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Injunction-Legality of Picketing-Constitutional Law

Injunction—Legality of Picketing—Constitutional Law—Defendants, as representatives of a restaurant employees union, undertook to organize an employees restaurant union in Hammond and asked plaintiffs to sign a contract whereby they would agree to employ only union members at terms set out in the contract. The plaintiffs refusing to sign such a contract, a strike was called and two of the plaintiffs' employees left their employment. Plaintiffs' place of business was picketed by members of the union who carried placards upon which in large letters were the words, "THIS RESTAURANT IS UNFAIR TO UNION LABOR." As a result, the plaintiffs lost the patronage of many customers, and drivers of trucks who delivered supplies to the restaurant refused to deal with the restaurant while the picketing was in progress. Held, the picketing, if conducted lawfully, without intimidation, or violence, fraud or misrepresentation, will not be enjoined even if there is a loss of patronage and consequent pecuniary damage.[1]

All jurisdictions agree that picketing for an illegal purpose will be enjoined as a tort if resulting in irreparable injury. Picketing, therefore, will always be enjoined when in furtherance of an illegal strike, or when it induces an

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19 Citing, People v. Smith (1912), 206 N. Y. 231, 99 N. E. 568; McCabe v. Voorhis (1926), 243 N. Y. 401, 153 N. E. 849.

20 Citing, Crawford v. Favour (1928), 34 Ariz. 13, 267 Pac. 412; Hayden Plan Co. v. Wood (1929), 97 Cal. App. 1, 275 Pac. 248; City of Manpato v. Jewell County Comm. (1928), 125 Kan. 674, 266 Pac. 96; Garden City News v. Hurst (1929), 129 Kan. 365, 282 Pac. 270; Axton v. Goodman (1924), 205 Ky. 382, 265 S. W. 806; In Re City of Pittsburgh's Consol. City Charter (1929), 297 Pa. 502, 147 Atl. 525; Perry v. City of Elizabethton (1930), 160 Tenn. 102, 22 S. W. (2d) 359.

21 Hoel v. Kansas City (1930), 131 Kan. 290, 291 Pac. 780; Moore v. Louisville Hydro-Electric Co. (1928), 226 Ky. 20, 10 S. W. (2d) 466; Oldhan County ex. rel. Woolridge v. Arvin (1932), 244 Ky. 551, 51 S. W. (2d) 657; Haan v. Haan (1928), 133 Misc. Rep. 197, 231 N. Y. S. 58.

22 Bochard, Uniform Declaratory Judgment Act (1934), 18 Minn. L. Rev. 241.

23 Nesbitt v. Manufacturers' Casualty Ins. Co. (1933), 310 Pa. St. 374, 165 Atl. 403.

24 Kaleikau v. Hall (1923), 27 Hawaii 420.

25 Miller v. Siden (1932), 259 Mich. 19, 242 N. W. 823.

26 Lisbon Village Dist. v. Town of Lisbon (1931), 85 N. H. 173, 155 Atl. 252; Green v. Inter-Ocean Casualty Ins. Co. (1932), 203 N. C. 767, 167 S. E. 38; Schmidt v. La Salle Fire Ins. Co. (1932), 209 Wis. 576, 245 N. W. 702.

27 Burns' Ann. Ind. Stat. (Supl. 1929), sec. 680.1.

1 Scofes v. Helmar (1933), 187 N. E. 662.

unjustifiable breach of contract.[2] However, if the contract is one providing for employment at will, peaceful picketing will be allowed even if it results in the termination of the employment.[3] It is not necessary that the employer be injured by the breach of the contract for a term. An employee may sue to enjoin the picketing which might cause the employer to cancel his contract.[4] As to when a strike is legal or when it is illegal, the cases are in great conflict.[5] However, assuming that the strike is legal, the question remains, what means may be used to enforce it?

There is a split of authority upon the question as to the legality of peaceful picketing. In Beck v. Railway Teamsters' Union[6] the court held that the plaintiffs were entitled to an injunction to restrain the distribution of boycotting circulars, and to restrain the pickets from intercepting the plaintiff's customers even though such was done peaceably and away from the plaintiff's premises. The court said that the strikers could present their cause to the public in newspapers or circulars in a peaceable way, but that there must be no attempt at "coercion". In State v. Stewart,[7] it was held that a combination of persons for the purpose of deterring a corporation from taking into its employ other person is an unlawful control over the use and employment by workmen of their labor for such time, person, and price as they chose. These cases proceed on the theory that picketing in any form is unlawful, and that there can be no such thing as peaceful picketing. In Rosenberg v. Retail Clerks Association,[8] it was said, "Picketing by strikers in its very nature tends to, and does accomplish its object by the illegitimate means of physical intimidation and fear, and will be enjoined." Barnes v. Chicago Typographical Union[9] said explicitly the very fact that the defendants established a picket line about the plaintiff's premises, irrespective of whether physical violence was resorted to, was in itself an act of intimidation and unwarrantable interference with the plaintiff's rights.[10] However, the cases referred to do not represent the majority view on this question.

The majority view is set out in Stillwell Theatre Corporation v. Kaplin,[11] where it was decided that peaceful picketing of a moving picture theatre with a sign truthfully stating that the owners refused to employ members of a certain union, will not be enjoined in an action by the owners because its effect may be to coerce them by diminution of their patronage to violate a contract which they have made with another union to employ its members only during a stated period. Gevas v. Greek Restaurant Workers Club,[12] does not seem to take either the majority or minority position and cites cases

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2 Rice Machine Co. v. Fales Machine Co. (1922), 242 Mass. 566, 136 N. E. 629; Kitchen and Co. v. Local Union No. 141, International Brotherhood of Electrical Workers et al (1922), 91 W. Va. 65, 112 S. E. 198; Hitchman Coal Co. v. Mitchell (1917), 245 U. S. 229, 62 L. ed. 260; Cook v. Wilson (1919), 108 Misc. 438, 178 N. Y. S. 463.

3 La France Electrical Construction Co. v. International Brotherhood of Electrical Workers Local No. 8 (1923), 108 Ohio 61, 140 N. E. 899.

4 Parker Paint Co. v. Local Union No. 813 (1921), 87 W. Va. 631, 105 S. E. 911.

5 Plant v. Woods (1900), 176 Mass. 492, 57 N. E. 1011; Picket v. Walsh (1906), 192 Mass. 572, 78 N. E. 753; 45 Harv. L. R. 1226; Also Cook, The Privilege of Labor Unions in the Struggle for Life (1918), 27 Yale L J. 779; 39 Yale L. J. 914; 20 Harv. L. R. 243.

6 Beck v. Railway Teamsters Union et al (1898), 118 Mich. 497, 77 N. W. 13.

7 State v. Stewart (1887), 59 Vt. 273, 9 Atl. 559.

8 Rosenberg v. Retail Clerks Association (1918), 39 Cal. App. 67, 177 Pac. 864.

9 Barnes v. Chicago Typographical Union (1908), 232 Ill. 424, 83 N. E. 940.

10 Moore v. Cooks, Waiters etc. Union No. 402 (1919), 39 Cal. App. 538, 179 Pac. 417; Knudsen v. Benn (1903), 123 Fed. 636; Local Union H. R. E. I. A. v. Slathakis (1918), 135 Ark. 86, 205 S. W. 450; George Jonas Glass Co. v. Glass Bottle Blowers Association (1907), 72 N. J. Eq. 653, 66 A. 953.

11 Stillwell Theatre Inc. v. Kaplan (1932), 295 N. Y. 405, 182 N. E. 63.

12 Gevas v. Greek Restaurant Workers Club (1926), 99 N. J. Eq. 770, 134 A. 309.

on both sides of the question. In Exchange Bakery and Restaurant Inc. v. Rifkin,[13] the court said, "Picketing connotes no evil. It may be accompanied, however, by violence, trespass, threats, or intimidation, express or implied. There may be no threats, no statements, oral or written, false in fact, yet tending to injure plaintiff's business." This case represents the majority view.[14] The rule in states holding that peaceful picketing is lawful is that such is true only where there is no statute or ordinance to the contrary. The constitutionality of such ordinances has been upheld.[15] This result is reached on the theory that it is not an unreasonable exercise of the power to preserve peace and good order to prevent that which so often disturbs the peace and destroys good order. The ordinance, however, must be reasonable. Thus in Hall v. Johnson,[16] the court held that an ordinance prohibiting picketing and declaring picketing to be prima facie evidence of a conspiracy to injure an employer's trade, was void. In Indiana, an ordinance prohibiting picketing was upheld in Thomas v. City of Indianapolis.[17] In Watters v. City of Indianapolis,[18] an ordinance prohibiting any display of banners except in procession was upheld in applying the ordinance to one picketing the shop.

As to whether peaceful picketing is lawful in the absence of a statute in Indiana, the case of Karges Furniture Co. v. Amalgamated Woodworkers' Local Union No. 131,[19] definitely commits Indiana to the majority view. The court there held that even if fourteen of the six hundred members of the union did disregard the express instructions and declared policy of the union to conduct strikes peacefully, and used force and intimidation, that fact alone was not sufficient in itself to condemn the union as a body. The court went on to say that whether picketing is lawful or unlawful depends in each particular case upon the conduct of the pickets themselves, and that workmen when free from contractual obligations may, to accomplish a legitimate purpose, use all lawful and peaceful means to induce others to quit or refuse employment. In Thomas v. City of Indianapolis,[20] the court although upholding an ordinance prohibiting picketing, cited the Karges case and stated that peaceful picketing is lawful in the absence of any statute or ordinance. In the principal case, therefore, the court in refusing to allow an injunction against the carrying on of peaceful picketing, followed the weight of authority and the Indiana rule as set out in the Karges case.

Which rule as to the legality of peaceful picketing is the most desirable? In Harper of Torts, sec. 333, it is said, "so long as the economic order is grounded upon a premise of strife between the producer and consumer, between labor and capital, the battle should not be rendered one sided by perpetuating the advantage which society, combined in the guise of capital enjoys as a result of an accidental oversupply of labor when the power to influence public opinion is denied workmen." To deny the laborer the right to picket

[13] Exchange Bakery and Restaurant Inc. v. Rifkin (1927), 245 N. Y. 260, 137 N. E. 130.

[14] American Steel and Wire Co. v. Wire Drawers and Die Makers Union No. 1 and 3 (1898), 90 Fed. 608; Southern Ry. Co. v. Machinests Local Union No. 14 (1901), 111 Fed. 49; Iron Moulders Union v. Allis-Chalmers Co. (1908), 166 Fed. 405; Truax v. Cooks and Waiters Union (1918), 19 Ariz. 379, 171 Pac. 121; Sherry v. Perkins (1888), 147 Mass. 212, 17 N. E. 307; Iverson v. Dilno (1911), 44 Mont. 270, 119 Pac. 719.

[15] Ex Parte Stout (1917), 82 Tex. Crim. Rep. 183, 198 S. W. 967; State v. Personett (1923), 114 Kan. 680, 220 Pac. 520; Hardie Tynes Mfg. Co. v. Cruse (1914), 189 Ala. 66, 66 So. 657; Re Williams (1910), 158 Cal. 550, 111 Pac. 1035.

[16] Hall v. Johnson (1917), 87 Ore. 221, 169 Pac. 515.

[17] Thomas v. City of Indianapolis (1924), 195 Ind. 440, 145 N. E. 550.

[18] Watters v. City of Indianapolis (1922), 191 Ind. 671, 134 N. E. 482.

[19] Karges Furniture Co. v. Amalgamated Woodworkers Local Union No. 131 (1905), 65 Ind. 421, 75 N. E. 877.

[20] Thomas v. City of Indianapolis (1924), 195 Ind. 440, 145 N. E. 550.

would be to deny him an opportunity "to appeal to the public sense of social justice." To deny the right of picketing would be to nullify to a large extent the effect of the strike. The right to strike is recognized as a method of industrial warfare.[21] In view of this, and since picketing is necessary to preserve the right to strike, the majority and Indiana view is clearly the enlightened and most socially desirable rule.

The plaintiffs' contention that the picketing deprived them of property without due process of law and was therefore a violation of the 14th Amendment, clearly cannot be sustained. The due process clause applies only as against acts of the state and not against acts of individuals.[22]

M. K.

BOOK REVIEWS

The Indiana Law of Future Interests, Descent and Wills. By Bernard C. Gavit. (1934. The Principia Press, Inc., Bloomington, Indiana. Pp. v-xli + 1-461.)

This is not just another law book. Dean Gavit, in his inimitable style and his precise and careful method, has accomplished for the lawyers of Indiana a monumental task.

Hundreds of authorities in both Indiana and other states have been read, digested and classified. The statutes of this state relating to the subject matter have been analyzed and commented upon. Not only have the Indiana statutes been dealt with in such wise but also the New York statutes have had similar treatment, the Indiana law of the subject matter having followed very closely the statutory and case law of the older state.

Any lawyer of this jurisdiction who has to do with titles to real estate will find Dean Gavit's book indispensable, and the general practitioner who is called from time to time to draft wills, or construe them, cannot hope to have a sufficient understanding of the matter before him unless this book is at his hand.

The subject of the book is one that gets little attention from the average lawyer and yet is one that deserves careful understanding. This work points out how the common law concepts of future interests and tenures have, in many respects, been changed by the statutes of Indiana and by the interpretations of our courts.

The canons of descent set out by the common law no longer obtain here and it is in Dean Gavit's book that a complete understanding of the Indiana law of descent may be found. The profession should be indeed grateful to Dean Gavit for this work.

This reviewer knows of nowhere else one could go to learn the subject matter of the treatise.

To say what is the most important feature of the book is to say that it is all important, but this reviewer is particularly impressed by Dean Gavit's discussion of the Indiana Law of Future Interests and Uses. In addition to a learned and careful compilation of what courts and legislatures have said concerning the subject matter, the book contains the applicable statutes of both New York and Indiana in full, contains digests of Indiana cases on charitable trusts, and also digests the New York cases on future gifts to charity prior to 1893.

The work contains suggestions with reference to the drafting of wills which no lawyer who is called upon to draft a will, no matter how simple, can afford not to read.

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[21] Harper on Torts, Sec. 233.

[22] Civil Rights Cases (1883), 109 U. S. 3, 27 L. ed. 835.