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Labor Law - Anti-Trust Acts - Restraint of Competition

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Several safeguards against surprise are available to the defendant in a criminal trial. The elaborate requirements to which the indictment must conform guarantee a full understanding of the prosecution's charge in advance of trial. Also, a bill of particulars is available in appropriate cases,[20] and a continuance may be allowed in the event of surprise.[21] Should the defendant be afforded further and more detailed information by being allowed to insist that the prosecution expose its evidence in the opening statement? The rule that evidence not referred to at the opening of trial is inadmissable affords another technicality of the criminal law by means of which astute defense lawyers may thwart an unwary prosecutor and incidentally defeat justice. It adds another complicating factor to the already over-elaborate and highly technical body of exclusionary rules of evidence. If such a rule is to obtain, it should apply only to testimony whose import the jury is unable to understand because it was omitted from the opening statement. Confusion of the jury, not surprise to the defendant, should be the test.[22]

A. B. R.

LABOR LAW—ANTI-TRUST ACTS—RESTRAINT OF COMPETITION—The defendant union seized and occupied the petitioner's shop, inflicted heavy material damage, and on three occasions refused to allow the shipment of finished goods to purchasers in other states. The petitioner brought this action to recover treble damages under the Sherman Act[1] as amended by the Clayton Act.[2] *Held*, although the effect of the sit-down strike was to restrict substantially the interstate transportation of the petitioner's product, there could be no recovery as there was no "restraint upon com-

20. Arts. 235, 288, La. Code of Crim. Proc. of 1928. It has been held that the bill of particulars should be granted where the short form of indictment is used. State v. White, 172 La. 1045, 136 So. 47 (1931). But it would seem that, in any case, the granting of a request for a bill of particulars lies within the discretion of the trial judge, and is not a matter of right. State v. Ezell, 189 La. 151, 179 So. 64 (1938).

21. Arts. 320-326, La. Code of Crim. Proc. of 1928.

22. If the criterion of admissibiity of evidence not mentioned in the opening statement be the ability of the jury to understand and apply such evidence, every Louisiana case in which evidence has been excluded under the present interpretation would have reached a contrary result. In each case a confession was the evidence not alluded to (supra, note 9). It seems certain that a jury can understand and apply a confession whenever introduced, and whether or not it is preceded by mention in the opening statement.

1. 26 Stat. 209 (1891), 15 U.S.C.A. § 1 (1927).

2. 38 Stat. 730 (1915), 15 U.S.C.A. § 15 (1927).

mercial competition in the marketing of goods or services." *Apex Hosiery Co. v. Leader,* 60 S.Ct. 982 (1940).[3]

Prior to the instant decision the cases of this kind which had come before the Supreme Court could be divided into three classifications. The first class was composed of cases where there was a clear showing of intent on the part of the union to restrain commercial competition by preventing or obstructing the free flow of goods in interstate commerce. An example of this type of situation is furnished by the *Second Coronado* case[4] in which the court found that the purpose of the union program, which included the destruction of the complainant's coal mine, was to prevent complainant's non-union coal from competing in interstate markets with union made coal. The result of such competition had been to threaten the relations of the union with operators of unionized mines in other states, who were suffering from the competition with non-union coal producers. Such conduct was held to be a violation of the Sherman Act.

The second classification comprised cases such as *Loewe v. Lawlor.*[5] There the purpose of the union was not to drive the complainant's product out of interstate markets to protect union competitors in whose success the union had no interest. Rather the union was attacking the interstate sales of the complainant's hats solely in an effort to paralyze its business to such an extent that unionization of the plant would be necessary. No interest of competitors appeared to be at stake. The price at which complainant's hats sold in interstate markets was not at issue. Nevertheless, the movement of goods in interstate commerce was directly under attack, and this was held to be in contravention of the act.

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3. The court pointed out that the law was enacted in an era of trusts and combinations of business and capital organized to control the market by suppression of competition in the marketing of goods and services. This was the meaning of "restraint of trade" as used in the act, which does not condemn all conspiracies and combinations which interrupt interstate commerce.

4. Coronado Coal Co. v. United Mine Workers of America, 268 U.S. 295, 45 S. Ct. 551, 69 L.Ed. 963 (1925). See also United States v. Brims, 272 U.S. 549, 47 S.Ct. 169, 71 L.Ed. 403 (1926) (where there was a conspiracy of the manufacturers of mill-work, building contractors, and union carpenters to check competition by non-union made mill-work from other states); International Brotherhood of Teamsters v. United States, 291 U.S. 293, 54 S.Ct. 396, 78 L.Ed. 804 (1934).

5. 208 U.S. 274, 28 S.Ct. 301, 52 L.Ed. 488 (1908). See also Gompers v. Buck's Stove & Range Co., 221 U.S. 418, 31 S.Ct. 402, 55 L.Ed. 797 (1911); Duplex Printing Press Co. v. Deering, 254 U.S. 443, 41 S.Ct. 172, 65 L.Ed. 349 (1921); Bedford Cut Stone Co. v. Journeymen Stone Cutters' Ass'n, 274 U.S. 37, 47 S.Ct. 522, 71 L.Ed. 916 (1927).

In the third group fell those cases where there was no intention to restrain interstate commerce, either by overcoming damaging price competition or stopping interstate sales.[6] In these situations the court refused to find a violation of the anti-trust acts. Although interstate commerce may have been affected by the union activity, the effect was merely incidental to a program local in origin and purpose.

In the instant case, despite the fact that the union expressly refused to permit the manufacturer to deliver to an out-of-state customer a certain quantity of finished goods, the court declined to admit that there was a restraint within the purview of the Sherman Act.[7] The principal question which arises concerns the effect of the present decision on cases falling within the second classification referred to above. Clearly, cases in the third group are unaffected. The formula applied by the court suggests that the decision is not to be understood as exempting from the application of the anti-trust acts situations in which there is an attempt on the part of the union to prevent competition between non-union and union goods in interstate markets.

Under the decisions dealing with the second classification, a finding of intent to obstruct or restrain interstate commerce appears to have been considered sufficient, although the competitive angle was not present. Therefore, the express refusal of the union in the instant case to permit the shipment of certain finished goods would appear at first to be a direct interference with interstate commerce in violation of the acts. However, such a conclusion may be avoided by adopting the view that, in spite of the fact mentioned, the interstate business of the petitioner was not under direct attack, and this one instance of intentional interference was not sufficiently grave to support a finding that the Sherman Act had been violated. In emphasizing the importance of the fact that there was no showing that the union was attempting to restrain *commercial competition* in the *marketing of goods or services* in interstate commerce, the court has thrown considerable doubt on the present effect of such landmark cases as

6. United Mine Workers of America v. Coronado Coal Co., 259 U.S. 344, 42 S.Ct. 570, 66 L.Ed. 975 (1922); United Leather Workers' I. U. v. Herkert & Meisel Trunk Co., 265 U.S. 457, 44 S.Ct. 623, 68 L.Ed. 1104 (1924).

7. The lower court reached the same decision, stating that the action was local in motive and effect, and the effect on interstate commerce was "indirect and remote." The court relied on United Mine Workers of America v. Coronado Coal Co., 259 U.S. 344, 42 S.Ct. 570, 66 L.Ed. 975 (1922) and United Leather Workers' I. U. v. Herkert & Meisel Trunk Co., 265 U.S. 457, 44 S.Ct. 623, 68 L.Ed. 1104 (1924).

Loewe v. Lawlor, Duplex Printing Press Co. v. Deering,[8] and *Bedford Cut Stone Co. v. Journeymen Stone Cutters' Ass'n.*[9] In those cases it does not clearly appear that the court found, or considered it necessary to find, that the union was undertaking to prevent the interstate sale of the particular product in competition with the product of union producers. Yet, such a basis of distinction was employed in the present case.[10] A fair inference is that those cases can no longer safely be depended upon as rendering interstate union cooperation unlawful, in the absence of a finding that there was an intent to restrain competition in the marketing of goods or services.[11]

H. W. W., JR.

MINERAL LEASE—WARRANTY—DAMAGES FOR EVICTION—Plaintiffs sued to have themselves declared owners of an undivided one-fourth interest in a tract of land and to cancel a mineral lease thereon, insofar as it affected their interest. The lease, covering an undivided one-half interest in the tract, had been granted to the defendant Texas Company by the defendant Hunt. It contained the customary warranty of title clause. Upon a finding in favor of the plaintiffs, the lessee called his lessor in warranty, praying for a judgment for the amount of one-fourth of the expenses of drilling a well.[1] *Held,* the expense of drilling should not be included as an item of "damage and loss" for which the lessor is answerable. *Martel v. Hunt,* 197 So. 402 (La. 1940).

By warranting title to the land leased, the lessor obligated

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8. 254 U.S. 443, 41 S.Ct. 172, 65 L.Ed. 349 (1921).

9. 274 U.S. 37, 47 S.Ct. 522, 71 L.Ed. 916 (1927).

10. *Loewe v. Lawlor* was distinguished from Apex Hosiery Co. v. Leader, 60 S.Ct. 982, 998 (1940). In the latter case the court stated that in *Loewe v. Lawlor* the "restraint alleged was not a strike or refusal to work in the complainants' plant, but a secondary boycott by which, through threats to the manufacturer's wholesale customers and their customers, the Union sought to compel or induce them not to deal in the product of the complainants *and to purchase the products of other unionized manufacturers.*" (Italics supplied.) Similar language was employed in distinguishing the *Duplex* case and the *Bedford* case.

11. In reviewing the history of the Sherman Act the court emphasized the fact that protection of the consuming public from practice in restraint of free competition was the primary aim of the act. Presumably, the interest of purchasers and consumers was not sufficiently at stake under the circumstances of the instant case to warrant the invocation of the anti-trust law.

1. Warranty claims were also made for one-half of cash bonuses paid lessor for the lease and for one-half of the royalty paid him out of the oil produced. Both these claims were allowed.