Furthermore, the entity status of labor unions has often been recognized for other purposes. Although the holding of the Supreme Court in United Mine Workers v. Coronado Coal Co.\(^8\) was based on Section 8 of the Sherman Act,\(^9\) the language of Mr. Chief Justice Taft to the effect that in view of frequent legislative and judicial recognition of the de facto existence of labor unions as artificial persons,\(^{10}\) the right to sue and be sued should be accorded to them, seems applicable even in the absence of statute. Since the Coronado case legislative recognition of the independent existence of the labor union as an entity apart from its members has become even more widespread. For example, the National Labor Relations Act\(^{11}\) and the various state labor relations acts\(^{12}\) acknowledge unions as bargaining agents for their members. This action of legislatures in granting many rights and privileges to labor unions which are considered appropriate only to legal entities has induced judicial recognition of an "entity" status for labor unions.\(^{13}\) For example, a labor union has been held a proper beneficiary of a private trust.\(^{14}\) Such recognition has also served to subject labor unions to suit in the absence of statute.\(^{15}\) Courts which recognize the liability of labor unions to suit should, on familiar principles of mutuality, permit unions to maintain actions in the courts.\(^{16}\) Thus, in Schlesinger v. Quinto\(^{17}\) the court authorized suit by a labor union to enjoin the violation of a collective bargaining agreement by the employer on the theory that since the agreement would have been enforceable against the union, a corresponding right to sue should be accorded the union.

Procedure—Illinois Civil Practice Act—Power of Appellate Court to Rule upon Motion for New Trial Not Considered by Trial Court—[Illinois].—After the jury returned a verdict for the plaintiff in a negligence suit, the defendant filed a motion for judgment

\(^8\) 259 U.S. 344 (1922).
\(^{10}\) For the legislative enactments relied upon in that case, see United Mine Workers v. Coronado Coal Co., 259 U.S. 344, 386 (1922).
\(^{12}\) See, e.g., New York State Labor Relations Act, N.Y. Cons. Laws (McKinney, 1940) c. 30, § 701.
\(^{13}\) But see Ex parte Edestein, 30 F. (2d) 636 (C.C.A. 2d 1929).
\(^{14}\) Furniture Workers' Union Local 1007 v. United Brotherhood of Carpenters and Joiners of America, 108 P. (2d) 651 (Wash. 1940). See art. XIII, § 17 of the Constitution of the American Federation of Labor, which provides that certain funds are to be held by the parent union in trust for the local union. See also 1 Bogert, Trusts and Trustees 377, 489, 491 (1935); [1939] Wis. L. Rev. 399.
\(^{15}\) Brown v. United States, 276 U.S. 134 (1928); Magill and Magill, Suability of Labor Unions, 1 N. C. L. Rev. 81, 87 (1922). But see Cahill v. Plumbers' Local 93, 238 Ill. App. 123, 131 (1925).
\(^{16}\) Laski, Personality of Associations, 29 Harv. L. Rev. 404, 408 (1916); Albertsworth, Leading Developments in Procedural Reform, 7 Corn. L. Q. 310, 332 (1922).
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notwithstanding the verdict and an alternative motion for a new trial on the ground that the verdict was against the weight of the evidence. The trial court allowed the former and entered judgment for the defendant but did not consider the motion for new trial. Upon appeal, the appellate court, acting under Section 68(3)c of the Civil Practice Act, reversed the judgment of the trial court, denied the motion for a new trial, and entered judgment for the plaintiff. On writ of error, the Illinois Supreme Court held, that Section 68(3)c, insofar as it purports to authorize a reviewing court to pass upon a motion for new trial not considered by the trial court, is unconstitutional because it confers original jurisdiction upon a court with only appellate jurisdiction. Judgment reversed and case remanded to the trial court to pass upon the motion for new trial. Sprague v. Goodrich.

The court in the present case assumed that the initial ruling upon a motion for new trial is an exclusive function of the trial court as a court of original jurisdiction. At early common law, however, this function was not exercised by the judge who presided at the trial. A motion for new trial was addressed to the court en banc at Westminster, to which the nisi prius judge had returned the record of the proceedings and the verdict of the jury for that court to enter judgment. The judges of the court en banc were not present at the trial and they relied upon the record in ruling on the motion. This practice of judges other than the trial judge ruling upon motions for new trial was based on the ground that the evidence was insufficient to warrant submitting the case to the jury. At common law a motion for judgment notwithstanding the verdict could be based only on the pleadings, and not on the evidence. Only the plaintiff could make the motion, and only when a verdict had been returned for the defendant who had made a plea in confession and avoidance but had failed to prove the avoidance. 2 Tidd, Practice 920 (1828). Legislation in many states, however, has broadened the scope of the common law motion, to cover the evidence presented at the trial. See Ill. Rev. Stat. (1939) c. 110, § 192 (3)a; 34 Mich. L. Rev. 93 (1935).

The Appellate or Supreme Court shall "order or enter judgment in accordance with the verdict of the jury, unless it shall appear that there was error in the case that would have entitled the party in whose favor judgment notwithstanding the verdict was entered to a new trial, if such judgment had not been entered by the trial court, in which case a new trial shall be ordered." Ill. Rev. Stat. (1939) c. 110, § 192 (3)c.

The right to have some court rule upon whether the jury's verdict is supported by the evidence is an essential of the right to trial by jury. Ill. Const. art 2, § 5. See Sinopoli v. Chicago R. Co., 316 Ill. 609, 619, 247 N.E. 487, 491 (1925); cf. Capital Traction Co. v. Hof, 174 U.S. 1 (1899). It might be contended that permitting an appellate court to rule initially on a motion for new trial deprives a litigant of his right to trial by jury. The arguments advanced herein to show that ruling upon such a motion in the first instance is not an exclusive function of the trial court refute this contention also.


Vicary v. Farthing, Cro. Eliz. 411 (Q.B. 1595); Farewell v. Chaffey, I Burr. 54 (K.B. 1756); Birt v. Barlow, 1 Doug. 171 (K.B. 1779).
trial continued after the Judicature Act of 1875, which provided that such motions be made to the Court of Appeal rather than to the trial court.\(^9\)

In the United States an appellate court, after reversing a judgment notwithstanding the verdict, generally remands the case to the trial court for a ruling upon the motion for new trial, previously made at the trial but not considered.\(^{10}\) In some states, however, a statute authorizes the appellate court itself to pass upon such a motion, as did Section 68(3)c of the Illinois Civil Practice Act.\(^{11}\) Although this procedure has been frequently utilized in these states, the instant case is the first declaring a statute authorizing it unconstitutional.\(^{12}\)

Moreover, the Illinois Supreme Court has previously recognized that the initial ruling upon a motion for new trial may be an appellate function. In the case of Corcoran v. Chicago,\(^{13}\) the issue before the court was whether the appellate court could review the trial court's ruling on the defendant's motion for new trial. In supporting its thesis that this procedure was well established, the court recognized that at common law even the initial ruling on such motions had been made by judges who did not preside at the trial.\(^{14}\) Indeed, the Illinois Supreme Court has held that a judge with no previous contact with the case may pass upon a motion for new trial when the trial judge has died or become incapacitated.\(^{15}\)

The court might have avoided the constitutional issue completely. Since the right to have a court rule on the motion for new trial may be waived by failure to make the

\(^9\) 38 & 39 Victoria, c. 77, Order 58(5) (1875); see Annual Practice Order 39 (1940); 15 & 16 Geo. V., c. 49, § 30 (1) (1925). Jones v. Spencer, 77 L.T. 536 (H.L. 1898), illustrates the English procedure under the Judicature Act.


\(^{13}\) 373 Ill. 567, 27 N.E. (2d) 451 (1940).


\(^{15}\) Chicago P. & S. W. R. Co. v. Marseilles, 107 Ill. 373 (1883) (circuit judge may rule on a motion for new trial of a case tried before another circuit judge); see People v. McConnell, 155 Ill. 192, 40 N.E. 608 (1895) (successor to deceased judge has power to decide motion for new trial of a case heard by his predecessor). Courts in other jurisdictions have also expressed the view that a motion for a new trial need not be passed on by the judge who presided at the trial. Life & Fire Ins. Co. of New York v. Wilson, 8 Pet. (U.S.) 291 (1834); Gunn v. Union R. Co., 23 R.I. 289, 49 Atl. 999 (1901); Texas & P. R. Co. v. Voliva, 41 Tex. Civ. App. 17, 91 S.W. 354 (1906).
motion, it might have held that the defendant in the instant case had waived this right by his failure to secure a ruling on his motion in the trial court. The result that there could be only one appeal from the trial court's ruling on one of two alternative motions accords with the policy of the modern practice acts to avoid "piece-meal" appeals. In the case of Montgomery Ward & Co. v. Duncan, however, the United States Supreme Court held that the failure of the moving party to secure a ruling by the trial court on his alternative motion for new trial, when it granted his motion for judgment notwithstanding the verdict, did not constitute waiver of his right to have this motion considered after reversal of the judgment. The court suggested that in the future the trial judge rule upon both alternative motions at the same time. This suggestion was also implied in the present decision.

Both decisions leave the implementing of these suggestions to the diligence of the litigants. Thus the non-moving plaintiff may frequently be placed in the anomalous position of desiring trial court rulings upon both motions of the defendant. In contrast, the defendant, interested in prolonging the litigation until the funds of the plaintiff are exhausted, may be willing that his alternative motion for new trial go unconsidered so that the case must be remanded for ruling upon that motion if the plaintiff's first appeal is successful. This situation might be avoided by amendment of Section 68(3)c to provide that the trial judge must rule on each of the motions and that appeal from the ruling on one brings up the other for review also.

Procedure—Federal Employers' Liability Act—State Court Injunction of Proceeding in Federal Court—[Ohio and Federal].—Section 56 of the Federal Employers' Liability Act provides that a railroad may be sued for damages arising out of employment in interstate commerce in a district court of the United States or a state court in any one of three places: the district of the residence of the defendant, the district in which the cause of action arose, or any district in which the defendant shall be doing


18 At common law the granting of a new trial was discretionary with the trial court; no exception could be taken to the ruling of that court. See Sinopoli v. Chicago R. Co., 316 Ill. 609, 147 N.E. 487 (1925). Section 77 of the Illinois Civil Practice Act provides that appeals may be taken from orders granting a new trial. Ill. Rev. Stat. (1939) c. 110, § 201; Wettaw v. Retail Hardware Mutual Ins. Co., 285 Ill. App. 394, 2 N.E. (2d) 162 (1936). Although an order denying a motion for new trial is generally not an appealable order, making such a motion may be a prerequisite to urging various other errors. Peirce v. Ott, 201 Ill. App. 46 (1915); Ill. Civ. Prac. Ann. (McCaskill, 1933) 292-93.

19 311 U.S. 243 (1940).


21 Sprague v. Goodrich, 32 N.E. (2d) 897, 900 (Ill. 1941).