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Labor Injunction and Free Speech

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Union coal miners peacefully picketed a coal mine in an effort to procure employment at the union wage scale. Meanwhile, non-union miners negotiated a lease contract under which they operated the mine, the owner receiving a flat price per ton. The trial court granted the non-union miners an interlocutory order enjoining the picketing. Held, reversed. An injunction against peaceful picketing violates the right of free speech guaranteed by the Federal Constitution. *Davis v. Yates*, 32 N.E. (2d) 86 (Ind. 1941).

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[6] Cardozo, J., in Van Vechten v. American Eagle Fire Ins. Co., 239 N. Y. 303, 146 N. E. 432, 433 (1923). Cases, however, differ widely as to what "common speech" would mean as theft. Note (1931) 89 A. L. R. 466.

[7] Nugent v. Union Automobile Ins. Co., 140 Ore. 61, 13 P. (2d) 343 (1932) (larceny by trick); Brady v. Norwich Union Fire Ins. Soc., 47 R. I. 416, 133 Atl. 799 (1926) (false pretenses); Southern Casualty Co. v. Landry, 266 S. W. 804 (Tex. Civ. App. 1924) (larceny by bailee); N. Y. PENAL LAW (1939) § 1290; ANN. LAWS OF MASS. (1933) c. 266, § 30; 6 BERRY, LAW OF AUTOMOBILES (7th ed. 1935) § 6.586.

[8] *But see* Employers' Fire Ins. Co. v. Consolidated Garage, 85 Ind. App. 674, 155 N. E. 533 (1926). In suit by insurer of owner of car against garage for acts of employee in taking car and wrecking it, the lower court cites the Indiana statute on vehicle taking and states, "And a person who violates this statute and is thereafter convicted and punished in accordance with its provisions may very properly be said to be guilty of stealing an automobile, and in referring to his act, it would be proper to say he stole an automobile, or that, in so doing he committed a theft."

[9] IND STAT. ANN. (Burns, 1933) § 10-3001 (grand larceny—punishable by imprisonment from 1 to 10 years); *id.* § 10-3010 (vehicle taking —first offense punishable by imprisonment from 1 to 10 years and second offense from 3 to 10 years).

Indiana's anti-injunction statute, IND. STAT. ANN. (Burns, 1933) §40-501, protects peaceful picketing from injunctive restraint regardless of whether the disputants stand in the proximate relation of employer and employee. Nevertheless, the application of this statute has been judicially limited to labor controversies where the disputants are in an employer-employee relation. *Roth v. Local Union No. 1460 of Retail Clerks Union*, 24 N.E. (2d) 280 (Ind. 1939); see *Muncie Bldg. Trades Council v. Umbarger*, 215 Ind. 13, 15, 17 N.E. (2d) 828, 829 (1938). But the principal decision was not based upon the Indiana anti-injunction statute. Instead, the court adopted the view that peaceful picketing, being essentially a medium of publicity, was protected by the constitutional guarantee of free speech. The doctrine that peaceful picketing is protected from state infringement by the Fourteenth Amendment was first enunciated in cases finding state anti-picketing statutes unconstitutional. *Thornhill v. Alabama*, 310 U.S. 88 (1940); *Carlson v. California*, 310 U.S. 106 (1940). Recently, it has been applied to invalidate injunctions issued by state courts restraining peaceful picketing where no employer-employee relation existed. *American Federation of Labor v. Swing*, 61 Sup. Ct. 568 (1941); see *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 61 Sup. Ct. 552, 556 (1941). The principal case by implication overrules the *Roth* case. However, in result, it is consistent with the Norris-LaGuardia Act. *New Negro Alliance v. Sanitary Grocery*, 303 U. S. 552 (1938); *Lauf v. Skinner*, 303 U. S. 323 (1938), 13 Ind. L. J. 516. As a result of the principal case any injunction restraining peaceful picketing, even in intra-state commerce, can now be tested by a direct appeal to the United States Supreme Court. *American Federation of Labor v. Swing*, 61 Sup. Ct. 568 (1941).

N.C.B.