ARTHUR et al. v. OAKES et al.

(Circuit Court of Appeals, Seventh Circuit. October 1, 1894.)

No. 169.

1. RAILROAD EMPLOYES—QUITTING SERVICE WITHOUT CAUSE—LIABILITIES.
If an employé of a railroad company quits without cause, and in violation of an express contract to serve for a stated time, then his quitting would not be of right, and he would be liable for any damages resulting from a breach of his agreement, and, perhaps, in some states of case, to criminal prosecution for loss of life or limb by passengers or others, directly resulting from his abandoning his post at a time when care and watchfulness was required upon his part in the discharge of a duty he had undertaken to perform.

2. SAME—INVOLUNTARY SERVITUDE.
It would be an invasion of one's natural liberty to compel him to work for, or to remain in the personal service of, another. One who is placed under such restraint is in a condition of involuntary servitude,—a condition which the supreme law of the land declares shall not exist within the United States, or in any place subject to their jurisdiction.

3. SAME—CONTRACT OF EMPLOYMENT—REMEDIES FOR BREACH.
The rule, we think, is without exception that equity will not compel the actual, affirmative performance by an employé of merely personal services, any more than it will compel an employer to retain in his personal service one who, no matter for what cause, is not acceptable to him for service of that character. The right of an employé, engaged to perform personal service, to quit that service, rests upon the same basis as the right of his employer to discharge him from further personal service. If the quitting in the one case, or the discharging in the other, is in violation of the contract between the parties, the one injured by the breach has his action for damages; and a court of equity will not, indirectly or negatively, by means of an injunction restraining the violation of the contract, compel the affirmative performance from day to day, or the affirmative acceptance, of merely personal services. Relief of that character has always been regarded as impracticable.

4. SAME.
Undoubtedly, the simultaneous cessation of work by any considerable number of the employés of a railroad corporation without previous notice will have an injurious effect, and for a time inconvenience the public. But these evils, great as they are, and although arising in many cases from the inconsiderate conduct of employés and employers, both equally indifferent to the general welfare, are to be met and remedied by legislation restraining alike employés and employers, so far as necessary adequately to guard the rights of the public as involved in the existence, maintenance, and safe management of public highways. In the absence of legislation to the contrary, the right of one in the service of a quasi public corporation to withdraw therefrom at such time as he sees fit, and the right of the managers of such a corporation to discharge an employé from service whenever they see fit, must be deemed so far absolute that no court of equity will compel him, against his will, to remain in such service or actually to perform the personal acts required in such employments, or compel such managers, against their will, to keep a particular employé in their service.

5. SAME—EQUITY JURISDICTION—PERFORMANCE OF CONTRACT.
The fact that employés of railroads may quit under circumstances that would show bad faith upon their part, or a reckless disregard of their contract or of the convenience and interests of both employer and the public, does not justify a departure from the general rule that equity will not compel the actual, affirmative performance of merely personal services, or (which is the same thing) require employés, against their will, to remain in the personal service of their employer.

6. RAILROAD EMPLOYES—QUITTING SERVICE OF RECEIVER.
These employés having taken service first with the company, and afterwards with the receivers, under a general contract of employment which did not limit the exercise of the right to quit the service, their peaceable co-operation, as the result of friendly argument, persuasion, or conference among themselves, in asserting the right of each and all to refuse further service under a schedule of reduced wages, would not have been illegal or criminal, although they may have so acted in the firm belief and expectation that a simultaneous quitting without notice would temporarily inconvenience the receivers and the public. If in good faith, and peaceably, they exercise their right of quitting the service, intending thereby only to better their condition by securing such wages as they deem just, but not to injure or interfere with the free action of others, they cannot be legally charged with any loss to the trust property resulting from their cessation of work in consequence of the refusal of the receivers to accede to the terms upon which they were willing to remain in the service. Such a loss, under the circumstances stated, would be incidental to the situation, and could not be attributed to employés exercising their lawful rights in orderly ways, or to the receivers when, in good faith and in fidelity to their trust, they declare a reduction of wages, and thereby cause dissatisfaction among employés, and their withdrawal from service.

7. CONSPIRACY—WHEN ILLEGAL.
According to the principles of the common law, a conspiracy upon the part of two or more persons, with the intent, by their combined power, to wrong others or to prejudice the rights of the public, is in itself illegal, although nothing be actually done in execution of such conspiracy. This is fundamental in our jurisprudence. So, a combination or conspiracy to procure an employé or body of employés to quit service in violation of the contract of service would be unlawful, and in a proper case might be enjoined, if the injury threatened would be irremediable at law.

8. SAME.
An intent, upon the part of a single person, to injure the rights of others or of the public, is not in itself a wrong of which the law will take cognizance, unless some injurious act be done in execution of the unlawful intent; but a combination of two or more persons with such an intent, and under circumstances that give them, when so combined, a power to do an injury they would not possess as individuals acting singly, has always been recognized as in itself wrongful and illegal.

9. UNLAWFUL COMBINATION OF EMPLOYES.
It seems entirely clear, upon authority, that any combination or conspiracy upon the part of these employés would be illegal which has for its object to cripple the property in the hands of the receivers, and to embarrass the operation of the railroads under their management, either by disabling or rendering unfit for use engines, cars, or other property in their hands, or by interfering with their possession, or by actually obstructing their control and management of the property, or by using force, intimidation, threats, or other wrongful methods against the receivers or their agents, or against employés remaining in their service, or by using like methods to cause employés to quit, or prevent or deter others from entering the service in place of those leaving it.

10. SAME.
The act of congress of June 29, 1886, legalizing the incorporation of national trade unions (24 Stat. 86, c. 567), does not sanction illegal combinations.

11. STRIKE—WHEN ILLEGAL.
In the absence of evidence, it cannot be held, as a matter of law, that a combination among employés, having for its object their orderly withdrawal in large numbers, or in a body, from the service of their employers, on account simply of a reduction in their wages, is not a "strike," within the meaning of that word as commonly used. Such a withdrawal, although amounting to a strike, is not illegal or criminal.

12. SAME—INTERFERENCE BY EQUITY.
Circumstances stated under which a court of equity may interfere to prevent strikes or illegal interference with property.

Appeal from the Circuit Court of the United States for the Eastern District of Wisconsin.

Petition by P. M. Arthur and others to modify certain injunctions issued in a consolidated suit brought by the Farmers' Loan & Trust Company and others against the Northern Pacific Railroad Company and its receivers, Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse. 60 Fed. 803. The injunctions were only modified in part, and the petitioners appeal.

Quarles, Spence & Quarles, for appellants.
George P. Miller, for appellees.

Before HARLAN, Circuit Justice, WOODS, Circuit Judge, and BUNN, District Judge.

HARLAN, Circuit Justice. The questions before us relate to the power of a court of equity, having custody by receivers of the railroad and other property of a corporation, to enjoin combinations, conspiracies, or acts upon the part of the receivers' employés and their associates in labor organizations, which, if not restrained, would do irreparable mischief to such property, and prevent the receivers from discharging the duties imposed by law upon the corporation.

The original bill was filed on behalf of stockholders and creditors of the Northern Pacific Railroad Company, a corporation created by an act of congress, and had for its general object the administration under the direction of the court of the entire railroad system, lands, and assets of that corporation, and the enforcement of the respective rights, liens, and equities of its preferred and common stockholders, bondholders, and creditors.

The railroad company having filed its answer, receivers were appointed, with authority to take immediate possession of its railroads and other property, and to exercise its authority and franchises, conduct its business and occupation as a carrier of passengers and freight, discharge the public duties obligatory upon it, or upon any of the corporations whose lines of road were in its possession, preserve the property in proper condition and repair so as to be safely and advantageously used, protect the title and possession of the same, and employ such persons and make such payments and disbursements as were needful. The receivers were also authorized to manage all other property of the company at their discretion, and in such manner as in their judgment would produce the most satisfactory results consistent with the discharge of the public duties imposed on them, and to fix the compensation of officers, attorneys, managers, superintendents, agents, and employés in their service. It was further ordered that an injunction issue against the defendant and all claiming to act by, through, or under it, and against all other persons, to restrain them from interfering with the receivers in taking possession of and managing the property.

Subsequently the Farmers' Loan & Trust Company, as trustee for the holders of bonds and collateral trust indentures, filed an original bill in the same court against the Northern Pacific Railroad Company, the individual plaintiffs in the first suit, and the receivers. The relief asked was that the plaintiff, as trustee under the mortgages named in the bill, be placed in possession of the mortgaged premises, or that receivers of the rights, franchises, and property of the railroad company be appointed with authority to operate its railroads and carry on its business under the protection of the court; that the liens created by the several mortgages be ascertained and declared; and that the mortgaged property, in certain contingencies, be sold, and the proceeds applied according to the rights of parties.

The railroad company having appeared in that suit, an order was entered appointing the same persons receivers who were appointed in the first suit, and the two suits were consolidated, to proceed together under the title of the Farmers' Loan & Trust Company v. Northern Pacific Railroad Company, etc.

By a writ of injunction dated December 19, 1893, the officers, agents, and employés of the receivers, including engineers, firemen, trainmen, train dispatchers, telegraphers, conductors, switchmen, and all persons, associations, and combinations, voluntary or otherwise, whether in the service of the receivers or not, were enjoined—

From disabling, or rendering in any wise unfit for convenient and immediate use, any engine, cars, or other property of the receivers;

From interfering in any manner with the possession of locomotives, cars, or property of the receivers, or in their custody;

From interfering in any manner, by force, threats, or otherwise, with men who desire to continue in the service of the receivers, or with men employed by them to take the place of those who quit;

From interfering with or obstructing in any wise the operation of the railroad, or any portion thereof, or the running of engines or trains thereon as usual;

From any interference with the telegraph lines of the receivers along the lines of railways operated by them, or the operation thereof;

From combining and conspiring to quit, with or without notice, the service of said receivers, with the object and intent of crippling the property in their custody or embarrassing the operation of said railroad, and from so quitting the service of the said receivers, with or without notice, as to cripple the property or prevent or hinder the operation of said railroad; and, generally,

From interfering with the officers and agents of the receivers or their employés in any manner, by actual violence or by intimidation, threats, or otherwise, in the full and complete possession and management of the railroad and of all the property thereunto pertaining, and from interfering with any and all property in the custody of the receivers, whether belonging to them or to shippers or other owners, and from interfering with, intimidating, or otherwise