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Labor Law - Norris-LaGuardia Act - Application to Anti-Trust Prosecution of Labor Union

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its determination, in the absence of more convincing evidence of what the state law is, should be followed by the federal court."[8]

These decisions further advance the fundamental purpose of the *Erie* decision. They represent another step in the removal of judicial uncertainties attendant upon a duplex system of jurisprudence. The whole purpose of the *Erie* decision might be thwarted if federal courts were free to choose their own rules of decision whenever the highest court of the state has not spoken, since the state is not necessarily without law on a subject merely because its highest courts have not spoken. The federal courts must now follow the rules of intermediate appellate courts of the state, unless "convinced by other persuasive data that the highest court of the state would decide otherwise."[9]

G. D. L.

LABOR LAW—NORRIS-LAGUARDIA ACT—APPLICATION TO ANTI-TRUST PROSECUTION OF LABOR UNIONS—Members of two craft unions, both affiliated with the American Federation of Labor, disagreed over which was to perform certain work for their mutual employer, a brewing company dependent on interstate commerce for materials and a market. The dispute resulted in a strike, picketing, and boycott whereby one union sought to force its jurisdictional demands on the employer. Officials of the dissatisfied organization were indicted under the Sherman Act for combination and conspiracy in restraint of trade. *Held,* demurrers denying that what was charged constituted a violation of the laws of the United States were properly sustained. *United States v. Hutcheson,* 61 S.Ct. 463, 85 L.Ed. 422 (1941).

The conclusion at which the Court arrived is another significant extension of the concept that labor should be relatively free from legal restraint.[1] But the process of statutory interpretation relied upon to sustain this result presents an interesting problem.

The Court's line of reasoning can be restated substantially as

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8. 61 S.Ct. at 178.

9. West v. American Telephone & Telegraph Co., 61 S.Ct. 179, 183 (1940).

1. Compare Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940) (involving the right to picket); Apex Hosiery Mills v. Leader, 310 U.S. 469, 60 S.Ct. 982, 84 L.Ed. 1311 (1940) (dealing with a suit for triple damages under the Sherman Act); American Federation of Labor v. Swing, 61 S.Ct. 568, 85 L.Ed. 513 (1941) (concerning the right to picket). Cf. Milk Wagon Drivers Union v. Meadowmoor Dairies, 61 S.Ct. 552, 85 L.Ed. 497 (1941).

follows: Section 20 of the Clayton Act[2] grants complete immunity from all federal laws for certain labor activities.[3] Whether the conduct here involved is within the protection of this section as defined and limited by earlier cases need not be considered, because the Norris-LaGuardia Act,[4] although dealing explicitly with the use of the injunction in labor disputes, outlines the national policy in regard to labor unions, indicates what Congress intended to accomplish by the earlier enactment, and expresses Congressional disapproval of the decisions restricting the scope of the Clayton Act. Reading the Clayton Act in the light of the interpretation which Congress has embodied in the Norris-LaGuardia Act, the acts charged in the indictment are exempted from the Sherman Act by Section 20.

Mr. Justice Stone concurred in the result reached; but he found in the case no occasion to consider the relation of the Norris-LaGuardia Act to the Clayton Act, since the conduct here involved was not criminal under earlier interpretations of the Clayton Act. Mr. Justice Roberts, joined in a dissent by Chief Justice Hughes, regarded the conduct as being criminal under the Sherman Act. He distrusted the interpretation of the Norris-LaGuardia Act because he viewed it as a novel and dangerous usurpation of legislative power by a process of construction never heretofore indulged by the Supreme Court.

Ostensibly the purpose of the Norris-LaGuardia Act was simply to eliminate, so far as the federal courts are concerned, the frequently misused[5] labor injunction. Since the basic guide of the courts in statutory interpretation is the intention of the legislators,[6] when a remedial statute, such as the Norris-LaGuardia Act,

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2. 38 Stat. 730, 738 (1914), 29 U.S.C.A. § 52 (1927).

3. "No restraining order or injunction shall be granted by any court of the United States . . . in any case . . . involving, or growing out of, a dispute concerning terms or conditions of employment. . . .

"And no such restraining order or injunction shall prohibit [here the act enumerates certain types of activity] *nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.*" (Italics supplied.) 38 Stat. 730, 738 (1914), 29 U.S.C.A. § 52 (1927).

4. 47 Stat. 70 (1932), 29 U.S.C.A. §§ 101-115 (Supp. 1940).

5. On the practical effects of use of the labor injunctions, see Norris, Injunctions in Labor Disputes (1932) 16 Marq. L. Rev. 151; Pepper, Injunctions in Labor Disputes (1924) 49 A.B.A.Rep. 174; Witte, The Government in Labor Disputes (1932) 111-113. Comments (1930) 24 Ill. L. Rev. 772, (1939) 8 Fordham L. Rev. 237.

6. Church of the Holy Trinity v. United States, 143 U.S. 457, 12 S.Ct. 511, 36 L.Ed. 226 (1892); Takao Ozawa v. United States, 260 U.S. 178, 43 S.Ct. 65, 67 L.Ed. 199 (1922). Maxwell, The Interpretation of Statutes (8 ed. 1937) 1; Sutherland, Statutory Construction (2 ed. 1904) 696, § 364.

is invoked as a rule for decision of a specific case, the courts will consider the evil which the statute was designed to correct.[7]

The Norris-LaGuardia Act was passed, in fulfillment of political campaign promises,[8] to eliminate abuse of the injunction; it is not believed that its original purpose was to relieve labor from other forms of legal responsibility for its acts.[9] The title of the act[10] and its specific provisions[11] indicate that it is aimed solely

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7. Church of the Holy Trinity v. United States, 143 U.S. 457, 12 S.Ct. 511, 36 L.Ed. 226 (1892). Maxwell, op. cit. supra note 6, at 61; Sutherland, op. cit. supra note 6, at 1074, § 583.

8. Both Democratic and Republican platforms for the 1932 presidential campaigns contained planks expressing disfavor with the labor injunction. 75 Cong. Rec. 5462 (1932).

9. The report of the Senate Committee recommending passage of the Norris-LaGuardia Act states: "It is not the intention of the bill to protect anybody, whether he be employer or employee, from punishment for the commission of unlawful acts." Sen. Rep. 163, 72nd Cong., 1st Sess. (1932) 19. The minority report of the Senate Committee objects to the bill because "it would repeal the anti-trust laws *in part as to issuance of injunctions.*" (Italics supplied.) Id. at 9. "The bill has as its primary purpose the relief from certain abuses growing out of the issuance of injunctions in labor cases." Id. at 14. The entire report of the House of Representatives committee recommending passage of the bill deals with injunctions, save for a mention of the Sherman Act in connection with Section 3 of the Norris-LaGuardia Act involving "yellow-dog" contracts. H.R.Rep. 689, 72nd Cong., 1st Sess. (1932). The reports of Congressional committees may be considered as indicative of the intention of Congress. Blake v. National Banks, 90 U.S. 307, 23 L.Ed. 119 (1875); Binns v. United States, 194 U.S. 486, 24 S.Ct. 816, 48 L.Ed. 1087 (1904); Helvering v. New York Trust Co., 292 U.S. 455, 54 S.Ct. 806, 78 L.Ed. 1361 (1934). See Jones, Extrinsic Aids in the Federal Courts (1940) 25 Iowa L. Rev. 737, 743. While Congressional debates are inadmissible to indicate the intention of Congress [United States v. Trans-Missouri Freight Ass'n, 166 U.S. 290, 17 S.Ct. 540, 41 L.Ed. 1007 (1897). See Ten Broeck, Admissibility of Congressional Debates in Statutory Construction by the United States Supreme Court (1937) 25 Calif. L.Rev. 326.] The arguments of supporters of the bill indicate that they construed the bill as simply eliminating judgment in advance by means of injunction, leaving labor to its full penalty if it violated any federal laws. See, for example, the remarks of Senator Blaine, 75 Cong. Rec. 4630 (1932); Representative Dyer, id. at 5465, 5466; Representative Greenwood, id. at 5467; Representative Celler, id. at 5487, 5490. See also Norris, supra note 5, at 165.

Even Mr. Justice (then Professor) Frankfurter did not think at the time the bill was being argued for passage, that its effect extended beyond elimination of the injunction: "The measure . . . merely deals with most insistent issues presented by the labor injunction as utilized by the federal courts." Frankfurter and Greene, The Labor Injunction (1932) 226.

10. "An act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes." 47 Stat. 70 (1932), 29 U.S.C.A. § 103 (Supp. 1940).

11. There are only three provisions which expressly have a broader application than to injunctions: the actions applicable to "yellow-dog" contracts [47 Stat. 70 (1932), 29 U.S.C.A. § 103 (Supp. 1940)], the agent-principal relationship [47 Stat. 70, 71 (1932), 29 U.S.C.A. § 105 (Supp. 1940)], and the trial of contempt cases [47 Stat. 70, 72, 73 (1932), 29 U.S.C.A. §§ 111-112 (Supp. 1940)]. See Witte, The Federal Anti-Injunction Act (1932) 16 Minn. L. Rev. 638. The title of an act is a guide to its meaning. Church of the Holy Trinity v. United States, 143 U.S. 457, 12 S.Ct. 511, 36 L.Ed. 226 (1892); Caminetti v. United States, 242 U.S. 470, 37 S.Ct. 192, 61 L.Ed. 442 (1917).

at the labor injunction. Even if, as Mr. Justice Frankfurter states, it was designed "to restore the broad purpose which Congress thought it had formulated in the Clayton Act," it is doubtful that the act was intended to free labor from all federal sanctions; for there are vast differences in the policy involved, on the one hand, in granting an immunity from injunction, and, on the other, in conferring a general freedom from all forms of accountability.[12] Even if phrased as a direct amendment to the Clayton Act, the Norris-LaGuardia Act would seem to affect the earlier statute only as to its injunctive phases.

There is some precedent for reasoning by analogy from a criminal statute in formulating a rule for decision of a civil case. Where criminal acts have caused damage, there has been resort to the statute for a standard of care for civil conduct, and a consequent finding of tort liability for the damages caused.[13] Within broad limits judges are free to impose their own standards of conduct in torts cases, and in so doing they may borrow from legislative policy to any extent that they deem advisable. Likewise, the courts have refused to be used as instruments for the enforcement of contracts connected with criminal acts.[14] Where conduct is thus proscribed as to the community as a whole it is easy to see why public policy impels the courts to take such a stand. But safety from injunction is merely freedom from an extraordinary civil remedy.[15] And equity has long applied the rule that an injunction will not issue merely to prevent violation of the criminal law,[16] although Mr. Justice Frankfurter considers forceful the argument that what is non-enjoinable could not be criminal.[17]

The Supreme Court might easily have arrived at the same result by following the path taken by Mr. Justice Stone in his

12. "Injunctions in labor disputes are merely the emergency brakes for rare use and in case of sudden danger." Chief Justice Hughes, quoted with approval in Frankfurter and Greene, op. cit. supra note 9, at 222.

13. Violation of criminal statutes may be held to create civil liability directly, or indirectly on the theories that violation is evidence of negligence or negligence per se. Harper, A Treatise on the Law of Torts (1933) 187, § 78. See Lowndes, Civil Liability by Criminal Legislation (1932) 16 Minn. L. Rev. 361; Schneider, Negligence by Violation of Law (1931) 11 B.U.L. Rev. 217; Comment (1932) 32 Col. L. Rev. 712.

14. See Anson, Principles of the Law of Contracts (5 ed. 1932) 301 et seq., § 246 et seq.; Gellhorn, Contracts and Public Policy (1935) 35 Col. L. Rev. 679; 6 Williston, A Treatise on the Law of Contracts (1936) 4956, § 1750. Arts. 11, 12, La. Civil Code of 1870.

15. "Not government but 'government by injunction' has been challenged." Frankfurter and Greene, op. cit. supra note 9, at 200. "The injunction ought never to become routine." Id. at 222.

16. Walsh, A Treatise on Equity (1930) 201, § 39.

17. 61 S.Ct. 463, 467, 85 L.Ed. 422, 426 (1941).

concurring opinion.[18] Several reasons may be advanced for its failure to do so. The majority may have been searching for a broad basis on which to deal with the charges which Assistant Attorney-General Thurman Arnold proposes to bring against participants in certain labor practices.[19] In the next case the Court may not find it easy to weave a thread of distinction and differentiation between the earlier decisions, as it did in *Apex Hosiery Mills v. Leader.*[20] Too, the Supreme Court has shown a determination to reconsider vital social problems without the hindering effect of precedents.[21] Here was a convenient way to discard old decisions without directly overruling established precedents. In addition, the Court perhaps considered it time to officially pronounce the end of the era of "mutilating narrowness"[22] in statutory construction. As a matter of statutory interpretation, the decision appears to be "not free from doubt"[23]—as stated by the moderate Mr. Justice Stone. As a *tour de force* to enable the Court to begin laying a fresh judicial foundation for reconciliation of labor activities and the Sherman Act, it is understandable.

A. B. R.

SUCCESSIONS — COLLATION—MANUAL GIFTS EXEMPT—Defendant, a daughter of decedent, had been given twelve shares of homestead stock without consideration, but in accordance with

18. 61 S.Ct. at 468, 85 L.Ed. at 427.

19. See the Public Statement of the Department of Justice, issued in the form of a letter, dated November 20, 1939, from Assistant Attorney-General Thurman Arnold to the Secretary of the Central Labor Union of Indianapolis, titled: "Application of the Anti-Trust Laws to Labor Unions." N.Y. Times, Nov. 20, 1939, p. 1, col. 4; id. at p. 12, cols. 1, 2. See also references to this statement and pending cases in Arnold, The Bottlenecks of Business (1940) 249; Boudin, The Sherman Act and Labor Disputes (1939) 39 Col. L. Rev. 1283; McLaughlin, Bottlenecks (Union-Made Included) (1941) 8 U. of Chi. L. Rev. 215, 218; Shulman, Labor and the Anti-Trust Laws (1940) 34 Ill. L. Rev. 769, 779; Simons, For a Free-Market Liberalism (1941) 8 U. of Chi. L. Rev. 202, 206.

20. 310 U.S. 469, 60 S.Ct. 982, 84 L.Ed. 1311 (1940), noted in (1940) 3 LOUISIANA LAW REVIEW 241. It is of interest that in the *Apex* case Mr. Justice Stone suggested the broad application given the Norris-LaGuardia Act in the *Hutcheson* case by citing the act in a footnote declaration that, "Federal legislation aimed at protecting . . . labor organizations . . . supports the conclusion that Congress does not regard . . . such combinations . . . as . . . condemned by the Sherman Act." 310 U.S. at 504, n. 24, 60 S.Ct. at 998, 84 L.Ed. at 1329.

21. See cases cited supra note 1.

22. "Such legislation must not be read in a spirit of mutilating narrowness." United States v. Hutcheson, 61 S.Ct. 463, 467, 85 L.Ed. 422, 426 (1941).

23. 61 S.Ct. at 468, 85 L.Ed. at 427.