

RULING REVERSED

Supreme Court of Ohio Upsets Judge Hosea's Famous Injunction Order.

Cincinnati, June 1, 1906.
Editor Labor Press:

Dear Sir and Brother—Under another cover I have mailed to your address the concurring opinions of the full bench of the Superior Court, Cincinnati, Ohio, reversing the opinion of Judge Hosea of the Superior Court who found two of our officers guilty of contempt of Court and in violation of his restraining order.

We call your attention to this case because in some of its aspects it is the most important and far-reaching, of any court decision relative to injunctions in labor cases as yet handed down by any of our courts. As there had been no intimidation, coercion or violence, the case rested entirely upon the right of a trade union to take into its membership men who were employed as strike breakers, and give them transportation to some other locality. In finding our officers guilty the Court based its opinion almost entirely upon the presumption that capital has a property right in labor. The concurring opinions handed down by the General Term of Superior Court not alone reverse Judge Hosea's decision but give in greater abundance than any other case on record, the citations from the law books and the interpretations of the many courts relative to the rights and privileges of labor unions and other members.

You will be interested to learn that in the opinions referred to, it is held that the principles contained in the Taft-Vale decision, now so famous, will not and do not hold good in American jurisprudence.

Believing that these opinions should prove of immeasurable value to the American labor movement, we trust that you will freely use any or all portions of them in your valuable publication, and as Judge Hosea's opinion finding our members guilty was published in pamphlet form and sent broadcast throughout the United States and Canada, we trust that the decision of the Court reversing this opinion will receive as wide a circulation.

Yours fraternally,
JOHN F. FREY,
Editor Iron Molders' Journal.

Review of Facts.

In September, 1904, some of the foundrymen of Cincinnati, members of the National Foundrymen's Association, attempted to enforce a reduction of twenty cents per day upon the molders of Cincinnati and vicinity. In this move they were acting under the advice and at the instance of the N. F. A., and in the strike of the molders, which this action precipitated, were accorded the fullest support of that association. Lawyers were employed to secure the assistance of the courts by the well-known injunction method, and everything that money could accomplish was done to administer a telling blow to the I. M. U. of N. A. in its home city. Their ignominious failure in their general purpose is now a matter of history. But one more chapter remained to close this record of inglorious defeat, and this has been furnished by the decision just handed down by the Superior Court of Cincinnati in General Term.

During the progress of the strike the legal representatives of the N. F. A. applied for an injunction in the name of one of its members the I. & E. Greenwald Co. of Cincinnati.

On Sept. 30, 1904, Judge Hosea of the Superior Court, by entry, issued a temporary restraining order on application and affidavits of the I. & E. Greenwald Co., plaintiffs, which, among other provisions, enjoined the officers and members of the Molders' Union from:

1. Hindering, obstructing or stopping any of the business of plaintiff in this city, county or elsewhere.
2. In any manner interfering with the plaintiff company in carrying on its business in the usual and ordinary way.
3. Going either singly or collectively to the homes of the employees of the plaintiff company, or any or either of them, for the purpose of, and in such manner as to intimidate, coerce or unlawfully persuade any of the said employees to leave the employment of the plaintiff company.
4. Compelling or inducing by threats, intimidation, force, violence or unlawful persuasion, from freely continuing in the service or employment of the plaintiff company.

In August, 1905, charges and specifications of contempt were filed, charging two of the defendants (O'Leary and Hinnenkamp), officers

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of the Iron Molders' Union, with violating the restraining order; the respondents pleaded "not guilty," and the case was duly argued and submitted to Judge Hosea in Special Term on August 22. Upon examination the witnesses for the plaintiff testified that no act of intimidation, coercion or violence had been used by the respondents on trial, and that they had of their own free will become members of the Iron Molders' Union and afterwards had accepted transportation to another city, to secure employment in a union shop.

The Court in Special Term held that the method used by the respondents, viz., offering inducements by way of other employment, cash consideration and railroad transportation, amounted to unlawful persuasion and a violation of the terms of the restraining order, and adjudged respondents in contempt of Court, and they were each fined one hundred (\$100.00) dollars and required to give bond in the sum of five hundred (\$500.00) dollars to abide the order of the Court.

In rendering his decision Judge Hosea used the following language: "In the present case no direct violence is shown; but, if the attitude of the union defendants is truly indicated by Mr. Hinnenkamp, the right is claimed to seduce away workmen by any means short of violence. But whether done with violence or without it, the purpose is clearly the same in both cases, namely to cripple the business and thus compel concession to the demands of the union. The results manifestly are the same in both cases; for, whether with violence or by means that do not involve violence the manufacturer is deprived of the assistance of his workmen, his machinery must stop and his business come to a standstill. It is manifest, therefore, that a mere difference in the means employed in inflicting the injury, provided that they were both actuated by an unlawful purpose and both tend to the same unlawful end, can make no difference in the wrongful character of the act. The character is to be determined by the initial purpose and the final result in the end to be accomplished."

Error was prosecuted to the judgment of Judge Hosea to the General Term of the Superior Court, Judges Ferris, Hoffheimer and Littleford constituting the bench. Their concurring opinion reversing the decision of Judge Hosea are herein printed in full.

Extracts From Opinions.

Ferris, P. J.—

The Court's order enjoined against the doing of the unlawful, not the lawful, and we are concerned therefore with the consideration of what the defendants could lawfully do. The evidence is clear and very convincing on the part of the persons charged with contempt that their motive was the securing of better conditions for the members of their organization. That is not unlawful. This they had the right to do, and while the law does not consider motives, it was entirely proper for them to show by competent testimony what their purpose was. And the law has defined the extent to which the acts may go regardless of motives. The men approached to join the union were not under contract for a definite term, and therefore it was entirely in the right, and not in violation of any law for Hinnenkamp and O'Leary to use peaceable persuasion and argument to induce them to unite with the union, although the effect of the same would be manifestly to deprive Greenwald and Co. of their services. Such cases are not rare. When men have been induced to leave employment at the expiration of the time for which they were hired, such acts are not within the prohibition of the law.

The Iron Molders' Union is not an unlawful combination. It is a legal union. Its representatives had a right to engage in conversation men

who were in the service of the Greenwald Company in an endeavor to induce them to leave their employment at the expiration of the contract for services. They had a right, in a peaceable, orderly manner, to present such arguments and reasons to East and Reid as would induce them to unite in an effort to better their conditions, to make more tolerable rules, to secure a greater wage and a shorter hour, and having done this without violence or coercion or threats or intimidation, they were not guilty of violation of that part of the court's order enjoining against unlawful persuasion. These things, under the decisions, they have the right to do. It is lawful persuasion.

Admitting, therefore, all that is claimed by counsel in this behalf, that the men found guilty of unlawful persuasion had made attempts to induce employees to leave the employment at the end of their contract; granting that the testimony shows that sums of money were paid in cash to the employees of the Greenwald Company, who were furnished with railroad tickets that they might leave the city and the employment of the Greenwald Company; admitting that certain offers were made to them for the express purpose of inducing them to join the Union and consequently the employment of the defendant in error; we find under the authorities nothing unlawful in such conduct. The payment of money furnishes no authority for their conviction. It is not unlawful, because they had the right to do it under the circumstances as shown by the evidence.

Hoffheimer, J.—

In examining the status of labor unions in our own state, we find that the policy of our law favors them. Section 4364-68 Revised Statutes of Ohio is as follows:

"It shall be unlawful for any individual or member of any firm, or agent, officer or employee of any firm, or corporation to prevent employees from forming or joining and belonging to any lawful labor organization, and any such individual, member, agent, officer or employee that coerces or attempts to coerce employees by discharging or threatening to discharge from their employment or the employ of any firm, company or corporation because of their connection with such lawful organization shall be guilty of a misdemeanor and upon conviction thereof in any court of competent jurisdiction shall be fined in a sum not exceeding one hundred dollars or imprisonment for not more than six months, or both, in discretion of the court."

By necessary implication the labor union has the right to invite members to join the unions. This being so, if the persuasion is peaceful (that which the law countenances), what difference does it make what the motives of those who engage in such persuasion may be?

Defendant in error earnestly contends, that any persuasion which has for its immediate and direct purpose and effect an injury to the complainant in his business or occupation by causing persons to leave his employ is unlawful persuasion. Can this be true? Can the motive with which a person acts in the clear exercise of a legal right become material in working out the true solution of the difficult and vexatious problem before this court? It seems to be established beyond cavil that it is immaterial by what motive one is prompted in the exercise of a clear legal right or in the performance of a duty. Such was the language of Shauck, now Chief Justice of Ohio, in Lancaster vs. Hamberger, 70 O. S. 156, 164. See also Frazier vs. Brown, 12 O. S. 294; Letts vs. Kessler, 54 O. S. 73 (spite fence case); Kelly vs. Ohio Oil Co., 57 O. S. 327.

As was said in Bohn Mfg. Co. vs. Hollis, supra, the exercise by one man of a legal right cannot be a legal wrong to another, or, as was said in another case: "Malicious motives make a bad case worse, but they cannot make that wrong which in its own essence is lawful." Heywood vs. Tillson, 75 N. E. 225; Phelps vs. Newlen, 72 N. Y. 39; Jenkins vs. Fowler, 23 Pa. St. 308.

Littleford, J.—

Peaceably persuading a man to quit work when he has a right to quit is not an unlawful thing to do. This has been asserted by courts in this state and elsewhere so often that it is unnecessary to cite any authorities. No court in this or any other country has ever forbidden a man to go peaceably to his neighbor and urge him to give up service which he has the right to quit if he chooses. This is not unlawful persuasion.

While it is not proved in this case that O'Leary and Hinnenkamp were moved by ill-will towards the Greenwald Company to do what they did, still, even if they had been, the result would be the same. Malice towards the Greenwald Company would not make the persuasion amount to unlawful persuasion.

It is the law of Ohio that if an act may be done lawfully with a good motive, it is just as lawful if done with malice towards another.

A man has the right to build his house on his line, even if he shuts off his neighbor's light and air; and he has just as much right to build a spite fence on his line.

Letts vs. Kessler, 54 O. S., 73-82; Kelly vs. Ohio Oil Co., 57 O. S., 327;

Lancaster vs. Hamberger, 70 O. S. 164.

In conclusion, we are of the opinion that O'Leary and Hinnenkamp have not been proved guilty beyond a reasonable doubt of a violation of the injunction herein as set forth in the written charge against them.

The singular fact that thousands of children of school age have residences on coal barges in the East or North rivers, has been brought to the attention of the New York Board of Education. By an investigation of the facts it is learned that from 2,000 to 4,000 children of school age have residences on the coal barges alone, and simply from the transitory condition of their residence have not had the least opportunity to acquire even the rudiments of an education.

South Water street, Chicago, experienced a new variety of strike last Tuesday in the walkout of 300 egg-candlers. Accordingly, they are striking for a nine-hour day at their present wages of \$3 a day.

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