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# THE STATUS OF LABOR UNIONS UNDER THE SHERMAN LAW

In *Dowd vs. United Mine Workers et al*,[1] the Circuit Court of Appeals for the Eighth Circuit holds, on demurrer, that a labor union is liable to be sued in its own name under the Sherman Anti-Trust Law of 1890.[2] Although it is well settled that labor organizations are subject to the act,[3] this is the first decision holding that such unincorporated associations may be sued by name. The importance of the ruling lies in the fact that it more readily subjects union funds to execution for the torts of union members.

The legal status of trade unions has always been the subject of controversy. In England, from the time of Francis Place and the Combination Laws of 1825 to the Taff Vale case[4] and the Osborne judgment,[5] judicial decisions on the status of trade unions have been followed by political agitation and legislation. It is therefore of some interest to find the Circuit Court of Appeals handing down a decision very similar to the historic Taff Vale case, which, with *Quinn vs. Leathem*,[6] resulted in the election of fifty-four labor members to Parliament in 1905 and the subsequent passage of the Trades Dispute Act of 1906.[7] The two decisions serve to illustrate, incidentally, some marked differences between the status of unions in England and in this country.

Both in reason and on authority the ruling in the principal case appears doubtful. In interpreting the Sherman Law the court (Carland, J.), follows the Taff Vale case, holding that, although a union is neither a natural or artificial person, "there is a clear and necessary implication that the association may be sued in its own name; otherwise the provision that the association should be liable could not be enforced." Coming after a rigorous execution under a judgment for some $250,000 against the savings accounts of the Danbury Hatters,[8]

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[1] 235 Fed. 1.
[2] Comp. Stat. 1913, 8830.
[3] Workingmen's Amalgamated Council of New Orleans vs. U. S., 54 Fed. 994; Affd. in 57 Fed. 85; *In re* Debs, 64 Fed. 724; Affd. in 158 U. S. 564; Loewe vs. Lawlor, 208 U. S. 274; Lawlor vs. Loewe, 235 U. S. 522; Waterhouse vs. Comer, 55 Fed. 149; U. S. vs. Eliot, 64 Fed. 27.
[4] (1901) A. C. 426.
[5] Amalgamated Society vs. Osborne (1910) A. C. 87.
[6] (1901) A. C. 87.
[7] 6 Edw. VII, c. 47.
[8] Lawlor vs. Loewe, *supra*.

the latter ground seems somewhat unsound. It is also clear that the Taff Vale case is not in point. That case involved a narrow question of statutory construction under the Trade Union Acts of 1871 [9] and 1876.[10] This legislation gave unions the exclusive right to a registered name, allowed them the right to hold property, and regulated their finances. It was accordingly held in the Taff Vale decision that "the registered name is nothing more than collective name for all the members." [11] A similar decision is found in Ohio under similar state statutes.[12] But the Sherman Act in no way registers or confers upon trade unions such "characteristics of incorporation." [13] There is no room for the prinicple *"Qui sentit commodum sentire debet et onus,"* upon which the Taff Vale case was decided.[14] Unionists would hardly call the Sherman Act a "commodum." We may therefore conclude that the grounds for the present decision are rather slender.

Although it is undoubtedly true that the importance of the decision in the Taff Vale case was magnified,[15] nevertheless it is clear that the question of parties defendant in suits against trade unions touches the interests of litigants very closely. To the capitalists it is a question of indemnity; to the labor union, one of protection of funds. That the present case has considerable effect is clear from a brief consideration of the rules of joinder of parties in the case of so-called voluntary unincorporated associations.

The rule that tort feasors are themselves primarily liable is generally of no advantage in trade union cases on account of the financial irresponsibility of the members. Similarly, where trade union property is held in trust, the rule that trust property is primarily liable for obligations incurred by the trustees within the scope of their authority,[16] has little application to tort actions. It is therefore a question of reaching the funds of the union such as strike funds or benefit funds. The invariable rule that at common law an unincorporated association, being neither a natural or artificial person, could not be

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[9] 34 and 35 Vict. c. 31.
[10] 39 and 40 Vict. c. 22.
[11] Lord Macnaghten, p. 439.
[12] Hilenbrand vs. Trades Council, 14 Ohio N. P. 628.
[13] Webb, in History of Trade Unionism, Introduction XXI.
[14] Farwell, J., at p. 430.
[15] See F. H. Cooke in Common's Trade Unionism and Labor Problems, p. 144.
[16] Bushong vs. Taylor, 82 Mo. 660; Kerrison vs. Stewart, 93 U. S. 155, 160.

sued as such, either in law[17] or in equity,[18] leaves three methods of reaching associations funds. (1) By joining all the members in an action at law; or, where the property is held in trust,[19] by creditors' bill joining all the *cestuis qui trustent.* (2) By using representative members in a civil action under the codes, whether the action be legal or equitable in nature. (3) By suing the association by name under special statute, or "statutory implication."

The first of these methods is almost universally abandoned, because of the numerousness of the parties, the difficulty of getting their names, and the probability of abatement by death.

The second method is of frequent application in injunction cases.[20] But the cases where unions and associations have been sued for damages, by joining representative members defendant are apparently rare. An excellent example of this procedure under the codes is the Nevada case of *Branson vs. I. W. W.*,[21] where it was held that a judgment for damages could be had against a trade union sued by representative members, and that an affidavit of attachment, good against the members sued, was also good against the union as such. Why this method of suit has not been more frequently adopted under the equity rule of the codes is difficult to understand. It is perhaps more expensive because of the necessity of joining a representative number of members. And the infrequency of its use may be due in part to the uncertainty of the equity rule on the matter. The general rule in equity has always been that all persons whose interest would be affected by the decree must be before the court.[22] And it lies within the discretion of the court to allow exception to the rule on account of numerousness of the parties. Lord Eldon's dictum in *Adair vs. New River Co.* (1805)[23] is frequently cited on this point. In an action against representative members of a joint stock company he held that a plea of non-joinder was bad, declaring that suit against representatives is allowable where it is "actually impracticable to bring in all

[17] St. Paul Typothetae vs. St. Paul Book Binders' Union, 94 Minn. 351.
[18] Pickett vs. Walsh, 192 Mass. 572; American Steel & Wire Co. vs. Die Makers' Union, 90 Fed. 598.
[19] A voluntary association as such cannot hold realty. Douthitt vs. Stimson, 73 Mo. 199, Bacon, Benefit Societies, p. 51.
[20] Franklin Union No. 4 vs. People, 220 Ill. 355; Flannery vs. People, 225 Ill. 62; Iron Molders vs. Allis Chalmers, 166 Fed. 45 (C. C. A.).
[21] 95 Pac. 354.
[22] Pom. Eq. Rem. Sec. 891; Perry on Trusts, Sec. 891; Willats vs. Busby, 5 Beav. 193.
[23] 11 Ves. Jr., 424, 444.

parties or where it is attended with inconvenience almost amounting to that." But he adds, "It must depend upon the circumstances in each case." *Meux vs. Maltby*[24] is the leading case on this point, and purports to collect all the early authorities. A close examination of these shows, however, that very few are directly in point, [25] and perhaps explains some of the uncertainty in the law. In spite of this uncertainty, the use of this procedure will probably become more frequent under the codes. Suit by representative parties plaintiff is, of course, of much greater frequency, being of everyday occurrence in foreclosure cases.

The third method of reaching the assets of an unincorporated association is entirely statutory. The type of statute that allows such associations to be sued in their own name was recently adopted in Missouri.[26] Another type is the New York statute,[27] allowing unions to be sued by designated officers. Organized labor looks upon these statutes with great disfavor. An interesting case where the validity of such statutes was in issue is found in Michigan,[28] in which it was decided that the statute was not class legislation, nor an attempt to create a new entity, but a mere matter of remedy. This statutory method is practically the same as the procedure allowed by implication in the decision under discussion, and it is probable that organized labor will look upon the decision in the principal case with the same disfavor as in the case of the statutes.

It is, therefore, clear that the facilitation of reaching the funds of trade unions under this decision is of more than technical significance. Of course, we need expect no such reaction as followed the Taff Vale case in England. The present ruling is restricted to actions under the Sherman Law, and in addition, the peculiar financial management of American unions makes the decision of less importance than the British ruling:[29] There are few unions in this country except

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[24] 2 Swanst. 284 (1818).

[25] The cases are either against trustees charged with the duty of defending such suits, or else they turn upon the ordinary principles of agent's liability. City of London vs. Richmond, 2 Vern. 421, (1701); Quintine vs. Yard, 1 Eq. Ca Abr. 74, 1702, (necessary party non-resident); Vernon vs. Blackerby, 2Atk. 144, 1740, citing the Case of the Bubble, (1702); Horsley vs. Bell, Amb. 774, (agency case); Cullen vs. Duke of Queensberry, 1 Bro. Ch. 101, (1781); Cousins vs. Smith, 13 Ves. 544.

[26] Laws of Mo. 1915, p. 225, amending Sec. 1760 R. S.

[27] Code Civ. Proc. Sec. 1919, See Curran vs. Galen, 152 N. Y. 33.

[28] U. S. Heater Co. vs. Iron Molders' Union, 129 Mich. 354.

[29] Kennedy: Beneficiary Features of American Trade Unions, XXVI Johns Hopkins' Studies, p. 18; Sakolski: Trade Union Finance, XXIV Johns Hopkins' Studies, p. 72.

the Railroad Brotherhoods, the Typographical, and the Tobacco Workers, which have extensive centralized benefit funds, whereas the benefit system is universal in England, in spite of the national insurance acts.

The decision will possibly serve to stimulate legislation such as that attempted in the equivocal Clayton Act.[30] Or it may furnish an argument for the exponents of incorporation for trade unions. As to incorporation, it is doubtful whether it will ever commend itself to unions, on account of the inflexibility of membership rules.[31] And with regard to legislation exempting labor organizations from the penalties of the law, probably a more direct method of benefiting trade unions would be to change certain rules of the substantive law.

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[30] 38 Stat. 731, Sec. 6, Compare, Harvey & Bradford, Fed. Tr. Comm. Manual, p. 169, and Judson on Interstate Commerce, 184, for interpretation of the act.

[31] See Commons, Trade Unionism and Labor Problems, p. 140.