec. 1; N. Y. Thompson's Laws (1939) Civ. Prac. Act, sec. 876a; N. D. Laws of 1935, c. 247; Okla. Stats. (1931) c. 52, art. 4, sec. 10878; Ore. Code (1935 Supp.) tit. 49, sec. 1901; Pa. Laws of 1937, act. no. 308, as amended by Laws of 1939, act. no. 163; R. I. Laws of 1936, c. 2359, sec. 1; Utah Rev. Stats. (1939 Supp.) c. 49, sec. 2A; Wash. Rem. Rev. Stats. (1937) sec. 7612; Wis. Code (1937) sec. 103.53, as amended by Laws of 1939, c. 25; Wyo. Rev. Stats. (1934 Supp.) c. 63, sec. 201, as amended by Laws of 1937, c. 15. Missouri has no Anti-Injunction Act.

3. Colo., Conn., Idaho, Ind., La., Md., Mass., Minn., N. Y., N. D., Ore., Pa., Utah, Wash., Wis. Massachusetts omits clause, "whether or not disputants stand in the proximate relation of employer and employee."

disputes like that in the Norris-La Guardia Act,⁴ which does not require an employer-employee relation to exist between the disputants.⁵ Four of these states amended their acts in 1939 to require the dispute to be between an employer and a majority of his employees.⁶ Two state acts⁷ contain a definition taken from the earlier Clayton Act,⁸ similar in purpose to the Norris-La Guardia Act, which, as construed,⁹ requires that the dispute be between an employer and those presently or prospectively in his employment. Ten acts,¹⁰ patterned after the Clayton Act, omit that portion of section 20 which defines the circumstances under which a labor dispute arises.¹¹

A minority of the lower federal courts in some early cases ignored the language of the Norris Act by requiring an employer-employee relation to exist between the disputants,¹² and these decisions undoubtedly influenced the state courts.¹³ Although their acts contain definitions like that of the

4. (1932) 47 Stat. 70, c. 90, (1938 Supp.) 29 U. S. C. A. sec. 101.

5. (1932) 47 Stat. 73, c. 90, sec. 13, (1938 Supp.) 29 U. S. C. A. sec. 113(c).

6. Minn., Ore., Pa., Wis. Michigan, which has no Anti-Injunction Act, has amended its Labor Relations Act to require this relation in the same situation.

7. Ariz., Kan. Note: Some acts contain both definitions.

8. (1914) 38 Stat. 738, 29 U. S. C. A. sec. 52.

9. Duplex Printing Press Co. v. Deering (1921) 254 U. S. 443.

10. Cal., Ill., Me., Mont., N. H., N. J., N. M., Okla., R. I., Wyo.

11. (1914) 38 Stat. 738, 29 U. S. C. A. sec. 52. "No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment * * *." (Italics supplied.)

12. Lauf v. Shinner (C. C. A. 7, 1936) 82 F. (2d) 68; Donnelly Garment Co. v. Int'l Ladies Garment Workers Union (D. C. W. D. Mo. 1937) 20 F. Supp. 767, rev'd (D. C. W. D. Mo. 1938) 23 F. Supp. 998, rev'd in part (C. C. A. 8, 1938) 99 F. (2d) 309, cert. den. (1939) 305 U. S. 662; United Electric Coal Co. v. Rice (C. C. A. 7, 1935) 80 F. (2d) 1. Contra: Cinderella Theater Co. v. Sign Writers Local Union (D. C. E. D. Mich. 1934) 6 F. Supp. 164; Miller Parlor Furniture Co. v. Furniture Workers Industrial Union (D. C. N. J. 1934) 8 F. Supp. 209; Grace Co. v. Williams (C. C. A. 8, 1938) 96 F. (2d) 478; Levering & Garrigues Co. v. Morrin (C. C. A. 2, 1934) 71 F. (2d) 284, cert. den. (1934) 293 U. S. 595; Coryell & Son v. Petroleum Workers Union (D. C. Minn. 1936) 19 F. Supp. 749.

13. Employer-employee relation needed before act may apply: McKay v. Retail Auto Salesmen's Local Union (Cal. 1939) 89 P. (2d) 426; Muncie Bldg. Trades Council v. Umbarger (Ind. 1938) 17 N. E. (2d) 828; The Meadowmoor Dairies, Inc. v. Milk Wagon Drivers' Union (1939) 371 Ill. 377, 21 N. E. (2d) 308; Bull v. Int'l Alliance (1925) 119 Kan. 713, 241 Pac. 459; Simon v. Schwachman (Mass. 1938) 18 N. E. (2d) 1; Gevas v. Greek Restaurant Workers' Club (1926) 99 N. J. Eq. 770, 134 Atl. 309; Feller v. Int'l Ladies' Garment Workers' Union (1937) 121 N. J. Eq. 452, 191 Atl. 111; for list of N. Y. decisions see (1939) 83 C. C. H. Labor Law Serv. par. 11,328; Moreland Theatres Corp. v. Operators Union (1932) 140 Ore. 35, 12 P. (2d) 333; Safeway Stores, Inc. v. Retail Clerks' Union (1935) 184 Wash. 322, 51 P. (2d) 372; Fornili v. Auto Mechanics' Union (Wash. 1939) 93 P. (2d) 422. No employer-employee relation needed before act may

Norris-La Guardia Act, the courts in Indiana,¹⁴ Massachusetts,¹⁵ and Washington¹⁶ hold that an employer-employee relation between the parties is a necessary element in labor disputes to which the acts apply. Montana,¹⁷ which has an act unlike others, holds contra.¹⁸ The United States Supreme Court, however, reversing the lower federal courts in some instances,¹⁹ has held that even though there is no employer-employee relation between the disputants, a labor dispute may exist within the meaning of the Norris-La Guardia Act. Hence peaceful picketing for the purpose of unionizing may not be enjoined in the federal courts.²⁰

The Illinois act is modeled on the Clayton Act but omits that provision which specifically limited the Clayton Act to disputes where there was an employer-employee relation.²¹ Since the present case, two other Illinois decisions have held the employer-employee relation must exist or the anti-injunction act will not apply.²²

As pointed out by the dissenting opinion in the present case, the Illinois legislature, eleven years after the passage of the Clayton Act and four

apply: *Schuster v. Int'l Ass'n of Machinists* (1937) 293 Ill. App. 177, 12 N. E. (2d) 50; *Dehan v. Hotel and Restaurant Employees Union* (1935) 181 La. 941, 159 So. 637; *Lichterman v. Laundry and Dry Cleaning Drivers Union* (1938) 204 Minn. 75, 282 N. W. 689; *Empire Theater Co. v. Cloke* (1917) 53 Mont. 183, 163 Pac. 107, L. R. A. 1917E 383; *Goldfinger v. Feintuch* (1937) 276 N. Y. 281, 11 N. E. (2d) 910; for other N. Y. decisions see (1939) 83 C. C. H. Labor Law Serv. (1939) par. 11,328; *Wallace Co. v. Int'l Ass'n of Mechanics* (Ore. 1936) 63 P. (2d) 1090; *Senn v. Tile Layers Protective Union* (1936) 222 Wis. 383, 268 N. W. 270, 272.

14. *Muncie Bldg. Trades Council v. Umbarger* (Ind. 1938) 17 N. E. (2d) 828.

15. *Simon v. Schwachman* (Mass. 1938) 18 N. E. (2d) 1; *Quinton's Market, Inc. v. Patterson* (Mass. 1939) 21 N. E. (2d) 546.

16. *Safeway Stores v. Retail Clerks' Union* (1935) 184 Wash. 322, 51 P. (2d) 372; *Adams v. Building Service Employees Int'l Union* (1938) 197 Wash. 293, 84 P. (2d) 1021; *Fornili v. Auto Mechanics Union* (Wash. 1939) 93 P. (2d) 422.

17. Mont. Rev. Code (1935) sec. 9242.

18. *Empire Theater Co. v. Cloke* (1917) 53 Mont. 183, 163 Pac. 1107, L. R. A. 1917E 383.

19. *Lauf v. Shinner* (1938) 303 U. S. 323, rev'g 82 F. (2d) 68; *Donnelly Garment Co. v. Int'l Ladies' Garment Workers' Union* (D. C. W. D. Mo. 1937) 20 F. Supp. 767, rev'd (D. C. W. D. Mo. 1938) 23 F. Supp. 993, rev'd in part (C. C. A. 8, 1938) 99 F. (2d) 309, cert. den. (1939) 305 U. S. 662.

20. *Lauf v. Shinner* (1938) 303 U. S. 323; *New Negro Alliance v. Sanitary Grocery Co., Inc.* (1938) 302 U. S. 679; see also *Senn v. Tile Layers Protective Union* (1937) 301 U. S. 468, aff'g (1936) 222 Wis. 383, 268 N. W. 270, 272.

21. Ill. Rev. Stats. (1937) c. 48, sec. 2 (a) :

"No restraining order or injunction shall be granted by any court of this state, or by a judge or judges thereof in any case involving or growing out of a dispute concerning terms or conditions of employment * * *."

See note 11, supra, where the omitted portion is italicized.

22. *Maywood Farms Co. v. Milk Wagon Drivers Union* (Ill. 1939) 22 N. E. (2d) 962; *Hendrickson Motor Truck Co. v. Int'l Ass'n of Mechanics* (Ill. 1939) 22 N. E. (2d) 969.

years after the Supreme Court's construction of section twenty of that act,²³ intentionally omitted that section from the Illinois Act.²⁴ Without this definition clause, the wording of the act seems broad enough to permit an opposite result to that reached in the present case. On the other hand the adherence to legislative intent in interpreting the statute yielded in this case to the policy consideration that an employer who can satisfy his employees as to wages, hours, conditions, *et cetera*, should not be subjected to economic pressure from third parties without some relief from the courts. It is suggested that this view is the more reasonable upon the particular facts. However, in Illinois, labor will have this precedent to face in cases where picketing is economically justifiable because of poor wages, hours, and conditions which the employees themselves are cowed into accepting.²⁵

S. M. M.

SALES—IMPLIED WARRANTY—LIABILITY OF MANUFACTURER TO CONSUMER IN SALE OF FOOD—[California].—Plaintiff Klein purchased from a retailer a sandwich manufactured, packaged, and sold to the retailer by defendant. His wife, co-plaintiff in this action, upon biting into the sandwich found that it was crawling with maggots. She became ill and suffered injuries for which she seeks damages on twin counts of negligence and breach of implied warranty. Defendant's motion for a directed verdict was granted at trial. The supreme court reversed the court below and *held*, (1) that there was a case of negligence for the jury and (2) that defendant was liable in warranty since the legislative intent was that the implied warranty of fitness raised by section 15(1) of the Uniform Sales Act, should inure in the case of foodstuffs to the ultimate consumer, and that it was not intended that strict "privity of contract" should be essential in an action for its breach.¹

With this decision California joins a growing minority of states attacking privity as it applies to the responsibility in warranty of manufacturers or processors of foodstuffs to the ultimate consumer. Liability has been founded in a number of these states on the technical grounds that the contract between manufacturer and retailer, to the extent that it raises a warranty of quality, is for the benefit of the ultimate consumer;² or that such a warranty "runs with the goods";³ or that public policy renders the

23. Clayton Act passed in 1914; Illinois Act passed in 1925. Duplex Printing Press Co. v. Deering (1921) 254 U. S. 443; American Steel Foundries v. Tri-City Central Trades Council (1921) 257 U. S. 134.

24. See notes 11 and 21, *supra*, for the provisions of both acts.

25. For the economic argument on the other side of the question see the dissenting opinion of Swing v. A. F. of L. (1939) 372 Ill. 91, 22 N. E. (2d) 857, 860. Also see: (1939) 33 Ill. L. Rev. 722; (1935) 14 Ore. L. Rev. 501; (1939) 14 Temple L. Rev. 1; (1938) 8 Law Society Journal 306; 8 Int'l Jurid. Assoc. Mthly. Bull. (Oct. 1939) no. 4, p. 1.

1. Klein v. Duchess Sandwich Co., Ltd. (Cal. 1939) 93 P. (2d) 799.

2. Ward Baking Co. v. Trizzino (1928) 27 Ohio App. 475, 161 N. E. 557.

3. Coca-cola Bottling Works v. Lyons (1927) 145 Miss. 876, 111 So. 305; Biedenharm Candy Co. v. Moore (Miss. 1939) 186 So. 628; Coca-Cola Bottling Co. v. Smith (Tex. Civ. App. 1936) 97 S. W. (2d) 761.