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Injunctions—Labor Disputes—Norris-Laguardia Act

as the courts of other states, to enjoin plaintiffs from prosecuting their suits in Missouri, for the Missouri courts, if they recognized this doctrine, would decline to exercise jurisdiction over suits brought in this state solely for the purpose of evadng the laws of another state. Unfortunately, however, the Missouri courts have as yet not adopted this doctrine and Missouri courts continue to try these cases, thus necessitating the use of the injunction by the courts of the defendant's residence.

W. B. M. '38.

INJUNCTIONS — LABOR DISPUTES — NORRIS-LAGUARDIA ACT. — A very recent case dealing with the problem of labor injunctions is the case of *Lauf v. E. G. Shinner and Company* (1936) 82 F. (2d) 68. In the case at hand we have a situation where the defendant union was attempting to picket the plaintiff's meat markets although none of the members of the union were employed in these markets. The employees themselves had no argument as to wages or conditions of labor with the plaintiff employer. The labor union displayed signs and posters reading "This firm is unfair to organized labor." The labor union demanded that the employees join their union. The Seventh Circuit Court held that these facts were not within the Norris-LaGuardia Act[1] because they did not involve a "labor dispute." They proceed here on the theory that to have a "labor dispute" you must have a "dispute" between the employer and the employees. This court is following the precedent it set for itself in the case of *Union Electric Coal Company v. Rice*,[2] in which they held that the "labor dispute" designated in the Norris-LaGuardia Act referred to a labor dispute betwen the employer and the employee and did not apply to disputes between employees or to disputes between employee unions to which the employer was not a real party. The decision of the *Union Electric Coal Company* case could have been distinguished from the instant case because in that case there was present a great deal of actual damage, fraud, and in addition it involved a quarrel between two labor unions to which quarrel the Company was a mere innocent third party.

In the case of *Dean v. Mayo*[3] the court held that in a situation where a labor union had no employees amongst the employer's laborers, the labor union could be enjoined from picketing; then on a motion for a rehearing, the court changed its decision holding that no injunctive relief could be granted until all possible attempts to arbitrate have been exhausted.

Under ordinary circumstances it would seem that an employer desiring to conduct his business with non-union labor would have that privilege. It would also appear that so long as his own employees remain satisfied, no outsider, who does not stand in the relation of an employee, can provoke a "labor dispute" in such a way as to bring into operation legislation which is intended to regulate an employer's conduct in relation to his employees. On the other hand, the provisions of the Norris-LaGuardia Act of 1932 and

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[1] (1932) 29 U. S. C. A. sec. 101 et seq.
[2] Union Electric Coal Company v. Rice (1935) 80 F. (2d) 1.
[3] Dean v. Mayo (1934) 8 F. Supp. 73.

the discussion and reports of Congress indicate rather clearly that this is precisely what has been attempted by the act. According to this statute, a labor union whose members are engaged in the same kind of work may force an issue by resorting to any means short of fraud and violence. They can demand that members of their organization be employed, and when this demand is made, the Federal District Court is denied the power or jurisdiction to act[4] until resort is had to those agencies provided by law for the determination of whether or not the employer should be caused to discontinue the employment of non-union labor and made to employ only members of a labor union.[5]

The *Dean v. Mayo* case followed the *Cinderella Theater Company*,[6] case in which the substantial holding was: "A case shall be held to involve or to grow out of a labor dispute, when the case involves persons who are engaged in the same industry, trade craft, or occupation, or have direct or indirect interest therein, or who are employees of the same employer."[7]

After carefully reading the Norris-LaGuardia Act, it would seem that the above *Cinderella* case follows the law and the intentions of Congress, more accurately than the *Lauf* case.

The main contention of the court in the instant case[8] was that there was no labor dispute involved and thus the Norris-LaGuardia Act had no application. In looking to the act we find the following language used, "A person or association shall be held to be a person participating in or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft or occupation in which such disputes occur, or has a direct or indirect interest therein, or is a member, officer or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft or occupation."[9]

Here the mere fact of filing suit against the defendant union would, according to this section of the act, be sufficient to bring the present set-up within the definition of labor dispute as defined by the Act.[10]

The act goes further and defines the term "labor dispute" as including "any controversy concerning terms or conditions of employment, or con-

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[4] Congress has the power of to limit the jurisdiction of an Equity Court respecting issuance of injunction, as well as other matters. Congress has the power to appoint and place court and can limit their jurisdiction as well as create it. In Re Cleveland and Sandusky Brewing Company (D. C. Ohio 1935) 11 F. Supp. 198.

[5] Dean v. Mayo 8 F. Supp. 73 (D. C. La. 1934) l. c. 77. A good discussion of the above is found here.

[6] Cinderella Theater Company, Inc. v. Sign Writers Local No. 591 (1934) 6 F. Supp. 164.

[7] Supra, note 6 at p. 167.

[8] Lauf v. E. G. Shinner & Co. (1936) 82 F. (2d) 68.

[9] Norris-LaGuardia Act, 29 U. S. C. A. Section 113 (b).

[10] Picketing carried on in a manner serving to intimidate those wanting to work or to interfer with or affect the free exercise of their right to work is unlawful whether fear or intimidation result from violence, threats or force of violence. Knapp Monarch v. Anderson (D. C. Ill. 1934) 7 F. Supp. 332.

cerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment regardless of whether or not the disputants stand in the proximate relation of employer and employee."[11]

This section would clearly seem to include the case under discussion, since there is present here an interest and an association organized to participate in this particular business. This opinion would seem to go back to the trend of strictly limiting the rights of labor, which trend preceded the passage of the Norris-LaGuardia Act.

Since there is conflict of authority among the Circuit Courts, the Supreme Court will probably be called upon to rule on the constitutionality of the act and the actual intentions of Congress. At this time it appears as if the Norris-LaGuardia Act meant that a controversy between a labor union and an employer not employing members of the union should be deemed a "labor dispute." N. K. '38.

NEGLIGENCE—RES IPSA LOQUITUR—AVIATION.—The applicability of the res ipsa loquitur doctrine to airplane accidents will possibly receive new consideration as a result of the litigation likely to grow out of the recent epidemic of air crashes. One of the latest cases involving this question is *Parker et al v. Granger et al.*[1] The Fox Film Company was engaged in producing a picture which involved the making of a parachute jump. The film company contracted with James Granger, Inc., for three planes, two of which were furnished by the Tanner Motor Livery. Two of these planes were equipped with cameras and dual controls and two licensed pilots were furnished for them by the livery company. Kenneth Hawks and Max Gold, director and assistant director of the movie company took places at the remaining controls and the planes took off. The plans for the flight had been very carefully mapped out by Hawks and he was to give the signals for the various maneuvers by wiggling the wings of the plane which he was helping to pilot. There was every indication that Hawks and Gold were to have a large share in the control of the planes during the flight. In a maneuver on a turn one of the planes side-slipped into the other, there was a crash, an explosion, and the ten persons in the two planes were carried to an ocean grave. The heirs and representatives of the persons killed, with the exception of those of the licensed pilots, brought suit against Granger and the Tanner Livery Company for damages resulting from negligence. The verdict for the defendants was affirmed. The court held it not error for the trial court to refuse to apply the res ipsa loquitur doctrine on the ground that the planes were not in the complete control of the defendants.

There are at least three factors which are basic to any application of the res ipsa loquitur doctrine.[2] (1) The accident must have been of the type

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[11] 29 U. S. C. A. Section 113 (c).

[1] (1935) 52 P. (2d) 226, aff. (1934) 39 P. (2d) 833.

[2] Byrne v. Boadle (1863) 2 H. & C. 722, 159 Eng. Rep. 299; Kearney v. London, etc. R. R. Co. (1870) L. R. 5 Q. B. 411; McCloskey v. Koplar (1932) 329 Mo. 527, 46 S. W. (2d) 557, 92 A. L. R. 641.