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Cover Page Footnote

The writer wishes to acknowledge, with the deepest gratitude, the kind attention and advice of Professor Frank E. Horack, Jr., of the Indiana University Law School.

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THE CIVIL SUABILITY, AT LAW, OF LABOR UNIONS

NEWTON COLE†

LABOR controversies are increasing in these days. It is of vital interest to the public that such controversies find ready settlement through lawful means. These means should act at once as solvents and deterrents, in as great a measure as possible, of both present and future labor difficulties.

Today, labor unions are almost uniformly involved in the labor controversies which are frequently carried to the courts. It is remarkable that actions involving labor unions have been comparatively seldom decided at law. The reasons for such avoidance of the law courts in favor of equity on the part of the unions, at least, may indeed be increasing rather than waning. None the less there appears a distinct possibility that strictly legal action may be advantageously availed of by either of the usual parties to labor controversies. It is in the suability of labor unions that such a possibility lies.

Considerations of policy, both social and legal, inevitably insinuate themselves into the treatment of such a subject as this, but it is hoped that concepts of policy have not here impaired candor of observation and record. At any rate, a brief shadowing of the social considerations involved may not be amiss. Despite modern tendencies toward socialization and the earnest effort in some world states to obliterate the lines between the various groups or strata of economic society, there still exist in the Anglo-American world vigorous separate embodiments of labor and capital. The course of their struggle is common knowledge. Suffice it to say that through united effort labor has attained something like collateral economic rank and power with capital. Indeed, it has been asserted that because of its power, labor should be subjected along with capitalistic enterprise, to the operation of the anti-trust laws.[1] It is certain that the law reflects the growing need for means of legal redress for the invasions of private rights by labor unions.

Nor should the other side of the picture be forgotten: labor has not outgrown the need for legal protection against capital. Recent federal legislation indicates that there is a most thorough public realization of such need. It may be that, as a result of such legislation, labor unions will have slight occasion to seek redress at law for injuries inflicted by capital. But the powerful predilection of the Anglo-American ethos for

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1. Black, *How Far is the Theory of Trust Regulation Applicable to Labor Unions?* (1930) 28 MICH. L. REV. 977.

equality and mutuality in such matters is assurance that remedy at law, if sought by unions, will not be found wanting. A description of the developments in the meeting of the needs of both parties, labor and capital, is the subject now to be dealt with.

I

The present law of the legal suability of labor unions has as its original historical background the early English law on the status of bodies of men. The complexion of that law is described by Professor Warren as follows:

"From very early times we find the doctrine that the courts should not treat any body of men as a legal unit without the consent of the Sovereign.

"Madox said: 'Anciently a *Gild* either Religious or Secular could not legally be set-up without the King's License. If any Persons erected a Gild without Warrant, that is, without the King's leave, it was a trespass, and they were lyable to be punished for it. For example. In the Twenty sixth year of K. Henry II. several *Gilds* in *London* were amerced to the Crown as adulterine, that is, as set-up without Warrant from the King.'

"In Y.B. 49 Edw. III, 3 (1375), is reported a case in which . . . Knivett, Chancellor, said that this commonalty of the guild, which is not confirmed by the King, could not be adjudged a body capable of taking an estate by purchase.

"As the centuries passed, the law as to guilds came to be accepted as the general rule.

". . . Blackstone said . . . a legal unit was either a natural person or it was not.

"A composite unit composed of human beings is not a legal unit, except by the King's consent."[2]

The bearing of the foregoing history on the problem in hand is this: Unincorporated bodies of men, or associations, having, as demonstrated, no existence as units in contemplation of law, had no legal standing either to sue or be sued.[3] That principle of the common law has been a steadfast one, and it has continued incorrigibly to the present day, so that, in the absence of statutes to the contrary,[4] an unincorporated association cannot be sued in its association name, since the association has no legal entity separate and distinct from that of its individual members.[5]

2. WARREN, CORPORATE ADVANTAGES WITHOUT INCORPORATION, (1929) 8-11.

3. See cases collected in note (1911) 1 British Ruling Cases 852.

4. See p. 32, *infra.*

5. Grand International Brotherhood of Locomotive Engineers v. Green, 206 Ala. 196, 89 So. 435 (1921); District No. 21, United Mine Workers of America v. Bourland, 169 Ark. 796, 277 S. W. 546 (1925); Johnston v. Albritton, 101 Fla. 1285, 134 So. 563 (1931); Diamond Block Coal Co. v. United Mine Workers of America, 188 Ky. 477, 222 S. W. 1079 (1920).

Finally, to settle the law of associations within the bounds of the present topic, let it be said that labor unions are, generally speaking, unincorporated associations, and the foregoing statement as to the suability of associations is fully applicable to labor unions as such. At common law an unincorporated labor union cannot be sued in its association name[6] but must be sued in the name of all its members.[7] In the absence of statutes this is the general rule.[8]

In view of the adamantine stand of the common law upon the point of the suability of labor unions, there has set in, for some considerable time a determined effort to obviate that stand by other legal means of suit. Such means have, of practical necessity, been statutory in their origin. It is appropriate in investigating the statutes upon the subject to turn first to those of England, the original home of labor unions. There the problem was partially met in the Trade Union Act.[9] Provision is made in that act for the registration of trade unions, the vesting of their property in certain trustees, and suits by and against the trustees in respect of such property.[10] The foregoing provisions of the Trade Union Act were finally made the basis of conferring a full complement of suability upon registered English trade unions in the famous *Taff Vale Case*.[11] In that case, in the House of Lords, it was

6. See note 5, *supra;* and Karges Furniture Co. v. Amalgamated Woodworkers' Local Union, 165 Ind. 421, 75 N. E. 877 (1905).

7. *Ibid.* The disadvantage to which a plaintiff is thus put is obvious. Even supposing that the membership of a union at any given moment is ascertainable, it is constantly changing, so that there will be of necessity an equally constant and incurable defect of parties defendant.

8. A unique exception obtains in Missouri, where in Syz v. Milk Wagon Drivers' Union, 24 S. W. (2d) 1080 (Mo. App. 1930), an unincorporated trade union was held a suable entity despite the unconstitutionality of a statute providing for service of process. *Cf.* Bruns v. Milk Wagon Drivers' Union, 242 S. W. 419 (Mo. App. 1922). Also, in some jurisdictions, where a suit has been brought on the entity theory, although in the absence of an enabling statute, if the defendant delays unreasonably in raising an objection on the ground that it has no capacity thus to be sued, the defence is deemed to have been waived. Barnes v. Chicago Typographical Union, 232 Ill. 402, 83 N. E. 932 (1908); Tucker v. Eatough, 186 N. C. 504, 120 S. E. 57 (1923). Also, further, it has been held that an unincorporated union which has held itself out as capable of contracting in the association name is estopped, when sued on its contract, to assert that it is incapable of being sued in such name. Clark v. Grand Lodge of Brotherhood of Railroad Trainmen, 328 Mo. 1084, 43 S. W. (2d) 404 (1931).

9. TRADE UNION ACT (1871), 34 & 35 Vict. c. 31.

10. *Ibid;* applied in Parr v. Lancashire and Cheshire Miners' Federation, [1913] 1 Ch. D. 366. *Cf.* Curle v. Lester, [1893] 9 T. L. R. 480 and Linaker v. Pilcher, 70 L. J. K. B. 396 (1901).

11. [1901] App. Cas. 426, 70 L. J. K. B. (N. S.) 905. It would seem that most English trade unions are registered, but it should be noted here that unregistered unions may be sued in a representative action if the parties are by their position fairly representative of the union. Parr v. Lancashire, etc., Federation, [1913] 1 Ch. D. 366.

held that: (1) the union, by virtue of registering its name under the Trade Union Act, was constituted a legal entity, a sort of quasi-corporation, (2) the fact that the statute omitted any provision authorizing the union to sue and be sued in any other name warranted the conclusion that it might be sued in its registered name, and (3) the legislature so intended.[12]

But that judgment was ordained erroneous by the language of the Trade Disputes Act of 1906,[13] which provided for the denial of actions of tort against trade unions for offenses committed in furtherance of trade disputes.[14] Doubtlessly, it may be fairly said that the doctrine of the *Taff Vale Case* as to the suability of registered trade unions, despite its attenuation by the Trade Disputes Acts, is an established part of the English law.[15]

In the United States likewise, the statutory repair of the common law of non-suability of labor unions has been initiated, but its course, though, perhaps in the long run, more vitally effective, has in general been by no means so direct. In the several state jurisdictions, which are considered first, the change has proceeded chiefly through the medium of the general law as to the suability of associations. In practically all of the states, there are statutes, of varying breadth of scope, regarding unincorporated associations, for some purpose or other as legal entities. Such statutes have been classified, and accurately so, into three separate groups or types:[16]

"... first, statutes permitting some to sue or be sued for themselves and others;[17]

12. See [1901] App. Cas. 426, 442.

13. TRADE DISPUTES ACT (1906), 6 Edw. 7, c. 47. Also applied in Parr v. Lancashire and Cheshire Miners' Federation, [1913] 1 Ch. D. 366. The action in this case is one to restrain a breach of contract, an equitable proceeding, but the language of the Taff Vale case is quoted and followed.

14. The sanctuary thus afforded English trade unions was opened against them perhaps to some slight extent by the provisions of the TRADE DISPUTES ACT (1927), 17 & 18 Geo. 5, c. 22, abrogating their immunity in the case of acts done in the course of illegal strikes or lockouts.

15. A contemplation of the modern English law as to the suability at law of trade unions compels recognition of that power of labor the growth of which was noted in the introduction to this paper, a power not only economic, but also political.

16. WARREN, *op. cit. supra,* note 2, at 542 *et seq.* The following three notes purport to complete the accumulation there found of general statutes conceivably permitting suits at law by or against labor unions.

17. ALA. CODE ANN. (Michie, 1928) § 5701; ARIZ. REV. CODE ANN. (Struckmeyer, 1928) § 3736; ARK. DIG. STAT. (Crawford & Moses, 1921) § 1098; CAL. CODE CIV. PROC. (Deering, 1935) § 382; COLO. COMP. STAT. (1921) § 12; CONN. GEN. STAT. (1930) § 5519; GA. CODE ANN. (Skillman, 1933) § 37-1002; IDAHO CODE ANN. (1932) § 5-316; IND. STAT. ANN. (Burns, 1933) § 2-220; IOWA CODE (1935) § 10974; KAN. REV. STAT. ANN. (1935) § 60-413; MINN. STAT. (Mason, 1927) § 9165; MONT. REV. STAT. (Choate, 1921) § 9083; NEB. COMP. STAT. (1929) § 20-319; NEV. COMP. LAWS (Hillyer, 1929) § 8558;

second, statutes which allow an officer for the time being to be the nominal party plaintiff and/or defendant, and which provide that he shall be taken to represent all those legal units which would have been necessary parties if no such statute had been passed;[18] and, third, statutes which allow the association name to be used in naming the party or parties plaintiff and/or defendant."[19]

As will hereupon be shown, labor unions have, upon occasion, been held clearly to fall within the purview of these various statutes.

Although the first type of statutes were equitable in origin,[20] actions

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N. M. STAT. ANN. (Courtright, 1929) § 105-113; N. Y. CIV. PRAC. ACT (1937) § 194; N. C. CODE ANN. (Michie, 1935) § 457; N. D. COMP. LAWS ANN. (1913) § 7406; OHIO GEN. CODE (Page, 1926) § 11257; ORE. CODE ANN. (1930) § 6-106; S. C. CODE (Michie, 1932) § 406; S. D. COMP. LAWS (1929) § 2315; UTAH REV. STAT. (1933) § 104-3-16; WASH. REV. STAT. ANN. (Remington, 1932) § 190; WIS. STAT. (1935) § 260.12; WYO. REV. STAT. ANN. (Courtright, 1931) § 89-516.

18. In many states the only statutes of this type are those permitting suits by the officers of the union to protect trade-mark rights. CAL. CODE CIV. PRAC. (Deering, 1935) § 7 (trade marks); CONN. GEN. STAT. (1930) § 4753 (trade marks); GA. CODE ANN. (Skillman Supp. 1933) § 106-104 (trade marks); IND. STAT. ANN. (Burns, 1933) § 66-123 (trade marks); IOWA CODE (1935) § 9873 (trade marks); ME. REV. STAT. (1930) c. 54 § 49 (trade marks); MO. STAT. ANN. (Vernon, 1932) § 14334 (trade marks); NEV. COMP. LAWS (Hillyer, 1929) § 7696 (trade marks); N. H. PUB. LAWS (1925) c. 170 § 7 (trade marks); N. J. COMP. STAT. (1911) p. 4064, § 40 (trade marks); N. Y. GEN. ASS'N LAW (Cahills Cons. Laws, 1930) c. 20, § 13; ORE. CODE ANN. (1930) § 14-398 (trade marks); R. I. GEN. LAWS (1923) § 2989 (trade marks); S. C. CODE (Michie, 1932) § 1247 (trade marks); S. D. COMP. LAWS (1929) § 10415 (trade marks); TENN. CODE ANN. (Michie, 1932) § 6769 (trade marks); W. VA. CODE ANN. (Michie, 1932) § 47—2-8 (trade marks); WIS. STAT. (1937) § 117-103 (trade marks).

19. Here, too, many, though fewer, of the statutes are for the purpose of protecting trade marks and labels. ALA. CODE ANN. (Michie, 1928) § 5723-28; ARK. DIG. STAT. (Crawford & Moses, 1921) § 10316; CAL. CIV. CODE (Deering, 1931) § 388; COLO. COMP. STAT. (1921) § 14; DEL. REV. CODE (1935) § 3954 (trade marks); FLA. COMP. LAWS ANN. (1927) § 7087 (trade marks); KAN. REV. STAT. ANN. (1935) § 81-103 (trade marks); IDAHO CODE ANN. (1932) § 43-505 (trade marks); ILL. REV. STAT. ANN. (Smith-Hurd 1933) c. 140, § 4 (trade marks); KY. CODES ANN. (Carroll, 1932) § 4750 (trade marks); LA. GEN. STAT. (1920) p. 358; MD. ANN. CODE (Bogby, 1936) Art. 23 § 104; MASS. GEN. LAWS (1932) c. 182, § 6; MINN. STAT. (Mason, 1927) § 9180; MONT. REV. CODE ANN. (Choate, 1921) § 11208 (trade marks); NEB. COMP. STAT. (1929) § 20-313; NEV. COMP. LAWS (Hillyer, 1929) § 8564; N. H. PUB. LAWS (1925) c. 170, §§ 1-7; N. J. COMP. STAT. (1911) p. 4064, § 40; OKLA. STAT. ANN. (Harlow, 1931) § 11012 (trade marks); PA. STAT. ANN. (Purden, 1930) tit. 73, § 106 trade marks); S. C. CODE (Michie, 1932) § 7796; TEX. ANN. CIV. STAT. (Vernon, 1925) art. 1195, § 27; VT. PUB. LAWS (1934) § 1526. Some statutes of this type are in terms applicable only to associations doing business, a provision which may on occasion bar suit against a labor union. St. Paul Typothetae v. St. Paul Bookbinders' Union, 94 Minn. 351, 102 N. W. 725 (1905); but see Bowers v. Grand International Brotherhood of Locomotive Engineers, 187 Minn. 626, 246 N. W. 362 (1933) and Fitzpatrick v. International Typographical Union, 149 Minn. 401, 184 N. W. 17 (1921) (holding other unions amenable to such statutes).

20. WARREN, *op. cit. supra*, note 2, at 542.

at law against labor unions have been maintained under them.[21] One judicial attitude toward the application of such statutes is expressed in the language of the Supreme Court of Nevada:

"We think it was the intention of the Legislature, by this provision of the statute, to make the equity rule applicable to all proceedings in the courts of this state, whether the same be of a legal or equitable nature. Under our Code provision, there is but one form of civil action, and legal and equitable distinctions, so far as practice is concerned, are largely, if not entirely, done away with. To hold that the defendant organizations cannot be sued without including all members, which are so numerous, scattered and difficult to ascertain might cause such hardship and delay as would amount to a denial of justice. It is hard to conceive of any case to which the statute would be more applicable in its provisions than where the parties are numerous one or more may sue or defend for all."[22]

The applicability of a statute of the second type to a labor union was recognized by the Supreme Court of New York in *Hagan v. Bricklayers', Masons', Marble Masons' and Tile Setters' Union No. 28 of City of Syracuse, et al.*,[23] in which Justice Smith said,

". . . the purpose of this section is obvious; prior to its adoption, if one would bring an action against an association it would have been necessary to bring in as parties all the individual members of the association, on the theory of a partnership. This requirement was such that in many instances it amounted to a denial of justice, and it was to avoid the inconvenience and the injustice of such a situation that this section was adopted authorizing action against the president or treasurer of the association. An action may be brought against either of these officers, not in their individual, but rather in their representative capacity."[24]

And under a statute of the third type a labor union was held suable in *Grand International Brotherhood of Locomotive Engineers v. Green*,[25] the Supreme Court of Alabama saying of the statute:

"It provided that 'actions or suits may be maintained against and in the name of any unincorporated organization or association for any cause of action for or upon which the plaintiff therein may maintain such an action against the members of such organization or association. . . .' This act . . . impairs no obligation of contracts, affects no vested rights, and was within the competency

21. Branson v. Industrial Workers of the World, 30 Nev. 270, 95 Pac. 354 (1908); St. Germain v. Bakery Union, 97 Wash. 282, 166 Pac. 665 (1917).

22. See Branson v. Industrial Workers of the World, 30 Nev. 270, 282, 95 Pac. 354, 359 (1908).

23. 143 Misc. 591, 256 N. Y. Supp. 898 (Sup. Ct. 1932).

24. See *id.* at 592, 256 N. Y. Supp. at 899.

25. 210 Ala. 496, 98 So. 569 (1923).

of the Legislature. It is a remedial statute, and must be liberally construed to advance the competent legislative purpose."[26]

The three opinions, just quoted, may be said to represent a liberal and progressive state of judicial mind upon the suability at law of labor unions. The opposite or common-law attitude is of course discoverable too,[27] and, doubtless, will long linger in certain quarters. But it would seem from the decisions generally that an irresistible entering wedge has been driven and that uniformity in this respect is but a matter of time.

In connection with the state law upon the suability at law of unions, it should be noted that some jurisdictions provide by statute for the incorporation of labor unions.[28] In this case they should be clearly suable at law in their corporate name and capacity, just as any other corporation.[29]

We turn now to a consideration of the federal rules of the suability at law of labor unions. Here, also, the background is statutory but of a different color from that of the state law. The pertinent provisions in the federal statutes are those dealing with labor unions where they are specifically mentioned.[30] In these provisions, labor unions are called by name and clearly recognized as legal quantities of some sort, though not expressly as legal entities. At any rate, the language of those provisions was straightforward enough to furnish a perfectly natural foundation for the doctrine of the famous *Coronado Case*,[31] a decision inspired also by the *Taff Vale Case*.[32] The words of Chief Justice Taft, significant for the present investigation, are these:

"Trade unions have been recognized (by numerous federal statutes). . . .[33]

26. See *id.* at 498, 98 So. at 570. See also Brotherhood of Railroad Trainmen v. Cook, 221 S. W. 1049 (1920); Fitzpatrick v. International Typographical Union, 149 Minn. 401, 184 N. W. 17 (1921); Bowers v. Grand International Brotherhood of Locomotive Engineers, 187 Minn. 626, 246 N. W. 362 (1933); Bricklayers', Masons' & Plasterers' International Union of America et al. v. Seymour Ruff & Sons, Inc., 160 Md. 483, 154 Atl. 52 (1931).

27. *Cf.* Baskins v. United Mine Workers of America, 150 Ark. 398, 234 S. W. 464 (1921) and St. Paul Typothetae v. St. Paul Bookbinders' Union, 94 Minn. 351, 102 N. W. 725 (1905).

28. IOWA CODE (1935) § 8582; MASS. GEN. LAWS (1932) c. 180, § 15; MICH. COMP. LAWS (1929) § 10277-83.

29. Obviously, however, so long as any vestige of an advantage in regard to immunity from suit, or otherwise, remains to them, unions will not generally incorporate, and in spite of the tendencies thus far reported in this paper, it is not a foregone conclusion that there will in any immediately future time be widespread incorporation of labor unions, unless such laws permissive of incorporation are made mandatory.

30. See United Mine Workers of America v. Coronado Coal Co., 259 U. S. 344, 391 (1922).

31. *Ibid.* For an exhaustive treatment of the case see WARREN, *op. cit., supra*, note 2, at 648-67.

32. See *id.* at 390.

33. See *id.* at 391.

In this state of federal legislation, we think that such organizations are suable in the federal courts for their acts. . . . Our conclusion as to the suability of the defendants is confirmed in the case at bar by the words of sections 7 and 8 of the Anti-Trust Law. . . . [34] This language is very broad, and the words given their natural signification certainly include labor unions like these."[35]

The *Coronado Case* has recently been followed in federal decision.[36]

Satis jam dictum. Regardless, for the moment, of the doctrinal warfare upon the topic,[37] the candid observer cannot help but say that the *Taff Vale Case* has a renaissance in the United States in token of a sterner policy toward labor unions than obtains in England.[38]

Finally, mention must be made of the federal statutes providing for the incorporation of national trade unions.[39] These provisions were enacted in 1886, and the virtual absence of case law in regard to them[40] is a token of the yet enormous advantages to unions in remaining unincorporated associations.

II

The civil suability at law of labor unions having, then, been thus viewed from the foregoing aspect, with the union as *defendant,* the transition to the other side of the picture, showing the union as *plaintiff,* is comparatively easy. At common law, as a result of the general law upon the status of bodies of men,[41] the rule as to suits against unincorporated labor unions applies with equal force to suits by such unions, so that such a union cannot sue in its own name[42] but must sue in the

34. 26. STAT. 210 (1890), 15 U. S. C. A. § 7; and 28 STAT. 570 (1894), 37 STAT. 667 (1913), 15 U. S. C. A § (1927).

35. See United Mine Workers v. Coronado Coal Co., 259 U. S. 344, 390-92 (1921).

36. Christian v. International Ass'n of Machinists *et al.,* 7 F. (2d) 481 (E. D. Ky. 1925); Dean v. International Longshoremen's Ass'n, 17 F. Supp. 748 (W. D. La. 1936).

37. As to which see Dodd, *Dogma and Practice in the Law of Associations* (1929) 42 HARV. L. REV. 977.

38. There must be noted here a remarkable parallel to the English TRADE DISPUTES ACT, previously discussed, in the Norris-La Guardia Act of 1932, 47 STAT. 70-73, 29 U. S. C. A. §§ 101-115 (Supp. 1938), limiting the jurisdiction of federal courts in the matter of issuing injunctions in labor disputes, and also the National Labor Relations Act, 49 STAT. 449-457 (1935), 29 U. S. C. A. §§ 151-66 (Supp. 1938), imposing collective bargaining on industries whose labor disputes affect the flow of interstate commerce, but neither of these acts directly affects the suability at law of labor unions.

39. 24 STAT. 86 (1886), 29 U. S. C. A. §§ 21-22 (1927).

40. So far as discovered, only one case, Farmers' Loan and Trust Co. v. Northern Pac. Ry., 60 Fed. 803 (E. D. Wis. 1894), involves the statute, but no incorporation appears in that case.

41. See p. 30, *supra.*

42. Diamond Block Coal Co. v. United Mine Workers of America, 188 Ky. 477, 222

names of each of its individual members.[43]

By the same token, broadly speaking, the common law rule as to suits at law by unions has been abrogated by statute and statutory interpretation so as to allow legal actions by unions to an extent probably commensurate with the facility discovered for such actions against unions.[44] In England, the Trade Union Act expressly provided for suits by, as well as against, the trustees of a registered union in respect of the union's property.[45] And when the House of Lords, in the *Taff Vale Case,*[46] evolved from the Act a full measure of suability of unions a natural part of that fruition was the opinion that a registered union could sue as well as be sued in its registered name. Lord Shand, said:

"I am clearly of the opinion that these and the provisions generally of the statutes imply a liability on the society to be used in its trade name, and a privilege of thus suing."[47]

The validity of the foregoing opinion was recognized shortly afterwards in a later case by Vaughan Williams, L. J.:

S. W. 1079 (1920); St. Paul Typothetae v. St. Paul Bookbinders' Union, 94 Minn. 351, 102 N. W. 725 (1905).

43. Johnston v. Albritton, 101 Fla. 1285, 134 So. 563 (1931).

44. It should be noted at the outset that the development of legal suability in behalf of labor unions is yet rudimentary. One great reason is that unions have sought relief in equity rather than at law. For example: in England: Charnock v. Court, [1899] 2 Ch. D. 35 (by local union to restrain acts of general officials); Cope v. Crossingham, [1909] 2 Ch. D. 148 (to compel trustees properly to handle union funds); McLuskey *et al.* v. Cole *et al.*, [1922] 1 Ch. D. 7 (to enforce an agreement between two unions); in the United States: Nann v. Raimist, 255 N. Y. 307, 174 N. E. 690 (1931) (to enjoin picketting by a rival union); Rodier v. Huddell, 232 App. Div. 531, 250 N. Y. Supp. 336 (1st Dept. 1931) (by locals to secure injunction against international for violation of their constitutional rights); Engelking v. Independent Wet Wash Co. Inc., N. Y. L. J., Aug. 26, 1931, p. 2363, col. 2 (to enjoin breach of trade union agreement by employer); Weintraub v. Spilke, 142 Misc. 867, 255 N. Y. Supp. 50 (Sup. Ct. 1931) (employer restrained from violating contract to employ union men). The reason usually given in cases of the latter sort is that damages at law are an inadequate remedy. See Simpson, *Fifty Years of American Equity* (1936) 50 HARV. L. REV. 171, 200.

Again, since labor unions generally have not heretofore been regarded as competent contracting parties, enforcement against employers of union working agreements has been pressed by individual employees. Christenson, *Legally Enforceable interests in American Labor Union Working Agreements* (1933) 9 IND. L. J. 69.

In addition, labor unions may in trade disputes employ with increasing impunity their time-honored devices of the strike, the right to picket, and the boycott, the successful use of which renders legal action pointless.

Finally, a persuasive reason of policy preventing action at law by labour unions may be that the recovery of heavy damages against an employer may put him out of business, whereas what the union wants is a place in which to work, to work more advantageously, ends attained more readily by injunction than by damage suits.

45. See p. 31, *supra.*

46. See note 11, *supra.*

47. [1901] App. Cas. 441. *Cf.* also the language of Lord Brampton at p. 442.

". . . . the federation . . . is a thing which can own property, which can inflict injury, to which the Legislature has impliedly given the power to sue, and on which the Legislature has imposed the liability to be sued. . . ."[48]

Though these expressions both are by way of dictum, since in neither case was the union suing, yet there can be slight doubt that they represent the law of England upon the point.[49]

In the United States, also, the development of the law as to legal actions by labor unions has been similar. Despite the extreme sparseness of decisions involving such actions, there is a plainly discernable stand to the effect that a labor union may bring a legal action as well as be liable to it. With regard to the several state jurisdictions, most of the three types of statutes enumerated in connection with actions against unions are in terms applicable to actions by unions.[50] Indeed many of the statutes, as noted, are expressly available only in behalf of unions for the protection of their trade marks.[51] The language of the Missouri court interpreting a statute of the third type is as follows:

"The defendant also makes the point it appears for the first time in this court, that the defendant, being a voluntary unincorporated labor union, was not capable of suing or being sued under the laws of this state. But our statute . . . provides how writs may be served upon voluntary or unincorporated associations, and such an organization as this is a legal entity, and entitled to sue and be sued the same as a corporation."[52]

So, again, must reliance be upon dictum, but in the light of the express language of the statutes such dictum appears sound.

Turning now to the federal jurisdiction, a search of that field for law upon the ability of labor unions to bring suits at law is at first blush fruitless, for there are no cases to be found in which a union has brought such an action. But the indications are that here too the pervading desire for equality and mutuality between the two chief parties to industry governs, so that under the rule of the *Coronado Case* a labor union as such might readily bring an action at law. An expression of such a belief following soon after the decision in the *Coronado Case* was this:

"Indeed there is already manifested some disposition on the part of unions

48. See Glamorgan Coal Co., Ltd. v. South Wales Miners' Federation, [1903] 2 K. B. 545, 571.

49. See Oram v. Hutt, [1914] 1 Ch. D. 98, 108. Note too, that the TRADE DISPUTES ACTS, though limiting actions against trade unions, do not so limit actions by unions.

50. See p. 32, *et seq., supra.*

51. *Ibid.*

52. Bruns v. Milk Wagon Drivers' Union, 244 S. W. 419 (Mo. App. 1922). Here too it may be noted that where a union is incorporated, it could probably bring action at law in its corporate name.

themselves to adopt the courts as agents for the protection of their rights . . . as indicated by the Mineworkers' Journal . . . , which declared editorially: 'If a labor union can be sued as was decided by the United States Supreme Court in the *Coronado* case, then it can also sue. If a labor union can sue then there is no good reason why it should not utilize the law and the courts for the protection of itself, and its members and its welfare. . . .'"[53]

Doubtless for politic reasons such as those already intimated,[54] this facility for suit in the federal courts has not been utilized by labor unions, but there appears to be no legal reason why it could not be so used.

III

Labor unions, then, have a suability at law: of what practical consequence is it? How does it color the possibility of recovery for invasions of recognized rights, for breaches of contract? Is it a futile piece of doctrine, or is it a useful tool? Such questions are answerable to a certain extent by a consideration of cases in which the doctrine of suability was developed and applied.[55]

To consider first, actions against unions, in England, recovery against a trade union, and its effectiveness, depended wholly upon the development of suability, predicated upon the Trade Union Act. In the *Taff Vale Case* the action was one of tort by the plaintiff railway against the union for damages for injury resulting from the conduct of a strike. Recovery was had. Judge Farwell said:

"If, therefore, I am right in concluding that the society are liable in tort, the action must be against them in their registered name. The acts complained of are the acts of the association. . . . For such wrongs, arising as they do from the wrongful conduct of the agents of the society . . . the defendant society is, in my opinion, liable."[56]

Lord Lindley said:

"I entirely repudiate the notion that the effect of the Trade Union Act, 1871, is to legalize trade unions and confer on them the right to acquire and hold property, and at the same time to protect the union from legal proceedings if their managers or agents acting for the whole body violate the rights of

53. Baker, *Labor Relations and the Law* (1922) 8 A. B. A. J. 731, 735.

54. See note 44, *supra.*

55. The desire in this inquiry is to eschew equity. It is recognized that damages may be recovered in suits for injunctions, on the theory that equity having once got jurisdiction will give complete relief, but it is the possibilities of strictly legal actions with which the present investigation is concerned. Furthermore, in spite of somewhat necessary notice of particular torts and breaches of contract, it should be remembered that it is the possibility of recovery, rather than the grounds of liability, that is being dealt with.

56. See [1901] App. Cas. 426, 431.

other people. For such violation the property of trade unions can unquestionably in my opinion be reached by legal proceedings properly framed."[57]

As already seen,[58] actions of tort against trade unions in England have, as a result of this case, been stringently limited, but the doctrine is still there.

Another action of tort, the tort of inducing a breach of contract, met with success under the *Taff Vale* rule in *South Wales Miners' Federation and others v. Glamorgan Coal Co., Ltd.*[59] Upon the instigation of the union, miners ceased working, in breach of their individual contracts with the plaintiff, who recovered damages from the union for such action. It may be noted that in the present case there was no trade dispute, hence no justification for strike, and in cases of this sort the rule of the *Taff Vale Case* should apply today with all its pristine vigor.

Again, the suability erected in Section 9 of the Trade Union Act of 1871 was made the basis of recovery against a defendant union for a libel published in a newspaper owned by the union.[60] There was a judgment for £1000 and costs against the trustees of the union and a direction that they be indemnified out of the union funds.

The feasibility of the English rule for recovery against registered English trade unions for breach of contract is illustrated in the case of *Curle v. Lester*.[61] There action was brought by the discharged secretary of the union against the trustees for back salary and pressed under Sections 8 and 9 of the Trade Union Act. It was held that the action was properly so brought, and recovery was granted the plaintiff.

More important of course is a consideration of the practical effect of the suability of labor unions in the United States. Under the state rules, we come first to the *Branson* case.[62] There it was held that an action would lie, under a statute of the first type,[63] against a labor union in tort for damages resulting to the plaintiff's newspapers from boycotts and violence committed by the defendant union. That the court recognized the importance of suability in determining whether or not such action would lie appears from its language:

"Were this a proceeding in equity, there would be no question about the right of the plaintiff to make certain members of the defendant organizations defendants for all their associates who had a common interest. This, however,

57. See *id.* at p. 443.
58. See p. 32, *supra.*
59. See note 48, *supra.*
60. Linaker v. Pilcher, 70 L. J. K. B. 396 (1901).
61. [1893] 9 T. L. R. 480.
62. 30 Nev. 270, 95 Pac. 354 (1908).
63. See p. 32, *supra.*

is an action at law for damages, and the equity rule does not prevail unless made so by statute."[64]

The court held that the statute did make the equity rule prevail at law.[65]

Another significant case with regard to recovery in tort against a union in a state court is *Bricklayers', Masons' & Plasterers' International Union of America et al. v. Seymour Ruff & Sons, Inc.*[66] The action involved was one against the union by a subcontractor, who, because of a strike against him (with whom the union had no dispute) was unable to perform his contract with the general contractor. The action was brought under the Maryland statute, of the third type,[67] and for the inducing of such breach the plaintiff recovered damages in the sum of $17,310.24.[68]

Again, in the case of *Bowers v. Grand International Brotherhood of Locomotive Engineers*,[69] the practicability of a statute of the same type is demonstrated. The suit was for recovery from the defendant as damages an amount paid by the plaintiff for worthless bonds sold to him by means of false representations. The court held that such action for damages consequent upon the tort of deceit properly lay against the defendant union under the Minnesota statute.[70]

The same type of statute effected a recovery in the case of *Grand International Brotherhood of Locomotive Engineers v. Green*.[71] The plaintiff in the case had been expelled without cause from the defendant union, and in an action apparently sounding in tort, sought damages for the injury done to his personal and property rights by such expulsion. The judgment in the trial court and in an appeal previous to that resulting in the instant decision were adverse to the plaintiff, but in the interim between appeals the Alabama statute[72] was enacted, with the result that the plaintiff finally prevailed and recovered damages in the sum of $12,500.[73]

Actions at law in the state courts against labor unions for breach of

64. See 30 Nev. 270, 282, 95 Pac. 354, 359 (1908).

65. See p. 33, *supra*.

66. 160 Md. 483, 154 Atl. 52 (1931).

67. See note 19, *supra*.

68. 13 LAW AND LABOR 96.

69. 187 Minn. 626, 246 N. W. 362 (1933).

70. See note 19, *supra*.

71. 210 Ala. 496, 98 So. 569 (1923).

72. See note 19, *supra*.

73. The Coronado case also intervened, and the court's language in this regard is particularly interesting: The Coronado case "places liability, so far as the federal courts are concerned, upon the statute law governing those courts, and in no wise impairs the integrity of our decision on the former appeal in this cause. However, the act of October 28, 1921 . . . provided a rule of liability in this as in other causes of like character."

contract also have been successfully prosecuted by means of the theory of suability heretofore observed. In *Brotherhood of Railroad Trainmen v. Cook*[74] the plaintiff union member brought suit for recovery of insurance benefits for the loss of an arm, under the insurance contract embraced in the constitution and rules of the defendant union. The court held that such action was proper under the Texas statute.[75]

To turn now to a consideration of the practical effect of suability in the federal courts, the theory itself depends upon one leading case, namely, the *Coronado Case,* which was an action for damages for a tortious violation of the anti-trust laws. But that such suability, if successfully availed of, is highly practical is strikingly apparent from the fact that the original trial of the cause resulted in a verdict under the act for the plaintiffs of $745,000.[76]

In *Dean v. International Longshoremen's Ass'n,*[77] the rule of the *Coronado Case* was held applicable in a suit against the defendant union for damages resulting from a similar tort, that of preventing the plaintiff from operating his barge line in interstate commerce.

There have been apparently no actions against unions in the federal courts for other types of torts or for breach of contract under the instant rule, but, as aforesaid,[78] the mere absence of such actions is not conclusive proof of their impossibility.

In considering the feasibility of suits against labor unions, an inquiry as to the enforceability of judgments at law against unions is indispensable. The uncollectability of judgments at law in general is notorious, and judgments against unions, far from being exceptions, are in the van of such empty trophies.[79] Doubtless in recognition of that fact, attempts of varying effectiveness to cure it have been made in every Anglo-American jurisdiction. In England the problem was fairly satisfactorily solved by Sections 8 and 9 of the Trade Union Act of 1871.[80] Even before the final decision in the *Taff Vale Case* the following strong policy for collectability was formulated by the court in the case of *Linaker v. Pilcher:*[81]

74. See note 26, *supra.*

75. A statute also of the third type. *Cf.* Syz v. Milk Wagon Drivers' Union, 24 S. W. (2d) 1080 (Mo. App. 1930), and Bruns v. Milk Wagon Drivers' Union, 242 S. W. 419 (Mo. App. 1922) and Fitzpatrick v. International Typographical Union, 149 Minn. 401, 184 N. W. 17 (1921).

76. Judgment was reversed because of lack of proof that interstate commerce was affected within the meaning of the Act.

77. 17 F. Supp. 748 (W. D. La. 1936).

78. See p. 39, *supra.*

79. Labor unions are probably classifiable much as are judgment debtors in general, and the collection of a judgment against a responsible union might be a simple matter.

80. See p. 31, *supra.*

81. See note 60, *supra.*

"In my opinion, 'property' in Section 9 of the Act of 1871 means property generally; and an action to add to the assets of the society, for example, an action brought for breach of contract entered into on behalf of the society, would be an action 'touching or concerning the property . . . of the trade union.' So an action which threatened the assets of the society by a claim for damages, as in this case, would be an action that touched and concerned the property of the society."

The *Taff Vale Case,* naturally enough, expressed a similar policy.[82]

In the United States enforceability of judgments against labor unions is not so firmly established. At least one state statute[83] provides that where judgments are rendered against organizations such as unions the property of such bodies shall be liable to the satisfaction of such judgments, but obviously such a provision would not be perfectly available against all unions, only the greater ones owning property being amenable to it.[84]

From the already over harrowed *Coronado Case* may be gleaned, in this connection, the one further principle of collectability in the federal jurisdiction. The exact words of Chief Justice Taft are:

"We think that such organizations are suable in the federal courts for their acts, and that funds accumulated to be expended in conducting strikes are subject to execution in suits for torts committed by such unions in strikes."[85]

But the innate weakness of all such provisions is reflected in the many current plans offered to perfect the execution of judgments generally,[86] as well as specifically in the case of labor unions.[87] It is without the scope of the present article to attempt to pass upon the relative merits of such schemes, but it is submitted that none of a general scope should be adopted which does not, as part of its effect, abrogate the immunity of unions in this respect.

Finally, we reach a consideration of the practical effect of suability

82. See [1901] App. Cas. 441, 445.

83. ALA. CODE ANN. (Michie, 1928) § 5727.

84. One method of satisfying judgments against national or international unions is to attach, where possible, the funds of local unions in the jurisdiction. Also, since most actions involving unions reach the appellate stage, frequently satisfaction of an affirmed judgment may be had upon the supersedeas bond.

85. Note that in actions against unions the officers and members may be joined as parties defendant, and, in case of recovery, satisfaction of the judgment may be had against such parties individually. Lawlor v. Loewe, 235 U. S. 522 (1915).

86. See Lunn, *Modernize the Process for Enforcement of Judgments* (1936) 22 A. B. A. J. 276, advocating the enforcement of judgments at law by the application of contempt proceedings similar to those of equity. Union officials might be made subject to such proceedings.

87. See, for example, Boyd, *The Case for Regulation of Labor Unions* (1937) 24 VA. L. REV. 103, suggesting the English system of control for American labor unions, which incidentally touches the problem in hand.

as exercised in behalf of unions, rather than against them. Mention has already been made of the scarcity of case law on the point, and the reasons for it,[88] but one or two decisions throw a little light upon the subject. In England, in the case of *Grieg v. The National Amalgamated Union of Shop Assistants, Warehousemen and Clerks,*[89] the union succeeded in obtaining a week's notice for a member who had been discharged by his employer on the ground of dishonesty. The court held that the union was guilty of maintenance in its subsequent action for libel against the employer in behalf of its member, but the inference is that the union's action in assisting its member to recover his wages was perfectly proper.[90]

In the United States the only case discovered approaching a significant expression in this regard is *Wiehtuechter et al. v. Miller et al.*[91] Here the plaintiffs brought an action at law in a representative capacity in behalf of their union for damages of $40,000 resulting from a libel published against the union by the defendants. The court said that the plaintiffs might not maintain the action at law in such capacity, but intimated in the following language that the action might have been successful if brought in the proper manner under the statute:

"While there have been some decisions in the state to the effect that an unincorporated association could not bring suit in its own name, under the present statute it is probable that such a suit might be maintained. . . . Voluntary associations like the one here considered, are by the statute classed with joint stock companies [and granted the power] to sue and be sued".[92]

The dictum in one case is little enough upon which to base a belief that suability at law might be of substantial avail to labor unions, yet such a belief is surely fair. At any rate, it is apparent from the decisions herein reviewed that a high degree of practical effectiveness attends the means of suit discussed in this article.

Here then, it is hoped, has been adequately outlined the law as to the civil suability, at law, of labor unions. The conclusion seems justified that this law is the increasing articulation of the need for means of legal redress against and possibly in behalf of labor unions. It is submitted that even further growth in the direction indicated is both necessary and proper. It must be recognized that labor, as well as capital, is susceptible to corruption and misguidance, to the terrible detriment of both private rights and the public welfare, and in the event of such miscarriage, legal machinery for its remedy and repair should be unhampered. Its complete disencumbrance is to be sought.

88. See note 44, *supra.*

89. [1906] 22 T. L. R. 274.

90. For a discussion of this case see 1 English and Empire Digest 84.

91. 276 Mo. 322, 208 S. W. 39 (1918). *Cf.* San Antonio Fire Fighters' Local Union No. 84 v. Bell, 223 S. W. 506 (Tex. Civ. App. 1920).

92. 276 Mo. 322, 324, 208 S. W. 39, 40 (1918).