unable to obtain satisfaction from the trustee, he may, by a bill in equity, reach the trust assets, and compel the application of it to the authorized claims against the trustee.[19] Where the trustee contracts against personal liability, therefore, it has been held that the creditor may sue the trustee as trustee on the agreement, and then receive satisfaction out of the trust estate.[20] In the common-law or Massachusetts trust, the creditor may, under any circumstances, sue the association directly, since it is regarded for purposes of suit as a legal entity.[21]

Since the instant case is one of first impression in our jurisdiction, it is well to note its consequences so as to be able to deal with trustees and trust estates accordingly.

M. J. G.

CONSTITUTIONAL LAW—CHILD LABOR AMENDMENT—RIGHT OF STATE TO RATIFY AFTER REJECTION—REASONABLE TIME FOR ACTION—[Kentucky].—In a recent decision,[1] the Court of Appeals of Kentucky has declared ineffective the attempted ratification by the state legislature of the Child Labor Amendment.[2] The grounds upon which the conclusion of the court was reached were: (1) that a state legislature, having once rejected an amendment to the federal Constitution and certified such rejection to the Secretary of State of the United States, cannot later ratify; (2) that when more than one-fourth of the state legislatures have rejected an amendment it becomes dead (irrespective of whether or not notices of rejection have been certified to the Secretary of State) and resubmission by Congress is necessary to validate subsequent state action upon it;[3] that even assuming

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21 Fla. 203; Hussey v. Arnold (1904) 185 Mass. 202, 70 N. E. 87; Gates v. Avery (1901) 112 Wis. 271, 87 N. W. 1091.

19. 3 Bogert, *op. cit.*, sec. 725.

20. Id. at sec. 715; Scott, supra, note 3, 731-732. In Jessup v. Smith (1918) 223 N. Y. 203, 119 N. E. 403, 404, Justice Cardozo said that the trustee has the power to create a charge equivalent to his own lien for reimbursement, in favor of the other who renders services under such a contract.

21. R. S. Mo. (1929) sec. 728 and 729 expressly so provide; Note (1920) 7 A. L. R. 612, 629.

1. Wise v. Chandler (Ky. 1937) 108 S. W. (2d) 1024.

2. In 1926 the General Assembly of Kentucky adopted a resolution rejecting the amendment and its action was certified by the governor to the Secretary of State of the United States. On January 13, 1937, a special session of the general assembly adopted a resolution of ratification. See Acts of fourth special session, 1937, ch. 30. Suit was brought to enjoin the governor from certifying to the Secretary of State. The petition was later amended to compel the governor to notify the secretary that the ratification en route, was to be of no effect and to warn him of the pendency of this action.

3. The Kentucky court quotes a letter published in the American Bar Association Journal, July, 1934, by Mr. Frank Grinnell in which he says, "Since the Constitution requires a vote of three-fourths of the several states to ratify an amendment, it requires only one state more than one-fourth to defeat ratification, and it sems to follow that the rule must work both

that adverse action by more than one-fourth of the state legislatures does not destroy the vitality of an Amendment, it may become dead if more than a reasonable time has elapsed since its submission. With reference to the Child Labor Amendment, the court was of the opinion that the passage of twelve and one-half years since the submission of the amendment and the apparent abandonment of the amendment between 1927 and 1933 brought the case within the holding in *Dillon v. Gloss*[4] where it was decided that if there is no ratification within a reasonable time, the Congressional offer becomes inoperative.[5]

A contrary result was reached by the Supreme Court of Kansas in *Coleman et al. v. Miller*,[6] in which it was held that the state legislature, although it had rejected the Child Labor Amendment in 1925 and certified this action to the Secretary of State, could subsequently ratify. The Kansas holding is in accord with the view generally held by writers on the subject,[7] namely, that ratification is a final act and cannot be withdrawn, while rejection is not a final act and can be withdrawn. According to this opinion, it would appear that a state may not reject after ratification even though no certification of ratification has been made.[8]

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ways, and when thirteen states (one more than one-fourth of forty-eight states), have voted not to ratify an amendment, it is no longer pending, but is defeated until congress sees fit to resubmit it. Otherwise a state could change its mind in one direction after a final vote of the necessary number of states, but not in the other direction. In the case of the Child Labor Amendment, not only thirteen but twenty-six states voted not to ratify. I submit that it was clearly rejected." The court holds that in addition to the fact the amendment was rejected by more than one-fourth of the states, twenty-one states in 1926, had not only rejected the amendment, but had duly certified resolutions thereon to the Secretary of State.

4. Dillon v. Gloss (1921) 256 U. S. 368, 41 S. Ct. 510, 65 L. ed. 994. The court held that the language of the Constitution (art. 5), authorizing Congress to propose amendments when it "shall deem it necessary," necessarily implies that ratification to be valid must be sufficiently contemporaneous with the submission so that the "necessity" still exists. It was also held that Congress may provide what it believes to be a reasonable time for the adoption of a proposed amendment.

5. The average time in which amendments 10-21 were ratified (excluding the Bill of Rights) is one year and six months with the maximum time of adoption being three years and six months (Amendment 16).

The court concludes that since Congress, in proposing the 20th and 21st amendment, limited the period of ratification to seven years, and in view of the time in which prior amendments were adopted, seven years should be regarded as a reasonable time in this case.

6. Coleman et al. v. Miller (Secy. of State) (Kan. 1937) 71 P. (2d) 518.

7. Willis, *Constitutional Law* (1936) 120; Jarret, Amending the Federal Constitutions (1929) 7 Tenn. L. Rev. 286. Note (1896) 30 Am. L. Rev. 894; 12 C. J., Constitutional Law (1917) 681, sec. 16.

8. This result is reached under Article 5 of the Federal Constitution which says "the Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution * * * which shall be valid to all intents and purposes as part of this constitution, when ratified by the legislatures of three-fourths of the several states * * *." It is argued that since the provision mentions ratification but not rejection, acts of rejection are of no effect.

No United States Supreme Court decision is available to test the accuracy of these conflicting state court decisions. Whether a state can ratify after rejection, and whether it makes any difference that the rejection has or has not been certified is still in question. The nearest analogy is the usually conceded position that ratification is a final and irrevocable act, whether or not there has been certification, but this is founded upon Congressional and not judicial interpretation of the Constitution.[9]

It is the belief of this commentator that an amendment should remain open to ratification, so long as the conditions which induced the original proposal remain the same. A proposed amendment should continue to be considered until it is adopted or until it is nullified by the passage of more than a reasonable time under the *Dillon v. Gloss* rule. So long as conditions remain the same, a state legislature should be able to reverse its prior act of ratification or rejection, irrespective of certification. The argument that a state can withdraw a rejection and not a ratification, because the fifth article mentions ratification and not rejection seems specious. Equally unconvincing seems the contention that rejection by more than one-fourth of the state legislatures terminates the offer. In the absence of judicial construction of the amending procedure, however, these questions will remain the subject of legal dispute.

W. A. H.

LABOR—NORRIS-GUARDIA ACT—LABOR DISPUTE—[Federal].—The defendant labor union, in order to compel plaintiff employer to recognize the union and force his employees to become members, carried on an intensive campaign of propaganda, persuasion, and threats of force. The employer had no quarrel with his employees, all of whom were satisfied with their own shop union. When suit for injunction was brought against the union, it defended upon the ground that the immunities provided for in the Norris-LaGuardia Act should be granted defendant, since the situation was a "labor dispute" within the scope of the Act.[1] *Held*, that the injunction should be granted, since there was no "labor dispute" concerning conditions

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The conclusion is also based on the fact that Congress declared the 14th amendment to be adopted, although New Jersey, Ohio and Oregon attempted to withdraw a prior certified ratification. Conversely the 14th amendment was rejected by the legislators of N. Carolina, S. Carolina and Georgia but later ratified by the reorganized government of those states and in each instance the ratification was treated as authoritative. The Kentucky court says that this is no basis for saying that ratification can follow rejection, since the legislatures which rejected were a part of state governments later declared illegal.

See (1866) 14 Stat. 428; (1867) 15 Stat. 706, 708; (1870) 16 Stat. 1131.

9. See note 8, supra.

1. Norris-LaGuardia Act (1932) 47 Stat. 70, c. 90, 29 U. S. C. A. secs. 101-115. The purpose of the Act is discussed in note (1936) 84 U. Pa. L. Rev. 771. One of the most recent resumes of the Act is found in note (1937) 2 Mo. L. Rev. 1.