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Torts--Interference with Advantageous Relations--Trade Unions--Selective Training and Service Act of 1940 (Williams v. Sinclair Refining Co., 74 F. Supp. 139 (N.D. Tex. 1947))

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There has been no established trend in other states to effectuate similar results except in Pennsylvania [17] and Maryland.[18] However, these cases will undoubtedly have a proper effect in that it will focus attention on the overall aspects of attempting to draw legal instruments not only in the light of their immediate purpose, but to give adequate consideration to the taxation problems which may arise in future enforcement of the instruments.

L. W.

TORTS — INTERFERENCE WITH ADVANTAGEOUS RELATIONS — TRADE UNIONS—SELECTIVE TRAINING AND SERVICE ACT OF 1940.— The plaintiff, Roscoe Williams, exercising his statutory right created by the Selective Training and Service Act of 1940, § 8, 50 U. S. C. A. App. § 308, within the prescribed ninety days after discharge, reclaimed his job with defendant, Sinclair Refining Company, that he had left upon entry into the armed services. The defendant company was desirous of honoring the plaintiff's request; however, the Oil Workers International Union, which was under contract with the defendant, through a legally constituted committee, protested his receiving the seniority provided for by the Veterans' Act. The issue was submitted to the Board of Arbitrators, a decision being rendered against the plaintiff who was not present at the arbitration. Williams brought this action to recover damages in the amount of the difference between wages he would have earned had his seniority rights been recognized and the earnings actually received. The Sinclair Refining Company has impleaded the Oil Workers International Union, as a third party defendant, charging interference by the union which prevented the defendant company from recognizing the plaintiff's seniority rights and deprived him of the wages he would have received in recognition thereof. *Held,* judgment for plaintiff ordered against the third party defendant in the amount demanded. *Williams v. Sinclair Refining Co.,* 74 F. Supp. 139 (N. D. Tex. 1947).

The court first considers Williams' right to bring this action, and resolves the question in the plaintiff's favor. Since Williams was not present at, nor invited to, the arbitration, where his claim for recognition of seniority rights under the Veterans' Act was decided against him, it is presumed that he was represented by the union which was also the bargaining agent of the other claimant for the job. On a familiar and settled principle of law, it cannot be said that Williams had any representation at the arbitration, since the union could not

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[17] Laws of Pennsylvania, Apportionment Act of 1937, P. L. 2762.
[18] Laws of Maryland 1937, c. 546.

fairly represent both claimants of the job. An agent cannot serve two principals in regard to the same subject without full knowledge and consent of both parties.[1] By way of a descriptive but admittedly crude illustration[2] and a consideration of the evidence, the court decides that sufficient pressure was present to justify the defendant company in heeding the union's order and not recognizing the claim made by plaintiff Williams. The last proposition which warranted consideration of the court was raised by the defendant's charge of interference on the part of the union, thus preventing the company from recognizing the plaintiff's claim. Here, the court resorts to the ancient doctrine of *Lumley v. Gye,* the proposition of law laid down in that well known case being as follows: It is an actionable wrong for a third party without justification to induce a party to a contract to break his agreement.[3] Supplementing the above, it has been held that there is no sufficient justification where the end sought to be attained is to cause the employee to surrender a claim or to prevent him from earning money.[4] Applying the principles just set forth, the conclusion arrived at is that Williams' claim for restoration to his old job with recognition of his seniority rights would have been granted had there been no interference by the union.

Since shortly before the beginning of the twentieth century, the trend in the law as respects labor unions has been to do away with the older outlook of the courts which considered unions undesirable and as outlaws.[5] "This is an age of associations and unions, in all departments of labor and business, for mutual benefit and protection. Confined to proper limits, both as to ends and means, they are not only lawful, but laudable." [6] Certain groups and individuals have received a privilege, at the hands of the courts, to interfere with advantageous or contractual relationships, terminable at will, where the benefit resulting from the interference is regarded as desirable by society.[7] The tendency of the courts in recent years, while giving labor unions the *new look,* has been to classify them with these

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[1] Audubon Bldg. Co. v. F. M. Andrews & Co., 187 Fed. 254 (C. C. A. 5th 1911); Chrystie v. Foster, 61 Fed. 551 (C. C. A. 2d 1894); Alger v. Anderson, 78 Fed. 729 (C. C. M. D. Tenn. 1897); Glover v. Ames, 8 Fed. 351 (C. C. D. Me. 1881).

[2] The court made reference to an old pioneer who was riding behind his team, using his long whip to flick flies off the oxen. A companion pointed to a hornets' nest, and said, "Let me see you take your whip to *that* boy." The pioneer replied, "No, they are organized."

[3] Lumley v. Gye, 2 El. & Bl. 216, 118 Eng. Rep. 749 (1853).

[4] London Guarantee & Accident Co. v. Horn, 206 Ill. 493, 69 N. E. 526 (1903).

[5] PROSSER, TORTS 1002 (1941).

[6] Bohn Mfg. Co. v. Hollis, 54 Minn. 223, —, 55 N. W. 1119, 1120 (1893).

[7] Kelly v. Morris County Tractor Co., 2 N. J. Misc. 802, 126 Atl. 24 (1924); Kuryer Pub. Co. v. Messmer, 162 Wis. 565, 156 N. W. 948 (1916); Chicago, R. I. & P. Ry. v. Armstrong, 30 Okla. 134, 120 Pac. 952 (1911).

groups, and to afford them the same privilege where possible.[8] Unions have been permitted to strike in order to obtain better wages,[9] to force the employer to perform his contracts [10] and to prevent discrimination against union workmen.[11]

As indicated in the principal case, the public policy which lies behind the Veterans' Act must cause the union contract between the Sinclair Refining Co. and the Oil Workers International Union to give way to the discharged soldier. In *David v. Boston & M. R. R.*,[12] Justice Connor, referring to the Act, decided that the veteran was not to be barred from the right contemplated by the statute because of a contract between the union and employer. In support of his contention, he quotes from *Fishgold v. Sullivan Drydock and Repair Corp.*, ". . . no . . . agreements between employers and unions can cut down the service adjustment benefits which Congress has secured the veteran under the Act." [13] It was also stated that ". . . if the bargaining agreement clashes with the provisions of the Selective Service Act, then the former must yield." [14] These and other cases [15] indicate the strength of the public and social policy supporting the statute. At the present time, when the interest in the returning veteran has not yet completely disappeared, it is quite apparent that this policy carries enough weight to offset that which lies behind the privilege afforded to unions with regard to interference.

W. H. C.

TORTS—RES IPSA LOQUITUR—EXCLUSIVE CONTROL.—Plaintiff, while walking on the sidewalk past the defendant's hotel on V-J Day was struck on the head and injured by an armchair which presumably

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[8] Although the full effect of the Taft-Hartley Act is not yet known, there is some indication that the pendulum has reached the top of its swing and may be returning the unions a step or two towards the *old look*. See Labor Management Relations Act, 1947, 61 STAT. 136, 2 U. S. C. § 251 (Supp. 1947), 29 U. S. C. §§ 141-144, 151-167, 171-182, 185-188, 191-197, 50 U. S. C. App. § 1509.

[9] Roddy v. United Mine Workers of America, 41 Okla. 621, 139 Pac. 126 (1914); Pierce v. Stablemen's Union, Local No. 8,760, 156 Cal. 70, 103 Pac. 324 (1909); Karges Furniture Co. v. Amalgamated W. L. U. No. 131, 165 Ind. 421, 75 N. E. 877 (1905).

[10] Spivak v. Wankofsky, 155 Misc. 530, 278 N. Y. Supp. 562 (Sup. Ct. 1935).

[11] United Chain Theatres v. Philadelphia M. P. M. O., 50 F. 2d 189 (E. D. Pa. 1931); Gill Engraving Co. v. Doerr, 214 Fed. 111 (S. D. N. Y. 1914).

[12] 71 F. Supp. 342, 347 (D. N. H. 1947).

[13] 328 U. S. 275, 285, 90 L. ed. 1230, 1240 (1946).

[14] Olin Industries v. Barnett, 64 F. Supp. 722, 728 (S. D. Ill. 1946).

[15] Meehan v. National Supply Co., 160 F. 2d 346 (C. C. A. 10th 1947); Kay v. General Cable Corporation, 144 F. 2d 653 (C. C. A. 3d 1944); Lord Mfg. Co. v. Nemenz, 65 F. Supp. 711 (W. D. Pa. 1946).