others have held that proof of the presence of foreign matter in food or beverages warrants recovery on the doctrine of *res ipsa loquitur*.[21] Because of the difficulties of proving that the agency causing the injury was under the exclusive control of the defendant; that the injury was one which would not ordinarily occur if the defendant had used due care; and, that evidence of the cause of the injury is more readily available to defendant than plaintiff, this doctrine is not generally used.[22] Most courts take the view that the presence of such foreign matter as glass, in itself, is evidence of negligence, hence there is no need for the doctrine of *res ipsa loquitor*, for the case is one for the jury without its aid.[23] Direct proof of actionable negligence on the part of the defendant is not required, however, since such negligence may be inferred from relevant facts and circumstances.[24] E. C. '37.

INJUNCTION—ENJOINING THE PROSECUTION OF A SUIT IN ANOTHER JURISDICTION.—In the case of *McConnell v. Thomson*[1] the appellant, an Indiana citizen, was enjoined from prosecuting a threatened action in the city of St. Louis, Missouri, to recover damages under the Federal Employers' Liability Act[2] on account of injuries alleged to have caused the death of appellant's deceased husband while he was in the employ of the appellee. The alleged tort took place in Patoka, Indiana. All the witnesses and records were at Evansville, Indiana. *Held*, the Indiana equity courts may enjoin the prosecution of actions in other states where it is shown that it would be inequitable for the action to be brought in another jurisdiction.

The general rule is that where a party to a suit is within the jurisdiction of one court he may, "on a proper showing," be enjoined from prosecuting an action in a court of another state.[3] The power to so enjoin a citizen rests upon the power of equity to act *in personam*,[4] for the court simply enjoins the person from prosecuting the suit and not the foreign court from trying the suit.[5] A court will not issue an injunction to restrain an

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N. E. 28; Minutilla v. Province Ice Cream Co. (1929) 50 R. I. 43, 144 Atl. 884; Bourcheix v. Willow Brook Dairy (1935) 268 N. Y. 1, takes the view that the presence of glass in a bottle of cream in violation of a statute prohibiting the sale of adulterated cream constituted negligence as a matter of law.

[21] Eisenbeiss v. Payne (1933 Ariz.) 25 P. (2d) 161; Atlanta Coca Cola Bottling Co. v. Sinyard (1932) 45 Ga. 272, 164 S. E. 231; Liggett & Myers Tobacco Co. v. Rankin (1932) 346 Ky. 65, 54 S. W. (2) 612.

[22] 20 Minnesota Law Review 527; Enloe v. Charlotte Coca Cola Bottling Co. (1925) 208 N. C. 305, 180 S. E. 582.

[23] 23 Michigan Law Review 785.

[24] Enloe v. Charlotte Coca Cola Bottling Co. (1935) 208 N. C. 305, 180 S. E. 582; Hampton v. Thomasville Coca Cola Bottling Co. (1935) 208 N. C. 331, 180 S. E. 584.

[1] (Feb. 18, 1936) 200 N. E. 96.

[2] 45 U. S. C. A. secs. 51-59 and particularly sec. 56.

[3] 14 R. C. L. 412.

[4] O'Haire v. Burns (1909) 45 Colo. 432, 101 Pac. 755, 132 A. S. R. 191, 25 L. R. A. (N. S.) 267 and note.

[5] Gordon v. Munn (1910) 81 Kans. 537, 106 Pacific 286, 25 L. R. A. (N. S.) 917.

action in a court of a foreign jurisdiction in the absence of a clear equity.[6] In *N. Y. C. & St. L. R. Co. v. Perdiue et al.*[7] the court said: "We are not unmindful of the rule that, on grounds of comity, the power of one state to interfere with a litigant who is in due course pursuing his rights and remedies given under the law, in the courts of another state, should be exercised sparingly." In determining the equities of the case the court will consider the purpose of the parties bringing the suit in the foreign jurisdiction and the probable consequences.[8] According to Pomeroy the true basis of the injunction in these cases is that the foreign court cannot do as complete justice as the domestic court.[9] The fact that the law in the foreign jurisdiction differs from that of the forum has generally been held not sufficient to justify an injunction.[10] But where the plaintiff in the original suit went into the court of another state solely for the purpose of evading the laws of the domicil, it has been held in Missouri, as well as in other states, that "It is an attempt to defraud the laws of the state, and an attempt at oppression which justifies the interference of courts of equity."[11] The only reasons that courts are not willing to grant an injunction for this purpose more readily lie in the principle of comity and in the full faith and credit clause of the Constitution of the United States. But the full faith and credit clause does not "prevent an inquiry . . . into the right of the State to exercise authority over the parties or the subject matter" where there is the element of fraud or other equitable bases.[12]

A number of injunctions have been granted in other states to prevent causes of action arising in those states from being litigated in Missouri Courts. It seems that all the Indiana injunctions, in cases such as these, were issued to prevent Indiana actions from being prosecuted in Missouri.[13] In the case of *Cleveland, C., C. & St. L. Ry. Co. v. Shelly*[14] the Indiana court in granting the injunction took into consideration the fact that in Missouri only nine jurors need concur in a verdict. There were in each instance, however, the additional elements of great inconvenience and expense in defending the suits in Missouri. If Missouri courts adopted the doctrine of *forum non conveniens*[15] it would no longer be necessary for Indiana courts, as well

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[6] 57 A. L. R. 77.

[7] (1933) 97 Ind. App. 517, 187 N. E. 349.

[8] Mason v. Harlow (1911) 84 Kans. 277, 114 Pac. 218, 33 L. R. A. (N. S.) 234.

[9] Pomeroy, *Equity Jurisprudence* (4th ed.) sec. 2091.

[10] Carson v. Dunham (1889) 149 Mass. 52, 20 N. E. 312, 3 L. R. A. 203.

[11] Wabash Western Ry. Co. v. Siefert (1890) 41 Mo. App. 35.

[12] Cole v. Cunningham (1889) 133 U. S. 107.

[13] Cleveland, C., C. & St. L. Ry. Co. v. Shelly (1930) 96 Ind. App. 273, 170 N. E. 328; Kern et al. v. Cleveland, C., C. & St. L. Ry. Co. (1933) 204 Ind. 595, 185 N. E. 446; N. Y., Chicago & St. L. R. R. Co. v. Peridue (1933) 97 Ind. App. 517, 187 N. E. 349; Alspaugh v. N. Y., Chicago & St. L. R. R. Co. (1934) 98 Ind. App. 280, 188 N. E. 869.

[14] Supra, note 13.

[15] Burdick v. Freeman (1890) 120 N. Y. 420, 426, 24 N. E. 949; Fehr v. Black Petroleum Corporation (1924) 103 Okla. 241, 229 Pac. 1048; Paxton Blair, The Doctrine of Forum Non Conveniens in Anglo-American Law, 29 Col. L. Rev. 1.

as the courts of other states, to enjoin plaintiffs from prosecuting their suits in Missouri, for the Missouri courts, if they recognized this doctrine, would decline to exercise jurisdiction over suits brought in this state solely for the purpose of evadng the laws of another state. Unfortunately, however, the Missouri courts have as yet not adopted this doctrine and Missouri courts continue to try these cases, thus necessitating the use of the injunction by the courts of the defendant's residence.

W. B. M. '38.

INJUNCTIONS — LABOR DISPUTES — NORRIS-LAGUARDIA ACT. — A very recent case dealing with the problem of labor injunctions is the case of *Lauf v. E. G. Shinner and Company* (1936) 82 F. (2d) 68. In the case at hand we have a situation where the defendant union was attempting to picket the plaintiff's meat markets although none of the members of the union were employed in these markets. The employees themselves had no argument as to wages or conditions of labor with the plaintiff employer. The labor union displayed signs and posters reading "This firm is unfair to organized labor." The labor union demanded that the employees join their union. The Seventh Circuit Court held that these facts were not within the Norris-LaGuardia Act[1] because they did not involve a "labor dispute." They proceed here on the theory that to have a "labor dispute" you must have a "dispute" between the employer and the employees. This court is following the precedent it set for itself in the case of *Union Electric Coal Company v. Rice*,[2] in which they held that the "labor dispute" designated in the Norris-LaGuardia Act referred to a labor dispute betwen the employer and the employee and did not apply to disputes between employees or to disputes between employee unions to which the employer was not a real party. The decision of the *Union Electric Coal Company* case could have been distinguished from the instant case because in that case there was present a great deal of actual damage, fraud, and in addition it involved a quarrel between two labor unions to which quarrel the Company was a mere innocent third party.

In the case of *Dean v. Mayo*[3] the court held that in a situation where a labor union had no employees amongst the employer's laborers, the labor union could be enjoined from picketing; then on a motion for a rehearing, the court changed its decision holding that no injunctive relief could be granted until all possible attempts to arbitrate have been exhausted.

Under ordinary circumstances it would seem that an employer desiring to conduct his business with non-union labor would have that privilege. It would also appear that so long as his own employees remain satisfied, no outsider, who does not stand in the relation of an employee, can provoke a "labor dispute" in such a way as to bring into operation legislation which is intended to regulate an employer's conduct in relation to his employees. On the other hand, the provisions of the Norris-LaGuardia Act of 1932 and

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[1] (1932) 29 U. S. C. A. sec. 101 et seq.
[2] Union Electric Coal Company v. Rice (1935) 80 F. (2d) 1.
[3] Dean v. Mayo (1934) 8 F. Supp. 73.