outweigh a presumption of due validity of probate, which he has not had an opportunity to meet in the probate court.

LOWELL M. GOERLICH.

LABOR LAW

THE RIGHT TO PICKET IN THE ABSENCE OF A TRADE DISPUTE.

Three recent cases decided in the Court of Common Pleas of Cuyahoga County involved the use of the injunction to restrain picketing. In none of these cases was there a strike in process, nor was there any legitimate trade dispute between the employer and his employees.

In the first case the labor union demanded that the employer raise the prices charged for the dry cleaning of clothes, and that he stop advertising low prices. Upon his refusal to comply, the union picketed his place of business without using force or coercion. The Court enjoined the picketing, finding that there was no legitimate trade dispute and that the union's activities violated the Valentine Act. *Markowitz* v. *The Dry Cleaners Union et al.*, 19 Abs. 445, 3 Ohio Op. 366 (1935).

The remaining two cases involved a demand by the union for a closed shop. Upon the employer's refusal, his apartment houses were picketed. The employer-employee relationship was entirely amicable. The defendant unions, however, were engaged in using force in both cases. The Court granted the injunction in these cases on the ground of an illegal secondary boycott. *Savoy Realty Co.* v. *McGee*, 19 Abs. 682, 4 Ohio Op. 88 (1935); *Mutual Benefit Life Ins. Co.* v. *McGee*, 19 Abs. 691, 4 Ohio Op. 99 (1935).

The court in these last two cases intimates that had the picketing been peaceful, without the use of force and coercion, and in furtherance of a legitimate trade dispute, there would have been no ground for injunction. In distinguishing between these cases and a California case, *Lisse et al.* v. *Local Union No. 31, Cooks, Waiters, & Waitresses, et al.*, 2 Cal. (2d) 312 (1935), 41 Pac. (2d) 314, in which both elements were present, the court said each case must be judged upon its own facts. "However we find no analogy . . . . In the California case we find that the employees . . . . becoming dissatisfied, called a strike, which was followed by picketing." The California Court granted the injunction on the ground of undue force and coercion, but saying in the course of its decision, "A trade union, besides having the right to call a strike, has the legal right to carry on a boycott, both primary and secondary."

Peaceful picketing has frequently been held lawful in Ohio. *The La France Electrical Construction & Supply Co.* v. *International Brotherhood of Electrical Workers, Local No. 8, et al.*, 108 Ohio St. 61, 140 N.E. 897 (1923); *Louis Park et al.* v. *Locals Nos. 106, 108, and 167 of the Hotel and Restaurant Employees International Alliance et al.*, 22 Ohio N.P. (N.S.) 257, 30 Ohio Dec. 64 (1920); *Fred Wiley et al.* v. *Retail Clerks Ass'n Union et al.*, 32 Ohio N.P. (N.S.) 257 (1934); *Bellview Brewing Co.* v. *International Union of the United Brewery Workers of America et al.*, 12 Ohio N.P. (N.S.) 257, 24 Ohio Dec. 102 (1911).

The right to picket peacefully is dependent upon the existence of a legitimate trade dispute. This has been defined to mean that there must be, or must have been, an employer-employee relationship out of which the dispute grew, concerning some matter relating to the employment. *The La France Electrical Construction & Supply Co.* v. *International Brotherhood of Electrical Workers, Local No. 8 et al, supra; Fred Wiley et al.* v. *Retail Clerks Ass'n Union et al., supra; Lundoff-Bicknell Co.* v. *Smith*, 24 Ohio App. 294, 156 N.E. 243 (1927); *The Driggs Dairy Farms, Inc.* v. *Milk Drivers & Dairy Employees Local Union No. 361 et al.*, 3 Ohio Op. 212, 49 Ohio App. 303 (1935).

However, in two cases injunctions against picketing were refused where there was no dispute between the employee and his employer, but only between the employer and the labor organization. *The S. A. Clark Co.* v. *The Cleveland Waiters & Beverage Dispensers Local No. 106 et al.*, 22 Ohio App. 265, 154 N.E. 362 (1926); *McCormick & Fisher* v. *Local Union No. 216 Hotel & Restaurant Employees*, 13 Ohio C.C. (N.S.) 545, 32 C.D. 165 (1911). These cases were instances of a boycott, and the courts justified their conclusions upon the ground that the conduct of the labor organizations was lawful in so far as it was peaceful. But the courts failed to recognize that a legitimate trade dispute is as essential to a lawful boycott as it is to a lawful strike. *Brown & Son* v. *United Mine Workers*, 25 Ohio N.P. (N.S.) 485 (1925); *United Tailors Co.* v. *Amalgamated Workers*, 26 Ohio N.P. (N.S.) 439 (1926).

In the *Markowitz* case, *supra*, the peaceful picketing was enjoined on the ground that there was no legitimate trade dispute. On this authority, it would follow that even had the picketing been peaceful in the *Savoy* and *Mutual* cases, *supra*, the court would have granted the injunction.

The *Markowitz* case, *supra*, was properly decided upon the further

ground that the defendants were violating the Valentine Act. This Act makes it illegal for any persons or associations to combine "to create or carry out restrictions in trade or commerce," and "to fix at a standard or figure, whereby its price to the public or consumer is in any manner controlled or established, an article or commodity of merchandise, produce or commerce, intended for sale, barter, use, or consumption, in this state." Injunctions have been granted under similar acts where the labor organization has attempted to enforce unlawful demands by picketing: Price fixing, *Standard Engraving Co.* v. *Voltz*, 200 App. Div. 758, 193 N.Y. Supp. 831 (1922); *Ellis* v. *Journeymen Barbers International Union of America et al.*, 194 Iowa 1179, 191 N.W. 111 (1922); Boycott to force a person to join the organization illegal: *Gildhausen Co.* v. *Busse*, 19 Ohio N.P. (N.S.) 265 (1916); Picketing, to force a person to close his shop on Saturday night: *Hellman* v. *Association*, 23 Ohio N.P. (N.S.) 177 (1919).

The labor organization in the *Markowitz* case, *supra*, violated the Valentine Act in making an illegal demand upon the Markowitz brothers. This demand, had it been complied with would have had the effect of creating a price standard, and of eliminating competition, both of which are prohibited by the Act. C. R. JOHNSON.

LANDLORD AND TENANT

LANDLORD-TENANT RELATIONSHIP — LIABILITY TO INVITEES OF TENANT — CONTROL

A woman brought her child to the lessee's photographic studio for a picture in the nude. The child fell from a chair in the lessee's dressing room and was severely burned by contact with a steam pipe which had nothing to identify it as such except its heat. There was evidence to show that the pipe was excessively hot and that it was used to convey heat to other parts of the building. The terms of the lease put the lessor in exclusive control of janitor service, heating, lighting, and repairs and gave him the right of access to the demised premises at all times. The plaintiff brought an action against the lessor for damages. The judgment for the plaintiff was sustained in the Court of Appeals on three grounds only the first of which will be discussed in this note. *R.K.O. Midwest Corp.* v. *Berling*, 51 Ohio App. 85, 199 N.E. 604 (1936). The bases of decision were: first, the lessor's liability is predicated on continued control of the premises; second, the lessor and the lessee