vorable state law or policy;[21] (3) discrimination between citizens and noncitizens.[22]

Although it is submitted that the result of the decision will have a salutory effect in giving to the states the right, contemplated by the framers of the Judiciary Act of 1789,[23] to have their own law applied in federal courts, yet it is believed that the gratuitous declaration that the prior course constituted an unconstitutional assumption of power by the United States courts was unnecessary. The instant case required only the disapproval of the interpretation given Section 34 of the Judiciary Act of 1789[24] in *Swift v. Tyson.* It might have been well to postpone the declaration, in effect, that Congress has not the power to provide by statute the rule laid down in *Swift v. Tyson,*[25] until the issue is directly presented.

L. H. B.

CONTRACTS—COLLECTIVE LABOR AGREEMENTS—RIGHTS OF NONUNION EMPLOYEE—[Oregon].—Defendant employer, operating a nonunion establishment, hired plaintiff under a contract containing no overtime or subsistence provisions. Thereafter defendant entered into a contract with a labor union which did contain such provisions. Neither plaintiff nor any other employee was then a member of the union or became such prior to suit. In a suit based upon the contract between the labor union and the employer, on agency and third party beneficiary theories, plaintiff contended that the employer was liable for overtime and subsistence under the trade agreement. *Held,* the contract was void for want of consideration, since no employee was a member of the union during the life of the contract.[1]

The court distinguished the instant case from *Yazoo & Mississippi Valley R. Co. v. Webb,*[2] in which case a nonunion employee was allowed to recover under a similar agreement, on two grounds: (1) the contract there had been entered into by the union while the relation of principal and agent

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21. Black & White Taxicab Co. v. Brown & Yellow Taxicab Co. (1928) 276 U. S. 518, 48 S. Ct. 404, 72 L. ed. 681, 57 A. L. R. 426.

22. Erie R. Co. v. Tompkins (1938) 58 S. Ct. 817, 820, 82 L. ed. 787.

23. Charles Warren, New Light on the History of the Federal Judiciary Act of 1789 (1923) 37 Harv. L. Rev. 49.

24. Federal Judiciary Act of 1789, 1 Stat. 92, (1928) 28 U. S. C. A. sec. 725. Section 34 is as follows: "The laws of the several states, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply." In Swift v. Tyson the word "laws" embodied in this section was interpreted to mean the constitutions and statutes of the states and to exclude judicial decisions.

25. The instant case ignores the rule of construction that courts will not determine a constitutional question unless it is necessary to a decision in the case at hand. Both Mr. Justice Butler in his dissent and Mr. Justice Reed in his concurring opinion point out that such declaration was not necessary to the decision in this case.

1. Shelley v. Portland Tug & Barge Co. (Ore. 1938) 76 P. (2d) 477.

2. (C. C. A. 5, 1933) 64 F. (2d) 902.

existed; and (2) the contract in the *Yazoo* case had been published and held out to the company's employees for their acceptance.

The enforceability of collective agreements depends upon the nature of their adoption by the parties. Some cases have required the collective contract to be clearly and expressly a part of the employee's individual agreement with the employer;[3] others upon the slightest evidence have held the contract to be an implied term of the individual's agreement.[4] Even when the majority or all of the employees are members of the union, this same conflict exists.[5]

The apparent minority of courts which deem the slightest evidence sufficient to constitute an adoption of the collective contract do so upon various theories.[6] (1) The usage or custom theory views the collective agreement as a part of the individual contracts of union members[7] or nonmembers,[8] unless specifically rejected,[9] or unless the individual contract is made contrary to the terms of the collective agreement.[10] (2) The agency theory, applying only to union members,[11] considers the labor association as the

3. *As to union employees:* Hudson v. Cincinnati, N. O. & T. P. R. Co. (1913) 152 Ky. 711, 154 S. W. 47; Burnetta v. Marceline Coal Co. (1904) 180 Mo. 241, 79 S. W. 136; Rentschler v. Missouri Pac. R. Co. (1934) 126 Neb. 493, 253 N. W. 694, 95 A. L. R. 1.

As to nonunion employees: Young v. Canadian N. R. Co. (1929) 38 Manitoba L. R. 283, 4 D. L. R. 452; Yazoo & M. V. R. Co. v. Webb (C. C. A. 5, 1933) 64 F. (2d) 902.

4. *As to union employees:* Piercy v. Louisville & N. R. Co. (1923) 198 Ky. 477, 248 S. W. 1042; Johnson v. American Ry. Express Co. (1931) 163 S. C. 191, 161 S. E. 473.

As to nonunion employees: United States Daily Pub. Co. v. Nichols (App. D. C. 1929) 32 F. (2d) 834; Estes et al. v. Union Terminal Co. (C. C. A. 5, 1937) 89 F. (2d) 768; Gregg v. Starks (1920) 188 Ky. 834, 224 S. W. 459.

5. Supra, notes 3 and 4. Also see Notes (1913) 45 L. R. A. (N. S.) 184 and (1935) 95 A. L. R. 10, which illustrate the gradual trend away from the requirement of an express adoption.

6. See for a general treatment, Rice, Collective Labor Agreements in American Law (1931) 44 Harv. L. R. 572; Fuchs, Collective Labor Agreements in American Law (1925) 10 ST. LOUIS LAW REVIEW 1; Duguit, Collective Acts as Distinguished from Contracts (1918) 27 Yale L. J. 753; Note (1931) 31 Col. L. R. 1156; Comment (1935) 2 U. of Chi. L. R. 335. Most writers favor the view that the standards fixed by collective bargaining should be protected.

7. Moody v. Model Window Glass Co. (1920) 145 Ark. 197, 224 S. W. 436; Cross Mt. Coal Co. v. Ault (1928) 157 Tenn. 461, 9 S. W. (2d) 692; West v. Baltimore & O. R. Co. (1927) 103 W. Va. 417, 137 S. E. 654.

8. United States Daily Pub. Co. v. Nichols (App. D. C. 1929) 32 F. (2d) 834; Gregg v. Starks (1920) 188 Ky. 834, 224 S. W. 459.

9. Langmade v. Olean Brewing Co. (1910) 137 App. Div. 355, 121 N. Y. S. 388.

10. Moody v. Model Window Glass Co. (1920) 145 Ark. 197, 224 S. W. 436; Hudson v. Cincinnati, N. O. & T. P. R. Co. (1913) 152 Ky. 711, 154 S. W. 47; Langmade v. Olean Brewing Co. (1910) 137 App. Div. 355, 121 N. Y. S. 388; Cross Mt. Coal Co. v. Ault (1928) 157 Tenn. 461, 9 S. W. (2d) 692.

11. Gary v. Central of Ga. R. Co. (1928) 37 Ga. App. 744, 141 S. W. 819; Ibid. (1931) 44 Ga. App. 120, 160 S. E. 716; Piercy v. Louisville &

agent of its members to negotiate collective agreements concerning wages and working conditions.[12] (3) The third party beneficiary theory regards the collective agreement as a contract entered into by the employer with the union for the benefit of the individual union employees.[13] A nonunion employee is brought under such an agreement when an intent can be found to benefit him.[14]

The majority view requires express adoption by the employee of the collective agreement,[15] on the theory that the task of labor unions is to negotiate with the employer only as to wages and conditions of service and that an employee must ratify or accept the agreement as an individual party if he approves of such usages.[16] Although the employee is prohibited from bringing an action as an individual under this strict construction, the labor union may sue under certain conditions to give effect to a trade agreement by injunction.[17] Whether the contract is called a "general offer,"[18] an "agreement,"[19] a "treaty,"[20] or a "contract,"[21] it imposes no obligation

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N. R. Co. (1923) 198 Ky. 477, 248 S. W. 1042; West v. Baltimore & O. R. Co. (1927) 103 W. Va. 417, 137 S. E. 654; cf. Yazoo & M. V. R. Co. v. Sideboard (1931) 161 Miss. 4, 133 So. 669.

12. Piercy v. Louisville & N. R. Co. (1923) 198 Ky. 477, 248 S. W. 1042, 33 A. L. R. 322; Hall v. St. Louis-San Francisco R. Co. (1930) 224 Mo. App. 431, 28 S. W. (2d) 687; cf. Burnetta v. Marceline Coal Co. (1904) 180 Mo. 241, 79 S. W. 136, where court held that union cannot bind members to a contract with an employer in respect to the performance of work and payment therefor.

13. McCoy v. St. Joseph Belt Ry. Co. (Mo. 1934) 77 S. W. (2d) 175; Gulla v. Barton (1914) 164 App. Div. 293, 149 N. Y. S. 952; H. Blum & Co. v. Laudau (1926) 23 Ohio App. 426, 155 N. E. 154; Johnson v. American Ry. Express Co. (1931) 153 S. C. 191, 161 S. E. 473.

14. Gregg v. Starks (1920) 188 Ky. 834, 224 S. W. 459; Yazoo & M. V. R. Co. v. Webb (C. C. A. 5, 1933) 64 F. (2d) 902; Yazoo & M. V. R. Co. v. Sideboard (1931) 161 Miss. 4, 133 So. 669; McCoy v. St. Joseph R. Co. (Mo. App. 1934) 77 S. W. (2d) 175; cf. Rowlett v. Louisville & N. R. Co. and Lewis v. Same (Ky. App. 1934) 75 S. W. (2d) 371 (contract not made for plaintiff's benefit).

15. *As to union members:* Hudson v. Cincinnati, N. O. & T. P. R. Co. (1913) 152 Ky. 711, 154 S. W. 47; Burnetta v. Marceline Coal Co. (1903) 180 Mo. 241, 79 S. W. 136; Rentschler v. Missouri Pac. R. Co. (1934) 126 Neb. 493, 253 N. E. 694, 95 L. R. A. 1.

As to nonunion members: Yazoo & M. V. R. Co. v. Webb (C. C. A. 5, 1933) 64 F. (2d) 902.

16. Yazoo & M. V. R. Co. Sideboard (1931) 161 Miss. 4, 133 So. 669; Cross Mt. Coal Co. v. Ault (1928) 157 Tenn. 461, 9 S. W. (2d) 692; Panhandle & S. F. R. Co. v. Wilson (Tex. Civ. App. 1932) 55 S. W. (2d) 216; but see Harper v. Local Union, I. B. E. W. (Tex. Civ. App. 1932) 48 S. W. (2d) 1033.

17. Goldman v. Cohen (1928) 222 App. Div. 631, 227 N. Y. S. 311; Engelking v. Independent Wet Wash Co. (1931) 142 Misc. 510, 254 N. Y. S. 87; but see Bancroft v. Canadian P. R. Co. (1920) 30 Manitoba L. R. 401, 53 D. L. R. 272, where the court expresses doubt as to the union's ability to sue at law to enforce the collective contract.

18. Rentschler v. Missouri P. R. Co. (1934) 126 Neb. 493, 253 N. W. 694, 95 L. R. A. 1; Yazoo & M. V. R. Co. v. Webb (C. C. A. 5, 1933) 64 F. (2d) 902.

19. *"Bargaining agreement":* Harper v. Local Union, I. B. E. W. (Tex.

upon the employer or employee until offered and accepted as part of the original contract of employment between the individual employer and the individual employee.

The court in the case at bar intimated that the plaintiff could have recovered had the relation of principal and agent existed between the union and some of the employees at the time of the making of the contract.[22] It is submitted that on sound principles a valid contract would have been formed had the plaintiff accepted the trade agreement or adopted it into his individual working contract, despite the fact that neither he nor any other employee was a member of the union.[23] M. H. A.

CRIMINAL LAW—FORGERY BY COUNTERSIGNING—[Federal].—An employee of plaintiff authorized to countersign checks drawn for specified purposes, having procured the necessary genuine signature of a company officer on a blank check, affixed his own signature, filled in the instrument for an unauthorized purpose and amount, and later appropriated it. Action was brought against a bonding company for indemnification on the basis of the forgery or alteration of the "signature of the insured" or "the signature of any endorser." *Held:* that plaintiff might recover on the bond notwithstanding the fact that the signatures were genuine. Since the filling in was for an unauthorized purpose and amount, there was a forgery.[1]

The rule of the English common law is that it is forgery when a party receiving a blank check already signed, with directions to fill in a certain amount, fraudulently fills in a different amount and appropriates the check to his own use.[2] This has been accepted as the rule in the United States.[3]

Civ. App. 1932) 48 S. W. (2d) 1033; Yazoo & M. V. R. Co. v. Webb (C. C. A. 5, 1933) 64 F. (2d) 902.

"Collective labor agreement": Rentschler v. Missouri P. R. Co. (1934) 126 Neb. 493, 253 N. W. 694, 95 L. R. A. 1; Cross Mt. Coal Co. v. Ault (1928) 157 Tenn. 461, 9 S. W. (2d) 692.

"Gentlemen's agreement": Commons and Andrews, *Principles of Labor Legislation* (1920) 118.

"Trade agreement": Rentschler v. Missouri P. R. Co. (1934) 126 Neb. 493, 253 N. W. 694, 95 L. R. A. 1; Hamilton, Collective Bargaining, 3 Ency. Soc. Sciences (1930) 629.

"Working agreement": New England Wool Heel Co. v. Nolan (1929) 268 Mass. 191, 167 N. W. 323, 66 A. L. R. 1079; Reihing v. Local Union, I. B. E. W. (1920) 94 N. J. L. 240, 109 Atl. 367.

20. Long v. Baltimore & O. R. Co. (1928) 155 Md. 265, 141 Atl. 504; Yazoo & M. V. R. Co. v. Webb (C. C. A. 5, 1933) 64 F. (2d) 902.

21. Foss v. Portland Terminal Co. (C. C. A. 1, 1933) 287 Fed. 33; Shelley v. Portland Tug & Barge Co. (1938) 76 P. (2d) 479.

22. Supra, notes 11 and 12.

23. Supra, note 15.

1. Quick Service Box Co., Inc., v. St. Paul Mercury Indemnity Co. of St. Paul (C. C. A. 7, 1938) 92 F. (2d) 15.

2. Regina v. Wilson (N. P. 1848) 175 Eng. Rep. 219; Flower v. Shaw (N. P. 1848) 175 Eng. Rep. 294; Regina v. Richardson (N. P. 1860) 175 Eng. Rep. 1088.

3. Yeager v. United States (App. D. C. 1929) 32 F. (2d) 402; Moore v.