

Trade Associations--Lawful Harm--Rule Applied to Trade Associations (Arnold v. Burgess, 241 App. Div. 364 (1st Dept. 1934))

St. John's Law Review

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Recommended Citation

St. John's Law Review (1934) "Trade Associations--Lawful Harm--Rule Applied to Trade Associations (Arnold v. Burgess, 241 App. Div. 364 (1st Dept. 1934))," *St. John's Law Review*: Vol. 9 : No. 1 , Article 32.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol9/iss1/32>

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however, insist on privity.⁹ A recovery on the ground of negligence would have been more difficult here¹⁰ than in other states,¹¹ and to bring himself under the statute,¹² plaintiff would have had to prove that the deleterious substance had been added,¹³ whereas it developed after the can had been sealed. While not going so far as to invoke so broad a third party beneficiary rule as in *Lawrence v. Fox*,¹⁴ it is submitted that the close relationship of the plaintiff to the injured party in the instant case might, without departing radically from established legal precedent, or opening the door to extensive litigation, form a basis of recovery.

J. R. O'D.

TRADE ASSOCIATIONS—LAWFUL HARM—RULE APPLIED TO TRADE ASSOCIATIONS.—Plaintiff, a civil engineer, furnished, according to submitted building plans and specifications, estimates of iron and wire to metal fabricators of whom thirty-two are members of a voluntary, unincorporated association. Plaintiff's service enabled smaller and irresponsible concerns to bid and this, the parties appear to agree, was ruinous to the trade. The association adopted a resolution requiring its members to make their own estimates on bids for metal work used in construction and enforced it by censure, fines and expulsion. From an award of the Supreme Court granting plaintiff damages and injunctive relief both sides appeal, *held*, reversed and complaint dismissed. The association acting in good faith for the benefit and advantage of its members and in the best interests of the trade was within its rights although plaintiff's business was damaged by the resolution and its enforcement. *Arnold v. Burgess*, 241 App. Div. 364, 272 N. Y. Supp. 534 (1st Dept. 1934).

Persons affiliating themselves with a voluntary association thereby agree to abide by its constitution and by-laws since the latter are the terms of the contract which define the privileges secured and the duties assumed by those who become members.¹ At common law

⁹ 1 WILLISTON, SALES (2d ed. 1924) 244, n. 47.

¹⁰ WHITNEY, LAW OF SALES (2d ed. 1934) §175, p. 201. In *Sheppard v. Beck Bros., Inc.*, 131 Misc. 164, 225 N. Y. Supp. 438 (1927) it was held that the mere presence of a tack in the food did not give rise to a *res ipsa loquitur* case.

¹¹ Cases cited in *supra* note 7, in which the court said that an implied warranty ran to the sub-vendee to establish a duty, the breach of which afforded a cause of action.

¹² N. Y. AGRICULTURE AND MARKETS LAW (1925) c. 612, subd. 8.

¹³ Instant case.

¹⁴ 20 N. Y. 268 (1859).

¹ *Polin v. Kaplan*, 257 N. Y. 277, 177 N. E. 833 (1931); see *Rankin v. Probey*, 131 App. Div. 328, 331, 115 N. Y. Supp. 832 (3d Dept. 1909):

"the voluntary adoption by an association of employees of reasonable rules relating to persons for whom, and to conditions under which, its members shall work is not illegal."² Nor is the enforcement of such rules through fines and expulsion illegal.³ In this regard, there is no distinction between the rights of organized employees and the trade organization.⁴ A voluntary association is not to be condemned as being in undue restraint of trade because it may affect a change in market conditions, which change would be in mitigation of recognized evils and which would not impair but rather would foster fair competitive opportunities.⁵ Even though the enforcement of

"* * * rights of members with the association and among themselves are governed by their agreement which is contained in the constitution and by-laws"; *Fairchild v. Tillotson*, 118 Misc. 639, 640, 195 N. Y. Supp. 39, 40 (1922): "a person joining any legally organized body with powers to make rules and laws for its own government and for the regulation of the conduct of its members becomes bound by those laws and rules and a decision of that body proceeding according to judicial forms and touching his rights or relation as a member is binding on the courts"; *Shapiro v. Gehlman*, 152 Misc. 13, 272 N. Y. Supp. 624 (1934).

² *Bossert v. Dhuy*, 221 N. Y. 342, 358, 117 N. E. 582, 585 (1917).

³ *Id.* at 359; *Polin v. Kaplan*, 257 N. Y. 277, 282, 177 N. E. 833, 834 (1931): "* * * if the contract reasonably provides that the performance of certain acts will constitute a sufficient cause for the expulsion of a member and the charges of their performance with notice to the member shall be tried before a tribunal set up by the association, the provision is exclusive and the judgment of the tribunal rendered after a fair trial will not be reviewed by the regularly constituted courts"; *cf. Carey v. Int'l Brotherhood of Paper Makers*, 123 Misc. 680, 687, 206 N. Y. Supp. 73, 83 (1924): "Until their [constitution's and by-law's] provisions are violated there is no ground upon which to invoke the jurisdiction of the court."

⁴ *Lafond v. Deems*, 81 N. Y. 507, 514 (1880): "Courts should not as a general rule interfere with the contentions and quarrels of voluntary associations so long as the government is fairly and honestly administered"; *Levy v. U. S. Grand Lodge, I. S. O. B.*, 9 Misc. 633, 635, 30 N. Y. Supp. 885, 886 (1894). In all questions of policy, discipline and internal government, the decision of the voluntary association in the absence of bad faith should govern. A policy of a voluntary association not illegal nor derogatory of a member's property rights is not subject to regulation. See *Allee v. Jones*, 68 Misc. 141, 142, 123 N. Y. Supp. 581, 583 (1910).

⁵ See *Appalachian Coal Co., Inc. v. United States*, 288 U. S. 344, 374, 53 Sup. Ct. 471 (1933): "Putting an end to injurious practices and the consequent improvement of the competitive position of a group of producers is not the less worthy aim and may be entirely consonant with the public interest, where the group must still meet effective competition in a fair market and neither seeks nor is able to effect a domination of prices"; *cf. Bossert v. Dhuy*, 221 N. Y. 342, 355, 117 N. E. 582, 584 (1917), where the court in speaking of a labor organization states: "Workingmen may organize for the purpose deemed beneficial to themselves and in that organizational capacity may determine that their members shall not work with non-members upon specified work or kinds of work. An act when done maliciously and for an illegal purpose may be restrained, and held to be within the bounds of reasonable business competition when done in good faith and for a legal purpose." Thus if the defendant's enforcement of its policy does not include fraud, coercion or malice it is legal. *Nann v. Raimist*, 255 N. Y. 307, 174 N. E. 690 (1931) (Defendant went beyond the bounds of lawful conduct in carrying on its campaign against the plaintiff and the court decided for the plaintiff not on

such a policy may be detrimental to another in his business it is a lawful harm as to the latter.⁶ The defendant was unjustly condemned by the lower court as conspiring to limit competition and destroy the plaintiff's business; there was no wrong committed and no action will lie.

A. S.

WORKMEN'S COMPENSATION—LIABILITY OF GENERAL CONTRACTOR TO EMPLOYEE OF SUBCONTRACTOR.—Claimant, employee of subcontractor under defendant general contractor, was injured in the course of employment. The subcontractor had insured for benefit of employees with a foreign carrier authorized by the State Industrial Commission. The insurer became insolvent subsequent to date of claimant's injuries and claimant seeks to hold defendant. *Held*, defendant is not liable for unpaid compensation, as the subcontractor had duly provided for compensation. *Sciachitano v. Spencer-Forbes, Inc.*, 264 N. Y. 324, 190 N. E. 656 (1934).

Under Section 56 of the Workmen's Compensation Law,¹ where a general contractor sublets an undertaking involving a hazardous employment² he is liable for injuries³ to employees⁴ of the subcontractor unless the subcontractor has procured compensation as provided in Section 50.⁵ Section 56 also provides that when a general contractor has paid compensation to an employee of an uninsured

the ground that the defendant's criticism was wrong but that it was clearly so wrong that only malevolence or something close akin thereto could have supplied the motive power); *Union Car Advertising Co. v. Collier*, 232 App. Div. 591, 594, 251 N. Y. Supp. 153, 157 (1st Dept. 1931): "For a business man wantonly or maliciously, without provocation, to interfere with another person's business by preventing the third party from entering into a contract with such other persons constitutes unfair competition where there is reasonable certainty that the contract would otherwise have been made."

⁶ *Appalachian Coal Co., Inc. v. United States*, *supra* note 5; *cf. Bossert v. Dhuy*, *supra* note 2, 221 N. Y. at 359, 117 N. E. at 585: "If the determination is reached in good faith for the purpose of bettering the condition of its members and not through malice or otherwise attempting to injure an employer, the fact that such action may result in incidental injury to the employer does not constitute a justification for issuing an injunction against enforcing such action."

¹ Laws of 1922, c. 615.

² N. Y. WORKMEN'S COMPENSATION LAW (1922) §3.

³ N. Y. WORKMEN'S COMPENSATION LAW (1914) §2, subd. 7.

⁴ N. Y. WORKMEN'S COMPENSATION LAW (1922) §2, subd. 4.

⁵ N. Y. WORKMEN'S COMPENSATION LAW as amended by Laws of 1922, c. 615.