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BASEBALL PEONAGE

CARL ZOLLMANN

A BASEBALL player under contract with a professional club is regarded and treated as the "property" of such club and his "sale" to another club is a constant occurrence. The "national agreement" between the various professional clubs in connection with the "reserve" provision, the most prominent feature of his contract, "mortgages" his services to such club for the entire period of his usefulness as a player under pain of being precluded from obtaining employment from any other professional club. The disposition of the players between the clubs composing the various professional leagues is thus fully controlled. The players need not be consulted and have no voice in the matter except by courtesy which is generally confined to the more prominent players who sometimes even receive a portion of the price for which they are sold.[1]

Without such rigid control, professional baseball could not exist at least not in its present form. There would be too many changes and an unending amount of scheming to invade the ranks of opposing teams. Capital under such circumstances would not invest the huge sums which now are tied up in baseball parks throughout the country. A monopolistic control of the outstanding baseball players has therefore developed under the national agreement which is unexampled in the American and English law. Any professional player who resents this control is at liberty to retire from professional baseball and (as has happened in New York) become a common laborer in a brewery at $20 a week.[2]

This system has received judicial condemnation. In a New York case involving Harold H. Chase, the former first baseman of both the White Sox and New York Highlanders (now the Yankees) the court said: "The analysis of the national agreement and the rules of the commission, controlling the services of these skilled laborers, and providing for their purchase, sale, exchange, draft, reduction, discharge and blacklisting, would seem to establish a species of quasi-peonage, unlawfully controlling and interfering with the personal freedom of the men employed . . . 'Organized baseball' is now as complete a monopoly of the baseball business for profit as any monopoly can be made. It is in contravention of the common law, in that it invades the right of labor as a property right, in that it invades the right to con-

[1] Baseball Players' Fraternity v. Boston American League Baseball Club, 166 App. Div. 484, 151 N.Y.S. 557 (1915).

[2] Griffin v. Brooklyn Baseball Club, 68 App. Div. 566, 73 N.Y.S. 864; affirmed: 174 N.Y. 535, 66 N.E. 1109 (1902).

tract as a property right and in that it is a combination to restrain and control the exercise of a profession or calling." The court further said that there is no difference in principle between Mexican peonage and the servitude of baseball players, that it places 10,000 skilled laborers under the dominion of a benevolent despotism through the operation of the monopoly created by the national agreement and that this monopoly interferes unlawfully with the personal liberty of the men employed, is contrary to the spirit of American institutions and contrary to the spirit of the United States Constitution.[3]

Naturally, however, professional baseball players generally prefer peonage which includes riding in sleepers, eating at good hotels, collecting scrapbooks of personal newspaper references and playing the game which they love before adoring crowds at substantial, fancy and sometimes even fantastic salaries to the liberty, obscurity and poverty connected with driving a brewery wagon at day laborer's wages.

The dream of thousands and perhaps millions of American boys is to achieve such peonage at substantial salaries. The annual holdouts in the ranks of professional players therefore always dwindle rapidly as the opening days of the respective seasons draw near. The lawfulness of the baseball agreement which professional players must sign to become such, or to remain such, has therefore generally been tested in the courts only during the so-called baseball wars when sufficient opposition to the established system developed to hold out inducements to players to violate their agreements by accepting employment from opposing clubs at increased salaries. The present American League has grown out of one such baseball war fought at the turn of the century. The "Federal League" uprising twenty-five years ago produced no such lasting results but collapsed and merely contributed new baseball parks, some of which, such as Wrigley Field in Chicago, the home of the Chicago Cubs, are in use today. There was still another upheaval in 1889 which has led to judicial opinions particularly in New York and in Pennsylvania.

The first extensive and intensive discussion of the baseball contract took place in connection with this baseball war in 1889. Many years before, an English court had enjoined a famous opera singer, who was under contract to sing for three months in an opera house, from singing in a competing opera house during such period though the court stated that it would not undertake to force her to perform her contract with her first employer.[4] This led the New York Supreme

[3] American League Baseball Club v. Chase, 86 Misc. Rep. 441, 149 N.Y.S. 6 (1914).

[4] Lumley v. Wagner, 1 De G. M. & G. 604, 13 Eng. L. & Eq. Rep. 252 (1852).

Court to state that no substantial distinction can be made between an actor of great histrionic ability and a professional baseball player of peculiar fitness and skill to fill a particular position. Each is sought for his particular and peculiar fitness; each performs in public for compensation; and each attracts customers. The refusal of either to perform his contract results in loss to his or her employer which is increased where such a service is rendered to a rival. Yet the court refused to enjoin one John W. Ward, a baseball player, under contract with the New York Baseball Club at a salary of $2,000 a year, from transferring to another baseball club on the ground of lack of "mutuality," in other words, because the player was bound indefinitely while the employer might discharge him on ten days notice.[5] The same general result was reached at the same time in the federal courts of New York in the case of one Ewing who in disregard of his contract with the New York Baseball Club sought to transfer to a rival organization.[6]

In Pennsylvania the results were not so decisive. It was indeed held that one Hallman, who was under contract with the Philadelphia Club which reserved him for the next year, was not bound by such reservation, it being too indefinite, and could transfer to another club.[7] In another Pennsylvania case the Harrisburg Baseball Club sought without success to enjoin an Athletic Association from accepting the services of F. U. Grant. The court disregarded the argument of the Harrisburg Club that it would by such action be subjected to financial loss.[8] However, in still another Pennsylvania case the court enjoined the player from carrying out his purpose. The Kansas City Club in 1889 paid to the St. Paul Baseball Club $3,300 for the release of one Pickett of which sum Pickett had received $800. A salary of $340 per month had been regularly paid to Pickett in 1889 though he was sick and unable to play during a large part of the season. In October 1889, Pickett had agreed to play for the Kansas City Club in 1890 at a salary of $2,200. Of this salary he had received two monthly advances of $100 each when he in February 1890, notified the Kansas City Club that he intended to play baseball in 1890 for the Players' League of Philadelphia. Under these particularly aggravating facts the court issued the injunction prayed for. In doing so it stated that a negative covenant need not be express in order to be enforceable and that every express covenant embraces within its scope an implied promise not to

[5] Metropolitan Exhibition Co. v. Ward, 9 N.Y.S. 779, 24 Abb. N.C. 393 (1890).
[6] Metropolitan Exhibition Co. v. Ewing, 24 Abb. N.C. 419, 42 Fed. 198, 7 L.R.A. 381 (1890).
[7] Philadelphia Baseball Club v. Hallman, 8 Pa. Co. Ct. 57, 47 Leg. Int. 130 (1890).
[8] Harrisburg Baseball Club v. Athletic Ass'n., 8 Pa. Co. Ct. 337 (1890).

do anything which will prevent the person making the promise from doing the act which he has agreed to do.[9]

At the turn of the century there was but one major baseball league consisting of twelve clubs in different cities known as the "National League and American Association of Professional Baseball Clubs." In consequence of the baseball war of 1902 it was succeeded by the National League and the American League, each consisting of eight clubs. Napoleon Lajoie, the peerless second baseman, became the central figure in the court aftermath of this war. He was under contract with the Philadelphia Club, but transferred to the Cleveland team, which accordingly for many years after was known as the "Naps." He was so outstanding in his day and perhaps for all time that the Pennsylvania Supreme Court said of him: "He may not be the sun in the baseball firmament, but he is certainly a bright particular star." His salary then of $2400 a year would be considered beggarly today but that was the year 1902. The Philadelphia Baseball Club succeeded in obtaining an injunction against him. The court held that the lack of mutuality in the contract did not matter, and that though the club could discharge him on ten days notice Lajoie was bound to play with Philadelphia for the rest of his playing days. The court in consequence issued an injunction forbidding Lajoie from playing with the Cleveland Club.[10] However, since the injunction was issued by a state court its effect was negligible. Lajoie played in the other cities of the circuit and played against Philadelphia when Philadelphia played in Cleveland. The order merely prevented him from playing in Philadelphia and, thus, deprived the citizens of that city of the privilege of seeing him in action. Curiously enough he ended his baseball career in Philadelphia as a member of the Philadelphia Nationals.

An entirely different result was reached in the same war by a federal court also sitting in Pennsylvania in an action brought by the Brooklyn Club to prevent one McGuire from transferring his services to another club. The court held that the contract was unenforceable partly because McGuire was not an outstanding player, partly because of the lack of mutuality.[11]

The baseball war of 1914 which led to the creation and operation (for a time) of the Federal League has resulted in very important lawsuits. The case of Armando Marsans, the Cuban player, whose attempted transfer from the Cincinnati Reds to a Federal League

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[9] American Ass'n. Baseball Club of Kansas City v. Picket and the Players' National League Baseball Club of Philadelphia, 8 Pa. Co. Ct. 232 (1890).

[10] Philadelphia Ball Club v. Lajoie, 202 Pa. 210, 51 Atl. 973, 58 L.R.A. 227, 90 Am. Rep. 627 (1902).

[11] Brooklyn Baseball Club v. McGuire, 116 Fed. 782 (E.D. Penn. 1902).

club was enjoined on condition that the Cincinnati club furnish a bond of $13,000;[12] and the case of George H. Johnson, from the same club, which resulted in a victory for Johnson on the ground of lack of mutuality[13] arose at this period.

More outstanding, however, was the case of William Killefer, the famous catcher of the Philadelphia Nationals, who subsequently with his even more famous battery-mate, Grover Cleveland Alexander, was transferred to the Chicago Cubs and who ended his baseball career in St. Louis some years ago. Killefer in 1913 had signed a contract with the Philadelphia Club containing the reserve clause. Though the Chicago Federal League Club, the Whales, knew of this it induced Killefer to sign a contract for $5,833.33 per season with it in 1914. Nevertheless, Killefer shortly after signed another contract with his old employer at a salary of $6,500 per season. The Whales management sought to enjoin him from playing with Philadelphia. The trial court was not favorably impressed with Killefer's methods. It said that he was not only a unique and exceptional player but also a person on whose pledged word little reliance could be placed. It said that the conduct of both Killefer and the Whales was open to criticism and censure and that since they had acted wrongfully the court would neither adjust their differences nor balance their equities. It said of the conduct of the Whales management that it did not square with the vital and fundamental principles of equity, and touched to the quick the dignity of the court and controlled its decision regardless of all other considerations.[14] The Circuit Court of Appeals promptly affirmed this judgment stating that the reserve clause indeed is ineffective as a contract, but creates on the part of the player an obligation to endeavor in good faith to reach an agreement with his club concerning his future services, and that the action of the Whales was a legal fraud on the rights of the Philadelphia team to have the reserve provision avoided only through an honest effort. The court then held that no such effort had been made, but that the reserve provision was merely ignored to the manifest injury of the Philadelphia Club. The injunction consequently was denied.[15]

The player of greatest prominence to become involved in a lawsuit in the Federal League controversy was Harold H. Chase, who was then considered the outstanding first baseman in the game and was connected with the Chicago White Sox. He in 1914 signed a contract with the Buffalo Federal League team and the White Sox management sought to enjoin him from playing in Buffalo. His special, unique

[12] Cincinnati Exhibition Co. v. Armando Marsans, 216 F. 269 (E.D. Mo. 1914).
[13] Cincinnati Exhibition Co. v. Johnson, 190 Ill. App. 630 (1914).
[14] Weegman v. Killefer, 215 Fed. 168 (W.D. Mich. 1914).
[15] Weegman v. Killefer, 215 Fed. 289, 131 C.C.A. 558 (1914).

and extraordinary characteristics as a baseball player were so pronounced that his new employer arranged on his arrival at Buffalo for a "Hal. Chase Day" the purpose being of course, not so much to honor Chase as to fill the Buffalo park with customers and the pockets of its owners with money. The New York Supreme Court held that the contract of Chase with the White Sox lacked mutuality and hence would not be enforced. It further intimated that the national agreement does not violate the Sherman Anti-Trust Act.[16]

The thought just expressed soon found its echo in the United States Supreme Court. When the Federal League had dissolved after a short and frantic existence, the Buffalo Club of that League sued the three members of the national commission and the sixteen baseball clubs which made up the National and American leagues and obtained a verdict of $80,000 on which judgment was entered for $240,000 under the treble damage clause of the Sherman Anti-Trust Act. The real grievance of the plaintiff was that the baseball agreements signed by major and minor league players had been effective to prevent the Federal League from securing a sufficient number of capable players to compete successfully with the older organizations. It was claimed that baseball thus organized was interstate commerce and that the monopoly obtained by the defendants violated the Anti-Trust Act. The Court of Appeals for the District of Columbia held that the act of playing baseball games for profit is not commerce but is sport, and that the profit features and the incidental transportation of bats and gloves and other baseball equipment from state to state do not change the nature of the game.[17]

The United States Supreme Court agreed with the Court of Appeals in an opinion written by Justice Holmes. The holding was that the business of giving baseball exhibitions is purely an intrastate affair. True, games are arranged between clubs from various states. However, the fact that the players in order to meet on a particular diamond cross state lines, is not enough to make the business interstate. Such transportation is incidental rather than essential. A firm of lawyers sending out a member to argue a case in another state or a Chautauqua lecture bureau sending out lecturers all over the United States do not engage in commerce, because the emissaries go to other states. Neither do baseball players engage in commerce merely because they travel from state to state between games.[18]

The national agreement and the baseball contracts drawn in accordance with it have thus proved their effectiveness by holding the baseball

[16] American League Baseball Club v. Chase, 149 N.Y.S. 6, 86 Misc. Rep. 441 (1914).

[17] National League of Professional Clubs v. Federal Baseball Club of Baltimore, 269 Fed. 681, 50 App. D.C. 165 (1920).

structure together through all the storm and stress which it has passed. Individual players whose desire naturally is to increase their salaries are prevented from destroying the very structure which supports them. Abuses which have developed have in large part been corrected. It was indeed the "Black Sox scandal" (the intentional "throwing" of the World Series of 1919 by certain White Sox players) and certain fraudulent practices in connection with player trades between various clubs which led to the appointment of former Federal District Judge Kenesaw Mountain Landis as baseball commissioner, whose decision is made final by the agreement of the parties in advance of need. His position is exactly that of a common law arbitrator. He is a private, extraordinary judge to whose decision the matters in controversy are referred by the consent of the parties. His decisions in effect become a part of the national agreement and as such are enforced by the courts as any other contract. Far reaching action on his part, such as forcing certain clubs to break up their "farm" systems, thus finds its legal basis.

Outside of the reserve provision a baseball contract is a perfectly binding contract. A player, therefore, whose contract does not contain the ten days clause and who plays the average good game of ball may recover damages where he is discharged in the middle of his contract without any reason. The courts will not in the face of the express provisions of the contract read into it by custom or usage the right to discharge a player on ten days notice.[19] In consequence baseball contracts now contain this clause. Under it the player's connection with the club may be severed by the club at any time with or without any reason. The players thus are kept on their toes to the great advantage of themselves, their employers and the baseball public. Of course a club which wishes to discharge a player under this clause thus making him a "free agent" must so state. If it instead attempts to transfer him to another club which refuses to accept him it escapes liability because it might have acted under the clause.[20] The contract being one which has been dictated by the employer will in a doubtful case be construed in favor of the player. The waivers by other members of the same league must therefore be proved by the employer and the salary during the direct transfer period cannot be reduced over the protest of the player.[21]

[18] Federal Baseball Club of Baltimore v. National League, 259 U.S. 200, 42 Sup. Ct. 465, 66 L.Ed. 898, 26 A.L.R. 357 (1920).

[19] Baltimore Baseball Club & E. Co. v. Pickett, 78 Md. 375, 28 Atl. 279, 44 Am. St. Rep. 304 (1894).

[20] Griffin v. Brooklyn Baseball Club, 68 App. Div. 566, 73 N.Y.S. 864; affirmed: 174 N.Y. 535, 66 N.E. 1109 (1903).

[21] Baseball Players' Fraternity v. Boston Club, 166 N.Y. App. 488, 151 N.Y.S. 557 (1915).