Buffalo Law Review

Volume 8 | Number 1 Article 98

10-1-1958

Labor Law—Application of Statute to Employer and Domestic

Buffalo Law Review

authorization in cases involving internal union disputes than in cases where a union is sued by an outside party. This distinction would seem to rest on sheer and transparent policy, however, and, it is to be hoped, will not be relied upon.

The Court's decision is a welcome stride forward from the position that a union is not liable except as all of its members are. Even if provisions in the General Associations Law are purely procedural, there is no reason why the substantive law of associations cannot develop in pace with changing societal conditions, rather than continue to sustain a rule of law " . . . for no better reason . . . than that so it was laid down in the time of Henry IV."[38]

Application of Statute to Employer and Domestic

Section 240 of the Labor Law imposes a duty upon employers of persons employed to, inter alia, clean buildings and structures, to furnish safe equipment for such work, including scaffolding, ladders, etc. A domestic who, while cleaning windows on a private dwelling, fell from a ladder and injured herself, attempted to hold the householder liable for the injuries because of an alleged violation of this section. The Court rejected the claim, however, holding that section 240 was not intended by the legislature to apply to such a situation but only to circumstances where cleaning is incidental to "building construction, demolition and repair work." The section is an integral part of the article of the Labor Law dealing with that subject and obviously was not meant to reach the controversy at issue.[39]

MUNICIPAL CORPORATIONS

Zoning—Constitutionality of Ordinance Discontinuing Non-Conforming Uses

The petitioner in *Harbison v. City of Buffalo*[1] operated a drum reconditioning plant on his own property in the city of Buffalo. He erected the building thereon shortly after purchasing the property in 1924. At that time there were located nearby a glue factory and a city owned dump. The area was unzoned at the time, but in 1926 it was zoned for residential use and has remained so zoned, with the exception of one short period, to the present time. From 1936 to 1956, Harbison applied for and received licenses to conduct business as a junk dealer, a classification which embraced drum reconditioners. In 1956, the petitioner was refused a junk dealer's license and a drum reconditioning license pursuant to a city ordinance passed in 1953, which provided for a cessation of certain nonconforming uses, including "any junk-yard", within two years of the date of

38. Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 469 (1897).
39. Connors v. Boorstein, 4 N.Y.2d 172, 173 N.Y.S.2d 288 (1958).

1. 4 N.Y.2d 553, 176 N.Y.S.2d 598 (1958).