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Notice of Appeal.
(Filed September 2, 1930)

IN CHANCERY OF NEW JERSEY.

80-320.

Between
HENRY P. RISSLER and FRANK J.
RISSLER,
Complainants,

and

PLUMBERS LOCAL #326 OF UNITED
ASSOCIATION OF JOURNEYMEN
PLUMBERS & STEAMFITTERS OF
THE UNITED STATES AND CANADA,
CHARLES FLYNN, STEAMFITTERS
LOCAL #284 OF UNITED ASSOCIA-
TION OF JOURNEYMEN PLUMBERS
& STEAMFITTERS OF THE UNITED
STATES AND CANADA, and VIN-
CENT R. BECRAFT,
Defendants.

On Bill, &c.

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The defendants, Plumbers Local #326 of the
United Association of Journeymen Plumbers and
Steamfitters of the United States and Canada,
Charles Flynn, Steamfitters Local #284 of the
United Association of Journeymen and Steamfitters
of the United States and Canada, and Vincent R.
Becraft, hereby appeal from the order made in the
above entitled cause on August 19, 1930, made by
the Chancellor on the advice of Vice-Chancellor,
John O. Bigelow, and from the whole and every part

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Notice of Appeal.

thereof to the Court of Errors and Appeals in the
Last Resort in All Causes.

Dated, August 29, 1930.

SAUL NEMSER,
Solicitor for and of Counsel with Defendants.

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I conceive there is good cause for appeal in the
above entitled cause.

SAUL NEMSER,
Of Counsel with Defendants.

Service of a copy of the within Notice of Appeal
is hereby acknowledged this 30th day of August,
1930.

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IRA KATZMAN,
Solicitor of Complainants.

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Petition of Appeal.

(Filed September 6, 1930)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

HENRY P. RISSLER and FRANK J.

RISSLER,

Complainants-Respondents,

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and

PLUMBERS LOCAL #326 OF UNITED
ASSOCIATION OF JOURNEYMEN
PLUMBERS & STEAMFITTERS OF
THE UNITED STATES AND CANADA,
CHARLES FLYNN, STEAMFITTERS
LOCAL #284 OF UNITED ASSOCIA-
TION OF JOURNEYMEN PLUMBERS
& STEAMFITTERS OF THE UNITED
STATES AND CANADA, and VIN-
CENT R. BECRAFT,
Defendants-Appellants.

On Appeal
from the
Court of
Chancery.

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TO THE HONORABLE THE COURT OF ERRORS AND AP-
PEALS IN THE LAST RESORT IN ALL CAUSES.

The petition of Plumbers Local #326 of the 30
United Association of Journeymen Plumbers &
Steamfitters of the United States and Canada,
Charles Flynn, Steamfitters Local #284 of the
United Association of Journeymen Plumbers &
Steamfitters of the United States and Canada, and
Vincent R. Becraft, respectfully shows that

1. Petitioners find themselves aggrieved by an
order made in the Court of Chancery of New Jersey
by his Honor, Edwin Robert Walker, Chancellor of 40

Petition of Appeal.

the State of New Jersey, under date of August 19th, 1930, in a certain cause in the Court of Chancery of New Jersey wherein the said Henry P. Rissler and Frank J. Rissler were complainants, and Plumbers Local #326 of the United Association of Journeymen Plumbers & Steamfitters of the United States and Canada, Charles Flynn, Steamfitters Local #284 of the United Association of Journeymen Plumbers & Steamfitters of the United States and Canada, and Vincent A. Becraft were defendants, in this respect, to wit, the said Order adjudges

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"That the said defendants, Plumbers Local #326 of the United Association of Journeymen Plumbers & Steamfitters of the United States and Canada, Charles Flynn, Steamfitters Local #284 of the United Association of Journeymen Plumbers & Steamfitters of the United States and Canada, and Vincent R. Becraft, and their agents and servants, be and they are each and every one of them hereby enjoined and commanded to desist and refrain from refusing to permit members of their respective Association to work for complainants, and that they be restrained from declaring the complainants Henry P. Rissler and Frank J. Rissler, unfair to union labor, and that they be restrained from interfering with the employees of the complainants Henry P. Rissler and Frank J. Rissler in such a way as to disturb complainants in the usual course of their business, until the further order of this Court."

and petitioners appeal from the said Order of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous in that

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Petition of Appeal.

1. The Order to Show Cause dated August 4th, 1930 should have been discharged and the ex parte interim restraint therein contained dissolved upon the return day thereof.

2. The Chancellor should not have granted the injunctive order dated August 19th, 1930.

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3. On the law and the facts the defendants-appellants should not have been restrained pending final hearing as provided for in the injunctive order dated August 19th, 1930.

4. The complainants-respondents were not entitled to preliminary injunctive relief pending final hearing, as against these defendants-appellants, because

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(a) The complainants-respondents proofs did not show any actual or threatened irreparable injury or damage to complainants.

(b) The defendants' affidavits fully met the charges contained in the complainants' bill, and affidavits thereto annexed, and the defendants' affidavits directly, categorically and unequivocally denied or explained every material allegation in the bill.

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(c) Under the Act of 1883 (P. L. 1883, Page 36; 3 Compiled Statutes of New Jersey, page 3051, Section 128) the alleged acts and conduct of these defendants-appellants as charged in the bill of complaint and affidavits thereto annexed, were lawful and proper and the bill of complaint does not state an equitable cause of action.

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Petition of Appeal.

(d) Under the Act of 1926 (Chapter 207, Laws of 1926, page 348), the Court of Chancery was powerless to grant a restraint in the case at bar.

(e) That complainants did not come into court with clean hands.

- 10 5. The defendants-appellants, Plumbers Local #326 and Steamfitters Local #284, being both voluntary and unincorporated associations, were not subject to suit in their respective association names under Chapter 156 of the Laws of 1925, page 395.

20 Petitioners, therefore, pray that the said Order of the said Chancellor may be, in the particulars aforesaid, wholly reversed, set aside and for nothing holden, and that petitioners may have such other relief in the premises as to this court shall seem proper.

SAUL NEMSER,
Solicitor for and of Counsel with Appellants.

Service of a copy of the within Petition of Appeal is hereby acknowledged this 4th day of September, 1930.

30 IRA KATZMAN,
Solicitor for Complainants-Respondents.

Order for Restraint.

(Filed August 19, 1930)

IN CHANCERY OF NEW YORK.

80-320.

Between

HENRY P. RISSLER and FRANK J.

RISSLER,

Complainants,

10

and

PLUMBERS LOCAL #326 OF UNITED
ASSOCIATION OF JOURNEYMEN
PLUMBERS & STEAMFITTERS OF
THE UNITED STATES AND CANADA,
CHARLES FLYNN, STEAMFITTERS
LOCAL #284 OF UNITED ASSOCIA-
TION OF JOURNEYMEN PLUMBERS
& STEAMFITTERS OF THE UNITED
STATES AND CANADA, and VIN-
CENT R. BECRAFT,

Defendants.

On Bill &c.
On Bill, Etc.

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This matter, being opened to the Court by Ira
Katzman, solicitor of the complainants, in the pres-
ence of Saul Nemser, solicitor of the defendants;
and the Court having considered the bill of com-
plaint and affidavits filed herein and the answer
and affidavits on the part of the said defendants,
and having heard and considered the arguments of
counsel and being satisfied that the complainants
are entitled to an order restraining the said de-
fendants Plumbers Local #326 of the United Asso-
ciation of Journeymen Plumbers & Steamfitters of
the United States and Canada, Charles Flynn,
Steamfitters Local #284 of the United Association

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Order for Restraint.

10 of Journeymen Plumbers & Steamfitters of the United States and Canada, and Vincent R. Becraft, and their agents and servants from interfering with the business of the complainants, and that they desist and refrain from refusing to supply complainants with union help and from permitting members of their respective Associations from working for complainants, and that they be restrained from declaring the complainants, Henry P. Rissler and Frank J. Rissler, unfair to union labor and that they be restrained from interfering with the employees of the complainants Henry P. Rissler and Frank J. Rissler in such a way as to disturb complainants in the usual course of their business;

20 And it appearing that the order to show cause, made in this matter on the 4th day of August, 1930, has been duly served in the manner therein directed;

30 It is on this 19th day of August, One Thousand Nine Hundred and Thirty, ORDERED that the said defendants, Plumbers Local #326 of the United Association of Journeymen Plumbers & Steamfitters of the United States and Canada, Charles Flynn, Steamfitters Local #284 of the United Association of Journeymen Plumbers & Steamfitters of the United States and Canada, and Vincent R. Becraft, and their agents and servants, be and they are each and every one of them hereby enjoined and commanded to desist and refrain from refusing to permit members of their respective Associations to work for complainants, and that they be restrained from declaring the complainants Henry P. Rissler and Frank J. Rissler, unfair to union labor, and
40 that they be restrained from interfering with the

Order for Restraint.

employees of the complainants Henry P. Rissler and Frank J. Rissler in such a way as to disturb complainants in the usual course of their business, until the further order of this Court.

E. R. WALKER,
Chancellor.

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Respectfully advised,

J. O. BIGELOW,
Vice Chancellor.

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Bill of Complaint.

(Filed August 4, 1930)

IN CHANCERY OF NEW JERSEY.

TO THE HONORABLE EDWIN ROBERT WALKER, CHAN-
CELLOR OF THE STATE OF NEW JERSEY:

10 The complainants, Henry P. Rissler and Frank
J. Rissler, residing in the City of Hackensack, in
the County of Bergen and State of New Jersey,
show that:

20 1. The complainants operate and conduct a gen-
eral plumbing and heating business in the City of
Hackensack, in the County of Bergen and State of
New Jersey, and vicinity, under the trade name of
Rissler Bros. Complainants have conducted same
for the past seven years. Complainants conduct
what is generally known as a "union shop", in that
all their employees are members of some associa-
tion commonly known as a "union".

30 2. Prior to and until December, 1926, the com-
plainant Henry P. Rissler was enrolled as a mem-
ber of the Union known as Plumbers Local #326
of the United Association of Journeymen Plumbers
and Steamfitters of the United States and Canada.
The said complainant Henry P. Rissler was advised
by the delegate of the said union that unless he re-
mained a member in good standing of the said
union, neither he nor his partner in business would
be permitted to do any plumbing work themselves
nor to handle any tools. Neither of the complain-
ants at any time, for the past seven years, has been
employed by any master plumber as "journeyman
plumbers" and their business for the past seven
years consisted solely of plumbing and heating con-

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Bill of Complaint.

tracting, in which business they, from time to time, employed such union help as they required.

3. On or about December, 1926, complainant, Harry P. Rissler, asked for a withdrawal card from the Local Union #326, and at that time was a member in good standing of the said Union, having paid all his dues and assessments to that date. The complainant was thereupon informed that a withdrawal fee in the amount of \$5.00 would be required. Said complainant thereupon drew a check in the amount of \$5.00 to the order of the secretary of the said Union, which was accepted by the secretary and endorsed by him and the union delegate, prior to the collection thereof. Subsequently the complainants were informed by the union delegate that the application for withdrawal had been denied and that unless complainants continued to pay the dues as required by the Local Union, their firm would be declared unfair to union labor and they would be unable to procure any union help. Complainant at that period was engaged in numerous enterprises and in order not to be declared unfair to union labor, and to obtain the necessary union help, was obliged to continue the payment of his dues, under protest, up to—on or about the month of June, 1929.

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4. Sections #179 and #180 of the Constitution of the United Association of Journeymen Plumbers & Steam Fitters of the United States and Canada, read as follows:

“Sec. 179. Any member of the United Association who starts in business legitimately for himself may resign from the United Associa-

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Bill of Complaint.

tion, with the consent of the Local Union to which he is attached.

10 Sec. 180. Members of the United Association may be granted an honorable withdrawal card upon entering into business, or leaving the trade upon recommendation of their Local Union or by action of the General Executive Board, if they are entitled to same in accordance with our rules and laws."

5. Complainants are members in good standing of an association called "Master Plumbers Association of Hackensack and Vicinity" which is composed of plumbing contractors. Complainants have at all times employed union labor exclusively on union jobs.

20 6. On or about July 14th, 1930, Charles Flynn, delegate and representative of Plumbers Local Union #326, together with Vincent R. Becraft, delegate and representative of Steamfitters Local Union #284 came to the job on which the complainants have the steam fitting contract at Cedar Lane and Garrison Avenue, Teaneck Township, Bergen County, N. J., and ordered a steamfitter employed by the complainants, one Louis Jamber of Washington Park, in the Borough of Little Ferry, New Jersey, to stop work for the complainants since they had been declared to be unfair to union labor by Plumbers Local Union #326. Defendant, Vincent R. Becraft, delegate of United Steamfitters Union, Local #284, refused to furnish union help to replace the said steamfitter on the ground that Rissler Bros. had been declared to be unfair to union labor by Plumbers Local Union #326 and has refused since that time to furnish such union

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Bill of Complaint.

labor. Since that time complainants have been unable to secure any union labor to work for them and they are unable to proceed with the work on hand.

7. On July 31, 1930, the complainant, Henry P. Rissler, appeared before the executive board of Local Union #326 and was informed by the Secretary of the Board, one Collins, that the local union had decided that Rissler Bros. were unfair to union labor because the said Henry P. Rissler had not kept his membership in the local union in good standing. The executive board further said that before Rissler Bros. would be permitted to employ any union help, said complainant Henry P. Rissler would be obliged to pay all back dues and a new initiation fee which the local union had fixed at the amount of \$300.00, in all amounting to \$324.00, and further that after the payment of said back dues and initiation fee, a withdrawal card would be issued only provided that Rissler Bros. agreed not to use tools themselves and kept a union plumber continually on their pay-roll.

9. Complainant, Henry P. Rissler stated to the executive board that as a master plumber and member of the Master Plumbers Association of Hackensack and Vicinity, he was under no obligations to maintain his membership in the local union composed of journeymen plumbers.

10. Section #147 of the Constitution of United Association of Journeymen Plumbers & Steamfitters of the United States and Canada, reads as follows:

"No member of the United Association will be allowed to do sub-contracting or plumbing

Bill of Complaint.

from a contracting plumber or fitter or work for any person that has taken such contract."

10 11. By reason of the aforesaid, complainants have been deprived of their employees. They have been unable to enter into any new contracts to do plumbing and heating work on jobs which employ only union labor. They are unable to continue with the work which they have on hand. By reason of the aforesaid, complainants are unable to continue their business, and their business is suffering to a continually increasing extent.

Complainants are without adequate remedy in the Courts of Law and, therefore, pray:

20 1. That the defendants, Plumbers Local Union #326 of the United Association of Journeymen Plumbers & Steamfitters of the United States and Canada, and Charles Flynn, delegate and representative, and Steamfitters Local Union #284 of the United Association of Journeymen Plumbers & Steamfitters of the United States and Canada, and its representative and delegate, Vincent R. Becraft, and their agents and servants, may be enjoined and restrained from interfering with the business of
30 complainants.

2. That defendants be enjoined and restrained from refusing to supply complainants with union help and from permitting members of their respective associations from working for complainants. That defendants be enjoined and restrained from declaring complainants unfair to union labor.

40 3. That defendants be restrained from interfering with the employees of complainants in such a

Bill of Complaint.

way to disturb complainants in the usual course of their business.

4. That a writ of subpoena may issue, commanding said defendants to answer this bill of complaint and to abide by such decree as this court may make in the premises.

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IRA KATZMAN,
Solicitor of Complainants.

JAMES DE TURCK,
Of Counsel.

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Affidavit of Henry P. Rissler.

(Filed August 4, 1930)

IN CHANCERY OF NEW JERSEY.

Between

HENRY P. RISSLER and FRANK J.

RISSLER,

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Complainants,

and

PLUMBERS LOCAL #326 OF UNITED
ASSOCIATION OF JOURNEYMEN
PLUMBERS & STEAMFITTERS OF
THE UNITED STATES AND CANADA,
CHARLES FLYNN, STEAMFITTERS
LOCAL #284 OF UNITED ASSOCIATION
OF JOURNEYMEN PLUMBERS
& STEAMFITTERS OF THE UNITED
STATES AND CANADA, and VIN-
CENT R. BECRAFT,

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Defendants.

On Bill, etc.

STATE OF NEW JERSEY, }
COUNTY OF BERGEN. } ss.:

30 HENRY P. RISSLER of full age, being duly sworn
according to law upon his oath, deposes and says:

1. I am the complainant in the foregoing bill of complaint mentioned and I have read the same and am familiar with the contents thereof and the matters therein set forth are true to the best of my knowledge and belief.

40 2. My partner Frank J. Rissler and myself, conduct a general plumbing and heating business in the City of Hackensack, Bergen County, New Jer-

Affidavit of Henry P. Rissler.

sey, where I reside. We have conducted the same for the past seven years and during that time I have conducted what is generally known as a "union shop" in that all our employees are members of some association commonly known as a "union".

3. Prior to and until December, 1928, I was enrolled as a member of the union known as Plumbers Local #326 of the United Association of Journeymen Plumbers & Steam Fitters of the United States & Canada. I was obliged to become a member because I was advised by the delegate of said union that unless I became a member, neither I nor my brother would be permitted to do any plumbing work ourselves or to handle any tools. At no time during the past seven years, since the inception of our business has my brother or myself been employed by any master plumber as "journeymen plumbers" and our business for the past seven years has consisted solely of plumbing and heating contracting in which business, from time to time, we employ such union help as we require.

4. On or about December, 1926, I applied for withdrawal from the Plumbers Local #326 of United Association of Journeymen Plumbers & Steam Fitters of the United States and Canada, at which time I was a member in good standing of the said Union, and I was instructed to pay a withdrawal fee of \$5.00, which I paid to the union delegate Charles F. Flynn and for which I received a stamp in my union book marked "withdrawal \$5.00 reinstatement". Subsequently I was informed by the union delegate that my application for withdrawal had been denied and that unless I continued to pay my dues as required by the Union,

Affidavit of Henry P. Rissler.

my firm would be unable to procure any union help. At that time my firm was engaged in various contracts and in order not to be declared unfair to union labor, I was obliged to continue payment of my dues and assessments until on or about the month of June, 1929, despite the fact that I protested that as a master plumber I was under no obligation to maintain my membership in the Local Union.

5. I am familiar with the Constitution and By-laws of the United Association of Journeymen Plumbers & Steam Fitters of the United States and Canada, and sections Nos. 179 and 180 of the said constitution read as follows:

20 "Section 179. Any member of the United Association who starts in business legitimately for himself may resign from the United Association, with the consent of the Local Union to which he is attached.

30 "Section 180. Members of the United Association may be granted an honorable withdrawal card upon entering into business, or leaving the trade upon recommendation of their Local Union or by action of the General Executive Board, if they are entitled to same in accordance with our rules and laws."

6. The firm of Rissler Bros. is a member in good standing of the Master Plumbers Association of Hackensack and vicinity, which is composed of contractors.

40 7. On or about July 14, 1930, Charles Flynn, delegate of the Plumbers Local Union #326, visited

Affidavit of Henry P. Rissler.

a job on which my firm has the steam fitting contract at Cedar Lane and Garrison Avenue, Township of Teaneck, Bergen County, New Jersey, and in the company of V. R. Becraft, delegate of the Steam Fitters Local Union #284, informed Louis Jambor whom we had employed as a steam fitter on that job, that he could no longer work for us since Rissler Bros. had been declared to be unfair to union labor by the Plumbers Local Union #326. I then requested the delegate of the Steam Fitters Local Union #284, V. R. Becraft, to furnish me with a steam fitter and helper in good standing, and he informed me that he could give me no help because the Plumbers Local Union #326 had declared Rissler Brothers to be unfair to Union labor.

8. On July 31st, 1930, I appeared before the executive board of Plumbers Local Union #326 and was informed by Mr. Collins, Secretary of the board, that Rissler Bros. had been declared to be unfair to union labor because "I had not kept my union dues up to date". I was also informed that I would not be reinstated until I paid a new initiation fee in the amount of \$300, together with back dues, in all amounting to \$324, and that the withdrawal card would be issued me only if Rissler Bros. agreed not to use tools themselves and kept a union plumber continually on their pay-roll. I informed the executive board that Rissler Bros. was a member of the Master Plumbers Association of Hackensack and vicinity, did no journeymen work and was, therefore, under no obligation to maintain my membership in the Plumbers Local #326 of United Association of Journeymen Plumbers & Steam Fitters of the United States and Canada.

Affidavit of Henry P. Rissler.

9. I am familiar with section #147 of the Constitution of the United Association of Journeymen Plumbers & Steam Fitters of the United States and Canada, and same reads as follows:

10 "No member of the United Association will be allowed to do sub-contracting or lumping from a contracting plumber or fitter or work for any person that has taken such contract".

20 10. Since July 14th, 1930, Rissler Bros. have been unable to secure any union labor to work for them and the firm is unable to proceed with the work on hand. We are unable to undertake any new contracts or jobs which employ only union labor and by reason of the aforesaid, we are unable to continue our business which is suffering to a continually increasing extent.

HENRY P. RISSLER.

Sworn and subscribed to before me }
this 2nd day of August, 1930. }

MARTIN M. HIGIER,
Notary Public of New Jersey.

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Affidavit of Frank J. Rissler.

(Filed August 4, 1930)

IN CHANCERY OF NEW JERSEY.

Between

HENRY P. RISSLER and FRANK J.

RISSLER,

Complainants,

10

and

PLUMBERS LOCAL #326 OF UNITED
ASSOCIATION OF JOURNEYMEN
PLUMBERS & STEAMFITTERS OF
THE UNITED STATES AND CANADA,
CHARLES FLYNN, STEAMFITTERS
LOCAL #284 OF UNITED ASSOCIA-
TION OF JOURNEYMEN PLUMBERS
& STEAMFITTERS OF THE UNITED
STATES AND CANADA, and VIN-
CENT R. BECRAFT,

Defendants.

On Bill, Etc.

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STATE OF NEW JERSEY, }
COUNTY OF BERGEN, } ss.:

FRANK J. RISSLER, of full age, being duly sworn
according to law upon his oath, deposes and says: 30

1. I am a complainant in the foregoing bill of
complaint mentioned and am familiar with the con-
tents thereof and the matters therein set forth are
true to the best of my knowledge and belief.

2. I was present at the Cedar Lane and Garrison
Avenue job in Teaneck, New Jersey, on July 31st,
1930, when Louis Jambor, a steam fitter which our
firm had employed was instructed to stop work for 40

Affidavit of Frank J. Rissler.

us. I heard V. R. Becraft, delegate of Steam Fitters Local Union No. 284 say that he would be unable to furnish Rissler Bros. with any union help until the other member of the firm, my brother, Henry P. Rissler, was reinstated in good standing by Plumbers Local Union No. 326. Since that time my firm has been unable to secure any union labor and we are unable to continue our business or enter into any new contract on jobs which employ only union labor or complete the contracts we have on hand, and our business is suffering to a continually increasing extent.

3. For the past seven years my brother and myself have conducted a union shop and at no time during that period was either of us employed as a journeyman plumber by any master plumber. Rissler Bros. is a member of the Master Plumbers Association of Hackensack and Vicinity and our business consists of plumbing and heating contracting, in which we require union help.

FRANK J. RISSLER.

Sworn and subscribed to before me }
this 2nd day of August, 1930. }

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MARTIN M. HIGIER,
Notary Public of N. J.

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Affidavit of Louis Jambor.

(Filed August 4, 1930)

IN CHANCERY OF NEW JERSEY.

Between

HENRY P. RISSLER and FRANK J.
RISSLER,
Complainants,

10

and

PLUMBERS LOCAL #326 OF UNITED
ASSOCIATION OF JOURNEYMEN
PLUMBERS & STEAMFITTERS OF
THE UNITED STATES AND CANADA,
CHARLES FLYNN, STEAMFITTERS
LOCAL #284 OF UNITED ASSOCIA-
TION OF JOURNEYMEN PLUMBERS
& STEAMFITTERS OF THE UNITED
STATES AND CANADA, and VIN-
CENT R. BECRAFT,

On Bill, Etc.

20

Defendants.

STATE OF NEW JERSEY, }
COUNTY OF BERGEN, } ss.:LOUIS JAMBOR, of full age, being duly sworn ac-
cording to law upon his oath, deposes and says:

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1. I am a journeyman steam fitter and belong to
the Steam Fitters Local Union No. 284 of the
United Association of Journeymen Plumbers and
Steamfitters.2. On or about July 14, 1930, while engaged in
work for Rissler Bros. on a job at Cedar Lane and
Garrison Avenue, Teaneck, Bergen County, N. J.,
I was approached by V. R. Becraft, delegate of the

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Affidavit of Louis Jambor.

Steam Fitters Local Union No. 284 who informed me that Rissler Bros. had been declared unfair to union labor and that I must cease working for the firm immediately.

LOUIS JAMBOR.

10 Sworn and subscribed to before me }
this 2nd day of August, 1930. }

MARTIN M. HIGIER,
Notary Public of N. J.

Certified True Copy.

IRA KATZMAN,
Solicitor of Complainants.

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Order to Show Cause and Restraint.

(Filed August 4, 1930)

IN CHANCERY OF NEW JERSEY.

Between

HENRY P. RISSLER and FRANK J.

RISSLER,

Complainants,

10

and

PLUMBERS LOCAL #326 OF UNITED
ASSOCIATION OF JOURNEYMEN
PLUMBERS & STEAMFITTERS OF
THE UNITED STATES AND CANADA,
CHARLES FLYNN, STEAMFITTERS
LOCAL #284 OF UNITED ASSOCIA-
TION OF JOURNEYMEN PLUMBERS
& STEAMFITTERS OF THE UNITED
STATES AND CANADA, and VIN-
CENT R. BECRAFT,

Defendants.

On Bill, Etc.

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This matter being opened to the Court by Ira Katzman, solicitor of the complainants, and the Court having read the bill of complaint in the above entitled cause and the affidavits thereunto annexed:

It is on this 4th day of August, One Thousand Nine Hundred and Thirty, ORDERED that the defendants Plumbers Local #326 of United Association of Journeymen Plumbers and Steam Fitters of the United States and Canada, Charles Flynn, Steam Fitters Local #284 of United Association of Journeymen Plumbers & Steam Fitters of the United States and Canada, and Vincent R. Becraft, show cause before the Chancellor at the Chancery Chambers in the City of Jersey City on the 11th day of

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Order to Show Cause and Restraint.

10 August, 1930, at the hour of ten o'clock in the forenoon or as soon thereafter as counsel can be heard, why the said defendants, Plumbers Local #326 of United Association of Journeymen Plumbers & Steam Fitters of the United States and Canada, Charles Flynn, Steam Fitters Local #284 of United Association of Journeymen Plumbers & Steam Fitters of the United States and Canada, and Vincent R. Becraft, should not be restrained and enjoined according to the prayer of said bill.

20 It is further ORDERED that the said defendants Plumbers Local #326 of United Association of Journeymen Plumbers & Steam Fitters of the United States and Canada, Charles Flynn, Steam Fitters Local #284 of United Association of Journeymen Plumbers & Steam Fitters of the United States and Canada, and Vincent R. Becraft, and their agents and servants, in the meantime, and until further order of this Court in the premises desist and refrain from enterfering with the business of the complainants Henry P. Rissler and Frank J. Rissler, trading as Rissler Bros.; that they desist and refrain from refusing to permit members of their Association from working for the complainants Henry P. Rissler and Frank J. Rissler; that
30 they be restrained from declaring the complainants unfair to union labor; and that they be restrained from interfering with the employees of the complainants Henry P. Rissler and Frank J. Rissler in the usual course of their business.

40 It is further ORDERED that true copies of said bill of complaint and the affidavits hereunto annexed and of this order, all certified by the solicitor of the complainants be served on the defendants

Order to Show Cause and Restraint.

Plumbers Local #326 of United Association of Journeymen Plumbers & Steam Fitters of the United States and Canada, by serving its secretary, Ira DeBaun, and the defendant Steam Fitters Local #284 of United Association of Journeymen Plumbers & Steam Fitters of the United States and Canada by serving its secretary, Joseph Narsese, and the defendants Charles Flynn and Vincent R. Becraft within two days from the date hereof. 10

E. R. WALKER,
C.

Respectfully advised.

JOHN O. BIGELOW,
V. C. 20

Certified to be a true copy.

IRA KATZMAN,
Sol'r for Compl'ts.

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DEFENDANTS' AFFIDAVITS.**Affidavit of Charles Flynn.**

(Filed August 19, 1930)

IN CHANCERY OF NEW JERSEY.

Between
 10 HENRY P. RISSLER and FRANK J.
 RISSLER,
 Complainants,

 and

 20 PLUMBERS LOCAL #326 OF UNITED
 ASSOCIATION OF JOURNEYMEN
 PLUMBERS & STEAMFITTERS OF
 THE UNITED STATES AND CANADA,
 CHARLES FLYNN, STEAMFITTERS
 LOCAL #284 OF UNITED ASSOCIA-
 TION OF JOURNEYMEN PLUMBERS
 & STEAMFITTERS OF THE UNITED
 STATES AND CANADA, and VIN-
 CENT R. BECRAFT,
 Defendants.

STATE OF NEW JERSEY, }
 COUNTY OF HUDSON, } ss.:

30 CHARLES FLYNN, of full age, being duly sworn,
 according to law, upon his oath, deposes and says:

1. I am Business Agent of Plumbers Local Union
 326 that takes in the territory of Hackensack and
 vicinity. I have known both Rissler Brothers for
 a number of years.

40 2. My attention has been particularly drawn to
 Paragraph "7" of the affidavit of Henry P. Riss-
 ler, and Paragraph "2" of the affidavit of Frank
 J. Rissler. I was present at the job at Cedar Lane

Affidavit of Charles Flynn.

and Garrison Avenue, Teaneck, New Jersey, on Tuesday, July 15th, 1930, and not on July 14th, 1930 as alleged in the affidavits of both Rissler Brothers. Rissler Brothers had employed one Louis Jambor, a steamfitter, on the job. Louis Jambor had formerly been a member of Steamfitters Local Union 284, but had been automatically expelled from the union because of the non-payment of dues for a period of over fifteen months. Mr. V. R. Becraft, business agent of Steamfitters Local 284, was also present, together with both Rissler Brothers. 10

3. I deny that Mr. Becraft told Mr. Louis Jambor that he could no longer work for Rissler Brothers, because Rissler Brothers had been declared unfair to union labor by Plumbers Local Union 326. I also deny that either of the Rissler Brothers requested Mr. Becraft to furnish them with a steamfitter and helper in good standing. I deny that Mr. Becraft informed them that he could give no help, because Local 326 had declared Rissler Brothers unfair to union labor. Jambor continued to work on this job and the same is practically finished. 20

4. Mr. Becraft and I were present at the job in the course of our duties as Business Agents to see that union conditions prevailed. 30

5. I have been a member of Plumbers Local Union 326 for the past eleven years. I am familiar with the constitution and by-laws, customs and usages of the plumbers trade and of the International Organization. I have been connected with the Plumbers Organization for forty years. 40

Affidavit of Charles Flynn.

6. Plumbers Local Union 326 was chartered by the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada, which is affiliated with the Building Trades Department of the American Federation of Labor.

10 7. The Plumbers Local Union 326 is a voluntary unincorporated association, consisting of approximately one hundred and fifty men, with its headquarters in the City of Hackensack.

8. I have known both Rissler Brothers for the past seven or eight years. Henry P. Rissler was recognized as a licensed plumber. Frank J. Rissler has never been recognized either as a plumber or steamfitter.

20 9. Referring to the rules of our organization, any journeyman plumber who handles the tools of his trade and does work himself, is eligible for membership in our local. Any Master Plumber or Boss Plumber who employs journeymen plumbers and does not handle tools of the trade himself, is not compelled to join our local. Any plumber whatever, whether designated as a Journeyman Plumber or Master Plumber, who actually handles the
30 tools of his trade, must be a member in good standing of our organization, before he is recognized as a union plumber.

10. Referring to Paragraph "4" of Henry P. Rissler's affidavit, it is my recollection that some time in the year 1925, Rissler did comply with the Constitution and Rules of our Association and obtained a withdrawal card, which he deposited with the local and was reinstated in the latter part of
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Affidavit of Charles Flynn.

1926, and thereafter he continued to pay his dues as a regular member. It is also true that prior to this time, viz, December, 1926, Henry P. Rissler had at one time been dropped from the rolls of Local 326 because of his non-payment of dues for a period of twelve months, which under our Constitution subjects a member to automatic expulsion, and that thereafter Rissler paid a new initiation fee and was reinstated in the local. 10

As a matter of fact, in accordance with the constitution and by-laws of our organization, any member who desires to withdraw from the organization, may apply for what is known as an "Honorable Withdrawal Card", which means that if at any time in the future such member desires to return to the organization, he can do so upon paying the annual fee of Two (\$2.00) Dollars to the International, plus a Five Dollar reinstatement fee to the Local Union as and when such member deposits his Honorable Withdrawal Card. To my knowledge, Henry P. Rissler has not done this since December, 1926. 20

11. According to our constitution and by-laws, if a member withdraws without obtaining the honorable withdrawal card, provided for in our constitution and without paying the annual fee of Two (\$2.00) Dollars to the International Organization, such member at any time in the future when he again desires to become affiliated with the organization, must go through the same procedure as a brand new member, that is, he must pay a new initiation fee and be inducted into the organization as if he had never been a member of the organization. The purpose of obtaining an Honorable withdrawal card is to do away with the necessity of paying another initiation fee when such member 30 40

Affidavit of Charles Flynn.

again desires to become affiliated with the organization. Our Constitution and by-laws also provide that when a member has been in arrears for dues for a period of twelve months, he becomes automatically expelled, and if he seeks reinstatement he must not only pay a new initiation fee, but also must pay twelve months dues in arrears.

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12. Henry P. Rissler has been a member of Plumbers Local Union 326 for a number of years last past. Since June 1st, 1929, Henry P. Rissler has not paid any dues to our local union and under our constitution and by-laws, became automatically expelled, and is no longer entitled to the benefits and privileges provided for in our organization. He is, therefore, not considered a union man in good standing. He has never, to my knowledge, applied for an Honorable Withdrawal Card.

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13. On July 31st, 1930, after Mr. Henry P. Rissler became automatically expelled, by reason of the non-payment of his dues, he applied to the Executive Board of Plumbers Local Union 326 for reinstatement. The matter was taken up by the Executive Board and in view of the fact that Mr. Rissler had never applied for an Honorable Withdrawal Card, he was told that in order to be reinstated in the local he would have to pay a new initiation fee of Three Hundred (\$300.00) Dollars, plus twelve months dues in arrears, as provided for in our Constitution and by-laws. He refused to pay the initiation fee and the back dues, or in any other manner comply with the constitution and by-laws. The dues in arrears amounted to Twenty-four (\$24.00) Dollars, which meant that Mr. Rissler in order to become reinstated, would have to

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Affidavit of Charles Flynn.

pay a total sum of Three Hundred and Twenty-four (\$324.00) Dollars.

14. It is untrue that Mr. Collins, Secretary of the Executive Board, told him that he had been declared unfair to union labor because he had not kept his union dues up to date.

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15. It was not a question of being fair or unfair, simply a question of expulsion from the organization for non-payment of dues under the constitution and by-laws. The action of the executive board, so far as Mr. Henry P. Rissler was concerned, was the same action that would have been taken against any other man who had been expelled and was seeking reinstatement.

16. Mr. Rissler at this meeting was given full opportunity to state his entire case. The matter was discussed in full. It is absolutely untrue that Mr. Rissler was told at this meeting, or at any other time, that Rissler Brothers would have to agree not to use tools themselves but would have to keep a union plumber continually on their payroll.

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17. Annexed hereto and made a part of this affidavit are certain provisions of the Constitution and by-laws of the United Association of Journey-men Plumbers and Steamfitters, which are binding upon all members and all local unions throughout the country, and which provisions were well known to Rissler Brothers.

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18. The entire dispute between Rissler Brothers and the Local Unions involve simply a question of whether Henry P. Rissler is a member in good

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Affidavit of Charles Flynn.

standing. He is clearly not, and not entitled to any of the benefits or privileges of our organization, nor is he a member of the union in good standing. He had been expelled because he had not paid his dues.

- 10 19. On behalf of my local, I desire to state that if Mr. Henry P. Rissler complies with the Constitution and by-laws, viz., pays an initiation fee of Three Hundred (\$300.00) Dollars, plus a year's dues in arrears of Twenty-four (\$24.00) Dollars, or a total of Three Hundred and Twenty-four (\$324.00) Dollars, as provided for in our United Brotherhood Organization, he will be reinstated as a member. We have no desire to keep him out, but unless he complies with the constitution and
20 by-laws of the organization, in which he had formerly been a member, we cannot reinstate him because to do so would be to violate our own constitution and by-laws.

20. The members of my organization will not work for Master Plumbers who employ non-union men or where non-union conditions exist on the job.

- 30 21. Mr. Rissler, by reason of the fact that he is no longer a member of our organization, is not entitled to have the members of our organization work for him, nor will they work for him because in this present status, he is considered a non-union employer until he becomes reinstated and until he secures reinstatement in our local he will continue to be a non-union employer. I have never instructed any of my men not to work for him, even
40 in this present condition. This is an obligation on

Affidavit of Charles Flynn.

the men themselves. As a matter of fact, neither one of the Rissler Brothers ever asked me for men at all. Neither I nor my organization can nor will prevent or attempt to prevent Rissler Brothers from hiring anybody they please to do their work, but the union plumbers of my organization will not work for Rissler Brothers unless and until Henry P. Rissler is reinstated as a member in good standing of our local. 10

22. I have no power or jurisdiction to compel my men to work. By refusing the Rissler Brothers, if they have so refused (of which I have no knowledge whatever) they are complying with the rules of their own organization. As a matter of fact, Rissler Brothers have very seldom been in good standing so far as working conditions are concerned. They were continually violating union rules. Henry P. Rissler has nearly always been behind in his dues. 20

23. On the Hobart Street job at Hackensack, New Jersey, about two months ago, Rissler Brothers had the heating contract on a frame dwelling house. The nature of the work was such that it had to be done by steamfitters and not by plumbers. We are very particular in our organization. In fact, we have an express provision and line of demarcation between the plumbers' and steamfitters' duties and jurisdiction. 30

24. One of the rules is that a plumber cannot do a steamfitter's work and vice versa. On this particular job on Hobart Street, both the Rissler Brothers used the tools of the trade and performed the duties of steamfitters, which they knew under 40

Affidavit of Charles Flynn.

their own union rules, was a violation. They should have employed steamfitters to do this particular work. Henry P. Rissler is only recognized as a plumber. Section 148 of our National Constitution provides

"NO VIOLATIONS OF TRADE JURISDICTION.

- 10 Sec. 148. In all local unions organized separately or combined, members of any one branch of the trade are prohibited from working at that of another, provided that a member or members of such other branch can be secured within the jurisdiction of the local."

- 20 Frank J. Rissler has never been recognized as a plumber, nor has he to my knowledge a license for a plumber. Neither has he been recognized as a steamfitter. Our National Organization includes both plumbers and steamfitters, but the line of demarcation between their respective jurisdictions is well known to Rissler Brothers. I again repeat that if Henry P. Rissler complies with the Constitution and by-laws of our National and local organization, he will be reinstated in good standing and will then be considered a union employer, and the
- 30 men of my organization will be only too glad to work for him. Unless and until he does this, my men will not work for him. My men do not have to be told or instructed by me or anyone else not to work for Rissler Brothers. Under the present circumstances, they will not work for him of their own accord. If any of my men should work for Rissler Brothers under the present circumstances, they will themselves be considered in violation of the present rules of the constitution. Again I want
- 40 to repeat that at no time had Rissler Brothers been

Affidavit of Charles Flynn.

declared unfair to Union Labor. The question of being fair or unfair has never entered into the controversy at all. The entire controversy was brought about by the fact that Henry P. Rissler refused to comply with the rules and by-laws of our Organization.

CHARLES F. FLYNN. 10

Sworn and subscribed to before me }
this 11th day of August, 1930 }

ALBERT BARBER,
Notary Public of New Jersey.

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**Extracts from the Constitution of the
United Association of Journeymen
Plumbers and Steamfitters of the
United States and Canada—Annexed
to Affidavit of Charles Flynn.**

HONORABLE WITHDRAWAL CARDS.

10 SEC. 182. Any member of the United Association who starts in business legitimately for himself may resign from the United Association, with the consent of the local Union to which he is attached.

20 SEC. 183. Members of the United Association may be granted an honorable withdrawal card upon entering into business, or leaving the trade upon recommendation of their Local Union or by action of the General Executive Board, if they are entitled to same in accordance with our rules and laws.

30 SEC. 184. Members holding honorable withdrawal cards who have not committed any act detrimental to our organization or any violation of the Constitution may be reinstated within one year, if they do apply and present withdrawal card with a reinstatement fee of \$5.00, they will secure a \$5.00 reinstatement stamp and have Due Book issued to them bearing their old or last card number. Said member shall become beneficial six months after reinstatement. The Local Secretary must forward the withdrawal card to the General Secretary-Treasurer.

40 SEC. 185. Or the said withdrawal card can be renewed before the expiration of a year from date of issuance or date of former renewal if within a year by payment of \$2.00 should such withdrawn

Extracts from the Constitution of the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada.

member present his lapsed withdrawal card, or ask for reinstatement after he has been out of the organization for one year or more, he shall be reinstated upon the payment of the minimum initiation fee of the local union to which he applies. He will receive the regular initiation stamp provided he has not committed any act detrimental to our organization as herein provided for in this section and must be re-obligated. When withdrawal cards are issued they must specify member's vocation. 10

EXPULSION OF MEMBERS.

SEC. 188. Any member in arrears for dues or assessments for a period of one year or more, shall stand expelled, and must pay a year's back dues, twenty-four dollars (\$24.00), and all moneys that he legally owes to the expelling local and a new initiation fee to the local in which he desires to be initiated. 20

NOTE:—THE CONSTITUTIONAL MEANING AND INTENT OF THE ABOVE SECTION 188 IS THAT, the EXPELLED MEMBER SHALL PAY AN INITIATION FEE, one year's back dues, twenty-four dollars (\$24.00), any disciplinary assessments that have been sanctioned by General Executive Board, or loans that he may owe. He is exempt from all other alleged indebtedness and the local unions have no constitutional or legal right to charge the expelled member with any other indebtedness except that which is herein stated above. 30

SEC. 189. Whenever a member is reinstated after having been expelled, and after having paid one 40

Extracts from the Constitution of the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada.

10 year's back dues to the local that expelled him, the expelling local, on receipt of the one year's back dues shall cancel 12 monthly due stamps and return them to the local that made the collection, as a receipt for the amount collected, the same to be kept on file and pasted on the original letter for future reference.

SEC. 190. When a member commits any act for which he is expelled by a local, all facts and evidence in the case shall be sent by the local to the general office for record.

20 SEC. 191. An expelled member shall have the right to appeal from the action of the local when expelled, for any cause, except for non-payment of dues, provided such appeal is filed within sixty days from notice of expulsion.

SEC. 192. An expelled member, except such member as was expelled for non-payment of dues, cannot be reinstated by any local union without the consent of the General Executive Board.

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Affidavit of Vincent R. Becraft.

IN CHANCERY OF NEW JERSEY.

Between

HENRY P. RISSLER and FRANK J.

RISSLER,

Complainants,

and

PLUMBERS LOCAL #326 OF UNITED
ASSOCIATION OF JOURNEYMEN
PLUMBERS & STEAMFITTERS OF
THE UNITED STATES AND CANADA,
CHARLES FLYNN, STEAMFITTERS
LOCAL #284 OF UNITED ASSOCIA-
TION OF JOURNEYMEN PLUMBERS
& STEAMFITTERS OF THE UNITED
STATES AND CANADA, and VIN-
CENT R. BECRAFT,

Defendants.

On Bill, Etc.

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STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

VINCENT R. BECRAFT, of full age, being duly
sworn, according to law, upon his oath, deposes
and says:

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1. I am Business Agent of Steamfitters Local
Union 284, with headquarters at the City of Hack-
ensack, New Jersey, having jurisdiction over Hack-
ensack and vicinity. I have been Business Agent
for the past five months and have been a journey-
man steamfitter for the past thirteen years.

2. I recall that on July 15th, 1930, I was pres-
ent on the job being done by Rissler Brothers at

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Affidavit of Vincent R. Becraft.

10 Cedar Lane and Garrison Avenue, Teaneck, New Jersey. There was employed on that job, by Rissler Brothers, one Louis Jambor, a steamfitter. On this particular job, Rissler Brothers only had one employee, so far as I know, the said Jambor. Rissler Brothers were installing a steam heating plant in a series of eight stores to be erected on said job. Rissler Brothers, to my knowledge, on this job, were using the tools of the trade and doing some of the work themselves.

20 3. Louis Jambor had formerly been a member of Steamfitters Local Union 284. He had been expelled from the local for the non-payment of dues around the latter part of May, 1930. He had been in arrears for this dues for more than twelve months, and under our National Constitution and Organization, he was automatically expelled and ceased to enjoy the privileges and benefits of organized union labor.

30 4. Jambor had been a member of my organization for a number of years last past and was familiar, as all members are familiar, with the rules of our National Constitution in regard to the non-payment of dues for the last twelve months. He had never applied for nor secured an honorable withdrawal card. He had been notified of his expulsion because of the non-payment of dues.

40 5. I particularly desire to deny the allegations contained in Paragraph "7" of Henry P. Rissler's affidavit, and Paragraph "2" of Frank J. Rissler's affidavit, and Paragraph "2" of Louis Jambor's affidavit. I was present on the job together with Charles Flynn, a delegate of Plumbers Local Union

Affidavit of Vincent R. Becraft.

326. In fact, I visited the job twice on that day. Mr. George Renz of the Electricians Union was also present on that day. I talked to Rissler Brothers on that day. Mr. Josephs, the owner of the premises, was also present. I absolutely deny that I told Jambor that Rissler Brothers had been declared unfair to union labor, and that he, Jambor, must cease working for them immediately. I also deny that either one of the Rissler Brothers requested me to furnish them with a steamfitter and helper in good standing, and I also deny that I informed them or either of them that I could give them no help because the Plumbers Union 326 had declared Rissler Brothers to be unfair to union labor. As a matter of fact, the matter discussed was the question of the standing of Henry P. Rissler in the Plumbers Union Local 326. At that time Henry P. Rissler had been expelled from Local Union 326 because of the non-payment of dues for more than one year.

6. The statement in the affidavit of Louis Jambor that he still belongs to Steamfitters Local 284 of the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada, is absolutely untrue. He was expelled last May for the non-payment of dues, as I related above, and his expulsion was well known to Rissler Brothers.

7. The United Association of Journeymen Plumbers and Steamfitters of the United States and Canada is the parent body and has chartered both Plumbers Local 326 and Steamfitters Local 284. Although both locals are engaged in different lines of work, they are both members of the same parent organization.

Affidavit of Vincent R. Becraft.

8. Steamfitters Local 284 is a voluntary unincorporated association and consists at the present time of approximately one hundred and sixty members in good standing.

10 9. I deny that either I or any member of my organization ever declared Rissler Brothers unfair to union labor, nor was the question of being unfair ever mentioned or discussed. The whole controversy between Rissler Brothers and the two locals was the question of the standing of Henry P. Rissler in Local 326. I have not ordered any of my men of the Steamfitters Local 284, not to work for Rissler Brothers. As a matter of fact, my men do not have to be told not to work for Rissler Brothers. They will not work for them because Rissler Brothers are now considered non-union employers, and until Henry P. Rissler is reinstated as a member in good standing of Local 326 of the Plumbers Union, my men, the steamfitters will not work for them. It is not necessary for me to instruct my men not to work for them. They are bound by their own constitution and by-laws not to work alongside of non-union men or for a non-union employer. Under the present circumstances, Rissler Brothers are considered non-union employers so far as the Steamfitters are concerned.

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10. To my knowledge for the past five months, Rissler Brothers have installed steam heating plants themselves. That is, they used the tools of the trade themselves. This is a clear violation of our constitution and by-laws. As neither one of the Rissler Brothers is a steamfitter, the work should have been done by men of my local who are recognized steamfitters. One of these jobs was the frame

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Affidavit of Vincent R. Becraft.

dwelling house on Hobart Street, Hackensack, New Jersey, and the other job is known as the Bratt job in Hackensack. I called both these jobs to the attention of Rissler Brothers and accused them of knowingly violating our rules. Henry P. Rissler is a plumber not recognized as a steamfitter. They told me they would do things to suit themselves. Rissler Brothers have openly defied the laws of the United Association. 10

11. On the job at Cedar Lane and Garrison Avenue, Teaneck, New Jersey, all the work of the various trades, such as electricians, carpenters, iron workers, etc., were all union craftsmen and they continued to do their work and finish their respective jobs. Both of the Rissler Brothers were working on this job, doing the job themselves, that is, doing the steamfitting themselves. 20

12. Henry P. Rissler on this date threatened to beat me up. He became very abusive toward me, using profane language in addressing me.

VINCENT R. BECRAFT.

Sworn and subscribed to before me }
this 11th day of August, 1930. } 30

ALBERT BARBER,
Notary Public of New Jersey.

Affidavit of George Renz.

IN CHANCERY OF NEW JERSEY.

Between
 HENRY P. RISSLER and FRANK J.
 RISSLER,
 Complainants,

10

and

PLUMBERS LOCAL #326 OF UNITED
 ASSOCIATION OF JOURNEYMEN
 PLUMBERS & STEAMFITTERS OF
 THE UNITED STATES AND CANADA,
 CHARLES FLYNN, STEAMFITTERS
 LOCAL #284 OF UNITED ASSOCIA-
 TION OF JOURNEYMEN PLUMBERS
 & STEAMFITTERS OF THE UNITED
 STATES AND CANADA, and V. R.
 BECRAFT,

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Defendants.

STATE OF NEW JERSEY, }
 COUNTY OF HUDSON, } ss.:

GEORGE RENZ, of full age, being duly sworn, ac-
 cording to law, upon his oath, deposes and says:

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1. I am Business Agent of Local Union 578,
 Electricians Union, with jurisdiction in Bergen
 County.

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2. I was present on the job at Cedar Lane and
 Garrison Avenue, Teaneck, New Jersey, on Tues-
 day, July 15th, 1930. There were present both the
 Rissler brothers, Mr. Becraft, a delegate of the
 Steamfitters Local Union No. 284, Mr. Edward
 West of the Carpenters District Council, and one
 Louis Jambor.

Affidavit of George Renz.

3. Rissler Brothers have a steamfitting contract on eight stores being constructed on the job at the corner of Cedare Lane and Garrison Avenue, Teaneck, New Jersey. Mr. Josephs, owner of the premises, was also present.

4. Paragraph "7" of the affidavit of Henry P. Rissler, and Paragraph "2" of the affidavit of Frank J. Rissler, have been called to my attention. I deny that Mr. Becraft, a delegate of the Steamfitters Local Union 284, informed Louis Jambor that he could no longer work for Rissler Brothers, because Rissler Brothers had been declared unfair to Union Labor by the Plumbers Local 326. I also deny that Mr. Becraft was requested by either of the Rissler Brothers to furnish them with a steamfitter in good standing and deny that Mr. Becraft stated that he could give no help because Plumbers Local 326 had declared Rissler Brothers to be unfair to union labor.

5. This conversation took place on July 15th, 1930, on a Tuesday and not on July 14th, 1930, as alleged in the affidavits of both Rissler Brothers.

6. Rissler Brothers were informed that Louis Jambor, who had been working for them as a steamfitter, was no longer in good standing with the Steamfitters Local Union 284; that he had been dropped from the local because of the non-payment of dues, and was therefore not recognized by the local union as a local member in good standing. They were also informed that Jambor had not paid any dues in nearly fifteen months, and that under the constitution and by-laws of the International Union and local union, a member who has not paid

Affidavit of George Renz.

his dues in twelve months stands automatically expelled.

7. I also spoke to Mr. Jambor personally and he admitted to me that he had been notified by the secretary of the Steamfitters Local Union 284 that he had been dropped from the rolls of the union
10 for the non-payment of dues.

8. In my conversation with both Rissler Brothers, they admitted to me that about two months prior to June 15th, 1930, they had a certain job on Hobart Street, Hackensack, New Jersey, on which job they handled the tools themselves and did the work personally, without the assistance of union labor.

20 9. I particularly remember a conversation which took place between one of the Rissler Brothers and Mr. Becraft. One of the Rissler Brothers accused Mr. Becraft of ordering Jambor off the job. Mr. Becraft denied that he ordered Jambor off the job. Mr. Becraft stated that he could not order Jambor off the job, because Jambor was not a local member of his organization, as he had been expelled for the non-payment of dues.

30 10. One of the Rissler Brothers also threatened to beat up Mr. Becraft.

GEORGE RENZ.

Sworn and subscribed to before me }
this 11th day of August, 1930. }

ALBERT BARBER,

40 Notary Public of New Jersey.

Stipulation.

IN CHANCERY OF NEW JERSEY.

Between	}	
HENRY P. RISSLER and FRANK J.		
RISSLER,		
Complainants,		10
and		
PLUMBERS LOCAL #326 OF UNITED		
ASSOCIATION OF JOURNEYMEN		
PLUMBERS & STEAMFITTERS OF		On Bill &c.
THE UNITED STATES AND CANADA,		
CHARLES FLYNN, STEAMFITTERS		
LOCAL #284 OF UNITED ASSOCIA-		
TION OF JOURNEYMEN PLUMBERS		
& STEAMFITTERS OF THE UNITED		
STATES AND CANADA, and V. R.		
BEACRAFT,	20	
Defendants.		

It is hereby stipulated and agreed between the Solicitors for the respective parties hereto that the Order to Show Cause heretofore granted on August 4th, 1930, and returnable before the Chancellor at the Chancery Chambers in the City of Jersey City, New Jersey, on the eleventh day of August, 1930, at ten o'clock in the forenoon, be and the same is hereby continued over until Tuesday, August 19, 1930, at the same time and place. 30

Dated, August 11, 1930.

IRA KATZMAN,
Solicitor of Complainants.

SAUL NEMSER, 40
Solicitor of Defendants.

Statement

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal, at the City of New York, this 12th day of August, 1930.

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and

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Dated August 11, 1930.

Witness my hand and seal, at the City of New York, this 12th day of August, 1930.

Witness my hand and seal, at the City of New York, this 12th day of August, 1930.

New Jersey Court of Errors and Appeals

Between

HENRY P. RISSLER and FRANK J.

RISSLER,

Complainants-Respondents,

and

PLUMBERS LOCAL #326 OF UNIT-

ED ASSOCIATION OF JOURNEY-

MEN PLUMBERS & STEAMFIT-

TTERS of the United States and

Canada, CHARLES FLYNN,

STEAM FITTERS LOCAL #284

OF UNITED ASSOCIATION OF

JOURNEYMEN PLUMBERS &

STEAM FITTERS of the United

States and Canada, and VIN-

CENT R. BECRAFT,

Defendants-Appellants.

On Appeal
from Court of
Chancery.

BRIEF FOR COMPLAINANTS-RESPONDENTS.

POINT I.

The affidavit of the defendants-appellants admitted facts which, taken in conjunction with complainant's bill, justified the intervention of the court through injunctive relief.

Henry P. Rissler was a master plumber who, with his brother Frank J. Rissler, conducted a

plumbing and heating business in Hackensack. The defendants Plumbers Local #326 and Steamfitters Local #284 of United Association of Journeymen Plumbers and Steamfitters justified their interference with the business of complainants-respondents on the ground that

“the entire dispute between Rissler Brothers and the local unions involved simply a question of whether Henry P. Rissler is a member in good standing. He is clearly not, and not entitled to any of the benefits or privileges of our organization, nor is he a member of the union in good standing. He had been expelled because he had not paid his dues.” (Flynn’s Affidavit, P. 33, Par. 18).

But it appears from the constitution of United Association of Journeymen Plumbers and Steamfitters of the United States and Canada annexed to his affidavit by the defendant Charles Flynn who was the business agent of Plumbers Local Union #326, that when a plumber ceased to be a journeyman and started in business for himself he was privileged to resign from the union.

“Sec. 182—Any member of the United Association who starts in business legitimately for himself may resign from the United Association with the consent of the local union to which he is attached.

“Sec. 183—Members of the United Association may be granted an honorable withdrawal card upon entering into business or leaving the trade upon recommendation of their local union or by action of the general executive board if they are entitled to same in accordance with our rules and laws.” (P. 38)

The defendants do not deny the allegation of the bill that Frank J. Rissler had conducted his plumbing and heating business for seven years. (P. 10, Par. 1) Nor was it denied by defendants-appellants that, Rissler had "started in business legitimately for himself" seven years ago, and was therefore privileged to resign. It does not deny the statement contained in Rissler's affidavit that

"at no time during the past seven years, since the inception of our business has my brother or myself been employed by any master plumber as 'journeymen plumbers' and our business for the past seven years has consisted solely of plumbing and heating contracting in which business, from time to time, we employ such union help as we require." (P. 17, Par. 3)

Despite this fact, and despite the provision in the constitution to which reference has been made, when Rissler, after having continued his affiliation with the local union for seven years, sought to withdraw in 1926, his application for withdrawal was denied.

In his affidavit he says:

"On or about December, 1926, I applied for withdrawal from the Plumbers Local #326 of United Association of Journeymen Plumbers & Steamfitters of the United States and Canada, at which time I was a member in good standing of the said Union, and I was instructed to pay a withdrawal fee of \$5.00, which I paid to the union delegate Charles F. Flynn and for which I received a stamp in my union book marked 'withdrawal \$5.00 reinstatement'. Subsequently I was informed by the union delegate that my application for withdrawal had been denied and that *unless I continued to pay my dues as required by the Union, my firm would be*

unable to procure any union help. At that time my firm was engaged in various contracts and in order not to be declared unfair to union labor, I was obliged to continue payment of my dues and assessments until on or about the month of June 1929, despite the fact that I protested that, as a master plumber, I was under no obligation to maintain my membership in the Local Union." (P. 17, Par. 4).

This statement is not denied. In his answering affidavit, the defendant Charles Flynn of Plumbers Local #326 says:

"In referring to paragraph 4 of Henry P. Rissler's affidavit, it is my recollection that some time in the year 1925, Rissler did comply with the Constitution and Rules of our Association and obtained a withdrawal card, which he deposited with the local and was reinstated in the latter part of 1926, and thereafter he continued to pay his dues as a regular member. It is also true that prior to this time, viz, December 1926, Henry P. Rissler had at one time been dropped from the rolls of Local 326 because of his non-payment of dues for a period of twelve months, which under our Constitution subjects a member to automatic expulsion, and that thereafter Rissler paid a new initiation fee and was reinstated in the local". (P. 30)

It will be noted that Flynn does not deny the statement of Rissler that not only was his application for withdrawal denied, but that he was informed that he would be unable to procure union help if he resigned.

So that as far back as 1925 and 1926, Rissler's attempt to withdraw from the Union was met with the threat of loss of union support if he did so; and

this, despite the fact that (as set forth in Rissler's affidavit and not denied by defendant) :

"the firm of Rissler Bros. is a member in good standing of the Master Plumbers Association of Hackensack and vicinity, which is composed of contractors."

It therefore appears that although the complainants had, upon entering upon business for themselves and ceasing to be journeymen plumbers, joined the association of master plumbers, the union of journeymen plumbers refused to permit them to withdraw from their organization.

The defendants admit that on July 14th or 15th, 1930, Charles Flynn, business agent of Plumbers Local #326 and Vincent R. Becraft, business agent of Steamfitters Local #284 appeared at a job on which Rissler Brothers had a contract. Flynn states in his affidavit:

"Mr. Becraft and I were present at a job in the course of our duties as business agents to see that union conditions prevailed." (P. 29, Par. 4)

Rissler claims that a steamfitter who had been working upon a job was informed by Flynn that he could no longer work for Rissler Bros. because they had been declared to be unfair to union labor by Plumbers Local Union and that Becraft, when requested by Rissler to supply a steamfitter in good standing, informed the complainant that he could give the latter no help because Plumbers Local Union had declared complainants to be unfair to union labor. (P. 19)

Defendants denied this allegation, but plausibility is given to it by the following statement in the affidavit of Flynn:

"Under the present circumstances they

(members of the local organization) will not work for him of their own accord. If any of my men should work for Rissler Brothers under the present circumstances, they will themselves be considered in violation of the present rules of the constitution."

"The present circumstances" to which Flynn refers were the handling of tools and the failure of Rissler to pay a new initiation fee of \$300.00 and dues of \$24. which the local union demanded as a condition of his reinstatement after having informed him that failure to pay dues in the local journeymen's union subjected him to its discipline despite the fact that he was no longer a journeyman plumber.

From the affidavits filed by the respective parties to this cause in connection with the application for injunctive relief, it therefore appears that the following situation presented itself:

According to the Constitution of the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada, of which association the local unions were subsidiaries, it appears that any member who enters into business legitimately for himself may resign with the consent of the local union to which he is attached. (Sec. 182, p. 38).

It appears, however, from the affidavit of the defendant Flynn that the local unions, without any apparent warrant in their constitution for so doing, had established a rule that any master plumber who actually handles the tools of his trade must join the journeymen's organization even though he should have become an independent contractor and entitled, according to the constitution, to sever his connection with that organization.

This rule is set forth in the affidavit of Flynn as follows:

"9. Referring to the rules of our organization, any journeyman plumber who handles the tools of his trade and does work himself, is eligible for membership in our local. Any Master Plumber or Boss Plumber who employs journeymen plumbers and does not handle tools of the trade himself, is not compelled to join our local. Any plumber whatever, whether designated as a Journeyman Plumber or Master Plumber, *who actually handles the tools of his trade*, must be a member in good standing of our organization before he is recognized as a Union plumber." (p. 30).

It appears that Rissler "handled the tools of his trade" while engaged in the performance of his contracts, and for that reason the defendants insisted that he continue his membership in their union.

Two questions therefore present themselves in this connection:

(a) Was it incumbent upon Rissler, as a master plumber engaged in the conduct of his own business to gain the consent of the Association of Journeymen Plumbers and Steamfitters in order to conduct his business?

(b) Could the association lawfully condemn as "unfair" a union plumber engaged in his independent business for the reason that he actually handled the tools of his trade and contributed his personal labor to the performance of his contracts?

It is submitted that there is nothing in the affidavits submitted by the defendants to warrant the conclusion that a master plumber who enters into business for himself is obliged to submit to the

dictates of an association of journeymen plumbers and steamfitters. Such an association is evidently designed to regulate and control the activities of *journeymen* in the exercise of their business and not master plumbers.

In the case of *Brennan vs. United Hatters*, 73 N. J. L. 729-742, this Court laid down the following rule:

"In a civilized community which recognizes the right of private property among its institutions, the notion is intolerable that a man should be prevented by the law in the enjoyment of property once it is acquired, but left unprotected by the law in his efforts to acquire it. The cup of Tantalus would be a fitting symbol for such a mockery. Our Constitution recognizes no such notion."

And in another case:

"A man's business is property. By the first section of the Bill of Rights of the Constitution of New Jersey, the right of acquiring, possessing and protecting property, is classed as a natural and inalienable right which all men have, with those of enjoying and defending life and liberty, and of pursuing and obtaining safety and happiness." *Barr vs. Essex Trades Council*, 53 N. J. Equity, 101-112.

When Rissler entered into business for himself, the firm of which he was a member affiliated itself with the Master Plumbers Association of Hackensack, and the right to withdraw from the local union of journeymen plumbers was not subject to the dictates of that union. Nor was the union warranted, under any circumstances, in objecting to an employer working in the performance of his own contracts. It is apparent, from the affidavits of the defendants that one of the principal reasons

why (as will hereafter be more fully set forth) Rissler Bros. were declared unfair to union labor, was their insistence upon laboring personally upon the contracts entered into by them as master plumbers.

Becraft, the representative of the defendant, the Steamfitters Local, #284 says:

"10. To my knowledge for the past five months Rissler Bros. have installed steam-heating plants themselves. That is, *they used the tools of the trade themselves. This is a clear violation of our Constitution and By-Laws.* As neither one of the Rissler Bros. is a steamfitter, the work should have been done by men of my local who are recognized steamfitters. One of these jobs was the frame dwelling house on Hobart Street, Hackensack, N. J. and the other job is known as the Bratt job in Hackensack. I called both these jobs to the attention of Rissler Bros. and accused them of knowingly violating our rules. Henry P. Rissler is the plumber not recognized as a steamfitter. They told me they would do things to suit themselves. Rissler Bros. have openly defied the laws of the United Association." (p. 44-45).

But it appears from the sections of the constitution introduced by Flynn in his affidavit, and upon which defendants rely, that there was nothing whatsoever in the constitution and by-laws prohibiting master plumbers from "using the tools of the trade themselves." (See extracts from constitution, p. 38).

The affidavit of George Renz, introduced by defendants to corroborate their contentions, reads as follows:

"8. In my conversation with both Rissler Bros. they admitted to me that about two months prior to June 15th, 1930, they had a

certain job on Hobart Street, Hackensack, N. J. on which job *they handled the tools themselves and did the work personally without assistance of union labor.*" (p. 48).

Rissler deposes that on or about July 14th, 1930, while engaged upon a job for which his firm had the steamfitting contract, the defendant Flynn of Plumbers Local Union #326 and Becraft of Steamfitters Local Union #284 visited the job, and informed one of his employees that he must no longer work for Rissler because the firm had been declared to be unfair. Subsequently Rissler appeared before the executive board of Plumbers Local Union on July 31st, 1930 and was informed that he had been declared to be unfair to union labor because of default on his part in payment of dues.

"I was also informed that I would not be reinstated until I paid a new initiation fee in the amount of \$300.00 together with back dues, in all amounting to \$324.00, and that *the withdrawal card would be issued me only if Rissler Bros. agreed not to use tools themselves and kept a union plumber continually on their pay roll.* I informed the executive board that Rissler Bros. was a member of the Master Plumbers Association of Hackensack and vicinity, did no journeymen work, and was, therefore, under no obligation to retain my membership in the Plumbers Local #326 of United Association of Journeymen Plumbers and Steamfitters of the United States and Canada." (P. 19, Par. 8)

While defendants in their affidavits deny that Rissler was required to agree not to use tools himself, yet the force of such denial is weakened, if not wholly overcome, by the emphasis laid by Becraft upon the fact that the complainants "used

tools of the trade themselves", and the equally emphatic insistence in the corroborating affidavit of Renz that "they handled the tools themselves and did the work personally without assistance of union labor."

The general rule laid down in *Citizen's Coach Co. vs. Camden Horse Railway Co.*, 29 N. J. Eq. 299, denying relief where "every fact that created an equity in favor of the complainant was denied by the answer and proofs by the defendant" has no application to the instant case for the reason that the essential facts to which reference has heretofore been made are, in the main, not denied; and where, as in the above instance, there is a denial, it is coupled with such admissions as to rob it of all force.

In *Forstmann & Huffman Co. vs. United Front Committee of Textile Workers*, 99 N. J. Eq. 230, Vice-Chancellor Bentley says:

"It is argued with great force and apparent earnestness that the discretion of the court should not be exercised in the defendants' favor because of the rule laid down in the case of *Citizens' Coach Co. vs. Camden Horse R. R. Co.*, 29 N. J. Eq. 299, declaring that where the complainant's proofs are fully and satisfactorily met by those of the defendants, no injunction will go in advance of the final hearing. The answer to this is that, so far as the illegal picketing by large numbers of strikers is concerned, I do not recall that it is even denied, and *certainly there is no denial that would persuade any rational being, in view of the exhibits in the nature of declarations against interests.*"

Considering the admission of both Flynn and Becraft that their respective unions prohibited masters from "working with the tools of the trade",

considering their admission of their visit to the Rissler job on July 14th or 15th "to see that union conditions prevailed"; considering that, by the union rules, union conditions did not prevail in the Rissler firm because the Risslers worked on their own jobs; and the real object of their visit becomes apparent. Their denial of the attempt to influence Jambor to quit the Rissler employ, their denial that they condemned the Risslers to Jambor as "unfair to labor" become ineffective to conceal the execution of a purpose which is not countenanced by the law as established by the cases hereinafter cited—the deprivation of an employer of labor of the right to labor himself on his own contracts. Certainly the contention of a "direct, categorical, and unequivocal denial" relied upon in appellant's brief is deprived of its entire force in the face of facts and circumstances so conceded by the defendants themselves.

But apart from the question of whether or not the executive committee apprized Rissler of their decision that he must not personally use tools of the trade, the fact remains that the affidavits of the union representatives clearly indicate that the union objected to the use of such tools by Rissler himself and to the fact that he labored personally in the performance of contracts into which he had entered. It is also obvious from the affidavit that members of the Journeymen's Local were not permitted by the association to work with Rissler Brothers (as will be more fully set forth hereafter) because of the refusal of Rissler to refrain from laboring in the performance of his own contracts.

In *Gevas vs. Greek Restaurant Workers' Club*, 99 N. J. Eq. 770, Vice-Chancellor Berry says:

"It is argued that no preliminary injunction should be issued in this case because the allegations of the bill and the accompanying affidavits are met by a full and complete denial in the affidavits of the defense. This objection is completely answered by Vice-Chancellor Bentley in the *Forstmann and Huffman Co. vs. United Front Committee of Textile Workers Case*."

In a very recent case, decided by the Court of Errors and Appeals on October 20, 1930, this Court stated its conclusions as follows:

"But the defendant contends that a temporary injunction could not lawfully issue in the face of his denial of secret methods contained in his affidavits. We think that it could in view of the character of such denial. While the general rule is that a preliminary injunction will not issue where the material fact in complainant's bill and affidavits, on which the complainant's right depends, is met by a full, explicit, and circumstantial denial under oath, yet, where, as here, the denial lacks these essential qualities and upon the entire showing from both sides it appears reasonably probable that the complainant had the right claimed, the injunction may issue. *Scherman v. Stern*, 93 N. J. Eq. 626, 117 A. 631; *Brunetto v. Montclair*, 87 N. J. Eq. 338, 100 A. 201; *Meyer v. Somerville Water Co.*, 79 N. J. Eq. 613, 82 A. 915; *Citizens' Coach Co. v. Camden Horse Railway Co.*, 29 N. J. Eq. 299. Tested by that rule the defendant's affidavits are insufficient."

Ideal Laundry Co. vs. Gugliemone, 151 Atl. Rep. 617-620.

In *Earle vs. American Sugar Refining Co.*, 74 N. J. Equity 751-761, Vice-Chancellor (now Chancellor) Walker says:

"A court of equity * * * penetrates all disguises of form, and, disregarding the shadow, grasps the substance."

In grasping the substance it becomes quite obvious, from the emphasis placed by defendants, in their affidavits, upon Rissler's use of his own tools and his own labor that when he appeared before the executive board after having been subjected to interference in his work by representatives of the unions, he was informed as he states in his affidavit that in order to be re-instated in the Journeymen's Union he would be required not only to pay an exorbitant initiation fee and dues, but would be required to abstain from working personally with the tools of his trade on contracts entered into by him.

The object and the purpose of this union requirement are unlawful, and acts of the unions in furtherance thereof are the proper subjects of injunctive relief.

In Oakes "Law of Organized Labor and Industrial Conflicts" P. 384, Par. 276, the law is stated as follows:

"Members of a labor organization cannot object to an employer laboring with his hands in performing his own contracts, and may not institute a boycott against him because he works as an operative in his own business."

In *Rutan vs. Local Union #4*, 97 N. J. Eq. 77, Backes, V. C., says:

"If, however, the purpose of a strike is, and as the complainant contends it is here,

to compel an employer to run his shop against his will, and to his injury re-employ his discharged hands, for whom he has no use, then the strike is unlawful, for *the union has no right to prevent employers of labor from profitably prosecuting their business.*"

In *Yablonowitz vs. Korn*, 205 App. Div. 440, 199 N. Y. Supp. 769, where plaintiff's two union helpers went on a strike, and plaintiff conducted the business of operating a small meat market with the aid of his son and wife, stating that he would employ no more helpers, an injunction issued, restraining defendants from picketing in an attempt to make plaintiff re-employ the men; and the court characterized the action of the defendant as follows:

"This is a high-handed attempt to run this man's business."

In *Hughes vs. Kansas City Motion Picture Machine Operators*, 282 Mo. 304, 221 S. W. 95, the court employed the following language (at page 314):

"The only conduct of the plaintiffs assigned by the executive board of the union for picketing the theatre, was that plaintiffs refused to hire a union operator to handle the picture projecting machine and persisted in having it operated by Hughes." (It appears that Hughes was a member of the plaintiff partnership).

The court continues:

"Beyond question the demand of the union that the plaintiffs should desist from conducting the business in that way and should employ an outside operator, was arbitrary and unlawful. The right asserted by the plaintiffs to keep down the expense of their

business by having Hughes manipulate the projector, is the simple and primitive right of a man to earn a livelihood with his own hands; as much so as that of a blacksmith to blow his forge”.

In *Roraback vs. Motion Picture Machine Operator's Union*, 140 Minn. 481, 3 A. L. R. 1290-1293 the court lays down the rule as follows:

“If men, either singly or in combination, may lawfully injure or destroy the business of another for the purpose of compelling him not to work in such business himself, it will have far-reaching consequences. Such a doctrine would limit the field of business to those who have sufficient capital to carry on a business without becoming operatives therein themselves, and would debar those who have little or no capital, except their personal skill and ability, from seeking to better their condition by engaging in business on their own account. Such a doctrine means that a machinist who starts a machine shop may lawfully be prevented from working therein as a machinist; that a carpenter who starts a carpenter shop may be required to have all his work done by others; that a barber who opens a barber shop must cease to work as a barber. It means that the man in any occupation who starts in business for himself, relying upon his personal skill and ability to attain success, must forego the right to profit by his own skill, at the arbitrary behest of another, or see his business ruined. Such is not the law. The right of every person to work in his own business is a fundamental right, guaranteed to him by the Bill of Rights in the Constitution and by the 14th Amendment to the Federal Constitution, and any attempt to deprive him of that right is necessarily unlawful. *Truax v. Raich*, 239 U. S. 33, 60 L. ed. 131, L. R. A. 1916D, 545, 36 Sup. Ct. Rep. 7, Ann. Cas.

1917B, 283. However far members of an organization may go in an attempt to force an employer to employ members of the organization, an attempt to force him to desist from working himself in his own business is clearly an invasion of the rights secured to him by the Constitution."

In *Parker Paint and Wallpaper Co. vs. Local Union #813*, 16 A. L. R. 222-228, the Supreme Court of Appeals of West Virginia says:

"It is not clear just what reasons dictated the acts complained of in the bill * * * If for the purpose of preventing a member of the master painters from laboring with his hands in performing his own contracts, it is unlawful. A man's labor is his most sacred asset. It is often his only capital and as long as he exerts it without injury to others, government will protect him. A government which imposes tax and other public duties, even going so far as to demand life for its defense, and which will not protect its subjects in the 'enjoyment of life and liberty with the means of acquiring property and of pursuing and obtaining happiness and safety,' is not worthy of the name of government nor of the support of its subjects. A person's occupation or calling by which he obtains a livelihood is property, entitled to protection as such from boycotts or unlawful interference by others."

And Chancellor Pitney, for the Court of Errors and Appeals, in the case of *George Jonas Glass Co. vs. Glass Bottle Blowers' Association*, 77 N. J. Eq. 219-223, in sustaining an injunction granted by the Court of Chancery, comments upon the conduct of the defendant and says:

"If, therefore, the acts themselves are unlawful and violative of the property rights of the complainant, the injunction is proper."

Interference on the part of the defendants with the complainants in the conduct of the latter's business and the attempt to prevent them from doing personally such work as they conceived themselves to be qualified to do in their own business, constituted a violation of the property rights of the complainant and was unlawful.

POINT II.

The affidavits of both complainants-respondents and defendants-appellants show actual or threatened irreparable injury or damage to complainants.

It is obvious, from the affidavits submitted by the respective parties,

(a) That the defendants have no legal right to insist that a master plumber must be a member of the journeymen's plumber union;

(b) That despite this fact, the defendants insisted that complainants join the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada; and

(c) That in addition to requiring payment of initiation fees and dues, the defendants insisted that complainants refrain from laboring personally on any work which they had contracted to perform.

Acting upon the assumption that they were warranted in enforcing their demands upon the complainants, the defendants proceeded to declare complainants non-union employers.

Flynn explains the status of complainants with respect to the labor organizations as follows:

"21. Mr. Rissler, by reason of the fact that he is no longer a member of our organization, is not entitled to have the members of our organization work for him, nor will they work for him because in this present status he is considered a non-union employer until he becomes re-instated and until he secures re-instatement in our local he will continue to be a non-union member. I have never instructed any of my men not to work for him, even in this present condition. This is an obligation on the men themselves. As a matter of fact, neither one of the Rissler Brothers even asked me for men at all. Neither I nor my organization can nor will prevent or attempt to prevent Rissler Bros. from hiring anybody they please to do their work, but the union plumbers of my organization will not work for Rissler Bros. unless and until Henry P. Rissler is re-instated as a member in good standing of our local." (P. 34)

This subtle attempt to impart to the court the impression that the members of the union were wholly free to seek the employ of complainants without fear of restraint or punishment from the union with which they may be affiliated is singularly disingenuous. The hollow ring that the statement carries to the ear becomes more pronounced when contrasted with the admissions of the other defendant Becraft who, in defending the local union, says:

"9. I deny that either I or any member of my organization ever declared Rissler Brothers unfair to union labor, nor was the question of being unfair ever mentioned or discussed. The whole controversy between Rissler Brothers and the two locals was the

question of the standing of Henry P. Rissler in Local 326. I have not ordered any of my men of the Steamfitters Local 284 not to work for Rissler Brothers. As a matter of fact, my men do not have to be told not to work for Rissler Brothers. They will not work for Rissler Brothers because they are now considered non-union employers, and until Henry P. Rissler is reinstated as a member in good standing of Local 328 of the Plumbers Union, my men, the Steamfitters will not work for them. It is not necessary for me to instruct my men not to work for them. *They are bound by their own Constitution and By-laws not to work alongside of non-union men or for a non-union employer. Under the present circumstances, Rissler Brothers are considered non-union employers so far as the Steamfitters are concerned.*

"10. To my knowledge for the past five months, Rissler Brothers have installed steam heating plants themselves. That is, they used the tools of the trade themselves. This is a clear violation of our Constitution and By-laws." (P. 44)

And further on Flynn declares emphatically:

"If any of my men should work for Rissler Brothers under the present circumstances, they will themselves be considered in violation of the present rules of the constitution." (P. 36)

It appears, therefore, that complainants, in using tools of the trade themselves, violated a *non-existent* section of the Constitution and By-laws. Rissler Brothers having fallen under the ban of the defendants, the two local unions, by stigmatizing the complainants as non-union employers, bound the members of the union to refrain from working with the complainants.

The effect of this ban soon manifested itself.

Frank J. Rissler, in his affidavit, referring to the occasion when the defendants Flynn and Be-craft visited the job on which the complainants were engaged in the month of July, 1930, says:

"Since that time my firm has been unable to secure any union labor and we are unable to continue our business or enter into any new contract on jobs which employ only union labor or *complete the contracts we have on hand*, and our business is suffering to a continual increasing extent.

For the past seven years my brother and myself have conducted a union shop and at no time during that period was either of us employed as a journeyman plumber by any master plumber. Rissler Bros. is a member of the Master Plumbers Association of Hack-ensack and vicinity and our business consists of plumbing and heating contracting in which we require union help." (P. 22)

The other complainant Henry P. Rissler refers to the effect of the action taken by the local union as follows:

"Since July 14th, 1930 Rissler Bros. have been unable to secure any union labor to work for them *and the firm is unable to proceed with the work on hand*. We are unable to undertake any new contracts or jobs which employ only union labor and by reason of the aforesaid, we are unable to continue our business which is suffering to a continual extent." (P. 20)

The immediate effect, therefore, of the action of the defendants was not only to render it impossible for the complainants to enter into "any new contracts on jobs which employ only union labor" but also to "complete the contracts that they had on

hand". They were therefore confronted with breaches of contract as a result of the ban placed upon them by the two local unions of the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada. The right of an employer to be protected against undue interference by third parties with contracts into which he has entered is fully recognized by the courts of this state.

In *Alfred W. Booth & Bro. vs. Burgess*, 72 N. J. Eq. P. 181-188, Vice-Chancellor Stevenson, in awarding a preliminary injunction, discourses on certain rights whose violation warrants relief by the court, and says:

"First, we have the right in a contract. Our law now recognizes a contract right as property which is to be protected against undue interference by persons not parties to the contract. When a third party intentionally, by the use of any kind of means, causes a breach of contract involving damage, he is prima facie guilty of a tort."

In *Lehigh Structural Steel Co. et al. vs. Atlantic Smelting & Refining Works*, 92 N. J. Eq. 131-145, Vice-Chancellor Backes says:

"The Atlantic Company next takes the stand that the remedy of the complainant Lehigh Company is at law for damages, citing *McGann vs. La Brecque Co.*, 91 N. J. Eq. 307. The general rule is that compensation in damages is the relief for breach of a contract, and that the remedy is at law, and that the measure of damages is the immediate loss, the incidental losses, which are often the heavier, being regarded as too remote to bring into calculation. Where, however, as here, the complainants are not suing for a breach, but to prevent a breach of a contract

by unlawful means, and to serve unlawful ends, to the injury of the complainants' business, the remedy at law is inadequate. The damages for such an injury are incapable of ascertainment at law, and justice demands that the injury be prevented by injunction. The many instances in which equity has intervened by injunction to restrain injury by strikes testify to the jurisdiction. As to the irreparableness of the injury to the complainants' business by breach of the contract due to the strike, the findings of the master in the Aberthaw Case (194 Mass. 208, 80 N. E. 478) may be profitably quoted."

And the court quotes from the Massachusetts case as follows:

"Any failure of a contractor to fully perform a contract, regardless of the reason or the party in fault, impairs his reputation for efficiency, and consequently is a damage to his goodwill. Let the fact of a breach become rumored about and it must need be explained. But friendly explanations cannot run coextensive with rumor spread by thoughtless friends or competitive foes. And then, again, explanations do not always explain. This is especially so in the event of a breach growing out of a labor trouble."

When it appears, as in the instant case, that the defendants proceeded in an unlawful manner to compel complainants to accede to their demands, and when, furthermore, the defendants do not deny the charge of complainants that, as a result of the action of the labor unions, they were unable to carry out their contracts (P. 22) it follows that the decision in the *Lehigh Structural Steel Co.* case, *supra*, applies.

As in the latter case, so here, "the complainants are not suing for a breach, but to prevent a breach

of contract by unlawful means". Without injunctive relief they could not hire union labor and could not complete the contracts into which they had entered. The unions had tied their hands, and only equity could give them relief. The breach of contracts which was threatened at the time when the restraining order was granted was one which would have resulted in irreparable damage to the complainants. Not through the exercise of force but through intimidation the defendants were rendering it impossible for complainants to fulfil their contractual obligations.

Nor is it necessary to show that force has been used by a labor organization in order to constitute intimidation.

In *Gervas vs. Greek Restaurant Worker's Club*, 99 N. J. Eq. 770-785, Vice-Chancellor Berry says:

"Picketing, the object of which is unlawful, irrespective of its militant or intimidating character, may be restrained whether peaceable in fact or not. Even peaceable acts, if unlawful and resulting in irreparable injury, may be enjoined."

An act which, when performed by a single individual, may be lawful, may nevertheless be unlawful if performed by a large group. In the *Gervas* case the court cites with approval the case of *Gompers vs. Buck's Stove & Range Co.*, 221 U. S. 418-439 and quotes from that decision as follows:

"But the very fact that it is lawful to form these bodies, with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve the sac-

rifice of rights protected by the Constitution; or by standing on such rights and appealing to the preventative powers of a court of equity. When such appeal is made it is the duty of government to protect the one against the many as well as the many against the one."

In the instant case there is presented a clear case of intimidation exercised without violence but none the less effectively and unlawfully. Defendants seek to compel a master plumber to join a union of journeymen, insist that he refrain from contributing his own labor to the jobs on which he may be working, meet his refusal to accede to their unlawful demands by soliciting his employee to leave his employment and by placing upon him a ban which results in inability on his part to secure union laborers, and thereby render it impossible for him to perform the contracts into which he had entered.

In the case of *Hitchman Coal & Coke Co. vs. Mitchell*, 245 U. S. 229, 38 Supreme Court Reporter 65, the plaintiff did not employ union help, and furthermore, insisted as a condition of employment with the company, that the employees shall agree not to join any labor union. Subsequently the defendants, comprising various labor unions and their representatives, induced some of the employees to agree to join the union secretly at a subsequent date but to continue in the employ of the plaintiff for the purpose of coercing the company into recognition of the union.

Justice Pitney, in delivering the opinion of the court, said:

"Of course, in a court of equity, when passing upon the right of injunction, damage threatened, irremediable by action at law, is equivalent to damage done * * * * Another

fundamental error in defendant's position consists in the assumption that all measures that may be resorted to are lawful if they are 'peaceable'—that is, if they stop short of physical violence, or coercion through fear of it. In our opinion, any violation of plaintiff's legal rights contrived by defendants for the purpose of inflicting damage, or having that as its necessary effect, is as plainly inhibited by the law as if it involved a breach of the peace." 38 Supreme Court Reporter 65-74.

The court further says:

"True, it is suggested that under the existing contract, an employee was not called upon to leave plaintiff's employ until he actually joined the union and that the evidence shows only an attempt by Hughes to induce the men to agree to join, but no attempt to induce them to violate their contract by failing to withdraw from plaintiff's employment after actually joining. But in a court of equity, which looks to the substance and essence of things and disregards matters of form and technical nicety, it is sufficient to say that to induce men to agree to join is but a mode of inducing them to join."

In the instant case the admission by Flynn that "if any of my men should work for Rissler Brothers under the present circumstances, they will themselves be considered in violation of the present rules of the constitution," was in effect an admission that the action of the local union was equivalent to an order that none of the members shall work for the complainants so long as the interdict of the union continues, and an acknowledgment that the visit by him and Becraft to the Rissler job was to put an end to those "circumstances" by direct pressure on Jambor, the Rissler steamfitter.

It was a form of intimidation none the less sinister for seeking to hide its true implication amid carefully chosen words. Every word constituted a guarded menace directed to every member who should dare work for Rissler Brothers.

The effect of this menace was to render it impossible for the complainants to carry out their lawful undertakings with third parties; to suffer them to endure the intimidation of Jambor, their employee, by an organization in furtherance of an unlawful object, and to inflict upon them irreparable loss if the strong arm of the Court of Chancery had not been stretched forth to protect them by restraining defendants from interfering with them in the conduct of their business.

The entire trend of the conduct of defendants, and the course of action resorted to by them, as disclosed in those portions of their affidavits relative to their attitude toward Rissler as a result of his insistence upon contributing his personal labor to the jobs undertaken by him, tends to corroborate that portion of the deposition of the complainant, Henry P. Rissler, wherein he states that when Flynn, on July 14, 1930, visited the job on which complainant's firm had a contract, and appeared there accompanied by Becraft, a representative of the Steamfitters Local Union, Flynn

"informed Louis Jambor whom we had employed as a steamfitter on that job that he could no longer work for us since Rissler Bros. had been declared to be unfair to union labor by the Plumbers Local Union #326. I then requested the delegate of the Steamfitters Local Union #284, V. R. Becraft, to furnish me with a steamfitter and helper in good standing, and he informed me that he could give me no help because the Plumbers

Local Union #326 had declared Rissler Brother to be unfair to union labor."

It is not surprising, therefore, that in the face of such unlawful interference on the part of the defendants, the complainants were, as expressed in the affidavit of Frank J. Rissler (Page 22) "unable to continue their business or enter into any new contract on jobs which employ only union labor, or *complete the contracts they had on hand.*" Faced with the prospect of irreparable damage, they were forced to either surrender the right guaranteed every citizen to labor with his own hands or seek the protection afforded by a court of equity.

POINT III.

The provisions of "An act relative to persons combining and encouraging other persons to combine" (P. L. 1883, p. 36; 3 Compiled Statutes of New Jersey, p. 3051, section 128) cannot be invoked to justify the conduct of the defendants presented in the bill of complaint and in the complainants' affidavits, and afford no defense to the right of the complainants to the injunctive relief granted by the Court of Chancery.

The Act provides as follows:

"It shall not be unlawful for any two or more persons to unite, combine or bind themselves by oath, covenant, agreement, alliance or otherwise, to persuade, advise or encourage, by peaceable means, any person or persons to enter into any combination for or against leaving or entering into the employment of any person, persons or corporation."

This Statute has been considered by the Courts of New Jersey on several occasions and has been variously construed. In *State vs. Donaldson*, 32 N. J. L. 151, decided before the passage of the Act of 1883, the Supreme Court of New Jersey held that it was an indictable conspiracy for several employees to combine and notify their employer that, unless he discharges certain enumerated persons, they will, in a body, quit his employment. The question of whether the Statute of 1883 was enacted for the sole purpose of overcoming the effect of this decision and to relieve union organizations from the burden of classification as criminal conspiracies,—or whether the Act had the additional purpose to enlarge on the civil liberties of such organizations has resulted in some contriety of opinion and conflict in the conclusions of both our Court of Chancery and the Court of Errors and Appeals. The two reported cases first dealing with this Statute are *Mayer vs. Journeymen Stone Cutter's Ass'n*, 47 N. J. Eq. 519, decided in 1890, and *Bar vs. Essex Trades Council*, 53 N. J. Eq. 101, decided in 1894. Both of these cases were decided by Vice Chancellor Green, and in both of them there is a tendency on the part of the Court to construe the act as giving to organized labor greater civil rights than it enjoyed before the act was passed, although in the *Mayer vs. Journeymen Stone Cutter's* case, the views of the Court on this question were hardly necessary and were dicta, the denial of the injunctive relief prayed being based on the conclusion that the union had been charged with no overt acts, that "much of intent" was charged by the complainants but nothing in furtherance of this intent. In the second of the two cases, however, Vice-Chancellor Green, notwithstanding his inclination to read into the act an intention to enlarge on civil rights, decided that "a

combination to injure a man in his business, by a concerted action on the part of an immense number of persons to cease dealing with him and to persuade others to cease dealing with him, by threats to withdraw their custom from them, for the purpose of obliging him to concede to their demands, or in other words, to boycott him, has not been made lawful by the statute." So that even in the earliest cases dealing with the Statute and giving to it the largest scope ever afforded to it by any other decision in our State, as will later appear, the Court refused to go so far as to hold that the Statute gave civil protection to every form of peaceable persuasion and concluded that in some instances, of which the boycott was one, peaceable persuasion was not legalized by the Legislature.

The next case dealing with the Statute is *Cumberland Glass M'fg Co. vs. Glass Bottle Blowers Ass'n*, 59 N. J. Eq. 49, decided in 1899. Here Vice-Chancellor Reed, like Vice-Chancellor Green in the two previous cases, though less clearly, also seems to lean in favor of the theory that the 1883 Act had a function both in the civil and criminal law of this State. Yet he too, notwithstanding this, proceeds to enjoin the acts of the union complained of by the complainant with the comment that "A permanent guard in a public street in front of citizens' houses or a factory is in itself a nuisance." There is nothing in the three cases last mentioned, all of which gave the act a wider construction than it ever again received by our Courts, to favor the theory that the acts complained of in the case at bar having an unlawful purpose (See Point I) are justifiable by reason of the legislation in question.

Continuing to develop chronologically the interpretation of the 1883 Act by the New Jersey Courts, we make mention of the following two cases:

Frank, et al. vs. Herold, 63 N. J. Eq. 443, decided by the Court of Chancery on the opinion of Vice-Chancellor Pitney in 1901 and *J. C. Printing Co. vs. Cassidy*, 63 N. J. Eq. 759, decided by the Court of Chancery on the opinion of Vice-Chancellor Stevenson in 1902. The opinions of these two cases, in connection with the treatment of the effect of the 1883 Statute, are in conflict with the three earlier decisions, to this extent: They conclude that the true construction of the Act of 1883 is simply that it

“renders innocent as against the public, an act which, previous to its passage, was a misdemeanor and punishable by indictment,”

and that

“it does not take away or in any wise effect any private rights which may arise out of acts which are legalized by the legislation.”
(*Frank, et al. vs. Herold*, *supra*, at p. 447, 448)

Connett vs. United Hatters, 76 N. J. Eq. 202 (Vice-Chancellor Hovell in 1909) avoids an interpretation of the act on the question of whether or not these provisions affect a civil controversy by finding in the facts a commission of acts of violence, which from the language of the act itself are concededly prohibited.

The first pronouncement of the Court of Errors and Appeals on the subject of the legislation of 1883 is found in the case of *George Jonas Glass Co. vs. Glass Bottle Blowers Ass'n*, 77 N. J. Eq. 219 (1911), sustaining the issuance of an injunction on the advice of Vice-Chancellor Bergen in a case bearing the same name and reported in 1907 in 72 N. J. Eq. 653. The decision from which the appeal was taken makes no mention of the act of

1883, but restrains among other things, a secondary boycott on the part of the defendant union of complainants' business. The Court of Errors, in affirming the decision of the Court below, enters into a discussion of the effect of the Statute, and concludes in agreement with the case of *Frank vs. Herald* and *Jersey City Printing Co. vs. Cassidy*, *supra*, as follows:

"The Act of 1883 is, as we think, properly to be treated, as merely rendering the combination no longer indictable; in effect as repealing the rule laid down by the Supreme Court of this State in *State vs. Donaldson*. It does not legitimize the invasion of private rights nor prevent the party injured from having full redress." (p. 224-5).

Up to this point, therefore, the development of the law in this State in connection with the subject with which we are treating may be summarized as follows:

Prior to 1911 the only decisions were those of the Court of Chancery; the first three decisions in this Court favor a construction of the act which extended greater civil liberties to union organizations, but do not go so far as to hold that the peaceable activities of these organizations were justified by the Statute in all cases; two later decisions of the Court of Chancery narrowed the application of the act to only the criminal phase of union organizations, rendering them no longer indictable as criminal conspiracies, and adhering to the view that from the civil standpoint nothing was made legal by the passage of the act which was illegal before its passage; the first consideration of the statute by the Court of Errors occurred in 1911 and favored the narrower interpretation of the statute last mentioned. The total effect of all of these de-

cisions is: either that the statute gave organized labor no greater civil rights than it enjoyed before its enactment; or that the civil rights of labor were extended in cases where only peaceable persuasion was resorted to, but only resorted to in a lawful manner or for the accomplishment of a lawful object. Under all of these decisions the acts done in furtherance of the unlawful objects of the defendants in the case at bar are enjoined.

The most recent consideration given to this statute by the Court of Errors is found in the case of *N. J. Painting Co. vs. Local No. 26 Brotherhood of Painters, Decorations and Paper Hangers of America, et als*, 96 Eq. 632. In this case, decided in 1924, the Court disposes of the interpretation of the statute previously made by the same Court in the case of *Geo. Jonas Glass Co. vs. Glass Bottle Blowers Ass'n, supra*, with the comment that the remarks of the Court in the latter case to the effect that the 1883 Act merely rendered the combination to which it refers no longer indictable, was unnecessary to the decision of that case, and was mere dictum. Notwithstanding this apparent reversion of the Court of Errors to the narrower construction of the statute afforded by the earliest decisions of the Court of Chancery on the subject, Justice Black, in stating the majority opinion, gives ample indication that the Court of Errors continues in accord with these earlier decisions, in the view that not every peaceable act of union combinations was legalized by the 1883 Act, and that the civil liberties afforded in connection with peaceable persuasion were confined to peaceable persuasion lawfully exercised, and in aid only of a lawful purpose. The decision in *New Jersey Painting Co. vs. Local No. 26*, 96 N. J. Eq. 632 has enough in common with the instant case to warrant comparison. The Court was considering

on appeal an order of the Court of Chancery, advised by Vice-Chancellor Backes in 1923, in a decision bearing the same title, and reported in 95 N. J. Eq. 108. The Vice-Chancellor had advised, for the reason that its provisions constituted an unlawful restraint of trade, and violated article 4, paragraph 2 of the United States Constitution, an injunction against the acts done by the defendant union and its officers and members in furtherance of the following union requirements: "Where there is a difference between the wage scale of two cities, all members employed on a job done in one of the two cities by an employer from the other * * * shall receive the higher of the two wage scales." He restrained a strike called in connection with this union rule for the reason that the purpose of the rule was unlawful. He made no mention in his decision of the Act of 1883. We quote as follows from the opinion of the Court of Errors:

"There is substantially no dispute about the facts. So the full problem for solution may be stated in a single sentence. Is such a rule of the defendants legal, and, if so, may it be enforced by penalties upon its members for disobedience, which they submit to voluntarily without violating the law?"

As in the case at bar a union rule was being subjected to the test of the Act of 1883. The conclusion of the Court that the rule before it was legally enforceable will not be inconsistent with a conclusion in the present case that the rule with which we are concerned, the rule prohibiting an employer of labor to work with the tools of his trade, is unenforceable and beyond the protection of the provisions of the 1883 Act. This, for the reason that the Court in the N. J. Painting case, in coming to

its conclusion, applied a test which, though it rendered lawful the union requirement before it for consideration at the time, would nevertheless render unlawful, in the face of the statute, the union requirement with which we are now concerned. That test is this: was the object of the rule a lawful one? If the result which the union hoped to bring about by the enforcement of its rule did not conflict with the constitutional and basic rights of those against whom it is directed, peaceable persuasion employed in connection with its enforcement came within the protection of the statute; if, however, a result of the union requirement, if enforced, would be to violate the constitutional and inherent rights of a citizen, no acts of the union in furtherance of the requirement could be justified by the Act of 1883. This theory of the Court in no wise conflicts with anything that was said in any of the preceding decisions and is in line with the entire trend of all of the cases.

On the question of the limitation of the act to application in the law of crimes there was, and still is, conflict of authority. The Court of Errors in the *N. J. Painting Co.* case disregards the comments made on this question by the same Court in the *Geo. Jonas* case, as dicta; but in so doing it gives utterance to remarks which are themselves dicta. There was no more reason for the Court in the later case to dispose of this question, than there was reason for the Court in the earlier Court of Errors case to dispose of the same question, the Chancery decisions appealed from having in both instances contained no reference to the Act of 1883 or the extent of its application, civilly or criminally. In other words the Court of Errors in the *New Jersey Painting Co.* case disposes of dictum by dictum. Furthermore, although stating that the utterances in the *Geo. Jonas* case in this regard

were dictum, the Court in the New Jersey Painting Court case does not at any point say that these utterances were incorrect. It merely refuses to construe the 1883 Act on this basis and elects to construe the legality of acts done in furtherance of the ambitions or organized labor by the test of the legality of the purpose, or of the means employed. But in applying this test, irrespective of the limited or wider interpretation of the statute from the standpoint of its civil or criminal application, there has been unanimity in all the cases. The following quotations are from the opinion in the New Jersey Painting Co. case, 96 N. J. Eq. 632, *supra*:

"To render such concerted act unlawful, *the object or the means used must be unlawful, or exercised for the malicious purpose of injuring another, * * ** (p. 637).

The Court reversed the decision of the Chancery Court below on the theory that the *object*, criticized in the Court below, was not unlawful, and not on the theory that if previously unlawful it was legalized by the 1883 Statute. See at page 638 the following:

"It is the illegality of the purpose to be accomplished or the illegal means used separately or in furtherance of the purpose, which makes the act illegal."

And again at the end of the majority opinion:

"The cases in which concerted action on the part of a body of workers has been held unlawful, have invariably been such in which either the object sought to be attained had little or no bearing on the interest of the workers, or in which the methods employed by them were in themselves unlawful."

Barker Painting Co. vs. Local No. 734, &c. decided by Federal Judge Runyon in 12-F (2 d), 945, involving a set of facts almost identical to the facts involved in the New Jersey Painting Co. case and argued by the same counsel who appeared in the latter case, applies the same test of lawfulness of object in considering the scope of the 1883 Act.

In the case of *Forstmann & Hoffman vs. United Front, &c.*, 99 N. J. Eq. 230 (V-C. Bently 1926) an injunction was granted against "picketing and unduly annoying" persons seeking to enter the employment of the complainant, and the *N. J. Painting Co. vs. Local No. 26* decision *supra*, was interpreted as not being in conflict with the granting of such relief, the court citing the latter case and its construction of the Act of 1883 as being wholly in accord with an earlier Court of Errors decision in *Keuffel & Esser vs. International Ass'n of Merchants*, 93 N. J. Eq. 429. In the Keuffel & Esser case "peaceful picketing" was enjoined because other acts committed by the defendants in connection with the so called "peaceful picketing" made the picketing itself an *unlawful means* of accomplishing an otherwise unlawful purpose. It is submitted that the Court of Errors failing, as it did in the Keuffel & Esser case, to find any protection afforded in the 1883 Act to the practice of picketing when it is accompanied by further conduct lending color to what might otherwise be an innocuous parade, there can be nothing in the same act construed by the same Court, to afford the countenancing of tactics designed to accomplish the surrender by an employer of labor of his right to employ his own talent in his own business,—an object in itself denounced by law as unlawful (see cases under Point I of respondents' brief).

In *C. B. Rutan Co. vs. Local Union No. 4*, 97 N. J. Eq. 77 (V-C. Backes 1925) the Court of Chancery had to deal with the following set of facts: The complainants had three parts to its shop, making, finishing and trimming hats. It found making unprofitable and discharged men in this department. Thereupon, the defendants struck because of a by-law prohibiting its members to work in a shop, where, "making" machinery, being idle, hats made elsewhere were brought into the complainant shop for finishing and trimming. It was held by the Court that the Act of 1883, giving due consideration to its construction by the Court of Errors in the N. J. Painting case, does not "countenance the strike to advance the interest of organized labor, if the purpose is to impinge the constitutional rights of employers to pursue their callings unmolested." The case goes on further to say that the N. J. Painting Co. case " * * * surely does not extend immunity for invasion of private rights, for that is beyond the power of the legislature to grant." An injunction was denied, but only because the strikers were doing no affirmative act,—they were not soliciting others to strike and were not advertising the complainant shop as unfair to labor,—elements which *are* present in the case at bar,—but the Court *did* give clear indication that, if the defendants had resorted to such affirmative conduct, the attempt to force complainant to run a part of its shop, the operation of which it found unprofitable, would have been enjoined. The same reasoning applied to the instant case, with the defendants, by the facts established in their own affidavits and those of complainants, aiming to accomplish a purpose more positively violative of personal rights than the rights defended in the Rutan case, clearly entitles the complainants to injunctive relief, with nothing in the Act of 1883 to limit

this right. Certainly if, as pointed out by the Chancery Court in the Rutan case, it is unlawful to make a man operate a part of a business which he does not wish to operate, it is more definitely unlawful to attempt to prevent him from working himself at work which he is able to do. There is nothing in *re Larkin*, 6 N. J. Adv. Rep. 1284 relied upon in appellants' brief, inconsistent with this position.

The Act of 1883, affording no greater civil liberties to the defendants than those which were enjoyed before its passage, has no application to the within proceedings. Any enlargement on the civil liberties of organizations, such as the two defendant unions, afforded by the Act of 1883, has application only to acts lawfully done in furtherance of a lawful purpose, and the purpose sought to be accomplished in the case at bar,—the surrender by the complainants of their right to be employed in their own business,—being an unlawful one, the construction of the Act of 1883 most favorable to the defendants, favors sustaining the action of the Court of Chancery in affording the complainants the relief granted.

POINT IV .

The Act of 1926 (Chapt. 207, Laws of 1926 P. 348) entitled "An Act relating to disputes concerning terms or conditions of employment, the communicating of information and limiting the issue of restraining orders and injunctions in certain cases" is no bar to the granting of the order from which this appeal is taken for the following reasons:

A.

The Act is declaratory of the common law and does not afford greater immunities than existed prior to its passage.

B.

The statute affords no protection to the employment of unlawful means by the defendants nor to the employment of any means in aid of an unlawful purpose or object; and to the extent that it can be construed to sanction the commission of unlawful acts, or acts committed in aid of an unlawful purpose or object, it is unconstitutional.

C.

The Act has no application except in connection with a "dispute concerning terms or conditions of employment" and no such dispute exists in the case at bar.

The pertinent portion of the Statute involved is as follows:

"No restraining order or writ of injunction shall be granted or issued out of any Court of this State in any case involving or growing out of a dispute concerning terms or conditions of employment, enjoining or restraining any person or persons, either singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from peaceably and without threats or intimidation recommending, advising or persuading others so to do."

In our discussion of this Statute we make reference to Section 20, Chapter 323 United States Laws of 1914 (63rd Congress); U. S. Statutes, Vol. 38, Part 1, page 738; U. S. Comp. Stat. P. 1243d; 6 Fed. Stat. Anno. 2d. ed. 141; commonly referred to as the *Clayton Act*. This act is very similar to the New Jersey Statute, which clearly appears to have been patterned after it. Some of the decisions to be used in the argument with reference to the New Jersey Act of 1926 were rendered in connection with a consideration of the Clayton Act, and are in point because the reasoning of the Courts in the construction of either of these two Statutes has application to both Statutes. The pertinent portion of the Clayton Act, in the construction of which we find analogy to the situation presented under the New Jersey Act, appears in the second paragraph, which reads as follows:

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from recommending, advising or persuading others by peaceable means, so to do."

A.

The Act is declaratory of the common law and does not afford greater immunities than existed prior to its passage.

Oakes on "The Law of Organized Labor and Industrial Conflicts" (1926) in a chapter dealing with statutes restricting issuance of injunctions in industrial disputes, draws the following conclusion from the cases dealing with this phase of the Act of 1926 and statutes similar to it:

"The Courts, although differing as to the specific acts which may not be enjoined under such Statutes (just as before their enactment they differed as to whether such acts were legal), have generally held that these Statutes are to be taken as declaratory of, and not as charging, the law. It has accordingly been declared that they do not render lawful any act or acts which were unlawful at the time the Statutes were passed, and are to be construed as warranting the employment of peaceable and *lawful* means only." (Page 954-955 par. 613). See cases quoted in notes 15-16-17 and 18 thereunder.

Chief Justice Taft, for the United States Supreme Court, in the case of *American Steel Foundries vs. Tri-City Trades Council* (1921) 257 U. S. 184; 66 L. ed. 189; 27 A. L. R. 360; 42 Sup. Ct. Rep. 72; referring to section 20 of the Clayton Act, quoted above, says:

"It is merely declaratory of what was the best practise always. Congress thought it wise to stabilize the rule of action and render it uniform."

Likewise, Mr. Justice Pitney, rendering the opinion for the U. S. Supreme Court in *Duplex Printing Press Co. vs. Derring* (1921) 254 U. S. 443; 65 L. ed. 349; 16 A. L. R. 196; 41 Sup. Ct. Rep. 172; a labor case in which a consideration of section 20 of the Clayton Act is involved (page 470 of the U. S. Rep.), gives utterance to the following:

"The first paragraph merely puts into statutory form familiar restrictions upon granting of injunctions already established and of general application in the equity practise of the Courts of the United States. *It is but declaratory of the law as it stood before.*"

A Wisconsin Statute similar to our own, and to the Clayton Act, is dealt with in the case of *A. J. Monday Co. vs. Automobile Aircraft & Vehicle Workers* (1920) 171 Wis. 532, 177 N. W. 867, as follows:

"The provisions of sec. 1, ch. 211 are simply declaratory of the law as it existed prior to its enactment."

In the important New Jersey case of *Gexas vs. Greek Restaurant Workers' Club, et al.*, 99 N. J. Eq. 770 (V-C. Berry 1926), the court, in construing the New Jersey Act of 1926, comes to the following conclusion (787):

"Legislation of this kind has generally been held to be declaratory of and not as changing the laws theretofore in force. Note, 27 A. L. R. 360-413. Accordingly such statutes do not render lawful any act or acts which were unlawful at the time the statutes were enacted; * * * *."

According to this line of authorities, therefore, the legality of the conduct of the defendants is sub-

ject to the test of lawfulness of means or purpose which was applied prior to the 1926 enactment and there is nothing in this legislation which modifies the right to injunctive relief sought on the basis of this test. The intention of the legislature in enacting Chapter 207 of the Laws of 1926 being only to restate in definite language principals theretofore recognized as established, the conduct of the defendant remains as it always was, repugnant to the law, and the attempt of the defendants to deprive the complainants of their right to enjoy the benefits of their own abilities in connection with work which they seek to perform as principals and not as employees of others, continues to be hostile to the theory of the law without any impairment of the right of the complainants to the protection of the Court of Chancery.

B.

The statute affords no protection to the employment of unlawful means by the defendants nor to the employment of any means in aid of an unlawful purpose or object; and to the extent that it can be construed to sanction the commission of unlawful acts, or acts committed in aid of an unlawful purpose or object, it is unconstitutional.

Under this heading the constitutionality of the act will be considered from two aspects: from the aspect of constitutional reservations with respect to the personal and property rights of citizens; and from the aspect of its legality or illegality as an encroachment on the jurisdiction ~~of~~ the Court of Chancery, a constitutional Court by the provisions of the New Jersey Constitution.

In aid of the proposition that the 1926 Statute affords no immunity to unlawful means employed in the pursuance of any purpose or of any means employed in the pursuance of an unlawful purpose, some repetition can be avoided by a reference to the argument and cases cited under Point III of this brief, in connection with a consideration of the New Jersey Statute of 1883.

Vice-Chancellor Berry, construing the New Jersey Act of 1926, establishes this principle of law in *Geras vs. Greek Restaurant Workers' Club*, 99 N. J. Eq. 770, with the following language (p. 787) :

"such statutes have also been held not to apply in the case of strikes for a wrongful purpose * * * I have already held that here no strike in fact exists and that the acts of the defendants complained of are in furtherance of a wrongful and illegal purpose."

That an injunction will issue to restrain conduct aimed at the accomplishment of an unlawful purpose or object notwithstanding the Act of 1926 will appear from the consideration of the following further decisions :

Duplex Printing Co. vs. Derring (1921) 254 U. S. 443, referred to *supra* in another connection. In this case the United States Supreme Court was called upon to decide the right of the complainants to an injunction restraining acts in aid of a secondary boycott, with reference to the existence of the provisions of Section 20 of the Clayton Act, the similarity of which to the provisions of our own act has heretofore been indicated. It was argued for the defendants in this case that the provisions of the Clayton Act negatived the right to such injunctive relief. At page 465 Chief Justice Taft, in defining the term "conspiracy" says:

"If the purpose be unlawful it may not be carried out even by means that otherwise would be legal."

Folsom Engraving Co. vs. McNeil, 235 Mass. 269. The following reference to a state statute similar to our 1926 Act appears at page 278 of the opinion:

"But the statute is applicable only to a lawful strike lawfully conducted."

United States vs. Railway Employees' Dep't. (1922; D. C. N. D. Ill.) 283 Fed. 479. Here again we quote from the opinion:

"Granting that those acts may not be punished when done under circumstances which amount to nothing more than a labor dispute, that controversy may broaden out so that the purpose of those waging it may include the accomplishment of unlawfulness. Can it be said that merely because the element of a labor controversy remains in the situation, the actors may not be punished when their purpose is not only the accomplishment of something with respect to wages or conditions of employment, but also the destruction of property, the invasion of the rights of others and the infliction of injury upon the public? Such an interpretation conflicts with elementary rules of statutory construction." (p. 491).

Pacific Type Setting Co. vs. International Typographical Union, 125 Wash. 273, is in accord with *Duplex Printing Press Co. vs. Derring*, *supra*, in its argument and conclusion that a secondary boycott is enjoined, notwithstanding the provisions of the Clayton Act restricting injunctions in labor disputes, the purpose and effect of this weapon being an unlawful one.

Central Metal Products Corp. vs. O'Brien, (Ohio 1922, 278 Fed. 827) involves a set of facts in which the Sheet Metal Workers on a municipal hospital caused sympathetic strikes to be called by sheet metal workers on other city construction work for the purpose of compelling the city on the hospital job to refuse to permit union carpenters from installing metal doors and casings,—work which the sheet metal workers claimed belonged to their craft. The Court found that sympathetic strikes of this nature, having as their object the accomplishment of jurisdictional trade awards, involve a purpose not protected by the provisions of Section 20 of the Clayton Act,—and an injunction was granted notwithstanding this legislation.

All of the above cases, in addition to those involving a similar question in connection with the 1883 Act, and previously quoted, are in accord with the general line of authorities to the effect that Statutes like our own Act of 1926 cannot be invoked in justification of a strike or other conduct in aid of unlawful purpose or object.

A construction of the Statute, which would result in a contrary or opposite conclusion would give to legislation of this kind a character which would render it unconstitutional.

The foregoing proposition is emphatically established by a decision of the United States Supreme Court, in an opinion written by Chief Justice Taft: *Truax vs. Corrigan* (1921) 257 U. S. 312. An Arizona Statute, apparently designed after the Clayton Act, and very similar in aim and wording to our own 1926 Statute, was before the Court for construction on the question of its constitutionality. The State Court from which the appeal was taken to the Supreme Court, had held that certain acts in furtherance of a strike, came within the full protection of the Statute invoked by the defend-

ants. The Supreme Court held that the Statute so construed, and thereby rendering immunity to the commission of acts otherwise unlawful, was unconstitutional as violative of the 14th amendment of the United States Constitution, (No State shall "deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law"); and of the further provisions of Section 2, article 4 of the United States Constitution ("The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States"). This decision is so illuminating and instructive that we refrain from doing it the injustice of quoting from it. A full reading of the text will establish sufficient argument for the position that the New Jersey Statute of 1926, if it can be construed to intend to afford protection for the acts of the defendants in the case at bar, having as their object the invasion of the right of complainants to work in their own business, is unconstitutional. The reasoning of the United States Supreme Court on this question of constitutionality is followed with like result in the following decisions: *Pac. Coast Coal Co. vs. District No. 10, United Mine Workers of America*, 122 Wash. 423; *Goldberg vs. Stableman's Union*, 149 Cal. 429, 8 L. R. A. (N. S.) 460; *E. G. Pierce vs. Stableman's Union*, 156 Cal. 70.

It is submitted further that if the Statute of 1926 can be construed so as to deprive the Court of Chancery of the right to furnish relief by injunction in cases in which that right existed before the passage of the Act, and at the time of the adoption of the New Jersey Constitution, we will be dealing with legislation which undertakes to encroach upon the jurisdiction of a constitutional court. The Court of Chancery is a constitutional court. See

article 6, section 1, paragraph 1 and article 6, section 4, paragraph 1 of the New Jersey Constitution. We have already amply demonstrated that the efforts of the defendants to dominate the complainants and to invade the constitutional right of the complainants to work with their hands in their own business, being conduct condemned by law and against which no adequate remedy in the courts of law exists, the jurisdiction of the Court of Chancery extends to afford relief by injunction (See argument and cases under Point I of this brief). If it can be argued that the Act of 1926 is otherwise constitutional and is not merely declaratory of the law as it always was, what will be left will be an attempt to take away from the Chancery Court a remedy in certain cases which existed at the time of its creation.

In *A. J. Monday Co. vs. Automobile, Aircraft & Vehicle Workers* (1920) 171 Wis. 532, 177 N. W. 867, the following statement appears, at page 540:

"Chapter 211 was an attempt to ingraft upon the laws of this State certain provisions of the Act of Congress of Oct. 15, 1914 (38 U. S. Statutes at Large 730, ch. 323) commonly known as the Clayton Act."

The Court in construing a Statute similar to our own 1926 Act and Section 20 of the Clayton Act, dealing with the restricting of injunctions in labor disputes.

"This was done without any reference to the fundamental distinction between the power of Congress to regulate procedure in and to limit the jurisdiction of Federal Courts, inferior to the United States Supreme Court, and the power of the Legislature to regulate procedure and to limit the jurisdiction of the courts created by the Constitution of a State."

To the same effect are also *Bull vs. International Alliance* (1925) (119 Kan. 713, 241 Pac. 459; and *Bogni vs. Perotti* (1916) 224 Mass. 152, L. R. A. 1916 F. 831, 112 N. E. 853.

C.

The Act has no application except in connection with a "dispute concerning terms and conditions of employment" and no such dispute exists in the case at bar.

Paragraph 11 of the syllabus in the case of *Duplex Co. vs. Deering*, 254 U. S. 443 referred to *supra* in another connection contains the following conclusion of the United States Supreme Court in a case involving the construction of Section 20 of the Clayton Act:

"This section confines the exceptional privilege to those who are proximately and substantially concerned in an actual dispute respecting the terms or conditions of their own employment, past, present or prospective; it does not * * * treat all the members of a labor organization as parties to a dispute which proximately affects but a few of them."

In *A. J. Monday Co. vs. Automobile, Aircraft & Vehicle Workers*, 171 Wis. 532 also referred to *supra* in another connection, the Court in dealing with a similar statute says:

"Sub-section 2, section 2 provides that an injunction shall not issue in disputes 'involving the terms and conditions of an employment'. In this case there is no such dispute." The Court granted a restraint notwithstanding the statute.

Our own case of *Gevas vs. Greek Restaurant Workers' Club, et al.*, 99 N. J. Eq. 770, coming to the same conclusion as, and involving a set of facts very similar to those involved in *Waitresses' Union vs. Benish Rest. Co.*, 6 Federal 2d. series 568, succinctly states the law as follows:

" * * * and the existence of a dispute is a condition of the immunity to injunction declared by the Statute, nor is it enough that such a controversy formerly existed where the employer has been successful in filling the place of the strikers. *Quinlivan vs. Dail-Overland Co.* (C. C. A.) 274 F. 56; Note 27 A. L. R. 415. * * * I have already held that here no strike in fact exists and that the acts of the defendant complained of are in furtherance of a wrongful and illegal purpose. The statute therefore has no application to the present controversy, * * * ."

There is nothing in the proofs before this Court for consideration to indicate that any dispute existed between Jambor, the complainants' employee, and the complainant, or that any dispute existed between the complainants and any of their employees on any of the contracts of the complainants. It appears therefore that were the act under consideration found to be constitutional; were it held to operate to legalize acts done in furtherance of an illegal or wrongful object; were it held to be not merely declaratory of the law as it always existed, the facts of the case at bar do not come within its contemplation, for the reason that one of the requirements of the act, the existence of a dispute concerning the terms and conditions of employment, is entirely absent from the proofs.

POINT V.

The defendant unions, Plumbers Local 326 and Steamfitters Local No. 284, were properly joined as parties defendant in their respective recognized names, to the proceedings in the court below.

A.

The provisions of Public Laws 1903 Page 545, 3 Compiled Statutes 4064, authorizes the naming of voluntary associations of more than seven persons as parties defendant to the within proceedings.

That Plumbers Local Union #326 is a voluntary unincorporated association consisting of approximately 150 persons is admitted in the affidavit of Charles Flynn offered by the defendants (page 30, lines 9 to 12 of the State of the Case). The same admission as to Steamfitters Local #284 is made by the defendants in paragraph 8 of the affidavit of Vincent R. Becraft (page 44, lines 1 to 8 of the State of the Case). It is argued in appellants' brief that this Act is not applicable because the case at bar is a suit in Chancery. To the contrary we refer to *Mayer vs. Journeymen's Stone-Cutter's Ass'n.*, 47 N. J. Eq. 519. The following is quoted from the opinion of the Court:

"The defendants are 'the Journeymen's Stone Cutters Association of Newark, Orange, Bloomfield, Avondale, and their vicinity', a voluntary association not incorporated, certain individuals, the officers of said

defendant association. Under the Act of 1885 (supp. revision, p. 812, par. 21) the defendant association can be sued, by its recognized name in an action affecting the common property or the point rights or liabilities thereof, * * * *."

The Court then proceeded to entertain the application for an injunction. This decision, of course, was rendered long before the enactment of the Chancery Act of 1925, which subsequently and affirmatively extended the right to designate unincorporated associations by their recognized names in Chancery proceedings. The Act of 1885 to which the Court refers in the foregoing excerpt is a supplement to the Practice Act of 1874, entitled "An Act to Regulate the Practice of Courts at Law" and on the question of the applicability of its provisions to Chancery practice it is subject to the same tests as Public Laws 1903, page 545, 3 C. S. 4064, which is section 40 of the 1903 Practice Act entitled, "An Act to Regulate the Practice of Courts of Law." Attention is directed to the similarity of title and apparent purpose in the two statutes. One is the Practice Act of 1874 and one is the Practice Act of 1903. Both acts in practically the same words authorize suits against unincorporated associations in their recognized names, and both are parts of acts having identical titles. If under the earlier section suits against unincorporated associations of more than seven persons by their recognized names were permissible in Chancery, the same privilege must result from the later enactment. The supplement to the Act of 1874 appearing in the provisions of the Act of 1885, referred to in the foregoing decision, (See volume 2 General Statutes of New Jersey, 1709-1895 at page 2588) having been held by the Court

of Chancery in this case to enable proceedings for injunction in Chancery against an unincorporated association by its recognized name, the suit for an injunction in the case at bar against the union defendants, named in their recognized names under the authority of the provisions of Section 40 of the Practice Act of 1903, has ample judicial sanction.

B.

The defendant unions are properly named by their recognized names by virtue of "A Supplement to an Act Entitled 'An Act respecting the Court of Chancery (Revision of 1902)' " Public Laws 1925 page 395 Chapter 156.

This Statute specifically authorizes naming by their recognized names, in Chancery proceedings, unincorporated organizations consisting of seven or more persons. Appellants in their brief, page 25, rely on paragraph 4 of this Act as exempting the defendant unions from its provisions. This paragraph reads "Nothing in this act contained shall apply to any fraternal, charitable, or other organization not organized for pecuniary profit." They argue that the defendants unions are not organized for pecuniary profit. It is submitted that there is nothing in the proofs to indicate that the defendants are not organized for pecuniary profit. The defendants in the affidavits of Flynn and Be-craft, admit that both unions are unincorporated associations of more than seven persons, having a recognized trade name, but they do not at any point deny that they are in business for pecuniary profit. There is nothing before the Court on appeal to bring these defendants within the provisions of paragraph 4 of the 1925 Act. *Iron Mould-*

ers Union #125 vs. Allis Chalmers Co., 166 Federal 45 (C. C. A.) is authority for the proposition that the objection, made on behalf of a labor union joined as a defendant in a suit for an injunction as representing its members collectively, that it was an unincorporated voluntary association not authorized by the laws of the State, will not be heard on appeal unless first presented in the trial court. Similarly the objection that the defendant unions are not organized for pecuniary profit within the contemplation of the 1925 Supplement to the Chancery Act cannot be argued on appeal, not having been argued below; and it could not have properly been argued below, there being nothing in the affidavits of the defendants before the Court of Chancery to establish the fact.

C.

The defendant unions are properly named by their recognized names irrespective of the provisions of any Statute, both for the reason that the law has come to recognize labor organizations as distinct entities, and for the reason that the defendant unions are joined in each instance together with officials who are representative of the class constituting the respective organizations.

Many statutes have been enacted in New Jersey intending to benefit organized labor. See Public Laws 1880 p. 178 and Public Laws 1886 p. 315, both of which can be found on page 107 of the Compiled Statutes of New Jersey, and providing mechanism for arbitration and amicable adjustment of grievances in labor disputes; the provisions of law

in connection with the creation of a state department of labor; the Act of 1883, discussed at length under Point III of this brief authorizing the combining of individuals into labor organizations; the provisions of the Act of 1926, also discussed at length above, attempting to deny the right to injunctive relief in labor disputes; provisions of Public Laws 1894 page 327 3 Compiled Statutes of New Jersey 3052, forbidding employers of labor from requiring as a condition of employment, the renouncing of membership in any labor organization; P. L. 1911 Chap. 54 page 133, Compiled Statutes of New Jersey page 1743, making it a misdemeanor to attempt to "influence a duly appointed representative of a labor organization"; and innumerable other statutes which can be readily found by a reference to the indices to the various compilations of the Statutes of New Jersey.

That such legislative recognition of the existence of union organizations has lent to them a unique character and has singled them out as distinct from other recognized entities cannot be gainsaid. Decidedly in point is the opinion of Chief Justice Taft delivered for the United States Supreme Court in the case of *United Mine Workers of America vs. Coronado Coal Co.*, (122) U. S. Sup. Ct. Rep. 66 Law ed. page 975, S. C. Reporter's ed. 344: The following quotations from this opinion are directly in point:

"There are five principal questions pressed by the plaintiffs in error here, the defendants below * * * * the second is that the United Mine Workers of America and the Local Unions made defendants, are unincorporated associations and not subject to suit, and therefore should have been dismissed from the case on motions seasonably made." (page 983 of the Law Edition).

Again at page 984 of the Law Edition, the late Chief Justice continues:

"Undoubtedly at common law, an unincorporated association of persons * * * * could only sue or be sued in the name of its members, and the liability had to be enforced against each member. But the growth and necessities of these great labor organizations have brought affirmative legal recognition of their existence and usefulness and provisions for their protection, which their members have found necessary. * * * We insert in the margin an extended reference * * * to legislation of this kind." The marginal reference includes a reference to the N. J. Act of 1883 (Comp. Stat. 1910 par. 128 page 3051).

The Court then concludes that the legislative and judicial recognition of labor unions, as institutions entitled to governmental protection, such as is afforded them by our own New Jersey Act of 1883 (*Supra*) and other New Jersey Statutes, has given them a status and character which makes them suable in their official titles or names. At page 986 of the Law Edition the Chief Justice says:

"* * * Equitable procedure adapting itself to modern needs has grown to recognize the need of representation by one of many, too numerous to sue or be sued. * * * It would be unfortunate if an organization with as great a power as this International Union has in the raising of large funds and in directing the conduct of 400,000 members in carrying on, in a wide territory, industrial controversies and strikes, out of which so much unlawful injury to private rights is possible, could assemble its assets to be used therein free from liability for injuries by torts committed in course of such strikes."

This decision refers to the case of *Taff Vale R. Co. vs. Amalgamated Soc. of Railway Servants* (1901) A. C. 426, 1 B. R. C. 832, in which an English statute, which did not create trade unions, but which simply regulated them in certain ways, and neither conferred on them general power to sue, nor imposed liability to be sued, a statute apparently very much like our own act of 1883—was held to give trade unions a quality which made them suable in their recognized names. The Court in this latter case, commenting on argument of counsel favoring a contrary conclusion, said:

“If the contention of the defendant society were well founded the legislature has authorized the creation of numerous bodies of men capable of owning great wealth and of action by agents, with absolutely no responsibility for the wrong that they may do to other persons by the use of that wealth and the employment of those agents.”

Apparently the Courts of New Jersey have applied the reasoning of the United States Supreme Court as basic; the cases in which union organizations are joined as such and by their recognized names, in actions in the Chancery Courts of New Jersey, both before and subsequent to the 1925 supplement of the Chancery Act, are legion.

Independently of the right to so designate union organizations by reason of their distinct and unique qualities entitling and subjecting them to specific recognition in law and in equity as entities, the practice of the Court of Chancery has favored the bringing in of unincorporated associations having large membership, through the medium of class representation.

In *Van Houghten vs. Pine*, 36 Eq. 133, it is said:

“The complainant * * * brings suit against

an unincorporated society named the Masonic Life Insurance Company * * *. The Company is a voluntary association located in this State * * *. Its members are free masons, of the degree of Master Mason. The minimum number of members is 1200." (Pages 134-135).

"The Masonic Life Insurance Company is not a corporation (page 137). As to want of parties: only two of the members (one of them is president and the other is secretary and treasurer) are made parties to the bill. To require the complainant to make all the other members parties would practically be so obstructive as substantially to put an end to the suit. But the practise of this Court does not require it. In a suit in equity against an unincorporated company of numerous members to enforce a right against the full body, it is not necessary to make all the members parties, but it is enough if so many be made parties as to insure a fair and honest trial. (Story's Eq. Pl. par. 107)."

We will not burden the record with too many references to New Jersey cases where union organizations were involved as parties to Chancery proceedings in New Jersey, both prior to and subsequent to the Supplement to the 1925 Chancery Act, either on the theory that such designation is permissible by the very nature of the unions or on the theory of class representation. Virtually every labor case previously cited in this brief, as well as the cases cited in the brief of the appellants, is an example of the right to designate unions by their recognized names, with or without the joinder of representative individuals, in proceedings in the Court of Chancery.

The Grand Lodge, Knights of Pythias of New Jersey vs. Germania Lodge, No. 50, 56 N. J. Eq.

63 relied upon in appellants' brief, is not at all in point. The Court struck out of the bill the allegation of continued organic existence of one of the unincorporated defendants and its name as a party defendant, for the reason that "The organization of the Lodge had been destroyed by the withdrawal on November 13, 1894 of a large part of its members", and not for the reason that unincorporated associations cannot be joined as parties to chancery proceedings.

The Practice Act of 1903 and the 1925 Supplement to the Chancery Act furnish statutory authority for the joinder of the defendant unions in the within proceedings by their recognized names; the statutory recognition and protection afforded labor organizations have rendered them answerable in their established names to proceedings in the Court of Chancery irrespective of the Practice Acts; and their joinder in Chancery, through the device of class representation, employed in the instant case, has always been permissible under equity practice.

Conclusion.

The conduct of the defendants constituted an unlawful interference with a lawful business, and the words of Vice-Chancellor Berry, are, therefore, applicable:

"This being, as I view it, a case of unlawful interference with a lawful business lawfully conducted, the restraint originally advised is none to sweeping in its scope and effect." *Gevas vs. Greek Restaurant*, 99 N. J. Eq. 770.

As has previously been pointed out in the course of this brief, the denials of the defendants, when

considered in connection with those facts which are not denied, are not so specific and conclusive as to warrant the court in vacating the restraining order.

In *Jersey City Printing Co. vs. Cassidy*, 63 N. J. Eq. 759-770, the oral opinion of Vice-Chancellor Stevenson is followed by a summary of the conclusion of such opinion in the following words:

"The Vice Chancellor then discussed at length the effect of the answer of the defendants and the affidavits annexed thereto, which denied all the charges of interference with existing labor contracts, or molestation practiced to prevent new workmen from being employed. The conclusion was that, notwithstanding such denials, even when sustained by the greater weight of evidence, the restraining order should be held in force as to those defendants who stood fairly charged under oath with the interdicted misconduct, and should be vacated as to any other defendants not so charged; that the sole issue appeared to be one of fact, viz., whether the defendants had done and were threatening to do the acts complained of or not; and that such an issue could not properly be tried on ex parte affidavits, but should be reserved for the final hearing; that in a case like this, *where the defendants were the only persons in sight, apparently, interested in having the unlawful conduct complained of continued, and were therefore subjected to a temptation to cause such conduct to be continued, an injunction which merely prevented them from doing acts which they disclaimed any right to do, and denied that they had done or threatened to do, should be retained until the final hearing.*"

In the present case, as in the case cited, the defendants are "the only persons in sight, apparent-

ly, interested in having the unlawful conduct complained of continued," and as it is quite evident from their attitude toward Rissler, and toward the insistence of the latter that a master plumber may work personally in the performance of his contracts, that the defendants would be "subjected to a temptation to cause such conduct to be continued;" and furthermore, as the restraining order "merely prevented them from doing acts which they * * * denied that they had done or threatened to do," though such denial lacked convincing force and was not sufficiently specific to be persuasive, the power exercised by the court in this instance should not be relaxed, but the restraint "should be retained until the final hearing".

Respectfully submitted,

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Solicitors of Complainants-Respondents.

JACOB FOX,
Of Counsel with Complain-
ants-Respondents.

57 FEB.T.1931

New Jersey Court of Errors and Appeals

Between

HENRY P. RISSLER and FRANK J.
RISSLER,
Complainants-Respondents,

and

PLUMBERS LOCAL #326 OF UNITED
ASSOCIATION OF JOURNEYMEN
PLUMBERS & STEAMFITTERS OF
THE UNITED STATES AND CANADA,
CHARLES FLYNN, STEAMFITTERS
LOCAL #284 OF UNITED ASSOCIA-
TION OF JOURNEYMEN PLUMBERS
& STEAMFITTERS OF THE UNITED
STATES AND CANADA, and VINCENT
R. BECRAFT,
Defendants-Appellants.

On Appeal
from the
Court of
Chancery.

BRIEF FOR APPELLANTS.

Statement of Case.

This is an appeal from an Order of the Court of Chancery granted on August 19th, 1930, in favor of the complainants-respondents and against the defendants-appellants wherein a preliminary injunction, pending final hearing was ordered, restraining the defendants from

(A) Refusing to permit members of their respective associations to work for complainants.

(B) Declaring the complainants unfair to union labor.

(C) Interfering with the employees of the complainants in such a way as to disturb the complainants in the usual course of their business.

The defendants are two Labor Organizations with headquarters at Hackensack, New Jersey, and two individual business agents of the respective associations involved.

Upon the filing of the bill on August 4th, 1930, an Order to Show Cause containing an *ad interim* restraint was granted *ex parte* against the defendants, and it was upon the return of this Order to Show Cause that the learned Vice Chancellor, after hearing argument of the respective counsel, granted the Injunctive Order of August 19th, 1930, pending final hearing, from which order this appeal has been taken.

The learned Vice Chancellor did not file any opinion but advised the Order of August 19th, 1930, immediately upon conclusion of the argument.

The matter was heard before the learned Vice Chancellor below on bill and affidavits, Order to Show Cause and answering affidavits filed by the defendants.

Although the cause at bar involves a labor dispute, the bill does not allege a *conspiracy* between the defendants to injure the complainants, *nor is there anything in the case whatever involving violence, intimidation, picketing, boycott or strike*. The case is absolutely free from any of these elements.

The complainants for sometime past have been conducting a general plumbing and heating business in the City of Hackensack, under the trade name of RISSLER BROTHERS. One of the complainants, Henry P. Rissler, had for a number of years last past been a member of Plumbers Local 326, one of the defendants in this cause, and had some

dispute in regard to his membership and the payment of his dues, resulting, as the complainants charge, in a situation wherein the complainants were unable to obtain any union plumbers or steamfitters from either of the defendant unions.

The bill charges but a *single* alleged illegal act, viz, a steamfitting contract being performed by the complainants on the premises located at Cedar Lane and Garrison Avenue, Teaneck, Bergen County, New Jersey, at which job the complainants charge that on or about July 14th, 1930, *one* of their employees, a steamfitter by the name of Louis Jambor, working on this job, was ordered to stop work by the defendant, Becraft, Business Agent of the defendant union known as Steamfitters Local 284.

It is further charged that the defendant, Becraft as a representative of Steamfitters Local 284, refused to furnish union help to replace Jambor on the ground that the complainants had been declared to be unfair to union labor. The bill prays that the defendants be restrained from interfering with the business of the complainants and from refusing to supply complainants with union help and from permitting members of the defendant unions to work for complainants, and from declaring complainants unfair to union labor.

Defendants in their answering affidavits, filed on the argument of the Order to Show Cause, *deny the charges of the bill-of-complaint in toto*—deny that Jambor had been ordered off the job or that the job at Cedar Lane and Garrison Avenue, Teaneck had been interfered with in any manner whatever, and in fact, point out *that the job had been practically finished and that Jambor had not left the job at all*. Defendants' affidavits further explained fully the real cause of the dispute between the complainants and the defendants, and pointed out that the same was due primarily to the fact

that the complainant, Henry P. Rissler who had formerly been enrolled as a member of Plumbers Local 326, had been expelled from that local for the non-payment of dues and that the complainants were considered non-union employers in view of this fact. *Defendants in their affidavits expressly offered to reinstate the complainant, Henry P. Rissler in the union, provided he complies with the union regulations and by-laws.*

The appellants will urge in this Honorable Court as they urged in the court below, viz, that the proofs before the court were insufficient to warrant the granting of preliminary injunctive relief, pending final hearing, and that the learned Vice Chancellor below was in error in granting the Injunctive Order of August 19th, 1930, but should on the contrary have discharged the Order to Show Cause, and the *ex parte* interim restraint therein contained, and should not have restrained these defendants pending final hearing.

POINT I.

The complainants-respondents were not entitled to preliminary injunctive relief pending final hearing, as against these defendants-appellants, because

(a) The complainants - respondents proofs did not show any actual or threatened irreparable injury or damage to complainants.

(b) The defendants' affidavits fully met the charges contained in the complainants' bill, and affidavits thereto annexed, and the defendants' affidavits directly, categorically and unequivocally denied or explained every material allegation in the bill.

(c) Under the Act of 1883 (P. L. 1883, p. 36; 3 Compiled Statutes of New Jersey, p. 3051, Section 128) the alleged acts and conduct of these defendants-appellants as charged in the bill of complaint and affidavits thereto annexed, were lawful and proper and the bill of complaint does not state an equitable cause of action.

(d) Under the Act of 1926 (Chapter 207, Laws of 1926, p. 348), the Court of Chancery was powerless to grant a restraint in the case at bar.

"A" and "B" Will Be Argued Together.

It is elementary that preliminary injunctive relief will not be granted unless the complainants

show actual or threatened irreparable injury or damage, or show the necessity of preserving a status pending final hearing.

It is also fundamental that on an application for preliminary restraint, pending final hearing, that if the defendants' affidavits fully meet the charges contained in the bill and directly and unequivocally deny and explain every material allegation in the bill, that the application for preliminary restraint will be denied.

The leading case in our state, illustrative of these two points, is the *Citizens Coach Company vs. The Camden Horse Railroad Company*, 29 N. J. Eq. 299, where the court said on page 303,

"It is entirely settled that a preliminary injunction will never be ordered unless from the pressure of an urgent necessity. The damage threatened to be done, and which it is legitimate to prevent, during the pendency of the suit, must be, in an equitable point of view, of an irreparable character."

The court in this case also quotes with approval, the cautionary words of Judge Baldwin, in the case of *Bonaparte v. Camden and Amboy R. R. Co.*, Bald. C. C. 205, 217, as follows:

"There is no power, the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, and which is more dangerous in a doubtful case, than the issuing of an injunction. It is the strong arm of equity that never ought to be extended unless in cases of great injury, where the courts of law cannot afford an adequate or commensurate remedy in damages."

Chief Justice Beasley, writing the opinion of the Court of Errors and Appeals in the case of *Citizens Coach Company vs. The Camden Horse Railroad Company*, *supra*, on page 305, said,

"When this order for this injunction was made, every fact that created an equity in favor of the complainant was denied by the answer and proofs of the defendant * * *.

"These sworn statements, as I have said, denied, as directly and emphatically as it was possible, every material allegation on which, in the bill, the prayer for an injunction rested."

* * * * *

"The general rule, subject to but a few exceptions, is, that if the facts constituting the claim of the complainant for the immediate interposition of the court are contraverted, under oath, by the defendant, the court will not interfere at the initial stage of the case."

Justice Dalruple, in this case also said on page 306,

"On the ground that the charges in the complainant's bill are fully met by the defendant's answer and affidavits, I vote to reverse the order for preliminary injunction."

The case of *Citizens Coach Company vs. The Camden Horse Railroad Company, supra*, has been cited with approval and followed in dozens of reported cases in our state. It is not the intention of counsel to burden the court with all the citations. The following extracts from a few reported cases will be cited.

In *Schlemm vs. Whittle*, 86 N. J. Eq. 415, this court said on page 417,

"We find it unnecessary for the determination of the propriety of making the order appealed from to discuss the merits of the issue presented, from the viewpoint of equitable jurisdiction, further than to reiterate the fact that every material allegation in the bill has been met by a specific denial in the answer.

To warrant the issuing of a preliminary injunction, in such a situation, it must be rea-

sonably apparent that the damage which the complaining party is liable to suffer will be irreparable in character, or that the urgent necessity of the case requires the intervention of the protecting arm of the court to save the subject-matter of the controversy from impairment or destruction.

Willard Eq. Jur. 343.

This statement of the equitable doctrine has frequently received the consideration of this court, in reported cases, which may be found collected in the digests. 4 N. J. Dig. 6902; supplement N. J. Dig. 1155.

But the ratio decidendi, and the logical analysis of the equitable philosophy underlying the doctrine, was presented in this court with that singular acumen and learned lucidity which invariably distinguished the pronouncements of Chief Justice Beasley in *Citizens Coach Co. v. Camden Horse Railroad Co.*, 29 N. J. Eq. 299. That case is the exponent of three settled rules of equity procedure which appear to us to be dispositive of the case at bar.

(1) A preliminary injunction is never granted unless the act threatened to be done will inflict an *irreparable* injury on the complainant. (2) Nor will the writ be issued where the right of the complainant depends on an unsettled question of law. (3) It is a general rule that when the equity of the complainant is disproved by the answer and affidavits, a preliminary injunction is not proper.

The present chief-justice, in *McMillan v. Kuehnle*, 78 N. J. Eq. 253, speaking for this court over thirty years after the determination in the *Citizens Coach Co.* case, emphasized the importance of a rigid adherence to this rule in the case of an alleged recurring weekly nuisance, and there declared the settled corollary of the rule that: 'It is not necessary now to consider whether the disturbance of the complainant's rights is of such a character as to entitle them to an injunction upon a final hearing of the cause.'

The present chancellor, in *Aldrich v. Union Bag and Paper Co.*, 81 N. J. Eq. 247, advertising to this adjudication, observed that the court of Chancery 'was recently admonished in *McMillan v. Kuehnle* not to award preliminary injunctions except to prevent irreparable injury,' which, in effect, was but another method of emphasizing the long established equitable doctrine that such injunctive relief should be exercised only '*with extreme caution.*' *Citizens Coach Co.* case, *ubi supra*; *Ramsey v. Erie Railroad*, 38 How. 193; *Willard Eq. Jur.* 344" (*Italics mine*).

In *Brunetto vs. Town of Montolair*, 87 N. J. Eq. 338, the court said on page 341,

"The object of a preliminary injunction is to prevent some threatening, irreparable injury *pending a full and deliberate investigation of the case upon the merits*; and it will not be ordered unless under the pressure of *urgent necessity*, and where the damage threatened during the pendency of the suit is of an *irreparable* character. *Meyer v. Somerville Water Co.*, 79 N. J. Eq. 613; *Citizens's Coach Co. v. Camden Horse Railroad Co.*, 29 N. J. Eq. 299.

It will not be granted merely to allay the fears and apprehensions of individuals. They must show the court that the acts against which they ask protection are not only threatened, but will, in probability, be committed to their injury. *Meyer v. Somerville Water Co.*, *Supra*; *Lutheran Church v. Maschop*, 10 N. J. Eq. 57.

The general rule is that a preliminary injunction will not issue where the material facts in the bill, on which the complainant's equity depends, are met by a full, explicit and circumstantial denial under oath. *Meyer v. Somerville Water Co.*, *supra*; *Citizens Coach Co. v. Camden Horse Railroad Co.*, *supra*; *Schlemm v. Whittle*, 99 Atl. Rep. 206." (*Italics mine*.)

Justice Minturn in the case of *Keuffel & Esser vs. International Association of Machinists*, 93 N. J. Eq. 429, at page 440, stated the rule

"The rule is settled, since the determination of this court, speaking by Chief-Justice Beasley, in *Citizens Coach Co. v. Camden Horse Railroad Co.*, 29 N. J. Eq. 299, that when the equity of the complainants' bill is disproved by the answer and affidavits, a preliminary injunction is not proper. In that case, as in this, the injunction went not upon the allegations of the pleadings, but upon the sworn statements annexed thereto. 'The general rule,' says the distinguished Chief Justice, 'subject to but few exceptions, is that if the facts constituting the claim of the complainant for the immediate interposition of the court are controverted under oath by the defendant, the court will not interfere at the initial stage of the cause.' Instances of the application of this rule by this court have been frequent, the latest case being *Brunette v. Montclair*, 87 N. J. Eq. 338, where Mr. Justice Trenchard, speaking for the court, reiterated the doctrine and amplified it to the extent of declaring that 'a preliminary injunction will not be granted merely to allay the fears and apprehensions of individuals. They must also show the court that the acts against which they seek protection are not only threatened but will in all probability be committed to their injury.'"

In *Guangione vs. Guangione*, 97 N. J. Eq. 303, at page 305, the Court said:

"The present Chief Justice tersely stated in *McMillan v. Kuehnle*, 78 N. J. Eq. 253, that such a resort should not be adopted 'unless from the pressure of urgent necessity,' citing *Hagerty v. Lee*, 45 N. J. Eq. 255, and the present chancellor in *Aldrich v. Union Bag, &c. Co.* (*ubi supra*), declared, citing the case mentioned, 'It has been decided again and again,

that a preliminary injunction should not be awarded unless from the pressure of urgent necessity, and also unless the injury to be prevented pendente lite will be irreparable."

The rule is further enunciated in the case of *Schindler Advertising Company vs. Public Service Transportation Company*, 97 N. J. Eq. 542, wherein the Court said:

"At the outset, we are confronted with the well-established and long-settled rule in this court regulating the granting of a preliminary injunction. It is thus clearly and succinctly stated by this court in the case of *Citizens' Coach Co. v. Camden Horse Railroad Co.*, 29 N. J. Eq. 299. A preliminary injunction is never granted unless the act threatened to be done will inflict an irreparable injury on the complainant. Nor will the writ be issued where the right of the complainant depends on an unsettled question of law. Nor where the equity of the complainants is disproved by the answer and affidavits. In such cases a preliminary injunction is not proper."

Justice Katzenbach stated the rule in *Loomis vs. Public Service Transportation Company*, 6 N. J. Advanced Reports 284, at page 289, as follows:

"There is, however, one other ground of appeal pressed by the appellant which we think should be considered as the question is discussed in the opinion of the learned Vice Chancellor who granted the order. The court of Chancery will not as a general rule grant a preliminary injunction when the equity of the complainant is controverted or disproved by the answer and affidavits. This principle has best been stated by Chief Justice Beasley in the case of *Citizens Coach Co. v. Camden Horse Railroad Co.*, 29 N. J. Eq. 299, in these words:

'The general rule, subject to but a few exceptions, is, that if the facts constituting the claim of the complainant for the immediate interposition of the court are controverted, under oath, by the defendant, the court will not interfere at the initial stage of the cause.'

In the present case the claim that the three defendant companies had notice that the property conveyed to the two corporations organized by the said association was held in trust for the owners of the association was denied by the affidavits of the defendants. The answering affidavits further denied every material allegation upon which the complainants' bill rested. We see no special circumstances in the proofs which in our opinion call for a departure from this rule. It was, therefore, error to have granted the order for preliminary injunction."

The rule enunciated in the case of *Citizens Coach Co. vs. The Camden Horse Railroad Company*, *supra*, was also followed in the case of *D'Elia vs. Warren*, 6 N. J. Advanced Reports, 1270.

The complainants' bill is verified by three affidavits annexed thereto, viz., affidavit of Henry P. Rissler (p. 16); affidavit of Frank J. Rissler (p. 21), and affidavit of Louis Jambor (p. 23). The defendants filed three answering affidavits, viz., affidavit of Charles Flynn (p. 28); affidavit of Vincent R. Becraft (p. 41), and affidavit of George Renz (p. 46).

Referring now to the affidavit of Henry P. Rissler, the Court's attention is called to Paragraph "7" thereof, wherein the said affiant states in substance that on July 14th, 1930, the defendants, Flynn and Becraft, visited the job being done by the complainants at Cedar Lane and Garrison Avenue, Teaneck, New Jersey, and informed one Louis Jambor, who was working for the complainants as

a steamfitter on that job, that he, Jambor, could no longer work for the complainants, because the complainants had been declared to be unfair to union labor; and that a request was then made to Becraft, the delegate of Steamfitters Local 284, to furnish another steamfitter or helper in good standing, and that Becraft is alleged to have stated that he could give no help because Local 326 had declared Rissler Brothers to be unfair to union labor.

Paragraph "2" of Frank J. Rissler's affidavit is practically to the same effect as the affidavit of his brother, Henry P. Rissler.

The defendant Flynn, in paragraphs "2" and "3" of his affidavit, answering Paragraph "7" of the affidavit of Henry P. Rissler and Paragraph "2" of the affidavit of Frank J. Rissler, says:

"2. My attention has been particularly drawn to Paragraph '7' of the affidavit of Henry P. Rissler, and Paragraph '2' of the affidavit of Frank J. Rissler. I was present at the job at Cedar Lane and Garrison Avenue, Teaneck, New Jersey, on Tuesday, July 15th, 1930, and not on July 14th, 1930 as alleged in the affidavits of both Rissler Brothers. Rissler Brothers had employed one Louis Jambor, a steamfitter, on the job. Louis Jambor had formerly been a member of Steamfitters Local Union 284, but had been automatically expelled from the union because of the non-payment of dues for a period of over fifteen months. Mr. V. R. Becraft, business agent of Steamfitters Local 284, was also present, together with both Rissler Brothers.

3. I deny that Mr. Becraft told Mr. Louis Jambor that he could no longer work for Rissler Brothers, because Rissler Brothers had been declared unfair to union labor by Plumbers Local Union 326. I also deny that either of the Rissler Brothers requested Mr. Becraft to furnish them with a steamfitter and helper in good standing. I deny that Mr. Becraft in-

formed them that he could give no help, because Local 326 had declared Rissler Brothers unfair to union labor. *Jambor continued to work on this job and the same is practically finished."*

It will thus be seen that Flynn absolutely denies that either he, or Becraft, ordered the complainants' employee, Jambor, off, because the complainants had been declared unfair to union labor. As a matter of fact, Flynn points out *that Jambor continued to work on this job and that the job was practically finished.*

The defendant, Becraft, in his affidavit, referring to what took place on the job at Cedar Lane and Garrison Avenue, Teaneck, shows that the complainants on this job had only *one* employee, viz., Jambor (p. 42, ll. 3-5). Paragraph "5" of Becraft's affidavit reads as follows:

"5. I particularly desire to deny the allegations contained in Paragraph '7' of Henry P. Rissler's affidavit, and Paragraph '2' of Frank J. Rissler's affidavit, and Paragraph '2' of Louis Jambor's affidavit. I was present on the job together with Charles Flynn, a delegate of Plumbers Local Union 326. In fact, I visited the job twice on that day. Mr. George Renz of the Electricians Union was also present on that day. I talked to Rissler Brothers on that day. Mr. Josephs, the owner of the premises, was also present. I absolutely deny that I told Jambor that Rissler Brothers had been declared unfair to union labor, and that he, Jambor, must cease working for them immediately. I also deny that either one of the Rissler Brothers requested me to furnish them with a steamfitter and helper in good standing, and I also deny that I informed them or either of them that I could give them no help because the Plumbers Union 326 had declared Rissler Brothers to be unfair to union labor. As a matter of fact, the matter discussed was the question of the standing of Henry P. Rissler

in the Plumbers Union Local 326. At that time Henry P. Rissler had been expelled from Local Union 326 because of the non-payment of dues for more than one year."

Becraft also says in Paragraph "9" of his affidavit:

"9. I deny that either I or any member of my organization ever declared Rissler Brothers unfair to Union Labor, nor was the question of being unfair ever mentioned or discussed. The whole controversy between Rissler Brothers and the two locals was the question of the standing of Henry P. Rissler in Local 326. I have not ordered any of my men of the Steamfitters Local 284, not to work for Rissler Brothers. As a matter of fact, my men do not have to be told not to work for Rissler Brothers. They will not work for them because Rissler Brothers are now considered non-union employers, and until Henry P. Rissler is reinstated as a member in good standing of Local 326 of the Plumbers Union, my men, the steamfitters will not work for them. It is not necessary for me to instruct my men not to work for them. They are bound by their own constitution and by-laws not to work alongside of non-union men or for a non-union employer. Under the present circumstances, Rissler Brothers are considered non-union employers so far as the Steamfitters are concerned."

and in Paragraph "11" says:

"11. On the job at Cedar Lane and Garrison Avenue, Teaneck, New Jersey, all the work of the various trades, such as electricians, carpenters, iron workers, etc. were all union craftsmen and they continued to do their work and finish their respective jobs. Both of the Rissler Brothers were working on this job, doing the job themselves, that is, doing the steamfitting themselves."

George Renz, who is not a defendant to this suit, but who was present on the job at Cedar Lane and

Garrison Avenue, Teaneck, New Jersey, in July, 1930, states his version of what occurred, in his affidavit (p. 46) as follows:

"4. Paragraph '7' of the affidavit of Henry P. Rissler, and Paragraph '2' of the affidavit of Frank J. Rissler, have been called to my attention. I deny that Mr. Becraft, a delegate of the Steamfitters Local Union 284, informed Louis Jambor that he could no longer work for Rissler Brothers, because Rissler Brothers had been declared unfair to Union Labor by the Plumbers Local 326. I also deny that Mr. Becraft was requested by either of the Rissler Brothers to furnish them with a steamfitter in good standing and deny that Mr. Becraft stated that he could give no help because Plumbers Local 326 had declared Rissler Brothers to be unfair to union labor."

and also in Paragraph "9" as follows:

"9. I particularly remember a conversation which took place between one of the Rissler Brothers and Mr. Becraft. One of the Rissler Brothers accused Mr. Becraft of ordering Jambor off the job. Mr. Becraft denied that he ordered Jambor off the job. *Mr. Becraft stated that he could not order Jambor off the job, because Jambor was not a local member of his organization, as he had been expelled for the non-payment of dues.*"

The affidavit of Louis Jambor (p. 23), annexed to the bill, states, in paragraph "2" thereof, that he was approached by Becraft, a delegate of the Steamfitters Local 284, who told him that Rissler Brothers had been declared unfair to union labor and that he, Jambor, must cease working for the firm immediately. It is significant that neither Jambor, nor either of the two complainants, state that Jambor *actually quit work*. As a matter of fact, the defendant, Flynn, in paragraph "3" of his affidavit, states affirmatively that *Jambor continued to work*

on the job and that the job was practically finished. Complainants do not contradict this statement.

The only work, which the complainants allege in their bill or affidavits, on which there was any interference at all, was the *single job* that the complainants were doing on the premises at Cedar Lane and Garrison Avenue, Teaneck, New Jersey.

The statement in the bill and in the affidavits thereto annexed that Jambor was ordered off the job, because the complainants had been declared unfair to union labor, it will be seen, *is absolutely denied in toto by the defendants in their affidavits*, and by the affidavit of Renz who was present at the time. At any rate, the complainants do *not* allege, either in the bill or in the affidavits annexed thereto, *that this job was ever tied up or that Jambor actually did quit work*, or that the complainants suffered any damage or inconvenience whatever on this particular job, or on any other job.

As Becraft points out in Paragraph "2" of his affidavit, the complainants only had *one* employee on the job and that was Jambor.

It will thus be seen that all the essential allegations charged in the bill, referring to the alleged interference with complainants in their work is completely denied by the defendants in their affidavits.

How the complainants, on this state of the proofs, can be said to have suffered any actual or threatened *irreparable* injury or damage, sufficient to warrant a preliminary restraint, pending final hearing is incomprehensible.

In addition to Jambor, the complainants were working on this job themselves. All the other crafts on this particular job were all union men and continued to do their work and finished their respective jobs (Affidavit of Becraft, Par. 11); (p. 45).

The complainants could not have suffered any injury or damage, even if their affidavits are to be believed, that the defendants did order Jambor off the job on the ground that the complainants had been declared unfair to union labor, because of the fact that *Jambor did not leave the job and the job was finished*. The job having been finished and Jambor continuing to work thereon, evidently Jambor was not effected by nor did he *obey* the *alleged* command of the defendants to quit the work, even if it is believed that the defendants *did give such an order*. It was at the most an order that was not obeyed—just mere idle words. The job to all intents and purposes continued as before. There was no *necessity* for a restraint to preserve a status, pending final hearing. That status, that is, the job itself, evidently continued and was finished. At least the complainants do *not* charge *anywhere in their proofs* that the job was tied up, or that Jambor *actually did quit* his work, in obedience to the defendants' *alleged command* to do so. The foregoing coupled with the defendants' *absolute denial* that they ordered Jambor off the job, plus the defendants' affirmative showing that *Jambor did not leave the job and that the job was completed*, shows conclusively that what took place on July 15th, 1930 on the job at Cedar Lane and Garrison Avenue, Teaneck, was no more than a lot of talk, no action being taken on either side.

It is, therefore, difficult to understand how the learned Vice Chancellor in view of the proofs that were presented before him, could have found that there was a *necessity* for granting an injunction, or "*the pressure of an urgent necessity*" or that complainants were threatened with *irreparable harm*.

Citizens Coach Company vs. The Camden Horse Railroad Company, supra.

In paragraph "10" of the affidavit of Henry P. Rissler (p. 20) and in paragraph "2" of the affidavit of Frank J. Rissler (p. 22, ll. 8-14), there are statements to the effect that the complainants have been unable to secure any union labor to work for them, and that they were unable to proceed with the work on hand, and unable to undertake any new contracts or jobs which employed only union labor, and that by reason thereof, the complainants were unable to continue their business which was suffering to a continually increasing extent.

It is submitted that such statements are *mere conclusions* and *not proof*.

The complainants did not submit any *specific* proofs whatever, that they were unable to secure union labor to work for them, and that they were unable to proceed with the work on hand. They did not set forth *what work they had on hand*, nor did they set forth, or attempt to prove any *specific contracts or jobs which they were unable to undertake* because of the alleged fact they could not get union men. The statement that they were unable to continue their business which was suffering to a continually increasing extent, is a *mere conclusion* and not supported by any *specific facts* or proofs—clearly within the rule stated in the foregoing cases, that a preliminary injunction will not issue "merely to allay the fears and apprehensions of individuals". Clearly, the complainants' proofs fall within the rule, that a preliminary injunction will not be ordered unless under "*the pressure of urgent necessity*". It is difficult to see where there was any *urgent* necessity for a preliminary injunction under the proofs as they were presented to the learned Vice Chancellor below.

The real cause of the trouble between the complainants and the defendants, is fully explained in the defendants' answering affidavits. Flynn in his

affidavit states that he has been connected with the Plumbers Organization for forty years, and has been a member of Plumbers Local 326 for the past eleven years and is familiar with the Constitution, by-laws, customs and usages of the Plumbers Trade; and the International Organization; that Henry P. Rissler, one of the complainants is a licensed plumber, but the other complainant, Frank J. Rissler has never been recognized either as a plumber or steamfitter.

Flynn also points out in paragraph "18" of his affidavit, that the entire dispute involves the question as to whether or not Henry P. Rissler, one of the complainants, was a member in good standing of Local 326 (Plumbers), and shows that Rissler had been expelled for the non-payment of dues. The complainant, Henry P. Rissler had not paid any dues since June 1st, 1929, and under the constitution of the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada, Section 188 (p. 39), any member who is in arrears for dues for a period of one year or more, stands expelled. There is no denial in the proofs submitted that the complainant, Henry P. Rissler had been expelled because he had not paid dues for more than a year. Flynn further shows in his affidavit that under the constitution and by-laws of the defendant organizations, that a member once expelled is not considered a union man in good standing and that in order to be re-instated, such member must pay a new initiation fee of Three Hundred (\$300.00) Dollars, plus twelve months dues in arrears, amounting to Twenty-four (\$24.00) Dollars, or a total of Three Hundred and Twenty-four (\$324.00) Dollars. Flynn states specifically in paragraph "19" of his affidavit that if the complainant Henry P. Rissler will comply with the constitution and pay a new initiation fee and the dues in

arrears, he will be re-instated as a member; *that there is no desire to keep him out.*

Flynn in his affidavit also explains what is meant by an "Honorable Withdrawal Card", the evident purpose of which is to enable a member who withdraws, to subsequently become re-instated without the necessity of paying a new initiation fee and shows that Rissler never applied for an Honorable Withdrawal Card, and that the defendant organizations were acting in accordance with their constitution in refusing to re-instate the complainant, Henry P. Rissler, unless he paid a new initiation fee (pars. 11 and 13 of Flynn's affidavit).

The court's attention is also invited to the fact that Jambor in his affidavit (p. 23, par. 1) stated that he was a journeyman steamfitter and belonged to Steamfitters Local 284. He was clearly stating an *untruth* as Becraft's affidavit, paragraph "3" thereof (p. 42), shows that Jambor, while he had *formerly* been a member of Steamfitters Local 284, had been *expelled* for the non-payment of dues in May 1930, and that his dues had been in arrears for more than twelve months, and in paragraph "4" of Becraft's affidavit, he states that Jambor had been notified of his expulsion because of the non-payment of dues.

In view of the fact that Jambor was no longer a member of Steamfitters Local 284, the defendant, Becraft certainly could not have ordered him off the job, as he no longer had any jurisdiction over him. Jambor having ceased to be a member of Steamfitters Local 284; whatever jurisdiction or authority Becraft had over him, undoubtedly ceased with the termination of Jambor's membership.

The court's attention is also invited to the extracts from the constitution of the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada, referred to in

Flynn's affidavit and dealing specifically with the question of Honorable Withdrawal Cards and expulsion of members (p. 38 and p. 39 and p. 40).

It is clear, therefore, that the real source of the trouble between the complainants and the defendants, is the fact that complainant, Henry P. Rissler who for a number of years last past, had been a member of the defendant, Plumbers Local 326, had been expelled for violation of the constitution of the United Brotherhood, because of the non-payment of dues, and for that reason is not considered a union man in good standing; and as will be shown hereafter, the defendants, even if they did order Jambor off the job, or even if they did order any of their other members not to work for the complainants, or refused to put them to work for the complainants, were acting within the law, and the complainants have no legal ground for complaint.

Flynn points out in paragraph "10" of his affidavit (p. 30), that the complainant, Henry P. Rissler must have known of the constitutional requirements of the organization, because once before he had been dropped from the rolls of Local 326 because of non-payment of dues for a period of twelve months, and that thereafter he was *re-instated* by *paying a new initiation fee*.

C.

Under the Act of 1883 (P. L. 1883, p. 36; 3 Compiled Statutes of New Jersey, p. 3051; Section 128) the Alleged Acts and Conduct of These Defendants-Appellants as Charged in the Bill-of-Complaint and Affidavits Thereto Annexed, Were Lawful and Proper and the Bill-of-Complaint Does Not State An Equitable Cause of Action.

Even if we assume for the moment that what the complainants say in their proofs, is absolutely true, and what the defendants say in their proofs, is absolutely untrue, still it is submitted that complainants' bill and affidavits do not make out an equitable cause of action, because even if the defendants did order Jambor off the job, and did refuse to permit any of their members to work for the complainants, that the defendants were acting within their rights.

The Statute of 1883 provides

"That it shall not be unlawful for any two or more persons to unite, combine or bind themselves by oath, covenant, agreement, alliance or otherwise, to persuade, advise or encourage, by peaceable means, any person or persons to enter into any combination for or against leaving or entering into the employment of any person, persons or corporation."

This act was construed in the case of *New Jersey Painting Company vs. Local No. 26*, 96 N. J. Eq. 632. These defendants had a perfect right, under this Statute, as construed by *New Jersey Painting Company vs. Local No. 26, supra*, to peaceably (no violence is alleged or charged) persuade, advise or encourage Jambor or any of the other employees of the complainants to leave complainants' employ;

and as Vice Chancellor Backes pointed out in the case of *C. B. Rutan Company vs. Local Union #4*, 97 N. J. Eq. 77:

"That they had the right to, singly or in concert, refused to work, out of sympathy for their fellow-employees, or because they regarded it as not of advantage to organized labor to work for this complainant under the circumstances, or *for no explained reason at all*, is beyond question" (*Italics mine*).

That it is not unlawful for members of a labor union to persuade its members by peaceable means to adhere to the rules of a union not inimical to law, is pointed out by Vice Chancellor Fallon in the matter of the alleged contempt of James Larkin, 6 N. J. Advanced Reports, 1284 at page 1287.

D.

Under the Act of 1926 (Chapter 207, Laws of 1926, p. 348), the Court of Chancery Was Powerless to Grant a Restraint in the Case at Bar.

Under this statute, the granting of a restraining order was unwarranted because the defendants in this case, it is submitted, acted peaceably. There were no threats, violence or intimidation. Even if we assume from a factual standpoint that the defendants did attempt to terminate the relation of employment existing between the complainants and their employee, Jambor, still under the statute such alleged action by the defendants cannot be condemned, nor can the same warrant the issuance of a restraint.

It is submitted, therefore, that the injunctive order of August 19th, 1930, should not have been granted, because complainants' proofs did not show

any actual or threatened *irreparable* injury; the defendants' affidavits fully met the charges contained in the complainants' bill and the defendants' affidavits directly denied or explained every material allegation in the bill, and under the Acts of 1883 and 1926 above referred to, even if these defendants did do the things charged in the bill and affidavits, so long as they were acting peaceably and without violence or intimidation, they were acting in accordance with law, and came within the protection of the two statutes cited.

POINT II.

The defendants-appellants, Plumbers Local #326, and Steamfitters Local #284, being both voluntary unincorporated associations, were not subject to suit in their respective association names under Chapter 156 of the Laws of 1925, page 395.

In 1925, the legislature passed a supplement to an Act entitled "An Act respecting the Court of Chancery (Revision of 1902)" which statute in substance permits suits in the Court of Chancery *against* unincorporated associations, consisting of seven or more persons. The act is divided into four paragraphs. Paragraph "4" thereof reads:

"Nothing in this Act contained shall apply to any fraternal, charitable or *other organization not organized for pecuniary profit.*"

The two defendants, locals 326 and 284, are both voluntary, unincorporated associations. Local 326 consists of approximately one hundred and fifty members, with headquarters in the City of Hack-

ensack, and was chartered by the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada, which in turn is affiliated with the Building Trades Department of the American Federation of Labor (Affidavit of Charles Flynn, pars. 6 and 7, p. 30).

The Steamfitters Local 284 is a voluntary unincorporated association, consisting of approximately one hundred and sixty members (Affidavit of Vincent R. Becraft, par. 8, p. 44). Although Local 326 is a plumbers local, and Local 284 is a Steamfitters Local, both locals belong to the same parent organization, viz., United Association of Journeymen Plumbers and Steamfitters of the United States and Canada, but there is a line of demarcation between the respective jurisdictions of the plumbers and steamfitters locals. Affidavit of Charles Flynn, p. 36.) (Affidavit of Vincent R. Becraft, p. 43, par. 7.)

The two local unions are labor unions within the commonly accepted designation of that term, and are not organized for pecuniary profit, and are, therefore, clearly within the exception mentioned in Paragraph "4" of the Statute and therefore, not subject to suit in the Court of Chancery in their respective organization names.

The general rule as to suits against voluntary, unincorporated associations, at common law, is stated in 5 Corpus Juris, 1369, Section 118, as follows:

"An unincorporated association cannot in the absence of statute, be sued in its society or company name, but all the members must be made parties, since such bodies have, in the absence of Statute, no legal entity distinct from that of their members. As just intimated, the members may be sued collectively, provided there is a joint liability."

Although in some states, statutes have been passed, authorizing the bringing of actions against unincorporated associations in their own name, these statutes being in derogation of common law, are strictly construed. 5 Corpus Juris, 1370, Section 120. The two defendant locals are certainly not organized for pecuniary profit.

The provision of the Practice Act of 1903 permitting suit at law against voluntary, unincorporated associations, is not applicable because the case at bar is a suit in Chancery (P. L. 1903, p. 545; 3 Compiled Statutes 4064).

In the case of *The Grand Lodge, Knights of Pythias of New Jersey vs. Germania Lodge, No. 50*, 56 N. J. Eq. 63, Vice Chancellor Pitney on page "73" struck out of a bill as a party defendant in an equity suit, the name of a voluntary association where it was attempted to sue said voluntary association in its society name.

It is submitted, therefore, that there is no warrant in law for a suit against the two defendant locals in their respective names, but on the contrary all the individual members of the locals should have been joined as parties defendant.

CONCLUSION.

The Injunctive Order of August 19th, 1930, wherein the defendants and their agents and servants are each and everyone of them, enjoined and commanded to desist and refrain from refusing to permit members of their respective associations to work for complainants and that they be restrained from declaring the complainants unfair to union labor, and that they be restrained from interfering with the employees of the complainants in such a way as to disturb the complainants in the usual course of their business, is contrary to the law and

the facts, because, the defendants in their proofs *absolutely deny* that they refused to permit any of their members to work for the complainants, and even if they did, they had a perfect right to do so; because the defendants *absolutely deny* that they had declared the complainants unfair to union labor; because there is a total failure of proof in complainants' case, that the defendants had interfered with the employees of complainants in such a way as to disturb the complainants in the usual course of their business, but on the contrary the proofs are clear on the complainants' own case that only *one* of their employees, viz, *Jambor* was ever approached by the defendants, and that if defendants ordered *Jambor* to quit work (which is denied), such an order was useless and of no avail, because *Jambor did not obey*, which is proven by the fact that *Jambor* continued on the job and therefore, the complainants cannot be said to have sustained any *irreparable* damage or injury, *and in fact sustained no damage at all*.

For the reasons already mentioned, the Order to Show Cause granted upon the filing of the bill, should have been discharged and the *ex parte* interim restraint therein contained dissolved upon the return thereof, and on the law and the facts, the Chancellor should not have granted the Injunctive Order of August 19th, 1930 pending final hearing and the same should be reversed, set aside and for nothing holden.

Respectfully submitted,

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