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# In Chancery of New Jersey

Between  
ANDREW BAYER,  
*Complainant,*  
*and*  
Brotherhood of Painters, Decorators and Paperhangers of America, Local 301, its principals, agents, officers and servants, and ARTHUR W. McCONNELL,  
*Defendants.*

On Bill, etc. 10

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BILL

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(Filed March 19, 1930)

Andrew Bayer, of the City of Trenton, County of Mercer and State of New Jersey, having his principal office in the City of Trenton, respectfully shows that:

1. He has been engaged in the painting contracting business for a period of three years and is at the present time engaged in fullfilling various contracts in and about the City of Trenton, County of Mercer, and State of New Jersey, and at the Clinton Reformatory, at Clinton, New Jersey. Among the jobs he is taking care of are two for the State of New Jersey, one at the Girls' Home at Trenton, and the other at the Clinton Reformatory, at Clinton, New Jersey. In the conduct of his business complainant says that he fre-

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quently employs 12 or 15 men. Complainant is paying the average and usual union rate of pay to his men and operates a union shop. These men receive \$55 per week. Complainant has about \$5,000 in actual cash invested in his business. Complainant's customers are the State of New Jersey, as above set forth, general contractors, builders, and also individual owners of property.

2. The business of complainant has been built up and established lawfully and is the only means of livelihood complainant has. Complainant is entitled to conduct his business free from hindrance or obstruction of others.

3. Complainant is a stockholder of the Crescent Spray, Painting and Contracting Co., a corporation of New Jersey, with its principal office in Trenton, New Jersey. This company sprays paint on material and this character of painting work is not recognized by the defendant labor unions. Because of complainant's association with the said corporation, he has been the recipient of the enmity of the defendants, and more especially Arthur W. McConnell, the walking delegate or business agent of the aforesaid union, and on or about March 17th, 1930, at a meeting of the defendant labor union, which was attended by the said defendant, Arthur W. McConnell, said complainant, Andrew Bayer, was placed on the unfair list of the labor union, fined \$200, and two of his men, although members of said defendant union, were fined \$100 each. In addition to this, the workmen of complainant were ordered not to appear at the respective jobs upon which complainant and his men have been doing painting work, so that all the complainant's jobs are now at a standstill, as defendant labor union and the aforesaid walking delegate or business agent, Arthur W. McConnell, refuses to permit said men to work for complainant, even though it is necessary that the state work be carried on with dispatch by complainant and his men.

4. Complainant says that he has always carried out the letter and the intent of the working agreement had be-

tween defendant union and the Master Builders Exchange of Trenton, of which complainant is a member; the hours of labor, working conditions and pay have always been adhered to by complainant. Complainant says that to be placed upon the unfair list will ruin his business, as that means that no union painter will be permitted by defendants to work for him and that should he attempt to get other workmen not members of the union, other workmen engaged in other crafts would leave the jobs on account of the fact that non-union men had been engaged 10 by complainant. Complainant says that if defendants are permitted to continue as they are, his business will be ruined.

Complainant is without adequate remedy in the Courts of law, and therefore prays:

(1.) That the defendants and such others as may hereafter be made parties defendant hereto may answer this bill of complaint, but without oath, and each statement therein made.

(2.) That the said defendants and all persons whom- 20 soever associated with them be enjoined as follows:

A. From placing complainant on the unfair list of aforesaid union and from proceeding in any way to attempt to collect the fine of \$200 levied upon him or the fines of \$100 levied against his men.

B. From doing anything whatsoever to keep union men from working for complainant.

C. From injuring the business of complainant 30 in any manner, shape or form.

D. From suggesting, promoting, encouraging or participating in any manner in sympathetic strikes against complainant.

E. From addressing persons willing to be employed by complainant with a view to persuading them or any of them to refrain from working for complainant.

(3.) That the complainant may have damages assessed against the defendants by reason of losses and injuries sustained by reason of the acts set forth in this bill of complaint.

(4.) That the defendants and each of them and their and each of their servants, principals and agents and all others associated with them may be temporarily enjoined as aforesaid.

(5.) That the complainant may have such other relief  
10 as may be proper, equitable and just.

(6.) That a writ of subpoena may issue out of this Honorable Court, commanding the said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

HERVEY S. MOORE,

*Solicitor for Complainant.*

HERVEY S. MOORE,

*Of Counsel with Complainants*

IN CHANCERY OF NEW JERSEY

Between  
ANDREW BAYER,  
Complainant,  
and  
Brotherhood of Painters, Dec- }  
orators and Paperhangers of } On Bill, etc.  
America, Local 301, its prin- }  
cipals, agents, officers and } 10  
servants, and ARTHUR W. MC-  
CONNELL, }  
Defendants. }

AFFIDAVIT

STATE OF NEW JERSEY, }  
COUNTY OF MERCER, } ss. 20

Newton James Hassall, of the City of Trenton, County of Mercer and State of New Jersey, being duly sworn according to law on his oath deposes and says:

1. I am the President of Crescent Spray, Painting and Contracting Co., a corporation of New Jersey, with its principal office in Trenton, New Jersey. I know Andrew Bayer, the complainant in this suit and know that Arthur W. McConnell and the officers of the defendant union have harrassed him for a considerable period of time. I know that the defendant union is opposed to any men doing spraying work. They do not recognize this craft in their union or in any other union, to my knowledge. Mr. Bayer is a stockholder in my corporation and is not an officer of said corporation, nor does he head any sprayers at any time on any jobs. His painting business is separate 30

and apart from any Crescent Spray, Painting and Contracting Co. work. I know that Mr. Bayer hasn't any union painters working for him now as they have been ordered by the unions to desist from any service for him.

NEWTON JAMES HASSALL

Sworn to and subscribed before me this 19th day of March, A. D. 1930.

EMMA E. DILLON,  
*M. C. C. of New Jersey*

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IN CHANCERY OF NEW JERSEY

Between  
ANDREW BAYER,  
*Complainant,*

*and*

20 Brotherhood of Painters, Decorators and Paperhangers of America, Local 301, its principals, agents, officers and servants, and ARTHUR W. MCCONNELL,  
*Defendants.*

} On Bill, etc.

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AFFIDAVIT

STATE OF NEW JERSEY, }  
COUNTY OF MERCER, } ss.

Sylvester Stella, of the City of Trenton, County of Mercer and State of New Jersey, being duly sworn according to law on his oath deposes and says:

1. I am a member of the defendant labor union and

am employed by Andrew Bayer, the complainant in this suit. Mr. Bayer pays me the usual union wages. I work the usual union hours and, so far as I know, he has always complied with the union rules on the jobs at which I have worked. The defendant, Arthur W. McConnell, on a number of occasions has asked me whether Mr. Bayer, the complainant, was connected with the Crescent Spray, Painting and Contracting Co., and my reply to him was that I did not know anything about it, which was a fact. Finally on Monday evening, March the 17th, McConnell told me not to go to work for Mr. Bayer any more and said that Mr. Bayer had been placed on the unfair list, fined \$200, and that I had been fined \$100. The President of the defendant union at the meeting which was attended by McConnell as well, stated that I had been fined \$100 for violating section 275 of the Constitution. Section 275 of the Constitution reads as follows: "No member of this Brotherhood shall injure the interests of another by undermining him in prices or wages, or wilfully performing any other act by which the situation of any member may be placed in jeopardy; nor shall he be allowed to work at his trade within the jurisdiction of any local union with anyone who does not carry a membership card in the Brotherhood." I know of no way in which I have violated that section because I have never done any spray work for Mr. Bayer and as long as I have worked for him have never done any spraying work on any of his jobs. I know Mr. Bayer has worked at Hiltonia, State Home for Girls, Trenton, New Jersey, and the Clinton Reformatory, Clinton, New Jersey. I know that all of his painters have been called off by this union and that his business is being jeopardized.

SYLVESTER STELLA.

Sworn to and subscribed before me this 19th day of March, A. D. 1930.

EMMA E. DILLON,  
*M. C. C. of New Jersey*

## IN CHANCERY OF NEW JERSEY

Between  
 ANDREW BAYER,  
*Complainant,*  
 and  
 Brotherhood of Painters, Dec-  
 orators and Paperhangers of  
 10 America, Local 301, its prin-  
 cipals, agents, officers and ser-  
 vants, and ARTHUR W. MC-  
 CONNELL,  
*Defendants.* } On Bill, etc.

## AFFIDAVIT

20 STATE OF NEW JERSEY, }  
 COUNTY OF MERCER, } ss.

Andrew Bayer, of the City of Trenton, County of Mercer and State of New Jersey, having his principal office in the State of New Jersey and City of Trenton, being duly sworn on his oath, according to law, deposes and says:

30 1. I am the complainant named in the above bill of complaint. I have been engaged in the painting contracting business in this vicinity and in other parts of the State of New Jersey for a period of three years. I have as many as 12 men working for me sometimes and pay them the union scale of wages, namely \$55 per week. Up-until March the 18th I was engaged in work at the Girls' Home in the City of Trenton, New Jersey, the Clinton Reformatory at Clinton, New Jersey, and at Hiltonia, Trenton, New Jersey. I conduct a union shop and have always

obeyed the provisions of the contract had between the painters union, the defendant in this suit, and the Master Builders Exchange of Trenton, a contractor's association, of which I am a member. I am a stockholder in the Crescent Spray, Painting and Contracting Co. This corporation sprays paint on materials. The labor union defendant is opposed to this kind of work. This work is separate and distinct from the work I usually do in accordance with contracts mentioned above. There is no labor union covering sprayers of paint to my knowledge.

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2. On or about March 17, 1930, the defendants held a meeting in Trenton, New Jersey, and I was placed upon the unfair list of the defendant labor unions, fined the sum of \$200, and two of my men were fined \$100 each. On the 18th of March, none of my men appeared on the jobs to take care of their work as they were ordered not to do so by Arthur W. McConnell, the walking delegate or business agent of the defendants. I know of no reason why this action should be taken against me or my men, as none of them were engaged in the spraying work, and on none of the jobs which were unmanned by the defendants was any spraying work being done. Unless I get relief from this Court, the business which I have so carefully built up will be ruined. To be placed on the unfair list by a labor union means to a contractor that the union will not permit its men to work for him. My only chance of doing work would be to get non-union painters, and if they were started to work on a building where there were other union craftsmen working, the other union craftsmen would quit. Furthermore, general contractors will not give a sub-contractor, such as I am, a job where they know he has been placed on the unfair list of any union, regardless of the injustice of any charges that might be made against him by the union representatives.

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30

ANDREW BAYER.

10 *Order to Show Cause With Temporary Restraint*

Sworn to and subscribed before me this 19th day of March, A. D. 1930.

EMMA E. DILLON,  
*Master in Chancery of  
New Jersey.*

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IN CHANCERY OF NEW JERSEY

10

Between

ANDREW BAYER,  
*Complainant,*

*and*

Brotherhood of Painters, Deco-  
rators and Paperhangers of  
America, Local 301, its prin-  
cipals, agents, officers and ser-  
vants, and ARTHUR W. MC-  
CONNELL,

*Defendants.*

} On Bill, etc.

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ORDER TO SHOW CAUSE WITH  
TEMPORARY RESTRAINT

(Filed March 20, 1930)

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This matter being opened to the Court by Hervey S. Moore, of counsel with the complainant, and upon reading and filing the bill of complaint and the affidavits there-  
to annexed:

It is, on this 20th day of March, 1930, ORDERED that the defendants, the Brotherhood of Painters, Deco-  
rators and Paperhangers of America, Local 301, its

*Order to Show Cause With Temporary Restraint* 11

principals, agents, officers and servants and Arthur W. McConnell, do show cause before the Chancellor at the Chancery Chambers, at the State Capitol, in the City of Trenton, New Jersey, on Tuesday, the 25th day of March, A. D. 1930, at the hour of ten-thirty o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why they should not be temporarily enjoined as prayed for in the bill of complaint.

And it is further ORDERED that in the meantime and until the further order of this court, the said defendants, their and each of their officers, agents, servants and representatives, and each and every one of them, do absolutely desist and refrain: 10

I. From placing or continuing complainant on the unfair list of the aforesaid union and from proceeding in any way to attempt to collect the fine of \$200 levied upon him or the fines of \$100 levied against his men.

2. From doing anything whatsoever to keep union men from working for complainant. 20

And it is further ORDERED that a copy of this order, together with a copy of the bill of complaint herein with the affidavits thereto annexed, neither of which copies need be certified, be served upon the defendants, the Brotherhood of Painters, Decorators and Paperhangers of America, Local 301, and Arthur W. McConnell, within the day of the date hereof.

Respectfully advised,

MALCOLM G. BUCHANAN,  
V.-C.

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## IN CHANCERY OF NEW JERSEY

Between  
 ANDREW BAYER,  
*Complainant,*  
 and  
 Brotherhood of Painters, Dec-  
 orators and Paperhangers of  
 10 America, Local 301, its prin-  
 cipals, agents, officers and ser-  
 vants, and ARTHUR W. MC-  
 CONNELL,  
*Defendants.* } On Bill, etc.

## NOTICE

20

(Filed March 31, 1930)

To JOSEPHSON & JOSEPHSON, *Solicitors for Defend-*  
*ants:*

Please take notice that on Tuesday, April 1st., A. D. 1930, before His Honor Malcolm G. Buchanan, Esq., Vice-Chancellor of the State of New Jersey, I shall use the attached affidavits in furtherance of the Motion to be made at that time for a preliminary injunction.

Respectfully,

30

HERVEY S. MOORE,  
*Solicitor of Complainant.*

IN CHANCERY OF NEW JERSEY

Between	}	On Bill, etc.	10
ANDREW BAYER,			
<i>Complainant,</i>			
<i>and</i>			
Brotherhood of Painters, Dec-	}		
orators and Paperhangers of			
America, Local 301, its prin-			
cipals, agents, officers and ser-			
vants, and ARTHUR W. MC-	}		
CONNELL,			
<i>Defendants.</i>			

AFFIDAVITS

STATE OF NEW JERSEY, }	} ss.	20
COUNTY OF MERCER, }		

Sylvester Stella, of the City of Trenton, County of Mercer and State of New Jersey, being duly sworn according to law, on his oath deposes and says:

I am a member of the defendant labor union and am employed by Andrew Bayer, the complainant in this suit. I have not yet received orders to go back to work for my employer, Mr. Bayer. I was ordered off the job on Monday, March the 17th, 1930, and have not yet been told to go back by any representative of the union. I talked to Arthur W. McConnell, the business agent of the defendant union on Tuesday, March the 25th. He said, "I cannot tell you to go to work and I cannot stop you if you go to work." I am starting to work today regardless of what he had to say. My fine with the Local Union has not been remitted and I took an appeal over their decision

fining me \$100 and was compelled to deposit with the Local Union the sum of \$10 before I could even take an appeal.

SYLVESTER STELLA.

Sworn to and subscribed before me this 26th day of March, A. D. 1930.

EMMA E. DILLON,  
*Master in Chancery of  
New Jersey.*

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STATE OF NEW JERSEY, }  
COUNTY OF MERCER, } ss.

Andrew Bayer, of full age, being duly sworn according to law, on his oath deposes and says:

20 I am the Complainant in the above entitled cause. My solicitor informed me that he served the bill of complaint, affidavits and order to show cause with restraint upon the defendants on Thursday, March the 20th, 1930. I am making this affidavit on March the 26th, 1930, and up to yesterday my men had not been permitted to go back to work on my respective jobs by the union. I talked with Arthur W. McConnell, the business agent of the union, on March the 25th, and when I demanded that my men be permitted to start to work, he said, "I cannot tell them to go to work, nor can I tell them not to go to work. My hands are tied." My jobs have been idle since Tuesday, 30 March the 18th.

ANDREW BAYER.

Sworn to and subscribed before me this 27th day of March, A. D. 1930.

EMMA E. DILLON,  
*Master in Chancery of  
New Jersey.*

IN CHANCERY OF NEW JERSEY

Between  
ANDREW BAYER,  
Complainant,  
and  
Brotherhood of Painters, Decorators and Paperhangers of America, Local 301, its principals, agents, officers and servants, and ARTHUR W. MCCONNELL,  
Defendants. } On Bill, etc. 10

ANSWERING AFFIDAVITS

(Filed March 31, 1930) 20

STATE OF NEW JERSEY, }  
COUNTY OF MERCER, } ss.

Edward Kennedy, of the City of Trenton, County of Mercer and State of New Jersey, being duly sworn according to law, upon his oath deposes and says that:

1. I am the President of the Brotherhood of Painters, Decorators and Paperhangers of America, Local 301, one of the defendants in the above entitled cause. I have knowledge of the constitution, by-laws, rules and regulations of the organization aforesaid, and I am fully acquainted with, and have knowledge of all the facts pertaining to the dispute between the complainant, Andrew Bayer, and the defendants. I know the complainant, and have read the affidavits annexed to the bill filed in the above cause. 30

2. I admit that the complainant is engaged in the painting contracting business, as alleged in paragraph one of the bill of complaint, but deny that he pays the union scale of wages, or that he conducts a union shop, or that he has obeyed, or now obeys the rules of the painters union. I further deny that he has carried out the provisions of the contract had between the painters union and the Master Builders Exchange of Trenton. I aver the truth to be that no contract whatsoever now exists between  
10 the painters union and the Master Builders Exchange of Trenton, nor between the defendant union and the complainant.

3. The complainant has continuedly and repeatedly violated the constitution, by-laws and working rules of the defendant organization. He has on numerous occasions failed to pay the scale of wages provided by the rules of the organization, as is established by the affidavit of Andrew Parknavy hereto annexed. He has employed  
20 non-union men on numerous occasions, as is established by the affidavit of our business agent, Arthur W. McConnell. He has also conducted his business in violation of the rules of the defendant organization by using, and causing to be used, certain machines known as the spraying machine, or "spray gun," which is a method of applying paint by the use of a machine that blows and sprays the paint without the use of any brush. This method of painting has been prohibited by the by-laws of the defendant organization.

4. The complainant has been notified on numerous occasions that he must carry out the rules and regulations of the organization in reference to the payment of the scale of wages provided for, in the employment of non-union men, and in the use of the spraying machine, but he has  
30 ignored all requests made to him in reference to these matters.

5. I admit that on or about March 17, 1930, the defendant held a meeting in Trenton, New Jersey, and it

was decided by the unanimous vote of the members present that the complainant, Andrew Bayer, was unfair to the organization, and it was further agreed by all those present that they will not do any work for him until such time as he carries out the rules and regulations of the organization in respect to the matters aforesaid enumerated.

6. I deny that the complainant was fined the sum of \$200.00 or any other sum. No fine whatever was imposed upon the complainant, and none is claimed from him now, or ever will be claimed. The complainant not being a member of the defendant organization, no fine could, therefore, be lawfully imposed upon him. 10

7. I deny that any men were ordered not to work for the complainant, or that any instructions whatever were given by me or anyone to anyone in reference to working for the complainant except as aforesaid.

8. I further aver that any fines that were imposed upon any other person or persons, who are members of the defendant organization, and who are not parties to this action, were imposed for violations of the rules of the organization, and in accordance with the constitution and by-laws made and provided for such purposes, and to which the members so fined agreed at the time of becoming members of the organization. 20

EDWARD KENNEDY.

Sworn and subscribed to before me this 28th day of March, 1930.

JAMES S. KLINE,  
Notary Public of N. J.

STATE OF NEW JERSEY, }  
COUNTY OF MERCER, } ss.

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Archie Cullen, of the City of Trenton, County of Mercer, and State of New Jersey, being duly sworn according to law, on his oath, deposes and says that:

1. I am the Secretary of the Brotherhood of Painters,

Decorators and Paperhangers of America, Local 301, one of the defendants in the above entitled cause. I have knowledge of the constitution, by-laws, rules and regulations of the organization aforesaid, and I am fully acquainted with, and have knowledge of all the facts pertaining to the dispute between the complainant, Andrew Bayer, and the defendants. I know the complainant, and have read the affidavits annexed to the bill filed in the above cause.

10      2. I have read the affidavit of Edward Kennedy, annexed hereto, and know of my own knowledge that all the facts therein stated are true.

3. I further aver that on or about August 20, 1928, a resolution was duly adopted by the defendant organization which provides that, "The use of the spraying machine, or 'spray gun' as a means or method of applying paint or any other ingredient to any surface whatever shall be prohibited, and that all members of the organization must refrain from the use of such machine." It is further  
20 provided that any employer who uses any such machine, or causes the same to be used, shall be regarded as unfair to the organization, and that members of the organization shall not work for such employer until the use of such machine is abandoned.

ARCHIE CULLEN,

Sworn and subscribed to before me this 28th day of March, 1930.

JAMES S. KLINE,  
*Notary Public of N. J.*

30

STATE OF NEW JERSEY, }  
COUNTY OF MERCER, }<sup>ss.</sup>

Harry S. Warren, of the City of Trenton, County of Mercer and State of New Jersey, being duly sworn according to law, on his oath, deposes and says that:

1. I am the Secretary and Treasurer of the New Jer-

sey State Conference Board of the Brotherhood of Painters, Decorators and Paperhangers of America, and I am also a general organizer of the union aforesaid.

2. I am fully acquainted with the controversy between the complainant and the defendants in the within cause. I have read the affidavits of Edward Kennedy and Archie Cullen and know of my own knowledge that the contents therein are true.

3. I also know that nearly every local organization, including Local No. 301, the defendant in this cause, prohibits the use and operation of the spraying machine, or spray gun. The reason for said rule is that such a method of applying paint, varnish and other ingredients, is detrimental to the lives and health of the persons using such machines. The danger being caused by the extreme force used in such spraying, whereby the various dangerous ingredients, such as lead, arsenic, salts of mercury, benzol, wood alcohol and other dangerous poisons, are released with great force in the presence of the person so using the machines. 10

4. I also know that Andrew Bayer, the complainant, is engaged in the use of such machines in the doing of the work of painting. That he is the owner and operator of such machines, and that he has employed union and non-union men in such work, contrary to the rules and regulations of the organization. 20

5. I further state that no one has been ordered to refrain from working for him, by the defendant organization or by any of its agents or servants, or that orders whatever were given by anyone connected with the defendant organization relating to working or not working for the complainant. 30

HARRY S. WARREN,

Sworn and subscribed to before me this 28th day of March, 1930.

JAMES S. KLINE,  
*Notary Public of N. J.*

STATE OF NEW JERSEY, }  
COUNTY OF MERCER, }<sup>ss.</sup>

Andrew Parknavy, of the City of Trenton, County of Mercer and State of New Jersey, being duly sworn according to law, on his oath deposes and says that:

10 1. I am a painter by occupation and have been a painter for more than twelve years, working in and about the City of Trenton. I am a member of the defendant organization. I am acquainted with Andrew Bayer, the complainant, for six years. I have worked for him for about two years. I left his employment sometime in the early part of December, 1929. While working for him as a union painter, I usually received the sum of \$40.00 per week. Sometimes I received a little more, and sometimes less. The average being about \$30.00 per week. The union scale of wages being \$55.00 per week.

20 2. I know that during the time I was employed by him, he contracted for various jobs for painting work upon which he employed other men to use the spraying machine. Some of the men so employed were members of the defendant organization, others were non-members.

3. I know that the complainant, Andrew Bayer, had estimated on the Curtin Restaurant job on South Warren Street, and thereafter had the said work done by one John Seville, with the use of the spraying machine.

30 4. I know that the spraying machines were purchased by Andrew Bayer. That he paid for them and had title taken in the name of one Newton James Hassall. He informed me that the reason he was doing that was so that the union could not claim they belonged to him, and that he was engaged in such work. Thereafter and sometime in the month of January, 1930, Mr. Bayer formed the Crescent Spray, Painting and Contracting Company so that he could not be accused of owning and operating such business of spraying. I know that he is still the owner of this business as he so informed me, and also asked me to

quit the union, and go to work for him to use the spraying machine.

ANDREW PARKNAVY.

Sworn and subscribed to before me this 28th day of March, 1930.

JAMES S. KLINE,  
*Notary Public of N. J.*

STATE OF NEW JERSEY, } 10  
COUNTY OF MERCER, } ss.

Arthur McConnell, of the City of Trenton, County of Mercer and State of New Jersey, being duly sworn according to law, upon his oath deposes and says that:

1. I am the business agent of the Brotherhood of Painters, Decorators and Paperhangers of America, Local No. 301, and one of the defendants in the above entitled cause. As such business agent, it is my duty to investigate working conditions and other matters pertaining to the welfare of the members of the defendant organization. As a result of such investigation I am fully aware of the facts and conditions relating to the business of the complainant and his relations with the defendants. 20

2. I know of my own knowledge that the complainant has violated the rules and by-laws of the defendant organization in that he has failed to pay the union scale of wages; that he has employed non-union workers; that he is the real owner of and operator of the spraying machines used in the work of painting, all of which are against the rules and regulations of the defendant organization. The complainant has at all times had full knowledge of the rules aforesaid as he was a member of the organization up to and until the latter part of 1927, and was chairman of the Committee on Revision of By-laws, when the rules and regulations were formulated. He was also a former business agent of the defendant organization, prior to that time. 30

3. I further aver that the complainant paid to one Andrew Parknavy, a member of the defendant organization, the sum of \$40.00 per week and less, the union scale being \$55.00 per week.

4. I further aver that the complainant has employed numerous non-union painters, and is now employing such non-union painters. That he employs between eighteen and thirty non-union painters from time to time.

10 5. Sometime in the month of November, 1929, I learned that the complainant was engaged in the painting of Curtin's Restaurant, located on South Warren Street, Trenton. I went there and saw one John Seville, a former member of our organization, using a spraying machine in the performance of that work. I also saw the complainant there at that time directing the work. That he also had one J. P. Peters, a member of the organization, do the same kind of work with the aforesaid machine on various jobs.

20 6. The complainant has employed union and non-union men in the performance of painting work with the use of the spraying machine aforesaid at the De Laval Steam Turbine Company, also at the Bahrenberg Ice Company on Swan Street, Trenton, and at numerous other places.

30 7. The complainant is the real and sole owner of the spraying machine aforesaid, and was the one who purchased and paid for the said spraying machine. The Crescent Spray, Painting and Contracting Company was formed by the Complainant, and is owned by him. The purpose and object of its incorporation being to conceal and avoid the consequences of the use and ownership of such machines in the doing of painting work.

8. It is true that on or about March 17th, 1930, at a meeting of the defendant labor union, which I attended, the matters aforesaid were discussed, and it was decided by the unanimous vote of the members present that the complainant, Andrew Bayer, was unfair to the organiza-

tion, and it was further agreed by all those present that they will not do any work for said complainant until such time as he carries out the rules and regulations of the organization, and shows that he is willing to comply with such rules and regulations.

9. I deny that the complainant was fined the sum of \$200.00 or any other sum. No fine whatever was imposed upon the complainant, and none is claimed from him now, or ever will be claimed. The complainant not being a member of the defendant organization, no fine could, 10 therefore, be lawfully imposed upon him.

10. I deny that any men were ordered not to work for the complainant, or that any instructions whatever were given by me or anyone to anyone in reference to working for the complainant except as aforestated. I further deny that I refused to permit any men to work for complainant, and aver the truth to be that the men affiliated with the defendant organization refused to go to work for the complainant, and would refuse to go if ordered to by me.

11. I further aver that any fines that were imposed 20 upon any other person or persons, who are members of the defendant organization, and who are not parties to this action, were imposed for violations of the rules of the organization, and in accordance with the constitution and by-laws made and provided for such purposes, and to which the members so fined agreed at the time of becoming members of the organization.

ARTHUR MCCONNELL.

Sworn and subscribed to before me this 28th day of 30  
March, 1930.

JAMES S. KLINE,  
*Notary Public of N. J.*

## IN CHANCERY OF NEW JERSEY

Between  
 ANDREW BAYER,  
*Complainant,*  
 and  
 Brotherhood of Painters, Dec-  
 orators and Paperhangers of  
 10 America, Local 301, its prin-  
 cipals, agents, officers and ser-  
 vants, and ARTHUR W. MC-  
 CONNELL,  
*Defendants.* } On Bill, etc.

## ORDER OF CONTINUANCE

(Filed March 26, 1930)

20 This matter being opened to the Court by Hervey Studdiford Moore, Solicitor of complainant, and Josephson and Josephson, Solicitors of defendant, and upon reading the consent hereto, it is on this 25th day of March, 1930,

ORDERED: That the hearing of the above matter be and the same is hereby continued until Tuesday, April 1, 1930, at ten-thirty o'clock in the forenoon.

E. R. WALKER,  
 C.

30 Respectfully Advised,  
 MALCOLM G. BUCHANAN.  
 V.-C.

I hereby consent to the entry of the above order.  
 HERVEY S. MOORE,  
*Solicitor of Complainant.*  
 JOSEPHSON & JOSEPHSON,  
*Solicitor of Defendant.*

IN CHANCERY OF NEW JERSEY

Between

ANDREW BAYER,  
*Complainant,*

*and*

Brotherhood of Painters, Decorators and Paperhangers of America, Local 301, its principals, agents, officers and servants, and ARTHUR W. MCCONNELL,

*Defendants.*

On Bill, etc.

10

ANSWER

(Filed April 21, 1930)

The answer of the defendants, Brotherhood of Painters, Decorators and Paperhangers of America, Local 301, its principals, agents, officers and servants; and Arthur W. McConnell. These defendants, Brotherhood of Painters, Decorators and Paperhangers of America, Local 301, its principals, agents, officers and servants; and Arthur W. McConnell, answering the bill of complaint, say that:

1. We admit that the complainant has been engaged in the painting and contracting business for a period of three years, but allege and say that during that time complainant has been engaged in said business as a member of the firm of Bayer, Peters and Company, and with other individuals associated as partners with him. Defendants further admit that complainant frequently employs twelve or fifteen men, but deny that he operates a union shop. As to the other allegations of paragraph No. 1 of the bill of complaint, these defendants have not sufficient knowledge or information to form a belief.

2. As to the allegations of fact contained in paragraph No. 2 of the complaint, defendants have not sufficient knowledge or information to form a belief.

3. We admit that complainant is a stockholder of the Crescent Spray, Painting and Contracting Company, and further allege that he was the organizer of the aforesaid corporation; that he is the active and directing head of the concern, and that he has charge of the entire business and the management of the Crescent Spray, Painting and Contracting Company aforesaid. Defendants deny that the complainant was fined Two Hundred Dollars (\$200.00). We deny that the workmen of the complainant were ordered not to appear at the jobs of the complainant, or that the defendants refused to permit the men to work for the complainant. All other allegations in paragraph No. 3 of the complaint are admitted.

4. We deny that complainant has always carried out the letter and intent of the working agreement had between defendant union and the Master Builders Exchange of Trenton. Defendants allege that no such agreement exists at present between the parties aforesaid. We further deny that the working conditions and pay of the defendant organization have always been adhered to by the complainant. Defendants have not sufficient knowledge or information as to the conclusions alleged in paragraph No. 4 of the complainant's complaint.

Defendants, further answering the bill of complaint of the complainant, say that:

1. A duly adopted resolution of the defendant organization prohibits the use, by its members, of a certain method of applying paint, known as the "spraying machine" or "spray gun." The said resolution further provides that any employer using or associated with the use of such "spraying machine" or "spray gun" in the application of paint, shall be regarded as unfair to the defendant organization.

2. The complainant, by his use and association with

the use of the "spraying machine" or "spray gun," violated the rules aforesaid, and as a result thereof was placed on the unfair list of the defendant organization.

3. At a meeting of the defendant organization, held on or about the 17th day of March, 1930, a motion was passed that the complainant be placed upon the unfair list, and it was further agreed that the members of the defendant organization, in accordance with the resolution aforementioned, shall refrain from working for the complainant until such time as the complainant complies with the rules 10 and regulations of the defendant organization.

*Solicitors for Defendants.*

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IN CHANCERY OF NEW JERSEY

Between

ANDREW BAYER,  
*Complainant,*

*and*

Brotherhood of Painters, Decorators and Paperhangers of America, Local 301, its principals, agents, officers and servants, and ARTHUR W. MCCONNELL,

*Defendants.*

On Bill, etc.

20

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REPLY

(Filed May 9, 1930)

Complainant joins issue with defendants on their answer.

HERVEY S. MOORE,  
*Solicitor for Complainant.*

30

## IN CHANCERY OF NEW JERSEY

	Between	}	On Bill, etc.
	ANDREW BAYER,		
	<i>Complainant,</i>		
	<i>and</i>		
10	Brotherhood of Painters, Dec-		
	orators and Paperhangers of		
	America, Local 301, its prin-		
	cipals, agents, officers and ser-		
	vants, and ARTHUR W. MC-		
	CONNELL,		
	<i>Defendants.</i>		

## TESTIMONY

20 Testimony taken in the above entitled cause, at the State House, Trenton, New Jersey, on Tuesday, the second day of April, 1930, at 10:30 A. M.

Before HON. MALCOLM G. BUCHANAN,  
Vice-Chancellor.

## Appearances:

HERVEY STUDDIFORD MOORE, Esquire, for  
Complainant;

MESSRS. JOSEPHSON & JOSEPHSON, by Mr.  
LOUIS JOSEPHSON, for Defendants.

30 ANDREW BAYER, the above named complainant, being produced for cross-examination upon his affidavits filed, and being duly sworn, testifies as follows:

CROSS-EXAMINATION, by Mr. Josephson:

Q. Mr. Bayer, you state that you are in the painting business?

A. Yes, sir.

Q. You have been in it for how many years?

A. About three years now.

Q. Contract painting?

A. Yes, sir.

Q. How many men are working for you now?

A. Today I have only three; I had five yesterday.

Q. As a rule, how many do you employ?

A. Sometimes eight, ten, twelve.

Q. You state in your affidavit that you conduct a union shop and have always obeyed the provisions of the contract between the painters union, the defendant in this suit, and the master builders of Trenton, "of which I am a member." What is this contract you refer to? 10

A. Well, it is an agreement that did exist between the master builders and the painters' union.

Q. It did exist?

A. Yes, sir.

Q. Does it exist now?

A. I don't believe so.

Q. Since when has there been no agreement? 20

A. I can't give you a definite date; there was some dispute in the past few months.

Q. At the present time there is no agreement?

A. I don't think so, but I think the other trades live up to the agreement as it did exist.

Q. In the expression of conducting a union shop, what is meant?

A. Employing all union men.

Q. Exclusively union men?

A. Yes. 30

Q. What else does that include?

A. Abiding by their conditions, paying the wages, the hours, and so forth.

Q. Hours and wages?

A. Yes.

Q. And that would include rules and regulations made in the conduct of the work?

A. Those that have been mutually agreed upon between the union and the bosses.

Q. What about those rules and regulations upon which no agreement exists?

The Court—Whose rules and regulations?

Q. The rules and regulations of this union you speak of?

10 A. I don't know how to answer. We live up to all agreements that have been made and agreed upon between the union and the master builders.

Q. Is there such an agreement now?

A. I don't think there is any agreement of official record.

Mr. Moore—That has been asked and answered.

20 Q. You have always lived up to these regulations. Have you ever employed non-union men in the performance of painting work?

A. No, sir.

Q. You have not?

A. No.

Q. Never?

A. No, sir; not in my own personal business.

Q. Not in your own personal business?

A. No.

30 Q. Have you employed non-union men in the performance of work? Have you hired non-union men to perform work for the Crescent Spraying—

A. I haven't done the hiring. I have sometimes told the men to go see the officials of that company, and they have been hired.

Q. What official are you in the company?

A. (No answer).

Q. Stockholder?

A. Yes, sir.

Q. And who else is in this corporation besides yourself?

A. Newton J. Hassall, John W. Saville and Bertha Hassall.

Q. That is Mr. Hassall's wife?

A. His sister.

Q. When was this corporation formed?

A. I don't know.

10

Q. About?

A. About two months ago.

Q. And prior to that time were you engaged in the spray painting business as an individual or partnership?

A. The spray painting business was being run by the same people that are running it now, only at that time it wasn't incorporated.

Q. That would be yourself and Hassell?

A. Saville and Hassell.

Q. Isn't it true that prior to the date of this incorporation you were the actual owner and operator of this business? 20

A. No, sir.

Q. Do you remember taking work for the painting of Curtin's Restaurant on South Warren Street?

A. Originally the contract was taken by the Crescent Spraying—

Q. The corporation?

A. At that time it wasn't incorporated.

Q. Do you remember being present at the time work was being done? Who was doing the work for you? 30

A. The men that were working for the Crescent Company were doing the work.

Q. Were you present?

A. I was present, yes sir.

Q. And doing work?

A. No, sir.

Q. Isn't it a fact, Mr. Bayer, that you purchased the spraying machines originally before the incorporation?

A. When the Crescent Spray Painting and Contracting Company was formed they had no credit. I ordered the spraying machine. It was billed to me. Afterwards it was turned over to the Crescent, and they paid for it.

Q. In whom was the bill of sale of these machines taken?

10           The Court—He just told you it was billed to him.

A. It was billed to me, due to the fact that they had no credit, just starting.

Q. Did you ever have any conversations about this matter of the spraying business, with Mr. Parknavy?

A. He at one time was a partner of mine, prior to the first of the year.

Q. A partner?

20           A. Yes, sir.

Q. Was he connected with the spraying business?

A. Only indirectly, being my partner. I was interested in the spraying business.

Q. Didn't you tell him that you were forming this corporation and arranging this business so that the union couldn't object to you using it?

A. I never had any talk to Parknavy with reference to the incorporation. He left before that happened.

30           Q. Didn't you ask him to quit the union and associate with you in the spraying business?

A. I asked him at one time if he was interested in going in the spraying business and that there was an opportunity for him, and he decided he wouldn't do it.

Q. In the use of this spraying machine you do hire non-union men?

A. We are compelled to.

Q. You have had non-union men do the work?

A. Never in—

Q. Is John Seville a member of the union?

A. No; he has been, but not now.

Q. Wasn't he a member of the union at the time he was working on this Crescent job?

A. No, sir.

Q. What did you pay Mr. Parknavy, as wages or salary, at the time he was working for you?

A. Just what our partnership called for, namely \$40.00 a week. 10

Q. Was there a time he was working for you when you were not in partnership?

A. Yes, he did work for us a short while before he came into the partnership, and it was shortly afterwards that he was taken into the partnership.

Q. What did you pay him at that time?

A. With the exception of one job we told him we were doing cheap, we wanted to get the work, outside of that he always got \$11.00 a day; but not on that job.

Q. Do you owe him any money now for wages? 20

A. Not for wages, no. I owe him some money, but it isn't for wages.

Q. You state in your affidavit that on or about March 17, 1930, the defendants held a meeting in Trenton, N. J., and "I was put on the unfair list and fined the sum of \$200.00." Is that a fact?

A. To the best of my knowledge, yes.

Q. Were you present at the meeting?

A. No, I wasn't present.

Q. Then, your only knowledge of this fine is derived from whom? 30

A. From the chairman of the board, of the trial committee.

Q. Who is he?

A. Catcart.

By the Court:

Q. What is his first name?

A. I think it's Jim, but I'm not certain.

Q. Did you ever receive any notice of any kind from the organization that you had been fined?

A. I had received a notice I was penalized and put on the unfair list, but it didn't state the amount.

10 Q. It didn't state you were fined?

A. It mentions a penalty.

Q. That was the unfair list?

A. I would remain on the unfair list until such time as I paid the penalty. I don't know what the exact wording is.

By the Court:

Q. Where is that notice?

20 A. Mr. Moore has it.

Mr. Moore—Is that the notice you received, Mr. Bayer?

The Witness—Yes, sir. (Handing it to Court).

Q. There is nothing in there about being fined?

A. It doesn't mention any amount.

Q. Does it mention any fine?

A. It implies I have been penalized.

30 Q. You have been in the painting business a few years?

A. Yes.

Q. You know that you can be penalized without being fined, by being placed on the unfair list?

The Court—It says "until such time as you comply with the penalty."

Mr. Moore—I offer that in evidence.

Said communication, under the letterhead of the Brotherhood of Painters, Decorators and Paperhangers of America, Local Union No. 301, addressed to Bayer Decorating Company but with salutation to Mr. Andrew Bayer, signed by A Cullen, Recording Secretary, and dated March 18, 1930, is marked Exhibit C-1.

Q. The only information you have, then, as to being 10  
fined, was what this chairman said to you together with  
this letter?

A. I also had the word of some of my men who were  
present at the meeting.

Q. Who were present at the meeting?

A. Yes, sir.

Q. Were they some of the men that were fined?

A. Yes, sir.

Q. You had a conversation with Mr. McConnell on  
the—

20

By the Court—

Q. Were you notified in advance of this so-  
called trial?

A. The week previous I was called down to  
local meeting and they questioned me at that  
time, but that night they didn't take any action.  
The following Monday I wasn't notified to be  
there; and that's the time they fined me.

30

Q. You say you spoke to Mr. McConnell on the 25th  
day of March?

A. I think that's the date.

Q. And you stated in your affidavit that Mr. Mc-  
Connell said, you asked him why the men hadn't returned  
to work?

A. Yes.

Q. And he said, "I can't tell them to go to work or not to go to work; my hands are tied?"

A. Yes, sir.

Q. Is that what he said?

A. Yes.

Q. Was there any further conversation?

10 A. Well, there were some words. That was the main part of the conversation. I told him afterwards, "I am going on with this work, and you will have to fight it out with your lawyers," or something like that.

Q. Did he say anything to you about being fined?

A. No, he didn't.

Q. You knew, Mr. Bayer, that the use of spraying machines in the doing of painting work isn't recognized by the union, didn't you?

A. I do.

Q. You have known that for quite some time, have you not?

20 A. Yes, sir.

Q. They have discussed this matter frequently with you in the past?

A. They have never come near me.

Q. Never come near you? Never discussed it with you?

A. Outside of the night that I was down at the local before the trial board.

Q. Do you remember the time of the Curtin's Restaurant job, Mr. McConnell found you there?

30 A. I was there.

Q. You had a special meeting that night?

A. I don't remember any particular discussion. They talked to Curtin and had the spraying work stopped.

Q. They spoke to you?

A. Maybe a few words. I don't remember anything particular that was said.

Q. Didn't they tell you then that you were the leading operator and owner of the spraying business and that—

A. They positively did not tell me that; but afterwards Mr. Curtin gave the job himself and I finished it with union men.

RE-DIRECT EXAMINATION, by Mr. Moore:

Q. You spoke about an agreement you had with Mr. Parknavy. I show you a paper and ask you if that is the agreement you have reference to, and ask you if the signature is that of Andrew Parknavy?

10

A. Yes, sir.

Mr. Moore—I offer that in evidence.

Said document, dated May 28, 1928, is marked Exhibit C-2.

Q. He states in his affidavit that while he worked for you he received \$40.00 a week; that sometimes he received a little less, the average being \$30.00 a week, the union scale of wages being \$55.00 a week. While he worked for you did you strictly adhere to the contract of the partnership?

20

A. He didn't always get the \$40.00 a week; I think he is mistaken on the average.

Q. Do you think the average is lower or higher?

A. Higher.

Q. Do the unions of this vicinity permit you to work with spraying machines.

A. No, sir.

Q. And isn't that the reason why you didn't have union men working on your machines?

30

A. In the Crescent Company, yes sir.

Q. You also know that after the meeting on March 17, that your men did not appear for work on the respective jobs?

A. Yes, sir.

Q. What were those jobs?

A. Clinton, N. J.; Women's Reformatory and the chapel at the Girl's Home, and some houses—

The Court—That is all in the affidavits.

By the Court:

10 Q. You say in your affidavit that on March 18th, your men did not appear on the jobs because they were ordered not to by Mr. McConnell, the walking delegate, or the business agent of the defendants. How do you know that McConnell ordered them to stay off the jobs?

A. The only thing I know is I asked the men and they told me they had instructions not to go to work.

Q. You had no conversation with McConnell?

A. No.

Q. Or other agents?

20 A. Except Monday night after the meeting Catcart told me I was placed on the unfair list and the men couldn't go to work the following morning.

SYLVESTER STELLA, an affiant produced for cross-examination upon his affidavit filed, being duly sworn, testifies as follows:

CROSS-EXAMINATION, by Mr. Josephson:

30 Q. Mr. Stella, what is your occupation?

A. Painter.

Q. Are you a member of the Brotherhood of Painters, Decorators and Paperhangers, Local 301?

A. Yes, sir.

Q. How long have you been a member?

A. About five years.

Q. Do you know Mr. Bayer?

A. Yes, sir.

Q. You worked for him?

A. Yes, sir.

Q. Are you working for him now?

A. Yes, sir.

Q. What kind of work do you do?

A. Painting.

Q. Machine or brush?

A. Brush.

Q. Brush painting?

A. Yes, sir.

Q. Did you ever do any work with the machine? 10

A. No, sir.

Q. Do you know that Mr. Bayer does work with spraying machines?

A. No, sir.

Q. You don't know that?

A. No, I never did.

Q. Were you ever associated in business with Mr. Bayer?

A. Yes, sir.

Q. What was the nature of that business, was it spray- 20  
ing or painting?

A. No, sir; painting business by brush.

Q. Were you present at a meeting of the organization held on March 17, 1930?

A. Yes, sir.

Q. You were?

A. Yes, sir.

Q. Were you there during the whole meeting?

A. Yes, sir.

Q. What, if anything, happened at that meeting in 30  
reference to Mr. Andrew Bayer?

A. Well, the chairman of the Brotherhood of Painters, Paperhangers and Decorators, he brought the charges that was brought back, he had charges in his hand that was brought back by the trial committee, and he said he would put a fine on Mr. Bayer of \$200.00, he was found guilty.

Q. Go ahead?

A. And then he put a fine of \$100.00 on brother Gean P. Peters and \$100.00 on me and \$75.00 on brother Andrew Parknavy, and one by the name of William Erlich, and he didn't put a fine on him. He was not present at this meeting, and the secretary informed the chairman that he wasn't notified to appear, so it was put over till the following week.

10 Q. You have been a member of this organization for five years?

A. Yes, sir.

Q. What is the name of the chairman?

A. Edward Kennedy.

Q. Is he president of the local?

A. He's president of the local; yes, sir.

Q. You say now that he stated himself that he imposed the fine?

A. Yes.

Q. That's what you mean?

20 A. Yes.

Q. No motion to that effect was made?

A. No, sir.

Q. It was never put up to the meeting at all?

A. No, sir.

Q. Never moved and carried in the regular fashion?

A. No, sir.

Q. He just said so?

A. He just said so; yes, sir.

Q. You are sure that happened that night?

30 A. Yes, sir.

Q. Did Mr. McConnell give you any instructions or orders as to working for Mr. Bayer?

A. After this fine was put on me Mr. McConnell told me I could not go to work, that Mr. Bayer was unfair. I took his word, but I wanted to be sure about it and I got up and asked Chairman Kennedy about it, what this meant being unfair. He told me I couldn't work for him; that was the order of the local.

Q. Was this question of working for Mr. Bayer put to a vote?

A. No, sir.

Q. It was not?

A. No, sir.

Q. You are sure about that, too?

A. Yes, sir.

Q. You said in an affidavit that you spoke to Mr. McConnell on March 25th, and he said, "I can't tell you to go to work and I can't stop you from going to work." Did he say that? 10

A. Yes, sir.

Q. And that was on March 25th?

A. It was on Tuesday; I believe it was on the 25th, yes. I went down and Mr. Bayer called me up and told me it was all right to go to work. I wanted to make sure, and I went to see Mr. McConnell, and Mr. McConnell told me he couldn't send me back to work and he couldn't stop me if I went, so I went to work the following morning. 20

Q. You went to work?

A. Yes, sir.

Q. Then, you say, that all these matters of placing Mr. Bayer on the unfair list and anything else that was taken up at the meeting, was simply declared by the President without any vote?

A. Yes, sir.

Q. In reference to the night of this meeting, when did you speak to McConnell, before or after the meeting?

A. About what? 30

Q. About anything?

A. I spoke to McConnell every now and then.

Q. When was it he told you you couldn't go to work for Bayer, before or after?

A. After the fine was placed on me.

Q. What was the charge or allegation against you prior to the night of this meeting, for which this fine was supposed to have been placed?

A. I have been fined for violating rule 275 of the general constitutoin, which I have never violated.

Q. What did they accuse you of?

A. I don't know. I wanted a duplicate copy of the charges and they absolutely refused to give it to me.

By the Court:

Q. When did you ask?

10 A. I asked previous to the trial. I asked a week ago Monday night.

Q. Whom did you ask?

A. The secretary.

Q. Who is he?

A. Archie Cullen.

Q. You say now that McConnell, at the night of the meeting, told you you couldn't work for them?

A. Yes, and also—

20

The Court—Wait; do not ask things over and over again.

RE-DIRECT EXAMINATION, by Mr. Moore:

Q. And also what?

30 A. And also, the following morning I reported to the painters' day room and asked—I demanded a job. He said, "I haven't any." I said, "This local has stopped me from making a living. I have a wife and three children to keep." He said he couldn't do nothing for me, he didn't have no job.

Q. How many men were present at this meeting, do you know?

A. Not exactly; between forty to fifty.

Q. Do you know how many men belong to the union, approximately?

A. Not exactly; between 200 and 210; approximately that.

Q. After the twentieth of March, and between that date and the twenty-fifth of March, did McConnell, or any official of the local 301, tell you you could go back to work?

A. No.

Q. Did they tell you that?

A. They never did up to today.

RE-CROSS EXAMINATION, by Mr. Josephson: 10

Q. Mr. McConnell did tell you in March—

The Court—Strike that out; it has been asked several times.

Mr. Moore—I have a witness here who has not made an affidavit, but knows about this matter.

The Court—There seems to be no objection. 20  
You may put him on.

GEAN P. PETERS, a witness produced on behalf of the complainant, being duly sworn, testifies as follows:

DIRECT EXAMINATION, by Mr. Moore:

Q. You are a member of Local 301?

A. Yes, sir.

Q. You live in the City of Trenton?

A. Yes.

Q. Did you attend a meeting of this union on March 17, 1930?

A. I did, sir.

Q. Was Mr. Stella there?

A. Yes, sir.

Q. Tell the Court just what occurred at that meeting 30

in connection with charges made against Andrew Bayer, and the penalties imposed upon him and penalties imposed upon you and Mr. Stella?

10 A. I attended the meeting of Local 301 on that date, and the business of the Local were transacted as usual; the reading of the minutes and the roll call of officers and so on, and it came to the report of committees. The chairman of the trial committee brought in the report that the evidence was found by the trial committee and the charges  
20 that were preferred against me. The chairman of the trial committee handed typewritten copies to the president of the union, Edward Kennedy, who was sitting in the chair at the time presiding over the union. He called me by name and made me stand up on the floor in front of the Local and he read charges and fined me \$100.00 for violating the article of the constitution of the Brotherhood of Painters, Paperhangers and Decorators of America. I don't know what the charge is. I can't find nothing in it where I've done anything as against the union. That  
30 broke my obligation with the union. And he read where he fined Sylvester Stella \$100.00 for the same article; Parknavy \$75.00 for the same article; and he read off William Erlich's name; the member not being present he postponed his. "We'll postpone it till next week;" he didn't fine him. And he read off Andrew Bayer and charged him with violating the rules and regulations of the union and fined him \$200.00 and declared him on the unfair list, put him on the unfair list, to stay on the unfair list till such time as Andrew Bayer furnish the \$200.00 certified check to the Local, and the Local will give it as  
30 it sees fit to any charitable institution. That's what transpired on March 17th.

Q. What was said about you men working for Mr. Bayer again?

A. Sylvester Stella, he got up on the floor and he asked the president of the union what this meant, "What do I understand by this putting Bayer on the unfair list?" He

says, "Does that mean I can't go to work for him tomorrow morning?" And the president of the union, Mr. Edward Kennedy, answered: "That's just what it means."

Mr. Josephson—No questions; I don't think there was anything in that.

Mr. Moore—I have here Newton J. Hassell. I don't imagine anything on that has been contradicted.

10

The Court—Is there anything you want to cross-examine Mr. Hassell about, Mr. Josephson?

Mr. Josephson—No.

The Court—Put on Mr. Kennedy.

EDWARD KENNEDY, an affiant produced by the defendants for cross-examination on his affidavit, being duly sworn, testifies as follows:

CROSS-EXAMINATION, by Mr. Moore:

20

Q. You are the president of Local 301?

A. Yes, sir.

Q. Just what is it you have against Andrew Bayer, the complainant in this suit?

A. What I have against him?

Q. Yes, your union?

A. The union has against Andrew Bayer he worked unfair and fair.

Q. I don't understand that. What do you mean?

A. He's having union men work with the brush and the spray work—

30

Q. The only thing you have against him is that he does spray work and is a stockholder in the company?

A. According to the evidence we got he's more than a stockholder.

Q. The only reason your union is harrassing him is be-

cause of the fact that that company has an interest in the spraying machine company and that the company does spray work in and about the vicinity of your union?

A. Yes.

Q. What does your union have against Sylvester Stella and Mr. Peters? You claim they have violated Section 275, which is general in its terms. Will you tell the Court why they were fined?

10

Mr. Josephson—This case is that of Andrew Bayer against two defendants. Sylvester Stella filed an affidavit to aid and assist the complainant. Are we now to be called upon to show what was done and why it was done. He is not a party to the suit. I haven't the evidence as to why Stella was fined.

The Court—If that is an objection it is overruled.

20

A. The reason that Peters and Stella were fined, they had been working in the shop, which is against our constitution.

Q. What sort of a shop?

A. For a boss that is running an unfair paint shop.

Q. They were fined because they worked for Bayer. Is that it, Mr. Kennedy?

A. Yes.

By the Court:

30

Q. Not because they worked for this Crescent Spraying Company?

A. Well, according to the evidence we had Bayer is the head of the Crescent Spraying.

Q. But you didn't believe that Stella or the other man was working for the Crescent?

A. No, not handling the spraying machine.

Q. Not working for the company that handled the sprayer?

A. No.

Q. You fined them because they worked for Bayer and Bayer had some interest in this spraying company?

A. That's it.

Q. And you fined Bayer because he had this interest in this spraying company?

A. Bayer wasn't fined.

10

Q. You fined the other two?

A. Yes.

Q. But you did not fine Bayer?

A. No, sir.

Q. You put Bayer on the unfair list because of his interest in this spraying company?

A. Yes.

Q. And you ordered his men to stay off his job?

A. Not me.

Q. Your union?

20

A. The organization.

Q. I mean your union. And did this occur on the evening of March 17, 1930?

A. Yes.

Q. Now, isn't it a fact that you imposed a fine of \$200.00 on Bayer?

A. No, sir.

Q. Isn't it a fact that one of the officials of your union said that until a certified check for \$200.00 was received he would still remain on the unfair list?

30

A. I never heard any of our officers say that.

By the Court:

Q. What penalty was it?

A. Unfair until such time as Andrew Bayer would come down to our Executive Board.

Q. You know about this notice that was sent by the secretary to Mr. Bayer?

A. No, sir.

Q. You don't know about that? (Exhibit C-2).

A. No, sir.

Q. No question about that being a notice sent by the secretary of your union?

A. Yes.

10 Q. That is a notice sent by the secretary of your union?

A. Yes, sir.

Q. There is no doubt in your mind that he knew what he was talking about?

A. Yes, I guess he did.

Q. What did he mean by "until such time as" Bayer should comply with the penalty imposed?

A. The penalty?

Q. Yes.

20 A. The penalty would be that—

Q. What was the penalty?

A. He was placed on the unfair list.

Q. But it says he shall stay on the unfair list until he shall have complied with the penalty.

A. He had to come to our agreement.

Q. You don't mean to tell me, Mr. Kennedy, that, in view of what this official letter of your union says, that your organization did not impose any penalty?

30 A. There was no penalty on Bayer.

Q. You don't expect me to believe that, in the face of this letter, do you, because I don't believe it?

A. (No answer).

Q. On or about the twentieth of March, after this action was taken by the union and this order to show

cause, carrying with it a temporary restraint, was filed, this order to show cause and restraint was left at your home, wasn't it, Mr. Kennedy?

A. Yes.

Q. Did you read it?

A. Yes, sir.

Q. Did you read that part which stated that you do absolutely desist and refrain from placing or continuing complainant on the unfair list of the aforesaid union and from proceeding in any way to attempt to collect the fine of \$200.00 levied upon him or the fine of \$100.00 levied against his men, and from doing anything whatsoever to keep union men from working for complainant? Do you remember reading that? 10

A. I didn't quite get that.

Q. You didn't?

A. Not all.

Q. And from doing anything whatsoever from keeping union men from working for complainant. You read all that, didn't you? 20

A. Yes, sir.

Q. What did you understand that to mean?

A. To mean?

Q. Yes. What were you to do when you got that notice?

A. I was to appear here at the Chancery Court and tell why he had no men.

Q. In the meantime what were you to do? Did you understand that you were to tell these men whom you had ordered not to work for Bayer, to go back to work? 30

A. I did not; I didn't have a right to tell them to go back to work.

Q. You can call a meeting on twenty-four hours notice?

A. Yes.

Q. And less than that?

A. Yes.

Q. Did you call any meeting?

A. No, sir.

Q. Well, did you do anything so that the men could go back to work for Mr. Bayer?

A. No, sir.

Q. You ordered them off?

A. Yes.

RE-DIRECT EXAMINATION, by Mr. Joseph-  
10 son:

Q. What was the procedure on March 17, 1930, in reference to any ruling or matters that were adopted in reference to Andrew Bayer?

A. In reference to Andrew Bayer?

Q. Yes, at the meeting?

A. There was a ruling that Andrew Bayer was—the examining board—not the examining board, or the jury, brought in a verdict of guilty of Section 395—No, it  
20 wasn't Section 395, I think it was Section 94, of working in a shop that was unfair and fair, which we don't recognize the sprayer.

Q. What did you do at the meeting about these charges? What was the procedure?

A. The procedure was that Andrew Bayer was placed on unfair.

Q. Was any motion passed?

A. I asked if there was any objections, a motion made and seconded, and there was nobody against it. Stella  
30 and Mr. Peters were there.

Q. Did any member of the association move it as a motion?

A. It was moved as a motion.

Q. And duly seconded?

A. Yes, sir.

Q. And then put to a vote?

A. I asked them in favor and they voted. I couldn't

tell you just how many was for. I know there was none against.

Q. Any members voting against?

A. No, the only two that really would, would be them two, and they didn't vote.

Q. They didn't vote at all?

A. No, sir.

Q. Did you declare yourself that Andrew Bayer was unfair, that he was fined and that the others were fined, without putting it to any vote?

A. I didn't fine Andrew Bayer; Andrew Bayer wasn't fined. 10

By the Court:

Q. Insofar as you are concerned, there is no objection on your part, or on the part of your union, to these union painters working for Mr. Bayer at the present time?

A. They went back to work and nobody said anything to them. 20

Q. And there is no objection to their doing that?

A. We can't stop them.

Q. And there won't be any penalty imposed upon them for doing it?

A. Not as far as I know.

Q. You ought to know.

A. I don't know until I go to the constitution and find out.

Q. Well, let me tell you that there had better not be, whatever you find in your constitution. You may not realize that it is a very serious thing to contravene a decree of the Court of Chancery, but if you do it you will find out. I take it by what you said, that there was no intention on your part to refuse to abide by the decree of this court 30

made a week ago, and that there is no reason why these men should not go back to work for Mr. Bayer, so far as you individually or as an officer of this union, are concerned?

A. I can't stop them.

Q. And there is no reason why they should not go back?

A. No, sir.

10

Q. As far as you are concerned, either as an individual or as an officer of the union?

A. No, sir.

RE-CROSS EXAMINATION, by Mr. Moore:

Q. What will happen, if you know—and, of course you do, because you are a member of the Building Trades Council—what will happen if Mr. Bayer is continued on the unfair list and your men do go back to work for him?

20 Won't the unions who are affiliated with your union, and who are all members of the Building Trades Council, won't they leave their work on account of Bayer being on their job as a sub-contractor, as a result of your action that he is unfair?

Mr. Josephson—That is objected to.

The Court—I think it is immaterial. If any such situation arises we shall have to deal with that when the time comes.

30

ARCHIBALD CULLEN, a witness produced by the defendants for cross-examination on his affidavit, being duly sworn, testifies as follows:

CROSS-EXAMINATION, by Mr. Moore:

Q. You are the secretary of Local 301, Painters' Union?

A. Yes, sir.

Q. Did you write and sign that letter to Mr. Bayer?

A. I didn't write this letter, but I authorized our business agent to write this letter for me, because he had a typewriter and I could keep it in duplicate.

Q. Did you sign it?

A. I authorized him to sign my name.

By the Court:

Q. Who is the agent?

10

A. Mr. McConnell.

Q. Tell the Court just what these terms mean, that you adjudge him unfair to organized labor "until such time as you comply with the penalty imposed by the above-named local union"?

A. Well, he was placed unfair to organized labor through our local union at their meeting of March 17, 1930. As against the penalty, I didn't word that, and, therefore, I can't say just what is intended by the word "penalty." 20

Q. But there was a penalty of some description?

A. There was no penalty that I know of.

Q. Why did you use the word "penalty?"

A. I didn't use that word sir; I didn't compose that letter.

Q. Do you recall what you said to this man who had the typewriter when you asked him to write this letter for you?

A. Yes, I told him to notify the Bayer Company that at our meeting he had been placed unfair. That's all I authorized him to do. 30

Q. What did you have in mind when you mentioned that he was to comply with the penalty?

A. I didn't have anything in mind, because I didn't talk about a penalty.

Q. Did you attend this meeting of the union on the 17th?

A. I did.

Q. Did you hear Mr. Kennedy tell the workmen for Mr. Bayer not to go back to work?

A. I did not.

Q. You didn't hear that?

A. No.

Q. You didn't hear anything about the fine?

A. No, sir.

10 Q. You did hear that Mr. Stella was fined and Mr. Peters was fined?

A. Yes, sir: they are members of our organization and we had some jurisdiction over them. We had no jurisdiction over Mr. Bayer, so far as I know, because he didn't belong.

Q. I know; but you know as well as I do that unions throughout this district have a habit of fining and then collecting it.

A. No, sir; I only know of one case where a fine has been collected from a contractor.

20 Q. You know there have been a dozen contractors in the last four years fined in this locality?

A. I don't know that.

Q. Perhaps your union has never done it except in this case, but it is common practice.

A. I might be ignorant of it, sir, but I don't know the fact.

Q. Did you ever sit down in any conference of the Building Trades Council?

A. No, sir.

30 Q. Who is your delegate?

A. We have three delegates, our business agent and two delegates selected from our floor.

RE-DIRECT EXAMINATION, by Mr. Josephson:

Q. You are acquainted with the rules and regulations of the organization, the by-laws, etc.?

A. I am, sir.

Q. Is there any rule or by-law which prohibits any painting work to be done by any contractor with the use of a spraying machine?

A. Yes, it is in our minutes at some particular place, but the use of the spraying gun is prohibited to our members.

HARRY S. WARREN, an affiant produced by the defendants for cross-examination on his affidavit, being 10 duly sworn, testifies as follows:

CROSS-EXAMINATION, by Mr. Moore:

Q. Mr. Warren, you are closely affiliated with 301?

A. I am a member of the local union No. 301, and also general organizer of the Brotherhood of Painters.

Q. You are familiar with the Bayer matter and the reasons why he was placed on the unfair list?

A. Yes.

Q. Do you know of any other reason why he was placed on the unfair list, except the fact that he had a monetary interest in the spraying company? 20

A. That's the only reason, because the investigation was referred to me since last October, when Mr. Bayer started the first job. Of course, there has been an investigation, and we wanted some action taken at that time, and thought there should be a thorough investigation made. I believe it was going on ever since that.

Q. You don't permit any of your men to work with paint spraying machines? 30

A. It is a local affair, on account of the health situation—

Q. Now, on that health situation you fellows went to the contractors' association and got a five-day week on account of the health situation, didn't you?

A. Yes.

Q. It is no more unhealthy to spray paint than to brush it, is it?

A. Oh, yes.

Q. Is that the reason why you put Bayer on the unfair list, because he sprayed paint?

A. I believe that was the occasion. I was there on the tenth, but the seventeenth I wasn't present.

10 Q. He employs all union men on his brush painting work, does he not?

A. As far as I know, yes.

Q. You have never known him to employ a union man on a paint spraying job, have you?

A. I have heard of it, yes.

Q. Do you know it?

A. I have never seen it direct, but I have heard of it, yes.

20 RE-DIRECT EXAMINATION, by Mr. Josephson:

Q. Do you have any jurisdiction or control over this local union 301?

A. No, never called upon for any service.

Q. Did you order any men to refrain or abstain from working for Andrew Bayer?

A. No.

30 ARTHUR W. McCONNELL, an affiant produced by the defendants for cross-examination upon his affidavit, being duly sworn, testifies as follows:

DIRECT EXAMINATION, by Mr. Moore:

Q. Mr. McConnell, you are business agent of Local 301?

A. Yes, sir.

Q. On the night of March 17th, you attended the local meeting?

A. Yes, sir.

Q. What, if anything, was said by either you or Mr. Kennedy, the president of the Local, with reference to the men who had been employed by Mr. Bayer staying off the jobs the next day?

A. There was no reference, to my knowledge.

Q. No one said anything about it?

A. Mr. Stella asked me during the time of the meeting if he would be permitted to go back to work for him.

Q. What did you say?

A. I told him he had heard the decision of the local.

Q. Which was?

A. That Mr. Bayer was placed on the unfair list.

Q. And which meant?

A. Well, it meant that under our constitution he wouldn't go to work there.

10

By the Court:

Q. That is what you said to him?

A. I didn't tell him so.

20

Q. You were talking to him?

A. Yes.

By the Court:

Q. You don't mean to tell me, Mr. McConnell, that in a conversation between you, as business agent, and this member of the union, you went to all that circumlocution?

30

A. I did.

Q. He asked you what it meant?

A. Yes.

Q. And you told him he couldn't go back?

A. Not in those words.

Q. What did you say?

A. I told him he knew what the constitution was.

Q. I can't believe that.

Q. Did you notify several painters in Phillipsburg and Easton belonging to the local up there, where Mr. Bayer had a job, not to work for him on the 18th of March?

A. I notified the local at Easton.

10 Q. Have you a copy of that letter here?

A. I believe Mr. Josephson has.

Mr. Moore—I ask you to produce it.

(Mr. Josephson commences a search through his papers.)

Q. Did you attend the whole meeting on the evening of March 17th?

A. Yes, sir.

20 Q. Now, just what happened to Andrew Bayer at that meeting?

A. He was placed on the unfair list by a vote of our local union.

Q. When a man is placed on the unfair list, just exactly what does it mean?

A. It means he is unfair to our organization.

Q. I know that; that is what it says, but how does it affect him?

30 A. We couldn't furnish him with union labor until such time as he came straight.

Q. In other words, you won't give him any men, will you?

A. We have—

Q. You wouldn't as long as he is unfair?

A. No.

Q. Now, the only other alternative would be to hire non-union men?

A. Yes.

Q. If he is working on a big job, a sub-contractor, with non-union men, how long would you permit him to get away with that?

A. I don't know.

Q. You don't?

A. No.

Q. Just as quick as you found out, and then you would have all the rest of the men on that job called off, because Bayer was using non-union men because you would not give him union men?

10

A. I couldn't control the rest of the organization.

Q. You couldn't control it?

A. It's the laws of the building trades.

Q. And you obey the laws of the building trade?

A. Yes.

Q. Isn't it your job to go from painting job to painting job, just to see whether the bosses are employing union men?

A. Yes.

Q. And paying the union scale, and to see that they are working union hours and where you find any violations you report it?

20

A. Yes, sir.

Q. You are a member of the Building Trades Council?

A. Yes.

Q. And you meet how often?

A. Every week.

Q. And all these things are taken up at that meeting and discussed?

30

A. The majority.

Q. You all help one another, don't you?

A. Yes.

Q. So that being unfair means a whole lot more than not permitting a union man to work for a man?

A. It just means that in our organization. We can't control the rest.

Q. Doesn't it really mean that he couldn't get a job at all as sub-contractor where the main job is a union job?

A. I think it would.

Q. You know that is what it means?

A. I presume that it does.

By the Court:

10 Q. You know it would mean that, don't you? If you went to a job and you found there was a carpenter on that job employing non-union men, what would you do as far as your painter's union is concerned?

A. I would naturally report it to the carpenters' union.

Q. Would you expect the union to take steps against that man?

A. Yes.

20 Q. So you know perfectly well that steps would be taken against him by the union, and you would impose a penalty upon a non-union contractor if the contractor was not following out the rules of your union?

A. Yes.

Q. Then why don't you say that and not hedge?

Q. In addition to Mr. Bayer being put on the unfair list on March 17th, what else happened to him?

30 A. That was all with Mr. Bayer.

Q. Wasn't he fined \$200?

A. He was not. We have no control on him.

By the Court:

Q. What penalty was imposed upon him?

A. The penalty as I understand it, he would sign our agreement and live up to our laws.

Q. What penalty was imposed upon him on the night of that meeting?

A. That's all.

Q. You wrote this letter?

A. Yes, I had it dictated.

Q. You signed it?

A. For Mr.—

Q. You signed it?

A. Yes.

Q. What did you mean when you said in 10 there, "Until you comply with the penalty imposed upon you."

A. Living up to our agreement.

Q. You know better than that, living up to an agreement is not a penalty.

A. We have no other control over him.

Q. What penalty was imposed? What did you mean when you said in that letter, what you did say about a penalty being imposed upon him, what was it?

A. Just as I have stated, sir.

20

Q. What?

A. That he be unfair until such times—

Q. I didn't ask you anything about being unfair. You make a statement in here about a penalty being imposed. What penalty did you mean?

A. To sign our agreement and living up to the laws of our association.

Q. You might just as well tell the truth, be- 30 cause I don't believe you when you lie?

Q. You had taken action against Mr. Bayer, hadn't you, the week previous to the 17th?

A. The trial was conducted then.

Q. And you fixed the penalty then, didn't you?

A. No, sir.

Q. He had already violated something?

A. Yes, sir.

Q. So that from the 17th on you made him unfair, and for being unfair you imposed something, didn't you?

A. Yes.

Q. What was that?

A. Just as I have stated.

10 Q. Well, one of your men says in an affidavit that you have no agreement with the Master Builders Exchange. There was an agreement which once existed and that must be now carried out in spirit, as I interpret the testimony, and you say he will be unfair until he carries out the rules and regulations. If that is the case, what sort of an agreement did you want Mr. Bayer to carry out?

A. We have an agreement with every Master Painter in the City of Trenton, with the exception of Mr. Bayer.

Q. You have no agreement with the Master Builders Exchange?

20 A. No, sir.

Q. Did you present Mr. Bayer with an agreement and say, "Sign it"?

A. Our present agreement doesn't run out until the first day of May.

Q. What agreement was it you wanted him to sign?

A. That agreement.

Q. That is the one?

A. Naturally.

Q. Do you have an agreement with him now?

30 A. No, sir.

Q. You haven't any agreement?

A. No, sir.

Q. What sort of an agreement did you present to him before you took this drastic action against him?

A. There was no agreement sent to him.

RE-DIRECT EXAMINATION, by Mr. Josephson:

Q. What the penalty referred to in this letter of the 18th means is the severing connection and giving up the use of the spraying machine?

A. I presume that would be one of the questions asked him.

Q. You wrote the letter?

A. Yes.

Q. You know what you had in your mind at the time you wrote it?

A. I didn't write it up myself.

By the Court:

Q. You signed it and you wrote it?

A. Yes, sir.

Q. You knew what you had in mind at the time you wrote it?

A. Yes.

Q. You say one of the things referred to would be that he would be compelled to give up the use of the spraying machine?

A. Yes.

By the Court:

Q. Why didn't you say so in the letter?

A. I don't know.

Q. How did you suppose Bayer was going to know what you had in mind?

A. I presumed he would naturally get in touch with our organization.

Q. Oh, you did?

A. Yes.

Q. Why were you so cautious about refraining from telling Bayer what he had to do?

A. I didn't think probably a letter would be the proper way to do it.

Q. Why not? You took the trouble to write him this letter, advising him he had been declared unfair and that he would have to comply with the penalty and you didn't tell him what the penalty was?

10 A. The penalty would be up to the executive board.

Q. You wrote to him that he would have to comply with the penalty?

A. No.

Q. Why, that's what you said in this letter?

A. Oh, yes.

Q. And you didn't tell him what the penalty was?

A. I didn't know.

20 Q. How did you know any penalty had been imposed?

A. That's the record of our meeting.

Q. What is?

A. That he be placed on the unfair list and that he be penalized.

Q. Penalized how?

A. Till he signed our agreement.

Q. How?

A. Till he signed our agreement.

30 Q. How penalized, until he signed your agreement?

A. By not being given any union labor.

Q. You say that is a record of your organization?

A. Yes.

Q. What record?

A. In the minutes

Q. Who kept them?

A. The recording secretary.

Q. Where are they now?

A. In Mr. Josephson's office.

Q. Mr. McConnell, this matter of Bayer came up on the night of this meeting. What was the form and method of procedure used insofar as you remember of those present at the meeting, were concerned?

A. The trial committee returned their verdict as they had found the case after hearing it. It was then brought before the local. 10

Q. What was?

A. Then the motion was put before the house whether anyone thought that Andrew Bayer should not be placed unfair. It was voted on by the local.

Q. Some member made the motion?

A. It was made by some member present.

Q. And the usual parliamentary procedure covered?

Mr. Moore—That is objected to.

20

The Court—Strike it out.

Q. What happened after the motion was made?

A. The motion was put to the house and it was asked by the president if anyone had any objections, and none voting no, it was declared passed.

Q. Was it put to a vote?

A. It was.

Q. Did anybody vote no?

A. Not to my knowledge.

30

Q. You were present?

A. Yes, sir.

Q. Had you given any orders to any members of your organization that they must not again work for Bayer?

A. No, sir.

Q. Have you the authority and power, according to

the constitution and by-laws of your organizations, to now order any men of your organization to work for Bayer?

A. No.

Q. Have you authority to order them to work any place for anyone?

A. No, sir.

RE-CROSS EXAMINATION, by Mr. Moore:

10 Q. Your organization ordered these men not to work for Bayer, didn't it?

A. Not a direct order, no, if it was it wasn't through me.

Q. You were present that night when Mr. Stella got up and said, "What does that mean," and Mr. Kennedy said, "You can't work for Bayer?"

A. It means the shop is unfair.

Q. Doesn't mean substantially that you ordered these men not to work for Bayer?

20 A. I did?

Q. Your organization?

A. I wouldn't hardly place it that way.

Q. How would you place it?

A. Our organization went on record as placing the shop unfair.

Q. You remember Mr. Stella got up?

A. He asked a question.

Q. What did your president reply?

A. I couldn't state the words of the president.

30 Q. What did you get from it, that the men could or could not work for Bayer?

A. I got the impression that they couldn't.

By the Court:

Q. It wasn't any doubtful impression either, was it?

A. No.

Q. You received the bill of complaint and the affidavits and the restraining order, didn't you?

A. Yes.

Q. They were left at your home, 110 Centre Street?

A. Yes, sir.

Q. After your union advised these men not to work for Bayer, when you got that order from the Court of Chancery, did you advise them that they could work for Bayer?

A. I did not.

10

Q. Why didn't you?

A. I had no authority to advise anybody to go to work.

Q. You read the English language, don't you?

A. Yes.

Q. You could certainly understand what the Court of Chancery meant in that order, couldn't you?

A. I understand it to mean that myself or my local, couldn't in any way interfere with Mr. Bayer.

Q. You had already interfered with him, hadn't you?

20

A. Before the injunction had been served.

Q. And you advised these men not to work for him. Didn't you deem it your duty after being ordered by this Court, to undo what you had done?

A. I didn't think so.

RE-DIRECT EXAMINATION, by Mr. Josephson:

Q. As business agent of the union, you investigate the work going on in the trade?

30

A. Yes.

Q. And were you present at the time that the spraying machine was used on Curtin's Restaurant on South Warren Street?

A. Yes.

Q. Who was there with you?

A. Mr. William Mace, who was then the president of our organization.

Q. He was doing spraying work there as far as you know?

The Court—Not as far as he knows.

Q. Did you see he was doing painting by spraying?

A. Who?

10 Q. Did you see who it was?

A. Yes.

Q. Who.

A. John W. Seville.

Q. Was John W. Seville a member of your organization?

A. Not at that time.

Q. He wasn't at time?

A. No, sir.

Q. Was Mr. Bayer there?

20 A. Yes.

Q. What was Mr. Bayer doing there?

A. I will not answer that.

Q. Did you see what he was doing?

A. I saw he was around there and I presumed he was interested in the work.

Mr. Moore—I object to that part of the answer.

30 Q. Did you talk to him?

A. I asked him if he was interested in this job, and he said no, he was there as a spectator.

Q. Do you know of any other painting jobs that Mr. Bayer has contracted for and done with the use of the spraying machine in Trenton, or Mercer County?

A. There are other jobs that I know Mr. Bayer has been interested in, where I know the spraying machine has been used.

Q. What?

A. De Laval.

By the Court:

Q. You mean jobs where the contractor was the Crescent Spraying Company?

A. Who the contractor was, I don't know.

Q. How do you know Mr. Bayer was interested in it?

10

A. I saw him a number of times on the job.

Q. And he saw you on these jobs?

A. I couldn't say.

Q. On these same jobs?

A. I couldn't say all of them.

Q. You were not hiding from him?

A. No.

Q. Didn't you think he saw you on the same jobs?

A. He probably did, if he did he didn't mention the subject.

20

Q. Did you mention it to him that you had seen him?

A. No, sir.

Q. And he would have been equally justified in thinking you were interested in these jobs, because he saw you there?

A. Yes.

Q. And were you?

A. I was quite interested.

Q. Financially?

30

A. No, sir.

Q. And that is the only reason you have for saying you know of any jobs in which Bayer was interested in which spray painting was used?

A. No, sir, I have known of jobs that Mr. Bayer figured on for the Crescent Spraying Company.

Q. Jobs that the Crescent Spraying Company got?

A. They didn't get the jobs, no sir.

Q. Then that is scarcely a job in which he was interested in financially?

A. No.

10 Q. Do you know of your own knowledge of any non-union painters or workers, that Mr. Bayer has engaged to do this painting work?

A. Well, I couldn't say directly. His association with the Crescent Spraying—

Q. When a man uses a spraying machine, do you in constitution call that painting?

A. No, sir.

Q. Do you know the number of men that he has employed in which spraying work was used?

20 The Court—Strike that out, there is no evidence that he has employed any. You have on the record the statement of the president of the union in which he said that the only fault they had to find with Mr. Bayer, was that he was financially interested in this Crescent Spraying Company. There is no charge against him that he had violated the rules in any other particular, Mr. Josephson.

Mr. Josephson—He violated the rules in spraying.

30 The Court—Your witness said that was the only charge they had against him. It is admitted, I take it, that on his own jobs, he employed union labor himself, but they say that only by reason of his interests in this Crescent Spraying Company did they find any fault with him, that in that way he was using these spraying machines and was doing that which the union regarded with disfavor. There is not a shred of evidence that he ever used

spraying machines on any job he had individually.

Mr. Josephson—We will show that he was actually the owner of the corporation.

The Court—We will deal with that as it comes up, I am only dealing with the testimony of this witness now.

Q. Do you know the number of men that he has employed, that the Crescent Spraying Company has employed in the painting or spraying business with these machines? 10

The Court—Strike it out, it is immaterial. Admittedly they have employed a number of them.

By the Court:

Q. So far as you are concerned individually, or as an officer of this organization, there is no reason why any of these men should not go to work for Mr. Bayer? 20

A. No, sir.

ANDREW PARKNAVY, an affiant, produced by the defendant for the purpose of cross-examination on his affidavit, being duly sworn, testifies as follows:

CROSS-EXAMINATION, by Mr. Moore:

Q. Mr. Parknavy, you were a partner of Mr. Bayer, weren't you? 30

A. Yes.

Q. What did you mean in your affidavit when you said, "While working for him as a union painter, I usually received the sum of \$40 per week, sometimes I received a little more, and sometimes a little less, the average being about \$30 per week. The union scale being \$55 per

week." Why didn't you come out and say you were a partner of his?

A. I did.

Q. Not in this affidavit?

A. I don't know what affidavit I told him I was a partner.

Q. Isn't that the reason you got less than the union scale, because you were a partner?

A. Yes.

10 Q. You were a contractor?

A. That is the agreement with him.

The Court—That is obvious.

Q. Can you name any non-union men that Mr. Bayer ever had working for him in the paint spraying business?

A. No, sir.

20 Q. Then why do you say in your affidavit, "Some of the men so employed were members of the defendant organization, others were non-members," what did you mean by that?

A. Well, when I was working, he hired Seville in the spraying business.

Q. Wasn't Seville one of his partners?

A. No, sir.

Q. Was Seville a member of the union then?

A. He used to be, he isn't now.

Q. Was he a member of the union at the time?

A. When was that?

30 Q. At the time he worked for Mr. Bayer?

A. No, sir, he wasn't.

Q. Then why did you say, "Some of the men so employed were members of the defendant organization."

A. I didn't say that.

Q. (Showing witness affidavit) There you are.

A. I meant by that I was working for the Bayer Company, I was a union man at the same time he hired Seville, he wasn't a union man.

Q. But you meant that you were the union man?

A. Yes, sir.

RE-DIRECT EXAMINATION, by Mr. Josephson:

Q. Mr. Parknavy, you were associated in some way with Mr. Bayer?

A. Yes, sir.

Q. What is it you know of his purchasing and the ownership and use of the spraying machines? 10

A. Well, I was in the shop there the same as the rest of us there and he stated he should buy a spray and make more money and we all agreed to it, and we all agreed to help pay for it, and the first job they pulled off was the Curtin's Restaurant, and we got collared on that job.

Q. He bought the spraying machines?

Mr. Moore—That is objected to, there is no dispute that he bought it.

20

Q. Do you know Mr. Newton James Hassal?

A. I do.

Q. What connection did he have with the spraying machine?

A. Well, he was in partnership, that was only a bluff, that's all that was.

Q. What do you mean by that?

A. Only used his name just as a shield for the company to keep them from the local.

Q. Who took the job? 30

A. Andrew Bayer is the head figure, what I understand.

By the Court:

Q. What do you understand?

A. I heard it from the office.

Q. From whom?

A. Mr. Bayer, himself.

Q. You say that Mr. Bayer told you that he, himself, told you that he had the contract for the Curtin job? Is that what you mean?

A. Yes, sir.

Q. When did he tell you that?

A. Well, it must have a been, I guess, about a week or so before he started on the job.

10

Q. When was that?

A. I guess sometime in November, I guess, I can't memorize exactly what day of the month.

Q. November of what year?

A. Last year.

Q. 1929?

A. Yes.

Q. That was while you were working in partnership with him?

A. Yes.

20

Q. How long did you work in partnership with him?

A. Almost two years.

Q. Is that what you mean when you say in your affidavit that you were employed by him?

A. Well, I was a union man—

Q. I didn't ask you that. You say, "I left his employment sometime in the early part of December, 1929," now you tell me you had been in partnership with him for two years, up until that time?

30

A. Yes.

Q. Why do you say in your affidavit that you were employed by him, if you were in partnership with him?

A. I must have made a mistake, if I said that.

Q. There isn't any doubt that you did say it? There is your affidavit, that is your signature, isn't it?

A. Yes, it is.

Q. And you swore to it, and you presented it to this court to be acted upon, and you say in there, "I left his employment sometime in the early part of December, 1929?"

A. Yes.

Q. You were not employed by him at that time?

A. I was working for the company, yes sir.

Q. You were in partnership?

10

A. Yes.

Q. Why did you say you were employed?

A. I meant the same thing.

Q. You think being employed by a man is the same thing as being in partnership with him?

A. Well—

Q. Do you mean to tell me that, that being employed by a man is the same as being in partnership with him. You know better than that, don't you?

20

A. No, not exactly, I don't.

Q. Now, if you were in partnership with Mr. Bayer in November, 1929, then you know perfectly well that he didn't take that job for himself, he took it for the partnership?

A. Yes.

Q. Why did you say he took it for himself?

A. The Curtin Restaurant?

Q. Yes?

A. It was for the partnership.

Q. You testified a few moments ago, that he took it for himself, in his own name, as I understood you?

30

A. He signed the contract, yes.

Q. I didn't ask you who signed the contract?

A. Well, I can't say he took it for himself, because I was in partnership, see?

Q. You said a few moments ago that he told you that he took it for himself.

A. I meant that he figured it himself.

Q. And that is about as accurate as all the rest of this material in your affidavit?

A. Yes.

Q. You say here, you know the spraying machines were purchased by Andrew Bayer, and he paid for them. How do you know that?

10

A. That is what we agreed.

Q. How do you know that Andrew Bayer, individually, paid for the spraying machines?

A. Well, the Bayer-Peters Company bought them.

Q. The Bayer-Peters Company bought them?

A. Yes.

Q. And paid for them?

A. Yes.

Q. Then why do you say Bayer bought them and Bayer paid for them?

20

A. Well, he's the head guy in our company, see.

Q. Do you know the difference between a man as an individual and a man as an officer of a company, or partnership?

A. Well, Mr. Bayer.

Q. Do you?

A. What?

Q. Do you know the difference?

30

A. I didn't get it.

Q. Do you know the difference between a man as an individual and a man as an officer of a company, or a man as a partner?

A. I can't understand that.

The Court—I think sufficient has been shown to indicate that his affidavit is absolutely worthless.

Q. Did Mr. Bayer ask you to quit the union and go to work for the spraying company?

A. Yes.

Q. When was that?

A. I can't remember the date, before Christmas, I think it was.

Q. Were you present at this meeting on March 17th?

A. Yes, sir.

Q. And you were present at the whole meeting?

A. Yes, sir.

10

Q. What happened at this meeting in reference to Bayer?

A. Oh well, I guess they were all fined, I guess.

Q. What?

A. Mr. Stella was fined, Mr. Peters was fined and myself and Mr. Bayer, but we heard later on that the fine was taken off Mr. Bayer—It wasn't fast.

By the Court:

Q. Well, Mr. Stella was fined?

20

A. Yes.

Q. Peters was fined?

A. Yes.

Q. You were fined?

A. Yes.

Q. And Bayer was fined?

A. Yes.

Q. Who said anything about the fine?

A. The president of the local fined us.

30

Q. Kennedy?

A. Yes, sir.

Q. There isn't any question about that, you heard him do that?

A. I heard him say—

Q. You heard him say that Stella was fined?

A. Yes.

Q. Fined how much?

A. \$100.00.

Q. You heard him say that Peters was fined?

A. The same thing.

Q. \$100.00?

A. Yes.

Q. And you heard him say that you were fined?

A. Yes, sir.

10

Q. How much?

A. \$75.00.

Q. And you heard him say Bayer was fined?

A. Yes, sir.

Q. How much?

A. \$200.00.

Q. And there was no taking off of any of those fines while you were there?

A. Not while I was there.

Q. Were you there the whole meeting?

20

A. I think so, yes.

Q. Were you there the whole evening?

A. The whole evening.

Q. Until the meeting was adjourned?

A. Yes, sir.

Q. And up to that time nothing was said about taking any of those fines off?

A. No.

30 Q. Were any of these matters put to a vote? How was it done?

A. I can't remember that at all.

Q. You were there?

A. I guess I was.

Q. You don't remember whether it was put up to a vote or not?

A. I'll tell you the truth, I can't remember. I must have been chewing the rag with somebody.

Q. Then you are sure that the things you do remember about the meeting happened at all, that they all happened or what happened?

A. Yes, I was anxious about my fine; that's what I was anxious about.

Mr. Josephson—We have most everybody at the meeting, but that is all I have here.

The Court—Who else did you want to produce?

Mr. Josephson—At this time, no one.

The Court—I think it is obvious where the truth lies, but I will advise counsel.

10

Testimony taken in the above entitled cause, at the State House, Trenton, New Jersey, on Wednesday, the ninth day of April, 1930, at eleven o'clock, A. M.

Before HON. MALCOLM G. BUCHANAN,  
Vice-Chancellor.

20

Appearances, as heretofore noted.

The Court—Will you have the secretary of the local union take the stand, Mr. Josephson?

Mr. Josephson—Yes, sir.

ARCHIBALD CULLEN, being re-called by the Court, testifies as follows:

By the Court:

30

Q. Mr. Cullen, you are the secretary, I think you said, of this local union. Have you the constitution and by-laws of the organization?

A. The lawyer has, I think.

Q. Your lawyer?

A. Yes.

Mr. Josephson—I have it here.

The Court—Produce it.

(Counsel produces booklets).

10 Q. You produce a book entitled "Constitution of the Brotherhood of Painters," etc., and another book entitled, "Working Rules and By-Laws of Local Union No. 301." This is the constitution which governs the National organization and the local unions?

A. Yes, sir.

Q. And the other book is the by-laws which govern your local union here?

A. Yes.

The Court—Let them be marked.

Mr. Josephson—Are we offering this testimony?

The Court—Did you offer it?

20 Mr. Josephson—I just wanted to be clear. If it is regarded as our testimony, I want to object.

The Court—I don't see how it can be yours, I don't know how you get the idea that you offered it. I directed you to put this witness on the stand and I have directed these books to be marked, if you desire to have an objection on the record, you may have it.

Mr. Josephson—That is what I mean. I want an objection on the record.

30 The Court—Of course you are not entitled to the objection because you have stated no grounds for it, but the objection may be noted on the record.

Said books are marked exhibits Court-1 and Court-2, respectively.

The Court—Have you the minute book of the local union?

Mr. Josephson—Yes, sir.

The Court—Produce that.

Mr. Josephson—There are two, would it be the one relating to the meeting?

The Court—I want the minute book relating to this matter.

(Counsel produces book).

Q. In this minute book in the minutes of March 10th, it is stated that a motion was made and seconded that the regular order of business be suspended in order to proceed with charges against Bayer, Peters, etc. The motion was carried, is that a fact? 10

A. Yes, sir.

Q. That the charges were read by the secretary?

A. Yes, sir.

Q. And it was regularly moved and seconded that they take the usual course, is that a fact? 20

A. Yes, sir.

Q. What is that course?

A. The usual course is to elect a trial committee to try the case.

Q. The next minutes say, that a trial committee was selected which consisted of Catcart and Johnson and others. That was a trial committee to try the case in involving the charges which have been mentioned before?

A. Yes, sir.

Q. That trial committee was Roxberg, Carson, Cathcart, Conte and Johnson? 30

A. Yes, sir.

Q. Where are those charges?

A. I just couldn't say. I think the lawyer has them, I'm not just sure.

Q. Were they in your custody and control?

A. Yes, sir, but the business agent came after them.

Mr. Josephson—I don't believe I have them. I may be mistaken, I will see if I can find them. I haven't any such thing as charges here, I never did have them. One of the men thought he gave them to me, but he didn't.

10 Q. The minutes of the meeting of March 17th recite that the trial committee investigating the charges against Mr. Bayer and brothers Gean P. Peters, Sylvester Stella, William Ehrlich and A. Parknavy made a written report which was read by the president. That is the trial committee that was elected at the meeting of March 10th?

A. Yes, sir.

Q. That was the only trial committee that there was at that time?

A. Yes.

Q. Where is that written report?

20 A. That written report, I think our lawyer has it.

The Court—Do you have the report?

(Mr. Josephson produces paper).

Q. This is the report?

A. Yes, sir.

The Court—Let it be marked.

30 (Said report signed by Cathcart, Carson, Conte and Johnson as trial committee to the officers and members of Local Union No. 301, dated March 12, 1930, is marked exhibit C-3).

Q. This report refers to a working agreement, that you find these people guilty of violating, a working agreement. What is that working agreement?

A. Well, I take it most of the Master painters have an agreement, signed with our local union, regarding conditions of employment and working

hours and wages. I take it that is what that refers to.

Q. Well, did Peters, Stella, Parknavy and the other man sign any working agreement with your union?

A. Not that I know of, unless they did so through being connected with the Bayer-Peters Company.

Q. Did the Bayer-Peters Company sign any working agreement with your union?

10

A. Not that I know of, I don't know.

Q. Well, you are the secretary, who would know?

A. I only took the secretary job a year ago and the business agent would tell you. The way things are at the present time, each employer will sign an agreement presented to him by our business agent, not through me and not through the secretary.

Q. Who keeps those agreements.

20

A. They are just filed.

Q. Where?

A. In the office of the local, in the filing cabinet.

Q. Who has charge of the filing cabinet?

A. The secretary has charge of the filing cabinet, but I have no agreement turned over to me that has been signed. The secretary in this union is only a part time official, he works every day—

Q. I want to know who has charge of these agreements. If the agreements are of any value, you certainly keep them and somebody must be responsible for them. Suppose you want to refer to it, where do you find it?

30

A. I think we can find it in the local room, in the cabinet there.

Q. But you think there is no such agreement with the firm of Bayer and Peters?

A. Well, there may not be, sir, not that I know of.

Q. To the best of your knowledge and belief there is not?

A. There is not.

Q. Or with the Crescent Spraying Company?

A. Not the Crescent Spraying Company.

Q. Is there a firm known as Bayer-Peters and Company?

10 A. To the best of my knowledge, there has been a firm known as the Bayer-Peters Company.

Q. What does that mean?

A. Since this case has come along, I have been told there is a Bayer decorating firm, but the firm has changed. It is now the Bayer-Peters Company, but previous to that I understood—we always referred to it as the Bayer-Peters Company. I have nothing definite to show such a firm existed. I don't know.

20 Q. Where are the rest of the minutes of this union. The last minutes written up here are March 17th, did you have a meeting on March 24th?

A. Yes.

Q. And a meeting on March 31st?

A. Yes.

Q. And a meeting a week after that?

A. Yes.

Q. Where are the minutes?

30 A. I am keeping those on a separate record until such time as I get the minute book back to make a complete record.

Q. Where has the minute book been?

A. In our lawyer's custody since sometime, I don't know what date, when the business agent came after me and asked me for the minute book and told me some action was being taken against

him and he wanted the minute book for reference. I haven't seen that minute book since.

Q. How do you keep the minutes, on a rough sheet and write them up afterwards?

A. Yes, on foolscap and write them up when I have time.

Q. Have you the foolscap sheets of the minutes of March 30th?

A. I usually destroy them.

Q. Have you the foolscap sheets that you kept 10 those minutes on?

A. I have not, sir.

Q. Now, you know that Andrew Bayer is engaged in the painting business?

A. Yes, sir.

Q. And when you refer to the Bayer-Peters Corporation, or the Bayer-Peters firm, you don't mean Andrew Bayer in his painting and contracting business?

A. I don't just understand, sir.

20

Q. Do you know what a firm is?

A. Yes.

Q. Do you know what a corporation is?

A. Yes.

Q. Do you know what individual is?

A. Yes.

Q. Then why don't you understand what I have asked you? Was Andrew Bayer in the painting and contracting business by himself?

A. I am led to believe he does at the present 30 time.

Q. Don't you know?

A. I don't know anymore than what I have heard.

Q. You deny that he pays the union scale of wages. When you deny that, do you refer to him as an individual?

A. At that time I referred to the company. These charges—

Q. I am speaking about the affidavit filed in this cause. "I admit that the complainant is engaged in the painting and contracting business." That means Bayer as an individual, doesn't it?

A. He is engaged in the painting and contracting business as a part of the Bayer-Peters Company.

10 Q. Where in this affidavit you say, "I admit that the complainant is engaged in the painting and contracting business," that means the complainant as an individual, doesn't it? (After a pause). Well, does it, or doesn't it?

A. I didn't take it that way, as an individual.

Q. What do you mean?

A. He is engaged in the painting and contracting business—

20 Q. When you say, "I admit that the complainant is engaged in the painting and contracting business," do you mean he is engaged in it individually or as a firm?

A. I mean as a partner in the firm.

Q. You don't say so, why didn't you say so, if that is what you meant?

A. I don't know how these things should be worded.

Q. You don't know the difference between an individual and a partner?

30 A. Yes, I do.

Q. Then, why do you say you didn't know? You say that Bayer, the individual, does not pay the union scale of wages, how do you know that?

A. From the evidence that was submitted at that trial.

Q. What personal knowledge have you of it?

A. I have the notes of the trial committee.

Q. You have the knowledge of what somebody told you?

A. That's all.

Q. What personal knowledge have you?

A. That's all.

Q. It would seem from your affidavit that you have personal knowledge?

A. I have no proof.

Q. You have no personal knowledge, except what somebody else has told you? 10

A. Just what I have been told.

Q. You say that Bayer individually, has not obeyed, and does not now obey, the rules of the painter's union. Have you any personal knowledge about that?

A. None, except from the trial committee.

Q. What somebody else told you?

A. What was submitted as evidence at the trial, that's the only knowledge.

Q. Were you present at the trial? 20

A. Yes, sir.

Q. What evidence was submitted there?

A. Various facts or evidence.

Q. What evidence?

A. There was evidence there that he figured work for spray painting. It was submitted there that men who were associated with him were using—

Q. You mean that is what somebody said at the trial? 30

A. That is the only evidence I have.

Q. Is that what you mean?

A. Yes.

Q. What somebody said at the trial?

A. Yes, sir.

Q. You have no personal knowledge of it at all?

A. No.

10 Q. Now, this affidavit of the president, Mr. Kennedy, says the defendant, Andrew Bayer, individually, has, "On numerous occasions failed to pay the scale of wages provided by the rules of the organization." In your affidavit you say you have read this affidavit and know of your own knowledge all the facts stated therein are true. What knowledge have you, of your own knowledge, that Andrew Bayer as an individual, failed to pay the scale of wages provided by the rules of the association?

A. From the evidence submitted at that trial.

Q. That is not your own knowledge, you say you know of your own knowledge that these facts were true. How do you know it of your own knowledge?

A. That's the only knowledge I have.

20 Q. Only what somebody else told you?

A. What was said at the trial.

Q. Well, that is what somebody else told you?

A. What was submitted as evidence.

Q. By somebody else's statement?

A. Yes.

Q. So you have no knowledge of your own that that fact was true?

A. No, sir, I have never seen any pay envelopes or pay checks.

30 Q. Mr. Kennedy's affidavit says that he has employed non-union men on numerous occasions, you say you know of your own knowledge that that is true. What knowledge have you that that is true?

A. Only the same way.

Q. Only what somebody told you?

A. Only in the trial committee.

Q. Only what somebody told you?

A. What was taken as evidence.

Q. Was there anything taken as evidence other than something somebody else said?

A. Well, that's all I know.

Q. You know by knowledge submitted as evidence and there was no evidence submitted, except the statements of somebody there?

A. That's all.

Q. Why don't you say "Yes," then. Your only knowledge about this is what you have heard 10 somebody else say?

A. Yes, sir.

Q. And you don't know of your own knowledge?

A. No, sir, I don't know personally.

Q. Mr. Kennedy says that Mr. Bayer has as an individual, conducted his business in violation of the rules of the organization by using and causing to be used certain machines known as the spraying machine, or spray gun. You say in your affidavit that you know of your own knowledge 20 that that fact is true. Now, what knowledge have you that the defendant used spraying machines or spray guns?

A. Only what was submitted in the same way.

Q. Only what you heard somebody else say, have you any knowledge other than what you heard somebody else say?

A. No, that's all I have.

Q. Then you don't know of your own knowledge that that is true? 30

A. Not as I see the meaning of the word "Personal knowledge," now, no, I don't.

Q. Why was the reference to the fine on Bayer omitted from these minutes?

A. There was no fine put on Bayer, sir, that's the reason it is not in the minutes.

Q. You don't expect me to believe that?

A. Yes.

Q. After what your witness, Parknavy, says now?

A. Yes, sir.

Q. Do you think I will believe that statement now?

A. Yes, sir.

10

Q. Well, I don't, neither would any other sane man. You realize you are under oath?

A. Yes, sir.

Q. And you realize you have taken a false affidavit here?

A. In what way, sir?

Q. Because you have stated you knew these facts of your own knowledge and you now admit you don't, that the only reason why you knew was because of hearsay. I want you to tell me the truth, who told you to leave the fine out?

20

A. No one.

Q. Why did you leave it out?

A. There was no fine imposed, sir.

Mr. Moore—No questions.

RE-DIRECT EXAMINATION, by Mr. Josephson:

Q. What day did you write those minutes?

A. What day did I write them?

30

Q. Yes, do you know when you wrote those minutes?

A. No, I couldn't say.

Q. When did you first learn that there was a suit instituted, or was going to be instituted in this case?

A. The business manager told me he wanted the minutes because there had been a restraining order or something issued against him, or the local union, and there was some hearing and he wanted to have those minutes.

Q. And when he told you that, were those minutes in the book in the book written, or not written?

A. They were written.

Q. Did you know prior to the time that the business agent came to see you about the minutes that there was a suit instituted?

A. No sir.

The Court—Call Edward Kennedy.

EDWARD KENNEDY, being re-called by the court, testifies as follows:

10

By the Court:

Q. Mr. Kennedy, you say in your affidavit that you know that the complainant is engaged in the painting and contracting business?

A. Yes.

Q. That means as an individual?

A. As an individual?

20

Q. Yes?

A. As the head of the company.

Q. What do you mean?

A. The Bayer-Peters Corporation, the company.

Q. You don't say anything about any corporation in this affidavit, do you? The Bayer-Peters Company isn't bringing this suit. You read this affidavit?

30

A. Yes, sir.

Q. It says, "The complainant is engaged in the painting contracting business." The complainant is Andrew Bayer, it doesn't say anything about any corporation?

A. No.

Q. Or any firm?

A. No.

Q. It just says Andrew Bayer?

A. Yes.

Q. Didn't he engage in it?

A. What?

Q. Is he engaged in it?

A. At this time.

Q. As an individual?

A. Yes.

10 Q. And he was at the time you made that affidavit, was he not?

A. I don't know whether he was or not at that time.

20 Q. Why did you say he was engaged in the painting and contracting business as alleged in paragraph one, of the bill of complaint. Paragraph one of the bill of complaint says that Bayer has been engaged in the painting contracting business for three years, and is at the present time engaged in fulfilling various contracts in and about the City of Trenton, County of Mercer and State of New Jersey, and that he employs twelve or fifteen men. Now you say that is true, in your affidavit?

A. That is true. The Bayer-Peter Corporation—

Q. You don't say anything about the Bayer-Peters Corporation here, do you?

A. No.

30 Q. You say that you deny that he, that is the Complainant Bayer, pays union scale wages. What do you know about that?

A. Only the saying of Parknavy.

Q. You have no personal knowledge?

A. Only what he says.

Q. You have no personal knowledge of it?

A. No.

Q. You say he does not conduct a union shop? What knowledge have you about that?

A. Because he has a spray and is implicated in a spray.

Q. He, Bayer, in his painting business, uses a spray?

A. He is interested in the spray.

Q. How?

A. He is a stockholder in it.

Q. Being a stockholder in the Crescent Spray- 10  
ing and Painting Company, or whatever it is?

A. Yes.

Q. That is what you mean when you say, he Bayer, uses a sprayer in his own painting and contracting business?

A. I don't say individually.

Q. You did say so? I asked you what you meant when you said he, Bayer, doesn't conduct a union shop and you said because he uses a spray? 20

A. Because he is implicated in the spray.

Q. And what about that?

A. That is not a union shop.

Q. Which, his shop?

A. The one that has a spray in it.

Q. Is that his shop, or the Crescent Spraying Company's shop?

A. The Crescent Spray.

Q. That is not his individual business, is it?

A. No, not individual.

Q. You say, that he, Bayer, individually has 30  
employed non-union men on numerous occasions, what knowledge have you about that?

A. Only that they are not union men that handles a spray.

Q. When do you know that Bayer, individually, employed non-union men?

A. When do I know?

Q. Yes. When did he do it?

A. John Seville worked for him.

Q. For whom?

A. The Crescent Spray.

Q. You say Bayer has employed non-union men. What do you know about that?

A. I don't say in his own business. He has had Seville as a painter.

10 Q. You are speaking about Bayer individually, you say he has employed non-union men, now when did he do it?

A. Well, if he has it is this spray—

Q. I am not asking you anything about the spray business, I am talking about his individual business?

A. I can't say he did do it.

Q. You have said it?

A. I said it about the spray.

20 Q. What you say here is, that he, Bayer, has employed non-union men on numerous occasions. Now, do I understand now, that you don't know anything about Bayer individually employing non-union men?

A. I said that Bayer employs them with the spray.

Q. You are not able to get that spray out of your mind. You say that Bayer employs them with the spray?

30 A. Bayer employs them with the spray.

Q. Do you know that?

A. Only what I hear.

Q. Then you don't know anything about his employing non-union men whatever?

A. No, I don't think he has with the brush, I wouldn't say that he was.

Q. You don't know anything about his using the spray—he, Bayer, individually?

A. Using it himself.

Q. Or any of his men?

A. I don't say he does use it himself.

Q. Or any of the men he employs in his individual business, do you know anything about that?

A. No, I don't.

Q. Now, you also say in your affidavit that the complainant has continually and repeatedly violated the constitution, by-laws and working rules of the defendant organization. What do you know about that, the complainant individually, Andrew Bayer in his individual business? 10

A. In this way, with the spray.

Q. He violated them with the spray?

A. Having a spray.

Q. He, having a spray, or because he owned stock in the spray company. (After a pause) Answer me?

A. I don't know how to answer you. 20

Q. You say he, having the spray—

A. Yes, sir.

Q. Did you see him with the spray?

A. I didn't see him.

Q. What do you mean by "he"?

A. The corporation.

Q. You mean he owns stock in this corporation that has a spray?

A. Yes.

Q. Well, that's what I asked you before. That is the only thing that Andrew Bayer, individually, has done that you think is a violation of the constitution, by-laws and working rules of the defendant organization? 30

A. Yes, sir.

Q. Because he owned stock in the spraying company?

A. Yes, sir.

Q. And that is the only reason that you voted to declare him unfair?

A. Yes, sir.

Q. And that is the only reason any of the other members voted to declare him unfair?

A. That is the only reason.

Q. That is the only reason you declared him unfair?

10

A. Yes, sir.

Q. Now, why did you make all these statements when you have no such knowledge. Why did you?

A. I think it would be common knowledge in the same thing. I thought it all went along in the shop as well as the Crescent spray. I thought it would all go along in the same thing.

20

Q. When you say that you know that a man employs non-union labor, you think that is the same thing as saying he is a stockholder in a corporation?

A. Well—

Q. Is that what you mean?

A. Yes, sir.

Q. You don't think any such thing, do you?

A. I didn't get you that time.

30

Q. Then why did you say yes, you are being just as reckless on the witness stand as you were in making the affidavit. You don't think that taking an oath to testify in court is of any importance at all.

A. I was trying to ask you—

Q. You are not there to ask me anything. You are there to answer questions that are put to you and to answer them truthfully.

A. That's what I am doing, sir.

Q. Now, I ask you why you put these things

in this affidavit and why you said these things and said that Andrew Bayer, individually, did these things when you knew it was not so, when you knew it was the corporation that did these things and he was a stockholder in the corporation?

A. According to all accounts he is the head of the corporation.

Q. You know the difference between an individual and a corporation? 10

A. Yes.

Q. You know the difference between the business he carries on and the business the corporation carries on?

A. Yes.

Q. You know the difference between a contract between Andrew Bayer and a contract with the spraying company?

A. Yes.

Q. Your statements are all about Andrew Bayer, not about the company, why did you make them? 20

A. I thought it was the whole thing combined together.

CROSS-EXAMINATION, by Mr. Moore:

Q. Mr. Kennedy, if your union declares a man to be unfair, are any of your men permitted to work for him?

A. No, sir.

Q. Then why was it that all the men that were employed by Andrew Bayer, personally, did not go back to work on the 18th of March? 30

A. They would be permitted to work if he was not unfair.

Q. At the meeting on the 17th, did you tell these men not to go back to work for Mr. Bayer on the 18th?

A. No, sir.

Q. Who told them that?

A. I don't know. I placed the shop on the unfair list and I guess they didn't go back.

Q. You don't remember Mr. Stella asking you if he could go back to work and you told him no?

A. I haven't seen Mr. Stella.

Q. I mean at the union meeting on the 17th of March?

A. I didn't tell Mr. Stella.

10

The Court—Will you call Harry Warren?

Mr. Josephson—If your Honor please, I have been unable to communicate a message to him. He was in Atlantic City. I called his home and found out he was away. I think that he was in Atlantic City, but I couldn't get any message to him.

The Court—You may call Mr. McConnell.

20 ARTHUR W. McCONNELL, being re-called by the court, testifies as follows:

By the Court:

Q. You are familiar with this constitution and the by-laws?

A. Yes, sir.

Q. Show me where in either one of them, there is anything which makes it a violation thereof to own stock in a paint spraying concern.

30

A. In the constitution and the by-laws, I can't show you. There is nothing there. I can show you in the minutes.

Q. Do you mean to say there is nothing in the constitution and nothing in the by-laws which forbids a contractor to own stock in a paint spraying concern, or makes it a violation of the rules for

a member of the union to work for a contractor who owns stock in a spraying concern?

A. No, sir, our rules are rather antique.

Q. There is nothing in the constitution and nothing in the by-laws which makes it wrong in any wise for a member of this union to work for a contractor who owns stock in a paint spraying concern?

A. No, sir.

Q. There is nothing? 10

A. No.

Q. Now, you say there is something in the minute book?

A. Yes, sir.

Q. Well, this, the book which has been handed up as a minute book. Show me where it is there?

A. It would be in an older book.

Q. Dating back how far?

A. I think it dates back two years. 20

The Court—Have you such a book here Mr. Josephson?

(Mr. Josephson produces book).

Q. Is that the book you mean?

A. Yes, sir.

Q. Show it to me in there?

A. (Witness points out page).

Q. You show me page 14 of what seems to be a prior minute book, that is the minutes of August 13, 1928, and the paragraph that is marked, or pointed out to me is this: "A lengthy discussion was held on the spray machine relative to the spraying of radiators. Local Union, No. 301, again went on record as refusing to recognize the spray machine by prohibiting its use by their members or the recognition of any employer 30

using said machine or associating in any way with the use of one." That's what you mean?

A. Yes, sir.

Q. You think that means that it is a violation of your rules?

A. Yes, sir.

Q. For a member of your union to work for a man who owns stock in a spraying concern?

A. Yes, sir.

10 RE-DIRECT EXAMINATION, by Mr. Josephson:

Q. Mr. McConnell, the constitution referred to, section I, under that section, over what work in connection with painting, has your union jurisdiction?

A. The application of all paint regardless of what material might be applied, or how it might be applied.

20 Q. And in accordance with that section, what is the jurisdiction of your organization applying to men engaged in applying paints, and would it make any difference in what method it was done. What method was employed in the application, or moving of the paints?

A. No, sir.

Q. Under that jurisdiction, you say your organization has authority?

The Court—Strike that out.

30 RE-CROSS EXAMINATION, by Mr. Moore:

Q. In your interpretation of the rules, does unfair mean the same as non-union?

A. Yes, sir.

Q. So that under section 274, of the constitution, any member going to work on a job, declared non-union, shall, after trial and conviction, be fined as the district

council or local union may decide, so when a man by the name of Mr. Bayer, was declared unfair on the night of March 17th, that precluded all members of your union from working for him?

A. Yes.

Q. Who made the announcement that he was unfair?

A. The president gave a decision.

Q. You had about thirty-five or forty men at your meeting?

A. I wouldn't be sure.

10

Q. Out of a membership of two hundred?

A. No, a hundred and ninety some.

Q. What method does your union use in notifying absent members of the action taken in connection with making a contractor unfair?

A. No action.

Q. How would your men know it?

A. They would be personally notified by me if they were to be on the jobs—were not to be.

Q. So, if Bayer's men had gone to work on the 18th, you would have notified them that they stay away? 20

A. Yes.

Q. Still you don't recollect anybody notifying them to that effect on the night of the 18th or 17th?

A. I do not.

The Court—Is there anything else from counsel?

Mr. Josephson—No, sir.

Mr. Moore—I have nothing.

30

77/615.

## IN CHANCERY OF NEW JERSEY

Between  
 ANDREW BAYER,  
*Complainant,*  
 and  
 10 Brotherhood of Painters, Dec- } *Conclusions.*  
 orators and Paperhangers of }  
 America, Local 301, its prin- }  
 cipals, agents, officers and }  
 servants, and ARTHUR W. MC- }  
 CONNELL, }  
*Defendants.* }

20

## ON BILL FOR INJUNCTION

APPLICATION FOR PRELIMINARY INJUNCTION

(Filed April 17, 1930)

BUCHANAN, V. C.

30 Complainant is a painting contractor, employing union labor, and at present engaged in performing a number of contracts including two for the State of New Jersey. He is also a stockholder in a corporation which is engaged in the business of painting by means of a spray instead of by hand brush work. Spray painting is objectionable to, and against the rules of the defendant painters' union. Complainant has not used the spray in his business, nor have any of his workmen (who are all members of the union); defendants do not allege or claim the contrary.

The defendant union, however, at the instigation of its president and its walking delegate, in their antagonism to spray painting, on learning that complainant was a stockholder in the Crescent Spray Painting Company, adopted a resolution that complainant be placed on the "unfair list," as being unfair to union labor, and imposed a fine of \$200.00 upon complainant and fines of \$100.00 and \$75.00 upon several of his union employees, because they worked for him, notwithstanding, as has already been said, complainant in his business employed only union men, at union wages and under union rules,—and told complainant's workmen that they must not work for complainant. 10

As a result complainant's workmen were afraid to work for complainant, and stopped work, and complainant could get no other union men to work for him; and could not employ non-union men, for if he had attempted so to do, the men in the other building trades working on the same buildings (all union men) would have refused to do further work on the building,—pursuant to an agreement among the several building trade unions. 20

All this is clearly established by the affidavits and the cross examination of the affiants on both sides which took place in open court. Indeed the only material thing which was denied by the defendants was that the president of the union or the walking delegate, McConnell, had told complainant's workmen that they must not work for complainant, and that they had imposed any fine on complainant. Notwithstanding these denials on the witness stand, by these officers of the union, there can be no doubt in the mind of the court or of anyone who saw and heard these men on the stand, that they did do what they said they did not do,—especially when their own witnesses contradicted them. 30

It is obvious, of course, that the imposition of the "fine" of \$200 on the complainant,—who was not a member

of their union, and over whom they had no jurisdiction nor color of right to impose a fine,—and the threat that they would not allow him to proceed with his work until he paid the fine, is a species of blackmail, and may well be an indictable offense. Hence their denials, in the face of written evidence and of the testimony of their own witnesses.

It is argued on behalf of defendants that complainant is not entitled to any injunction, because they have the  
10 right to decline to work for complainant for any reason or for no reason at all. That is true—or nearly so. Any man may decline to work for another, without reason and without cause,—and is subject to no legal liability, except for breach of contract, if he violated such a contract.

But this argument entirely misconceives what the defendants have done. They have not simply, individually, or even collectively, declined to work for complainant; they have collectively conspired and by threats and intimidation (of being fined and disciplined by the union)  
20 kept others who were willing and desirous of working for complainant, from so doing. Admittedly, a union member who works for an employer who has been declared “unfair,” renders himself subject to fine or other punishment by the union. It would appear also that the defendants, collectively, as well as individually, would have the right to decline to work for complainant, and to persuade or seek to persuade, by peaceable means, and by lawful means, any other person or persons from declining to be employed by complainant. It seems logical  
30 that if employers may seek to persuade persons to enter their employ, workmen may seek to persuade them not to enter such employ. But workmen have no right to attempt to get an employee to break his contract of employment or do any other unlawful thing. Neither have they any right to attempt to prevent, by means that are

not lawful, a workman from entering into, or remaining in, the employ of an employer. So also defendants would have the right, by lawful means, to seek to get complainant to abstain from being a stockholder in a paint spraying company,—but not by unlawful means.

No one, be he workman or employer, has a right to do a thing which is not lawful, nor to do a lawful thing in a way or by means that is unlawful.

The means used by defendants, in the present instance, were unlawful.

Defendants on the cross-examination admitted that the only reason for their declaring complainant unfair and forbidding (expressly or impliedly) union men to work for him, was that he was a stockholder in the paint spraying company; and that the only reason for their fining his union employees was that they had worked for an employer who owned stock in the paint spraying company.

But it was not unlawful, nor against the constitution or by-laws or duly adopted rules of the union for an employer to own a stock in a paint spraying company, nor for union members to work for an employer who owned such stock. The constitution and by-laws were produced, and defendants admitted they contained no such provision. The only color of justification attempted to be produced was a paragraph in the minutes of a regular meeting of the local union, under date of August 13, 1928, that

“a lengthy discussion was held on the spray machine—Local Union 301 again went on record as refusing to recognize the spray machine by prohibiting its use by their members, or the recognition of any employer using said machine or associated in any way with the use of one.”

Assuming that the meaning of this is that union members are not to work for a man who owns stock in a paint spraying company,—and assuming that such a rule would be legal if properly adopted,—there is no evidence whatever that such a rule ever was legally adopted. The minute in question is a mere record of an expression of opinion by those present at the meeting,—or perhaps only a bare majority of them. It does not purport to be an adoption of an amendment to the by-laws or working rules of the union. It is not such in form; and if it were

10 clearly did not become so in fact,—under the evidence.

A member of a union, by joining, consents to such curtailment of his personal rights and privileges as provided by the constitution, by-laws and rules then in force or which may thereafter be duly adopted in conformity with the duly established regulations for such adoption or amendment. But any attempt, by the union or other member, to curtail his rights and privileges in any other way than in accordance with the union "law" is in nowise

20 binding on the member, and if the attempt be made by unlawful means, such as threats or fines or expulsion, such attempt is a violation of the law of this State.

As I have already said, there is no rule in the constitution and rules of the national union, nor in the printed by-laws and working rules of the local, prohibiting a member from working for an employer who holds stock in a spray paint company. The nearest thing to it is Section 154, which prohibits members of *sign and pictorial painters'* unions from *using the spray*. The rules may be amended by the national body (Section 78);

30 but there is no evidence of any such amendment.

It would seem that a rule of the kind in question, may be adopted or amended by the local union,—Section 151, 156, 157. But if so, every member in good standing must be officially notified that such amendment will be considered at the given meeting; and if adopted, must

be submitted to the district council and the General Executive Board of the national body for approval, "before being printed or enforced." Sections 157, 156.

There is not the slightest evidence or contention that any such notice was given to the members, or any such approval was had.

Moreover, under Sections 258 and 259, a strike cannot be called except at a *special* meeting, after two weeks' notice to all members, and receiving sanction by the National General Executive Board. The present action of the defendants was not taken, (as the evidence shows) at a special meeting,—nor is there any evidence or claim that the requisite notice was given to the members, or the requisite sanction obtained. The action was, of course, a strike. It was a calling off of union members from employment by complainant, and a refusal (under the union rules,—Section 274) to permit union members to accept employment under complainant. 10

It is evident, therefore, that the conduct of defendants was coercion and unlawful, and that complainant is, therefore, entitled to the *pendente lite* restraint prayed for. 20

The public interest, in the completion of the public buildings, is an added reason, in the present instance, for the restraint.

## IN CHANCERY OF NEW JERSEY

Between  
 ANDREW BAYER,  
*Complainant,*  
 and  
 Brotherhood of Painters, Dec-  
 orators and Paperhangers of  
 10 America, Local 301, its prin-  
 cipals, agents, officers and ser-  
 vants, and ARTHUR W. MC-  
 CONNELL,  
*Defendants.* } On Bill, etc.

## ORDER OF RESTRAINT

20

(Filed May 12, 1930)

This matter being opened to the court by Hervey S. Moore, Solicitor of the complainant, Andrew Bayer, in the presence of Josephson & Josephson, Solicitors of defendant, and the court having considered the bill and affidavits filed herein, and the answer and answering affidavits filed, and the evidence and testimony taken in open court, and having heard and considered the argument of counsel and being satisfied that the complainant is  
 30 entitled to an order of restraint *pendenti liti* as hereafter provided:

And it appearing that the order to show cause made in this matter has been duly served in the manner therein directed:

It is on this 5th day of May, 1930, Ordered, that the defendants, its principals, agents, officers and servants, and the defendant, A. W. McConnell, and his agents

and servants be, and they are each and everyone of them, hereby enjoined and commanded during the pending of this suit, or until the further order of this court, to desist and refrain from placing or continuing complainant on the unfair list of defendant union; and from designating or continuing to designate complainant in any wise as unfair to organized labor, and from proceeding in any way to attempt to collect the fine of \$200, imposed upon complainant or the fines imposed upon complainant's workmen; and from threatening or doing anything whatsoever unlawful to prevent or keep union men from working for complainant, and from injuring the business of complainant in any manner, shape or form by any unlawful acts or conduct; and from suggesting, permitting, encouraging or participating in any manner in sympathetic strikes against complainant on account of, or because of any matter or thing heretofore set up in this cause by said defendant, in justification of their acts in that behalf complained of herein by said complainant. 10

It is further Ordered that defendants, Brotherhood, 20 and A. W. McConnell, pay to the complainant, or his solicitor, the complainant's costs of these proceedings to be taxed within ten days after service upon said defendants of true but uncertified copies of this order and of said taxed costs; and that there be included in said taxed costs the sum of \$300, hereby allowed and adjudged as a reasonable sum by way of counsel fee; \$200 of which counsel fee shall be paid by said defendant, Brotherhood, and \$100 of which fee shall be paid by said defendant, A. W. McConnell, and that in default of such payment, 30 execution issue therefore, according to the practice of this court.

Respectfully advised,  
MALCOM G. BUCHANAN, V. C.

E. R. WALKER,  
Chancellor

## IN CHANCERY OF NEW JERSEY

	Between	}	On Bill, etc.
	ANDREW BAYER,		
	<i>Complainant,</i>		
	<i>and</i>		
10	Brotherhood of Painters, Dec-	}	
	orators and Paperhangers of		
	America, Local 301, its prin-		
	cipals, agents, officers and ser-		
	vants, and ARTHUR W. MC-	}	
	CONNELL,		
	<i>Defendants.</i>		

## NOTICE OF APPEAL

(Filed May 29, 1930)

20 The defendants, Brotherhood of Painters, Decorators and Paperhangers of America, Local 301, its principals, agents, officers and servants, and Arthur W. McConnell, hereby appeal from the interlocutory decree made by the Chancellor in the above mentioned cause on May 5th, 1930, on the advice of Vice-Chancellor Malcolm G. Buchanan, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in All Causes.

30 Dated: May 28, 1930.

JOSEPHSON & JOSEPHSON,  
*Solicitors for and of Counsel  
with the Defendants.*

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

LOUIS JOSEPHSON,  
*Of Counsel with Defendants.*

NEW JERSEY COURT OF ERRORS AND APPEALS

Between ANDREW BAYER, <i>Complainant-Appellee,</i>  vs. Brotherhood of Painters, Dec- orators and Paperhangers of America, Local 301, its prin- cipals, agents, officers and ser- vants, and ARTHUR W. MC- CONNELL, <i>Defendants-Appellants.</i>	}	On Appeal from the Court of Chancery.	10
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PETITION OF APPEAL

(Filed June 17, 1930)

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To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of Brotherhood of Painters, Decorators and Paperhangers of America, Local 301, its principals, agents, officers and servants, and Arthur W. McConnell, the appellants in the above entitled cause, respectfully show that:

1. Petitioners find themselves aggrieved by an inter- 30  
 locutory order made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date May 5, 1930, in a certain cause in said Court of Chancery, wherein the said Andrew Bayer was complainant, and Brotherhood of Painters, Decorators and Paperhangers of America, Local 301, its principals, agents, officers and servants, and Arthur

W. McConnell, were defendants, in this respect to wit, that the said order adjudges that the appellants are enjoined and commanded to desist and refrain from placing, or continuing, complainant on the unfair list of the appellant union, and from designating complainant as unfair to organized labor, from proceeding to collect certain fines alleged to have been imposed upon complainant, and the complainant's workmen; and from threatening or doing anything whatsoever unlawful to prevent or  
10 keep union men from working for complainant, and from injuring the business of complainant in any manner, shape or form by any unlawful acts or conduct, and from suggesting, permitting, encouraging, or participating in any manner in sympathetic strikes against complainant, and the appellants are ordered to pay to the appellee, Andrew Bayer, a counsel fee of Three Hundred Dollars (\$300.), with costs to be taxed.

2. Petitioners appeal from the order of the Chancellor which decrees as aforesaid, upon the ground that the  
20 same is erroneous in that:

(a) On the hearing of the application for a preliminary injunction, or order to show cause, the Court allowed the introduction of evidence not contained in the bill, or in the affidavits annexed thereto, and also allowed the examination of witnesses who were not affiants in the proceedings, contrary to law and rules of the Court of Chancery.

(b) The restraint imposed by the order aforesaid in which the appellants are prohibited from placing or continuing complainant on the unfair list of the appellant  
30 union, is erroneous in that the appellants have the lawful right to place or keep complainant on the unfair list of said union.

(c) The restraint imposed by the order aforesaid in which the appellants are prohibited from designating, or continuing to designate the complainant as being unfair to organized labor, is erroneous in that the appellants

have the lawful right to designate and to continue to designate complainant as unfair to organized labor.

(d) The restraint imposed by the order aforesaid in which the appellants are prohibited from suggesting, permitting, encouraging or participating in any manner in sympathetic strikes against complainant is erroneous in that appellants have the lawful right to suggest, permit, encourage and participate in sympathetic strikes against complainant.

(e) The restraint imposed by the order aforesaid, in which the appellants are prohibited from proceeding in any way to attempt to collect fines imposed upon their members is erroneous in that the appellants have the lawful right to impose fines upon their members in pursuance to the constitution and by-laws of the appellant union, and that such members were not parties to the proceedings as complainants, and the Court, therefore, did not have jurisdiction to make any order for and in behalf of such members. 10

(f) The facts established by the evidence does not show that the appellants committed any unlawful acts, subject to be restrained by order of the Court of Chancery in accordance with the law of the State of New Jersey. 20

Petitioners, therefore, pray that the said order of the Chancellor may be 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.

JOSEPHSON & JOSEPHSON,  
*Solicitors for and of Counsel  
with Defendants-Appellants.* 30

New Jersey State Library

## NEW JERSEY

# Court of Errors and Appeals

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Between

ANDREW BAYER,  
*Complainant-Respondent,*

*and*

BROTHERHOOD OF PAINTERS,  
DECORATORS AND PAPER-  
HANGERS OF AMERICA,  
Local 301, its principals,  
agents, officers and serv-  
ants, and ARTHUR W.  
McCONNELL,  
*Defendants-Appellants.*

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### BRIEF FOR COMPLAINANT- RESPONDENT

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The complainant is a painting contractor.

He operates a brush painting concern, strictly union in its character, employing union men, under the union wage and with the union system of working hours.

He is a stockholder in a paint spraying machine company and because the defendants are opposed to this character of business, will not permit union men to work at it.

Because complainant was a stockholder in the paint spraying machine company, and for this reason only (see top of page 46 of the State of the Case) defendants called strikes on three of complainant's jobs, two of which were state contracts, fined him \$200.00, fined the union men working on the said jobs in sums ranging from \$75.00 to \$100.00 each, and placed complainant on the "unfair list." These jobs were brush work and not spray work.

Defendants took these actions against complainant and his union men without affording them a hearing (page 34—State of the Case).

These facts were established to the satisfaction of Vice-Chancellor Buchanan who sat below.

These defendants have collectively conspired and by threats and intimidation of being fined and disciplined by the union kept others who were willing and desirous of working for complainant from so doing (page 40—State of the Case). This is unlawful.

Defendants have no right to prevent, by means that are not lawful, a workman from entering into, or remaining in, the employ of an employer.

No one, be he workman or employer, has a right to do a thing which is not lawful, nor to do a lawful thing in a way or by means that is unlawful. The means used by defendants here were entirely unlawful.

It is submitted that the order and decree appealed from should be affirmed, with costs to the complainant-respondent.

Dated: October 10, 1930.

HERVEY STUDDIFORD MOORE,  
*Solicitor and Counsel for Complainant*  
504-5-6 Broad Street Bank Bldg.,  
Trenton, New Jersey.

# New Jersey Court of Errors and Appeals

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Between  
ANDREW BAYER,  
*Complainant-Respondent,*  
*and*  
Brotherhood of Painters, Dec-  
orators and Paperhangers of  
America, Local 301, its prin-  
cipals, agents, officers and ser-  
vants, and ARTHUR W. MC-  
CONNELL,  
*Defendants-Appellants.*

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## BRIEF FOR DEFENDANTS-APPELLANTS

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### STATEMENT.

This is an appeal from an order and decree made by Vice-Chancellor Buchanan on the 5th day of May, 1930, which in effect enjoins the defendants from calling a strike or continuing a strike against complainant for the purpose of enforcing a rule of the defendant organization relating to the use and operation of a spray painting machine.

### THE FACTS.

The facts in the case are substantially as follows:  
The defendant, Brotherhood of Painters, Decorators

and Paperhangers of America, is a national labor union composed of workers in the various branches of the painting and paperhanging industry, about one hundred and fifty thousand (150,000) in number, who are represented by approximately one thousand five hundred (1,500) local unions in all parts of the United States and Canada. It is affiliated with the American Federation of Labor.

Local No. 301 is one of such local unions of the Brotherhood, and it represents the organized painters and decorators of the City of Trenton and vicinity.

The defendant, Arthur W. McConnell, is the business agent of Local No. 301, Trenton.

The Brotherhood of Painters, Decorators and Paperhangers of America, as such, does not fix the wage scale or working conditions of its members, nor does it enter into agreements with employers or associations of employers. These functions are left exclusively to the local unions. The functions of the Brotherhood are confined to matters of general and common interest to all members of the organization. For that purpose the Brotherhood has adopted a constitution consisting of rules of a general character, applicable to all its members and subordinate organizations. Any special rule or regulation applicable to any given locality, or any rule or regulation not in conflict with the national constitution can be adopted by any local union affiliated with the national body.

On or about August 13th, 1928, the defendant union adopted a rule and regulation to the effect that the use by its members of the paint spraying machine is prohibited, and that they will not recognize or deal with any employer who either uses, or is any way associated with the use of such spray painting machine. Such rule and regulation was duly entered into the minutes of the defendant union on that date. (State of Case, page 18, line 15, and page 99, line 31.)

At the time the controversy between the parties hereto arose, the complainant was a boss painter, employing a

various number of men in the painting business he owned and operated, which men painted by the use of the brush, and who were members of the defendant union. At the same time the complainant organized a corporation, consisting of himself and two others, under the name of the Crescent Spray Painting Company (State of Case, page 31, lines 1 and 19), the business of which consisted of the application of paint by means of the spraying machine. That business was operated by the complainant, and was conducted in the same office as that of the painting business operated by the complainant. (State of the Case, page 32, line 10; page 37, line 32, and page 73, lines 25 and 28.) After an investigation was made by the defendant, Arthur W. McConnell, the business agent of the defendant union, the matter was reported to the organization and the members passed a motion instructing the said Arthur W. McConnell to notify the complainant that he was violating the rule relating to the use of the spraying machine, and that he should refrain from its use. That was done, and after the repeated refusal of the complainant to comply with their request in regard to the use of such machine, the defendant union, at a meeting held on March 17, 1930, passed a resolution declaring the complainant unfair to the local organization, and voted to abstain and refrain from working for the complainant until such time as he complied with the rule and regulation above referred to, regarding the use of the spray painting machine (State of Case, page 58, line 22), which amounted to, in effect, of the calling of a strike against the complainant. It was and is contended by the defendants that the Crescent Spray Painting Company has no independent existence of its own, but is merely a disguise for Andrew Bayer, created for the sole purpose of avoiding the application of the rule of the local union relating to the use by an employer of the spray painting machine. (State of Case, page 73, lines 25 and 28.)

It is upon the basis of this State of facts that the decree of Vice-Chancellor Buchanan was rendered.

The decision of the learned Vice-Chancellor is predicated on the finding that the strike was unlawful in that it was not unlawful, nor against the constitution, for an employer to own stock in a paint spraying company. That there was no evidence that the rule of the local union relating to the use of the spraying machine was ever legally adopted, and that the strike was not called in accordance with the rules and procedure provided by the constitution of the National Union. (State of Case, page 105, line 19, and page 106, line 5.)

The appellants contend that the rule adopted by the union is lawful; that no particular method of adopting rules or regulations is required by law; that a labor organization can adopt any rule or regulation it sees fit to adopt, and that it can use any method of procedure it desires, or no procedure whatever, if it sees fit to do so, and that those matters are not subject to be questioned by the employer, nor passed upon by the courts, as long as no law of the State is violated.

The appellants further contend that they have the legal right to place the complainant on the unfair list of the union. That they have the legal right to designate the complainant as being unfair to organized labor. That they have the legal right to suggest and encourage sympathetic strikes against complainant. That they have the legal right to impose fines upon their members, and that such acts cannot be questioned by anyone else except the members so fined.

#### **POINT I.**

**Testimony allowed on preliminary hearing was unlawful.**

On the preliminary hearing, held in pursuance to Rule No. 201 and Rule No. 204 of the Court of Chancery,

the learned Vice-Chancellor allowed the introduction of evidence not annexed to the bill, and allowed the testimony of one who was not an affiant in the proceedings previous to such hearing.

Chancery Rule No. 201, page 71, provides as follows:

When an application is made for injunctive relief and an order is made requiring the defendant or defendants to show cause, on a particular day, why injunction should not be granted, it shall be the duty of the complainant to serve such order on the defendants, and a copy of the bill and affidavits annexed on such defendant or defendants as the court shall direct, at least five days previous to the day fixed for the hearing, unless the order shall otherwise direct; such order shall specify the manner of service; on the hearing of such motion the defendant may read his answer to the bill, and also affidavits, in reply to the case made by the bill and the accompanying affidavits, or defendant may read such affidavits only; but no other affidavits than those accompanying the bill or presented by the defendant shall be read on either side unless the court on application at or before the time appointed for the hearing, shall otherwise direct; and when further affidavits are taken they shall be taken either *ex parte* or on such notice to the opposite party as may be ordered.

Chancery Rule No. 204, page 72, provides as follows:

The Chancellor or Vice-Chancellor before whom an order shall come for hearing under Rule 201, or before whom a motion to dissolve an injunction shall be made under Rules 202 and 203, may further order that any affiant whose affidavit is annexed to or accompanying the bill or presented on the part of defendant, shall appear and submit to cross-examination in respect to matter contained in his affidavit, under such direction as to notice and time and officer before whom such cross-examination

shall be taken, as may be prescribed in the order; and if satisfied that the affiant has, after reasonable notice, neglected or refused to submit to cross-examination as ordered, the Chancellor or Vice-Chancellor may decline to consider such affidavit.

Under both of these rules, the testimony of Gean P. Peters (State of Case, page 43, line 25) and the introduction of Exhibits C-1 (State of Case, page 35, line 8, and C-2, State of Case, page 37, line 14), were unlawful and erroneous. Also that the introduction in evidence, and the use by the Court of Exhibits Court 1, and Court 2 (State of Case, page 80, lines 34 and 35) were unlawful and erroneous.

## POINT II.

**Restraint imposed upon defendants in favor of those not parties to action is erroneous.**

The order of restraint allowed by the learned Vice-Chancellor provides that the defendants are enjoined from proceeding in any way to attempt to collect fines imposed upon certain members of the defendant organization. (State of Case, page 109, line 10.) The members so fined were not parties to the action, either as complainants, or as defendants. It is a fundamental rule of law so well established, by the law of this State, as well as the law of every State, that it has seldom, if ever, been questioned. Namely, that a court cannot render any judgment or decree for or against any person or persons, unless such person or persons are parties to the proceedings, either as complainants or defendants. In the case of *Schalk v. Schmidt*, 14 Eq., page 268, it was held that "It is a well settled general rule that the court has no right to grant an injunction against a person who is not a party to the suit." The court in that opinion quotes Lord Eldon as saying in the case of *Iveson v. Harris*,

"I have no conception that it is competent to this court to hold a man bound by an injunction who is not a party in the cause for the purpose of the cause." This language of Lord Eldon was adopted and approved by Chancellor Kent in *Fellows v. Fellows*, 4 Johns Ch. R. 25. "Such is undoubtedly the well settled general rule." Drawing on inj. 346.

"It is an obvious dictate of reason and justice that the court will not determine the rights of a party who is not before the court."

*Inchiquin v. French*, Ambler 34.

### POINT III.

Courts do not have authority to supervise the conduct and proceedings of involuntary associations except for the purpose of preventing violations of law.

One of the main theories upon which the opinion of the learned Vice-Chancellor is based is that the Court can supervise and regulate the business methods and procedure followed by the defendant organization in the carrying on of its affairs. In the Court's conclusions (State of the Case, page 106, line 1), the Vice-Chancellor says: "Assuming that the meaning of this is that union members are not to work for a man who owns stock in a paint spraying company, and assuming that such a rule would be legal if properly adopted, there is no evidence whatever that such a rule ever was legally adopted." Again the Court says (State of Case, page 106, line 32): "It would seem that a rule of the kind in question may be adopted or amended by the local union. But, if so, every member in good standing must be officially notified that such an amendment will be considered at the given meeting." Further on in the conclusions the Court says (State of Case, page 107, line 7): "Moreover, under

Sections 258 and 259, a strike cannot be called except at a special meeting after two weeks' notice to all members, etc." All of which establishes that in the opinion of the Court, the business methods and procedure followed by the defendant organization is subject to the scrutiny and supervision of the Court.

The appellants contend that the principle and theory thus advanced is not the law of the State of New Jersey.

In the case of *Mayer v. Journeymen Stonecutters Association*, 47 Eq. 519, it was held: "That this Court has no jurisdiction to compel the admission of a person, not elected according to its rules and by-laws, to membership in a voluntary association." "Courts do not exercise visitatorial powers over voluntary associations or their proceedings, except to prevent the violation of some law of the state, or to protect or enforce some right already acquired."

In the opinion of Vice-Chancellor Green in the above case, page 524, it was said: "These organizations are formed for purposes mutually agreed upon; their right to make by-laws and rules for the admission of members and the transactions of business is unquestionable; they may require such qualifications for membership and such formalities of election as they choose."

"Neither is it clear upon what ground of jurisdiction the Court can inquire into the action of the defendant association in the passage of the resolution complained of."

Again in page 530 of the above case, the Court says:

"So that in the whole history of this long continued struggle, which has been going on between these combinations on the one hand, and the employers on the other, there is but one reported and unreversed case where a Court of Equity has, by its writ of injunction, attempted to control the action of these associations, and then only to prevent a continuing trespass upon the lands of the complainant."

In view of the generally accepted fundamental principle of law followed in the above case that voluntary associations can transact its affairs in any manner it sees fit, as long as no law of the state is violated, it was immaterial what method of procedure was used, or if any method at all was used. The acts complained of, not being violations of the law of this State, it was not a matter for the Court to decide if such acts were done according to any specific rules of procedure, or parliamentary law.

#### POINT IV.

**Defendants have lawful right to fine members in pursuance to Constitution and By-laws.**

Assuming that the Court below could impose a restraint in favor of persons who were not parties to the action, the order of restraint allowed by the learned Vice-Chancellor, which provides that the defendants are enjoined in anyway to attempt to collect fines imposed upon certain members of the organization (State of Case, page 109, line 10) is erroneous in that defendants have the lawful right to impose fines upon their members for violations of the rules and regulations of such organization.

The Vice-Chancellor in his conclusions (State of Case, page 104, line 19) says that "they have collectively conspired and by threats and intimidation (of being fined and disciplined by the union)". Again, on page 106, line 20, State of the Case, in the same conclusions, the Vice-Chancellor says that "if the attempt be made by unlawful means, such as threats or fines or expulsion, such attempt is a violation of the law of this State." Which clearly indicates that in the opinion of the Court the imposition of fines or penalties, such as expulsion from the organization, is unlawful.

The appellants contend that such actions are not un-

lawful, and by the great weight of authority of the decisions of the Courts of the various states, including our own State, the imposition of fines and penalties upon the members of a voluntary association, such as a labor union, is lawful.

Thus in *Jetton Dekle Lumber Co. v. Mather*, 53 Florida 969, 43 South 590, a decision of the Florida Supreme Court, it was held that an employer of labor is not entitled to an injunction to prevent officers and members of a union acting in furtherance of a strike from fining or expelling, or from threatening to fine or expel members, in order to prevent them from working for such employer; that Courts will not interfere with labor unions in the peaceable enforcement of their rules.

In *Longshore Printing and Publishing Co. v. Howell*, 26 Ore. 527, 38 Pac. 547, 46 Am. St. Rep. 640, 28 L. R. A. 464, it was held that the ordering by officers of a union of its members to cease working for one against whom a strike has been called, under penalty of being dealt with in accordance with the rules and by-laws of the union, which provided for suspension or expulsion, was not in violation of a statute making it a misdemeanor for a person by threats, force or intimidation to prevent an employee from continuing or performing his work, and the employer was not entitled to an injunction against such acts.

In our own State, in the case of *Mayer v. Journeymen's Stonecutters Ass'n.*, 47 N. J. Eq. 519, it was held that an injunction will not be granted an association of employers to prevent a union from enforcing one of its rules whereby members who work for employer with whom the union has a trade dispute are denounced as "Scabs," and expelled.

In *Wabash R. R. Co. v. Hannahow*, 121 Fed. 563, the Court refused to grant an injunction to prohibit offi-

cers of a union from calling a strike, and "compelling" its members in complainant's employ to quit the service. In this case it was urged that the acts of the officers were subversive alike of the fundamental rights of the employer to manage his own business, and of the employees to bestow their labor as they will. In answering this contention, the Court (by Judge Adams) said: "This kind of argument enters deeply into the domain of political science, and might well be addressed to a body of constructive statesmen or men originally contemplating a labor organization. It is an argument that would be pertinent against the organization of society into government. The will of the individual must consent to yield to the will of the majority, or no organization, either of society into government, capital into combination, or labor into coalition, can ever be effected. The individual must yield in order that the many may receive a greater benefit. The right of labor to organize for lawful purposes and by organic agreement to subject the individual members to rules, regulations and conduct prescribed by the majority is no longer an open question in the jurisprudence of this country."

In *Martin, The Modern Law of Labor Union*, Sec. 148 et seq., the law is summarized as follows:

"Fines and penalties, including expulsion, are not improper means for an organization to use to secure obedience to its rules and orders. The reasons advanced in support of the doctrine is that since the creation of the organization is lawful (e. g., a labor union), and since as between itself and its members it has a right to pass rules and impose fines upon its members for the purpose of securing obedience to those rules, and since, further, it has a right to strike, then it must follow that it should be permitted to use the right to fine and expel in order to make effective the right to strike. In other words, that the right to impose such penalties is incidental to the carrying out of the purposes of the organization; in fact,

that penalties are the very bone and sinew of the organization.”

The above doctrine has been held to be the law in the following cases: *Jetton-Deble Lumber Co. v. Mather*, 53 Florida 969, 43 South 590; *Wabash R. R. Co. v. Hannahan*, 121 Fed. 563 at p. 568 and 571; *Bohn Mfg. Co. v. Hollis*, 54 Minn. 223, 40 Am. St. Rep. 319, 21 L. R. A. 337, 55 N. W. 1119; *Rhodes Bros. Co. v. Musicians Protective Union*, 37 R. I. 281, 92 Atlantic 641.

It is thus apparent from a review of the decisions and from accepted legal principles that the order of the Court below in the granting of the restraint prohibiting the defendants from proceeding in any way to attempt to collect the fines imposed upon their members is erroneous.

#### POINT V.

Every presumption is in favor of the lawfulness of a strike of workers; the burden of proving a strike unlawful rests upon those who challenge it.

The entire basis of the learned Vice-Chancellor's opinion seemed to be that the defendants did not establish that they had a lawful right to do the acts restrained, such as placing the complainant on its unfair list, designating complainant as unfair to organized labor, and from refusing to work for complainant, and from agreeing and deciding among themselves not to work for complainant, and from attempting to persuade and induce others to do likewise, which in effect amounted to the calling of a strike by the defendants against the complainant (State of Case, page 105, line 19, and page 106, line 23.)

The appellants contend that the principle and theory

followed in the case at bar is not the accepted law on the subject, either in the State of New Jersey or elsewhere. The trend of modern judicial opinion is that workingmen are not in a condition of involuntary servitude. Their labor is free and they are at liberty to withhold it or to give it upon such terms as to them seems proper, so long as their prime purpose is not the gratification of personal malice. Subject to this qualification, the right of workers to combine and to strike is unlimited, and whenever such strike is declared, the workers are not called upon to justify the same upon the ground that the object of such strike falls within any particular category of permissible causes, but it devolves upon those who attack the validity of such strike to prove that the same comes within an express exception of the general right of workers to strike.

In *National Protective Association v. Cumminga*, 170 N. Y. 315, the Court of Appeals of the State of New York, in a very elaborate opinion, summarized the prevailing doctrine with respect to the right of workers to strike as follows:

"The same rule applies to a body of men who, having organized for purposes deemed beneficial to themselves, refuse to work. Their reasons may seem inadequate to others, but if it seems to be in their interest as members of any organization to refuse longer to work, it is their legal right to stop. The reason may no more be demanded, as a right, of the organization than of an individual, but if they elect to state the reason their right to stop work is not cut off because the reason seems inadequate or selfish to the employer or to organized society."

And again:

"Our laws recognize the absolute freedom of the individual to work for whom he chooses, with him he chooses and to make any contract upon the subject that he chooses. There is the same freedom to organize, in an association with others of his craft, to further their common interests as workingmen, with respect to their wages,

to their hours of labor, or to the matters affecting their health and safety. They are free to secure the furtherance of their common interests in every way, which is not within the prohibition of some statute, or which does not involve the commission of illegal acts. The struggle on the part of individuals to prefer themselves, and to prevent the work which they are fitted to do from being given to others, may be keen and may have unhappy results in individual cases; but the law is not concerned with such results, when not caused by illegal means or acts."

That the doctrines so clearly announced in *National Protective Association v. Cummings*, 170 N. Y. 315, are also accepted in New Jersey, is made apparent by the following excerpts from the opinion of Vice-Chancellor Stevenson in *Jersey City Printing Co. v. Cassidy*, 63 N. J. Eq. 759:

"From an examination of the cases and a very careful consideration of the subject, I am unable to discover any right in the Courts, as the law now stands, to interfere with this absolute freedom, on the part of the employer, to employ whom he will, and to cease to employ whom he will and the corresponding freedom on the part of the workman, for any reason or no reason, to say that he will no longer be employed, and the further right of the workman of their own free will to combine and meet as one party—as a unit—the employer, who, on the other side of the transaction, appears as a unit before them. Any discussion of the motives, purposes, or intentions of the employer in exercising his absolute right to employ or not to employ as he sees fit, or of the free combination of employees in exercising the corresponding absolute right to be employed or not as they see fit, seems to me to be in the air."

"The doctrines of the old cases, of which we have an interesting example in *State v. Donaldson*, 32 N. J. Law 151, which placed the employee, when acting in combina-

tion with his fellow workmen, at a tremendous disadvantage as compared with his employer, I think may be regarded as entirely exploded."

"Thus, there may be a wide field in which employees may combine and exercise the arbitrary right of 'dictating' to their common employer, how he shall conduct his business." The exact correlative of this right of the employee exists, in an equal degree, in the employer. He may arbitrarily 'dictate' to five thousand men in his employ in regard to matters in respect of which their conduct ought, according to correct social and ethical principles, to be left entirely free. But if the 'dictation' is backed up solely by the announcement that if it is not submitted to, the dictating party will refrain from employing or being employed, as the case may be, no legal or equitable right belonging to the party dictated to, which I am able to discern, is thereby invaded."

The opinion of the Court in the earlier cases of *Mayer v. Journeymen Stone Cutters Ass'n.*, 47 N. J. Eq. 519, and *Cumberland Glass Mfg. Co. v. Glass Blowers Ass'n.*, 59 N. J. Eq. 49, show how well established these principles are in New Jersey. In the former cases it was said:

"Whatever may have been the rule of the common law with reference to such acts as are now under consideration and however criminal many of them may have been heretofore considered, the Legislature of this State has greatly changed the law which declared combinations to effect such purposes unlawful. By the act of 1883 (Supp. Revision, p. 774, Sec. 30), it is provided that it shall not be unlawful for any two or more persons to unite, combine, or bind themselves by oath or covenant, agreement, alliance, or otherwise to persuade, advise, or encourage, by peaceable means, any person or persons to enter into any combinations for or against leaving or entering into the employment of any person or persons or corporations; in fact, the policy of the law, with reference to such com-

binations, was revolutionized, and what, before that time, would have been held to be an unlawful combination and conspiracy, became in this State a lawful association, and acts which had been the subject of indictment became inoffensive according to any provision of our law."

In *Cumberland Glass Mfg. Co. v. Glass Bottle Blowers Ass'n.*, 59 N. J. Eq. 49, the principle was thus affirmed.

It was held in the case of *Mayer v. Association*, 47 N. J. Eq. 519, "that since the passage of the act of 1883 (p. 36) a combination which before that time would have been held to be a conspiracy, became by the force of this statute a lawful combination. This act has not been repealed. By its terms, it is lawful for workmen to combine to persuade, by peaceable means, any person or persons to enter into any combination for the leaving or entering into the employment of any person or persons or corporation. The purpose of the act was undoubtedly to legalize strikes; i. e., the organization of concerted simultaneous cessation of work by bodies of workmen."

The rule is stated in *Ruling Case Law*, Vol. 16, page 434, in the following language:

"The right of workmen who are not under contract to quit singly or in a body is not now an open question. The fact that they do so by preconcerted arrangement is not material. It is likewise immaterial whether they have cause for quitting. They have the same right to quit without cause as the employer has to discharge them without cause. They need not give any reasons for their conduct. Their reasons may seem inadequate to others, but if it seems to be in their interest as members of an organization to refuse longer to work, it is their legal right to stop. The reason may no more be demanded, as a right, of the organization than of an individual."

In *Saulsberry v. Cooper International Union*, 147 Ky. 143 S. W. 1018, it was said:

"The influences which actuate the employer in discharging the servant or the servant in quitting the employ of the master are not a proper subject of the inquiry."

The Court tersely stated the rule in *Roddy v. United Mine Workers of America*, 41 Okla. 621, 139 Pac. 126:

"We take it as fundamental that any man, in the absence of a contract to work for a definite time, has the right to quit whenever he chooses, for any reason satisfactory to him or without any reason."

The law governing strikes is thus summarized in *Jones v. Maher*, 62 Misc. (N. Y.) 388, 394:

"The law of strikes is well established, at least to the following extent. In the absence of a contract for an unexpired specified term of service and hire, there being no question of any such, the employer has the absolute right, at any time, and for any cause to discharge his employees, one or more, and on the other hand, his employees have the right, at any time, singly or collectively, and for any cause, even at their own mere will, to leave his employment."

Whatever doubt and confusion that existed in the decisions of our State relating to the rights of workmen to do the acts restrained by the Court below was removed and clarified in the case of *New Jersey Painting Company v. Local No. 26, Brotherhood of Painters, Decorators and Paperhangers of America et al.*, 96 Eq. page 632. In the forceful and lucid opinion of Justice Black, which was adopted as the law of our State by our Court of Errors and Appeals in 1924, it was held that the dictum in the case of *Jonas Glass Co. v. Glass Bottle Blowers Ass'n.*, 77 N. J. Eq. 219 was disapproved. This case also overruled a number of the older cases which

restrained similar acts as in the case at bar. In that opinion, the Court summarized the prevailing doctrine with respect to the right of the workers in their dealings with their employers as follows:

“In 1883 the Legislature of New Jersey passed an act which provides (1) “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.” P. L. 1883, p. 36; 3 Comp. Stat. of N. J., p. 3051 No. 128.

“This statute was referred to by this Court in the case of *Jonas Glass Co. v. Glass Bottle Blowers' Assn.*, 77 N. J. Eq. 219. Thus the act of 1883 is 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 the case of *State v. Donaldson*, 32 N. J. Law. 151.”

This statement was unnecessary to the decision of that case. It was mere dictum. The basis, if not an exact copy of that statement, was an oral deliverance by Vice-Chancellor Pitney, in the case of *Frank & Dugan v. Herold*, 63 N. J. Eq. 447. The statute is much broader in its scope than the above statement of dictum would seem to indicate.”

This statute has been under consideration in the Court of Chancery in several cases; thus by Vice-Chancellor Green in the case of *Mayer v. Journeymen Stonecutters' Assn.*, 47 N. J. Eq. 531, where the learned Vice-Chancellor said: “So long as they (*i. e.*, the workers) confine themselves to peaceable means to effect these ends (*i. e.*, the control of the work connected with their trade), they

are within the letter and spirit of the law, and not subject to the interference of the courts." *Barr v. Essex Trades Council*, 53 N. J. Eq. 119. This case was cited with approval by the Supreme Court of Missouri in *Lohse Patent Door Co. v. Fuelle*, 215 No. 457. This statute left still subject to the inhibition of law every other illegal combination, except these mentioned in the statute. So, in the case of *Cumberland Glass Manufacturing Co. v. Glass Bottle Blowers' Assn.*, 59 N. J. Eq., Vice-Chancellor Reed said: "By its terms (*i. e.*, the statute) it is lawful for the workmen to combine to persuade, by peaceable means, any person or persons to enter into any combination for the leaving or entering into the employment of any person or persons or corporation. The words employed by the statute cover a combination for the purpose of persuading others to combine, for the purpose of entering or leaving an employment. According to the act, the means adopted must be peaceable." *Jersey City Printing Co. v. Cassidy*, 63 N. J. Eq. 762; *Baldwin Lumber Co. v. Local No. 560*, N. J. Eq. 240.

"Since the passage of the statute in New Jersey, in 1883, the rule of the common law, that combinations of two or more persons, which were held to be illegal, has been greatly modified in this country, in its application to labor unions and labor disputes. The weight of authority by the more recent cases now seems to be that, an act lawful, if done by one, is not necessarily rendered unlawful by the mere fact of concerted action. To render such concerted act unlawful, the object or the means used must be unlawful or exercised for the malicious purpose of injuring another. Mere concert of action, in and of itself, not being sufficient to render the act illegal." *American Federation of Labor v. Bucks Stove, &c., Co.*, 33 App. D. C. 83; 32 L. R. A. (N. S.) 748; 221 U. S. 418; 16 R. C. L. 430 No. 13, 14; *Meier v. Speer*, 96 Ark. 618; 32 L. R. A. (N. S.) 792; 24 Cyc. 819.

Employees, said Chief Justice McSherry, "have a perfect legal right to fix a price upon their labor, and to refuse to work unless that price is obtained. They have that right both as individuals and in combination. They may organize to improve their condition and to secure better wages." *My Maryland Lodge v. Adt*, 100 Md. 238, 349; *National Protective Asso. v. Cummings*, 170 N. Y. 315, 321; 58 L. R. A. 135; 16 R. C. L. 432 No. 16.

So, it has been held, they may stop work, unless non-members are discharged, and will not be enjoined from so doing, where they act for the good of their organization and not from malice or a desire to injure others. *National Protective Asso. v. Cummings*, 170 N. Y. 315, Contra, in the Supreme Court of New Jersey before the statute of 1883. *State v. Donaldson*, 32 N. J. Law 151.

The mere combination of action is not the element which gives an illegal character to the act. 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. *Lindsay & Co. v. Montana Federation of Labor*, 37 Mont. 264, 273; 18 L. R. A. (N. S.) 707; *Vegeahn v. Guntner*, 167 Mass. 92, 98; 16 L. R. A. (N. S.) note 85.

"The rule adopted and promulgated by the defendants is not aimed at and does not apply to the complainant solely. It does not seek to establish arbitrary discriminations between one person or corporation and another. It applies to all employing painters within the whole territory of the United States who undertake to do work outside of their home districts. It applies to all alike, automatically, who come within the prescribed rule. Cooperation in some form now seems to be an economic ne-

cessity in all business, trade and occupations throughout the United States, if not throughout the entire world."

An accurate and lucid statement of the rule to be applied was made by Chief Justice Taft, when sitting as a circuit judge, in the case of *Toledo, &c., Railroad Co. v. Pennsylvania Co.*, 54 Fed. Rep. 746; 19 L. R. A. 387, 392: "Ordinarily, when such a combination of persons does not use violence, actual or threatened, to accomplish their purpose, it is difficult to point out with clearness the illegal means or end which makes the combination an unlawful conspiracy; for it is generally lawful for the combiners to withdraw their intercourse and its benefits from any person and to announce their intention of doing so, and it is equally lawful for the others, of their own motion, to do that, which the combiners seek to compel them to do."

"Economically, the conclusion reached by the lower court confuses the possible or probable effect of the defendants' action upon the employers with the defendants' rights. The law gives the defendants a right to sell their labor to whom they please, when and under such conditions as they may fix, individually or in combination. They may make rules and regulations, passed in good faith, providing for what they deem to be an economic advantage to themselves. If, in the enforcement of such rules and regulations, they violate no law, but act solely for the declared purpose, the courts ought not and cannot legally enjoin them from such concerted action, simply because such action may affect some employers. How can it be said that such rules and regulations create an unfair restraint of trade. If the law gives the workers such rights, it must protect them in their enjoyment. They cannot be enjoined from their use or interfered with by the courts. Employers have no vested interest in the labor of workers. We think the defendants, by the terms of the statute of 1883, both its letter and spirit, are within

its protection. They are also within the protection of the law as declared in the cases cited."

Following the doctrine of the above cases, it was immaterial whether the complainant was the owner of the paint spraying business or not. Whether that was a valid reason for calling a strike, or whether the strike was called in any particular manner. It was also immaterial whether the resolution relating to the paint spraying business was ever legally adopted or whether any particular rule of procedure was followed in its adoption. Defendants having the right to do what they did for no reason, the reason or justification given becomes immaterial.

#### POINT VI.

**Restraining order granted was invalid by reason of an act of the Legislature of New Jersey Laws of 1926, Chapter 207, page 348.**

The legislature of this State passed an Act in 1926, Chapter 207, page 348, which provides 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; or from peaceably and without threats or intimidation being upon any public street or highway or thoroughfare for the purpose of obtaining or communicating information, or to peaceably and without threats or intimidation, persuade any person or persons to work or abstain from working, or to employ

or to cease to employ any party to a labor dispute, or to peaceably and without threats or intimidation recommend, advise or persuade others so to do, provided said persons remain separated one from the other at intervals of ten paces or more.

All acts and parts of acts inconsistent with the provisions of this act are hereby repealed. Approved March 29, 1926.

It is quite obvious that the above law prohibits the granting of any injunction or restraining order in any labor dispute, where no unlawful acts are committed. It is also apparent from the above law, and the cases aforementioned, that placing or continuing complainant on the unfair list of the union; designating or continuing to designate complainant in anywise unfair to organized labor; proceeding to collect fines imposed against its members and suggesting, permitting, encouraging, or participating in any manner in sympathetic strikes against complainant, are not unlawful acts.

#### POINT VII.

It is respectfully submitted that the order and decree appealed from herein should be reversed and the restraining order herein should be vacated, with costs to the defendants-appellants.

Dated: September 24th, 1930.

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