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### Notes

George R. Landgrave

John Fetzer

Daniel Chas. Lencioni

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## NOTES

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CRIMINAL LAW—THE DIFFERENCE BETWEEN MEDICAL AND LEGAL INSANITY.—Starting on this subject, one is immediately warned of the hazards in attempting to give a definition of these terms, in order that we may have a rule by which we might determine responsibilities, under both the legal and the medical sense. We find jurists, medical men and psychologists differing with each other and within their profession, concerning a standard definition of insanity, whether legal or medical.

Since the medical and legal authorities recognize different kinds and degrees of insanity, it is best to give you a definition of each. Bouvier says: "Insanity in medicine has to do with a prolonged departure of the individual from his natural mental state arising from bodily disease." <sup>1</sup>

"In law insanity is such a deprivation of reason that the subject is no longer capable of understanding and acting with discretion in the ordinary affairs of life." <sup>2</sup>

Although there are some decisions to the contrary,<sup>3</sup> it must now be regarded as well settled that mere mental depravity or medical insanity, so called, which results, not from any disease of mind, but from a perverted condition of the moral system, where the person is mentally sane, does not exempt one from responsibility for crimes committed under its influence.

In *Andersen v. State*,<sup>4</sup> where the petitioner was convicted of murder in the first degree and sentenced to be hanged, on petition for a new trial on the ground of newly discovered evidence, the court said: "The courts have been slow to recognize moral insanity as an excuse for crime, but it exists, and a jury where satisfied of its existence in a particular case ought to consider it in determining the degree of the crime. Unsoundness of mind is a fact which is not susceptible of direct proof and it is a consideration of importance in the present case, that even if the proof should not establish the total want of responsibility by reason of insanity, yet it might show that the prisoner's mind was so impaired that he was incapable of a deliberate, premeditated murder and so should be convicted only of murder in the second degree."

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<sup>1</sup> BOUVIER'S LAW DICTIONARY, p. 1052.

<sup>2</sup> Snyder v. Snyder, 142 Ill. 60 (1892).

<sup>3</sup> Scott v. Commonwealth, 4 Metc. (Ky.) 227 (1863).

<sup>4</sup> 43 Conn. 514 (1876).

The prevailing American rule is set forth in the case of *Sharp v. State*<sup>5</sup> where the defendant was indicted for the offense of sodomy and the defense of insanity at time of offense is set up, and the court said: "In criminal jurisprudence, persons who indulge in the excessive use of intoxicants, and thereby become degraded and depraved in their morals, are not necessarily, for that reason alone, to be considered insane, so as to absolve them from responsibilities for a crime committed."<sup>6</sup>

Although the evidence upon the issue of insanity of the defendant in a criminal case may be weak and possess but little weight, still if it is of such strength that the jury may reasonably infer that the defendant was in contemplation of law, of sound mind at the time he committed the offense, then the question of his insanity, upon the evidence, under the circumstances, is not one open to review by the supreme court on appeal. The court, in *Lee v. State*<sup>7</sup> (where insanity was a defense) said: "Where the circumstances are of such a character that the jury might have reasonably drawn an inference of guilt of the accused, the question of guilt becomes one of fact for the determination of the jury and trial court and is not open to review on appeal."<sup>8</sup>

In *Swartz v. State*<sup>9</sup> the defendant was found guilty of incest, and he brought error. The court said: "Moral insanity as a criminal defense is not recognized in this state. One who knows abstractedly, what is right and what is wrong, must at his peril, choose the right and shun the wrong. He cannot yield to a vicious impulse, and allege mere weakness of will as an excuse."

<sup>5</sup> 161 Ind. 288 (1903).

<sup>6</sup> *Accord*: *Parsons v. State*, 81 Ala. 577, 60 Am. Rep. 193 (1887) (Holding, when insanity is set up as a defense in a criminal case, it must be established to the satisfaction of the jury by a preponderance of the testimony, and a reasonable doubt as to the defendant's sanity, raised by all the evidence, does not justify an acquittal.); *Bell v. State*, 120 Ark. 530, 180 S. W. 186 (1915); *State v. Lyons*, 113 La. 959, 37 So. 890 (1904); *Spencer v. State*, 69 Md. 28, 13 Atl. 809 (1888); *Bothwell v. State*, 99 N. W. 669 (Neb. 1905); *Mackin v. State*, 36 Atl. 1040 (N. J. 1897); *Flanagan v. People*, 11 Am. Dec. 731 (N. Y. 1873); *State v. Potts*, 6 S. E. 657 (N. C. 1888); *Leach v. State*, 3 S. W. 539 (Tex. 1886).

<sup>7</sup> 156 Ind. 54 (1901).

<sup>8</sup> *Accord*: *Blume v. State*, 154 Ind. 343 (1900); *Rinkard v. State*, 157 Ind. 534 (1901); *Braxton v. State*, 157 Ind. 213 (1901); *People v. Kerrigan*, 73 Cal. 222, 14 Pac. 849 (1887) (Defendant set up defense of moral insanity to charge of murder; the court said: "Moral insanity, as distinguished from mental derangement, is no excuse for crime nor an exemption from punishment therefor."); *People v. Spencer*, 264 Ill. 124, 106 N. E. 219 (1914) (The court said: "Every man is presumed to be sane, and in the absence of evidence which may raise a reasonable doubt as to his insanity, no evidence need be introduced.")

<sup>9</sup> 91 N. W. 190 (Neb. 1902).

In *Sanders v. State*<sup>10</sup> the defendant was convicted of murder and he appealed on the ground of insanity. The court said: "Ungovernable passion is not insanity, and one whose power of will is not impaired by disease, and who, yielding to passion, slays another is subject to the punishment fixed by law."

In *Dunn v. People*<sup>11</sup> the appellant was adjudged guilty of murder and set up the defense of insanity. The court stated: "Where a man knows that it is wrong to do a certain act, and possesses the power of mind to do or not to do the act, it would be a dangerous doctrine to hold that such person should not be held responsible because he might not be regarded entirely and perfectly sane."

In *Hopps v. People*<sup>12</sup> Hopps was indicted for the murder of his wife. The fact of the killing was clearly established, but it was insisted that he was insane at the time of the commission of the act charged. In substance, the court says that this unsoundness of mind or affection of insanity must be of such degree as to create an uncontrollable impulse to do the act charged, by overriding the reason and the judgment, and obliterating the sense of right and wrong and depriving the accused of the power of choosing between right and wrong as to the particular act done.

In many jurisdictions the courts, when insanity is relied on as a defense, do not limit the test of responsibility to the mere capacity to distinguish between right and wrong either generally or as to the particular act but go farther than this and recognize that a person may know the nature and quality of an act which he does, and that it is wrong or contrary to law, and yet do the act under the influence of an insane irresistible impulse; and it is held that, although there may have been a capacity to distinguish between right and wrong as to the particular act, still the party is not responsible if the jury finds that by reason of duress of mental disease he had so far lost the power to choose between right and wrong as not to be able to avoid doing the act, so that his free agency at the time was destroyed.<sup>13</sup>

In most jurisdictions, however, the courts have repudiated this doctrine and have limited the test of irresponsibility on the ground of insanity to the capacity to distinguish between right and wrong. So that an irresistible impulse, even though it is claimed to have been an insane impulse, does not exempt one from responsibility for crime,

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<sup>10</sup> 94 Ind. 147 (1883).

<sup>11</sup> 109 Ill. 635, 644 (1884).

<sup>12</sup> 31 Ill. 385 (1863).

<sup>13</sup> *Plake v. The State*, 121 Ind. 433 (1889); *Hall v. Commonwealth*, 155 Ky. 541 (1913); *People v. Durfee*, 29 N. W. 109 (Mich. 1886).

where his mental capacity was such that he had a knowledge of right or wrong as to the particular act.<sup>14</sup>

Side by side with this doctrine of the criminal law which makes persons, who from a medical point of view are insane, responsible for their criminal acts is another, equally well recognized, *viz.*, that a kind and degree of insanity which would not excuse a person for a criminal act may render him legally incompetent for the management of himself or his affairs.<sup>15</sup>

Mere imbecility or weakness of mind, however great, is not insanity. There must be a total want of understanding.<sup>16</sup>

To avoid a deed or other instrument on the ground of insanity it is indispensable that such instrument be the product of the insanity.<sup>17</sup>

The general rule, universally laid down, that a deed or other conveyance of an insane person is void or voidable, does not refer to insanity in its technical meaning. And a deed may be upheld in a proper case without reference to the abstract question whether the grantor was sane or insane. The mere fact that the mind of the grantor was to some extent impaired is not sufficient to invalidate the deed.<sup>18</sup>

In *Somers v. Humphrey*<sup>19</sup> the court said: "Imbecility of mind is not sufficient to set aside a contract where there is not an essential privation of the reasoning faculties, or an incapacity of understanding and acting with discretion in the ordinary affairs of life. The law cannot undertake to measure the validity of contracts by the greater or lesser strength of the understanding; and if the party be *compos mentis*, the mere weakness of his mental powers does not incapacitate him."<sup>20</sup>

In conclusion, it may be said, with reasonable assurance, that the legal profession considered as a whole consistently holds that it is necessary for the defendant to prove his insanity in the particular act accused, while the medical profession always holds the person insane at the slightest provocation and that a person might have a diseased mind and be insane as to all his acts and should be, in contemplation of law, not responsible.

*George R. Landgrave.*

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<sup>14</sup> *Davis v. State*, 32 So. 822 (Fla. 1902); *State v. Lyons*, 37 So. 890 (La. 1904).

<sup>15</sup> *Stevens v. State*, 31 Ind. 485 (1869).

<sup>16</sup> *Samson v. Ladies of Maccabees*, 131 N. W. 1022 (Neb. 1911); *Johnson v. Miller*, 110 Neb. 830 (1923).

<sup>17</sup> *Schley v. Horan*, 118 N. W. 659 (Neb. 1908); *Blakely v. Blakely*, 33 N. J. Eq. 508 (1881).

<sup>18</sup> *Lindsey v. Lindsey*, 50 Ill. 79, 99 Am. Dec. 489 (1869); *Guild v. Warner*, 149 Ill. 105 (1893); *Hovey v. Chase*, 52 Me. 305, 83 Am. Dec. 514 (1864).

<sup>19</sup> 24 Ind. 231 (1865).

<sup>20</sup> *Accord*: *Freed v. Brown*, 55 Ind. 310 (1876).

NEGOTIABLE INSTRUMENTS.—THE INFANT'S INDORSEMENT.—DISAFFIRMANCE OF INDORSEMENT AND RECOVERY OF THE INSTRUMENT.—The infant plaintiff is payee of a note which he indorses. His indorsee indorses to an innocent party defendant who can qualify as a holder in due course. Either before or after attaining his majority,<sup>1</sup> the infant indorser repudiates his indorsement. Queries: (1) Is the infant entitled to disaffirm his contract of indorsement?; and (2) Is the infant entitled to recover the instrument?

The first question engenders little contentious discussion because in the majority of courts the common law favored an infant and permitted him to disaffirm his contracts whether they were contracts of sale, purchase or indorsement. The common law paternally adopted as to infants' contracts the instinctive protection for infants which is co-eval with mankind and permitted the infant to avoid his liability on a bill or note whether it be secondary or primary liability. The majority of jurisdictions under the common law merchant held that an infant's liability is voidable and that the right to avoid is absolute and superior to the rights of a bona fide holder or assignee.<sup>2</sup> An early Tennessee case held that an infant's liability on a bill or note was void and not voidable.<sup>3</sup>

Since the primary and secondary liability of an infant was voidable we have these results from the decisions: (1) The indorsement of a negotiable instrument by an infant passed the property in the instrument and the holder could recover payment from the maker in the absence of the infant indorser's disaffirmance; and (2) The act of disaffirmance was a defense available to the infant only or his personal representatives and the maker or drawer was precluded from setting up the infancy of the payee-indorser as a defense in a suit by the infant's indorsee.

As to the second question, whether the infant is entitled to recover possession of the instrument after he indorses and sells and the in-

<sup>1</sup> A deed of land cannot be finally avoided before the infant attains his majority. *Sims v. Everhardt*, 102 U. S. 300 (1880); *Singer Mfg. Co. v. Lamb*, 81 Mo. 221 (1883).

Other contracts may be avoided during infancy or after attaining majority. *Carr v. Clough*, 26 N. H. 280, 59 Am. Dec. 345 (1853); *Shipman v. Horton*, 17 Conn. 481 (1846); *Cummings v. Powell*, 8 Tex. 80 (1852); *Patterson v. Kasper*, 182 Mich. 281, 148 N. W. 690 (1914).

<sup>2</sup> OGDEN, *NEGOTIABLE INSTRUMENTS*, 3 ed., p. 39; *PARSONS, BILLS AND NOTES*, p. 276; *Briggs v. McCabe*, 27 Ind. 327 (1866); *Craig et al. v. Van Bebber et al.*, 100 Mo. 584, 13 S. W. 906 (1890); *Roach v. Woodall et al.*, 91 Tenn. 206, 18 S. W. 407 (1892); *Sewell v. Sewell et al.*, 92 Ky. 500, 18 S. W. 162 (1892); *Searcy et al. v. Hunter*, 81 Tex. 644, 17 S. W. 372 (1891); *Hasler v. Beard*, 54 Ohio St. 398, 43 N. E. 1040 (1896); *Frazier v. Massey*, 14 Ind. 315 (1860); *Nightingale v. Withington*, 15 Mass. 272 (1818); *Guy v. Cooper*, 3 Doug. 65, 99 Eng. Rep. 541 (1782); *Jones v. Darch*, 4 Price 300, 146 Eng. Rep. 471 (1817); *Willis v. Twambly*, 13 Mass. 204 (1818).

<sup>3</sup> *McMinn v. Richards*, 14 Tenn. 9 (1834).

strument is held by a bona fide purchaser, there are no cases in the American reports that directly decide this prior to the Negotiable Instruments Law. There are at least two American cases which hold that an infant is entitled to recover a non-negotiable instrument from an innocent purchaser.<sup>4</sup>

England has an interesting case which does not directly decide the latter question. In the case of *Taylor v. Croker*<sup>5</sup> two infants drew a bill of exchange payable to themselves which was accepted by the defendant. The infant drawers indorsed to one Sizeland who indorsed to the plaintiff, a bona fide purchaser. Sizeland misappropriated the funds. As a defense the defendant proved that the infants demanded the bill from the plaintiff disclosing the fraud of Sizeland and claiming the bill to be theirs, the infants. Lord Ellenborough said: "In an action against the acceptor by an indorsee, it is no defense that the drawers who had drawn the bill payable to themselves and indorsed it, were infants when the bill was drawn." Lord Ellenborough's decision permits of several interpretations: (1) The mere demand by the infants for their bill was not a sufficient disaffirmance to revest them with title to and property in the bill; or (2) An infant cannot disaffirm a contract of indorsement so as to revest himself with title to and property in a negotiable instrument when it is owned by an innocent purchaser-indorsee.

Having no English case which decided an infant's right to a return of a chattel, negotiable instrument or piece of land when it had come into possession of a bona fide purchaser-indorsee, or vendee, it is not certain just what Lord Ellenborough indirectly decided. If the common law of England on revestment of title after disaffirmance was the same as the American common law, Lord Ellenborough erred in his decision because in America when an infant demanded a return of his property it was as though there had been no sale and title reverted to the infant. Since there can be only one legal title to property the plaintiff could not have recovered under American common law. If the common law of England did not permit an infant to recover his property from a bona fide purchaser or indorsee, Lord Ellenborough's decision was correct. Brannan accepts the interpretation that an infant could not recover the instrument.<sup>6</sup>

Until the drafting of the Negotiable Instruments Law in 1896, such was the legal status of an infant's rights and liabilities on a negotiable instrument in the United States.<sup>7</sup> That Act provided by Sec-

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<sup>4</sup> *Willis v. Twambly*, *op. cit. supra*, note 2; *Briggs v. McCabe*, *op. cit. supra*, note 2.

<sup>5</sup> 4 Esp. 187 (1802).

<sup>6</sup> BRANNAN'S NEGOTIABLE INSTRUMENTS LAW, 4th ed. by Zechariah Chaffee, Jr., p. 180.

<sup>7</sup> The Act has been adopted in all the States, the District of Columbia and all Territories except Porto Rico. It has not been enacted in the Canal Zone.

tion 22: "The indorsement or assignment of the instrument . . . by an infant passes the property therein, notwithstanding that from want of capacity . . . the infant may incur no liability thereon." Section 22 has been interpreted to be nothing more than a codification of the law merchant or case law on the subject of disaffirmance. It might be well to consider a few common well known rules regarding the application of statutes before discussing the cases that have been decided under Section 22. A statute is not construed as changing the common law beyond what is expressly stated or necessarily implied, and when a case is doubtful there is a presumption that the drafters of the statute intended no change. The drafters of the Negotiable Instruments Law probably did not intend to abrogate and supersede the common law rule that an infant might affirm or disaffirm his contract of indorsement and in the event that the minor did not disaffirm his indorsement passed title to the instrument. The purpose of the Negotiable Instruments Law was to codify the law merchant and adopt the rules which were concordant with better reasoning and wiser doctrine. Such rules as were uniformly accepted were not changed and an attempt was made to make the law certain and uniform by adopting one or two or more conflicting rules, arising from discordant decisions in the different jurisdictions, which one was thought best to eventuate justice and pronounce the common law. Section 22 is ambiguous and does not clearly state whether an infant might recover his negotiable instrument when it is held by a holder in due course. Section 196 of the Negotiable Instruments Law further provides: "In any case not provided for in this act the rules of the law merchant shall govern." Since there was no common law case that directly decided an infant's right to recover a negotiable instrument when it was owned by a bona fide indorsee, post-Negotiable Instruments Law cases apparently base their decisions on the common law rules permitting an infant to recover a personal chattel, piece of land, and a non-negotiable instrument, and find negotiability and non-negotiability to have no weight.

The corresponding section of the English Bills of Exchange Act is more perspicuous and certain in its language.<sup>8</sup> Section 22 of that Act provides: "Where a bill is drawn or indorsed by an infant . . . having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill and to enforce it against any other party thereto." By unequivocal words it denies the infant's rights to recover his instrument. This section may be a statutory expression of the English common law if Lord Ellenborough decided that an infant could not recover in *Taylor v. Croker, supra*.

*Murray v. Thompson et al.*<sup>9</sup> was the first American case to decide the question of an infant's right to recover his negotiable instrument

<sup>8</sup> Judge Chalmers drafted the English Act and Parliament enacted it in 1882.

<sup>9</sup> 136 Tenn. 118, 188 S. W. 578 (1916).



from an innocent indorsee after disaffirming his contract of indorsement. This case was decided after Tennessee had adopted the Negotiable Instruments Law.<sup>10</sup> The complainant, an infant, was the payee of a note for \$1,750. The note was made payable June 1, 1915, on which day the complainant would become of age. On October 16, 1914, the father of the complainant, with authority of latter, sold the note to Thompson, indorsing the name of his son without apprising Thompson of the payee's infancy and without apprising Thompson that he himself was not the payee. The proceeds were deposited to the complainant's account and later lost in a saloon business enterprise. There was no actual fraud in the transfer to Thompson. The chancellor decreed that the complainant might disaffirm and recover the note, but the Court of Civil Appeals reversed the ruling on the grounds that Section 22 changed the common law so as to deny an infant indorser the right to disaffirm and recover the note. The Supreme Court of Tennessee reversed the decision of the lower court, reasoning thus: "It was to make certain and uniform the law on this point that Section 22 was embodied in the Negotiable Instruments Act. In stipulating that the indorsement of the instrument by an infant 'passes property therein,' it was meant to provide that the contract of indorsement is not void, and that his indorsee has the right to enforce payment from all parties prior to the infant indorser. The incapacity of the minor cannot be availed of by prior parties. It was not intended to provide that the indorsee should become the owner of the instrument by title indefeasible as against the infant, or to make the act of indorsement an irrevocable one."

The next case which directly decided the right to recover was the case of *Strother v. Lynchburg Trust and Savings Bank et al.*<sup>11</sup> Paul M. Strother, infant payee of a negotiable note, indorsed the note to his guardian who negotiated said note to the defendant bank. The guardian then defalcated. Before attaining his majority the infant learned of the defalcation and notified the defendant bank that he disaffirmed his contract of indorsement. This notice was not heeded by the bank and the plaintiff repeated the disaffirmance and repudiation after attaining his majority. The bank refused to make restitution and the plaintiff began suit to recover his note. Judgment for the defendant was reversed on appeal. The Virginia court followed the interpretation of Section 22, established by the case of *Murray v. Thompson, supra*, and reiterated the rule that the indorsement of an infant passes the property in the instrument but the remote purchaser acquires a voidable title.<sup>12</sup> The courts which interpreted Section 22 were hesitant to deny the infant his common law right to dis-

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<sup>10</sup> Tennessee adopted the Act in 1899.

<sup>11</sup> 156 S. E. 426 (Va. 1931).

<sup>12</sup> Virginia adopted the Act in 1898.

affirm his indorsement or sale and recover his chattel or piece of land when the Negotiable Instruments Act neither expressly nor impliedly denied this right.

The situation at common law in reference to an infant's right to disaffirm a sale of a chattel or piece of land was analogous to the present situation of an infant with respect to negotiable paper. A contract of a sale of goods by an infant is voidable and if he elects to rescind the sale and tenders to the purchaser the price received he may recover his chattel or its value from a third person to whom it has been sold without tendering the price received to such person even if the latter qualifies as a bona fide purchaser.<sup>13</sup> Professor Williston writes: "Though a transaction with an infant is merely voidable, it is unlike contracts voidable for fraud or other equitable ground in this respect; even a bona fide purchaser for value of property formerly belonging to an infant, without notice that the seller acquired title directly or indirectly from an infant, cannot retain the property if the infant elects to rescind his transfer of title . . . . This rule has, however, been changed in the Uniform Sales Act, which makes no exception in favor of infants to the rule that a bona fide purchaser for value from one who has a voidable title acquires a good title."<sup>14</sup>

The Uniform Sales Act (§ 24) provides: "Where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a *good* title to the goods, provided he buys them in good faith, for value, and without notice of seller's defect of title." This Act has changed the common law rule as to infant's right to recover his chattel from a bona fide purchaser in a replevin action. It has derogated from the common law's infant protection policy and innovated a policy of *once sold to an innocent purchaser no recovery*. New York decided the case of *Casey v. Kastel*<sup>15</sup> under the Sales Act. In this case the infant plaintiff made an assignment in blank of a stock certificate to its agent, who sold to a bona fide purchaser without authority. The plaintiff joined the United States Steel Corporation, which corporation transferred the stock certificate on its stock book, with the agent defendant. This case decided that an infant's appointment of an agent is a voidable act and does not void bringing the sale within Section 24 of the Uniform Sales Act, and that the rescission of a transfer of a certificate of stock by an infant does not invalidate even a subsequent transfer by the transferee in possession to a purchaser for value in good faith and without notice,

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<sup>13</sup> *Downing v. Stone*, 47 Mo. App. 144 (1891).

<sup>14</sup> WILLISTON ON SALES, 2nd ed., § 14.

<sup>15</sup> 237 N. Y. 305, 142 N. E. 671 (1924).

under the New York Personal Property Law, Section 169, the transfer of the certificate by an infant being made valid when made under Section 162.<sup>16</sup>

In similar cases of transfers of land by infants, the courts were consistent in applying their *chattel recovery policy*. When an infant had title to land which he conveyed, the conveyance was not considered as being void but voidable and his right to disaffirm such conveyance was absolute and superior to equities of other persons and this right could be exercised by the infant against a bona fide purchaser from his grantee. It was not necessary for the infant to turn to a court of equity but he could bring ejectment on the theory that he never made a legal conveyance. If the infant was able to return the consideration or its equivalent he was required to do so but such return was not a consideration precedent to his ejectment action.<sup>17</sup> From these land cases the following deductions can be made: Since the action of ejectment must be brought by one who has the legal title, a statement of disaffirmance is sufficient to avoid the conveyance and revest the infant with legal title, and the parties are reverted to their positions with respect to the title that existed before the conveyance, except that ordinarily the infant is out of possession of his land until the termination of his ejectment action.

From a review of the two principal cases it appears that the drafters of the Negotiable Instruments Act intended no change and improvement in the law as to an infant's contract of indorsement. From a study of the post-Negotiable Instruments Act cases we can conclude that Section 22 provided expressly and impliedly: (1) An infant's incapacity is not a defense available to prior parties; (2) An infant's indorsement is not void but voidable and will pass the property in the instrument; and (3) The common law right to disaffirm and revest himself with title has not been superseded. The Negotiable Instruments Act has added nothing to the negotiability of an infant's indorsement contract other than to make it voidable in a state which held such contract to be void at common law. From a comparison with the Uniform Sales Act it is apparent that a bona fide purchaser of a chattel once owned by an infant is in a position far superior to that of a holder in due course of a note or bill once owned by an infant. The drafters of the Negotiable Instruments Act permitted an excellent opportunity to escape them to change the common law by extirpating this legal anachronism which restricts and hinders the transferability of notes on which an infant is a party. It might be

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<sup>16</sup> New York enacted the Uniform Sales Act into its Personal Property Laws, Sept. 1, 1911.

<sup>17</sup> *Conn v. Boutwell*, 101 Miss. 353, 58 So. 105 (1912); *Mustard v. Wohlford's Heirs*, 15 Gratt. 329 (1859); *Seed v. Jennings*, 47 Or. 464, 83 Pac. 872 (1905); *Miles v. Lingerman*, 24 Ind. 385 (1865).

asked: Of what value is negotiability if transferability does not accompany? Such welfare as infants received under the judge-made common law is excessive and unreasonable and has resulted in what has been termed "infantile paralysis." The free circulation and transferability of negotiable instruments have not been improved by Section 22 and in our day of complicated exchange, when investigation is difficult and frequently so impractical that it is prohibited, holders in due course should have such protection as the drafters of the Uniform Sales Act saw fit to extend to innocent purchasers of chattels. The Uniform Sales Act drafters divorced infant protection from judge-made rules and placed it under a wise legislative policy which was expressed in a succinct, unequivocal and well reasoned statute in accordance with present day needs and conditions. Why should holders in due course purchase a voidable title when an innocent purchaser of a chattel purchases a good title?

*John Fetzer.*

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PICKETING—INJUNCTION—HOW FAR PICKETING IS LAWFUL IN STRIKES.—Picketing has been defined as the act of "a body of men belonging to a trade union set to watch and annoy men working in a shop not belonging to the union or against which a strike is in progress."<sup>1</sup>

A strike is a combined effort by workmen to obtain higher wages or other concessions from their employer, by stopping work at a pre-concerted time. A strike is not of itself illegal.<sup>2</sup>

An injunction is "A prohibitory writ issued by the authority and generally under the seal of a court of equity, to restrain one or more of the defendants or parties, or quasi parties, to a suit or proceeding in equity, from doing, or from permitting his servants or others who are under his control to do an act which is deemed to be inequitable so far as regards the right of some other party or parties to such suit or proceeding in equity."<sup>3</sup>

With these definitions providing a basis for our discussion, we will now consider a concrete case, in order to see how far these acts are permissible. Workmen leave their employer, A. In endeavoring to receive their terms of employment they picket A's premises. A wishes to enjoin the pickets in order to enjoy a free labor market, and that his employees and those wishing to work for him will not be turned

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<sup>1</sup> Beck v. Railway Teamsters' Protective Union, 77 N. W. 13 (Mich. 1898); Goldfield Consol. Mines v. Goldfield Miners' Union, 159 Fed. 500 (1908).

<sup>2</sup> Albro J. Newton Co. v. Erickson, 126 N. Y. S. 949 (1911).

<sup>3</sup> BOVIER'S LAW DICTIONARY, Vol. 1, p. 1038.

away. It is an open question in our law as to what rights the parties have and how far they may go to advance these rights.

First, it will be necessary to consider the complainant's rights and then how far labor is to be protected. The right of the complainant may be placed under two headings: (1) A right based on an existing contract, and (2) The right of "probable expectancy."<sup>4</sup> Some courts rule that mere persuasion will suffice to violate the right;<sup>5</sup> others require some element of fraud or coercion in the defendant's conduct to cause such a breach.<sup>6</sup> That a contract relation should be free from influences of third parties because it is a property right entitled to the protection of the courts of equity is the opinion of *Jersey City Printing Co. v. Cassidy*,<sup>7</sup> where the court said: "The interest of an employer or employee in a contract for services is conceded," and adds, "where defendants in a combination or individually undertake to interfere with and disrupt existing contract relations between the employer and employee it is plain that a property right is directly invaded."

Both law and equity recognize the right of the employer to have a free labor market, and the laborer a free employment market. But this right is not an absolute right. A chancellor must consider whether he would do a greater injury by enjoining the pickets than would result from refusing an injunction and leaving the party to his redress at law. Pickets may have rights equal to those of the complainant. While society has a right to seek services for the lowest possible price, every man has a right to get the most he can in return for his services.<sup>8</sup> This situation is the cause of competition. While competition may be a warfare, the courts act as a referee to the contest, and they must judge what weapons, shields, and methods may be used in the combat.

Coercion has always been condemned. Yet the courts have had quite a bit of difficulty in determining what constitutes coercion. In the case of *Jersey City Printing Co. v. Cassidy*<sup>9</sup> it was held that the test of coercive conduct is the effect of conduct on "the reasonably

<sup>4</sup> *Cumberland Glass Mfg. Co. v. Glass Bottle Blowers' Ass'n*, 59 N. J. Eq. 49, 46 Atl. 202 (1899).

<sup>5</sup> *Jersey City Printing Co. v. Cassidy*, 63 N. J. Eq. 759, 53 Atl. 230 (1902); *Knickerbocker Ice Co. v. Gardiner Dairy Co.*, 69 Atl. 405 (Md. 1908).

<sup>6</sup> *Swain v. Johnson*, 151 N. C. 93 (1909); *Ashley v. Dixon*, 48 N. Y. 430, 8 Am. Rep. 559 (1872); *Beattie v. Callanan*, 81 N. Y. S. 413 (1903).

<sup>7</sup> *Op. cit. supra* note 5.

<sup>8</sup> *Wilbert, etc., v. Driscoll*, 200 Mass. 110 (1908), Held the employer's right to prevent intimidation of his employees by pickets is neither contractual nor statutory, being the common law rule to a reasonably free labor market, but that such right is not absolute, and is subject to conflicting rights.

<sup>9</sup> *Op. cit. supra* note 5.

prudent, reasonably courageous, and not unreasonably sensitive man." We are here faced with the problem that what may be violence in one case is not in another, and the facts of each case must be considered.

Legitimate competition approves of persuasion as a means to better one's economic interest. Who can complain that another has taken away his customers by offering them better wares at lower prices? On the same grounds what employer can complain that strikers or union men have convinced others not to be employed by him because labor will greatly benefit by not working for him under certain conditions? These means are justifiable provided the motive is for economic advancement and not for personal spite. In *Guethler v. Altman*<sup>10</sup> the court said: "We know of no authority holding that an action will lie for persuading a party not to enter into a contract."

Picketing is a broad term; it cannot be unlawful *per se* if it means an act without physical annoyance, or hindrance of anyone, and without molestation. However, it may mean a stationing of pickets to coerce persons willing to work in the place patrolled and it then becomes unlawful and an injunction may be granted.<sup>11</sup>

Courts will grant injunctions even though the parties are liable to a criminal prosecution,<sup>12</sup> or even though the workmen against whom acts are directed are not under a contract to enter into or continue the employment of the person whose premises are picketed.<sup>13</sup>

Generally speaking, when picketing is connected with a purpose antagonistic to the health and welfare of a community it is unlawful and will be restrained regardless of what may be the right or wrong of the wage controversy in furtherance of which the picketing is carried on.<sup>14</sup>

Picketing has been forbidden by statute.<sup>15</sup> A number of courts, although this is a minority rule, condemn all picketing on the grounds

<sup>10</sup> 26 Ind. App. 587 (1901). *Accord*: *Karges Furniture Co. v. Amalgamated Woodworkers' Local Union*, 165 Ind. 421 (1905) (Here the strikers were justified in seeking higher wages).

<sup>11</sup> *Mills v. United States Printing Co.*, 91 N. Y. S. 185, 92 N. E. 214 (1910).

<sup>12</sup> *Vegeahn v. Guntner*, 167 Mass. 92 (1896); *Heitkamper v. Hoffman*, 169 N. Y. S. 533 (1917).

<sup>13</sup> *Vegeahn v. Guntner*, *op. cit. supra* note 12.

<sup>14</sup> *Gottlieb v. Matckin*, 117 Misc. 128, 191 N. Y. S. 777 (1921) (Interference with milk supply).

<sup>15</sup> See *Hardie-Tynes Mfg. Co. v. Cruise*, 189 Ala. 66, 66 So. 657 (1914) (Here picketing is made a misdemeanor by statute).

See, also, *Colter v. Osborne*, 18 Manitoba L. Rep. 471. Canadian Statutes and decisions hold picketing to be unlawful even for the purpose of peaceful persuasion.

English statutes make an exception in favor of attending for the purpose of obtaining or communicating information. See Note in 4 L. R. A. (N. S.) 308.

that picketing in its very nature, though intended for persuasion, is a pretense for intimidation, and peaceful picketing is a mere color or words existing only in name.<sup>16</sup> These courts enjoin picketing whether the persuasion was addressed to present or prospective employees of the complaint.<sup>17</sup> The view taken is that picketing is an unwarranted disruption with free trade<sup>18</sup> and it is immaterial whether the pickets are placed a few feet or a thousand feet from the premises picketed.<sup>19</sup>

In *Connett v. United Hatters*<sup>20</sup> the court held when the employees (unless under contract) leave their employment "they have no right to interfere in the slightest degree with the efforts of the employer to fill their places."

According to the majority rule, peaceful picketing is lawful. In *Goldfield Consolidated Mines Co. v. Goldfield Miners' Union*<sup>21</sup> the court said: "Peaceful picketing in theory is not only possible but permissible and as long as it is confined strictly and in good faith to gaining information, and to peaceful persuasion and argument it is not forbidden by law." Decisions have gone so far as to hold that picketing, the climbing of adjacent telephone poles, the watching of shops, the massing of pickets in the streets and at entrances of picketed premises, and constant surveillance, if confined to obtaining information and lawful persuasion could not be enjoined.<sup>22</sup>

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<sup>16</sup> *Vegeahn v. Guntner*, *op. cit. supra* note 12 (Holmes, J., dissented, saying that the assumption that the patrol necessarily carries with it a threat of bodily harm is unwarranted).

*Atchinson T. & S. R. Co. v. Gee*, 139 Fed. 582 (1905), held "there is and can be no such thing as peaceful picketing any more than there can be chaste vulgarity or peaceful mobbing, or lawful lynching."

<sup>17</sup> *Pierce v. Stablemen's Union*, 156 Cal. 70, 103 Pac. 324 (1909) (The court said: "The public rights are invaded the moment the means employed are such as are calculated to and naturally do incite to crowds, riots, and disturbances of the peace—a picket, in its very nature, tends to accomplish these very things").

<sup>18</sup> *Rosenburg v. Retail Clerk's Assoc. Local No. 428*, 39 Cal. App. 67, 177 Pac. 864 (1918).

<sup>19</sup> *Beck v. Railway Teamsters' Prot. Union*, *op. cit. supra* note 1.

*Barnes v. Chicago Typographical Union*, 232 Ill. 424, Held, "The very fact of establishing a picket is evidence of an intention to annoy, embarrass, and intimidate whether physical violence is resorted to or not."

<sup>20</sup> 76 N. J. Eq. 202, 74 Atl. 138 (1909).

*Knudsen v. Benn*, 123 Fed. 636 (1903), Held, if employees leave their employer it is of no concern to them as to whom is next employed and they are not acting lawfully when inducing others, and their acts are injurious to their former employer.

<sup>21</sup> 159 Fed. 500 (1908).

<sup>22</sup> *Karges Furniture Co. v. Amalgamated, etc.*, *op. cit. supra*, note 10; *Keuffel v. International Assoc. of Mach.*, 116 Atl. 9; 93 N. J. Eq. 429 (1922); *Cumberland Glass Mfg. Co. v. Glass Bottle Blowers' Assoc.*, *op. cit. supra* note 4.

*Contra*: *George Jonas Glass Co. v. Glass Bottle Blowers' Assoc.*, 72 N. J. Eq. 653 (1911); *Thomas Machine Co. v. Brown*, 108 Atl. 116 (N. J. 1918);

*Segenfield v. Friedman*<sup>23</sup> held that the right to picket is founded on constitutional principles and that no sound principle of law prohibits orderly picketing. Peaceful picketing for information and persuasion has been declared lawful by statute.<sup>24</sup>

While pickets are permitted to use peaceful persuasion, yet we cannot draw a line between peaceful and unlawful persuasion so they can be easily defined. Where the line is to be drawn can best be seen by the decisions and the circumstances of each case. It will readily be seen that although pickets are allowed to use lawful means to induce others to assist the striking employees, they must not carry the attempt too far and annoy customers and employees who are unwilling to listen to argument.<sup>25</sup> In *Otis Steel Co. v. Local Union Co.*<sup>26</sup> the court said: "Persuasion too emphatic or too long and persistently continued may itself become a nuisance and its use a form of coercion." The right of persuasion is limited to dissuade but not to restrain men from working.<sup>27</sup>

The question which comes up now is whether the motive of doing damage to another although confined to peaceful persuasion is to be treated a *prima facie* liability in tort. If the motive is not to be treated as a *prima facie* tortious harm then equity will not enjoin such

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*Segenfield v. Friedman*, 193 N. Y. S. 128 (1922) ("The right to picket is founded on constitutional privileges."); *Walter A. Wood Mowing, etc., v. Toohy*, 114 Misc. 185, 186 N. Y. S. 95 (1921) (Striking workmen have as much right to picket as to strike.); *Southern R. Co. v. Machinists' Local Union No. 14*, 111 Fed. 54 (1901); *Christenson v. Kellogg Switchboard & Supply Co.*, 110 Ill. App. 66 (1903) (Held, that where picketing and patrolling are used to mean mere watching, or being in the street should not be enjoined.); *Peckins v. Rogg*, 11 Ohio Dec. Reprint 585 (Held, if picketing is conducted for the purpose of reporting to labor unions the number of men employed by the former employer and to obtain information as to the success of the strike it is lawful if not accompanied by intimidations.); *Iron Molders' Union v. Allis-Chalmers Co.*, 166 Fed. 45 (1908) (Picketing of small number should not be enjoined.); *Tri-City Central Trades Council v. Amer. Steel Foundries*, 238 Fed. 728 (1916); *Beaton v. Tarrant*, 102 Ill. App. 124 (1902); *Foster v. Retail Clerk's Inter. Prot. Ass'n*, 78 N. Y. S. 860 (1903); *Levy v. Rosenstein*, 66 N. Y. S. 101 (1900); *Standard Tube & Forkside Co. v. International Union*, 7 Ohio N. P. 87 (1899) (Pickets were permitted to speak in a proper way to men seeking employment from the owner of the picketed premises, and to explain the matter and make such appeals as were reasonable and proper).

<sup>23</sup> 193 N. Y. S. 128 (1922).

<sup>24</sup> *Truax v. Corrigan*, 20 Ariz. 7 (1918).

<sup>25</sup> *Rogers v. Everts*, 17 N. Y. S. 264 (1891); *Piano & Organ Workers', etc., v. Piano & Organ Supply Co.*, 124 Ill. App. 353 (1906); *Jersey City Printing Co. v. Cassidy*, *op. cit. supra* note 5; *Union Pacific R. Co. v. Ruef*, 120 Fed. 103 (1902); *Niles-Bement Pond Co. v. Iron Molders' Local, etc.*, 246 Fed. 851 (1917) (A picket cannot compel another to listen against his will).

<sup>26</sup> 110 Fed. 698 (1901).

<sup>27</sup> *Iron Molders' Union v. Allis-Chalmers Co.*, *op. cit. supra* note 22; *Jones v. E. Van Winkle Gin and Mach. Works*, 181 Ga. 336, 62 S. E. 236 (1908).



activities, otherwise equity will or will not grant an injunction depending upon the adequacy of the legal remedy, or whether the interference with the rights of the plaintiff can be justified upon the motive of the actor. Some decisions will not restrain peaceful picketing regardless of whether or not irreparable damages are being caused.<sup>28</sup> The contrary view is found in *Tuttle v. Buck*<sup>29</sup> where the court said: "When a man starts an opposition place of business, not for the sake of profit to himself, but regardless of loss to himself and for the sole purpose of driving his competitor out of business, and with the intention of himself retiring upon the accomplishment of his malevolent purpose, he is guilty of a wanton wrong and an actionable tort. In such a case he would not be exercising a legal right or doing an act which can be judged separately from the motive which actuated him. To call such conduct competition is a perversion of terms."

From the majority opinion it is obvious picketing is unlawful when accompanied by intimidation,<sup>30</sup> violence, coercion and threats,<sup>31</sup> physical assault,<sup>32</sup> and abusive language<sup>33</sup> designed to prevent work-

<sup>28</sup> *Walter A. Mowing Mach. Co. v. Toohey*, 186 N. Y. S. 95 (1921) (Peaceful persuasion allowed even though damages are irreparable.); *Foster v. Retail Clerks' Inter. Prot. Ass'n*, 78 N. Y. S. 360 (1902) (The motive of the pickets cannot be enjoined if only persuasion is used); *Atkins v. W. A. Fletcher Co.*, 65 N. J. Eq. 658, 55 Atl. 1074 (1903) (The employer must show his remedy at law is inadequate before equity will interfere).

<sup>29</sup> 107 Minn. 145, 119 N. W. 946 (1909).

<sup>30</sup> *American Steele v. Wire Drawers' & Die Union No. 130*, 90 Fed. 608 (1898); *Cumberland Glass, etc. v. Glass Bottle, etc.*, *op. cit. supra* note 4; *Keuffel v. International Assoc. of Mach.*, *op. cit. supra* note 22 (Workmen willing to be employed but interfered with by intimidation are entitled to relief by injunction); *Pope Motor Car Co. v. Keegan*, 150 Fed. 148 (1906); *Karges Furniture Co. v. Amalgamated Woodworkers' Local Union*, *op. cit. supra* note 22; *Jersey City Printing Co. v. Cassidy*, *op. cit. supra* note 5; *Standard Tube & Forkside Co. v. International Union*, 7 Ohio N. P. 87 (1899); *Goldberg, etc., v. Stablemen's Union*, 149 Cal. 429, 86 Pac. 806 (1906).

<sup>31</sup> *Union Pac. R. Co. v. Ruef*, *op. cit. supra* note 25 ("Picketing in and of itself is not unlawful, but when accompanied by violence or any manner of coercion or intimidation to prevent persons from engaging in service of employer, it is unlawful."); *Herzog v. Fitzgerald*, 77 N. Y. S. 366 (1902) (An injunction was granted to restrain the acts of violence and threats but not specifically to restrain picketing.); *Connett v. United Hatters*, 74 Atl. 188, 76 N. J. Eq. 202 (1909) (Here turbulent affrays in the street, attacks on employees, assembling of mobs resulting in riots, and annoying of employees were all considered unlawful means of picketing).

<sup>32</sup> *Union Pac. R. Co. v. Ruef*, *op. cit. supra* note 25 (Held, that assaults committed and threats of violence made though subject to criminal law does not deprive equity from interfering).

<sup>33</sup> Abusive language is as bad as physical violence, moreover every one has the right to travel without having the disagreeable done to them. *Beck v. Railway Teamsters' Prot. Union*, *op. cit. supra* note 1 (An injunction was granted to restrain abusive language intended to drive away employees.); *Beaton*

men from continuing in or accepting employment with the person against whom the acts are directed and injunctions will be granted.<sup>34</sup>

The case of *Union Pacific R. Co. v. Ruef*<sup>35</sup> is interesting as the court said intimidation cannot be defined but everyone knows whether acts are intimidating or not. Yet this rule leaves the court to determine by the degree of annoyance whether the picketing should be enjoined or not, and this not completely satisfactory as it forms no rigid rule or guide.

Intimidation can best be understood by making reference to a few instances of acts which courts have agreed upon as tending to intimidate and thus enjoin. In *Goldberg B. & Co. v. Stablemen's Union*<sup>36</sup> the court enjoined a union and its members from picketing in front or in the immediate vicinity of the business place where pickets had carried posters bearing the words, "Unfair firm; reduced wages of employee 50 cents per day. Please don't patronize." The court said the act tended to intimidate customers and other employees.

Although most courts take the view that picketing and the stationing of men may be peaceful<sup>37</sup> for the purpose of "patrolling" or "persuading," yet these courts concede that when the number of the patrol is too great the picket becomes *per se* intimidating and should be restrained by injunction. The number picketing cannot be so large as to overawe men seeking employment or going to work.<sup>38</sup> Under the Clayton Act, Federal courts will not grant an injunction to prevent

v. Tarrant, 102 Ill. App. 124 (1902) (Here pickets were restrained from calling employees "scabs" and other abusive names.); *Levy v. Rosenstein*, *op. cit. supra* note 22; *George J. Glass Co. v. Glass Bottle Blowers' Assoc.*, 77 N. J. Eq. 219 (1910); *Jordahl v. Hayda*, 82 Pac. 1079 (1902); *Atchinson T. & S. F. R. Co. v. Gee.*, 139 Fed. 582 (1905).

<sup>34</sup> *Pope Motor Car. Co. v. Keegan*, 150 Fed. 148 (1906) (The injunction went only to those acting unlawfully.); *Badger Brass Mfg. Co. v. Daly*, 137 Wis. 601, 119 N. W. 328 (1909); *Folsom Engraving Co. v. McNeil*, 235 Mass. 269, 126 N. E. 479 (1920); *N. Y. Central Iron Works v. Brennan*, 105 N. Y. S. 865 (1907); *O'Neil v. Behanna*, 182 Pa. 236, 38 L. R. A. 382 (1897).

<sup>35</sup> *Op. cit. supra* note 25.

<sup>36</sup> *Op. cit. supra* note 30.

<sup>37</sup> *Amer. Eng. Co. v. International Molders' Union*, 25 Pa. Dist. 564 (Held, it was permissible to maintain a reasonable number of pickets.); *Amer. Steel Fdy. v. Tri-City C. Trades Council*, 257 U. S. 185 (1921) (Strikers were limited to one representative at each point of ingress and egress at the picketed premises, and all others were enjoined from congregating in the neighborhood street.); *Iron Molders' Union v. Allis-Chalmers Co.*, *op. cit. supra* note 22 (Picketing of small number should not be enjoined.).

<sup>38</sup> *Standard Tube & Forkside Co. v. International Union*, *op. cit. supra* note 30; *Everett-Waddig Co. v. Richmond Typographical Union*, 53 S. E. 273 (1906); *Niles-Bement Pond Co. v. Iron Molders' Union, etc.*, *op. cit. supra* note 25 (A large number of pickets terrorizes and thus is unlawful.); *Keuffel v. Inter. Assoc. of Mach.*, *op. cit. supra* note 22 (Picketing in numbers of 25 to

peaceful picketing. However, this Act does not give a right to assemble or picket in such numbers as to become a menace and produce intimidation by the very fact of the number.<sup>39</sup>

Where the strike has become a dead issue further picketing is classed as a nuisance and can be enjoined.<sup>40</sup> Picketing will be enjoined though peaceful when it is conducted in furtherance of an unlawful strike.<sup>41</sup> In *Philip Henrici Co. v. Alexander*<sup>42</sup> where in fact there was no strike and pickets made statements that there was one, the court declared the act unlawful and enjoined the pickets.

Generally speaking picketing, for the purpose of inducing a breach of contract<sup>43</sup> or to induce customers not to patronize certain employers<sup>44</sup> is enjoined. In *Walton Lunch Co. v. Kearney*<sup>45</sup> an injunction was granted where members of a union picketed so as to cause disturbances at their former employer's place, harrasing and annoying customers and employees.

In its very nature blocking of an entrance to a business place or picketed premise is unlawful. It is embarrassing to whoever wishes to enter and annoying to the degree it will discourage him to do so. Besides constituting a public nuisance, this conduct is a nuisance to the one on the premises and can be enjoined by him.<sup>46</sup>

To summarize the view in the cases it may be said the lawfulness or unlawfulness of picketing is to be governed according to the particular circumstances of each case. If the picketing becomes a weapon to wield beyond peaceful persuasion and destroy the right of those entitled to be employed or seek employment it is illegal. The boundary between lawful and unlawful conduct in the attempt to induce persons, not under contract, to leave the employment of one whose premises are picketed, or not to enter such employment is the line between

50 may constitute intimidation although no acts of violence were committed.); *Goldfield Consol. Mines Co. v. Goldfield Miners' Union* No. 220, 159 Fed. 500 (1908) (Pickets in numbers of 30 to 100 held to constitute intimidation.).

<sup>39</sup> *Kinlock Tel. Co. v. Local Union No. 2*, 265 Fed. 312 (1920).

<sup>40</sup> *Dail-Overland Co. v. Willy's Overland Inc.*, 263 Fed. 171 (1920) (When a plant is operating at full capacity, further acts of picketing are unlawful.).

<sup>41</sup> *United Shoe Mach. Corp. v. Fitzgerald*, 237 Mass. 537, 130 N. E. 86 (1921); *Hughes v. Kansas City Motion Picture Mach. Operators Local No. 170*, 282 Mo. 304, 221 S. W. 95 (1920).

<sup>42</sup> 198 Ill. App. 568, 83 N. E. 940 (1916).

<sup>43</sup> *Rice, etc., Mach., etc., Co. v. Willard*, 136 N. E. 629 (Mass. 1922); *Parker Paint etc. Co. v. Local Union No. 813*, 105 S. E. 911 (1921).

<sup>44</sup> *Goldberg B. & Co. v. Stablemen's Union*, *op. cit. supra* note 30; *Jersey City Printing Co. v. Cassidy*, *op. cit. supra* note 5.

<sup>45</sup> 236 Mass. 310, 128 N. E. 429 (1920); *Levy v. Rosensteedin*, *op. cit. supra* note 22.

<sup>46</sup> *Standard Tube & Forkside Co. v. International Union*, *op. cit. supra* note 30.