

# Michigan Law Review

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Volume 44 | Issue 5

---

1946

## LABOR UNIONS-SUABILITY OF UNINCORPORATED LABOR UNION IN ITS COMMON NAME

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### Recommended Citation

Joseph R. Brookshire S.Ed., *LABOR UNIONS-SUABILITY OF UNINCORPORATED LABOR UNION IN ITS COMMON NAME*, 44 MICH. L. REV. 869 (1946).

Available at: <https://repository.law.umich.edu/mlr/vol44/iss5/18>

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LABOR UNIONS—SUABILITY OF UNINCORPORATED LABOR UNION IN ITS COMMON NAME—Plaintiff brought suit in a district court of the United States against the defendant union in its common name, and officers of the union for

an alleged libel. The union was not incorporated, no substantive right protected by federal law was involved, and the state wherein the suit was brought, Illinois, did not have a statute permitting actions at law against an unincorporated association in its own name. The district court dismissed the action against the union on the ground that it was not a legal entity; the plaintiff appealed. *Held*, under the common law of Illinois, an unincorporated association was not suable in its common name. Dissent, the National Labor Relations Act made the union a legal entity suable in its own name, and the Illinois courts are bound by the federal law. *Pullman Standard Car Manufacturing Company v. Local Union No. 2928 of United Steelworkers of America, CIO*, (C.C.A. 2d, 1945) 152 F. (2d) 493.

The principal case presents a question which has been and continues to be a matter of lively discussion.<sup>1</sup> While it might seem that cases involving this issue have long since lost their interest, writers have found, at intervals, reason for discussing them anew.<sup>2</sup> The implications of the dissenting opinion in the principal case are the reason for this note. The dissent points out that the purposes of the National Labor Relations Act are to be accomplished by unions acting as entities, and by employers treating them as such. "The Union was given the right in its own name to bargain, and contract, and as an entity to enforce such contract in courts of law. To say that either Congress or the Labor Union intended that the employer could not likewise seek relief in a court of law against the same entity for fraudulently accomplishing the purposes of the Act, would be to attribute to them a characteristic which, to say the least, would not be charitable."<sup>3</sup> While the logic of the dissent is very persuasive, its contribution to the argument used by the broad constructionists of the *Coronado* case is negligible,<sup>4</sup> consisting simply of the addition of the National Labor Relations

<sup>1</sup> See WARREN, CORPORATE ADVANTAGES WITHOUT INCORPORATION 648 and esp. 661-667 (1929), and Dodd, "Dogma and Practice In The Law of Associations," 42 HARV. L. REV. 977 (1929), for conflicting interpretations of *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344, 42 S. Ct. 570 (1922).

<sup>2</sup> Magill, "The Suability of Labor Unions," 1 N. C. L. REV. 81 (1922); Sturges, "Unincorporated Associations as Parties to Actions," 33 YALE L. J. 383 (1924); 37 ILL. L. REV. 70 (1942); Witmer, "Trade Union Liability: The Problem of the Unincorporated Corporation," 51 YALE L. J. 40 (1941).

<sup>3</sup> Principal case at 498. The majority of the court recognized that the law of Illinois is clearly that an unincorporated association is not suable in its own name. See *Cahill v. Plumbers, Gas and Steam Fitters' and Helpers' Local 93*, 238 Ill. App. 123 (1925); *Montgomery Ward v. Franklin Union, Local No. 4*, 323 Ill. App. 590, 56 N.E. (2d) 476 (1944); and *Kingsley v. Amalgamated Meat Cutters*, 323 Ill. App. 353, 55 N.E. (2d) 554 (1944). If the Illinois law had not been clear, the common law would control, and the same result would be reached. See *Baskins v. United Mine Workers of America*, 150 Ark. 398, 234 S.W. 464 (1921); *Powers v. Bricklayers' Union*, 130 Tenn. 643, 172 S.W. 284 (1914); *Moffat Tunnel League v. United States*, 289 U.S. 113, 53 S. Ct. 543 (1933); *Tyler v. Union*, 285 Mass. 54, 188 N.E. 509 (1933); Sturges, "Unincorporated Associations as Parties to Actions," 33 YALE L. J. 383 (1924).

<sup>4</sup> *Russell v. Central Labor Union*, (C.C.A. 2d, 1924) 1 F. (2d) 412. The *Coronado* decision was interpreted as establishing the rule that unincorporated labor unions were suable in their common name. See 2 MOORE, FEDERAL PRACTICE, § 17.17 at

Act<sup>5</sup> to the list of federal statutes which might be interpreted as indicative of a Congressional intent to treat unincorporated labor unions as legal entities. Prior to the adoption of rule 17b of the Federal Code of Procedure<sup>6</sup> we find the Supreme Court holding that an unincorporated association must be authorized by statute in order to sue in its common name. The rule rejects this restriction upon the *Coronado* case,<sup>7</sup> but at the same time does not go so far as to treat unincorporated associations as legal entities in all cases in federal courts regardless of state law. If the basis for the dissenting opinion is merely a disagreement as to what the common law rule of Illinois is, then it loses its interest.<sup>8</sup> But, to the extent that it is founded upon an idea that implications of federal enactments may be used by a federal court to change an established rule, the dissent is unique. Again rule 17b stands as an obstacle to such a result, because this reasoning, if adopted, would nullify the provision that state law determines legal capacity to sue or be sued where no substantive rights protected by federal law are involved. As pointed out in the principal case, "the legislature of a state as well as its courts are free to proclaim such rule as they may see fit."<sup>9</sup> The decision reached in the principal case, therefore, is clearly correct. One may quite readily agree with the dissenting judge in his view that the present stature of unionism is such as to require legal competency and responsibility. But the way to this end must be direct action by those empowered to make federal and state law.

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p. 2098 (1938); also, Sturges, "Unincorporated Associations as Parties to Actions," 33 *YALE L. J.* 383 (1942).

<sup>5</sup> 49 Stat. L. 449, § 1 (1935), 29 U.S.C. (1940) § 151.

<sup>6</sup> 28 U.S.C. (1940) 2621. Pertinent provisions of rule 17b are: "In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held; except that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States."

<sup>7</sup> *Moffat Tunnel v. United States*, 289 U.S. 113, 53 S. Ct. 543 (1933).

<sup>8</sup> The dissent recognized the common law rule at 497, wherein it is said that "the Illinois cases relied upon in the majority opinion . . . merely adhere to appellee's interpretation of the old common law rule, that an unincorporated association can neither sue nor be sued, which means that such an association can become a legal entity only by incorporation."

<sup>9</sup> The principal case at 496.