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LABOR LAW - CONSTITUTIONALITY OF STATE ANTI-INJUNCTION ACTS - EXISTENCE OF A "LABOR DISPUTE"

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LABOR LAW — CONSTITUTIONALITY OF STATE ANTI-INJUNCTION ACTS — EXISTENCE OF A "LABOR DISPUTE" — Organized labor has long contested the use of the injunction in labor disputes and since the turn of the century has been active in legislative circles to secure statutory relief from the paralyzing effect of the too-freely granted temporary injunction and restraining order.[1] A substantial step forward was the enactment of the Clayton Act by Congress.[2] Similar legislation was adopted by several states, some before and some after the congressional action.[3] However, the expected benefits to labor did not accrue,

[1] See WITTE, THE GOVERNMENT IN LABOR DISPUTES, c. 12, pp. 265-273 (1932); FRANKFURTER and GREENE, THE LABOR INJUNCTION (1930).

[2] 38 Stat. L. 730 at 738, 29 U. S. C., § 52 (1914). Sec. 20 provided in part: "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 . . . involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury. . . ."

[3] WITTE, THE GOVERNMENT IN LABOR DISPUTES 270-272 (1932); 33 MICH. L. REV. 777 (1935).

for the Supreme Court in *Duplex Printing Press Co. v. Deering*[4] so narrowly construed the statute as to rob it of its effectiveness. And in *Truax v. Corrigan*[5] the Court held the Arizona statute,[6] based on the Clayton Act, unconstitutional as denying to the employer the equal protection of the laws and depriving him of property without due process of law. The state courts adopted similar narrow constructions of corresponding state legislation.[7] Again in 1932, Congress acted to espouse the cause of labor in passing the Norris-La Guardia Act[8] and several states have enacted laws identical in nature.[9] These statutes are now being tested in the courts. The salient provisions of this kind of legislation have already been adequately discussed and comment made as to its constitutionality.[10] The present discussion will be limited to a review of some of the recent cases in connection with the courts' decisions regarding (1) the constitutionality of the statutes and (2) what constitutes a "labor dispute" within the meaning of that term as used in the statutes.

I.

In several of the recent cases involving state anti-injunction acts, a double-barreled attack has been directed against their constitutionality; one barrel discharging the allegation that such statutes abrogate a part of the constitutional jurisdiction of the equity courts while the other ejects the due process and equal protection shells of the Fourteenth Amendment. Both contentions will be considered in this section in the order mentioned.

First, then, the allegation that such a statute abrogates the equit-

[4] 254 U. S. 443, 41 S. Ct. 172 (1921).

[5] 257 U. S. 312, 42 S. Ct. 124 (1921).

[6] Ariz. Rev. Stat. (1913), § 1464 [Laws of 1913, 2d spec. sess., c. 41].

[7] WITTE, THE GOVERNMENT IN LABOR DISPUTES 272-273 (1932).

[8] 47 Stat. L. 70, 29 U. S. C., §§ 101-115 (1932); see 30 MICH. L. REV. 1257 (1932) for a discussion of this act.

[9] Colo. Sess. Laws (1933), c. 59, p. 404 et seq.; Idaho Sess. Laws (1933), c. 215, p. 452 et seq.; Ind. Acts (1933), c. 12, p. 28, Ann. Stat. (Burns 1933), §§ 40-501 et seq.; La. Acts (1934), No. 203, Gen. Stat. (Dart. 1932), §§ 4379.5 to 4379.17; Md. Laws (1935), c. 574, § 70, p. 1197; Mass. Acts (1935), c. 407, p. 451 et seq.; Minn. Laws (1933), c. 416, Stat. (Mason Supp.), § 4260-1 et seq.; N. Y. Laws (1935), c. 477, p. 1051 et seq.; N. D. Laws (1935), c. 247, p. 350; Ore. Laws (1933), c. 355, p. 559 et seq., Code Ann. (Supp. 1935), §§ 49-1901 to 49-1914; Pa. Laws (1931), p. 926, Stat. Ann. (Purdon Supp. 1936), tit. 43, § 203; Wash. Laws (Spec. sess. 1933), p. 13, § 7; Wis. Stat. (1935), § 103.51 et seq.; Wyo. Laws (1933), c. 37, Rev. Stat. (1934 Supp.), § 63-201 et seq. See Riddlesbarger, "State Anti-Injunction Legislation," 14 ORE. L. REV. 501 (1935); and 33 MICH. L. REV. 777 (1935).

[10] 33 MICH. L. REV. 777 (1935); 18 MINN. L. REV. 184 (1934); 17 CORN. L. Q. 666 (1932).

able jurisdiction of the courts. A variation of such a contention appeared in *Dehan v. Hotel and Restaurant Employees Union*,[11] wherein the employer claimed the right to an injunction, denied by statute,[12] as a constitutional right. The Louisiana court said the right to an injunction was not constitutional but rather one granted by the legislature and subject to change at its will.[13] This case, however, is of little value outside of Louisiana for the constitution of that state provides for no equity jurisdiction at all and for injunctions only in cases involving the Public Service Commission or actions by the attorney general against monopolies. That the Wisconsin anti-injunction statute was unconstitutional as invalidly limiting the equitable powers of the circuit court was argued in *American Furniture Co. v. Chauffeurs, Teamsters and Helpers Union*.[14] The statute[15] was upheld on the ground that the legislature could change the substantive law and in doing so increase or reduce the subject matter on which the jurisdiction of the courts might operate; that when the legislature made peaceful picketing valid it left nothing for the injunction to operate on; the jurisdiction itself was not diminished.[16] The point was also raised in Oregon in *Starr v. Laundry and Dry Cleaning Workers' Union*,[17] and the statute held constitutional because the Oregon circuit courts are not supported by express constitutional provisions nor does the constitution expressly confer upon any tribunal jurisdiction to issue injunctions. The court said, however, that it was in accord with the dissenting opinions in *Blanchard v. Golden Age Brewing Co.*[18] In that

[11] (La. App. 1935) 159 So. 637.

[12] La. Acts (1934), no. 203, p. 600, a facsimile of the Norris-La Guardia Act.

[13] 159 So. 637 at 647.

[14] 222 Wis. 338, 268 N. W. 250 (1936).

[15] Wis. Stat. (1935), §§ 103.51 to 103.63 (the Norris-La Guardia Act in state's clothing).

[16] Note for Wisconsin lawyers: Wis. Const., Art. VII, § 8: "They [the circuit courts] shall also have the *power to issue writs of* habeas corpus, mandamus, *injunction*, quo warranto, certiorari and all other writs necessary to carry into effect their orders, judgments and decrees, and give them a general control over inferior courts and jurisdictions." Art. VII, § 3: "The supreme court shall have a general superintending control over all inferior courts; *it shall have power to issue writs of* habeas corpus, mandamus, *injunction*, quo warranto, certiorari and other original and remedial writs, and to hear and determine the same." Wis. Stat. (1935), § 268.01: "*The writ of injunction is abolished.* An injunction may be the final judgment in the action or may be allowed as a provisional remedy therein; and when so allowed it shall be by order as prescribed by this chapter." (Italics added.) If the "and not hereafter prohibited by law" clause makes the answer easy as to the circuit courts, it must be remembered that clause is not present in section 3 applying to the supreme court. Is the quoted statute constitutional?

[17] (Ore. 1936) 63 P. (2d) 1104.

[18] (Wash. 1936) 63 P. (2d) 397.

case four of the judges of the Washington Supreme Court held the state anti-injunction act[19] invalid as being an encroachment by the legislature on the judicial power.[20] Two others concurred in the result, because no adequate remedy had been substituted for the one taken away, but thought that the legislature could take away from the courts the power to protect certain rights and to exercise certain remedies. Three judges dissented on the ground that it is within the province of the legislature to regulate remedies, and this statute involved no more than that. The dissenters, in support of their position, pointed to the fact that statutes limiting or forbidding injunctions to stay legal proceedings and statutes forbidding injunctions to restrain the collection of taxes had been held constitutional;[21] indeed, one of the latter type had been upheld by the Washington court itself.[22]

It should be remembered that the courts, in deciding the foregoing cases, had to contend with a different constitutional provision in each instance. In the Louisiana Constitution there is no provision for equitable jurisdiction or for the use of the injunction to aid private litigants.[23] In Oregon the constitution places the courts of general jurisdiction entirely at the mercy of the legislature.[24] In Wisconsin the constitution provides for general jurisdiction not thereafter prohibited by law and provides further that the courts shall have power to issue writs of injunction.[25] In Washington the constitution provides for the jurisdiction of the courts and does not provide for later changes therein by the legislature.[26] It can thus be seen that, admitting the statute to be an attempt to curtail the equitable jurisdiction of the courts, it would

[19] Wash. Laws (Spec. sess. 1933), c. 7, p. 10 (identical with the Norris Act).

[20] These judges reasoned that the constitution conferred on the supreme courts "jurisdiction in all cases in equity" [Wash. Const. Art. IV, § 6], that the writ of injunction is the most important process of equity and that its issuance is addressed to the discretion of the court.

[21] Prohibiting injunctions restraining legal proceedings: Spreckels v. Hawaiian Commercial & Sugar Co., 117 Cal. 377, 49 P. 353 (1897); Wright v. Superior Court, 139 Cal. 469, 73 P. 145 (1903). Denying injunctive remedy against illegal or excessive taxes: Eddy v. Lee Township, 73 Mich. 123, 40 N. W. 792 (1888); National Loan & Exch. Bank v. Jones, 103 S. C. 80, 87 S. E. 482 (1915); Black v. Geissler, 58 Okla. 335, 159 P. 1124 (1916); Zimmerman v. Corson County, 39 S. D. 167, 163 N. W. 711 (1917) [error dismissed, 249 U. S. 593, 39 S. Ct. 390 (1919)].

[22] Casco Co. v. Thurston County, 163 Wash. 666, 2 P. (2d) 677 (1931).

[23] La. Const. of 1921, Art. VII, §§ 10, 29, 35.

[24] Ore. Const., Art. VII, § 2.

[25] Wis. Const., Art. VII, § 8.

[26] Wash. Const., Art. IV, § 6. The power to issue writs of injunction is not, however, set out in these words but it is provided that injunctions may be issued and served on legal holidays and non-judicial days. In other states the constitution specifically sets out that the courts of general jurisdiction shall have jurisdiction to issue writs of injunction. See, for example, S. C. Const. of 1895, Art. V, § 15.

not for that reason be invalid in Louisiana, Oregon, Wisconsin or other states with similar constitutional provisions in this respect. But it is significant that none of the courts in the three named states and only four of nine justices in the Washington case considered the statute to be such an attempt. It is true that the Norris Act fairly shouts that the courts shall not have jurisdiction to do otherwise than it provides (and it is only too plain that the *in haec verba* adoption of that act by the state legislature caused trouble in the *Blanchard* case). But it must be clear that the purpose of the act was to legalize certain weapons, which labor uses in its economic struggle, and to regulate the procedure pertaining to the issuance of injunctions in labor disputes. Whether in reaching for those aims the legislature has not trod on the toes of due process and equal protection is a question which remains to be discussed, but the power of the legislature to express the public policy of the state by changing the substantive law has long been established.[27] Likewise the power of the legislature to regulate judicial remedies and procedure has been widely recognized.[28] An exception to the last enunciated principle has been suggested in cases where the remedy is a part of the right itself;[29] and it may be said that the injunctive remedy in labor disputes is a part of the right to have a business protected from injury by the acts of labor, since the legal remedy is obviously inadequate. However, this line of reasoning but leads to the question whether the legislature can validly change the substantive right involved and should not be the basis for a decision that an anti-injunction statute encroaches on the equitable jurisdiction of the courts.

The second of the above mentioned bases on which state anti-injunction acts are alleged to be unconstitutional is that they contravene the due process and equal protection clauses of the Fourteenth Amendment. *Truax v. Corrigan*[30] is the stumbling block in the path

[27] 1 COOLEY, CONSTITUTIONAL LIMITATIONS, 8th ed., pp. 175, 345, 354 (1927); People ex rel. Brixton Operating Corp. v. La Fetra, 230 N. Y. 429, 130 N. E. 601 (1921) [writ of error dismissed, 257 U. S. 665, 42 S. Ct. 47 (1921)]; Congdon v. Congdon, 160 Minn. 343, 200 N. W. 76 (1924); Cavender v. Hewitt, 145 Tenn. 471, 239 S. W. 767 (1922); American Furniture Co. v. Chauffeurs, Teamsters, and Helpers Union, 222 Wis. 338, 268 N. W. 250 (1936).

[28] 1 COOLEY, CONSTITUTIONAL LIMITATIONS, 8th ed., p. 586 (1927); 2 ibid. 754; People ex rel. Durham Realty Corp. v. La Fetra, 230 N. Y. 429, 130 N. E. 601 (1921); Miller & Lux v. Secara, 193 Cal. 755, 227 P. 171 (1924); Shamlian v. Equitable Accident Co., 226 Mass. 67, 115 N. E. 46 (1917); Eddy v. Lee Township, 73 Mich. 123, 40 N. W. 792 (1888); Black v. Geissler, 58 Okla. 335, 159 P. 1124 (1916).

[29] 2 COOLEY, CONSTITUTIONAL LIMITATIONS, 8th ed., p. 754 (1927).

[30] 257 U. S. 312, 42 S. Ct. 124 (1921), discussed supra, at note 5.

of holding such laws valid in this respect,[31] and it is interesting to see how the recent cases deal with that obstacle. In 1931 and 1933 two proposed statutes of this nature were held unconstitutional on the basis of the *Truax* case as depriving the employer of the equal protection of the laws.[32] In 1934 the Supreme Court of Illinois held constitutional a statute of that state based on the Clayton Act. The basis for the decision was that the statute forbade the use of the injunction only in relation to legal acts.[33]

In *Dehan v. Hotel and Restaurant Employees Union*[34] the court failed to mention this problem.[35] In *American Furniture Co. v. Chauffeurs, Teamsters and Helpers Union*,[36] the Wisconsin court held the *Truax* case inapplicable since it dealt with a situation involving libel, intimidation and breaches of the peace, which were not present in the Wisconsin case. The court added that it was not apparent that the legislature could not recognize the peculiar status of labor organizations in labor disputes. Then followed a remarkable passage:

> "There is no substantial question of classification. To hold that there was would put into question the validity of both the Clayton Act, the Norris-La Guardia Act and the Wisconsin labor code, no matter how these acts were construed." [37]

In *Starr v. Laundry and Dry Cleaning Workers' Union*[38] the statute was upheld on this score, the court saying that the controlling provisions of the statute applicable to that case merely prescribed the procedure to be followed and did not purport to deny the right to injunctive relief; thus the case was distinguishable from the *Truax* case. But considering only those procedural provisions[39] applicable to the *Starr* case, they too are limited to cases of labor disputes, so that

[31] See discussion in 33 MICH. L. REV. 777 (1935).

[32] In re Opinion of the Justices, 275 Mass. 580, 176 N. E. 649 (1931); In re Opinion of the Justices, 86 N. H. 597, 166 A. 640 (1933).

[33] Fenske Bros. v. Upholsterers' International Union, 358 Ill. 239, 193 N. E. 112, 97 A. L. R. 1318 at 1333 (1934). For a comment on this case, see 33 MICH. L. REV. 777 at 781 (1935). See decision of the United States Supreme Court in Senn v. Tile Layers Protective Union, 4 U. S. Law Week, index p. 1211 (May 25, 1937, 2d ed.).

[34] (La. App. 1935) 159 So. 637.

[35] It does not appear whether or not counsel raised the issue.

[36] 222 Wis. 338, 268 N. W. 250 (1936).

[37] 222 Wis. at 363. "The effect of the decision [in the Truax case] is to declare any state anti-injunction statute unconstitutional if two things are true: . . . second, if the statute only applies to one class of disputes such as those 'between employer and employee,' leaving the law as to other cases unaffected." 33 MICH. L. REV. 777 at 780 (1935).

[38] (Ore. 1936) 63 P. (2d) 1104.

[39] Ore. Code Ann. (1935 Supp.), §§ 49-1907 to 49-1909.

the problem of whether that is a reasonable basis for classification would seem to be still present and the decision in the *Truax* case still an obstacle. The statutes were also upheld in *Senn v. Tile Layers Protective Union*,[40] which adopted the reasoning of the *American Furniture Co.* case, and *Wallace Co. v. International Association of Mechanics*,[41] which adopted the reasoning of the *Starr* case.

Thus the state courts apparently are treating the employer-employee relation as a reasonable basis for classification in restricting freedom of contract and cutting down the protection to business as property; logically they seem to be doing this in defiance of *Truax v. Corrigan*, but that decision on this point was not well received.[42]

The United States Supreme Court, in affirming the Wisconsin court's decision in the *Senn* case,[43] apparently supports the position which the state courts have adopted. Justice Brandeis, writing for the majority (it was a five-to-four decision), said that the issue of equal protection was not present because the Court had held the Wisconsin statute which authorized the conduct constitutional and no one has a constitutional right to a "remedy" against the lawful conduct of another. It is not to be supposed that Justice Brandeis overlooked the fact that the statute authorized such conduct on the part of a certain class of persons only, and it is to be regretted that he did not explain the basis of its constitutionality in respect to the doctrine of reasonable classification as a part of the equal protection provision of the Fourteenth Amendment. For it is remembered that in the *Truax* case the Court said:[44]

> "Here is a direct invasion of the ordinary business and property rights of a person, unlawful when committed by any one, and remediable because of its otherwise irreparable character by equitable process, except when committed by ex-employees of the injured person. If this is not a denial of the equal protection of the laws, then it is hard to conceive what would be."

It is also to be remembered that two states have discarded statutes of the type under consideration because their highest courts were of the opinion that the foregoing quotation bespoke the position of the Supreme Court.[45]

[40] 222 Wis. 383, 268 N. W. 270 (1936). This case has now been affirmed by the United States Supreme Court. See infra, at note 43.

[41] (Ore. 1936) 63 P. (2d) 1090.

[42] See 20 MICH. L. REV. 657 (1922); 31 YALE L. J. 408 (1922); 22 COL. L. REV. 252 (1922); 33 MICH. L. REV. 777 (1935).

[43] Senn v. Tile Layers Protective Union, 4 U. S. Law Week, index p. 1211 (1937).

[44] Truax v. Corrigan, 257 U. S. 312 at 335-336, 42 S. Ct. 124 (1921).

[45] Massachusetts and New Hampshire. See supra, note 32.

Nor is the *Truax* case to be crucified on the cross of fine distinctions as involving violence whereas other cases involve only "peaceful" picketing. For "peaceful" picketing may be just as destructive of the ordinary business and property rights of a person as was the conduct of the defendants in the *Truax* case. It is not suggested that the Court reached any but the right result in the *Senn* case. Yet it is difficult to comprehend a truly satisfactory decision without a disposition of the equal protection question raised by the *Truax* case. It is to be hoped that that case has not been consigned to "a burning winding sheet and a grave that's got no name"; how much more fitting was the decent burial accorded the *Adkins* case[46] in *West Coast Hotel Co. v. Parrish*[47] (the Washington minimum wage law case).

The problems are clear, the answers should be equally so. Will the Court protect business and property rights as it said it would in the *Truax* case? Or will it grant such protection only against those not engaged in a labor dispute? If the latter, is the classification "labor disputant or no" a reasonable classification? In the *Truax* case the Court said it was not. Many persons, lawyers and laymen alike, believe that it is. The *Senn* case seemed to present the opportunity to review the *Truax* case on this point; to repudiate it if it were wrong, to substantiate it if it were right and was still thought to be so, or to take cognizance of changes in the social order which perhaps outmode the reasoning of the *Truax* case, correct though it may have been when decided.

2.

Assuming the validity of the anti-injunction law, the crucial question of its applicability remains. By its terms the usual statute is to be applied in all cases involving "labor disputes," as that phrase is defined by the statute. As has been related above, the United States Supreme Court in 1921 declared that the terms of the Clayton Act were limited in their applicability to disputes between an employer and his employees.[48] That decision prevented the Clayton Act from giving effective support to labor in its endeavor to strengthen its bargaining position; for the strength of that position depends upon broad unionization, which can only be secured by allowing the unions to use their available weapons against recalcitrant employers even though there be no present dispute as to wages or conditions between that employer and his employees.

The Norris-La Guardia Act, and the state statutes which have adopted its terms, sought to circumvent the effect of the decision in

[46] Adkins v. Children's Hospital, 261 U. S. 525, 43 S. Ct. 394 (1923).
[47] (U. S. 1937) 57 S. Ct. 578.
[48] Duplex Printing Press Co. v. Deering, 254 U. S. 443, 41 S. Ct. 172 (1921).

the *Duplex* case by including in the definition of "labor dispute" the clause "regardless of whether or not the disputants stand in the proximate relation of employer and employee."[49] The recent cases show, on the whole, a tendency on the part of the state courts to give the full scope to this definition which the legislatures intended it should have. In *Wallace Co. v. International Association of Mechanics*[50] the Oregon Supreme Court held the statute applicable to an employer's suit to enjoin picketing by a labor union though none of the employees were members of that union and no dispute existed between the employer and employees. In *Starr v. Laundry and Dry Cleaning Workers' Union*,[51] the employer sought an injunction against a strike by his employees and picketing by the union; some of the striking employees claimed their pay was inadequate and the sanitary conditions bad. The Oregon court held this was clearly a labor dispute. The Wisconsin court has held a labor dispute to exist when there was a controversy between a union and a contractor whom the union sought to compel to obey union rules under which the contractor would be unable to work himself though there was no dispute between the contractor and his employees and he was willing to adopt all other union terms.[52] The same court has held the statute to apply when a union picketed to get recognition and force the discharge of non-members although none of the plaintiff's employees were members of the union.[53] The Washington court has held no labor dispute to exist when there was no dispute between the employer and its employees and the only purpose of the picketing by the union was to compel the employees to join.[54] In *Blanchard v. Golden Age Brewing Co.*,[55] the same court held a controversy between two unions to involve a labor dispute; the earlier case was distinguished on the ground that there the employer had remained aloof, which was not true in the instant case, and the further ground that here, also, was a question, at least indirectly involved, of the condition under which one of the two factions would be employed.

The New York Court of Appeals, before the adoption of the statute based on the Norris-La Guardia Act, held that no injunction would issue in a dispute between two unions if no violence were present.[56]

[49] 47 Stat. L. 70 at 73, § 13 (c), 29 U. S. C., § 113 (c).

[50] (Ore. 1936) 63 P. (2d) 1090.

[51] (Ore. 1936) 63 P. (2d) 1104.

[52] Senn v. Tile Layers Protective Union, 222 Wis. 383, 268 N. W. 270 (1936).

[53] American Furniture Co. v. Chauffeurs, Teamsters, and Helpers Union, 222 Wis. 338, 268 N. W. 250 (1936).

[54] Safeway Stores, Inc. v. Retail Clerks' Union, 184 Wash. 322, 51 P. (2d) 372 (1935), noted in 35 MICH. L. REV. 340 (1936).

[55] (Wash. 1936) 63 P. (2d) 397.

[56] Nann v. Raimist, 255 N. Y. 307, 174 N. E. 690 (1932); Stillwell Theatre v. Kaplan, 259 N. Y. 405, 182 N. E. 63 (1932).

After the adoption of the present act,[57] the New York Supreme Court held picketing of ice cream parlors by a sign-painters union to involve a labor dispute; the sign company was a subsidiary of the manufacturer selling ice cream to the parlors.[58]

The federal courts have not been in accord on what constitutes a labor dispute. The District Court for the Eastern District of Michigan held[59] a "labor dispute" to be involved in a controversy between a labor union and theater owners growing out of the owner's refusal to discharge a non-union man though "none of the disputants stand in the proximate relation of employer and employee." The District Court for New Jersey held[60] a labor union's attempt to unionize a factory in its line of business to involve a labor dispute though none of the present employees were union members and the employees had no complaint to wages and conditions. But the Circuit Court of Appeals for the Seventh Circuit has not seen fit to follow those earlier cases. *United Electric Coal Companies v. Rice*[61] involved the desertion of the old union by many employees; after they had joined a new union, it demanded that the employer break his contract with the old union; there was no dispute as to wages and other conditions of employment. The court, in affirming the decree enjoining defendants, reached the conclusion that a "broad and liberal" interpretation of the labor dispute provision of the Norris-La Guardia Act required the existence of a dispute between employer and employee before the act was applicable:

> "The term 'labor disputes' comprehends disputes growing out of labor relations. It infers employment—implies the existence of the relation of employer and employee."[62]

[57] N. Y. Laws (1935), c. 477, p. 1051 et seq.

[58] Hydrox Ice Cream Co. v. Doe, 159 Misc. 642, 289 N. Y. S. 683 (1936). But see Thompson v. Boekhout, 273 N. Y. 390, 7 N. E. (2d) 674 (1937).

[59] Cinderella Theatre Co. v. Sign Writers' Local Union, (D. C. Mich. 1934) 6 F. Supp. 164 at 169.

[60] Miller Parlor Furniture Co. v. Furniture Workers' Industrial Union, (D. C. N. J. 1934) 8 F. Supp. 209.

[61] (C. C. A. 7th, 1935) 80 F. (2d) 1. This case was followed in Lauf v. Skinner & Co., (C. C. A. 7th, 1936) 82 F. (2d) 68, involving an attempt on the part of the union to compel the employer to force his employees to join the union. The court, after saying no labor dispute was involved, reasoned that both federal and state law forbade the employer coercing his employees into joining a particular union, which fact rendered the union's demand unlawful. The Wisconsin court in American Furniture Co. v. Chauffeurs, Teamsters, and Helpers Union, 222 Wis. 338, 268 N. W. 250 (1936), expressly refused to follow the interpretation of the federal circuit court of appeals.

[62] 80 F. (2d) 1 at 5.

Confirmation of the conclusion reached was found in the fact that the entire act had reference to controversies over wages and conditions of employments. But meeting the court on its own ground, it is suggested that the determination of which union is to represent the employees involves the determination of a condition of employment. Further, the court seems to have ignored section 13 (a) (3)[63] to the effect that a case shall be held to grow out of a "labor dispute" when the dispute is between one or more employees or associations of employees and one or more employees or associations of employees; as well as section 13 (c),[64] which states that a "labor dispute" may exist regardless of whether or not the disputants stand in the proximate relation of employer and employee. In view of the fact that such violence as was found by the court to be present justifies, under the terms of the act, the granting of an injunction, it is to be regretted that dicta were used to the effect that the act was inapplicable. The court spoke of the employer as being the innocent bystander injured by the conflict between two unions, and there is much to be said on that score; but it would seem that such arguments are more properly addressed to the legislature, which has expressly included a dispute between two associations of employees in those "labor disputes," the existence of which render the act applicable.

It is to be hoped that the reasoning of the *Rice* case will not be accepted, for its effect would be to stultify a legislative attempt to correct a grievous abuse of the injunctive remedy on the part of the courts. Further, the kind of judicial legislation indulged in by the court in that case is especially undesirable in view of the fact that the problem which the legislature had to face in dealing with the abuse of the injunctive remedy was much broader than the problems circumscribed by the employer-employee relationship.

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[63] 47 Stat. L. 70 at 73, 29 U. S. C., § 113 (a) (3).
[64] 47 Stat. L. 70 at 73, 29 U. S. C., § 113 (c).