most potent weapon of self-protection in unionizing new territory and preventing non-union products from driving union made goods out of the interstate market.[9]

The difference between the earlier decisions and the instant one lies simply in the Norris-La Guardia Act. By that act federal courts are deprived of jurisdiction to issue injunctions in labor disputes except upon certain findings of fact,[10] and then only against fraud and violence.[11] The circuit court of appeals reasoned that the Norris-La Guardia Act did not restrict federal equity jurisdiction in a case involving a "secondary boycott" under the Sherman Act because the boycott was *illegal*.[12] Such construction not only overlooks the rather plainly expressed intent of Congress to overrule the *Duplex* and *Bedford* cases,[13] but it also conflicts with section 5 of the Norris-La Guardia Act which prohibits the granting of an injunction "upon the ground that any of the persons participating * * * in a labor dispute constitute * * * an unlawful combination of conspiracy * * *."[14]

S. M. M.

SALES—CARRYING CHARGE AS USURY—TRIPARTITE CREDIT TRANSACTIONS —[Texas].—Plaintiff purchased an automobile under a conditional sale contract, giving in payment his note for a sum much greater than the regular cash price. The seller immediately assigned the note and the conditional sale contract to the defendant finance company, in whose office the entire transaction was consummated. In return, defendant paid to the seller the cash price of the automobile. After paying the note, plaintiff sued to recover the statutory penalty for usury, claiming that the $151.55 difference between the cash price and the credit price was an excessive interest charge. Defendant contended, on the other hand, that the $151.55 was merely a carrying charge—that the transaction was not a loan or forbearance, but a valid credit sale. *Held*, that the sum of $151.55 was intended as compensation for the use or detention of money loaned, and that the transaction was, therefore, usurious. *Frankfurt Finance Co. v. Cox*.[1]

The decision seems to conflict with the well-established rule that on a contract to secure the price or value of work or labor done, or of property sold, the contracting parties may agree upon one price if cash be paid, and upon as large an addition to the cash price as they wish if credit be given. The courts have uniformly agreed that conditional sales contracts do not involve the lending of money or the forbearance of a debt, unless they are

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9. Cf. 274 U. S. 37, 65, Brandeis, J., dissenting.
10. (1932) 47 Stat. 71, c. 90, 29 U. S. C. A. (Supp. 1940) sec. 107.
11. Id. at sec. 104.
12. (1939) 108 F. (2d) 436, 442. See vigorous criticism of such reasoning under Sherman Act in Frankfurter and Greene, *The Labor Injunction* (1930) 171; Berman, *Labor and the Sherman Act* (1930) 99-110, 170-179.
13. See New Negro Alliance v. Sanitary Grocery Co. (1938) 303 U. S. 552, 562. See also: H. R. Rep. No. 669 (1931) 72nd Cong., 1st Sess., 7, 8; Sen. Rep. No. 163 (1931) 72nd Cong., 1st Sess., 8.
14. (1932) 47 Stat. 71, c. 90, 29 U. S. C. A. (Supp. 1940) sec. 105.

1. (Tex. Civ. App. 1940) 142 S. W. (2d) 553.

used merely to avoid the usury statutes.[2] The rule is especially applicable to credit sales of rapidly depreciating property, such as automobiles, when the down payment is small and the purchaser takes possession.[3] A purchase-money note is regarded as part payment and not as evidence of money borrowed. The proposition has been applied to contracts concerning the sale of various goods, wares, and merchandise,[4] pianos,[5] radios,[6] lumber,[7] capital stock in an automobile agency,[8] and real property.[9] The general rule applies to tripartite transactions in which the professional moneylender enters the picture as creditor, as well as to bipartite transactions in which the seller is the creditor.

In the past, the courts have not regarded as material the fact that finance corporations solicit such business from automobile agencies, furnishing them with forms and standard discount rates.[10] The court in the principal case[11] justified and distinguished its holding by alluding to the close connection between seller and finance company as indicated by the presence at the sale

2. In re Bibbey (D. C. D. Minn. 1925) 9 F. (2d) 944; Graham v. Universal Credit Co. (Tex. Civ. App. 1933) 63 S. W. (2d) 727; Rattan v. Commercial Credit Co. (Tex. Civ. App. 1939) 131 S. W. (2d) 399; Burkitt v. McDonald (1901) 26 Tex. Civ. App. 426, 64 S. W. 694; Holland-O'Neal Milling Co. v. Rawlings (1925) 217 Mo. App. 466, 268 S. W. 683; Commercial Credit Co. v. Tarwater (1926) 215 Ala. 123, 110 So. 39; Cheairs v. McDermott Motor Co. (1928) 175 Ark. 1126, 2 S. W. (2d) 1111; Wilson v. J. E. French Co. (1931) 214 Cal. 188, 4 P. (2d) 537; Cady L. Daniels Inc. v. Fenton (1935) 97 Colo. 409, 50 P. (2d) 62; Zazzaro v. Colonial Acceptance Corp. (1933) 117 Conn. 251, 167 Atl. 734; Davidson v. Davis (1910) 59 Fla. 476, 52 So. 139, 28 L. R. A. (N. S.) 102, 20 Ann. Cas. 1130; Richardson v. C. I. T. Corp. (1939) 60 Ga. App. 780, 5 S. E. (2d) 250; Atlas Securities Co. v. Copeland (1927) 124 Kan. 393, 260 Pac. 659; General Motors Acceptance Corp. v. Swain (La. 1937) 176 So. 636; Keefe v. Bush & Lane Piano Co. (1929) 247 Mich. 82, 225 N. W. 585; Benson v. Berry-Dampeer Co. (1930) 158 Miss. 237, 130 So. 157; American Loan Plan v. Frazell (1939) 135 Neb. 718, 283 N. W. 836; McAnsh v. Blauner (1928) 222 App. Div. 381, 226 N. Y. S. 379, aff'd (1928) 248 N. Y. 537, 162 N. E. 515; Sayler v. Brady (1933) 63 N. D. 471, 248 N. W. 673; Mayer v. American Finance Corp. (1935) 172 Okla. 419, 45 P. (2d) 497; Conway v. Skidmore (1935) 48 Wyo. 73, 41 P. (2d) 1049.

3. Wilson v. J. E. French Co. (1931) 214 Cal. 188, 4 P. (2d) 537; Gilbert v. Hudgins (1933) 92 Colo. 571, 22 P. (2d) 858.

4. Starling v. Hamner (1932) 185 Ark. 930, 50 S. W. (2d) 612; Benson v. Berry-Dampeer Co. (1930) 158 Miss. 237, 130 So. 157.

5. Keefe v. Bush & Lane Piano Co. (1929) 247 Mich. 82, 225 N. W. 585.

6. Conway v. Skidmore (1935) 48 Wyo. 73, 41 P. (2d) 1049.

7. Hartwick Lumber Co. v. Perlman (1929) 245 Mich. 3, 222 N. W. 147.

8. Holland-O'Neal Milling Co. v. Rawlings (1925) 217 Mo. App. 466, 268 S. W. 683.

9. Davidson v. Davis (1910) 59 Fla. 476, 52 So. 139, 28 L. R. A. (N. S.) 102, 20 Ann. Cas. 1130; McAnsh v. Blauner (1928) 222 App. Div. 381, 226 N. Y. S. 379, aff'd (1928) 248 N. Y. 537, 162 N. E. 515; Edwards v. Wiley (1921) 150 Ark. 480, 235 S. W. 54; Nantz v. Hurst (1915) 166 Ky. 396, 179 S. W. 400.

10. Commercial Credit Co. v. Tarwater (1926) 215 Ala. 123, 110 So. 39; American Loan Plan v. Frazell (1939) 135 Neb. 718, 283 N. W. 836.

11. Frankfurt Finance Corp. v. Cox (Tex. Civ. App. 1940) 142 S. W. (2d) 553.

of a representative of defendant, and the use of defendant's form-blanks. But can it be said that the presence of the appellant's representative takes the case out of the rule, if the same agreement between seller and creditor, consummated by telephone in the ordinary way, would fall within it? It is perhaps significant that the court expressed, by way of *dictum*, grave doubts as to the wisdom of the general rule and said that it was difficult to say what the credit differential represented, if not interest.[12]

Parties extending credit in sales transactions are subject to certain risks which must be covered by increasing the price of the article. It is questionable whether the creditor could survive if forced to compute this increase in price on the basis of the legal interest rates. The usury laws were intended to apply to small loan transactions in which the lender, owing to the dire need of the borrower, was able to exact from him almost any rate of interest.[13] The question is whether these laws are now to be extended to financing transactions involving conditional sales. The courts, except in this case, have answered in the negative. If regulation of this type of financing is necessary, would it not be more successfully and justifiably dealt with through legislative or administrative channels, rather than by judicial decision? J. W. F.

TORTS—LIBEL—LIABILITY OF ADVERTISING COMPANY FOR PUBLICATION OF CLIENT'S CIRCULAR—[Missouri].—Defendant's business consisted of selling to his clients lists of prospective customers. Incidentally, defendant would mail advertising matter supplied by such clients. Pursuant to this business it mailed out 10,000 copies of a circular furnished by a client, which contained a passage libelling plaintiff. Plaintiff brought an action for damages, against defendant. *Held*, that defendant, though unconscious of the libel, made the publication and was liable for it. *McDonald v. Polk & Co.*[1]

Generally there is absolute liability for the publication of a libel;[2] privi-

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12. Id. at 555. The court suggests that it is wrong to say broadly, as a matter of law, that a seller may demand one price for cash and another for credit without infringing the usury statute, and submits that it would be more correct to say that if the difference in price exceeds the legal rate of interest, the contract as a matter of law is usurious, and that if the evidence raises an issue on the point, it becomes one of fact.

13. In Frorer v. People (1892) 141 Ill. 171, 31 N. E. 395, 399, the court said: "Usury laws proceed upon the theory that the lender and the borrower of money do not occupy toward each other the same relations of equality that parties do in contracting with each other in regard to the loan or sale of other kinds of property, and that borrower's necessities deprive him of freedom in contracting, and place him at the mercy of the lender; * * *." Ryan, *Usury and Usury Laws* (1924) 128.

1. (Mo. 1940) 142 S. W. (2d) 635.

2. Peck v. Tribune Co. (1909) 214 U. S. 185; Washington Post Co. v. Chalconer (1919) 250 U. S. 290; Hulton v. Jones [1910] A. C. 20, 16 Ann. Cas. 166; Taylor v. Hearst (1895) 107 Cal. 262, 40 Pac. 392; Laudati v. Stea (1922) 44 R. I. 303, 117 Atl. 422, 26 A. L. R. 450; Morrison v. Ritchie & Co. (1902) 39 Scot. L. R. 432. See Harper, *Torts* (1938) 503, sec. 237.