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Federal Jurisdiction -- Enforcement of Collective Bargaining Agreements Under Section 301 of Labor-Management Relations Act

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in two recent federal cases,[35] but denied in a third.[36] It cannot be denied that the case will involve new procedure and more latitude in preparation of the defendant's case. However, the pessimistic predictions of doom present in the dissenting opinion of Justice Clark would appear without foundation, since the decision, in restricting defendant's right of examination to specific and relevant material, never afforded the defendant a "Roman holiday."[37]

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Federal Jurisdiction—Enforcement of Collective Bargaining Agreements Under Section 301 of Labor-Management Relations Act

Much of the confusion and uncertainty as to the constitutionality and proper application of section 301 of the Labor-Management Relations Act of 1947 (Taft-Hartley Act),[1] created, at least in part, by the Supreme Court's treatment of the *Association of Westinghouse Salaried Employees v. Westinghouse Elec. Corp.* case,[2] has now been somewhat alleviated. By its decision in *Textile Workers Union v. Lincoln Mills,*[3] the Court has clearly upheld the constitutionality of section 301. It is not so clear how the Court reconciles its extension of federal jurisdiction with article III, section 2 of the Constitution[4] which limits

[35] United States v. Frank, D.D.C., June 20, 1957; United States v. Hoffa, D.D.C., June 20, 1957.
[36] United States v. Benson, 20 F.R.D. 602 (S.D.N.Y. 1957).
[37] 353 U.S. at 680-81.

[1] 61 STAT. 156 (1947), 29 U.S.C. § 185 (1953).
"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.
"(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."
[2] 348 U.S. 437 (1955).
[3] 353 U.S. 448 (1957). The case involved an action brought by a labor union in the United States District Court for the Northern District of Alabama seeking specific performance of the arbitration provisions of a collective bargaining agreement. The district court exercised jurisdiction and ordered the employer to comply with the arbitration provisions. The court of appeals, in a split decision, reversed, holding that although the district court had jurisdiction to entertain the suit it lacked authority founded on either state or federal law to grant the relief sought. 230 F.2d 81 (5th Cir. 1956). On certiorari, the Supreme Court reversed the decision of the court of appeals.
[4] U.S. CONST. art. III, § 2, cl. 1. "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority . . . ."

the national "judicial power" to those cases *"arising under"* the Constitution, laws, and treaties of the United States. Not only did the majority of the Court find little constitutional difficulty in extending the federal judicial power to the enforcement of collective bargaining agreements, including specific performance of arbitration provisions contained therein, but it also directed the federal district courts to "fashion a body of federal law" for the enforcement of such agreements.[5]

Justice Frankfurter, in a lone dissent, failed to find in the legislative history of section 301 congressional intent to grant to the federal courts the right to specifically enforce arbitration provisions in collective bargaining agreements. He also felt that the section could not be constitutionally construed to grant jurisdiction to federal courts over contracts founded on state substantive law, in the light of the provisions of article III of the Constitution. The majority was little bothered by the constitutional problem set forth by Justice Frankfurter.[6] As stated by Justice Douglas:

> There is no constitutional difficulty. Article 3, § 2 extends the judicial power to cases "arising under . . . the laws of the United States . . . ." The Power of Congress to regulate these labor-management controversies under the Commerce Clause is plain . . . . A case or controversy arising under § 301 (a) is, therefore, one within the purview of judicial power as defined in Article 3.[7]

Justices Burton and Harlan concurred in the result, but disagreed with the majority's conclusion that the substantive law to be applied was federal law:

> The power to decree specific performance of a collectively bargained agreement to arbitrate finds its source in § 301 itself, and in a Federal District Court's inherent equitable powers, nurtured by a congressional policy to encourage and enforce labor arbitration in industries affecting commerce.[8]

Apparently, these two Justices viewed the case in a "remedial sense" only, following the view of Judge Wyzanski in *Textile Workers Union, CIO v. American Thread Co.*[9] Justices Burton and Harlan also noted with approval the view of Judge Magruder in *International Brotherhood of Teamsters, AFL v. W. L. Mead, Inc.*,[10] to the effect that some federal

[5] 353 U.S. at 451.
[6] *Id.* at 469-84. *Cf.* Association of Westinghouse Salaried Employees v. Westinghouse Elec. Corp., 348 U.S. 437, 449-52 (1955).
[7] 353 U.S. at 457.
[8] *Id.* at 460.
[9] 113 F. Supp. 137 (D. Mass. 1953).
[10] 230 F.2d 576 (1st Cir. 1956).

rights may necessarily be involved in a section 301 case and, therefore, the constitutionality can be upheld as a congressional grant to the federal district courts of "protective jurisdiction." The reasoning of the concurring justices is probably best expressed by the dissent of Judge Brown, in the court of appeals' determination of the principal case:

> But the studied search for a federal statute, the painstaking analysis of the cases under it [*i.e.*, by the two-judge majority], demonstrates, I think, a misconception of the fundamentals. It is as though we were dealing with a court having statutory power only. But that is not the case. The United States District Court is a constitutional organ with the intrinsic capacity to grant traditional coercive relief as the cases over which it has jurisdiction may require . . . .
>
> . . . .
>
> The remedy sought here is common and traditional—the equity injunction to compel or restrain action because of the inadequacy of the usual money damage. Its availability need find no source, as such, in specific statute.[11]

This reasoning would appear to be sound. But while it avoids some of the logical difficulties presented by the majority's construction of section 301 (the "substantive law" approach), which does not seem to be founded on any authority, it still fails to solve many of the constitutional problems.[12]

It remains to be seen whether the Court has, in effect, attributed to section 301 of Taft-Hartley an "occult content" as alleged by Justice Frankfurter.[13] What are the constitutional implications of the decision in the field of federal jurisdiction, and what repercussions may be felt in the area of labor relations?

Federal Jurisdiction

The courts have not been without their difficulties in construing the language, "cases . . . arising under the laws of the United States." A very broad scope was accorded by Chief Justice Marshall in the leading case of *Osborn v. Bank of the United States*,[14] where the language was held to confer jurisdiction on the federal courts over suits brought by or against the national bank chartered by Congress. It was reasoned that the original "law" which established the bank impliedly contained, as an "original ingredient," a federal question which would satisfy the

[11] 230 F.2d 81, 90-91 (5th Cir. 1956).

[12] It might be noted that Judge Brown also indicated his belief that § 301 might be used in a "modified substantive way." *Id.* at 95.

[13] 353 U.S. at 461 (dissenting opinion).

[14] 22 U.S. (9 Wheat.) 738 (1824).

"arising under" test of article III. However, the broad construction of the clause by Chief Justice Marshall in the *Osborn* case has not been followed by the courts in most subsequent cases which have arisen under either the Constitution or the federal jurisdiction statute.[15] While the *Pacific Railroad Removal Cases*[16] followed the rationale of *Osborn,* such cases as *Puerto Rico v. Russell & Co.*,[17] and *Gully v. First Nat'l Bank*,[18] while recognizing the validity of the charter cases (such as *Osborn*) within their special field, treated them as exceptional and refused to extend their doctrine: "Today, even more clearly than in the past, 'the federal nature of the right to be established is decisive—not the source of the authority to establish it.' "[19]

The importance of raising a "federal question" in the plaintiff's complaint in order to establish the jurisdiction of the court is well-illustrated by such cases as *Bell v. Hood*,[20] and *Skelly Oil Co. v. Phillips Petroleum Co.*:[21] "The plaintiff's claim itself must present a federal question 'unaided by anything alleged in anticipation of avoidance of defenses which it is thought the defendant may interpose.' "[22] However, as illustrated by *McGoon v. Northern Pac. Ry.*,[23] a case may not properly be brought within the "arising under" clause unless its determination actually and substantially involves a dispute over a federal law.[24]

Textile Workers Union v. Lincoln Mills would seem to represent a radical departure from the traditional requisites for the exercise of jurisdiction by a federal district court under article III. Here, there is no federally created right to be vindicated, the substantive law being state, not federal. Yet, Congress is permitted to create federal jurisdiction to the satisfaction of the "federal question" clause of article III where there is no substantive federal law in existence to be construed

[15] Congress also utilized the "arising under" language in a statute which provided for a general grant of federal jurisdiction. 28 U.S.C. § 1331 (1953).

[16] 115 U.S. 1 (1885).

[17] 288 U.S. 476 (1933).

[18] 299 U.S. 109 (1936).

[19] *Id.* at 114, citing Puerto Rico v. Russell & Co., 288 U.S. 476 (1933). The scope of the *Osborn* decision is further curtailed by statute. Federal incorporation may not now serve as a basis for federal jurisdiction except where the United States holds more than one-half of the corporation's stock. 28 U.S.C. § 1349 (1953).

[20] 327 U.S. 678 (1946).

[21] 339 U.S. 667 (1950).

[22] *Id.* at 672.

[23] 204 Fed. 998, 1002-03 (D.N.D. 1913). Here, a suit brought by a shipper against a railroad company to recover for damage to property incurred while being transported in interstate commerce was held to arise under the Interstate Commerce Act and to involve a construction of that law for purposes of conferring federal jurisdiction under the "arising under" clause. *Cf.* Doucette v. Vincente, 194 F.2d 834, 845 (1st Cir. 1952); Annots., 28 U.S.C.A. § 1331 n. 35 (1949).

[24] Of course, any national source will suffice whether the particular case "arises under" the Constitution, Bell v. Hood, 327 U.S. 678 (1946), a federal law, Bock v. Perkins, 130 U.S. 628 (1891), or a treaty, Wilson Cypress Co. v. Del Pozo y Marcos, 236 U.S. 635 (1915).

or enforced.[25] The reference by the Court to the commerce clause and the impossibility of basing the decision on any other portion of article III would seem to leave little else to support the finding of jurisdiction but the "federal question" clause. On what grounds is the Court justified in finding this case to "arise under" a *law of the United States?* The majority chose not to rationalize publicly its decision, simply relying on the bald reference to the commerce clause.[26]

The *Osborn* case might be thought analogous, but there, incorporation by an act of Congress supplied the "original federal ingredient" by which the resulting jurisdiction could be rationalized by the Chief Justice who, undoubtedly, "leaned over backward" to protect the bank from local prejudices.[27] It can hardly be said that a labor union, or a collective bargaining agreement, founded on no federal law, similarly satisfies the "original ingredient" rule. Yet, *Osborn* demonstrates that situations might develop where Congress may use the federal courts as a means for protecting a special interest within the "arising under" clause of article III. The use of the federal courts for "protective" purposes is further illustrated by the provisions for jurisdiction under article III, section 2, which follow after the "arising under" clause and which create independent jurisdictional grounds not dependent on federal substantive law.[28]

The present case raises the question of how far Congress may go in protecting a special interest through the use of the federal "sanctuary." In determining what interests may be so protected, the theory has been advanced that any interest over which Congress has the power to legislate may qualify.[29]

> From this point of view, each such interest is necessarily one which the Constitution has determined to be a potential subject of national concern; since Congress might act in behalf of such interests in *some* substantive respect, it might choose instead to provide them with a protective forum for *all* their litigation. Under this approach, so long as the interest involved is of the

[25] While Congress *might have* provided the substantive law to govern collective bargaining agreements, under § 301 of Taft-Hartley, it has not chosen to do so.

[26] 353 U.S. at 457.

[27] See, Shulman and Jaegerman, *Some Jurisdictional Limitations on Federal Procedure,* 45 YALE L.J. 393, 404-05 (1936).

[28] U.S. CONST. art. III, § 2, cl. 1. "The judicial Power shall extend . . . to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State:—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

[29] Mishkin, *The Federal Question in the District Courts,* 53 COLUM. L. REV. 157, 188 (1953).

kind described, it is of no concern whether the particular case be one as to which Congress might have enacted the substantive rule.[30]

Another theory[31] would permit the extension of the federal judicial power to all cases in which Congress has the potential authority to make rules governing the matter in controversy, but has left the state substantive law to govern, while vesting jurisdiction to enforce the law in the federal courts. The grant of jurisdiction is here treated as an assertion of Congress's regulatory powers.[32] However, since the majority of Justices in the principal case side-stepped state substantive law, of the two theories noted above, the former would seem to be closer to that followed in the Court's "holding."

Looking at the situation more realistically, it might well be concluded that article III is not the *exclusive* source on which the Court bases the grant of judicial power to the federal district courts, but that the legislative authority of Congress under article I of the Constitution is of equal importance. Perhaps, it is the over-all legislative power under article I which provides the real source of (and limitation on) federal jurisdiction, and article III is of only incidental significance. At least, this would seem to be the effect of the present decision.

Such reasoning has received previous support in *National Mut. Ins. Co. v. Tidewater Transfer Co.*[33] Justices Jackson, Black and Burton there reasoned that while jurisdiction could not be sustained directly under article III, relying on the opinion of Chief Justice Marshall in *Hepburn and Dundas v. Ellzey,*[34] it could be sustained as an exercise of Congress's article I power of "exclusive legislation" over the District of Columbia, *i.e.,* citizens of the District are proper subjects to be accorded a protective federal forum by Congress. The remaining six justices opposed the article I approach, maintaining that article III was the exclusive source of federal jurisdiction. A fear was expressed that under the article I approach the district courts might be swamped with a flood of all types of litigation.[35] However, Justice Rutledge,

[30] *Ibid.*

[31] See, Wechsler, *Federal Jurisdiction and the Revision of the Judicial Code,* 13 LAW & CONTEMP. PROB. 216, 224-25 (1948).

[32] The reasoning of Justices Burton and Harlan would seem to approximate this theory. 353 U.S. at 459-60.

[33] 337 U.S. 582 (1949). The question involved was the validity of a congressional act which sought to open *all* of the federal district courts to suits between citizens of the District of Columbia and those of the states.

[34] 6 U.S. (2 Cranch) 445 (1804). The Court, through Chief Justice Marshall, here held that the District of Columbia was not a "state" for purposes of federal jurisdiction based on the "diversity of citizenship" clause of article III.

[35] "If Article III were no longer to serve as the criterion of district court jurisdiction, I should be at a loss to understand what tasks within the constitutional competence of Congress, might not be assigned to district courts. 337 U.S. at 616 (concurring opinion of Justice Rutledge).

joined by Justice Murphy, concurred in the result reached by Justices Jackson, Black and Burton, but on the precise ground opposed by the latter—a rejection of Marshall's construction of the status of the District of Columbia. Rutledge and Murphy felt that for purposes of the diversity clause, the District could well be treated as a "state."[36]

In *Textile Workers Union v. Lincoln Mills,* it would seem that the majority of the Court proceeded (either consciously or unconsciously) along lines similar to those laid down by Justices Jackson, Black and Burton in the *National Mutual Insurance* case. Thus, Congress has enacted legislation governing the field of labor relations, and in section 301 of the Taft-Hartley Act, has utilized the federal courts to effectuate its policies. While there may be no federal substantive law which can be applied to particular cases, and, therefore, no "federal question" raised in the technical sense, the majority apparently felt that over-all national policies in the area of labor relations could better be protected in the federal courts. In effect, we have a somewhat analogous situation to that of the "original ingredient" in *Osborn.* There, the incorporation act was deemed sufficient to confer jurisdiction. Here, the federal legislation in the area of labor relations is, in itself, considered a sufficient "original ingredient" to support the exercise, by the federal courts, of a "protective jurisdiction" in support of congressional policy. *Textile Workers Union v. Lincoln Mills* would seem to have resulted in a blending of article I and article III in the area of federal jurisdiction. While article III cannot here be considered as the *original* source of judicial power, by implication it refers over to the legislative powers granted to Congress by article I. So, in an oblique manner, the "arising under" clause of article III may be said to have been satisfied.

The net result of *Lincoln Mills,* if the Court ultimately adheres to such a theory as expressed above, could well result in the creation of new areas of federal jurisdiction whenever Congress should see fit to exercise its constitutional powers under article I by enacting legislation to protect a special interest, and providing for "protection" of such an interest in the federal courts.

LABOR LAW

The decision of the Supreme Court in the principal case results in federal district courts' being permitted to order specific performance of agreements to arbitrate contained in collective bargaining contracts, and it settles the question of the constitutionality of section 301 of the Taft-Hartley Act. But far from settled are various questions involving the relationship between state and federal law in the area of labor relations,

[36] "And so, conflicting minorities in combination bring to pass a result—paradoxical as it may appear—which differing majorities of the Court find insupportable." 337 U.S. at 655 (dissenting opinion of Justice Frankfurter).

and the further types of relief which might now be sought under section 301. When all the "returns are counted" it is quite possible that labor's apparent "victory" in the *Lincoln Mills* case will turn out to be Pyrrhic.

The potential conflict of state and federal law posed by the Court's decision is noted by Justice Frankfurter.[37] While section 301 provides the opportunity to bring a suit on breach of a collective bargaining agreement in the federal courts, it does not preclude the maintenance of a similar action in the state courts. Unless state courts are prepared to follow the substantive law which the federal courts may "fashion" in this area,[38] considerable conflict could result between the decisions.

Difficulties might also be presented in the establishment of a *uniform* federal substantive law. If independent federal district courts may resort to state law where it is compatible with the purposes of section 301 "in order to find the rule that will best effectuate the federal policy,"[39] varying conceptions of the "federal policy" by different district court judges in particular cases might well keep the circuit courts and the Supreme Court very busy in trying to establish a uniform law. The Court stated that, "Any state law applied, however, will be absorbed as federal law and will not be an independent source of private rights."[40] But this "absorbing process" does not, in itself, resolve the problem of the application of conflicting state laws by district court judges who, in turn, may well have conflicting views of the "federal policy."

The greatest question left unsettled by *Lincoln Mills* is the extent to which the federal district court may exercise its remedial powers in enforcing collective bargaining agreements. In the principal case specific performance was granted of an agreement to arbitrate. The Court reasoned that, "Plainly the agreement to arbitrate grievance disputes is the quid pro quo for an agreement not to strike."[41] Now if the Court decreed specific performance of the *quid pro quo* for an agreement not to strike, it may be reasoned that an agreement not to strike would similarly be enforced. Suppose a union goes out on strike in violation of such an agreement. Further suppose that the setting for the strike is an industrial state such as New Jersey which has a "little Norris LaGuardia Act."[42] The harried employer desires relief and wants it fast. Under New Jersey law, he cannot enjoin the union from breaching

[37] 353 U.S. at 462; Association of Westinghouse Salaried Employees v. Westinghouse Elec. Corp., 348 U.S. 437, 454-55 (1955).

[38] An illustration of the *type* of jurisdictional problem which can be raised by a case which falls within the purview of Taft-Hartley Act provisions covering unfair labor practices, but also within the jurisdiction of a state court to grant "traditional relief," is presented by J. A. Jones Constr. Co. v. Electrical Workers Union, AFL, 246 N.C. 481, 98 S.E.2d 852 (1957).

[39] 353 U.S. at 457. *Cf.* Clearfield Trust Co. v. United States, 318 U.S. 363, 367 (1943).

[40] 353 U.S. at 457.

[41] *Id.* at 455.

[42] See N.J. REV. STAT. §§ 2A: 15-51 to -58 (1952).

its "no-strike agreement" if there is a genuine labor dispute involved.[43] Query: can an injunction now be had in the federal district court under section 301? It has been suggested[44] that, even in light of the *Lincoln Mills* decision, the Norris-LaGuardia Act[45] would preclude the federal courts from enjoining strikes arising out of genuine labor disputes; but if *Lincoln Mills* is taken at face value, a different conclusion might well be reached. As noted above, the Court collated its treatment of the agreement to arbitrate to that of an agreement not to strike. The line between "specific performance" and "injunction" in this area is certainly a fine one,[46] and it would hardly seem consistent for the Court to enforce the *quid pro quo* of an agreement not to strike while leaving unenforceable the *"quo pro quid."* Yet, the Norris-LaGuardia Act is said to require the Court to do just that.

In its search for legislative intent, the Court cites and relies on the view of the House sponsor, Congressman Hartley, in answer to a question by Congressman Barden:

> "Mr. Barden. . . . It is my understanding that section 302 . . . contemplates not only the ordinary lawsuits for damages but also such other remedial proceedings, both legal and equitable, as might be appropriate in the circumstances . . . .

[43] No judge may issue an injunction in any case involving or growing out of a labor dispute, except after hearing testimony of witnesses in open court in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings by the court of all the following facts:

a. That unlawful acts have been committed and are likely to be continued unless restrained;

b. That substantial and irreparable injury to plaintiff's property will follow unless the relief is granted;

c. That as to each item of relief granted greater injury will be inflicted upon plaintiff by the denial thereof than will be inflicted upon defendants by the granting thereof;

d. That plaintiff has no adequate remedy at law. N. J. REV. STAT. § 2A: 15-53 (1952).

Neither will the types of relief available under formal NLRB proceedings generally be adequate for the employer who cannot endure the effects of a strike which runs longer than a few days.

[44] *The Supreme Court, 1956 Term*, 71 HARV. L. REV. 83, 178, 176 n. 511 (1957).

[45] 46 STAT. 70 (1932), 29 U.S.C. §§ 101-115 (1953). Section 104 provides: "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of a labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

". . . .

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence . . . ."

[46] A court might "enjoin" a strike by ordering the union to "specifically perform" the terms of its collective bargaining agreement (including a no-strike clause contained therein).

"Mr. Hartley. The interpretation the gentleman has just given of that section is absolutely correct."[47]

While the Court was able to avoid the "obstacle" of the Norris-LaGuardia Act in the present case—"The failure to arbitrate was not a part and parcel of the abuses against which the Act was aimed."[48]—if section 301 does, in effect, contemplate "such other remedial proceedings, both legal and *equitable*," should Norris-LaGuardia constitute a bar to the issuance of an injunction to prevent a strike in breach of a non-strike agreement? It seems unrealistic to view the Norris-LaGuardia Act, passed in 1932, as a vital part of federal policy governing collective-bargaining agreements (and upon which federal substantive law is now supposed to be fashioned), *where such act conflicts* with the Taft-Hartley Act, passed fifteen years later. If congressional intent is construed as calling for application of *all* equitable remedies of the federal courts under section 301, and Norris-LaGuardia is in irreconcilable conflict with the intent, the conflict, seemingly, should be resolved in favor of the more recent legislation.[49] In any event, in the hypothetical New Jersey situation set forth above, until the Supreme Court rules on the matter, an attorney for the "harried employer" should certainly give serious consideration to the possibility of obtaining injunctive relief in the federal district court under section 301.[50] Meanwhile, the influence of section 301 is undoubtedly being felt in the area of labor relations in settlement of controversies without the necessity of court proceedings. By its very presence and potential use as a weapon for the attainment of not only money damages, but also injunctive-type relief in the federal courts, section 301 should serve to accomplish some of the ends sought by its designers—primarily, the enforcement of collective bargaining agreements.

The Supreme Court has, in *Lincoln Mills,* resolved one point of controversy in the field of labor law. By its failure to spell out with

[47] 353 U.S. at 455-56, quoting from 93 CONG. REC. 3656-57 (1947).

[48] *Id.* at 458.

[49] Judge Magruder, in W. L. Mead Inc. v. International Brotherhood of Teamsters, AFL, 217 F.2d 6 (1st Cir. 1954), presents a vigorous argument in support of a contrary conclusion. *Cf.* Amazon Cotton Mill Co. v. Textile Workers Union, CIO, 167 F.2d 183 (4th Cir. 1948), in which a *union* was unsuccessful in attempting to overcome the Norris-LaGuardia obstacle in an action brought to enjoin the employer from refusing to bargain collectively. However, the Norris-LaGuardia Act need not necessarily prohibit a federal district court from issuing a mandatory injunction in *all* cases involving a "labor dispute." "It is inaccurate to say that the court is barred from issuing an injunction in any case involving a labor dispute." Textile Workers Union, CIO v. Aleo Mfg. Co., 94 F. Supp. 626, 629 (M.D.N.C. 1950), citing the opinion of Judge Parker in Virginian Ry. v. System Federation No. 40, 84 F.2d 641 (4th Cir. 1936), *aff'd*, 300 U.S. 515, 562-63 (1937).

[50] The Norris-LaGuardia problem might also arise in situations where the employer sues in a state court such as in North Carolina which has no "little Norris-LaGuardia Act," and the union seeks removal to the federal courts. This, however, raises other questions beyond the scope of this Note.

greater clarity the rationale behind its decision, it has created numerous potential difficulties in other areas of both labor law and federal jurisdiction.

RICHARD P. WEITZMAN

Mortgages—Effect of Assignment without Assigning the Debt—Formalities Necessary to Transfer the Mortgagee's Title to the Mortgaged Property

In a recent North Carolina case,[1] *X*, *Y*, and *Z* together held a recorded mortgage. *X* and *Y* made a marginal entry on the mortgage as follows: "For value received we hereby transfer and assign the within mortgage deed from [mortgagors] to [*Z*] without recourse."[2] Concerning this assignment, the court uttered dicta to the effect that: (1) The assignment sufficed to transfer only the debt which the mortgage had been given to secure, and (2) The assignment did not pass any title to the *land*. *Z* later conveyed the mortgaged land to a third party by warranty deed. Concerning this conveyance, the court in a dictum stated that the grantee in the warranty deed became a mere trustee chargeable with a duty and responsibility to both the owner of the equity of redemption and the owner of the debt secured by the instrument. The court did not elaborate on any of these dicta and it is the purpose of this Note to examine the validity thereof.

The statement that the assignment sufficed to transfer the debt only seems to assume that it was sufficient to transfer the debt. No authority for that assumption was cited. It seems to be well settled in North Carolina that an assignment of the debt draws with it the mortgage.[3] But there seems to be a dearth of authority in North Carolina as to the effect of assigning a mortgage without transferring the debt also. One

[1] Gregg v. Williamson, 246 N.C. 356, 98 S.E.2d 481 (1957).

[2] The plaintiff in this case claimed title through various conveyances of the mortgaged land beginning with a deed from *Z* to a third party. The defendants claimed title under a deed from the original mortgagors which was executed about thirty years after the mortgage. The defendants contended that the land was free from the mortgage since no one had filed an affidavit or made a marginal entry on the mortgage showing that the debt was alive within fifteen years after due date of the secured debt as is required by N.C. GEN. STAT. § 45-37(5) (1950), which accordingly creates a conclusive presumption in favor of a purchaser of the land that the debt is satisfied. The plaintiff contended that the statute was unconstitutional since it was retroactive in effect and thus impaired the obligation of the mortgage. The court dismissed the plaintiff's appeal on the grounds that he was not an aggrieved party since the statute concerned only the holder of the secured debt and the plaintiff did not claim to hold the debt. The court also said the statute was not unconstitutional since the owners of debts affected by the statute were given one year after enactment of the statute to comply with its provisions.

[3] Citizens' Savings Bank & Trust Co. v. White, 189 N.C. 281, 126 S.E. 745 (1925); Hussey v. Hill, 120 N.C. 312, 26 S.E. 919 (1897); Hyman v. Devereux, 63 N.C. 624 (1869). However, the court stated in the principal case that the transfer of a note secured by a mortgage does not transfer title to the mortgaged property nor the power of sale nor the right to release the mortgage.