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real party in interest. A third type of statute, which is applied in New York and Pennsylvania, makes it mandatory that an action be prosecuted in the name of the real party in interest, but makes a specific exception where subrogation or a "loan receipt" transaction has occurred.

Under the specific and permissive statutes no real problem arises over the "loan receipt". However, under the mandatory statutes, if a state holds that a "loan receipt" is payment, then the interpretation the court puts on the phrase "real party in interest" becomes of importance. The majority of jurisdictions hold that the real party in interest is the person who is to be benefited or injured by the judgment. Under this view it is held that the insurer must bring the action when the insured has been fully paid. Another view prescribes that the real party in interest is the person who holds the legal title to the claim. Here it would seem that the action must be brought by the insured.

There can be little doubt that the appearance of an insurance company in legal proceedings tends to prejudice the jury and obstruct justice. The courts, by construing the "loan receipts" as loans and not payments and by allowing the insurance company to sue in the name of the insured, are not only giving effect to the intent of the parties, but are aiding in the procurement of a fair trial.

Larry Hoffman

LABOR LAW — LEGALITY OF PEACEFUL PICKETING DETERMINED BY UNION'S OBJECTIVES

Plaintiff's employees were unwilling to join defendant's labor union. The defendant union picketed plaintiff's plant, interfering with the sale and distribution of company's products, and causing injury to the plaintiff and its employees, in an attempt to compel the company to force its employees to join the union. In an action to enjoin defendant's picketing, held that the plaintiff is entitled to an injunction. An attempt to force employees to join

§ 1-57 (1943); N.D. REV. CODE § 28-0201 (1943); OHIO GEN. CODE ANN. § 11241 (Supp. 1952); OKLA. STAT. ANN. tit. 12, § 1221 (Supp. 1952); OR. COMP. LAWS ANN. § 51-301 (1940); S.C. CODE § 10-287 (1952); S.D. CODE § 33.0401 (1939); UTAH CODE ANN. rule 17a (1953).

14. Ibid.
a union by coercing their employer is an unlawful labor objective. Way Baking Co. v. Teamsters & Truck Drivers Local No. 164, AFL, 56 N.W.2d 357 (Mich. 1953).

Combinations of laborers organized for the purpose of raising wages were held to be unlawful by early American decisions. In one instance, a labor organization was held to be a violation of a statute prohibiting conspiracies to do any act injurious to trade or commerce. In another, the court made it clear that a combination to get fair wages would be lawful, while at attempt to gain unreasonable wages would be unlawful. However, for many years, the courts, without regard to statute, have recognized the right of workmen to organize in labor unions for the purpose of promoting their common welfare by lawful means as a fundamental right guaranteed by the Constitution.

Although it has been held that the constitutional guaranty of free speech may not be abridged by the policy of a state, the right to picket peacefully, as the right to speak freely, is not absolute. At present, the general trend is to permit the states reasonable discretion in adopting a policy forbidding peaceful picketing. Only where the discretion has been abused will an injunction be held to be invalid as a deprivation of the right of free speech. The constitutional guaranty which protects the right of peaceful picketing is lost when the picketing ceases to be used for the purposes of persuasion, and is used instead as a means of coercion.

Peaceful picketing must have a lawful or proper labor objective.

2. Sayre v. Louisville Union Benevolent Association, 1 Duv. 193 (Ky. 1863); People v. Fisher, 14 Wend. 9 (N.Y. 1835).
3. People v. Fisher, 14 Wend. 9 (N.Y. 1835).
4. Sayre v. Louisville Union Benevolent Association, 1 Duv. 143 (Ky. 1863).
11. Fred Wolfman v. Root, 356 Mo. 976, 204 S.W.2d 733 (1947), cert. denied.
If employed for unlawful objectives, it will be enjoined as it is not protected under the constitutional guaranty of freedom of speech. When lawful and unlawful objectives are combined, the fact that one of the several is lawful does not make the picketing lawful; picketing for both purposes is unlawful. The propriety of an injunction against picketing must be tested by determination of whether the union sought to achieve a proper labor objective.

The courts are not in accord as to what constitutes a lawful union objective under the common law or pertinent statutes. They do not agree whether it is a lawful objective for a union to coerce self employed persons to join the organization, to exert pressure to induce one who operates his business without outside help to employ union help, or to observe union wage, hours, and work standards or other conditions of immediate employment. Also they are in discord whether it is lawful

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333 U.S. 837 (1948); Retail Clerks Union Local 779 v. Lerner Shops, 140 Fla. 865, 193 So. 529 (1939); Roth v. Local Union No. 1460 of Retail Clerks Union, 216 Ind. 363, 24 N.E.2d 280 (1939); Kincaid-Webber Motor Co. v. Quinn, 362 Mo. 375, 241 S.W.2d 886 (1951).


16. The determination of the purpose or objective sought to be accomplished is one of fact. Fred Wolferman v. Root, 356 Mo. 976, 204 S.W.2d 733 (1947).


for a union: to attempt to force employees to become unionized either directly or indirectly through their employer, to peacefully picket in the absence of any dispute between the employer and his employees, or to resort to tactics calculated to interfere with another's business to coerce him to stop working as an operative in his own business. If the courts find that an objective is lawful, they hold that it is an implicit guaranty of the 1st and 14th Amendments of the Federal Constitution. When they deem it unlawful they hold that the right to picket, however peacefully, is subject to public policy.

Picketing merely for the purpose of disseminating union news is a lawful objective under the right of free speech, but the constitutional guaranty of free speech does not extend its immunity to speech or writing used as an integral part of conduct in violation of public policy as established by a state criminal statute or labor relations act. Any group which

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26. **Unlawful**: Roraback v. Motion Picture Machine Operators Union, 140 Minn. 481, 168 N.W. 766 (1918), rehearing denied 140 Minn. 481, 169 N.W. 529 (1918); Parker Paint & Wall Paper Co. v. Local Union No. 813, 87 Va. 631, 105 S.E. 911 (1921).


undertakes to do that which is contrary to express public policy engages in the performance of an unlawful act.  

Whenever an interest valuable to society has needed encouragement, the United States, through its courts and legislative bodies, has developed it; but as soon as it becomes too strong attempts are made to curtail it. Capital reached its peak under *laissez faire*; then the government restricted it. Labor reached its peak under the New Deal, now it has been limited. The writer strongly feels that attempts will be made by the present Administration to find a balance between the conflicting interests of capital and labor.

Norton H. Schwartz

**LIENS — PRIORITY OF MECHANICS’ LIEN OVER TAX LIEN**

The United States sought to prevent a materialman from foreclosing his lien, claiming priority of its tax lien over the prior recorded, unperfected mechanic's lien. *Held*, the mechanic's lien had priority by the court's interpretation of the applicable federal and Florida statutes.  


Neglect or refusal by anyone to pay any federal tax after demand gives a lien to the United States against that person's real and personal property. Originally this lien became operative upon the receipt of a list of assessments by the collector of internal revenue, and was valid against other claimants without any necessity for filing notice. An amendment was passed requiring filing of notice for the lien to have validity against mortgagees, judgment creditors, pledgees, and purchasers. In its application, this section of the Internal Revenue Code, which grants a pre-