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Article 6

Labor Unions--Libel--Liability of Newspaper for Libeling Union (Kirkman v. Westchester Newspaper, Inc., 287 N.Y. 373 (1942))

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degeneracy.[11] Because such a statute is not a criminal act its passage after the commission of the crime is not *ex post facto* legislation.[12]

M. J. S.

LABOR UNIONS—LIBEL—LIABILITY OF NEWSPAPER FOR LIBELING UNION.—The plaintiff, Kirkman, president of Local Union Number 3 of the International Brotherhood of Electrical Workers, brought a libel action in the union's behalf, as well as his own against a newspaper and a newspaper syndicate. The defendant published an article denouncing the union officials, charging that they were demanding exorbitant initiation fees from their new members. The publication did not tend to discredit any particular member of the union but tended to injure the union as a whole. The defendant moved to dismiss the case as insufficient in law. The lower court denied the motion and on appeal to the Court of Appeals, held that the plaintiff as resident of the union may maintain an action in behalf of the union as well as for himself. *Kirkman v. Westchester Newspaper, Inc.*, 287 N. Y. 373, 39 N. E. (2d) 206 (1942).

Prior to this decision, unions and other incorporated associations could not sue for libel or slander;[1] nor could any member of the union sue on his own behalf, unless he could prove that he personally was injured.[2] It is usually difficult for an individual member to prove damages[3] for the courts have held that the libelous statements made against the union were not the concern of the member[4] and that the member of a union did not have any property interest in the reputation of the union.[5] Non-profit corporations were permitted to sue for the torts of libel or slander in New York since the middle of the nineteenth century.[6]

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[11] Davis, Warden v. Walton, 74 Utah 60, 276 Pac. 921 (1929); Buck v. Bell, 143 Va. 310, 130 S. E. 516 (1925); State v. Feilen, 70 Wash. 65, 126 Pac. 75 (1912). *But see* Aranoff, *Constitutionality of Asexualization in the United States* (1927) 1 ST. JOHN'S L. REV. 146, 158.

[12] *In re* Clark, 86 Kan. 539, 121 Pac. 492 (1912).

[1] Giraud v. Beach, 3 E. D. Smith 337 (Ct. Com. Pl. N. Y. 1854).

[2] Gross v. Cantor, 270 N. Y. 93, 200 N. E. 596 (1936); Owen v. Clark, 154 Okla. 108, 6 P. (2d) 755 (1931).

[3] Trenton Mutual Life and Fire Ins. Co. v. Perrine, 23 N. J. L. 402 (1852); Thomas v. Moore, [1918] 1 K. B. 555.

[4] Stone, Treas. v. Textile Examiner's Ass'n, 137 App. Div. 655, 123 N. Y. Supp. 460 (1st Dep't 1910); SEELMAN, LIBEL AND SLANDER § 88.

[5] Hays v. American Defense Soc., 252 N. Y. 266, 169 N. E. 380 (1929).

[6] Taylor v. Church, 8 N. Y. 452 (1853); Electrical Board of Trade v. Sheehan, 214 App. Div. 712, 210 N. Y. Supp. 127 (1st Dep't 1925); Peacoch v. Tata Sons, 206 App. Div. 145, 200 N. Y. Supp. 656 (1st Dep't 1923); The Shoe and Leather Bank v. John Thompson, 23 How. Pr. 253 (N. Y. 1863); Vagel v. Bushnell, 203 Mo. App. 623, 221 S. W. 819 (1920).

The Supreme Court of the United States recognized the entity status of a labor organization [7] as an artificial person who had the right to sue for torts committed upon it during strikes. Labor unions are permitted to bring suits in equity in order to enforce the terms of collective bargaining agreements.[8] It has also been held by the courts, that unions could hold funds of another union in trust.[9] In New York State, as in other jurisdictions, the problem as to whether or not a labor union can bring an action at law, and who in the labor union could bring the action, was solved by statute.[10]

G. N.

NEGLIGENCE—ATTRACTIVE NUISANCE.—Defendant used an electric truck to make deliveries. There was no driver's seat in the truck, and the platform upon which the driver stood was nine inches above the level of the sidewalk. This platform could be entered upon from either side of the truck. Each side had a sliding door which was usually kept open in the warm weather, and closed and locked in the cold weather. In order to make a delivery, the driver pulled alongside the curb and parked the truck in a street where three children, including the five-year-old infant plaintiff, were playing. He turned off the safety switch, but had no key with which to lock it, and he pulled up the emergency brake. Knowing that these children generally had played on the truck on previous occasions, the driver sharply warned them to stay away. While he was making his delivery, the children got on the truck, turned on the safety switch, and set the truck in motion. It moved diagonally across the street with its full power, but so slowed by the brakes that its speed was only two miles per hour. Warning the children not to jump off, the driver ran to catch the truck. The infant plaintiff either fell or jumped before the driver reached the truck, and he brings this action through his guardian *ad litem* to recover for the damages he sustained. From a judgment

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[7] Mine Workers v. Corando Coal Co., 259 U. S. 344, 42 Sup. Ct. 570 (1921).

[8] Schlesinger v. Quinto, 201 App. Div. 487, 194 N. Y. Supp. 401 (1st Dep't 1922); Weber v. Nasser, 61 Cal. App. Dec. 1259 (1930).

[9] Furniture Workers' Union Local 1007 v. United Brotherhood of Carpenters and Joiners of America, 6 Wash. (2d) 654, 108 P. (2d) 651 (1940).

[10] N. Y. GEN. ASS'N L. § 12.—*Actions or proceedings by unincorporated associations.* An action or special proceeding may be maintained, by the president or the treasurer of an unincorporated association to recover any property, or upon any cause of action, for or upon which all the associates may maintain an action or special proceeding, by reason of their interest or ownership therein, either jointly or in common. An action may likewise be maintained by such president or treasurer to recover from one or more members of such association his or their proportionate share of any moneys lawfully expended by such association for the benefit of such associates, or to enforce any lawful claim of such association against such member or members. (L. 1932, c. 609.)