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The New York Anti-Injunction Act as Affecting the Close-Corporation

Bernard Rothman

THE NEW YORK ANTI-INJUNCTION ACT AS AFFECTING THE CLOSE-CORPORATION.

Piercing the Corporate Veil.

The New York Court of Appeals was recently confronted with a novel case [1] involving the doctrine of "Piercing the Corporate Veil",[2] the complexities being intensified in applying the New York Anti-Injunction Statute.[3] Four brothers and their mother, the only directors, officers and stockholders of the plaintiff corporation, had employed members of the defendant union. On the expiration of the contract and a failure to negotiate for a renewal, the union sought to compel the plaintiff to hire their men by picketing and other methods. An injunction was applied for on general equitable grounds against the defendant's interference with its business, concededly not having complied with the provisions of the Civil Practice Act, Section 876-a.[4] The plaintiff contended that the corporate entity should be ignored, as it conducted only a small family business, the stockholders performing almost all the manual labor without any employees. The Court of Appeals, in a divided opinion,[5] held, that an employer-employee relationship existed between the corporate employer and its stockholders, refused to "penetrate the veil" and decided the controversy constituted a "labor dispute" [6] within the meaning of the statute. The dissent, however, maintained this was a case wherein justice demanded the "corporate personality" be ignored. In voting for the injunction on equitable grounds, reality, not theory, was looked upon as the controlling factor. The majority of the court claimed the union was not self-contradictory in insisting on the existence of an employer-employee relationship and refusing to admit the stockholders to membership as being employers. This is anomalous as the

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[1] Boro Park Poultry Market, Inc. v. Heller, 280 N. Y. 481, 21 N. E. (2d) 687 (1939).

[2] Note (1937) 11 ST. JOHN'S L. REV. 294.

[3] N. Y. CIV. PRAC. ACT § 876-a (N. Y. Laws 1935, c. 477).

[4] LIEN, LABOR LAW AND RELATIONS (1938) § 217. The complaint should allege: (1) facts giving the court jurisdiction; (2) unlawful acts, *i.e.*, unlawful picketing, false and fraudulent dissemination of information to the public, violence, crime, property damage, or injury to the person; (3) defendant's liability for participating, authorizing or ratifying the acts; (4) threats of unlawful acts or their continuance; (5) facts showing substantial and irreparable injury, with the balance of the equities in the plaintiff's favor; (6) public officers have failed or refused to give adequate protection; (7) reasonable efforts have been made to settle the dispute by negotiation or voluntary arbitration; (8) plaintiff has complied with all the provisions of the act; (9) the legal remedy is inadequate.

[5] The majority of the court was composed of Justices Lehman, Crane, Loughran and Finch, while Justices Hubbs and Rippey dissented, Justice O'Brien taking no part.

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

individuals on the one hand are regarded as the "bosses", while on the other the corporation is considered their employer.

The perplexing problem is under what circumstances one should consider the corporation as a distinct entity,[7] and when it may be justly disregarded. The corporate entity must be looked upon as a legal personality for ordinary everyday transactions, *i.e.*, acquiring and transferring property, making contracts, suing and being sued, etc. This concept has been attacked [8] on the ground that it becomes idolized and so deep-rooted as to prohibit any contradiction, with a consequent refusal to go behind the actual facts. A court of law often has a figurative concept which takes the shape of dogma and is rigorously upheld despite the purpose of the corporation.[9] Equity, on the other hand, determines the rights and liabilities of the real parties in interest, its elastic procedure permitting the recognition of the true relationship between the corporation and its stockholders when necessary for an equitable result.[10] There the association is treated as a collection of

[7] Most authorities characterize the corporate entity as an artificial fiction. Sutton's Hospital, 10 Coke's Rep. 1, 32, 77 Eng. Rep. 937, 972 (1613) ("A corporation aggregate of many is invisible, immortal, and rests only in intendment and consideration of the law"); Blackstone (1 BL. COMM. *467) refers to corporations as "artificial persons"; Bank v. Deveaux, 5 Cranch 61, 87 (U. S. 1809) ("* * * that invisible, intangible and artificial being; that mere legal entity"); Trustees of Dartmouth College v. Woodward, 4 Wheat. 518, 636 (U. S. 1819) ("* * * artificial being, invisible, intangible and existing only in contemplation of law"); People v. North River Sugar Refining Co., 121 N. Y. 582, 621, 24 N. E. 834, 839 (1890) ("The abstract idea of a corporation, the legal entity, the impalpable and intangible creation of human thought, is itself a figure of speech. It serves very well to designate in our minds the collective action and agency of many individuals as permitted by our laws"); 7 R. C. L. (1915) p. 25, § 3; 14 C. J. (1919) p. 52, § 5; 13 AM. JUR. (1938) p. 157, § 6; Professor Radin (Radin, *The Endless Problem of Corporate Personality* (1932) 32 COL. L. REV. 643) conceives of a corporation as a deliberate assumption of something which it is not, a definite and unconcealed make-believe, which the law treats as if human.

Farmers' Loan & Trust Co. v. Pierson, 130 Misc. 110, 114, 22 N. Y. Supp. 532, 538 (1927) ("A continental school * * * insists that a corporation has something akin to human personality, with a corporate will, additional to and identifiable from the separate wills of the corporators. * * * The tendency with us has been to accept what is commonly called the 'fiction', perhaps sometimes the 'concession theory', of the corporation"); Arthur W. Machen (Machen, *Corporate Personality* (1911) 24 HARV. L. REV. 253) contends that it is a real, natural thing, not imaginary, fictional or artificial, recognized and not created by law as an entity, an objective fact.

[8] Wormser, *Piercing the Veil of Corporate Entity* (1912) 12 COL. L. REV. 496.

[9] 1 MORAWETZ, PRIVATE CORPORATIONS (2d ed. 1896) p. 222, § 227. The instant case would seem to justify this conclusion. The theory tends to produce an absoluteness of thought which determines the matter for all cases, totally disregarding whether the statement fulfills the purpose for which it was intended. The error lies in the fact that the same reasoning is applied to situations essentially different, though all involve the corporate issue, and similar terminology is adopted. Latty, *The Corporate Entity as a Solvent of Legal Problems* (1936) 34 MICH. L. REV. 597.

[10] Note (1937) 11 ST. JOHN'S L. REV. 294. One should bear in mind, however, that there are and must be limitations to casting aside the form. It

individuals who, in reality, own its property [11] and conduct its business for their individual benefit, as in the instant case where no third party is concerned.

It must be borne in mind that the law is growing, changing with the times, especially in the field of corporations, and that any definition must of necessity be relative, not absolute.[12] The peculiar facts in the particular case determine whether the "corporate veil" should be "pierced". A broad foundation of the doctrine is the basis of the determination, rather than any limitation to a specific class of cases or particular subject matter or to the parties' relative position. The dissimilarities produce a different workability of the concept, the corporation presenting divergent aspects for various situations. Often it must be viewed as a composite unit, the entity dominating, while under other circumstances the members' existence is the primary fac-

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should not be capriciously nor inconsistently disregarded without due consideration for fundamental rules of law. McCaskill Co. v. United States, 216 U. S. 504, 30 Sup. Ct. 386 (1910); Smith v. Moore, 199 Fed. 689 (C. C. A. 9th, 1912); United States v. United Shoe Machinery Co., 234 Fed. 127 (D. C. E. D. Mo. 1916); Phoenix Inv. Co. v. James, 228 Ariz. 514, 237 Pac. 958 (1925); Ark. River, etc. Co. v. Farmers' Loan & Trust Co., 13 Colo. 587, 22 Pac. 954 (1889); Chicago Union Traction Co. v. City of Chicago, 199 Ill. 579, 65 N. E. 470 (1902); Goss & Co. v. Goss, 147 App. Div. 698, 132 N. Y. Supp. 76, *aff'd*, 207 N. Y. 742, 101 N. E. 1099 (1913); Chas. F. Garrigues Co. v. Int'l Agr. Corp., 159 App. Div. 877, 144 N. Y. Supp. 982 (1st Dept. 1913); Cawthra v. Stewart, 59 Misc. 38, 109 N. Y. Supp. 770 (1908).

Professor Ballantine believes that strict adherence should be the rule and the courts should not disregard it when reasonable limitations are made to effectuate the proper ends and functions of the corporate privilege. By ignoring the concept one is merely left at the threshold of the determination of the question of ultimate liability. BALLANTINE, CORPORATIONS (1927) § 6. The theory is rendered less certain and definite, breeding vagueness and confusion, making more difficult a topic subject to much controversy. By introducing new elements into litigations, valuable corporate features are lost, which, after all, were the purposes of incorporation originally. Again, what are to be the applicable standards and where should the line of demarcation be set? Canfield, *The Scope and Limits of the Corporate Entity Theory* (1917) 17 COL. L. REV. 128; (1918) 31 HARV. L. REV. 894. In many cases the fiction should not and has not been disregarded where they have been cited for that proposition, as the decision may often be reached on more satisfactory grounds. Note (1937) 11 ST. JOHN'S L. REV. 294.

[11] *In re* Winburn's Will, 136 Misc. 19, 21, 240 N. Y. Supp. 208, 209 (1930) ("However, in construing similar provisions in wills, courts in this state have regarded the substance of the gift and have pierced the veil of corporate entity to sustain such a gift. Matter of Foley, 132 Misc. 332, 230 N. Y. Supp. 305 (1928). The recent cases have shown an impatience with the strict 'entity doctrine', and have been disposed to disregard the corporate fiction, especially in cases of so-called 'one-man companies', where these have been used simply for convenience. In such cases the courts have frequently tended to 'pierce the veil of corporate entity' and to treat the title as really being in the sole stockholder. There is a strong intimation in Judge Crane's opinion in the *Brown* case that the court is not in entire sympathy with the doctrine of corporate entity where it tends to cloud and shroud the actual facts"); *In re* Turley's Estate, 160 Misc. 190, 289 N. Y. Supp. 704 (1936).

[12] Latty, *The Corporate Entity as a Solvent of Legal Problems* (1936) 34 MICH. L. REV. 597.

tor, the fiction being a mere convenient symbol.[13] To promote justice and avert wrong, the instant case must be allocated to the latter theory. No third party is involved, as the union itself admits the stockholders are the employers by refusing to accept their membership, despite the fact that they later contend the corporation occupies such a position. In reality, the union is picketing the members, as individuals, to compel their employing union labor. The corporate form itself is inconsequential, and the defendant's dispute is restricted to the individuals who will finally determine whether or not they will accede to the demands imposed on them. Although the very nature of the corporate fiction is that it should be acted upon as if true,[14] it must never be invoked to an extent not within reason and public policy. The fiction is applied only in the sense that the law treats a group of persons as though it was an individual.[15] Here it seems is the "proper case" [16] where the equities are balanced in the plaintiff's favor and the corporate fiction should be disregarded. This appears especially true when, as seen subsequently,[17] the corporation was forced to dissolve a few days after the decision in the instant case,

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[13] Halsted v. Globe Indemnity Co., 258 N. Y. 176, 179, 179 N. E. 376, 377 (1932) ("The corporation exists for the legitimate convenience of the stockholders; not as a mere mask for their personal acts and responsibilities. It absorbs and takes the place of the individuals who own its stock); Werner v. Hearst, 177 N. Y. 63, 69 N. E. 221 (1903); Brock v. Poor, 216 N. Y. 387, 111 N. E. 229 (1915); Berkey v. Third Ave. Ry., 244 N. Y. 84, 155 N. E. 58 (1926); Jenkins v. Moyse, 254 N. Y. 319, 172 N. E. 521 (1930); 1 MORAWETZ, *op. cit. supra* note 9, at § 1; (1924) 24 COL. L. REV. 798.

Among the distinctive and advantageous features of incorporation are: (1) limited liability; (2) creation by the acceptance of its certificate of incorporation by the Secretary of State; (3) the capacity to sue and be sued in its own name; (4) "continuous succession", *i.e.*, neither death, insanity nor bankruptcy of any stockholder has any effect on the legal existence of the entity; (5) management by a board of directors; (6) transferability of stock certificates. PRASHKER, LAW OF PRIVATE CORPORATIONS (1937) 92.

[14] Klein v. Board of Supervisors, 230 Ky. 182, 18 S. W. (2d) 1009, *aff'd*, 282 U. S. 19, 51 Sup. Ct. 15 (1930).

[15] State v. Standard Oil Co., 49 Ohio St. 137, 30 N. E. 279 (1892); Damascus Mfg. Co. v. Union Trust Co., 119 Ohio St. 439, 164 N. E. 530 (1929); CLARK, CORPORATIONS (3d ed. 1916) p. 2, § 3. A fiction should only be used to promote justice and may be contradicted for any purpose but to defeat the ends for which it was created. Johnson v. Smith, 2 Burr. 950, 97 Eng. Rep. 647 (1760).

[16] Note (1937) 11 ST. JOHN'S L. REV. 294; WORMSER, THE DISREGARD OF THE CORPORATE FICTION (1927) 84 ("The nearest approximation to generalization which the present state of the authorities would warrant is this: When the conception of the corporate entity is employed to defraud creditors, to evade an existing obligation, to circumvent a statute, to achieve or perpetuate monopoly, or to protect knavery or crime, the courts will draw aside the web of entity, will regard the corporate company as an association of live, up-and-doing, men and women shareholders, and will do justice between real persons. This is particularly true in courts of equity, but finds many illustrations in courts of law as well * * *").

[17] Kershner v. Heller, 14 N. Y. S. (2d) 595, *mod'd*, 15 N. Y. S. (2d) 451 (2d Dept. 1939) (to determine by jury trial whether the plaintiff's partnership is bona fide as a question of fact).

forming a partnership and obtaining an injunction against the defendant's picketing.

The New York Anti-Injunction Act.

a. Public Policy.

It has become quite common for several individuals to picket a place of business, attempting to persuade the public to side with them in their struggle with an employer to force him to comply with their demands for higher wages, less hours, better conditions, a closed shop and other vital interests of labor. Placards are exhibited describing the "unfair treatment" they have suffered. When, through violence, coercion and intimidation, the situation gets out of hand, the public authorities are called.[18] Injunctive relief is the only method left for the employer to combat the union carrying on its various modes of economic warfare.[19] A temporary injunction, as applied in a labor dispute, is a provisional remedy procured by the plaintiff at the commencement of the action or during its progress to immediately secure him against irreparable loss and injury. Its purpose is to effectuate the final judgment, if obtained, by restraining the defendant, pending the action, from the commission of acts which would preclude ultimate adequate relief, if permitted. The *status quo* is thus maintained until the final determination of the issues.[20]

The Sherman Anti-Trust Act[21] well illustrates the previous attitude toward the labor union which had been subject to innumerable injunctions, by declaring it to constitute a monopoly. By 1914, however, there was a shift of view. The Clayton Act[22] exempted the union from its provisions, and what seemed more of a victory for labor was Section 20,[23] which restricted the issuance of labor injunc-

[18] Heintz Mfg. Co. v. Local No. 515 of U. A. W., 20 F. Supp. 116 (D. C. E. D. Pa. 1937) ("That act of Congress [Norris-LaGuardia Act] was based upon a recognition of the fact that the preservation of order and the protection of property in labor disputes is in the first instance a police problem, belonging to the executive rather than the judicial side of the government, and its whole intent and purpose was to remove the courts from that field, except in cases where the peace authorities failed or refused to act").

[19] 2 WAIT, PRACTICE AT LAW, EQUITY (3d ed. 1935) p. 395, § 12.

[20] 7 CARMODY, PLEADING AND PRACTICE (2d ed. 1932) p. 205, § 180. Peaceful picketing will not be enjoined until an unlawful act is imminent or something has occurred to start in motion the administration of equitable rules or the performance of police duties. Senn v. Tile Layers Union, 222 Wis. 383, 268 N. W. 270, *aff'd*, 301 U. S. 468, 57 Sup. Ct. 857 (1937).

[21] 26 STAT. 209 (1890), 15 U. S. C. §§ 1–7; (1934) LIEN, *loc. cit. supra* note 4; Legis. (1939) 14 ST. JOHN'S L. REV. 200.

[22] CLAYTON ACT § 6, 38 STAT. 731 (1914), 15 U. S. C. § 17 (1934).

[23] CLAYTON ACT § 20, 38 STAT. 738 (1914), 29 U. S. C. § 52 (1934) ("That no restraining order or injunction shall be granted by any court of the United States * * * in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to

tions. The courts, in at least two cases,[24] held, by a narrow construction, that those not proximately and substantially concerned as parties to an actual labor dispute involving terms or conditions of employment could be enjoined, *i.e.*, only a distinct employer-employee relationship militated against an injunction. The Norris-LaGuardia Anti-Injunction Act was passed by Congress to obviate this construction [25] and to remedy the situation as expressed in the New York Civil Practice Act,[26] one of many state statutes substantially similar to it. The compelling conclusion to be derived from the cases [27] is that Congress intended that many acts, heretofore illegal, were now to be considered lawful. As was pointedly remarked:[28] "But that section (Civil Practice Act Section 876a) tellingly indicates the policy of this state concerning injunctions in labor disputes. Since its enactment and the passage of the Norris-LaGuardia Act, many of the old precedents have become outmoded. They mark a new era in the domain of labor injunctions. More and more the tendency is to permit the parties to compose their differences without resort to injunction. The old order was injunction first, the new is injunction

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property or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application * * *").

[24] Duplex Co. v. Deering, 254 U. S. 447, 41 Sup. Ct. 172 (1921); American Foundries v. Tri-City Council, 257 U. S. 184, 42 Sup. Ct. 73 (1921).

[25] Senn v. Tile Layers Union, 301 U. S. 468, 57 Sup. Ct. 857 (1937); Lauf v. E. G. Shinner, 303 U. S. 323, 58 Sup. Ct. 578 (1937); New Negro Alliance v. Grocery Co., 303 U. S. 552, 58 Sup. Ct. 703 (1938); (1938) 13 ST. JOHN'S L. REV. 171.

[26] N. Y. Laws 1935, c. 477, § 1: "The policy of this state is declared as follows: Equity procedure that permits a complaining party to obtain sweeping injunctive relief that is not preceded by or conditioned upon adequate notice and hearing of the responding party or parties, or that issues after a hearing based upon written affidavits alone and not upon examination, confrontation and cross-examination of witnesses in open court, is peculiarly subject to abuses in labor litigations for the reason that among other things,

(1) The status quo cannot be maintained but is necessarily altered by the injunction,

(2) Determination of issues of veracity and of probability of fact from affidavits of opposing parties that are contradicted, and under the circumstances, untrustworthy rather than from oral examination in open court is subject to grave error,

(3) Error in issuing the injunctive relief is usually irreparable to the opposing party, and

(4) Delay incident to the normal course of appellate practice frequently makes ultimate correction of error in law or in fact unavailing in the particular case"; (1937) 37 COL. L. REV. 1411.

[27] Schuster v. Int'l Ass'n of Machinists, etc., 293 Ill. App. 177, 12 N. E. (2d) 50 (1938); Geo. B. Wallace Co. v. Int'l Ass'n, M. M. H. L., 155 Ore. 652, 63 P. (2d) 1090 (1936). Both express the view that it is reasonably certain that the state legislature had the same intent as Congress, the statute in each case being substantially similar to the Norris-LaGuardia Act.

[28] Goldfinger v. Feintuch, 159 Misc. 806, 813, 288 N. Y. Supp. 855, 863 (1936), *rev'd*, 250 App. Div. 751, 295 N. Y. Supp. 753, *mod'd*, 276 N. Y. 281, 11 N. E. (2d) 910 (1937); (1938) 12 ST. JOHN'S L. REV. 358.

last." The express policy of Congress [29] considered the then prevailing economic conditions. The Government had aided in organizing property owners into associations, and had left the unorganized worker helpless to protect his freedom of labor in contracting for acceptable terms and conditions of employment. Independence in association, self-organization, and designation of representatives of the worker's own choice to negotiate terms of employment was declared necessary, as was the desire to be bereft of interference, restraint, or coercion of employers in any concerted activity or collective bargaining or other mutual aid or protection.

b. "Labor Dispute."

The Anti-Injunction Acts have been held to limit equity's prior exercised jurisdiction, and have not conferred it anew.[30] In accordance with the express statutory conditions precedent for immunity from an injunction in a labor dispute,[31] courts will only grant one in their discretion,[32] depending on some extraordinary facts involved in the particular case. The term "labor dispute" [33] has been given a broad, liberal construction,[34] comprehending a great variety of situations not necessarily concerning a dispute between an employer and employee, nor the existence of the proximate relationship between them. As Justice Frankfurter said,[35] "A strike or threat to strike

[29] 47 STAT. §§ 70–73 (1932), 29 U. S. C. §§ 101–111 (1934); United States v. Weirton Steel Co., 10 F. Supp. 55 (D. C. D. Del. 1935); Oberman & Co. v. United Garment Workers of America, 21 F. Supp. 20 (D. C. W. D. Mo. 1937). The social advantage of peaceful picketing is the desire to improve the worker's economic status which is best accomplished by collective bargaining. Note (1937) 23 CORN. L. Q. 206.

[30] Virginia Ry. Co. v. System Federation etc., 11 F. Supp. 621, *aff'd*, 84 F. (2d) 641, *aff'd*, 300 U. S. 515, 57 Sup. Ct. 592 (1937); Cinderella Theatre Co. v. Sign Writers Local Union, 6 F. Supp. 164 (D. C. E. D. Mich. 1934); Notes (1923) 27 A. L. R. 411; (1925) 35 A. L. R. 460; (1935) 97 A. L. R. 1334; (1937) 106 A. L. R. 362; (1939) 120 A. L. R. 316. This series of annotations contains an excellent survey of all the related aspects of these statutes not considered in this note.

[31] Note (1936) 14 N. Y. U. L. Q. REV. 89.

[32] PRASHKER, CASES AND MATERIALS ON THE LAW OF NEW YORK PLEADING AND PRACTICE (2d ed. 1937) 1062. The acts are unique in that no injunction, temporary or permanent, in a "labor dispute" will be granted until after a hearing, in which a verified complaint and bill of particulars is served, an opportunity has been given for cross-examination of witnesses, affidavits being inadmissible in evidence. The finding of the facts by the court is mandatory, otherwise the granting of an injunction is without jurisdiction.

[33] N. Y. CIV. PRAC. ACT § 876-a(10)(c).

[34] United Electric Coal Cos. Co v. Rice, 80 F. (2d) 1 (C. C. A. 7th, 1938), *cert. denied*, 297 U. S. 714, 56 Sup. Ct. 590 (1936); Oberman & Co. v. United Garment Workers of America, 21 F. Supp. 20 (D. C. W. D. Mo. 1937); Weil & Co. v. Doe, 168 Misc. 211, 5 N. Y. S. (2d) 559 (1938); see the dissenting opinion of Justice Lehman in Busch Jewelry Co. v. United Retail Employees' Union, 281 N. Y. 150, 22 N. E. (2d) 320 (1930); (1938) 15 N. Y. U. L. Q. REV. 581; (1938) 38 COL. L. REV. 1265.

[35] FRANKFURTER AND GREEN, LABOR INJUNCTIONS 45.

may be brought to bear on neutrals, provided that the neutrals thus used as a lever are within the same industry as those in whose coercion the union is primarily interested." It is essential that there be a controversy involving some term or condition of employment, *i.e.*, recognition of representatives, strike for a closed shop, or a unionization campaign, etc., and not necessarily concerning wages and hours.[36]

The leading case [37] on the point and which the instant case cites with approval, decided that "Where the owner of a small business without any employees seeks to avoid 'labor disputes' as defined in the statute, by running his business without any employees, an attempt to induce or coerce him to hire an employee or employees, upon terms and conditions satisfactory to persons associated in such attempted inducements or coercion, is not a 'labor dispute' within the letter or spirit of the statutory definition. We hold that the statute has no application in this case." The cases [38] reveal, as in the case under discussion, that the applicant is a small business owner, aided by his family and an employee whom he is forced to discharge as a result of a demand upon him to accept a contract to maintain the union wage, which he cannot afford. Thereafter, only he and his family perform all the work of the business and he is beset by picketing. Whether peaceful or otherwise,[39] it should be enjoined, as not being

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[36] See note 30, *supra*.

[37] Thompson v. Boekhout, 273 N. Y. 390, 393, 7 N. E. (2d) 674, 675 (1937).

[38] Luft v. Flove, 246 App. Div. 523, 283 N. Y. Supp. 481, *aff'd*, 270 N. Y. 640, 1 N. E. (2d) 369 (1936) (The defendant was permitted to apply for an order vacating a permanent injunction in the event the plaintiff employs others than his wife and two sons in his place of business); Kershner v. Heller, 14 N. Y. S. (2d) 595, *mod'd*, 15 N. Y. S. (2d) 451 (2d Dept. 1939) (To determine by jury trial whether the plaintiff's partnership is *bona fide* as a question of fact. The employer-employee relationship necessary to prohibit an injunction did not exist under the same facts as in the instant case, the partners conducting their business alone); Bieber v. Bininbaum, 168 Misc. 943, 6 N. Y. S. (2d) 63 (1938) (No "labor dispute" is involved where a small business owner discharged his only salesman after refusing to accede to the union's demand to sign a contract); Botnich v. Winokur, 7 N. Y. S. (2d) 6 (1938) (The statute would be inapplicable if the plaintiff ran his business without employees, but would apply otherwise); Pitter v. Kaminsky, 7 N. Y. S. (2d) 10 (1938) (It is the business owner's right to conduct his business without outside aid, and he may not be subjected to picketing by a union to induce him to hire union employees); Wishney v. Jones, 169 Misc. 459, 8 N. Y. S. (2d) 2 (1938) (No "labor dispute" existed within the definition of the statute, the plaintiff not employing any workers and definitely manifesting a desire to liquidate his business); Gips v. Osman, 170 Misc. 53, 9 N. Y. S. (2d) 828 (1938) (The statute refers to a "labor dispute" of which there could be none if no one was employed). Compare Miller v. Fishworkers Union, 170 Misc. 713, 11 N. Y. S. (2d) 278 (1939) (Co-partners secured an injunction against the union, after the sole employee was discharged) with Schwartz v. Fishworkers Union, 170 Misc. 566, 11 N. Y. S. (2d) 285 (1939).

[39] Legis. (1939) 14 ST. JOHN'S L. REV. 200 contains an excellent survey of picketing in New York, in which is discussed the law of picketing accompanied by fraud, violence, or other illegality, and peaceful picketing as involved in "labor disputes" and "non-labor disputes".

within the Legislature's contemplation to compel one to employ union workers against his will when he desires to run his business without outside assistance.

Conclusion.

It is therefore submitted that the court in the instant case should not have bound itself to a strict view of a corporate form. Rather it should have considered the stockholders as primarily important, and ignored the corporate entity. As thus contemplated, the five members of the family are the sole owners and workers, not involved in a "labor dispute" within the meaning of the Anti-Injunction Act, and are entitled to an injunction without complying with its terms on the equities balanced in their favor.

BERNARD ROTHMAN.