THE

# CENTRAL LAW JOURNAL.

WM. A. GARDNER, Editor.
ALEXANDER H. ROBBINS, Manager.

---

# VOLUME 65.

**JULY—DECEMBER, 1907.**

---

ST. LOUIS, MO.:
CENTRAL LAW JOURNAL COMPANY
1907.

## NOTES OF IMPORTANT DECISIONS.

NUISANCE—LIABILITY FOR SUFFERING PUBLIC NUISANCE ON PRIVATE PREMISES.—It is not so generally known as it should be that the mere sufferance of a nuisance to exist on one's premises is as much of a crime as the actual creation and maintenance of a nuisance. In the recent case of Southern Railway Co. v. Commonwealth, 101 S. W. Rep. 882, the Court of Appeals of Kentucky held that where a railroad company quartered a band of laborers on its right of way, who destroyed the peace and quiet of the neighborhood, it may be convicted of having suffered and permitted a common nuisance on its premises, and that the laborers were in its employ was immaterial.

The court, in an opinion by Chief Justice O'Rear, says: "Appellant was convicted under an indictment charging it with having suffered and permitted a common nuisance on its premises. It allowed a band of 100 or 150 laborers, quartered in one of its work trains and occupying a side track on its railroad near Hempridge Station, to continue, for weeks, noisy, boisterous, and riotous conduct, shooting firearms on appellant's premises, and near the station and public highway, so as to alarm the neighborhood and those having occasion to pass that way. These laborers were Greeks in appellant's employ, and with its permission occupied a part of its right of way in the manner indicated. The fact that the laborers were in appellant's employment did not affect the question. It would have been the same if the persons permitted to assemble on appellant's premises were strangers. No one has the right to knowingly suffer or permit noisy, boisterous, and lawless crowds of people to assemble on his premises, so as to disturb the peace and quiet of the public. To do so is to suffer a public nuisance on his premises."

## INJUNCTIONS AGAINST STRIKES, BOYCOTTS AND SIMILAR UNLAWFUL ACTS.

1. *Importance of Subject and Purpose of Paper.*—The subject of injunctions as applied to strikes, boycotts and other similar proceedings derives its importance from the far reaching use of the writ in recent years, and the probability of the recurrence of a similar experience at our next commercial crisis. In the period from 1893 to 1897 inclusive there were in the United States 5,973 strikes, resulting in a loss to the employers of $37,633,528.[1] Employers were not slow to discover that in most cases a suit at law for damages afforded no adequate remedy for their loss, and eagerly sought the protection of the chancery courts. The latter in turn recognized the fact that three elements contribute to make an action at law an extremely unsatisfactory remedy, first, the difficulty of estimating damages,[2] second, the necessity of a multiplicity of suits,[3] and third, the financial irresponsibility of a large proportion of laboring men.[4]

How quick the courts were to grant injunctive relief is shown by the following graphic statement as to the prevalence of the restraining writ in 1894: "The Attorney General of the United States, in the exercise of its sovereignty as a nation, has sued out injunctions in nearly every large city west of the Alleghèny Mountains. Injunction writs have covered the sides of cars, deputy marshals and federal soldiers have patrolled the yards of railway termini, and chancery process has been executed by bullets and bayonets."[5] It is the two-fold purpose of this paper to point out, first, what rules, if any, the courts follow in the use of injunctions as applied to labor troubles, and, second, to consider briefly some of the principal objections to their views, attempting to discover in how far the criticisms are just.

2. *Close Relation of Law to Equity.*—The employment of the writ of injunction to restrain labor disturbances first manifested itself in England in 1868[6] and in the United States twenty years later[7] though prior to that, the law courts had frequently dealt with them in actions for damages[8] and criminal prosecutions.[9] In studying the injunction

[1] Article by C. W. Hanger in U. S. Bulletin of Labor, Sept. 1904, p. 1097.

[2] Barr v. Essex Trades Council (N. J. 1894), 30 Atl. Rep. 881.

[3] *Ibid:* Blindell v. Hagan (1893), 56 Fed. Rep. 696; Coeur D'Alene, etc., Co. Miners' Union (1892), 51 Fed. Rep. 260-1.

[4] Coeur D'Alene, etc., Co. v. Miners' Union (1892), 51 Fed. Rep. 260.

[5] Paper by C. C. Allen, Report of American Bar Association (1894), p. 315.

[6] Springhead Spinning Co. v. Riley (1868), 6 L. R. Eq. 551.

[7] Sherry v. Perkins (1888), 107 Mass. 212, 17 N. E. Rep. 307.

[8] Walker v. Cronin (1888), 107 Mass. 555; Old Dominion S. S. Co. v. McKenna (1887), 30 Fed. Rep. 48.

[9] King v. Journeymen Tailors of Cambridge (1721), 8 Mod. 10, 1 Hawk. P. C., ch. 72, sec. 2; Reg. v. Duffield (1851), 5 Cox C. C. 404; Reg v. Druitt (1867), 10 Cox C. C. 593; Statev. Glidden (1887), 55 Conn. 46; Crump v. Common-

cases, one soon becomes impressed by the utterances of judge after judge that in dealing with labor combinations equity closely follows the law. Before setting forth the rules of chancery on the subject, it is therefore in order briefly to summarize what the law in England and America was about the time the use of injunctions in this connection began to become common, as to the right of laborers to combine and employ the means customary to effectuate their objects. In so far as the courts had passed upon the questions, the following is a fair statement of the law both in England and America at that time.

3. *The Law at Beginning of Injunction Period.*—(a) Notwithstanding the earlier view that any combination to raise wages was a criminal conspiracy,[10] workingmen now had a recognized right to combine to better their condition.[11] (b) No action lay against them for ceasing work in order to secure concessions, either individually or collectively,[12] provided no breach of contract was involved.[13] (c) There was no prohibition, either civil or criminal, on inducing others to quit their employment, or, if not employed, to abstain from hiring themselves, provided there is no intimidation, molestation or obstruction,[14] their object is not primarily to injure some other person,[15] and they are not inducing a breach of contract.[16] (d) The old common law civil liability of a workman who broke his own contract, to be sued for damages, of course remained unchanged, and the rule that one who entices away a servant under contract is liable in damages[17] also remained unaltered.

How closely equity has followed the law in dealing with labor problems will appear in what follows.

4. *Injunctions to Restrain Strikes*—(A) General Rule.—As a rule courts of equity have not considered it within their duty to enjoin mere voluntary cessations of work having as their purpose the securing of better terms of employment, either by an individual or a collection of individuals. Justice Harlan writes as follows: "But the vital question remains whether a court of equity will, under any circumstances, by injunction, prevent one individual from quitting the personal service of another? An affirmative answer to this question is not, we think, justified by any authority to which our attention has been called or of which we are aware. It would be an invasion of one's natural liberty to compel him to work for or to remain in the personal service of another. One who is placed under such constraint is in a condition of involuntary servitude,—a condition which the supreme law of the land declares shall not exist within the United States, or in any place subject to their jurisdiction. The rule, we think, is without exception that equity will not compel the actual, affirmative performance by an employee of merely personal services, any more than it will compel an employer to retain in his personal service one who, no matter for what cause is not acceptable to him. Relief of that character has always been regarded as impracticable."[18]

wealth, 84 Va. 940; State v. Stewart, 59 Vt. 273; Reg. v. Bunn, 12 Cox C. C. 316; Reg. v. Hilbert, 13 Cox C. C. 82; Reg. v. Bauld, 13 Cox C. C. 282.

[10] King v. Journeymen Tailors of Cambridge (1721), 8 Mod. 10, citing The Tub Women v. The Brewers of London (not reported); Rex v. Mawbey (1796), 6 Term. R. 619, 636, 1 Hawk. P. C., ch. 72, sec. 2; 2 Jacob's Law Dictionary (1811), 230; Stat. 2 & 3 Edw. VI. ch. 15 (1549). List of statutes on subject prior to 1824, see 5 Geo. 4, ch. 95 (1824). For account of labor legislation in England during nineteenth century, see Bulletin of U. S. Dept. of Labor, Nov. 1899.

[11] England—Stat. 22 Vict., ch. 34 (L. J. 1859, p. 36); Stat. 34 & 35 Vict., ch. 31; Stat. 38 & 39 Vict., ch. 86; Reg. v. Rowlands (1851), 5 Cox C. C. 460; Reg. v. Druitt (1867), 16 L. T. (N. S.) 855; United States—Comm. v. Hunt (1842), 4 Metc. (Mass.) 111; United States v. Kane (1885), 23 Fed. Rep. 748; *In re* Doolittle (1885), 23 Fed. Rep. 544; *In re* Higgins (1886), 27 Fed. Rep. 444.

[12] England—Reg. v. Druitt (1867), 16 L. T. (N. S.) 855. United States—United States v. Kane (1885), 23 Fed. Rep. 748; *In re* Doolittle (1885), 23 Fed. Rep. 544; *In re* Higgins (1886), 27 Fed Rep. 443, 445.

[13] Stat. 22 Vict., ch. 34; Comm. v. Hunt (1842), 4 Metc. 111.

[14] Stat. 5 Geo. 4, ch. 129; Reg. v. Rowlands, 5 Cox. C. C. 460; Rex v. Shepherd, 11 Cox C. C. 325; Sherry v. Perkins, 147 Mass. 212. Under English Act of 1875, however, "picketing," consisting merely of a patrol coupled with peaceable persuasion not to work for another has been held illegal. Lyons & Sons v. Wilkins (1899), 1 Ch. 255.

[15] State v. Glidden, 55 Conn. 460 (semble); Walker v. Cronin, 107 Mass. 155; Carew v. Rutherford, 106 Mass. 1; Lumley v. Gye (semble) 2 E. & B. 216, and remarks in Allen v. Flood, 78 L. J. Q. B. 119, as to the previous condition of the law.

[16] Stat. 22 Vict., ch. 34; Lumley v. Gye, 2 E. & B. 216; Rex v. Duffield, 5 Cox. C. C. 404.

[17] See Lumley v. Gye, 2 El. & Bl. 216; Hambleton v. Veere, 2 Saund. 169. See cases cited in 16 Am. & Eng. Ency. 1109.

[18] Arthur v. Oakes, 63 Fed. Rep. 310, 317. See also

(a) An Apparent, Though Not Real Exception to the Rule.—While equity will not enjoin a combined cessation from work, it has been held by the federal courts that an order may be issued, which while recognizing the right of workmen to quit, nevertheless commands them to carry out their duties as long as they choose to remain within their employment,[19] and restrains any person from ordering or persuading them to fail to do so.[20] It is to be noted, however, that these decisions are all based on the fact that either interstate commerce or the carriage of mails was affected by the refusal of employees to carry out all their duties. It is not settled whether the same principle would be extended to all cases of private contract relations.

(B) Importance of Purpose of Strike—(a) General Rule.—While the courts in general have refused to consider a strike *per se* enjoinable, the very decision which lays down the rule to that effect, expressly sustains an injunction from[21] combining and conspiring to quit with or without notice, the service of certain receivers, with the object and intent of crippling the property in their custody or embarrassing the operation of the railroad.[22]

In another case[23] the court, while recognizing the right to strike for improvement in terms of employment of the strikers, characterizes as highly illegal a strike inaugurated for the purpose of obstructing the operation of the employer's road, and compelling him to break his contract with the Pullman car company. Says the court: "All the employees had the right to quit their employment but they had no right to combine to quit in order thereby to compel their employer to withdraw from a mutually profitable relation with a third person for the purpose of injuring that third person, when the relation thus sought to be broken had no effect whatever on the character or reward of their service. It is the motive for quitting, and the end sought thereby, that make the injury inflicted unlawful, and the combination by which it is effected an unlawful conspiracy."[24]

It is of course true that in every strike there is a purpose to injure the employer, even though the further desire to secure better terms of employment also exists. It is not, therefore, correct to say that wherever there is a purpose to injure another, equity will enjoin. The carrying out of that purpose may be entirely justified by the fact that it is necessary in order to secure betterment in the terms of employment of the strikers themselves, and the courts will not enjoin an attempt to secure by a strike higher wages or less hours on the grounds that the strikers have adopted that method of enforcing their demands, knowing that it will injure the employer if the desired concessions are not granted. Where, however, the strikers are not attempting to bring about improvement in their own terms of employment, but are merely seeking to injure another person, (either their employer,[25] or a third party, as in the case of Thomas v. Cincinnati, etc., Ry.,[26] where they threatened to strike if the use of cars manufactured by a third party was not discontinued by their employer), their design to injure him is not justified and the carrying out of that purpose may be enjoined.

(b) Application to Sherman Anti-Trust Law.—The attempt was early made to apply the Sherman Anti-Trust law of 1890,[27] to combinations of workmen effecting their objects by means of strikes. There seems to be little question but that the act in question when enacted had as its sole object the crushing of capitalistic combinations,[28] and

Toledo, etc., Ry. Co. v. Penn., etc., Co., 54 Fed. Rep. 730, 740 and authorities cited. Also Fry, Specif. Perf. (3d Am. Ed.), 87-91.

[19] Southern Cal. Ry. Co. v. Rutherford (1894), 62 Fed. Rep. 796; Toledo, etc., Ry. Co. v. Penn. Co. (1893), 54 Fed. Rep. 746. Employees cannot evade this principle by mere temporary stoppage of work, followed by a resumption of duties when orders objectionable to them had been withdrawn. (*Ibid*).

[20] Toledo, etc., Ry. Co. v. Penn. Co. (1893), 54 Fed. Rep. 730; *In re* Debs (1895), 158 U. S. 564.

[21] Arthur v. Oakes, 63 Fed. Rep. 310, 319.

[22] The court says (*Ibid*, p. 322): "An intent upon the part of a single person to injure the rights of others or of the public is not in itself a wrong of which the law will take cognizance, unless some injurious act be done in execution of the unlawful intent. But a combination of two or more persons with such intent, and under circumstances that give them when so combined a power to do an injury they would not possess as individuals acting singly, has always been recognized as in itself wrongful and illegal."

[23] Thomas v. Cincinnati, etc., Co., 62 Fed. Rep. 803.

[24] *Ibid*., p. 818.

[25] Arthur v. Oakes (1894), 63 Fed. Rep. 310, *supra*.

[26] *Supra*.

[27] Act of July 2, 1890, 26 Stat. L. 209.

[28] U. S. v. Cassidy (1895), 67 Fed. Rep. 698.

so it was held in one of the first cases in which the point was raised.[29] A contrary decision[30] extending its operation to labor combinations has, however, been consistently followed.[31] The construction of this act does not operate to make every strike enjoinable by suit instituted by the government, but merely to place in the hands of the government the power to restrain [those which are organized primarily for the purpose of restraining interstate trade or commerce. Thus, in a leading case[32] the court, while distinctly laying down as law that a peaceable strike is not actionable and that the organization of such a strike is not enjoinable,[33] even though it "much impeded the operation of the road under the order of the court," holds that the organization of one which was to carry out an express purpose "to paralyze the interstate commerce of this country" comes within the prohibition of the statute.[34]

(c) Application to Receiver Cases.—The numerous cases[35] in which injunctions have been granted to restrain interference with property in the hands of a receiver by means of a strike, are also based on the purpose for which the strike is called. Thus, in a leading case,[36] that part of a decision of the lower court enjoining persons from combining to strike with intent to injure the property in the possession of the receiver is affirmed, while the part enjoining them from quitting so as to injure the same property, without regard to their motive, is reversed.

5. *Injunctions to Restrain the Inducement of Other Laborers to Leave.*—(A) General Rule.—The mere cessation of work by a body of discontented laborers is not always sufficient to secure the desired concessions. It is often necessary that enough other workmen be induced to withdraw along with the discontented ones seriously to impede the employer's business. The law courts of neither England nor America have considered it actionable to induce by peaceable means the voluntary withdrawal of laborers, provided no breach of contract is involved.[37] Equity has followed a similar rule. Peaceable persuasion to quit work or to discharge laborers is not enjoinable[38] but coercion and intimidation[39] are uniformly held to be proper subjects of equitable restraint.[40]

(B) Importance of Motive of Inciter—(a) General Rule.—Just as the motive of the striker himself has been scrutinized by the courts in determining whether his acts were proper subjects of injunction, so the purpose of those who induce a cessation of work has had no small influence on the decision of the cases presented. In a leading federal case,[41] the court while not denying the right to call the strike to secure an improvement in the terms of employment of the strikers, punished for contempt one who had disobeyed an injunction from "either as an individual or in combination with others, inciting, encouraging, ordering or in any other manner causing the employees of the receiver to leave his employ, with intent to obstruct the operation of his road, and thereby to compel him not to fulfill his contract and carry Pullman cars."[42]

(b) Application in Receiver Cases.—Similarly, the instigation of strikes for the purpose of interfering with the operation of a

[29] U. S. v. Patterson (1893), 55 Fed. Rep. 605.

[30] U. S. v. Workingmen's, etc., Council (1893), 54 Fed. Rep. 995.

[31] U. S. v. Workingmen's, etc., Council, 57 Fed. Rep. 85.

[32] *In re* Phelan (1864), 62 Fed. Rep. 803.

[33] *Ibid.*, p. 817.

[34] To same effect, U. S. v. Elliott (1894), 62 Fed. Rep. 801; U. S. v. Agler (1894), 62 Fed. Rep. 824; U. S. v. Cassidy (1895), 67 Fed. Rep. 698.

[35] U. S. v. Kane, 23 Fed. Rep. 748; *In re* Wabash, 24 Fed. Rep. 217; *In re* Higgins, 27 Fed. Rep. 443; Thomas v. Cincinnati, etc., Ry., 62 Fed. Rep. 803.

[36] Arthur v. Oakes (1894), 63 Fed. Rep. 310.

[37] *Supra.*

[38] Richter v. Tailors' Union (1890), 24 Wkly. L. B. 189; U. S. v. Kane (1885), 23 Fed. Rep. 748; Harvester Co. v. Meinhart (1895), 24 Hun (N. Y.), 489; Rogers v. Evarts, 17 N. Y. Supp. 264; Reynolds v. Everett (1894), 144 N. Y. 189.

[39] Note as to what intimidation is.

[40] Davis v. Zimmerman (1895), 36 N. Y. Supp. 303; Union, etc., Co. v. Ruef (1902), 120 Fed. Rep. 102; Allis Chalmers Co. v. Reliable Lodge (1901), 111 Fed. Rep. 264; Southern Ry. v. Mach., etc., Union (1901), 111 Fed. Rep. 49; O'Neil v. Behanna (1897), 182 Pa. 236.

[41] Thomas v. Cincinnati, etc., Ry. Co., 62 Fed. Rep. 803.

[42] See also Arthur v. Oakes (1894), 63 Fed. Rep. 310, in which an injunction was granted to restrain a conspiracy to injure another by a strike. See also Quinn v. Leathem (1901), L. R. A. C. 495; *In re* Higgins (1886), 27 Fed. Rep. 443. See, for cases of injunction against wilful interference with interstate commerce, *In re* Phelan (1894), 62 Fed. Rep. 803; U. S. v. Elliott (1894), 62 Fed. Rep. 801; U. S. v. Agler (1894), 62 Fed. Rep. 824; U. S. v. Cassidy (1895), 67 Fed. Rep. 698. Injunction granted to restrain calling of a strike not directly connected with the welfare of the strikers, in securing which grave public injury will come about. U. S. v. Debs, 64 Fed. Rep. 724.

railroad in the hands of a receiver has been held to be contempt of court, the receiver being a court officer,[43] may be enjoined[44] or punished equally in ordinary contempt proceedings.[45]

(c) The English Rule.—A notable decision was handed down in the House of Lords in 1898,[46] to the effect that one who induces the discharge of another by telling his employer that if he is not discharged, the employer's other workmen will quit, is not liable in damages to the laborer so discharged, though his motive may have been bad, and his act designed to injure the person discharged.

This decision was supposed by many to revolutionize English law on the subject, and to stand for the doctrine that the motive of an act has nothing to do with its legality. Consequently, three years later when, in the carrying out of a design to injure the plainiff, the defendants induced his customer to withdraw his patronage under threat of having his own employees called out, the defendants denied their liability[47] because their act was not *per se* unlawful, and under the principle of the case of Allen v. Flood,[48] the motive behind the act was of no importance. The court, however, after deciding that Allen v. Flood stands merely for the proposition that an act if legal, is not made illegal because of its motive, held that a conspiracy to injure another, resulting in damage, does give rise to civil liability. Lord Shand expressly holds that a combination of persons having as its purpose "to injure the plaintiff in his trade, as distinguished from the intention of legitimately advancing their own interests" is actionable.

While the exact point has not been presented in English chancery courts, a comparatively recent federal decision holds what would likely be held in England after the case of Quinn v. Leathem,[49] that equity will restrain "a combination which is formed to induce employees who are not dissatisfied with the terms of their employment to strike for the purpose of inflicting injury and damage upon the employers.[50]

(C) Rule as to Enticement of Servant Under Contract.—It has been held that an employer may maintain an action for damages against one who entices away a servant under contract with him.[51] It would seem then that if the complainant could establish the fact that legal relief would be inadequate, he should be allowed to enjoin even peaceable persuasion to break such a contract, and in so far as the question has been passed upon this rule is followed,[52] a Pennsylvania case going so far as to enjoin an effort to persuade employees to join a union, they being under contract with their employer not to do so.[53]

6. *Injunctions to Restrain Inducement of Others Not to Take Employment.*—(A) General Rule.—Not only is it necessary that the withdrawal or discharge of enough fellow laborers to injure the employer's business be induced, but he must not be permitted to fill the vacancies with non-sympathizers. Here, again, equity has followed the law, and, while not objecting to peaceable persuasion, restrains coercion and intimidation. In the first English case on the subject this rule is followed,[54] the court enjoining the defendants from giving notice to workmen by means of placards not to hire out to plaintiffs, on the ground that while every man is free to induce others by persuasion to enter into combina-

[43] *In re* Phelan (1894), 62 Fed. Rep. 803; Farmers, etc., Co. v. Northern, etc., Ry. (1894), 60 Fed. Rep. 803; Arthur v. Oakes (1894), 63 Fed. Rep. 310. U. S. v. Kane (1885), 23 Fed. Rep. 748; *In re* Wabash R. Co. (1885), 24 Fed. Rep. 217; *In re* Higgins, 27 Fed. Rep. 444.

[44] *In re* Phelan (1894), 62 Fed. Rep. 803; Farmers, etc., Co. v. Northern, etc., Ry. (1894), 60 Fed. Rep. 803; Arthur v. Oakes (1894), 63 Fed. Rep. 310.

[45] U. S. v. Kane (1885), 23 Fed. Rep. 648; *In re* Wabash R. Co. (1885), 24 Fed. Rep. 217; *In re* Higgins, 27 Fed. Rep. 444. These cases establish the proposition that injunctions in case of injury to property in hands of receiver are not necessary, the party being as much in contempt of court without as with an injunction, yet the courts constantly issue them notwithstanding. See case of Beers v. Wabash Ry., 34 Fed. Rep. 244, in which the union had rescinded its order of a strike before the case came up for hearing, and although the court refused the injunction, the bill was left "on file for further action, should there be occasion for it."

[46] Allen v. Flood (1898), L. R. A. C. 1.

[47] Quinn v. Leathem (1901), L. R. A. C. 495.

[48] *Supra.*

[49] *Supra.*

[50] U. S. v. Haggerty (1902), 116 Fed. Rep. 510, 515.

[51] Lumley v. Gye, 2 El. & Bl. 216. See cases cited in 16 Am. & Eng. Ency. 1109.

[52] Southern Ry. Co. v. Machinists, etc., Union (1901) 111 Fed. Rep. 49; Vegelahn v. Guntner (1896), 44 N. E. Rep. 1077, 167 Mass. 92.

[53] Flaccus v. Smith (1901), 199 Pa. St. 128, 48 Atl. Rep. 894.

[54] Springhead Spinning Co. v. Riley (1868), 6 L. R. Eq. 55.

tion to uphold prices, yet he will not be upheld in the use of intimidation. Similarly, in the first authoritative American case,[55] the defendants were enjoined from intimidating persons by means of a threatening banner, from entering the employ of the plaintiff. Interference by threats and epithets,[56] violence to overcome which police assistance was necessary,[57] riotously congregating in front of the employer's place of business for the purpose of coercing others from hiring out,[58] a patrol organized for purpose of conflict,[59] have all been enjoined because of the element of force involved.[60]

(b) Influence of Motive of Inciter.—While there seem to be no cases directly in point, it would appear from the case of Quinn v. Leathem[61] and United States v. Haggerty[62] that if the motive of those who persuade others not to hire to a third party is merely to injure such third party, such persuasion should be enjoined. It is conceded, however, that under the holding in Allen v. Flood,[63] the decision of this case is doubtful.

7. *Injunctions Against Boycotts.*—(A) General Rule.—It is as important to the employer that he be able to sell his products, as it is to be able to hire workmen to produce them, consequently if he is deprived of a market for his goods he can in many cases be forced to terms almost as quickly as if he were deprived of workmen. Realizing this fact, labor leaders have employed the boycott side by side with the strike. What the attitude of the courts has been, as to this method of making their demands effective, follows.

(a) As to Personal Withdrawal.—Just as laborers have the right to strike in combination, so they should be conceded the right to withdraw their own patronage in a body. It is therefore submitted that no court should enjoin a withdrawal of their own patronage by any number of persons, and so far as the cases go, none hold otherwise.[64]

(b) As to Influencing Others—(x) Lack of Adequate Legal Remedy.—The kind of boycott, however, which extends to others besides the laborers themselves presents a different proposition. Even here, however, it is to be noted that before the complainant will be awarded an injunction he must show lack of adequate remedy at law. Thus, an injunction against the continuance of a boycott was refused, where in ten months previous there had been but a single act of trespass, and the publication of a notice that the union had withdrawn from complainant's shop, coupled with a threat of "war to the knife" had resulted in the loss of but three customers, the ground of refusal being the lack of any likelihood of irreparable injury.[65]

(y) Influence of Intimidatory Methods.—As applied to the kind of boycott in which third parties are induced to sever business relations with a given person, the principle that while fair persuasive methods are permissible, nothing in the nature of threats or intimidation will be countenanced, has been applied by the courts just as in the case of the strike. They have, however, steadily seen fit to classify almost any kind of a boycott as having within itself intimidatory elements, consequently it has become almost, in fact if not in words, a rule that an attempt to secure concessions from an employer, by inducing other persons to withdraw their patronage from him in case the concessions are not granted, is illegal, and if an action at law will not afford an adequate remedy, equity will enjoin.[66]

[55] Sherry v. Perkins (1888), 147 Mass. 212, 17 N. E. Rep. 307.

[56] Wick China Co. v. Brown, 164 Pa. 449, 30 Atl. Rep. 261.

[57] Blindell v. Hagan (1893), 56 Fed. Rep. 696.

[58] Steel & Wire Co. v. Murray (1897), 80 Fed. Rep. 811.

[59] Steel & Wire Co. v. Union (1898), 90 Fed. Rep. 608.

[60] See also Otis Steel Co. v. Local Union, etc. (1901), 110 Fed. Rep. 698; Allis Chalmers Co. v. Reliable Lodge (1901), 111 Fed. Rep. 264; Southern Ry. Co. v. Machinists Local Union (1901), 111 Fed. Rep. 49; Franklin Union, etc. v. People (1906), 220 Ill. 355, L. R. A. (N. S.), 1001. See also Elder v. Whitesides (1896), 72 Fed. Rep. 724; Murdock v. Walker (1893), 152 Pa. 595; Ry. Co. v. Bailey (1893), 51 Fed. Rep. 494; Underhill v. Murphy (1904), 117 Ky. 640, 4 A. & E. Ann. Cas. 780.

[61] *Supra.*

[62] *Supra.*

[63] *Supra.*

[64] This doctrine is adhered to in principle in Bohn Mfg. Co. v. Hollis, 54 Minn. 223, where the right of an association of lumber dealers to withdraw their patronage from a hostile wholesaler was upheld. See also Cote v. Murphy, 159 Pa. 420.

[65] Longshore Prtg. Co. v. Howell (Oreg. 1894), 28 L. R. A. 464. See also Francis v. Flinn, 118 U. S. 385.

[66] Thus, an injunction issued to restrain the defendant from threatening customers of the plaintiff, that if they do not cease buying goods from the plaintiff, they themselves will be listed for boycott by other union men (Sinsheimer v. U. G. Workers (1893), 26 N. Y. Supp. 152); another issued to restrain an organization of labor unions from urging its members and the public not to buy plaintiffs newspaper, advertise in it,

While the tendency of the courts is decidedly toward holding that, providing there is no adequate legal remedy, all attempts to induce others to cease patronizing a certain person can be enjoined, on the ground that such attempts are *per se* intimidatory, a comparatively recent Missouri decision[67] recognizes that where, as a matter of fact, the attempts do not amount to threats, a court of equity is without power to enjoin requests to withdraw patronage. The court bases its holding on the constitutional provision in Missouri that "every person shall be free to say, write or publish whatever he will on any subject, being responsible for all abuse of that liberty."[68] The same point was raised in a Michigan case[69] a few years before, and the court held that while a mere libel cannot be enjoined,[70] yet where the means used are threatening in their nature and naturally tend to overcome by fear of loss of property the will of others an injunction will be granted in the absence of adequate legal remedy.

The theory of the courts as to the applications of injunctions to boycotts may then, be summed up as follows: An association of persons may agree among themselves to withdraw their own patronage from a given individual, and may by means other than threats induce other persons to do the same, but if any means are employed which are designed to overcome the will of those other persons by threats, such means will be enjoined if no adequate legal remedy exists.

(B) Influence of Motive.—Though no cases are expressly in point, it would seem that the same rule as to the purpose of those who induce withdrawal of patronage should apply here as in case of the strike.[71]

8. *Criticisms of the Courts.*—During the period at which injunctions were issued with greatest frequency (1894-7) much magazine and newspaper criticism of so-called "government by injunction" was indulged in.[72]

The principal objections to the widespread use of injunctions were, briefly: (1) That trial by jury in criminal cases is interfered with. (2) That persons not parties to the bill are bound by the decree. (3) That equity has gone beyond the protection of property rights and assumed executive powers.

How well founded these complaints of usurpation are, it will be attempted briefly to point out.

(A) Infringement of Jury Trial.—As to the charge that the right of jury trial is being infringed. While it is true that equity has not for hundreds of years been invoked to prevent crimes as such, yet it is also true that from early times it has not been doubted but that a court will interfere to prevent criminal acts if they lead to the destruction of property. The principle is that merely because such acts happen to be crimes, the court should not be deprived of its jurisdiction.[73] Thus, in an early case[74] Lord Eldon says: "The publication of a libel is a crime; and I have no jurisdiction to prevent the commission of crimes. The question will be whether the bill has stated facts of which the court can take notice, as a case of civil property, which it is bound to protect." An injunction against a public nuisance has been granted in numerous cases,[75] though a remedy exists by indictment.[76]

or trade with those who do (Barr v. Essex Trades Council (N. J. 1894), 30 Atl. Rep. 881); another to restrain the issuance of circulars to workingmen merchants and newspaper dealers requesting a boycott under threat of being considered an enemy of organized labor in case the request is not complied with (Casey v. Cincinnati Typo. Union (1891), 45 Fed. Rep. 135. To the same effect see Oxley Stave Co. v. Coopers' Union, 72 Fed. Rep. 695), another, to restrain the circulation of any statements that the hats made by complainants are "unfair," and should be boycotted (Loewe v. Cal. etc. of Labor (1905), 139 Fed. Rep. 71); another, to restrain the publication by a labor union of notices as follows, "Organized Labor and Friends! Don't drink scab beer;" then naming certain brands as being "unfair," followed up by an admonition to "Guard your health by refusing to drink unfair beer." Seattle, etc. Co. v. Hansen (1905), 144 Fed. Rep. 1011.

[67] Marx & Haas Jeans Clothing Co. v. Watson, (1902), 168 Mo. 133.

[68] Const. of Mo., Art. 2, Sec. 14.

[69] Beck v. Ry. etc. Union, 118 Mich. 497. Also see Hamilton Brown Shoe Co. v. Saxey, 181 Mo. 212.

[70] Also see Coeur D'Alene, etc. Co. v. Miners' Union (1892), 51 Fed. Rep. 260; Richter v. Tailors' Union (1890), 24 Wkly. L. B. 189. See also Mayers v. Journeymen Stone Cutters Ass'n (1890), 20 Atl. Rep. 492.

[71] *Supra.*

[72] See article of F. J. Stimson in Pol. Sci. Quar., June, 1895.

[73] See Emperor of Austria v. Day (1861), 3 De Gex, F. & J. 217.

[74] Gee v. Pritchard (1818), 2 Swans. 313.

[75] Atty. Genl. v. Forbes (1836), 2 Myl. & C. 123; Box v. Allen, 1 Dick, 49; Atty. Genl. v. Johnson, 2 Wils. C. C. 87; High on Injunctions, p. 519, and list of cases.

[76] 21 Am. & Eng. Ency. of Law, 711, and cases cited.

In so far, then, as courts of equity in recent years have interested themselves in the preservation of property rights, they have deprived the wrongdoers of no inherent rights in enjoining the commission of the acts threatened,[77] though they do happen to be crimes.[78]

(B) Disregard of Parties to the Bill.—The second general charge made is that the courts have gone beyond all precedent by extending the application of their writs to persons not parties to the bill, and have rendered thousands of persons liable for contempt who had no chance to appear and defend the action. The Debs case is pointed to as an example of this unwarranted tyranny of the courts. In that case,[79] Debs and three others, together with all persons combining and conspiring with them, and all other persons whomsoever, were enjoined.

It is true that there was never any generally recognized principle that persons not made parties to injunction suits might be punished for contempt in violating the terms of the injunction.[80] It was early held, to be sure, that if the writ is directed to the defendant alone, and his servant with knowledge of that fact, commits the acts prohibited, he may be committed for contempt, though he is not technically guilty of a breach of the injunction.[81] Similarly, if the writ be directed to defendant, his agents and employees, it is binding on the attorney of the defendant having notice.[82] Beyond the exception of agents and servants with notice the rule seems to have been that only parties to the record were bound.[83]

From the above it is plain that the language of the court in cases similar to the Debs case suggests a vast departure from the old rule. It is to be noted, however, that in the Debs case the supreme court did not pass upon the validity of the portion of the order supposed to conflict with the settled rule, and that the final decision in that case is not authority for the proposition that persons not parties to the record and not servants or agents thereof are bound by the decree. In a case decided in 1896,[84] the U. S. Supreme Court does make the broad assertion that "to render a person amenable to the suit in which the injunction was issued, it is neither necessary that he should have been a party to the suit in which the injunction was issued, nor to have been actually served with a copy of it, so long as he appears to have had actual notice." The facts of the case, however, do not necessitate such a broad statement, for the one alleged to be in contempt was a servant of the defendant in the injunction suit, and the writ was directed to its agents, servants and employees.

The facts of the contempt cases will not be found to justify the conclusion that there has been a radical departure from the old rule, though frequent dicta and loosely worded decrees of the courts may lead to a contrary impression. The decisions themselves may in general be harmonized with the general rule on one of three grounds.

(a) That the violator of the injunction was an agent or servant of a party to the record, with notice of the writ.[85]

(b) That the court was exercising its power of punishing a willful obstruction to the carrying out of its orders,[86] on the same principle that permits it to punish him who procures the arrest of a party to a cause,[87] or his witnesses[88] during a trial. The courts

[77] To the objection that the defendant should not be enjoined because his acts amount to a crime, the court in a leading Missouri case returns the sharp answer that to sustain such a doctrine would be virtually to say the constitution guarantees to every man the right to commit crime so that he may enjoy the right of trial by jury. Hamilton Brown Shoe Co. v. Saxey (1895), 131 Mo. 212.

[78] Notwithstanding that this is historically true, there has grown up over a considerable portion of the country, largely from the memory of the period when injunctions, followed by contempt proceedings for their violation, were every day occurrences, a conviction that for every offense the offender should have a right of jury trial, and it is interesting to note that in the constitution recently voted upon by the citizens of the new state of Oklahoma, there is a provision that all trials for contempt of court shall be tried by jury. (Kansas City Times, March 16, 1907.)

[79] *In re* Debs, 158 U. S. 564.

[80] Barthe v. Larquie (1890), 42 La. Ann. 131, 7 So. Rep. 80); Boyd v. State (1886), 19 Neb. 128, 26 N. W. Rep. 925; Sickles v. Bordon (1857), 4 Blatchf. 14, semble. See also Oxley Stave Co. v. Coopers,' etc., Union (1890), 72 Fed. Rep. 695.

[81] Wellesley v. Mornington (1848), 11 Beav. 181.

[82] Wimpy v. Phinzy (1881), 68 Ga. 188.

[83] 1 Beach on Injunctions, 279.

[84] *Ex parte* Lennon (1896), 166 U. S. 548.

[85] Toledo, etc., Ry. v. Penn., etc., Co., 54 Fed. Rep. 746.

[86] Huttig, etc., Co. v. Fuelle (1906), 143 Fed. Rep. 363.

[87] Rex v. Hall (1885), 2 Bl. Rep. 1110.

[88] *In re* Healy (1881), 53 Vt. 694; Commonwealth v.

recognize a vital distinction between this kind of contempt, and that of a party to the suit,[89] who refuses to obey, and while it is not proper to hold one not a party to an injunction suit, guilty of contempt for violating it, circumstances may exist which make it entirely proper that he be held liable for "obstructionary" contempt.[90]

(c) That the violator of the injunction was interfering with property in the possession of an officer of the court, ordinarily a receiver,[91] in which case, independently of injunctions it has been uniformly held from an early date that a court has the power to punish for contempt.[92]

(C) Have Gone Beyond Property Rights.—The Debs decision[93] gave rise to the widespread criticism that courts of equity had gone beyond their valid jurisdiction over protection of property rights and had ventured into a domain where property rights are not the prime consideration, but rather the enforcement of the criminal law. To quote from an eminent writer of that date: "It makes the courts no longer judicial, but a part (and it bids fair to be a most important part) of the executive branch of government."[94]

Those who object to the exercise of equity jurisdiction in such circumstances as those connected with the Debs case, overlook the fact that that decision was based in large part on the fact that the acts of Debs and his associates amounted to a public nuisance, and, to quote the court, "in no well considered case has the power of a court of equity to interfere by injunction in cases of public nuisance been denied."[95] The injunctions in the Debs case were issued, one on the complaint of a receiver of a railroad under control of a federal court, and the other on a bill filed by the Attorney-General of the United States.[96] That the injunction in the first instance was properly issued follows logically from the power of a court to protect property in its custody.[97] Granted that the acts of Debs *et al* amounted to a public nuisance, that the attorney-general's bill was properly sustained, follows directly from an unbroken course of American and English decisions.[98] That the threatening actions were a public nuisance, no man can doubt who considers the immensity of the conspiracy.[99] To quote from an address of Judge Taft before the American Bar Association: "A public nuisance more complete in all its features than that which Debs and his colleagues were engaged in furthering cannot be imagined."[100] To justify the interposition of a court of equity Judge Taft's further remarks are essentially in point: "Such nuisances have been frequently enjoined by courts of equity on the bill of the attorney-general. Was there any doubt that Debs proposed to continue his unlawful course unless restrained? Was there any doubt that the injury would be irreparable and could not be compensated for by verdict at law?"[101]

9. *Conclusion.*—In general, when dealing with labor troubles, courts of equity have not forsaken the principles ordinarily governing their decisions. In the great majority of cases the holding is entirely consistent with the rule that before securing equitable relief one must show prospective injury to his property for which the law affords no adequate relief. The institution of jury trial has not been threatened, neither has the principle that one not a party to a suit is not bound by a decree therein. The apparent exception to the rule that equity interferes only to protect property, in case of a suit at the instance of the attorney-general, is justified by numerous precedents of successful bills in equity filed by the government to restrain public nuisances.

Feely, 2 Va. Cas. 1. See Am. Law Reg., Feb.—May, 1881.

[89] *In re* Reese (1901), 107 Fed. Rep. 942; Huttig, etc., Co. v. Fuelle (1906), 143 Fed. Rep. 363.

[90] See 2 Hawk P. C. 220.

[91] U. S. v. Kane, 23 Fed. Rep. 748; *In re* Wabash, 24 Fed. Rep. 217; *In re* Higgins, 27 Fed. Rep. 443; Thomas v. Cincinnati, etc., Ry., 62 Fed. Rep. 803; Farmers', etc., Co. v. N. P. Ry., 60 Fed. Rep. 803.

[92] Angel v. Smith (1804), 9 Ves. Jr. 335; Skip v. Harwood (1747), 3 Atk. 564; Russel v. East Anglia R. Co. (1850), 3 Macn. & G. 104; Richards v. People (1876), 81 Ill. 551; Hazelrigg v. Bronaugh (1879), 78 Ky. 62.

[93] *In re* Debs, 158 U. S. 564.

[94] F. J. Stimson in Pol. Sci. Quar., June, 1895.

[95] *In re* Debs, 158 U. S. 564.

[96] U. S. v. Debs (1894), 64 Fed. Rep. 724.

[97] See notes 91, 92, 93, 94, *supra*.

[98] People v. Vanderbilt, 28 N. Y. 396; People v. Vanderbilt, 38 Barb. 282; Atty. Genl. v. Richards, 2 Aust. 602; Atty. Genl. v. Forbes (1836), 2 Mylne & C., 123; Atty. Genl. v. Terry (1873), 9 Ch. App. 423; Atty. Genl. v. Birmingham (1858), 4 Kay & J. 528; Pomeroy's Equity Jurisprudence, par. 1349. See further list of cases cited in U. S. v. Debs, 64 Fed. Rep. 724.

[99] See U. S. v. Debs, 158 U. S. 564 for description.

[100] Rept. of Am. Bar Assn. 1895, p. 270.

[101] Rept. of Am. Bar Assn. (1895), p. 270.

The chancery courts, then, under trying circumstances, have proved themselves capable of dealing with the complex conflicts of labor and capital without abandoning old and well-settled principles. The history of English and American jurisprudence affords no stronger testimonial to the efficiency of courts of equity in solving wisely new and difficult problems as they present themselves.

F. C. DONNELL.

St. Louis, Mo.

---

MONOPOLIES—RESERVATION IN DEEDS FOR EXCLUSIVE RIGHT TO USE OF STREETS.

JONES v. CARTER.

*Court of Civil Appeals of Texas. March 9, 1907. Rehearing Denied April 3, 1907.*

A monopoly not only includes an exclusive right granted by the state to a few of something which was before of common right, but embraces any combination or contract, the tendency of which is to prevent competition in its broad and general sense and control prices to the detriment of the public, regardless of the form assumed.

Where the owners of land adjacent to a city platted the same and executed deeds to the city for the streets, alleys, and public grounds, reservations therein to the grantors of the exclusive right to use the streets for the operation of street railroads, and for the maintenance of lighting appliances, sewers, gas, waterworks, and telephone lines, free from the city's control, were contrary to public policy, and void as tending to create a monopoly.

GILL, C. J.: O. M. Carter brought this suit to enjoin H. N. Jones from constructing, establishing, maintaining, or operating upon, along, over, or across any of the streets or alleys of the city of Houston Heights any electric light poles, wires, or other fixtures, and to forever enjoin him from interfering with plaintiff in the enjoyment of the exclusive right to the use of the streets and alleys for such purpose. The trial court sitting without a jury rendered judgment for plaintiff as prayed for, and the defendant has brought the judgment here for revision.

In 1897 the village of Houston Heights formed a municipal corporation as a town or village under the provisions of chapter 11, tit. 18, of the Revised Statutes. In 1901 it duly organized under the general laws as a city of 1,000 inhabitants or over, and has since been operating as such. On March 21, 1905, the city council of said city granted to the defendant Jones a franchise to construct and operate in said city an electric light plant for the purpose of supplying electric lights to the municipality and its inhabitants. To prevent him from proceeding under that franchise and thus interfering with plaintiff's asserted exclusive right is the purpose of this suit.

The facts upon which plaintiff rests his assertion of exclusive right are as follows: In 1892 plaintiff and the Omaha & South Texas Land Company were joint owners of 1,200 acres of unoccupied land of which the municipality in question now covers a part. On that date the owners caused the land to be subdivided and platted into lots, blocks, streets, and alleys, and caused to be prepared and recorded a map showing such subdivision and the location of the streets and alleys as they now exist. In connection with the map they executed and placed of record the following deed of dedication: "This plat and map represents a tract of about seventeen hundred (1,700) acres of land, situated in the John Austin two-league survey, near the city of Houston, in Harris county, Texas, and now [and here designated as 'Houston Heights,' and owned partly by the Omaha & South Texas Land Company and partly by O. M. Carter. The streets and alleys, as designated and marked on said plat and map, are dedicated to the use of the owners of the property in said 'Houston Heights,' subject, however, to the following reservations, hereby expressly made by said Omaha & South Texas Land Company and said O. M. Carter, viz.: Said land company and O. M. Carter each hereby expressly reserves and retains to themselves, their successors, heirs and assigns, as against all the world, and especially as against all who may hereafter purchase or become the owners of lots fronting or abutting on said streets or alleys, the exclusive right to construct, maintain, repair and operate in any and all of said street and alleys, single or double railway tracks, or both, to be operated by animal, electric, steam or other power, with overhead wires or underground appliances or power or other powers, as the said company or the said Carter may elect. And the said company and the said Carter also hereby expressly reserve and retain to themselves, their successors and assigns forever, the exclusive right to do each and every act in and on said streets and alleys, including the erection of poles, stringing of wires for the operation of street railways, telephone and telegraph systems, laying of pipes, construction of conduits, and such other construction as may be necessary or convenient, in the judgment of said company and said Carter, for propelling machinery or other purposes calculated to make said Houston Heights desirable and convenient for business or residence purposes, or either, without restriction of any kind or character. And the said company and the said Carter each hereby reserve unto themselves, their successors, heirs and assigns, as against the world, and especially as against all parties who may hereafter purchase and become the owners of any lot or lots fronting or abutting on the said streets or alleys, or either of them, the exclusive right to lay, maintain and keep in repair in the streets and alleys of said Houston Heights, water pipes, gas pipes, steam heating pipes, compressed air pipes, and sewer pipes, and operate the same without any sort of restrictions, and also the exclusive right to erect