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peals from improperly procured acquittals.¹⁷ It will further tend to foster a symmetrical and uniform development of criminal law, at least within each state, by subjecting rulings of every trial court, in favor of the accused as well as against him, to appellate review.¹⁸ It has also been suggested that such a statute will have a wholesome effect on the character of criminal trials and agencies of law administration and enforcement by subjecting the conduct of the defense of an accused to the scrutiny of an appellate court.¹⁹

C. J. D.

LABOR — TRADE UNIONS — LIABILITY FOR VIOLENCE — [Federal]. — The United Electric Coal Companies secured an injunction in 1935 which compelled the defendant Progressive Mine Workers of America to discontinue its campaign of violence arising out of the jurisdictional dispute between the Progressives and the United Mine Workers in the Illinois Coal Fields.¹ After establishing its right to an injunction,² the plaintiff company filed a motion for assessment of damages caused by the destructive methods of the Progressives. *Held*, that all damages suffered by the plaintiff employer as a result of illegal activities of the Progressives be assessed against the defendant union.³

It is settled that a union may be held liable in damages for unlawful boycotts and picketing,⁴ for causing breach of contract,⁵ and for causing a

17. Miller, Appeals by State in Criminal Cases (1926) 36 Yale L. J. 486, 504.

18. See *People v. Ah Leo* (1915) 28 Cal. App. 164, 151 Pac. 749; *State v. Johnson* (1918) 139 Minn. 500, 166 N. W. 123; *Alt v. State* (1911) 88 Neb. 259, 129 N. W. 432; *State v. Lee* (1873) 10 R. I. 494; *State v. Elder* (1924) 130 Wash. 612, 228 Pac. 1016.

19. Miller, Appeals by State in Criminal Cases (1926) 36 Yale L. J. 486, 506-512. Thus even though a defense attorney may be in contempt and subject himself to discipline personally, an acquittal of the accused can not be challenged in absence of collusion on the part of the defendant. *Goodhart v. State* (1911) 84 Conn. 60, 73 Atl. 853; *In re Cary* (Minn. 1925) 206 N. W. 402.

1. An indication of the methods employed in the dispute may be found in *People v. Beacham* (1934) 358 Ill. 373, 193 N. E. 205.

2. *Electric Coal Companies v. George Rice et al.* (C. C. A. 7, 1937) 80 F. (2d) 1, reversing (D. C. E. D. Ill. 1934) 9 F. Supp. 635.

3. Unreported. The original decree awarded \$117,000 damages. A motion for rehearing, to re-assess damages, is now pending.

4. *Shinsky v. Tracy* (1916) 226 Mass. 21, 114 N. E. 957, L. R. A. 1917C, 1053; *St. Germain v. Bakery & Confectionery Workers' Union* (1917) 97 Wash. 282, 166 Pac. 665.

5. *O'Neil v. Behanna* (1897) 182 Pa. 236, 37 Atl. 843; *R and W Hat Shop, Inc. v. Sculley* (1922) 98 Conn. 1, 118 Atl. 55, 29 A. L. R. 551. However, certain decisions, notably in New York, permit unions to carry on activities which in other jurisdictions would be regarded as inducing breach of contract. The decisions may be distinguished on the ground that the courts refused to find any contract between employer and employee which could be broken. See *Exchange Bakery & Restaurant v. Rifkin* (1926) 216 App. Div. 663, 215 N. Y. S. 753; *Interborough Transit Co. v. Green* (1928) 131 Misc. 682, 227 N. Y. S. 258. Cf. *Diamond Block Coal Co. v. United Mine Workers* (1920) 188 Ky. 477, 222 S. W. 1079.

discharge of employees.⁶ But under what conditions will a union be held liable for violence during a strike?⁷ Ordinarily, in those jurisdictions which permit unions to be sued in the common name, the customary rules of agency will be applied.⁸ Hence, there seems to be little dissent from the proposition that, if previous authorization by the union for the commission of violence is proved, damages may be recovered.⁹ This authorization may be either express or implied.¹⁰ The courts, however, differ as to what constitutes a subsequent ratification by the union of the independent acts of its members during a strike. The federal courts have long held to the view that a failure on the part of the union to discipline the member who occasioned the damage signifies a ratification by the union.¹¹ Sufficiently binding ratification has been found in the fact that the union paid the fines of members found guilty of violence or employed attorneys to defend union members accused of violence.¹² Some decisions declare that only an express disavowal of these independent acts will relieve the union.¹³ Other decisions declare, and perhaps too broadly to be predicated upon any principles of agency, that the union will be liable for damages, even though there is no definite proof that its members were the actual cause of the destruction.¹⁴

6. These are usually based on master and servant rules. *Carter v. Oster* (1908) 134 Mo. App. 146, 112 S. W. 995; *Grassi Contracting Co. v. Bennett* (1916) 174 App. Div. 244, 160 N. Y. S. 279.

7. For liability due to violent activities of a union's officers and agents, see: *Clarkson v. Laiblan* (1918) 202 Mo. App. 682, 216 S. W. 1029; *Michaels v. Hillman* (1920) 112 Misc. 395, 183 N. Y. S. 195.

8. *Great Northern R. Co. v. International Ass'n of Machinists* (D. C. Mont. 1922) 283 Fed. 557; *Excelsior Mfg. and Supply Co. v. Sound Equipment, Inc.* (C. C. A. 7, 1934) 73 F. (2d) 725.

9. *Tannenbaum v. Hofbauer* (1931) 142 Misc. 120, 253 N. Y. S. 90; *Great Northern R. Co. v. International Ass'n of Machinists* (D. C. Mont. 1922) 283 Fed. 557; *Michaels v. Hillman* (1920) 112 Misc. 395, 183 N. Y. S. 195.

10. *United States v. Railway Employees' Dept. A. F. of L.* (D. C. N. D. Ill. 1922) 283 Fed. 479; *Alaska S. S. Co. v. International Longshoremen's Ass'n* (D. C. W. D. Wash. 1916) 236 Fed. 964.

11. *Nederlandsch Amerikaansche S. M. v. Stevedores' & L. B. Soc.* (D. C. E. D. La. 1920) 265 Fed. 397; *United States v. Railway Employees' Dept., A. F. of L.* (D. C. N. D. Ill. 1922) 283 Fed. 479; *Alaska S. S. Co. v. International Longshoremen's Ass'n* (D. C. W. D. Wash. 1916) 263 Fed. 964. State courts are also influenced by the failure to discipline: *United Traction Co. v. Droogan* (1921) 115 Misc. 672, 189 N. Y. S. 39; *Franklin Union No. 4 v. People* (1906) 220 Ill. 355, 77 N. E. 176.

12. The court seemed to think this implied ratification in *Hillenbrand v. Building Trades Council* (1904) 14 Ohio Dec. 628.

13. *Hillenbrand v. Building Trades Council* (1904) 14 Ohio Dec. 628; *United States v. Railway Employees' Dept., A. F. of L.* (D. C. N. D. Ill. 1922) 283 Fed. 479.

14. These decisions apparently are based upon the theory that once instituting a strike, the union assumes the risk of lawlessness by outsiders. *Union Pac. R. Co. v. Ruef* (C. C. D. Neb. 1902) 120 Fed. 102; *United States v. Railway Employees' Dept., A. F. of L.* (D. C. N. D. Ill. 1922) 283 Fed. 479; *Clarkson v. Laiblan* (1919) 202 Mo. App. 682, 216 S. W. 1029; contra, *Cumberland Glass Mfg. Co. v. Glass Blowers' Ass'n* (1899) 59 N. J. Eq. 49, 46 Atl. 208.

Apparently, any attempt on the part of the union to condone violence, or any failure to take steps to avoid violence, will be looked upon as ratification of destructive methods.

In those jurisdictions which refuse to recognize the union as an entity, the suit for damages cannot be brought against the union as a unit.¹⁵ Although this procedural difficulty is decidedly conclusive in some states,¹⁶ the doctrine of agency, combined with that of conspiracy, has produced a significant result. Where a plaintiff is forced to rely upon a suit against the individual members, the union funds may be used, as was done in the Danbury Hatters case,¹⁷ to satisfy the individual judgments, for no responsible union will stand by and watch a member's property be attached for violence committed by the union as a unit. It would seem that if many unions voluntarily pay the individual judgments, the arguments of those who assert the procedural immunity of the union itself are weakened considerably. Whatever the practical result reached may be, the conspiracy doctrine, as in the case of the agency doctrine, has been variously interpreted by the courts. Is a union member liable as a "conspirator" although he personally did not participate in the violence or did not even know of it? Some courts declare that merely a continued membership in the union after the commission of violence will be indicative of the status of a conspirator.¹⁸ This view, enabling a plaintiff to establish a conspiracy as to *inactive* members tends greatly to produce the above-mentioned practical result. Other courts repudiate this entirely and declare that knowledge and participation in the violence must be shown before any individual member may be held liable.¹⁹ Other decisions flatly state that liability will not extend to individual members not specially connected with the officers and agents of the union.²⁰ The rigid liability imposed upon individual members may be a

15. For cases holding unincorporated associations cannot be sued in the common name, see: *Hajek v. Bohemian & Slavonian Benev. Soc.* (1896) 66 Mo. App. 568; *Clark v. Grand Lodge* (1931) 328 Mo. 1084, 43 S. W. (2d) 404; *Forest City Mfg. Co. v. International Ladies' Garment Workers' Union* (Mo. App. 1938) 111 S. W. (2d) 934; *Tyler v. Boot & Shoe Workers' Union* (1933) 285 Mass. 54, 188 N. E. 509.

16. The allowance of representative suits relieves this procedural difficulty in some instances. *McIntyre v. Live Stock Shipping Ass'n* (1928) 222 Mo. App. 935, 11 S. W. (2d) 77; *Cahill v. Plumbers' etc., & Helpers' Local 93* (1925) 238 Ill. App. 123.

17. *Loewe v. Lawlor* (1908) 208 U. S. 274, 28 S. Ct. 310, 52 L. ed. 488. It is reported that the American Federation of Labor settled the Danbury strike for about \$150,000. *New York Times*, Jan. 14, 1938, p. 12:6.

18. *Illinois Cent. R. Co. v. International Ass'n of Machinists* (C. C. E. D. Ill. 1911) 190 Fed. 910; *O'Neil v. Behanna* (1897) 182 Pa. 236, 37 Atl. 843; *contra*, *Schneider v. Local Union No. 60* (1906) 116 La. 270, 40 So. 700; *Michaels v. Hillman* (1920) 112 Misc. 395, 183 N. Y. S. 195; *cf.* *Church Shoe Co. v. Turner* (1926) 218 Mo. App. 516, 279 S. W. 232.

19. *Piercy v. Louisville & N. Ry. Co.* (1923) 198 Ky. 477, 248 S. W. 1042. In Missouri the liability of members depends largely upon whether the association is organized for profit. *Stone v. Guth* (Mo. 1937) 102 S. W. (2d) 738.

20. *Michaels v. Hillman* (1920) 112 Misc. 395, 183 N. Y. S. 195.

compensatory measure for plaintiffs who, because of procedural obstacles, cannot reach the union fund directly.²¹

For several years after the decision in the Danbury Hatters case, the allowance of damage suits against labor unions was regarded as potentially more threatening to labor than the injunction.²² The second showing of the damage suit as a menacing weapon was the *Coronado Coal* case.²³ Although the Supreme Court firmly established the federal rule permitting suits against unincorporated associations, the practical effect of the case was to show one important restriction upon the use of damage suits. There, the plaintiff was forced to bear his cost of the litigation, which was far more than the damages received.²⁴ This, coupled with the fact that successful damage suits against unions are on the decrease,²⁵ indicates that such suits are not too remunerative. It is submitted that in view of this feeling of the courts and of the legislatures as reflected in the Norris-LaGuardia²⁶ and Wagner Acts,²⁷ a plaintiff who sues a union for a large sum should prove his case within a comparatively short time—prolonged litigation may prove too expensive. When it is considered that the plaintiff employer in the instant case was a third party to the dispute, protection of his interests seems to be in accord with sound justice.

W. E.

LABOR—VALIDITY OF CLOSED SHOP AGREEMENT—[New York].—A closed shop agreement between an employer and an exclusive bargaining agency of the employees was held not contrary to public policy in the recent New York case of *Williams v. Quill*.¹ The rapid transit companies had entered into a

21. Illustrative of the cases in which judgments rendered against unions were recovered from the individual members are: *F. R. Patch Mfg. Co. v. Capeless et al.* (1906) 79 Vt. 1, 63 Atl. 938; *Patterson & Co. v. Building Trades Council of Wilkes-Barre* (1902) 11 Pa. Dist. 500.

22. There are only a few cases, other than the instant decision, in which large damages were assessed against labor. The Danbury case cost labor around \$150,000 (supra, note 17); labor expended nearly \$400,000 to compromise the case of *Southern Illinois Coal Co. v. United Mine Workers* (1923) 6 Law and Labor 295 (settled out of court).

23. The progressive history of the case is found in *Dowd v. United Mine Workers* (C. C. A. 8, 1916) 235 Fed. 1; (1917) 242 U. S. 653; *Coronado Coal Co. v. United Mine Workers* (C. C. A. 8, 1919) 258 Fed. 829; *United Mine Workers v. Coronado Coal Co.* (1922) 259 U. S. 344, 42 S. Ct. 570, 66 L. ed. 995, 27 A. L. R. 762; *Finley v. United Mine Workers* (C. C. A. 8, 1924) 300 Fed. 972; *United Mine Workers v. Coronado Coal Co.* (1925) 268 U. S. 295, 45 S. Ct. 551, 69 L. ed. 963.

24. Newspapers of the period of Oct. 14, 1927, state that the compromise reached gave the plaintiff company \$27,500. The costs of each party was estimated to total between \$100,000 and \$200,000. See *New York Times*, Oct. 14, 1927, p. 7:5.

25. Witte, *The Government in Labor Disputes* (1932) 139. The author points out that the only concentration of such suits was immediately following the Danbury case.

26. (1932) 47 Stat. 70, 29 U. S. C. A. secs. 101-115.

27. (1935) 49 Stat. 449, 29 U. S. C. A. secs. 151-166.

1. (1938) 277 N. Y. 1, 12 N. E. (2d) 547.