

language of the case stated, we think, does not exclude the hypothesis that in making the deposit Lewis acted as the agent of the plaintiff. It may well be presumed that what he did was within the contemplation of the parties when the money was handed to him, and that, while the deposit was nominally on account of N. T. Lewis & Son, it was really on account of the plaintiff. Now, it is firmly settled that the contract of an agent is the contract of his principal, for whom he acted, and that the undisclosed principal may sue thereon at law in his own name, and this even where the contract is in writing, and the principal is not mentioned therein. *Skinner v. Stocks*, 4 Barn. & Adol. 437; *Barry v. Page*, 10 Gray, 398; *Ford v. Williams*, 21 How. 287. Hence, in the case of the Duke of Norfolk v. Worthy, 1 Camp. 337, where money of the principal was paid by the agent as a deposit on a contract made by and in the name of the agent, who apparently was acting on his own account, it was held that the principal might recover back the deposit in a suit at law in his own name, the contract having been rescinded. The judgment of the circuit court is affirmed.

LAKE ERIE & W. RY. CO. v. BAILEY et al.

(Circuit Court, D. Indiana. January 20, 1893.)

No. 8,811.

MASTER AND SERVANT—LABOR ORGANIZATIONS—CONTEMPT.

Where the members of a labor organization combine and confederate for the purpose of enforcing their demands by the seizure of their employers' property, or to prevent other men, by force and intimidation, from entering such employment, they are guilty of a crime; and, where such acts violate an injunction, they will be punished for contempt of court.

On the 16th day of January, 1893, the Lake Erie & Western Railway Company filed its bill for injunction against the defendants to restrain them from obstructing and interfering with the movements of its trains. A temporary restraining order was issued at once, in accordance with the prayer of the bill, and a further hearing of the cause was set for the 25th day of January, 1893, and certified copies of this order were served upon the defendants by the marshal. Afterwards, upon affidavits filed by the complainant showing that certain of the defendants had violated the restraining order, a rule was entered against them, requiring them to show cause why they should not be attached for contempt. On their failure to appear pursuant thereto, it appearing that service of the monitory order had been made upon them, an attachment was issued, and they were brought before the court and tried. As a result of the trial, some of the defendants were convicted, and others were acquitted.

W. E. Hackedorn, John B. Cockrum, and Miller, Winter & Elam, for Lake Erie & W. Ry. Co.

BAKER, District Judge, in pronouncing sentence upon those who were convicted, said orally:

The court recognizes the right of any man or number of men to quit the service of their employers, and it recognizes the right of men to organize if they deem it expedient to better their condition. It also recognizes the hardships of the life of the average laboring man. Their conditions are often such as to touch the sensibilities of a feeling heart. The court is also aware of the scanty wages which they often receive, and of their long and arduous hours of service, frequently exposed to the rigors of an inclement season. All these things are calculated to produce sympathy in every right-minded man. It is laudable for men, whether they are day laborers or are engaged in other vocations of life, by organization to take any lawful course for the purpose of bettering their condition; but it must be done according to those principles that lie at the very foundation of the social compact. Man was created for organized society; and in order that society shall exist, whatever may be the form of government, it is absolutely indispensable that the great fundamental and God-given right of every human-being, unrestrained and un-intimidated, to labor and enjoy the fruits of his toil, should be protected. There is little excuse for labor to organize, and, by unlawful means, attempt to overthrow the law. Society is organized under our form of government on the recognition of man's rights as man. If society were overthrown, and men turned back into conditions of anarchy, as they were, in large measure, during the dark ages, when power and force made right, the condition of the laboring man would not be bettered. If such were the condition of society, the man or the men with great intellectual power and great wealth would become the masters of the laboring classes as in those dark ages, and the laborer would be little better than a slave. The effort of these defendants, as the evidence in this case shows, is an effort, not only to overthrow the law, but also an effort to overturn the just authority of the courts. To permit this would be an offense, not only against society, but against the laboring men themselves. In the convulsions of society, when law becomes silent and force reigns, it is the humble and the poor and the powerless that become the victims. The condition of things that is evidenced by these strikes is well calculated to impress thoughtful men with their danger. I do not know but that I am a little old-fashioned in my notions, but I confess that I cannot look with any degree of tolerance on the false and dangerous teachings of those who actively, or by their silent acquiescence, are leading labor organizations to think that, because they are organized in associations, they have the right to seize property, or, by intimidation, to prevent well-disposed people from laboring. In my judgment, it is no less criminal for an organized body of men to commit these wrongs than it would be for a single man, armed with bludgeons or revolvers, to commit the same wrongs on the persons or property of others. I confess that, so far as I can see, if my property or personal rights are invaded by a body of men who call themselves "organized laborers," there is no more distinction,

either in the view of God's law or human law, than if the same things were done by a single individual. Indeed, it would be more tolerable if it were done by the midnight robber in the silent watches of the night than if it were done by an organized body of men. I think it would be wholesome if this lesson, which was taught me by my parents in a rude frontier cabin in the early settlements of Northwestern Ohio, had been taught these men by their fathers and mothers. When I come to the final disposition of these cases, I shall deal justly and mercifully with these men; but I do not intend that it shall ever be said of me, if anything shall ever be said, that, as a magistrate, I failed in the discharge of my duty in any such way as tended to unsettle the foundations of our government. I am charged with a great and solemn duty. There can be no greater or more solemn duty than that which requires judges to impress on men, not only the supremacy of the law, and the rightful supremacy of the law, but that it is necessary that men should be punished who violate the law, in order that the fabric of human society may not go to pieces.

In this case the evidence shows that there are a number of men who belong to a secret labor organization whose ramifications reach, not only over the entire extent of the United States, but into Canada as well. It has kindred associations by other names in Europe. All these organizations have the same general aim, and that is by force, violence, and terrorism to compel their employers to submit their business, their property, and their means of livelihood to the arbitrary demands of these associations. In their secret, oath-bound assemblies they determine for themselves on what terms they will work for others. They refuse those who are not members of their association the right to labor when they desire to do so. Those who will not submit to their exactions have no more option about carrying on their business than has the belated traveler when a highwayman presents a revolver, and bids him submit. As I say, I do not see any difference, either morally or legally, between this sort of business, where an organized body of men combine for the criminal and unlawful purpose of compelling somebody else, against his will, to submit to their demands, than if the same thing were done by a single individual. If they compel submission, it is robbery, because whoever compels me, by force or terrorism, to give up one dime of my money, or one dime's worth of my property, is equally guilty, whether it be the man who meets me on the street corner in the nighttime, or an organized band of strikers who take possession of my property and deprive me of its use. But these combinations are infinitely worse than isolated violations of the law, in that they teach general disregard and contempt of law. They make people think that human rights are of no value. They teach the fantastic and monstrous doctrine that a man who is hired to labor, and is paid for his work, has some sort of equitable right in the property of his employer, together with a right of perpetual employment. It has been said on the floor of the United States senate that the laborer has a sort of equitable lien on the property of the man for whom he works, whose money bought the property, together with

the right of perpetual employment. It may do for men that are reckless of the welfare of human society—who care nothing for its peace and good order—to imperil life, property, and liberty, and the perpetuity of our institutions, by teaching such doctrines, but the judge who tolerates it ought to be stripped of his gown, and be driven from the sacred temple of justice. I think these men have been misled; I think they have been deceived by false teachers; but still they ought to have known better than to violate the law of the land, and to trample under foot the solemn processes of the court. I want it to be understood, so far as this court is concerned, that such offenses will not be deemed trivial, and that the law cannot be violated with impunity by any combination of men, under whatever name they may clothe themselves. They will not be permitted to violate the law, and then set themselves above the court. If laborers wish to organize to learn the principles of political economy, to learn something about the great laws of supply and demand, or to learn something about the effect of immigration, and the increase of the number of laborers on the wage market of the country; if they want to organize for the purpose of quitting their employers; in short, if they want to organize to do anything that is recognized as within the pale of the law,—I have no word of criticism. I think that such organizations for lawful purposes are to be commended. But when these organizations, as I said on yesterday, combine and confederate for the purpose of seizing other men's property, or when they undertake, by force and intimidation, to drive other men away from employment, and thus deny them the right of earning a livelihood, they commit a crime,—they commit a crime that this court cannot suffer to go unpunished. There ought to be blazed on the minds of every one of these men that belongs to a labor organization, as with a hot iron, so that they shall know and understand it, that, while it is lawful and commendable to organize for legitimate and peaceful purposes, it is criminal to organize for the invasion of the rights of others to enjoy life, liberty, and property. I will not pass upon the cases of these men now, and before I do pass upon them I shall be glad to know who and what they are; something about their former lives; what they have been doing; whether they have been engaged in criminal combinations before this. The gravity of crime depends upon the character of the criminal. An ignorant boy who, in the heat of excitement or the impulse of the moment, is led into the commission of crime, is to be looked upon with sympathy, and ought to be dealt with lightly; but the man who is given to lawlessness, who is a confirmed criminal and violator of the law, on whom reason and mercy would have no influence, ought to be made to feel the heavy hand of the law, so that if respect for law, and respect for the rights of their neighbors, will have no influence upon them, the power of the law and its judgments may have.

In re BRIGGS.

HUTCHINS v. BRIGGS et al.

SAME v. TATE et al.

(Circuit Court of Appeals, Second Circuit. April 18, 1894.)

1. **BANKRUPTCY—JURISDICTION OF CIRCUIT COURT.**

Under the supervisory jurisdiction over all bankruptcy proceedings conferred on the circuit court (Rev. St. U. S. § 4986), it may entertain a petition to review the refusal of the district court to remove an assignee in bankruptcy.

2. **SAME—CIRCUIT COURT OF APPEALS.**

Act March 3, 1891, § 4, which transfers to the circuit courts of appeals created by that act, and to the supreme court, the jurisdiction theretofore exercised by the circuit courts on appeal or writ of error, does not affect the supervisory jurisdiction over bankruptcy proceedings which is conferred on the circuit courts by Rev. St. U. S. § 4986.

3. **SAME—APPELLATE JURISDICTION—INTERLOCUTORY ORDERS.**

Rev. St. U. S. § 4980, confers upon the circuit courts appellate jurisdiction in bankruptcy cases in the district courts; and Act Cong. March 3, 1891, §§ 4-6, transfers the appellate jurisdiction theretofore vested in the circuit courts to the circuit courts of appeals and the supreme court. *Held*, that this jurisdiction extends only to final judgments, and does not authorize a review of the action of the district court in refusing to dismiss, for want of prosecution, a suit brought by the assignee in bankruptcy.

Appeal from the District Court of the United States for the Southern District of New York.

Petition of appeal from the decision of the district court in the matter of Alanson T. Briggs, a bankrupt, and in the suits of Augustus Hutchins, as his assignee, against Alanson T. Briggs and others, and of the same against Amelia A. Tate and others.

Samuel E. Briggs, as a creditor of the above-named bankrupt, made a motion in the bankruptcy proceedings pending in the United States district court for the southern district of New York to remove the assignee in bankruptcy. He also moved, as a defendant in two suits in equity pending in that court, brought by the assignee of the bankrupt, to dismiss the suits for want of prosecution. The district court denied the motion to remove the assignee, and denied the motion to dismiss the suits in equity, except upon condition of payment by the defendant to the assignee of the sum of \$2,650, as counsel fee, costs, and disbursements. Thereupon, Briggs filed in this court a petition of appeal, praying that this court exercise jurisdiction under section 4986 of the Revised Statutes of the United States, conferring a general superintendence and jurisdiction upon the circuit court of all cases and questions arising in the district court, when sitting as a court of bankruptcy, and review and reverse the proceedings of the district court. The assignee in bankruptcy moves to dismiss the petition of appeal.

Geo. C. Lay, for appellant Briggs.

Wm. F. Scott, for assignee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

WALLACE, Circuit Judge. Properly speaking, there are no appeals pending in this court. No assignment of errors has been filed, no appeal or writ of error has been allowed, and no citation has been issued. But the theory of the petitioner is that the circuit court has no longer jurisdiction to review proceedings in bankruptcy,