

**Labor Dispute--Effect of Employer-Employee Relationship in
Determining Presence or Absence of Labor Disputes (Mays Furs
and Ready to Wear v. Bauer, 282 N.Y. 331 (1940))**

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been committed or threatened. Reprehensible conduct, that is only socially wrong, annoying and humiliating, will not justify the granting of an injunction.² Equity cannot by injunction restrain conduct merely because it injures a person's feelings and causes mental anguish.³ The remedy for such a situation lies in the declaratory judgment which will quiet or stabilize an uncertain or disputed jural relation either as to present or prospective obligation.⁴ This step will establish the matrimonial status of litigants, and, since it is alleged that the defendant is a resident of New York State, all the issues would be properly adjudicated by a declaratory judgment, and plaintiff's rights as a spouse fully protected. On the facts of the instant case, the courts of Florida are wholly without jurisdiction to render a valid divorce against plaintiff.⁵ It is not the duty of the courts of equity to regulate unconscionable acts that result only in social and moral wrongs to a member of society.⁶ The validity of a foreign decree depends upon jurisdiction of the marital *res* or of both the parties.⁷ In view of this fact, equity will not issue an injunction where in the final analysis plaintiff's rights will be fully protected when the dispute is properly tried.⁸ The plaintiff has nothing to fear from the action brought against her by her husband in Florida, for on her own statement a judgment entered there would be a nullity.⁹

E. R. D.

LABOR DISPUTE—EFFECT OF EMPLOYER-EMPLOYEE RELATIONSHIP IN DETERMINING PRESENCE OR ABSENCE OF LABOR DISPUTES—SECTION 876-a OF THE CIVIL PRACTICE ACT.—Plaintiff-employer and an "inside" association¹ of his employees were granted an injunction² in an action against "outside" defendant union³ picketing the employer's premises. The plaintiff was an employer of retail sales clerks; the defendant was a union of retail sales clerks which sought recogni-

² *Lowe v. Lowe*, 265 N. Y. 197, 192 N. E. 291 (1934).

³ *Atkinson v. Doherty*, 121 Mich. 372, 80 N. W. 285 (1899); *Mitchell v. Rochester Ry.*, 151 N. Y. 107, 45 N. E. 354 (1896); *Roberson v. Rochester Folding-Box Co.*, 171 N. Y. 538, 64 N. E. 442 (1902).

⁴ *James v. Alderton Dockyards*, 256 N. Y. 298, 176 N. E. 401 (1931).

⁵ *Haddock v. Haddock*, 201 U. S. 562, 26 Sup. Ct. 525 (1906); *Ball v. Cross*, 231 N. Y. 329, 132 N. E. 106 (1921).

⁶ *Chappel v. Stewart*, 82 Md. 323, 33 Atl. 542 (1896) ("The Court has no jurisdiction, * * * to enforce the performance of a moral duty, except so far as the same is concerned with rights of property, * * *").

⁷ *Haddock v. Haddock*, 201 U. S. 562, 26 Sup. Ct. 525 (1906).

⁸ *Baumann v. Baumann*, 250 N. Y. 382, 165 N. E. 819 (1929).

⁹ *Hubbard v. Hubbard*, 228 N. Y. 81, 126 N. E. 508 (1920).

¹ Employees of plaintiff-employer belonged to an association headed by the employer's general manager.

² 255 App. Div. 643, 8 N. Y. S. (2d) 819 (2d Dept. 1939).

³ The Retail Women's Apparel Salespeople's Union, Local 1125.

tion as the bargaining agent of the plaintiff's employees. Not a single employee of plaintiff belonged to the defendant union. During the union's campaign for recognition unlawful acts were committed resulting in arrests and convictions for unlawful conduct. Plaintiff contended: that, since no employer-employee relationship existed, there was no "labor dispute", and Section 876-a of the Civil Practice Act⁴ did not apply;⁵ and that, if the case at bar did arise out of a "labor dispute", nonetheless, Section 876-a should not be construed to forbid the relief which had been granted. On appeal, *held*, injunction modified for: there was a "labor dispute" as defined by Section 876-a of the Civil Practice Act; the very words of the statute being that a labor dispute shall exist "regardless of whether the disputants stand in the relationship of employer and employee";⁶ and furthermore, extreme violence does not negative the existence of a "labor dispute" nor does it prevent the application of Section 876-a. The judgment should be so modified as to strike out all the provisions except those restraining violence, breach of the peace, and false and misleading statements; moreover, to an injunction so modified should be added a provision limiting the duration of the injunction to six months in accordance with the statute. *Mays Furs and Ready to Wear v. Bauer*, 282 N. Y. 331, 26 N. E. (2d) 280 (1940).

The Legislature enacted Section 876-a of the Civil Practice Act to stay the restraining hand of equity.⁷ Today, before a labor union can be enjoined from picketing, certain prescribed facts must be pleaded and proven by the plaintiff.⁸ Since injunctive relief, when a "labor dispute" exists, is permitted only after a hearing and upon the presence of a rare combination of circumstances,⁹ the lower courts

⁴ *Remington Rand v. Crofoot*, 248 App. Div. 356, 289 N. Y. Supp. 1025 (4th Dept. 1937), *aff'd*, 279 N. Y. 635, 18 N. E. (2d) 37 (1938) (N. Y. CIV. PRAC. ACT § 876-a is the anti-injunction act for labor in New York State. Its preamble declares that the injunctive powers of the equity court " * * * had been subject to abuse in labor litigations". The legislation was enacted to make easier the path of labor unions, to win workers to their cause, and to make resistance to their pressure more difficult).

⁵ N. Y. CIV. PRAC. ACT § 876-a (it applies only to labor litigations; thus, before it can become of use, and its anti-injunctive powers come into play, a labor dispute must be found to exist); see note 9, *infra*; *Thompson v. Boekhout*, 273 N. Y. 390, 7 N. E. (2d) 674 (1937); *Hydrox Ice Cream Co. v. Doe*, 250 App. Div. 770, 293 N. Y. Supp. 1013 (2d Dept. 1937).

⁶ N. Y. CIV. PRAC. ACT § 876-a (10-c).

⁷ See note 4, *supra*.

⁸ *Boro Park Market v. Max Heller*, 280 N. Y. 481, 21 N. E. (2d) 687 (1939) (pursuant to N. Y. CIV. PRAC. ACT § 876-a a verified bill of particulars must be served, and other requirements of the statute met before an injunction will issue); see *Nevins v. Kasmach*, 279 N. Y. 323, 18 N. E. (2d) 294 (1938); *Hydrox Ice Cream Co. v. Doe*, 250 App. Div. 770, 293 N. Y. Supp. 1013 (2d Dept. 1937).

⁹ N. Y. CIV. PRAC. ACT § 876-a (2). "No court or judges thereof shall have jurisdiction to issue any restraining order or a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein-after defined, except after a hearing, and except after findings of all the follow-

seem inclined to discard the yoke imposed upon them by the statute.¹⁰ When the court finds that no "labor dispute" exists, the statute cannot apply, and the very motivating purpose which prompted its enactment is frustrated.¹¹ The courts then proceed to grant as drastic an injunctive relief as they choose under their broad equitable powers.¹² A plethora of precedents established by the tribunals of this state conclusively demonstrate that an employer and an employee need not be the disputants in order to find the presence of a "labor dispute".¹³ At common law the courts reasoned that, although the members of a defendant union were not employees of a plaintiff-employer, they still had a vital interest in that employer's labor policy because he was in the same industry as they were.¹⁴ Other jurisdictions are in accord¹⁵ with this rule. In the instant case the court in searching for the touchstone to be applied to find the presence of a labor dispute said

ing facts by the court or judge or judges thereof to be filed in the record of the case:

- (a) That unlawful acts have or a breach of any contract not contrary to public policy has been threatened or committed and that such acts or breach will be executed or continued unless restrained;
- (b) That substantial and irreparable injury to complainant's property will follow unless the relief requested is granted;
- (c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial thereof than will be inflicted upon defendants by the granting thereof;
- (d) That complainant has no adequate remedy at law;
- (e) That the public officers charged with the duty to protect complainant's property have failed or are unable to furnish adequate protection; and
- (f) That no item of relief granted prohibits directly or indirectly any person or persons from doing, whether singly or in concert, any of the following acts: * * *

(eleven categories of activities, including peaceful picketing, are then enumerated which cannot be enjoined); *Strauss v. Steiner*, 173 Misc. 521, 18 N. Y. S. (2d) 395 (1940), *aff'd*, 259 App. Div. 725, 18 N. Y. S. (2d) 75 (2d Dept. 1940).

¹⁰ *Lauf v. Shinner*, 303 U. S. 323, 58 Sup. Ct. 578 (1938), *rev'g*, 82 F. (2d) 68 (C. C. A. 7th, 1936); Note (1940) 49 YALE L. J. 537; see note 4, *supra*; see note 12, *infra*.

¹¹ See note 5, *supra*.

¹² *Stalban v. Friedman*, 171 Misc. 106, 11 N. Y. S. (2d) 343 (1939), *rev'd*, 259 App. Div. 520, 19 N. Y. S. (2d) 978 (1st Dept. 1940) ("Plaintiff having failed to plead or prove the facts prescribed relating to issuance of an injunction in a labor dispute, could not be afforded relief").

¹³ *Exchange Bakery v. Rifkin*, 245 N. Y. 260, 157 N. E. 130 (1927); *Nann v. Raimist*, 255 N. Y. 307, 174 N. E. 690 (1931); *Stillwell v. Kaplan*, 259 N. Y. 405, 182 N. E. 63 (1932); *Wise Shoe Co. v. Lowenthal*, 266 N. Y. 264, 194 N. E. 749 (1935); *Goldfinger v. Feintuch*, 276 N. Y. 281, 11 N. E. (2d) 910 (1937).

¹⁴ *Exchange Bakery v. Rifkin*, 245 N. Y. 260, 157 N. E. 130 (1927); *Nann v. Raimist*, 255 N. Y. 307, 174 N. E. 690 (1931).

¹⁵ *Lauf v. E. G. Shinner & Co.*, 303 U. S. 323, 58 Sup. Ct. 578 (1938); *New Negro Alliance v. Sanitary Grocery Co.*, 303 U. S. 552, 58 Sup. Ct. 703 (1938); *Carlson v. California*, 310 U. S. 116, 60 Sup. Ct. 746 (1940) ("Peaceful picketing is a branch of our fundamental right of free speech"); Note (1940) 49 YALE L. J. 537; *American Furniture Co. v. Teamsters Local No. 200 of Milwaukee*, 222 Wis. 338, 268 N. W. 250 (1939).

that, subject to constitutional restrictions, the statute as enacted will be applied. The statute itself supplies two relevant criteria to be used. First, the dispute, in order to be a labor dispute, must be one which relates to conditions of employment or representation of persons in negotiating conditions of employment.¹⁶ Second, the disputants must be commercially participating in the same industry.¹⁷

The plaintiff contended that the statute limiting an injunction to a period of six months was unconstitutional. The statute does not deprive plaintiffs of property without due process of law, but prevents the use of a stale injunction. It seeks to provide a method whereby the injunction may be re-examined at reasonable intervals.¹⁸ Injunctions are protection for the future, not punishment for the past.¹⁹ Injunctions should issue to restrain only unlawful and violent methods of the defendant, and should not include the peaceful and legal methods sanctioned by law. The statute itself enumerates eleven categories of activities such as peaceful picketing which may not be restrained.²⁰

B. F.

PATENT ACT—SHERMAN ANTI-TRUST ACT.—Defendant corporation appeals from a decree of the District Court of the United States for the Southern District of New York restraining it from granting licenses to jobbers and oil refiners who sell and distribute such fuel on the ground that such conduct violates the Sherman Anti-Trust Act.¹ The corporation manufactures tetraethyl lead, a patented, poisonous, fluid compound which, when made a part of gasoline used in high-pressure engines, increases their efficiency. This substance is sold to oil refiners solely for use in the production of this improved type of motor fuel. Licenses are issued gratis to jobbers and refiners of

¹⁶ N. Y. CIV. PRAC. ACT § 876-a (10-c) ("The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, * * * terms or conditions of employment, * * *").

¹⁷ N. Y. CIV. PRAC. ACT § 876-a (10-b) ("A person * * * shall be held to be a person participating or interested in a labor dispute if relief is sought against him * * * and if he * * * is engaged in the industry, * * * in which such dispute occurs, or is a member, * * * or agent of any association of * * * employees engaged in such industry, * * *").

¹⁸ N. Y. CIV. PRAC. ACT § 876-a (8) ("No permanent injunction shall remain in force for more than six months, from the date on which the judgment is signed, provided, however, that the duration of the injunction may be extended for another six months, if after a further hearing initiated and conducted in the same manner as the original hearing the court shall determine that the injunction shall be continued or modified in accordance with the findings of facts on the subsequent hearing").

¹⁹ *Nann v. Raimist*, 255 N. Y. 307, 174 N. E. 690 (1931).

²⁰ N. Y. CIV. PRAC. ACT § 876-a (1-F).

¹ 50 STAT. 693, 15 U. S. C. A. § 1 (1937).