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Anti-Trust Act--Criminal Prosecution of a Labor Union for a Conspiracy in Restraint of Trade (United States v. Drivers, Chauffers and Helpers Local Union No. 639 of International Brotherhood of Teamsters, Chauffers, Stablemen and Helpers of America, et al., 32 F. Supp. 594 (D.C.D.C. 1940))

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RECENT DECISIONS

ANTI-TRUST ACT—CRIMINAL PROSECUTION OF A LABOR UNION FOR A CONSPIRACY IN RESTRAINT OF TRADE.—Defendants [1] were indicted under Section 3 of the Sherman Anti-Trust Act [2] for a criminal conspiracy to restrain trade and commerce within the District of Columbia. Specifically, they were charged with seeking to replace members of another union which had collective agreements with the employers involved with members of their own organization through the use of strikes, boycotts, threats, force and violence. A demurrer was interposed on the grounds that a labor union or its agents are exempt from the operation of the Sherman Anti-Trust Act, and that, furthermore, the alleged acts are not illegal. An alternative motion was also made to quash the indictment for indefiniteness, vagueness and uncertainty. *Held,* the indictment is sufficiently clear and definite, and the alleged resort to force and the attempted interference with existing contracts and collective bargaining rights rendered both the object of the activity and the means employed for its attainment unlawful and removed the defendant organization from any limited exemption that it may have enjoyed as a labor union. *United States* v. *Drivers, Chauffeurs and Helpers Local Union No. 639 of International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, et al.,* 32 F. Supp. 594 (D. C. D. C. 1940).

Combinations of labor as well as of capital have been repeatedly held by the courts to be included within the provisions of the Sherman Anti-Trust Act of 1890.[3] Decisions following the promulgation of the Clayton Act,[4] aside from reaffirming that a labor union was not to be deemed a monopoly *ipso facto,*[5] did not greatly favor labor.[6]

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[1] There were six defendants, namely, Drivers, Chauffeurs and Helpers Local Union No. 639 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America; Thomas O'Brien, a representative of the International Brotherhood; and four officers or representatives of the Drivers Union Local No. 639.

[2] 26 STAT. 209 (1890), 15 U. S. C. A. § 3 (1927).

[3] Loewe v. Lawlor, 208 U. S. 274, 28 Sup. Ct. 301 (1908); Apex Hosiery Co. v. Leader, *et al.,* 310 U. S. 469, 60 Sup. Ct. 982 (1940); United States v. Workingmen's Amalgamated Council, 54 Fed. 994 (E. D. La. 1893), *aff'd,* 57 Fed. 85 (C. C. A. 5th, 1893). Despite an unbroken succession of cases to the contrary, labor leaders still insist that unions are not, and never were, intended to be subject to anti-trust prosecution. See letter of William Green to Attorney-General Murphy in N. Y. Times, Nov. 23, 1939, p. 30, col. 4.; *Sherman Act and Labor Unions* (1939) 5 LAB. REL. REP. 316.

[4] 38 STAT. 730 (1914) (with the addition thereto of the "labor sections").

[5] Duplex Printing Press Co. v. Deering, *et al.,* 254 U. S. 443, 41 Sup. Ct. 172 (1921).

[6] Section 6 was held not to exempt a union or its members "from accountability where it or they depart from its normal, legitimate objects and engage in an actual combination or conspiracy in restraint of trade", and the attempt in Section 20 to restrict the issuance of injunctions was rendered nugatory by a narrow definition of a "labor dispute". Duplex Printing Press Co. v. Deering, *et al.,* 254 U. S. 443, 41 Sup. Ct. 172 (1921); American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184, 42 Sup. Ct. 72 (1921). See

The courts still held that labor organizations are subject to the anti-trust laws, and that the Clayton Act did not give labor a free rein to engage in acts which would be unlawful for other combinations to commit.[7] All combinations, whether labor or otherwise, were held to be accountable for violations of the Act, either as to the means or the end.[8] If the end sought to be attained is in violation of the statute, the means to effect the end are immaterial,[9] for means legal in themselves cannot be used for an illegal end.[10] Acts lawful in themselves assume an unlawful character when they are so interwoven with acts inherently criminal that the whole plan must be condemned as a violation of the laws against conspiracy in restraint of trade;[11] and even, if the object of the combination is outside the purview of the Act, the combination is, nonetheless, unlawful, if the means adopted to effectuate the end directly or unduly obstruct the free flow of commerce.[12]

In the instant case, the allegations in the indictment, if proven, would be sufficient to show that defendants' object was not a legitimate one. The employers involved had existing contracts with an opposing union requiring them at all times to engage 75% of their employees from the members of that union. Adherence to the defendants' demands would result not only in an illegal breach of a valid existing contract[13] but also in a violation of the National Labor

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FRANKFURTER AND GREENE, THE LABOR INJUNCTION (1930) 142; BERMAN, LABOR AND THE SHERMAN ACT (1930) 99; WITTE, THE GOVERNMENT IN LABOR DISPUTES (1932) 66.

[7] Duplex Printing Press Co. v. Deering, *et al.*, 254 U. S. 443, 41 Sup. Ct. 172 (1921); International Organization, United Mine Workers of America v. Carbon Fuel Co., 275 U. S. 536, 48 Sup. Ct. 31 (1927); United States v. Railway Employees' Dept., A. F. L., 286 Fed. 228 (N. D. Ill. 1922). *Contra:* the contravention of public as well as employer interest by labor activity finds some immunity in the doctrine of *damnum absque injuria*, the damage being justified by the purpose. This doctrine was developed by Justice Holmes in his article, *Privilege, Malice and Intent* (1894) 8 HARV. L. REV. 1, and in his opinions in Vegelahn v. Guntner, 167 Mass. 92, 44 N. E. 1077 (1896); Plant v. Woods, 176 Mass. 492, 57 N. E. 1011 (1900); Aikens v. Wisconsin, 195 U. S. 194, 25 Sup. Ct. 3 (1904). See FRANKFURTER AND GREENE, *op. cit. supra* note 6, at 24.

[8] Hitchman Coal & Coke Co. v. Mitchell, *et al.*, 202 Fed. 512 (D. C. W. Va. 1912), *modified and aff'd*, 245 U. S. 229, 38 Sup. Ct. 65 (1917); United States v. Motion Picture Patents Co., 225 Fed. 800 (E. D. Pa. 1915).

[9] Northern Securities Co. v. United States, 193 U. S. 197, 24 Sup. Ct. 436 (1903); H. B. Marinelli, Ltd. v. United Booking Offices of America, 227 Fed. 165 (S. D. N. Y. 1914).

[10] Lamar v. United States, 260 Fed. 561 (C. C. A. 2d, 1919), *cert. denied*, 250 U. S. 673, 40 Sup. Ct. 16 (1919). "The Statute covers any illegal means by which interstate commerce is restrained, whether the restraint is occasioned by unlawful contracts, trusts, * * * blacklists, boycotts, coercion, threats, intimidation, and whether these are made effective, in whole or in part, by acts, words or printed matter"—Gompers v. Buck Stove Co., 221 U. S. 418, 438, 31 Sup. Ct. 492 (1911).

[11] United States v. Railway Dept., A. F. L., 286 Fed. 228 (N. D. Ill. 1922).

[12] San Francisco Industrial Ass'n v. United States, 268 U. S. 64, 45 Sup. Ct. 403 (1924).

[13] Hitchman Coal & Coke Co. v. Mitchell, 245 U. S. 249, 38 Sup. Ct. 65 (1917); Central Metal Products Corp. v. O'Brien, 278 Fed. 827 (N. D. Ohio 1922).

Relations Act.[14] Even if the object of the defendants were to be held legitimate and reasonable,[15] the means allegedly employed to achieve it [16] were unlawful, and the defendants, if guilty, are subject to punishment under the Sherman Act.[17]

The Court also ruled against the defendants on their alternative motion to quash the indictment. An indictment for violation of the Anti-Trust Act must state all the necessary facts constituting the offense charged [18] with such definiteness and certainty that the defendant may understand the offense with which he is charged to enable him to prepare a defense,[19] and so that the judgment in the case can be relied upon in another prosecution for the same offense as a former acquittal or conviction.[20] In the instant case, the indictment was carefully drawn; each defendant is adequately described; the venue consistently laid in the District of Columbia; and the time is described as being a continuous period between May 16th, 1939 and the date of the indictment. The indictment not only charged the alleged crime in the words of the statute but proceeded to elaborate on the specific trade and commerce sought to be restrained and the object and purpose of the alleged conspiracy. It named the companies involved. The Court could not perceive why defendants were unable to understand and plead to this indictment, especially since more specific information as to the acts of force, violence and threats could have been obtained in a bill of particulars.[21]

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[14] 49 STAT. 449, 29 U. S. C. A. § 151 (1935) (This act, among its provisions, requires that the employer bargain collectively with the organization representing a majority of the employees. In the instant case, this would be not the defendants but the opposing A. F. L. Union representing, according to the contract, at least 75% of the employees).

[15] See Terrio, *et al.* v. S. N. Nielson Construction Co., *et al.*, 30 F. Supp. 77 (D. C. La. 1939) (Where the object was similar to instant case, but the means employed differed greatly).

[16] As stated, "the prevention, by threat of force and by the use of actual force, of delivery of concrete to construction projects by 'mixer' trucks driven and operated by persons other than members of defendant union * * * and the threat to call and the actual calling of strikes so as to stop work on the projects." Instant case at 596.

[17] San Francisco Industrial Ass'n v. United States, 268 U. S. 64, 45 Sup. Ct. 403 (1924); Aeolian Co. v. Fischer, 40 F. (2d) 189 (C. C. A. 2d, 1930), *rev'g*, 35 F. (2d) 34 (S. D. N. Y. 1929).

[18] United States v. Colgate, 253 Fed. 522 (E. D. Va. 1918), *aff'd*, 250 U. S. 300, 39 Sup. Ct. 465 (1919); United States v. American Naval Stores Co., 186 Fed. 592 (S. D. Ga. 1809). It is not sufficient to charge the offense in the language of the statute because it does not set forth all the elements necessary to constitute the offense; United States v. Patterson, 55 Fed. 605 (C. C. D. Mass. 1893); Cilley v. U. S. Shoe Machinery Co., 152 Fed. 726 (C. C. Mass. 1907).

[19] Patterson v. United States, 222 Fed. 599 (C. C. A. 6th, 1915); United States v. Virginia-Carolina Chemical Co., 163 Fed. 66 (C. C. Tenn. 1908); United States v. Calwell, 243 Fed. 730 (D. C. D. Ore. 1917).

[20] State v. Witherspoon, 115 Tenn. 138, 90 S. W. 852 (1906).

[21] Nash v. United States, 186 Fed. 489 (C. C. A. 5th, 1910), *rev'd on other grounds*, 229 U. S. 373, 33 Sup. Ct. 780 (1912); United States v. Brookman, 1 F. (2d) 528 (D. C. Minn. 1924); Beard v. United States, 82 F. (2d) 837 (App. D. C. 1936).

It seems, therefore, that the objections to the use of the criminal sections of the anti-trust laws against labor unions have no legal basis. The remedy would be to apply to Congress for legislative changes in the present law, and not to attack it on grounds of invalidity of the form of action.[22]

A. A.

BANKRUPTCY—APPOINTMENT OF RECEIVER AS AN ACT OF BANKRUPTCY—LIMITED RECEIVERSHIP UNDER MARTIN ACT.—The appellant, having been adjudicated a bankrupt, seeks to set aside the order of adjudication upon the ground that he has not committed any act of bankruptcy. It was alleged in the involuntary petition that the appellant and his partner, while engaged in the business of selling securities to the public, permitted the appointment of a receiver. The receiver was appointed after an action had been commenced by the Attorney General in the Supreme Court in New York pursuant to the provisions of the Martin Act.[1] The appellant consented to the appointment. The complaint in that action alleged that the defendants had intermingled their funds with those of their customers to such an extent that the assets could not be identified in kind because of such intermingling. The receiver was appointed to take possession of, administer, and liquidate so much of the defendants' property which would be found to be acquired by means of such fraudulent practices in the sale of securities. The appellant in his answer to the involuntary petition contended that this appointment did not constitute an act of bankruptcy as defined by the Chandler amendments to the Bankruptcy Acts.[2] *Held,* the appointment of the receiver did not constitute an act of bankruptcy, proceeding dismissed, order vacated. *Elfast* v. *Lamb,* 111 F. (2d) 434 (C. C. A. 2d, 1940).

The appointment of a receiver in an action pursuant to the provisions of the Martin Act[3] does not constitute an act of bankruptcy. It is expressly stipulated in General Business Law, Section 353a, among other things, that the judgment entered in an action pursuant to the provisions of the aforementioned Act may provide that the powers of the receiver are limited only to those assets which were derived by means of fraudulent acts. This is exactly what had occurred in this case. The order of appointment provided that the receiver is directed to "take possession and title of the property and

[22] See letter of Assistant Attorney-General Thurman Arnold to the Secretary of the Central Labor Union of Indianapolis, N. Y. Times, Nov. 20, 1939, p. 1, col. 4, stating the liberal policy which will be pursued in respect to prosecution of labor unions under the Anti-trust Act.

[1] N. Y. GEN. BUS. LAW §§ 353, 353a.

[2] 52 STAT. 844, 11 U. S. C. A. § 21a(5) (1938): "Acts of bankruptcy by a person shall consist of his having * * * (5) while insolvent or unable to pay his debts as they mature, procured, permitted, or suffered voluntarily or involuntarily the appointment of a receiver or trustee to take charge of his property."

[3] See note 1, *supra.*