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## COMMENT.

### DOES MALICIOUS INTERFERENCE WITH EMPLOYMENT CONSTITUTE A TORT?

Several cases have recently been decided in the United States, which are interesting as showing the attitude of American courts toward the leading English case of *Allyn v. Flood*, L. R. (1898) App. Cas. 1.

In that case, the discharge of an *employé* of the Glingall Iron Co. was brought about by the action of defendant, the delegate of a labor union, who told the officers of the Iron Co. that the union men working for them would be called out unless the plaintiff was discharged. The plaintiff, who was thereupon discharged, brought an action against the delegate

and two higher officers of the union, but it appeared that the act of the delegate had been neither authorized nor adopted by the officers, so the action as to them was discontinued. On appeal to the House of Lords, the majority of the court held that no legal right of the plaintiffs had been violated; that the action of the defendant was not unlawful, there being no contractual relations between the Iron Co. and the plaintiff; and that the presence or absence of malice on part of defendant had no effect in determining whether his conduct was lawful or unlawful. The court below and a minority of the highest court recognized a legal right in the plaintiff to pursue his calling unmolested, and held that if defendant acted *with malice*, or in other words without justifiable cause or excuse, in interfering with such right, then such conduct was actionable.

It will be noticed that the element of combination or conspiracy is absent in this case, and several of the judges intimated that the decision might be different if such elements were present. But this point is now settled, so far as England is concerned, by the case of *Hutley v. Simmons*, L. R. (1898) Q. B. D. 181, which holds that the element of conspiracy does not make that unlawful which, if done by one alone, would be lawful.

In the United States, previous to *Allyn v. Flood*, the weight of authority seems to favor the view taken by the minority in that case. *Lucke v. Clothing Assembly*, 77 Md. 396, 26 Atl. 505; *Curran v. Gahn*, 152 N. Y. 33; *Walker v. Cronin*, 107 Mass. 555; see also, 11 *Harvard Law Rev.* 449; 228 *Am. Law Rev.* 47.

The recent New York case of *Natl. Protective Assn. v. Cumming*, 53 App. Div. 227, decided by the Supreme Court in July, 1900, was an action brought by one labor union against another, to enjoin the latter from in any way interfering with the work or employment of any member of the plaintiff union. The Supreme Court held that this case came within the principle of *Allyn v. Flood*, and reversed the decision of the Special Term granting the injunction. It can hardly be said that this case does come within the principle of *Allyn v. Flood*, inasmuch as the additional element of conspiracy or combination is present. But it does come within the principle of *Hutley v. Simmons*, *supra*, which is the latest statement of the English rule. This case, however, is not satisfactorily distinguished by the Court from the previous New York case of *Curran v. Gahn*, *supra*, which case is not in harmony with the recent English

decisions, and we shall await the decision of the Court of Appeals with interest.

The question has also arisen in Massachusetts in two cases decided since *Allyn v. Flood*. The case of *Plant v. Woods*, 176 Mass. 492, decided in September, 1899, was an action brought by one labor union to enjoin another labor union from any acts tending to prevent members of plaintiff's union from securing employment or continuing in employment. The Court recognized the legal right of plaintiffs to pursue their calling unmolested, and also reasserted the Massachusetts doctrine that the presence or absence of malice may determine whether an act is lawful or unlawful, thus reaching conclusions on these two points contrary to those reached by the English court. Holmes, C. J., dissents; but he does not deny the principle, he merely denies the application of the principle to the case at bar. He admits that if malice were present there would be a right of action; but contends that malice was not present in this case, inasmuch as the purpose of the defendants, which was to strengthen their union, was justifiable.

Again, in *Moran v. Dunphy*, 59 N. E. 125, decision in January, 1901, the same Court goes a step further and holds that maliciously and without justifiable cause to induce a third person to end his employment of the plaintiff, whether the inducement be false slander or *successful persuasion*, is an actionable tort, and that this principle applies whether the employment be by contract or at will.

The decisions of the Massachusetts court seem much more productive of justice to the employer than the English decisions, but they make a classification of lawful and unlawful acts in this connection very difficult. No general rule can be laid down to decide whether the acts are lawful because justified by competition or by the fact that the acts are done in connection with one's property, and this question must therefore be settled in each individual case as it comes up.

#### TAXATION OF STREET RAILWAY FRANCHISES.

A very important decision has recently been made by the Supreme Court of Michigan. It concerns taxation of the street railroads of Detroit, and is especially important because the same question in various phases is pressing for decision in many of the States.

To compel street railroad corporations to make proper returns in the way of taxation for the extraordinary privileges conferred, is one of the most serious problems confronting American municipalities. In the majority of instances, these corporations do not equitably share the burden of taxation. The injustice is usually effected by eliminating from the assessment roll the value of the franchises, and taxing only the tangible property of the corporation.

Only in recent years have these gigantic companies been organized; since, in fact, the practical application of electricity as the means of propulsion. In many of the courts of last resort, the question, in its relation to street railroads, is one of first impression, and in all the States the companies are vigorously opposing what they claim to be a violation of their constitutional rights.

We think the Michigan decision is the clearest pronouncement yet received on this vexed and difficult question.

The facts of the case, in briefest form, are as follows: The Board of Assessors of the City of Detroit assessed the street railroad property for the year 1900 at \$5,000,000, and this assessment was confirmed by the council. Its previous assessments were \$800,000 for 1898, and \$1,500,000 for 1899, on practically the identical property. In mandamus proceedings in the Circuit Court, the principal points urged by the relator were (1) that there were illegally included in said valuation several million dollars on account of franchises, and (2) that no separation was made on the assessment roll of the valuation placed on the franchises and the valuation placed on the personal property of the relator.

It was contended by the relator that if the franchise is not made taxable property by express statute, it cannot be taxed indirectly by associating it with tangible property, and thus increasing the value of the latter. This contention was not sustained, and it was held that the property should be taxed at its cash value, whatever it may be that causes or contributes to such value.

There is manifest propriety in considering these aggregations of property as a unit, and within the unity of use is comprehended the value of the franchises. The market value of a street railway company might be \$10,000,000, while, if its easements and franchises were disassociated, its tangible property might sell for only \$3,000,000. What a travesty on the principle of equality of taxation to allow this burden to be shifted by such a wrongful evasion.

The decision of the Michigan court is fortified by the able decisions of Justice Brewer and Chief Justice Fuller in *Adams Express Co. v. Ohio State Auditor*. In these cases it was held that for purposes of taxation the value of the intangible property must be included, and in some cases this would exceed the aggregate value of the separate pieces of tangible property.

The lesson should be brought home to the assessors in many States that it is an idle task to speculate on the value of intangible franchises. These must be inseparably connected with the tangible property, and earning power and cash value are the important factors in determining the amount of taxation.

#### LABOR UNION LEGISLATION—EMPLOYER'S RIGHT TO DISCHARGE.

The importance of labor unions and the frequent legislation concerning them make the case of *Gillespie v. People*, 58 N. E. 1009 (Ill.) worthy of note. In the interest of union men, a statute was passed in Illinois similar to ones in several other States, making it a misdemeanor to coerce a workingman into leaving, or from joining, a union. The plaintiff discharged an *employé* working by the day, because he belonged to a labor union and declined to withdraw. Such a statute is deemed unconstitutional, as it deprives the employer of property without due process of law, and is a special act conferring privileges upon union men. The same conclusion was reached upon practically the same state of facts in *State v. Julow*, 129 Mo. 169, 31 S. W. 781.

While not new in principle, it emphasizes the right of property. The nearer courts come to the recognition of property as itself a right over an object—which is the subject of property and not, legally speaking, property itself—the greater become the constitutional guarantees. It then becomes clear that the right to contract is a property right, and under the Constitution inviolable. It involves the right to unmake as well as to make contracts, regardless of motive, subject of course to reasonable police regulation necessarily restrictive in its nature, of which usury laws furnish an example.

Being guaranteed by the Constitution, the legislature is prohibited from declaring that a crime without a hearing which the Constitution permits. The employer can dismiss an *employé* with or without reason, answerable, indeed in a civil

action for the breach if any there be. The same liberty is accorded the workingman, subject to the same limitations. The decision of an inferior court in a famous strike case, compelling workmen to continue in a receiver's employ, was overruled because it involved an invasion of one's liberty to be compelled to remain in the service of another, though the concerted withdrawal of many might seriously injure the public. *Arthur v. Oakes*, 63 Fed. 310.

The other contention, that the statute was a special law conferring a special privilege on some out of a class, is not free from doubt. Strictly, perhaps it is rather a restriction upon employers than a privilege conferred on union men. Doubtless the legislature meant to leave the employer free to discharge a union man for any or no reason, except that he belonged to a union. Whatever privilege this gives to union men was enjoyed by non-union already, and it rather equalizes their positions so far as discharge is concerned. Though its effect may be indirectly to benefit union men, the statute operates on all workmen alike, and perhaps does not strictly fall within special legislation.

Whether or not this is so, the result clearly shows that paternal legislation in behalf of labor organizations, so far, at least, has not been considered by the courts to come within the scope of the police regulating power of the State so as to permit legislation restricting the right and liberty of contract.