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as of the date of the institution of the action<sup>12</sup> (which was before the marriage) to set aside the transfer.<sup>13</sup> Thus the creditor's lien attached before the dower could attach, and a sale to satisfy the prior lien would effectually bar any dower claim against the defendant purchasers under such sale. Because of his priority the creditor is entitled to full satisfaction of his claim out of the proceeds of the sale before other subsequent rights therein are considered. Where, however, the creditors' claims do not require all of the proceeds, it would seem that the widow should be entitled to her dower as against the grantee's claim. We have seen that logically the re-vesting of the estate in the grantor should be sufficient to support dower (whether the wife has ever before had dower in the property or not), and the fraudulent grantee's deed should be ineffective against rights of the widow and the creditor arising out of the re-vesting of title in the grantor. The equity of the widow as against the grantee is further strengthened by the fact that though her claim is through her husband's title which is tainted with fraud, she did not actually participate in the fraud and is not *in pari delicto* with the grantee.

C. A. GRIFFIN, JR.

#### Labor Law—State Anti-Injunction Statutes.

Since the advent of the New Deal there has been a rapidly growing tendency to look upon labor with an increasingly liberal attitude, evidenced, in state labor anti-injunction legislation,<sup>1</sup> by the correction of the abuses caused by the injunction in labor disputes during the past fifty years.<sup>2</sup> Twenty-three states have enacted such legislation,<sup>3</sup> each

<sup>12</sup> *Hancock v. Wooten*, 107 N. C. 9, 12 S. E. 199 (1890); *Frank v. Kessler*, 30 Ind. 8 (1868); *Lindley v. Cross*, 31 Ind. 106 (1869); *Wooten v. Steele*, 109 Ala. 563 19 So. 972 (1895). Accord: *The Dawson Bank v. Harris*, 84 N. C. 206 (1881); *Armstrong Grocery Co. v. Banks*, 185 N. C. 149, 116 S. E. 173 (1923); *cf. Casady v. Anderson*, 53 Tex. 535 (1880); *Arbuckle Bros. Coffee Co. v. Werner and Cohen*, 77 Tex. 43, 13 S. W. 963 (1890).

<sup>13</sup> Most jurisdictions require that a judgment be obtained against the grantor as a condition precedent to the suit to set aside the fraudulent conveyance. *Allyn v. Thurston*, 53 N. Y. 622 (1873); *Estes v. Wilcox*, 67 N. Y. 264 (1876); *Whitney v. Davis*, 148 N. Y. 256, 42 N. E. 661 (1896); *WAITE, FRAUDULENT CONVEYANCES AND CREDITORS' BILLS* (3d ed. 1897) 149.

<sup>1</sup> No attempt will be made to consider federal anti-injunction legislation.

<sup>2</sup> *FRANKFURTER AND GREENE, THE LABOR INJUNCTION* (1930); *Fraenkel, Recent Statutes Affecting Labor Injunctions and Yellow Dog Contracts* (1936) 30 ILL. L. REV. 854.

<sup>3</sup> *ARIZ. REV. CODE ANN.* (Struckmeyer, 1928) §4286; *CAL. GEN. LAWS* (Deering, 1931) act 1605; *COLO. STAT. ANN.* (Michie, 1935) c. 97, §78; *Idaho Sess. Laws* 1933, c. 215; *ILL. REV. STAT. ANN.* (Cahill, 1933) c. 22, §58; *ILL. STAT. ANN.* (Callaghan, Supp. 1925-31) c. 22, §58; *IND. STAT. ANN.* (Burns, 1933) §40-504; *KAN. GEN. STAT. ANN.* (Corrick, 1935) c. 60, §1107; *LA. GEN. STAT.* (Dart, Supp. 1936) §4379.7; *ME. LAWS* 1933, c. 261, §1; *MD. CODE ANN.* (Bagby, Supp. 1935) c. 574, §67; *Mass. Acts* 1935, c. 407, §4; *MINN. STAT.* (Mason, Supp. 1936) §§4260-4264; *MONT. REV. CODE ANN.* (Anderson & McFarland, 1935) §9242; *N. J. COMP. STAT.* (Supp. 1925-30) §107-131a; *N. Y. CIVIL PRACTICE* (Cahill, Supp. 1936) §876a; *N. D. LAWS* 1935, c. 247; *OKLA. STAT.* 1931, §10878; *ORE. CODE ANN.*

of the statutes having substantially the same provisions.<sup>4</sup> Generally,<sup>5</sup> they prohibit the courts from enjoining the peaceful activities of labor in disputes with employers, *i.e.*, striking, holding meetings, publishing grievances, peaceful picketing, and using strike funds without restriction.<sup>6</sup>

The first case involving the validity of an anti-injunction statute to come before the Supreme Court of the United States<sup>7</sup> was that of *Truax v. Corrigan*,<sup>8</sup> in 1921. The court, in a five to four decision, ruled the Arizona statute unconstitutional because it violated the due process and equal protection clauses of the Fourteenth Amendment.<sup>9</sup> The state courts, relying on this decision, have, until recent years, consistently declared similar statutes invalid.<sup>10</sup>

A change of attitude, however, became apparent during the depression years with their attendant labor troubles. The Oregon Supreme Court led the way in 1932 when it pronounced such a statute to be valid<sup>11</sup> if properly construed.<sup>12</sup> All of the reported cases since 1933, with the exception of one,<sup>13</sup> have upheld the validity of anti-injunction

(1930) §§49-902, 49-903; PA. STAT. (Purden, 1936) §43-203; UTAH REV. STAT. ANN. (1933) §§4-2-6, 4-2-7; WASH. REV. STAT. ANN. (Remington, 1932) §§1712-1714; WIS. STAT. 1935, §§103:53, 103:63; Wyo. Sess. Laws 1937, c. 15, §1.

<sup>4</sup> For a classification and comparison of these statutes, see Riddlesbarger, *State Anti-Injunction Legislation* (1935) 14 ORE. L. REV. 501.

<sup>5</sup> Most of the statutes have additional provisions prohibiting "yellow dog" contracts, *ex parte* injunctions and the restraint of acts other than those specifically complained of, and guaranteeing the right to a jury trial to all persons charged with violating labor injunctions.

<sup>6</sup> Fraenkel, *supra* note 2, at 871.

<sup>7</sup> California and Massachusetts anti-injunction statutes had been previously declared unconstitutional by state tribunals, the courts employing substantially the same reasoning as that applied in *Truax v. Corrigan*, 257 U. S. 312, 42 Sup. Ct. 124, 66 L. ed. 254, 27 A. L. R. 375 (1921); *Goldberg, Bowen and Co. v. Stablemen's Union*, 149 Cal. 429, 86 Pac. 806, 8 L. R. A. (N. S.) 460 (1906); *Pierce v. Stablemen's Union*, 156 Cal. 70, 103 Pac. 324 (1909); *Bogni v. Perotti*, 224 Mass. 252, 112 N. E. 853, L. R. A. 1916F 831 (1916).

<sup>8</sup> 257 U. S. 312, 42 Sup. Ct. 124, 66 L. ed. 254, 27 A. L. R. 375 (1921).

<sup>9</sup> Pitney (with whom Clarke, J., concurred), Brandeis, and Holmes, JJ., each wrote a dissenting opinion maintaining that the statute was a valid exercise of the police powers of the legislature and that the classification was not so unreasonable as to violate the equal protection clause of the Fourteenth Amendment.

<sup>10</sup> *In re* Opinion of the Justices, 275 Mass. 580, 176 N. E. 649 (1931), Note (1932) 17 CORN. L. Q. 666; *In re* Opinion of the Justices, 86 N. H. 597, 166 Atl. 640 (1933), Note (1934) 18 MINN. L. REV. 184; *Greenfield v. Central Labor Council*, 104 Ore. 236, 192 Pac. 783 (1922); see *Bull v. International Alliance*, 119 Kan. 713, 718, 241 Pac. 459, 461 (1925); *Elkind and Sons, et al. v. Retail Clerks' Protective Ass'n*, 114 N. J. Eq. 586, 595, 169 Atl. 494, 497 (1933); *Pacific Coast Coal Co. v. Dist. No. 10*, U. M. W. A., 122 Wash. 423, 436, 210 Pac. 953, 957 (1922).

<sup>11</sup> *Moreland Theaters Corp. v. Portland M. P. M. O. P. Union*, 140 Ore. 35, 12 P. (2d) 333 (1932).

<sup>12</sup> The validity of these statutes has, from the outset, depended largely upon whether the courts construed them as legalizing unlawful acts. Many courts look upon picketing as being unlawful in itself and therefore ruled that the statute attempted to make an unlawful act legal.

<sup>13</sup> *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 63 P. (2d) 397 (1936).

legislation. These recent decisions have, for the most part, followed the same line of reasoning: that due process is not violated, for the legislature may, in the exercise of its police powers, make such regulations as the welfare of the public requires, even to the extent of interfering with the liberty and property of an individual; that equal protection is not taken away, for the classification is a reasonable one,<sup>14</sup> since labor injunction cases are fundamentally different from ordinary equitable actions;<sup>15</sup> and that the inherent equity powers of the courts are not abridged, for the statute, while it limits the jurisdiction of the courts in prohibiting the issuance of injunctions in certain cases, does not deprive the courts of the power to restrain *unlawful* acts.<sup>16</sup> The climax in this change in the attitude of the courts came recently when the United States Supreme Court declared a Wisconsin anti-injunction statute to be constitutional, in the first case to reach it since *Truax v. Corrigan*, involving the validity of this type of legislation.<sup>17</sup> The court distinguishes this case from *Truax v. Corrigan* on the grounds that in the latter the Arizona court construed the statute as legalizing picketing, which at that time was considered to be unlawful in any form,<sup>18</sup> while in the instant case the Wisconsin court construed the statute as prohibiting the issuance of injunctions only against peaceful picketing, which is now regarded as being lawful.<sup>19</sup> From recent decisions, then, it appears that: "More and more the tendency is to permit the parties to

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The case was decided, in the face of a strong dissent, on the grounds that the statute violated that section of the state constitution which specifically granted to the courts the power to issue injunctions. For comments on this case see (1937) 23 VA. L. REV. 606 and (1937) 4 U. OF CHI. L. REV. 500.

<sup>14</sup> The courts have uniformly held that the constitutional guarantee of equal protection of the laws to all citizens is not violated by legislation affecting only a certain group of citizens, as long as the classification is reasonable and there is no discrimination against members of the group. Labor anti-injunction statutes apply only to the employee-employer group.

<sup>15</sup> When an injunction is issued, the striker is immediately branded as a law-breaker in the eyes of the public. And since strikes are usually short, the issuance of even a temporary injunction nearly always decides the case immediately. Note (1934) 18 MINN. L. REV. 184 at 191.

<sup>16</sup> *Aberdeen Restaurant Corp. v. Gottfried*, 158 Misc. 758, 285 N. Y. Supp. 832 (1935); *Dehan v. Hotel and Restaurant Employees and Beverage Dispensers*, 159 So. 637 (La. 1935); *American Furniture Co. v. T. B. of T. C. and H. of A.*, 222 Wis. 338, 268 N. W. 250, 106 A. L. R. 335 (1936); *Starr v. Laundry and Dry Cleaning Workers' Local Union No. 101*, 63 P. (2d) 1104 (Ore. 1936), (1937) 16 ORE. L. REV. 192; *Fenske Bros. Inc. v. Upholsterers' International Union*, 358 Ill. 239, 193 N. E. 112, 97 A. L. R. 1318 (1934), Notes (1935) 30 ILL. L. REV. 237, (1935) 13 CHI-KENT REV. 170, (1935) 35 COL. L. REV. 616; *Geo. B. Wallace Co. v. International Ass'n of Mechanics*, 63 P. (2d) 1090 (Ore. 1936); see *Bayonne Textile Corp. v. American Fed. of Silk Workers*, 116 N. J. Eq. 146, 164, 172 Atl. 551, 559, 92 A. L. R. 1450, 1463 (1934).

<sup>17</sup> *Senn v. Tile Layers Protection Union*, 57 Sup. Ct. 857, 81 L. ed. Adv. Ops. 829 (1937).

<sup>18</sup> FRANKFURTER AND GREENE, *op. cit. supra* note 2, at 171.

<sup>19</sup> It is interesting to note that Mr. Justice Brandeis, who dissented strongly in *Truax v. Corrigan*, wrote the majority opinion in the instant case.

settle their differences without resort to injunction. The old order was injunction first, the new is injunction last."<sup>20</sup>

North Carolina has been extremely fortunate in escaping the labor injunction abuses which have been so prevalent in other jurisdictions.<sup>21</sup> The state was untroubled by labor injunction cases until as late as 1921, when, in the case of *McGinnis v. Raleigh Typographical Union*,<sup>22</sup> an injunction was granted which specifically listed the acts<sup>23</sup> and the parties restrained. Three years later, in *Citizen v. Asheville Typographical Union*,<sup>24</sup> the court became more conservative and affirmed a restraining order which not only enjoined all picketing, but also contained an all-inclusive and ambiguous clause restraining the defendants and all other persons from "doing any acts or things whatsoever in furtherance of any conspiracy of combination among themselves or any of them to obstruct and interfere with the plaintiff or its business. . . ."<sup>25</sup> In the third and last North Carolina decision, the unreported case of *Marion Manufacturing Co. v. United Textile Workers*,<sup>26</sup> the injunction was ambiguous in its terms, and hence, although the court did require that notice be personally served on each defendant, there was much confusion as to exactly what acts were enjoined. Thus, while the North Carolina court in the first case was extremely liberal towards labor, the injunctions granted in the last two cases are characterized by the vague sweeping terms which have been the despair of organized labor in other states ever since "government by injunction" began.<sup>28</sup> Both liberalism and conservatism have been exhibited in these three cases, and it is impossible to foretell which attitude the North Carolina court will adopt in the future.

While it is true that the number of labor injunction cases in North Carolina has been strikingly small in the past, it is inevitable, in view of the fact that the state is in a process of rapid industrial growth, that labor disputes will increase and the injunction tend to become common. And, since the trend of the courts throughout the nation is to uphold

<sup>20</sup> Collins, J., in *Goldfinger v. Feintuch*, 159 Misc. 806, 288 N. Y. Supp. 855, 863 (1936).

<sup>21</sup> McCracken, *STRIKE INJUNCTIONS IN THE NEW SOUTH* (1931).

<sup>22</sup> 182 N. C. 770, 108 S. E. 728 (1921).

<sup>23</sup> Mass picketing, intimidation of employees, following employees, abusive epithets, and attempting to persuade employees to break employment contracts.

<sup>24</sup> 187 N. C. 42, 121 S. E. 31 (1924). <sup>25</sup> *Id.* at 44, 121 S. E. at 32.

<sup>26</sup> McCracken, *op. cit. supra* note 21, at 79. (Superior Court, McDowell County, July 24, 1929).

<sup>27</sup> *Id.* at 84.

<sup>28</sup> The labor injunction has become an object of hatred for many reasons, but probably the chief among these is that the courts have, in most cases, issued restraining orders enjoining almost everybody from doing anything whatsoever in furtherance of labor's attempts to improve its situation. Due to vagueness and uncertainty of terms, and the failure to require personal notice to be served on the defendants, it is often impossible to determine just which acts and parties are restrained.

anti-injunction legislation, North Carolina might probably avoid the abuses which the use of the injunction has thrust upon labor in other jurisdictions by passing the Model Anti-injunction Act.<sup>29</sup>

JAMES D. CARR.

### Municipal Corporations—Remedies Allowed Holders of Invalid Bonds—Constructive Trusts.

Municipal bonds, issued for the erection of a school building, were invalid because the city had no constitutional power to devote funds to such purposes. The United States Circuit Court of Appeals for the Fifth Circuit held that the plaintiff, holder of the entire bond issue, was entitled to have the municipality made a constructive trustee of the school building. This had been built on a city lot with funds supplied from the bond issue and by the county board of public instruction. The court decreed that the way was to be left open to the interested parties (the city, county board, and bondholder) "for such adjustments, whether by sale or rental, as may be within their several powers."<sup>1</sup> In a previous action for money had and received the plaintiff had failed because of the Statute of Limitations.<sup>2</sup> In the instant case there is a clear dictum that such an action would not lie on the merits, for the city no longer had the money, nor had it been used for a proper municipal purpose.<sup>3</sup>

It is settled that no action may be maintained on an invalid municipal bond.<sup>4</sup> However, where the city had the power both to borrow money and to devote it to the purposes for which the bonds were issued, the invalidity being due to mere irregularities in form or manner of issuance,<sup>5</sup> the bondholder may recover for money had and received.<sup>6</sup> The

<sup>29</sup> Prepared by Nathaniel Greene and Felix Frankfurter, and published by the National Committee on Labor Injunctions of the American Civil Liberties League, 100 Fifth Ave., New York City.

<sup>1</sup> *Nuveen v. Board of Public Instruction*, 88 F. (2d) 175 (C. C. A. 5th, 1937), cert. denied 57 Sup. Ct. 794. The adjustment would probably be a *pro rata* share. But see *Nuveen v. Quincy*, 115 Fla. 510, 524, 156 So. 153, 159 (1934) (in a dictum the state court on the same facts said that a constructive trust should be refused).

<sup>2</sup> *State ex rel. Nuveen v. Greer*, 88 Fla. 249, 102 So. 739 (1924).

<sup>3</sup> See *Nuveen v. Board of Public Instruction*, 88 F. (2d) 175, 178 (1937).

<sup>4</sup> *Dodge v. Memphis*, 51 Fed. 165 (C. C. E. D. Mo. 1892); *German Ins. Co. v. Manning*, 95 Fed. 597 (C. C. S. D. Iowa 1899); *Swanson v. Ottumwa*, 131 Iowa 540, 106 N. W. 9 (1906); *People's Bank of St. Paul v. School Dist.* 3 N. D. 496, 57 N. W. 787 (1893).

<sup>5</sup> *Louisiana v. Wood*, 102 U. S. 294, 26 L. ed. 153 (1880) (not registering bonds with proper authorities); *Gause v. Clarksville*, 1 Fed. 353 (C. C. E. D. Mo. 1880) (voters in bond election were not sworn properly); *Geer v. School Dist. No. 11 in Ouray County*, 111 Fed. 682 (C. C. A. 8th, 1901) and *Fernald v. Gilman*, 123 Fed. 797 (C. C. S. D. Iowa 1903) (municipality, although authorized to become indebted, was not entitled to secure the money by bonds); *State ex rel. Northwestern Nat. Bank v. Dickerman*, 16 Mont. 278, 40 Pac. 698 (1895) (non-compliance with notice requirement); *Hoag v. Greenwich*, 133 N. Y. 152, 30 N. E. 842 (1892) (bonds came due at different dates than allowed by law); *Rainsburg v. Fyan*, 127 Pa. 74, 17 Atl. 678 (1889) (not filing statement as required).

<sup>6</sup> *Hitchcock v. Galveston*, 96 U. S. 341, 24 L. ed. 659 (1877); *Louisiana v. Wood*, 102 U. S. 294, 26 L. ed. 153 (1880); *Read v. Plattsmouth*, 107 U. S. 568,