James S. O'Brien et al., Appellees, v. International Ladies' Garment Workers' Union et al. (Defendants).

Ash-Madden-Rae Company et al., Appellees, v. International Ladies' Garment Workers' Union et al. (Defendants).

In the Matter of the Contempt of Steve Sumner, Appellant.

Gen. No. 23,706.

1. INJUNCTION, § 260*—*when imprisonment of strike leader proper.* On appeal from an order committing appellant to jail for contempt of court in violating an injunction issued during a strike, language used by appellant in addressing the strikers, *held* to amount to wilful disobedience and defiance of the injunction and to warrant his imprisonment.

2. INJUNCTION, § 149*—*what constitutes violation of prohibiting any one from aiding or abetting strikers to do forbidden acts.* Language or conduct intended to incite others to a violation of the court's order is in violation of the specific terms of an injunction prohibiting any one from aiding or abetting any of the strikers to commit any of the acts forbidden in the injunction.

3. CONSTITUTIONAL LAW—*when doctrine of free speech not applicable.* Where the language of one appealing from an order committing him for contempt will bear only one reasonable construction, that both with particularity and emphasis it had reference to the particular injunctions involved, he cannot escape by asserting the protection of constitutional rights of free speech applicable to general conditions and situations.

Appeal from the Circuit Court of Cook county; the Hon. JESSE A. BALDWIN, Judge, presiding. Heard in this court at the October term, 1917. Affirmed. Opinion filed April 7, 1919. *Certiorari* denied by Supreme Court (making opinion final).

DARROW & SISSMAN, for appellant; VICTOR S. YARROS, of counsel.

ROSENTHAL, HAMILL & WORMSER, for appellees in Ash-Madden-Rae Co. case.

*See Illinois Notes Digest, Vols. XI to XV, and Cumulative Quarterly, same topic and section number.

LEWIS F. JACOBSON, for appellees in O'Brien case; CHARLES H. HAMILL and LEO F. WORMSER, of counsel.

MR. JUSTICE MCSURELY delivered the opinion of the court.

This is one of the contempt cases which we have referred to in our opinion this day filed in case No. 23,705, *ante,* p. 46. What we there said as to the circumstances and the legal propositions involved applies to the case of this appellant and is adopted as part of this opinion.

Appellant Steve Sumner was charged with having violated the injunction which enjoined any one with knowledge thereof "from ordering, asking, aiding or abetting, in any manner whatever, any person or persons to commit any or either of the acts aforesaid," namely, picketing and other conduct tending to molest or intimidate employees, and also from using language intending to incite others to a violation of the court's order. He was found guilty and sentenced to imprisonment in jail for 70 days.

There is no substantial defense made for this appellant. It is undisputed by evidence that he is not a garment worker or identified with the Garment Workers' Union, and that his conduct and actions were those of an interloper. On February 21st he addressed a meeting of garment workers, and indulged in a most violent denunciation of judges and these particular injunctional orders. He mentioned some of the judges sitting in the Circuit and Superior Courts of this county by name, and applied to them opprobrious epithets. He boasted of how he would break injunctions right and left, and encouraged the girl strikers to do the same, saying that they might as well be in jail, for there they could get three square meals a day. He further incited violence by saying that if any one took his job while on strike he would "bounce a brick on his bean." He specifically told the strikers

to go out and picket, telling them "to get right out and picket, not to be afraid; they were just as well off in jail as out of jail." He attacked the chancellor for issuing the injunctions, referring to them as "outrageous and un-American." There was also further vulgar and shameless abuse of the judge. Also, he stated that "somebody ought to be killed" in connection with this strike. There were further statements made by him to the effect that judges had no right to issue such an injunction because they were elected by the people. There was much more of the same inflammatory kind of talk, all with the manifest purpose of inciting violence, lawlessness and disobedience of the order of the court. There was no testimony on behalf of appellant in contradiction.

It is well settled that language or conduct intended to incite others to a violation of a court's order is in contempt of court. *United States v. Colo,* 216 Fed. 654; *Stewart v. United States,* 236 Fed. 838; *In re Debs,* 158 U. S. 564. In the *Stewart* case, *supra,* the court said "that language or conduct designed, and having the natural effect, to incite others to violence in disregard of the orders of the court, is itself a contemptuous act."

It is presented in defense that Sumner merely advised others to violate the injunction, and that that did not constitute a violation by Sumner. This is wholly without merit. As we have stated, Sumner is charged with having violated that part of the injunction which prohibited any one from aiding or abetting any of the strikers to commit any of the acts forbidden in the injunction. Everything Sumner said was directed toward this end, and hence was in violation of the specific terms of the injunction.

It is further said that the mere ridicule or denunciation of injunctions in general, not amounting to advice to violate these particular injunctions, is but the exercise of free speech guaranteed by the Constitution.

We do not need to determine the broad, general question as to how far a citizen may go in general criticism of courts in relation to practice, policies or methods; that is not this case. The language of appellant could bear only one reasonable construction, that, both with particularity and emphasis, the advice and encouragement to lawlessness had reference to the particular injunctions in question. The judge issuing these injunctions was especially designated by name, the particular injunctional orders attacked, and the advice as to the course of conduct had reference only to the conduct and acts forbidden by these same injunctions. Appellant's language was specific and direct, and he cannot escape by asserting the protection of constitutional rights of free speech applicable to general situations and conditions.

No defense of any merit is presented tending to excuse Sumner or to relieve him of the consequences of his wilful disobedience and defiance of the injunctions. The court could properly have made no other finding than that he was guilty of contempt.

It is not claimed that his punishment is excessive, and in his speech above referred to Sumner, in defiant language, said that he was not afraid of the court or the injunctions, and "would take whatever sentence he got."

The judgment is affirmed.

Affirmed.

James S. O'Brien et al., Appellees, v. International Ladies' Garment Workers' Union et al. (Defendants).

Ash-Madden-Rae Company et al., Appellees, v. International Ladies' Garment Workers' Union et al. (Defendants).

In the Matter of the Contempt of Sam Schuester, Appellant.

Gen. No. 23,710.

1. INJUNCTION, § 260*—*when punishment for violation of injunction not unreasonable.* On appeal from an order punishing appellant for acts of intimidation and violence in violation of an injunction issued during a strike, evidence that appellant, a member of one of the striking unions, in company with another, made their way into the bedroom of one of the workers and, upon his refusing to quit work, committed a violent assault accompanied by language indicating a disregard for the injunction, *held* to show that the finding of guilty was justified and the punishment of 6 months in jail and a fine of $100 not unreasonable.

2. INJUNCTION, § 257*—*when knowledge of injunction against union shown.* An appeal from a sentence for violation of an injunction, evidence that appellant admitted that he knew his union was enjoined, that a witness had talked with him in the vicinity of the factory where placards were posted giving information as to the injunction and that there was widespread publicity concerning it, *held* sufficient to show that he had knowledge of the injunction.

3. INJUNCTION, § 257*—*when shown that assault was committed in connection with injunction against strikers.* On appeal from a conviction for violation of an injunction issued during a strike, the undisputed testimony of the worker assaulted by appellant as to why he was assaulted, in connection with other circumstances of the case, *held* to show that the assault was committed in connection with the injunction.

Appeal from the Circuit Court of Cook county; the Hon. JESSE A. BALDWIN, Judge, presiding. Heard in this court at the October term, 1917. Affirmed. Opinion filed April 7, 1919.

*See Illinois Notes Digest, Vols. XI to XV, and Cumulative Quarterly, same topic and section number.

DARROW & SISSMAN, for appellant; VICTOR S. YARROS, of counsel.

LEWIS F. JACOBSON, for appellees.

MR. JUSTICE MCSURELY delivered the opinion of the court.

This is one of the contempt cases which we have referred to in our opinion this day filed in case No. 23,705, *ante,* p. 46. What we there said as to the circumstances and the legal propositions involved applies to the case of this appellant and is adopted as part of this opinion.

Appellant Schuester is a member of one of the organizations affiliated with the International Ladies' Garment Workers' Union, and had been employed by one of the complainants. He went out on strike February 15th. Later a petition was filed charging him and one Sam Handleman with violating the injunction by acts of intimidation and violence against one Harry Pefferman, an employee of the complainant. Schuester was found guilty of violation of the injunction and sentenced to a term of 6 months in the county jail and to pay a fine of $100.

The evidence tended to show that on March 26, 1917, Schuester and Handleman went to the place where Pefferman lived and made their way into his bedroom where he was asleep in bed; that they commenced to beat him with an iron curtain rod, inflicting wounds and bruises on his arms, elbows and abdomen, which still appeared at the time of the hearing in court. He fell out of bed, and Schuester jumped on him and struck him in the face. Pefferman said to Schuester during the assault, "You know what you will get from the court for this," and Schuester replied, "I don't care if I get 20 years, I want to beat you up." This stands uncontradicted in the record. There was testimony by other witnesses that Schuester made statements admitting the assault, but referring to it as "an argument." Handleman and Schuester were both members of the Garment Workers' Union and were well known to Pefferman, who testified that when they arrived in his room on the night of the assault Schuester stated he wished Pefferman would not continue to work, but was told by Pefferman that as everybody was working in the shop he would continue to work, and that thereupon they commenced to beat him.

In defense it is stated that the evidence fails to show that Schuester had notice of the injunction, but this is not justified by the record. Schuester in his testimony admits that he had heard that his union was enjoined. Another witness also testified that he had employed Schuester during the strike and had talked with him as to why he was not working; that this conversation took place in the vicinity of the factory where placards were posted giving information concerning the injunction. There is also other evidence as to the widespread publicity by newspapers and posting of summaries of the injunction. We are of the opinion, in view of Schuester's admission and the other evidence, that his knowledge of the injunction was sufficiently proven.

It is asserted that the assault is not shown to have been connected with the injunction. The undisputed testimony of Pefferman as to why he was assaulted, taken in connection with the other circumstances of the case, established clearly that the assault on Pefferman was solely for the purpose of intimidating him so as to cause him to stop working. The assault was brutal and in defiance of the order of court, as indicated by Schuester's remarks at the time, that he would commit the assault regardless of what the court might do.

There can be no doubt as to the propriety of the finding that Schuester was guilty, and in view of the

seriousness and flagrancy of the offense the punishment is not unreasonable. The judgment is affirmed.

Affirmed.

In the Matter of the Estate of Charles H. Limbach, Deceased.

Elsa Limbach, Appellant, v. Russell Warder Limbach, Appellee.

Gen. No. 24,284.

1. WILLS, § 89*—when evidence insufficient to show publication of nuncupative will. Upon appeal by one of the proponents of a nuncupative will from an order admitting to probate a written will, evidence reviewed and held to be insufficient to establish a publication of the alleged nuncupative will.

2. WILLS, § 94*—what evidence admissible to show fraud in execution. The rule limiting the contestants of a will to the testimony of subscribing witnesses, when the testimony of such witnesses is exclusively relied upon by the proponents, applies only to testimony as to testamentary capacity, and fraud going to the execution of the instrument offered for probate may be shown on behalf of contestants by any competent evidence.

3. WILLS, § 94*—when fraud as to making of nuncupative will shown. Evidence, offered by the contestants of an alleged nuncupative will, establishing the fact that the words of the supposed will were never in fact spoken, showed such fraud as is contemplated by section 15 of the Statute of Wills (J. & A. ¶ 11556).

4. WILLS, § 118*—effect of nuncupative will as revocation of written will. A revocation of a written will by a later nuncupative will is forbidden by section 17 of the Statute of Wills (J. & A. ¶ 11558).

5. WILLS, § 118*—application of statute to partial revocation. Section 17 of the Statute of Wills (J. & A. ¶ 11558) applies to an attempt by a testator to revoke a part, as well as the whole, of his previous testament.

Appeal from the Circuit Court of Cook county; the Hon. Orrin

*See Illinois Notes Digest, Vols. XI to XV, and Cumulative Quarterly, same topic and section number.