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Labor Contracts: The Nature of Barber Shop Card Agreements

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got a vested remainder which constitutes present ownership of an estate as distinguished from the mere expectancy that one has as prospective heir or devisee.[14] Clearly, depriving a person of a vested remainder would be working a forfeiture of property on him contrary to the express terms of such statutes. Thus it is submitted that even without the Virginia statute the court should have allowed the son to keep the property acquired through his mother's will.

Many states have adopted statutes, with varying degrees of completeness, pursuant to the public policy against allowing a murderer to profit by his crime similar to the Virginia one.[15] Once a state has adopted such a statute the public policy argument, as far as the courts are concerned, should be at an end. The province of the courts in our government, based upon a separation of powers, is to interpret the law and not to legislate.[16] When a statute is clear and unambiguous, it may not be extended to a subject which isn't mentioned therein. The courts can't supply what the statute omits, and this is true even if the legislature undoubtedly would have drawn the statute otherwise had it considered the subject in question.[17]

Here the Virginia statute is clear in its terms setting out when a murderer is prevented from obtaining property by his crime. The court was clearly correct in refusing to extend the prohibition to the case of a remainderman murdering his life tenant, a subject not included within the statute.

Don A. Tambling.

LABOR CONTRACTS: THE NATURE OF BARBER SHOP CARD AGREEMENTS.—May a union withdraw its shop card from a barber shop where the card's display is necessary to the successful continuance of the business?

Plaintiff, a barber-employer, signed a shop card agreement in 1936, agreeing that in "consideration for being allowed to display" the card, the union could withdraw "their" card for the violation of "any present or future law of the union, or for any cause whatever." The union has since made the right to display the card conditional upon the proprietor-barbers becoming union members. Under the terms of the new condition the employer-barbers would have no significant voting rights, would have to forfeit membership in the Master Barbers Association, and "would have, in short, only the right to pay dues." The union admits that if the card is removed, all union employee-barbers must leave the plaintiff's shop. Taft, speaking for the majority of the court, reasoned that, "in the absence of contract obligation" to allow the display of the card, there was no need to go into the legality of the union's object in withdrawing the card, *Fouts* v. *Journeyman Barbers*.[1]

Traditionally one's right to conduct a business free from interference is qualified only by what others may lawfully do. Here it cannot be doubted that the removal

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[14]Fairlif v. Scott, 88 Fla. 229, 102 So. 247 (1924); Copenhaver v. Pendleton, 155 Va. 463, 155 S. E. 802 (1830), 77 A. L. R. 324.

[15]16 Am. Jur., Descent and Distribution, sec. 77. Acquisition of property by wilfully killing another—a statutory solution, 49 Harv. L. Rev. 715 (1936), in which the author has drafted a complete statute to cover all phases of this problem.

[16]Holden v. Stratton, 198 U. S. 202 (1905); Bodinson Mfg. Co. v. California Employment Commission, 17 Cal. 2d 321, 109 P. 2d 935 (1941).

[17]U. S. v. Monia, 317 U. S. 424 (1942); Iselin v. U. S., 270 U. S. 245 (1925); DuPont v. Mills, 196 A. 168 (Del.) (1937), 50 Am. Jur., Statutes, secs. 227, 228, 229.

[1]99 N. E. 2d 782 (Ohio, 1951).

will seriously impede the successful continuance of the plaintiff's business.[2] One may generally retake his property from another where the other has no right to the possession of the property,[3] (e.g., to continue its display). "But one may no more employ[4] it (union label) for an unlawful act or unlawful purpose, than any other thing which he owns."[5] So the union may not act in withdrawing its card if the net effect of the withdrawal was to unlawfully obstruct plaintiff's business. Property rights in the card are irrelevant if the acts were unlawful. "A union may not employ its label for an unlawful purpose."[6]

Was the act unlawful? If the union had a right[7] under the shop card agreement to remove from the plaintiff's possession then its action was lawful so long as this is a proper subject of contract.

It may be argued as a matter of construction that the right to withdraw for "any cause whatsoever" and "upon violation of any future law," meant, in the contemplation of the parties, only an otherwise "reasonable" law or cause; that the parties contracted within the substantive law of labor and that "reasonable" thus meant that no condition which independently of the contract will be for an unlawful purpose, may be imposed on plaintiff's right to display the card. If such was the agreement of the parties, inquiry must be made into the lawfulness of the purpose.

Was this a proper subject of contract? Those things which make an act unlawful may also render the contract illegal.[8] Contracts in unreasonable restraint of trade are void at common law.[9] There is a restraint if competition is restricted,[10] (e.g., prospective employers discouraged from continuing in business). It is unreasonable if it tends to create a monopoly or imposes undue hardship on persons restricted.[11] An association of employers or employees for price fixing purposes in a substantial part of any industry creates a monopoly.[12] It is clear that the union here engages in price fixing.

Further, by the weight of authority collective action to compel an employer to join an employees' association is illegal.[13] The contract[14] stands as the fruit of such action and should be struck down.

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[2]"These plaintiffs cannot remain in business unless they have a union card." Riviello v. Journeyman Barbers, 88 Cal. App. 2d 499, 199 P. 2d 400 (1948).

[3]The cases were in conflict as to a property right in a trade unions label. Carson v. Ury, 39 F. 777, 5 L. R. A. (N. S.) 614 (1889); Connors v. Connoly, 86 Conn. 641, 86 A. 600, 45 L. R. A. (N. S.) 564 (1913). A shop card seems analogous.

[4]Removal is an act, RESTATEMENT, TORTS, sec. 2 (1934).

[5]Connors v. Connoly, *supra*, note 2.

[6]31 Am. Jur., § 84, pp. 869; cases cited therein support this statement.

[7]In view of what has been said "absence of a contract obligation to allow the display," seems irrelevant.

[8]"When the performance of an act would be either a crime or a tort, an agreement to do that act will also be illegal." Williston on Contracts, § 1628.

[9]Williston on Contracts, § 1633-34; the Sherman Act isn't involved. Barber shops aren't in interstate commerce, State ex rel. Schneider v. Dunkle, 5 Ohio Supp. 412.

[10]RESTATEMENT, CONTRACTS, 513 (1932).

[11]International Business Machine v. U. S., 298 U. S. 131, 56 S. Ct. 707 (1936); RESTATEMENT, CONTRACTS, 515, comments (b) and (c).

[12]Manhattan Storage v. Movers Assn., 28 N. Y. S. 2d 594, 262 App. Div. 332 (1941).

[13]U. S. Glass Co. v. Levett, 24 Misc. 429, 53 N. Y. S. 688 (1898); Wis. Employment Board v. Barbers, 259 Wis. 77, 39 N. W. 2d 725 (1949). In the latter case a statute outlawed forced financial contribution of employers to employee's associations.

[14]Should the clause "for any condition of the union or for any cause whatever" be upheld?