compensatory measure for plaintiffs who, because of procedural obstacles, cannot reach the union fund directly.[21]

For several years after the decision in the Danbury Hatters case, the allowance of damage suits against labor unions was regarded as potentially more threatening to labor than the injunction.[22] The second showing of the damage suit as a menacing weapon was the *Coronado Coal* case.[23] Although the Supreme Court firmly established the federal rule permitting suits against unincorporated associations, the practical effect of the case was to show one important restriction upon the use of damage suits. There, the plaintiff was forced to bear his cost of the litigation, which was far more than the damages received.[24] This, coupled with the fact that successful damage suits against unions are on the decrease,[25] indicates that such suits are not too remunerative. It is submitted that in view of this feeling of the courts and of the legislatures as reflected in the Norris-LaGuardia[26] and Wagner Acts,[27] a plaintiff who sues a union for a large sum should prove his case within a comparatively short time—prolonged litigation may prove too expensive. When it is considered that the plaintiff employer in the instant case was a third party to the dispute, protection of his interests seems to be in accord with sound justice. W. E.

LABOR—VALIDITY OF CLOSED SHOP AGREEMENT—[New York].—A closed shop agreement between an employer and an exclusive bargaining agency of the employees was held not contrary to public policy in the recent New York case of *Williams v. Quill.*[1] The rapid transit companies had entered into a

21. Illustrative of the cases in which judgments rendered against unions were recovered from the individual members are: F. R. Patch Mfg. Co. v. Capeless et al. (1906) 79 Vt. 1, 63 Atl. 938; Patterson & Co. v. Building Trades Council of Wilkes-Barre (1902) 11 Pa. Dist. 500.

22. There are only a few cases, other than the instant decision, in which large damages were assessed against labor. The Danbury case cost labor around $150,000 (supra, note 17); labor expended nearly $400,000 to compromise the case of Southern Illinois Coal Co. v. United Mine Workers (1923) 6 Law and Labor 295 (settled out of court).

23. The progressive history of the case is found in Dowd v. United Mine Workers (C. C. A. 8, 1916) 235 Fed. 1; (1917) 242 U. S. 653; Coronado Coal Co. v. United Mine Workers (C. C. A. 8, 1919) 258 Fed. 829; United Mine Workers v. Coronado Coal Co. (1922) 259 U. S. 344, 42 S. Ct. 570, 66 L. ed. 995, 27 A. L. R. 762; Finley v. United Mine Workers (C. C. A. 8, 1924) 300 Fed. 972; United Mine Workers v. Coronado Coal Co. (1925) 268 U. S. 295, 45 S. Ct. 551, 69 L. ed. 963.

24. Newspapers of the period of Oct. 14, 1927, state that the compromise reached gave the plaintiff company $27,500. The costs of each party was estimated to total between $100,000 and $200,000. See New York Times, Oct. 14, 1927, p. 7:5.

25. Witte, *The Government in Labor Disputes* (1932) 139. The author points out that the only concentration of such suits was immediately following the Danbury case.

26. (1932) 47 Stat. 70, 29 U. S. C. A. secs. 101-115.

27. (1935) 49 Stat. 449, 29 U. S. C. A. secs. 151-166.

1. (1938) 277 N. Y. 1, 12 N. E. (2d) 547.

closed shop agreement with a C. I. O. affiliate[2] as the duly selected bargaining agency for 11 out of 12 groups of employees on the rapid transit lines. Six employees who had not joined the union had asked for an injunction to prevent their dismissal. The petitioners admitted that closed shop contracts are not invalid *per se*, but contended that since this contract was made by a company which holds a monopoly, the effect is to deprive them of their right to work—there being no other jobs of the same kind in the community. The court, in denying the injunction, noted that although the effect may be to coerce the petitioners into joining a union against their will or sacrificing their employment, the remedy for such a situation, if any, lies with the legislature and not with the courts.

Under the Labor Law of the State of New York[3] closed shop agreements, which require that all employees be members of the union as a condition of employment, are valid. The only requirements are: (1) that such labor organization must be the representative of the majority of the employees; (2) that the purpose of the contract be to further the cause of labor. Although employees are thereby coerced into joining the union or sacrificing their employment, such contractual agreements have been held not violative of public policy.[4] Similarly, one collective agreement in an entire industry does not create a monopoly in violation of the state anti-trust laws, since labor organizations are specifically exempted from the statute.[5]

The agreement in the instant case was made pursuant to the Labor Law of New York.[6] Even prior to the passage of this act, New York courts had recognized the rights of laborers to organize to improve their working conditions.[7] Similarly, efforts to increase their numbers or to unionize an entire trade were upheld.[8] Employees were permitted to strike as a means to this end, provided it was done in good faith and not simply for the purpose of keeping non-union employees out of work.[9] Since the courts had recognized labor's rights to accomplish closed shop results by means of the strike, it followed logically that labor had the right to accomplish the same ends through peaceful negotiations. Consequently, contracts or written agreements with labor organizations, embodying the same arrangements, were

2. The Transport Workers Union of America.

3. N. Y. Cahills' Consol. Laws (1930) ch. 32, art. 20, sec. 704 (5), as amended by N. Y. Laws of 1937, ch. 443.

4. De Agostina v. Parkshire Ridge Amusements, Inc. (1935) 155 Misc. 518, 278 N. Y. S. 622; Jacobs v. Cohen (1905) 183 N. Y. 207, 76 N. E. 5.

5. N. Y. Cahills' Consol. Laws (1930) ch. 21, art. 22, sec. 340 (3), as amended by N. Y. Laws of 1935, ch. 12, and N. Y. Laws of 1933, ch. 804. Upheld in American Fur Manufacturers Ass'n, Inc. v. Associated Fur Coat and Trimming Manufacturers, Inc. (1936) 161 Misc. 246, 291 N. Y. S. 610.

6. N. Y. Cahills' Consol. Laws (1930) ch. 32, art. 20, sec. 704, as amended by N. Y. Laws of 1937, ch. 443.

7. National Protective Ass'n v. Cummings (1902) 170 N. Y. 315, 63 N. E. 369.

8. Exchange Bakery and Restaurant, Inc. v. Rifkin (1927) 245 N. Y. 260, 157 N. E. 895.

9. American Steel Foundries v. Tri-City Central Trades Council (1921) 257 U. S. 184, 209, 42 S. Ct. 72, 66 L. ed. 189.

held valid,[10] and were held to be enforceable in equity.[11] In *Curran v. Galen*[12] a closed shop contract was held void, but the reason for this decision was the malice, ill-will, and injury intended the other employees. It is manifest that the Labor Law, under which the contract in the instant case was made, was merely a statutory recognition of the existing law on the subject.

The National Labor Relations Act approves of closed shop contracts.[13] However, in cases where the labor organization is an employer-dominated company union, such closed shop agreements have generally been held not entitled to recognition under the act.[14] The reason for this is the fact that in such company unions, there is frequently initiation, sponsorship, participation in the affairs of, and financial support given to the union by the employer. Such domination has been held to constitute an unfair labor practice in violation of Section 8 of the National Labor Relations Act.[15] A closed shop contract to be validated under this section must meet two conditions: (1) the union must represent the employees in the appropriate unit; (2) it must not have been aided by any action defined in the National Labor Relations Act as unfair labor practice.[16]

It is well to bear in mind that the National Labor Relations Act deals only with federal cases, and that the rulings of the National Labor Relations Board are not binding on state labor relations boards. In a recent case, for example, the Wisconsin Labor Relations Board held that a closed shop contract obtained as a result of unfair labor practices of the employer was not invalid.[17] The court in this case refused to speculate as to what the National Board might decide in applying the Federal Act to the same facts. They added that the Wisconsin Board has no power to declare a particular closed shop agreement invalid solely because it may be such under the Federal Act. The obvious inference is that the same closed shop

10. Jacobs v. Cohen (1905) 183 N. Y. 207, 76 N. E. 5; Kissan v. U. S. Printing Co. (1910) 199 N. Y. 76, 92 N. E. 214; Interborough Rapid Transit Co. v. Lavin (1928) 247 N. Y. 65, 159 N. E. 863.

11. Schlesinger v. Quinto (1922) 201 App. Div. 487, 194 N. Y. S. 401; Goldman v. Cohen (1928) 222 App. Div. 631, 227 N. Y. S. 311; Ribner v. Rasco Butter & Egg Co. (1929) 135 Misc. 616, 238 N. Y. S. 132; Farulla v. Freundlich, Inc. (1934) 152 Misc. 761, 277 N. Y. S. 47.

12. (1897) 152 N. Y. 33, 46 N. E. 297.

13. The Act provides "that nothing in this act * * * shall preclude an employer from making an agreement with a labor organization * * * to require as a condition of employment, membership therein, if such labor organization is the representative of the employees * * *." (1935) 49 Stat. 457, 29 U. S. C. A. sec. 158.

14. In re Clinton Cotton Mills & Local No. 2182, United Textile Workers of America (1935) 1 N. L. R. B. 97; In re Hill Bus Company and Brotherhood of Railroad Trainmen, Rockland Lodge No. 329, Spring Valley (1937) 2 N. L. R. B. 781.

15. In re Clinton Cotton Mills & Local No. 2182, United Textile Workers of America (1935) 1 N. L. R. B. 97.

16. In re Zenite Metal Corp. & United Automobile Workers of America, Local No. 442 (1938) 5 N. L. R. B. No. 73.

17. In re Freeman Shoe Corp. & United Shoe Workers of America, Local No. 132 (Wis. Labor Bd. 1937) 1 Labor Relations Rep. 221.

contract may be valid in the contemplation of a state act and at the same time invalid under the Federal Act.

It is submitted that although on the surface the case at bar appears to be a new development in the field of labor law in New York, it is in reality only a statutory recognition of existing law on the subject. It may be stated that in those jurisdictions which recognize the validity of closed shop contracts, the following limitations are generally imposed: (1) their object must be not to injure non-union workers but to improve working conditions of all employees; (2) the union must be representative; (3) it must not be an employer-dominated company union.[18] The question of whether the courts or the labor boards have jurisdiction to determine finally the validity of such contracts is still moot. In a recent case, the National Labor Relations Board ordered employees to disregard a contract, notwithstanding a prior court order commanding the employer to carry out this contract.[19]

A. K. S.

18. See supra, notes 9 and 16.

19. In re National Electric Products Corp. & United Electrical and Radio Workers of America, Local No. 609 (1937) 3 N. L. R. B. No. 47. For a good discussion of the whole question of jurisdiction see note (1938) 23 WASHINGTON U. LAW QUARTERLY 425.