57TH CONGRESS, 1st Session. } SENATE. { DOCUMENT No. 190.

A COMPILATION OF DOCUMENTS

RELATING TO

INJUNCTIONS IN CONSPIRACY CASES

TOGETHER WITH

ARGUMENTS AND DECISION OF THE COURT IN CASE OF COMMONWEALTH V. HUNT, 4 METCALF, ETC.

FEBRUARY 13, 1902.—Ordered to be printed as a document.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1902.

IN THE SENATE OF THE UNITED STATES,
February 13, 1902.

Ordered, That Senate Report No. 827 and House Report No. 2471, parts 1 and 2, Fifty-fourth Congress; Senate Document No. 58, Fifty-sixth Congress, together with other papers and documents herewith submitted, be printed as one document.

Attest: CHARLES BENNETT,
Secretary.

Senate Report No. 827, Fifty-fourth Congress, first session.

APRIL 30, 1896.—Ordered to be printed.

Mr. HILL, from the Committee on the Judiciary, submitted the following

REPORT.

[To accompany S. 2984.]

The Committee on the Judiciary, to whom was referred Senate resolution No. 83, which was as follows:

Resolved, That the Judiciary Committee is hereby directed to investigate the law upon the whole subject of "Contempts of court," as enforced by the Federal courts, and to report to the Senate whether any additional legislation is necessary for the protection of the rights of citizens; and if so, to report such legislation;

and to whom was also referred Senate bill No. 418, entitled "A bill concerning the trial and punishment of contempts of the United States courts herein mentioned," respectfully report:

In obedience to the resolution aforesaid, the committee have duly investigated and considered the whole subject of "Contempts of courts," as enforced by the Federal courts, and believing that some additional legislation is necessary, or at least desirable, upon that subject, recommend the passage of said Senate bill No. 418 with an amendment striking out the title and all the provisions of said bill, and in their place inserting the following:

A BILL in relation to contempts of court.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That contempts of court are divided into two classes, direct and indirect, and shall be proceeded against only as hereinafter prescribed.

SEC. 2. That contempts committed during the sitting of the court, or of a judge at chambers, in its or his presence or so near thereto as to obstruct the administration of justice, are direct contempts. All other are indirect contempts.

SEC. 3. That a direct contempt may be punished summarily without written accusation against the person arraigned, but if the court shall adjudge him guilty thereof a judgment shall be entered of record in which shall be specified the conduct constituting such contempt, with a statement of whatever defense or extenuation the accused offered thereto and the sentence of the court thereon.

SEC. 4. That upon the return of an officer on process or an affidavit duly filed, showing any person guilty of indirect contempt, a writ of attachment or other lawful process may issue, and such person be arrested and brought before the court; and thereupon a written accusation, setting forth succinctly and clearly the facts alleged to constitute such contempt, shall be filed and the accused required to answer the same, by an order which shall fix the time therefor, and also the time and place for hearing the matter; and the court may, on proper showing, extend the time so as to give the accused a reasonable opportunity to purge himself of such contempt. After the answer of the accused, or if he refuse or fail to answer, the court may proceed at the time so fixed to hear and determine such accusation upon such testimony as shall be produced. If the accused answer, the trial shall proceed upon testimony produced as in criminal cases, and the accused shall be entitled to be confronted

with the witnesses against him; but such trial shall be by the court, or, in its discretion, upon application of the accused, a trial by jury may be had as in any criminal case. If the accused be found guilty judgment shall be entered accordingly, prescribing the punishment.

SEC. 5. That the testimony taken on the trial of any accusation of indirect contempt may be preserved by bill of exceptions, and any judgment of conviction therefor may be reviewed upon direct appeal to or by writ of error from the Supreme Court, and affirmed, reversed, or modified, as justice may require. Upon allowance of an appeal or writ of error execution of the judgment shall be stayed, upon the giving of such bond as may be required by the court or a judge thereof, or by any justice of the Supreme Court.

SEC. 6 That the provisions of this Act shall apply to all proceedings for contempt in all courts of the United States except the Supreme Court; but this Act shall not affect any proceedings for contempt pending at the time of the passage thereof.

House Report No. 2471, Fifty-fourth Congress, second session.

CONTEMPTS OF COURT.

JANUARY 8, 1897.—Referred to the House Calendar and ordered to be printed.

Mr. RAY, from the Committee on the Judiciary, submitted the following

REPORT.

[To accompany S. 2984.]

The Committee on the Judiciary, having carefully considered Senate bill 2984, report as follows:

The right and power of courts to punish for contempts is inherent and absolutely essential to the existence of the court as such.—(Rapalje on Contempts, etc.) Its exercise is more frequent in chancery practice, it being, in many cases, the only way in which a court of equity can enforce its orders and decrees.

This power is not lightly to be interfered with or curtailed, and very little legislation has been attempted or deemed necessary on the subject.

Section 725 of the Revised Statutes of the United States provides as follows:

> The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority: *Provided*, That such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the said courts.

In fact this is but declaratory of the common law, and is restrictive if anything. Section 1070 (Rev. Stat. U. S.) expressly confers this power on the Court of Claims.

The power is recognized in consular courts (sec. 4104, Rev. Stat. U. S.) It was given to courts in bankruptcy (sec. 4975, Rev. Stat. U. S.), to the judges at chambers in such proceedings. (Rev. Stat. U. S., sec. 4973.)

Indeed it has been held that—

> In the absence of a constitutional provision on the subject legislative bodies have not power to limit or even regulate the inherent power of courts to punish for contempts. This power being necessary to the very existence of a court, as such, the legislature has no right to take it away or hamper its free exercise. (Rapalje on Contempts, p. 13, and cases there cited.)

This has no application to the circuit and district courts of the United States, they being creatures of Congress. (Ex parte Robinson, 19 Wall., U. S. 505, 510.)

It is a well-settled rule that that court alone in which a contempt is committed, or whose order or authority is defied, has power to punish it or to entertain proceedings to that end. (Rapalje on Contempts, p. 15.)

The tendency of legislation in this country, however, has been to narrow the definition of the offense, diminish the class of persons to whom it can be imputed, and restrict the power of the courts over it,

especially by limiting their power to fine and imprison. (Rapalje on Contempts, p. 14, and cases there cited.)

The Senate bill (S. 2984, passed the Senate June 10, 1896) divides contempts into two classes, "direct contempts" and "indirect contempts." "Contempts committed during the sitting of the court, or of a judge at chambers, in its or his presence, or so near thereto as to obstruct the administration of justice," are classified as "direct contempts" and may be summarily dealt with and punished by the court or judge at chambers, while "all other" contempts are classified as "indirect contempts," and a jury trial is given if demanded by the alleged offender.

Your committee are of the opinion that a failure of a witness duly served, or of a juror duly summoned, to obey the mandate of the court so nearly and immediately affects and obstructs the due administration of justice that such offenses ought to be classed with direct contempts and summarily dealt with by the court or judge having jurisdiction. If a reasonably good excuse is offered no punishment will follow, but if the failure is inexcusable a jury trial would cause delay, expense, and seriously impede the administration of justice. Contumacious witnesses and jurors should not be permitted to delay the proceedings of a court.

The proposed substitute carefully guards the rights of the accused and gives ample opportunity to present to the court written evidence purging himself of the alleged contempt.

The Senate bill, while granting a jury trial in all cases of alleged "indirect contempts" (those not committed in the presence of the court or judge at chambers), failed to point out a procedure and seemingly left the trial for a future day and possibly in another court. No provision was made for obtaining a jury in case no jury was present, and hence great and serious delays might occur.

Your committee think it wise that when a jury trial is demanded specific power shall be vested in the court to speedily obtain a jury and proceed to the trial of the alleged contempt. No injustice can be done the accused. Preliminary proofs are required; process must issue and the alleged offender be brought before the court or judge; a written accusation must then be made and filed; an answer is permitted, and a day is then fixed for the hearing. When the jury is obtained the trial is to proceed as in a criminal case and upon evidence produced as in criminal cases, and the accused must be confronted with the witnesses against him. The manner of selecting the jury is pointed out and peremptory challenges provided for.

These provisions, necessary for the reason that the proceeding is new, can not result in injustice to the accused; for he is provided with every safeguard the law throws around alleged offenders against the criminal law.

The provision of the substitute, which says that interrogatories embracing the questions of fact material to the inquiry shall be framed by the presiding judge and submitted to the jury, to be by it answered in writing, while provoking some criticism, is, in our judgment, wise and necessary.

When the evidence has been presented to the court and jury the question of contempt or no contempt will rest on the decision of the jury as to whether the accused has or has not done certain acts. It is not for the jury to say whether the order or decree of the court alleged to have been offended against is wise or unwise, lawful or unlawful. It is not for the jury to say whether the act done is forbidden by the order or decree. The court is to construe and interpret its own order, and if the act found by the jury to have been done (or omitted when

the order requires the doing of an affimative act) has been done or omitted, contrary to the provisions of the order, decree, or judgment of the court or judge, and under conditions and circumstances showing contumacious conduct, the court or judge should be permitted to determine the effect of the act or conduct complained of.

The whole bill is restrictive upon the courts and judges, and in our judgment it would be unwise to impose on the jury the task of determining the single question "guilty or not guilty" of violating the order or decree of the court. The construction of a statute is always for the court, and not the jury. The construction of an unambiguous writing is always a question of law for the court, and not a question of fact for the jury. So the court making the order or decree should be permitted to construe it; the appellate courts will reverse or modify it if wrong, but while it stands as the order of the court a jury should only be called on to determine the question whether certain acts commanded or forbidden have or have not been done.

The passing of the determination of this question over to the jury is quite as far as we ought to go if we would maintain the character and dignity of our courts. When we have done this we have gone quite as far as just-minded men will ask us to go. The facts are for the jury, the law for the courts to decide. No jury cares to be burdened with questions of law, and the accused is safe only when the determination of legal propositions is left to the decision of the proper tribunal. If we go further we tread upon dangerous ground and may undermine our courts, the only true bulwarks of our liberties.

The proposed substitute has been presented to and approved by a representative of five of the principal labor organizations of the country. The language is carefully guarded and in express terms provides that the presiding judge shall pronounce judgment according to law and in accordance with the findings of the jury. The jury is made the sole arbiter of every question of fact. These findings can not be disregarded or set aside by the court. No man can be pronounced guilty except on the finding of a jury.

The bill further provides for preserving the testimony and for an appeal in all cases of indirect contempts. This is in the interest of the liberty of the citizen, and while we should be careful not to open the door to petty appeals made for delay, we should give every reasonable opportunity for the correction of errors when personal liberty is involved.

Your committee, having carefully examined the whole question, favorably report the accompanying substitute for Senate bill 2984, and recommend that the whole of Senate bill 2984 after the enacting clause be stricken out and the following inserted in lieu thereof, to wit:

That contempts of court are divided into two classes, direct and indirect, and shall be proceeded against only as hereinafter prescribed.

SEC. 2. That contempts committed during the sitting of the court or of a judge at chambers, in its or his presence or so near thereto as to obstruct the administration of justice, or by neglecting or refusing to obey the mandate of any lawful subpœna to attend any court or before a judge or commissioner and testify as a witness or produce books, documents, or records, or by neglecting or refusing to obey the mandates of a lawful summons or subpœna to attend and serve as a juror in any court or authorized proceeding, are direct contempts. All other are indirect contempts.

SEC. 3. That a direct contempt may be punished summarily without written accusation against the person arrainged, but if the court or judge at chambers shall adjudge him guilty thereof a judgment shall be entered of record in which shall be specified the conduct constituting such contempt, with a statement of whatever defense or extenuation the accused offered thereto and the sentence of the court thereon; but when the alleged contempt consists in neglecting or refusing to obey the mandates of a subpœna or summons to attend as a witness and give evidence or produce books, papers, or documents, or to attend as a juror, due proof of the lawful

service of such subpœna or summons shall first be filed and the contumacious witness or juror allowed to file written proofs by affidavit denying such service or giving excuses for the neglect or failure to obey such mandates, and thereupon the court may proceed to a hearing of the alleged contempt.

SEC. 4. That upon the return of an officer on process or an affidavit duly filed, showing any person guilty of indirect contempt, a writ of attachment or other lawful process may issue and such person be arrested and brought before the court or judge at chambers; and thereupon a written accusation setting forth succinctly and clearly the facts alleged to constitute such contempt shall be filed and the accused required to answer the same, by an order which shall fix the time therefor, and also the time and place for hearing the matter; and the court or judge at chambers may, on proper showing, extend the time so as to give the accused a reasonable opportunity to purge himself of such contempt. After the answer of the accused, or if he refuse or fail to answer, the court or judge at chambers may proceed at the time so fixed to hear and determine such accusation upon such testimony as shall be produced. If the accused answer, the trial shall proceed upon testimony produced as in criminal cases, and the accused shall be entitled to be confronted with the witnesses against him; but if a trial by jury is not demanded, such trial shall be by the court without the intervention of a jury if the alleged contempt consists in the violation of an order or process of the court, or by a judge at chambers in case the alleged contempt consists in the violation of an order or lawful process granted by a judge at chambers, and upon application of the accused, a trial by jury shall be had as in any criminal case. In case an application is made for a trial by jury and the alleged offender is entitled thereto under the provisions of this act, the court or judge may impanel a jury for the trial of the question from the jurors then in attendance, or send the case to a term of the court for trial at a future day, or if no jury is in attendance the court or judge at chambers, as the case may be, may cause a sufficient number of jurors to be selected and summoned as provided by law to attend at the time and place fixed for the trial of such alleged contempt, from which panel of jurors a jury for the trial of the case shall be selected in the manner jurors are selected for the trial of misdemeanors, and the plaintiff and defendant in the proceeding shall each be entitled to three peremptory challenges, and the trial shall then proceed as in case of misdemeanor: *Provided, however*, That in each case interrogatories shall be framed by the judge presiding at the trial, which shall embrace the questions of fact material to the inquiry, and be submitted to the jury, to be by it answered in writing, and to each interrogatory the jury shall separately answer in writing, over their signatures, and in case the jury shall answer any interrogatory in the affirmative the fact therein brought in question shall be deemed established. On the findings of the jury in answer to such interrogatories the court or judge shall proceed to pronounce judgment in accordance therewith according to law. If the accused be adjuged guilty judgment shall be entered accordingly, prescribing the punishment.

SEC. 5. That the testimony taken on the trial of any accusation of indirect contempt may be preserved by bill of exceptions, and any judgment of conviction therefor may be reviewed upon direct appeal to or by writ of error from the Supreme Court, and affirmed, reversed, or modified as justice may require. Upon allowance of an appeal or writ of error execution of the judgment shall be stayed upon the giving of such bond as may be required by the court or a judge thereof, or by any justice of the Supreme Court.

SEC. 6. That the provisions of this act shall apply to all proceedings for contempt in all courts of the United States except the Supreme Court; but this act shall not affect any proceedings for contempt pending at the time of the passage thereof.

House Report No. 2471, part 2, Fifty-fourth Congress, second session.

CONTEMPTS OF COURTS.

JANUARY 11, 1897.—Referred to the House Calendar and ordered to be printed.

Mr. DE ARMOND, from the Committee on the Judiciary, submitted the following as the

VIEWS OF THE MINORITY.

[To accompany S. 2984.]

The undersigned members of the Committee on the Judiciary, being unable to agree with the committee in its action upon the bill (S. 2984) entitled "An act in relation to contempts of courts," wish to state briefly some of the reasons for our dissent.

It is evident that legislation concerning contempts of courts is suggested by a belief that the existing law or practice upon the subject is such that there is need of improvement. What, then, is the supposed defect?

Are the Federal tribunals wanting in power to punish for contempts of court? Or is legislation demanded or desirable to correct abuse in the exercise by some of these tribunals of ample powers already possessed by them?

There is but one answer—neither reason nor excuse for legislation "in relation to contempts of courts" can be found, except upon the theory of an abuse by some of the courts of the power which all of them have in large measure to punish summarily such contempts.

Then there should be no legislation at all upon this subject, or there should be legislation to circumscribe the powers or reform the practice of the courts and strengthen the safeguards of the citizen.

Viewed thus, we believe the amendment, by way of substitute, proposed by the committee should be rejected, and the Senate bill should be passed.

The committee have included in the classification of what are called "direct contempts" failure or refusal to obey a subpœna for witnesses or a summons for jurors. If such failure or refusal amounts to a "direct" contempt, it is not easy to perceive how or why a failure or refusal to obey any other lawful command of a court, whether affirmative or negative, is an indirect and not a direct contempt of court.

But it is urged that a contempt committed in failing or refusing to obey a subpœna for witnesses or a summons for jurors should be punished summarily, as direct contempts are punished. Direct contempts, according to the Senate bill, are "contempts committed during the sitting of the court or of a judge at chambers, in its or his presence or so near thereto as to obstruct the administration of justice."

About this definition is a degree of accuracy which must commend it to the favorable consideration of lawyers, while the committee's enlargement of this definition into that which they offer as constituting direct

contempts may, perhaps, be regarded by legal lexicographers as a novelty.

It is submitted that such contempts as lie in disregard of a subpœna or summons may, and in practice would, be dealt with summarily under the Senate bill if it were law. For instance, there would be no trial if the person charged with being guilty of such a contempt should admit that he neglected or refused to render obedience to the command of the subpœna or summons. In such case the "written accusation" mentioned in the Senate bill and in the committee substitute could be confined within the limits of a single short sentence. There would never be a trial upon a plea of guilty. Besides, a few words inserted in the Senate bill, by way of amendment, would directly, in terms, provide for the summary punishment of such indirect contempts as direct contempts, properly so called, may be punished.

The object of the Senate bill is to afford persons charged with indirect contempts a trial by jury, as in criminal cases. The effect of the committee substitute, if enacted into law, would be to give the accused the form of a jury trial, with the substance withdrawn. For, instead of accepting the plan of the real jury trial, as embodied in the Senate bill, the committee provide for the submission to the jury of interrogatories, prepared by the court, and to be answered by the jury in writing. Upon the answers the court will determine the guilt or innocence of the accused. About the question of guilt or innocence the jury, according to the committee, shall have nothing to say. That shall be determined by the court, which is to continue to be not only judge and jury, but accuser as well.

Believing that the citizen should be better protected in his rights in proceedings for alleged contempts of court, and believing also that additional protection for him is to be found in real and not mock jury trials, we oppose the recommendation of the committee, and favor the passage of the Senate bill. For while that bill might be improved by amendment in furtherance of its object and not against it, we are of opinion that unless the House pass the Senate bill as it is there will be no legislation upon the subject by the present Congress.

If, however, the committee substitute is to be passed instead of the Senate bill, there should surely be taken out of it the provision for interrogatories to the jury and special findings by the jury, and it should be clearly provided that the verdict of the jury shall be "guilty" or "not guilty;" nothing more, nothing less.

DAVID A. DE ARMOND.
D. B. CULBERSON.
W. L. TERRY.
J. W. BAILEY.

Senate Document No. 58, Fifty-sixth Congress, Second Session.

REPORT

OF A

HEARING BEFORE THE COMMITTEE ON THE JUDICIARY OF THE HOUSE OF REPRESENTATIVES

MARCH 23, 1900,

ON THE BILL "TO LIMIT THE MEANING OF THE WORD 'CONSPIRACY,' AND ALSO THE USE OF 'RESTRAINING ORDERS AND INJUNCTIONS,' AS APPLIED TO DISPUTES BETWEEN EMPLOYERS AND EMPLOYEES IN THE DISTRICT OF COLUMBIA AND TERRITORIES OR ENGAGED IN COMMERCE BETWEEN THE SEVERAL STATES, DISTRICT OF COLUMBIA, AND TERRITORIES, AND WITH FOREIGN NATIONS."

DECEMBER 20, 1900.—Ordered to be printed, to accompany S. 4233.

CONSPIRACIES AND INJUNCTIONS.

COMMITTEE ON THE JUDICIARY,
Friday, March 23, 1900.

The Committee on the Judiciary this day met, Hon. George W. Ray, chairman, presiding.

The CHAIRMAN. We agreed to give a hearing this morning to Mr. Gompers, who is to be here, and some other gentlemen who desire to be heard regarding a bill. Can you tell me the number of it?

Mr. MORRISON. It is H. R. 8917.

[H. R. 8917, Fifty-sixth Congress, first session.]

A BILL to limit the meaning of the word "conspiracy" and also the use of "restraining orders and injunctions" as applied to disputes between employers and employees in the District of Columbia and Territories, or engaged in commerce between the several States, District of Columbia, and Territories, and with foreign nations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no agreement, combination, or contract by or between two or more persons to do, or procure to be done, or not to do, or procure not to be done, any act in contemplation or furtherance of any trade dispute between employers and employees in the District of Columbia or in any Territory of the United States, or who may be engaged in trade or commerce between any Territory and another, or between any Territory or Territories and any State or States, or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States, or foreign nations, shall be deemed criminal, nor shall those engaged therein be indictable or otherwise punishable for the crime of conspiracy if such act committed by one person would not be punishable as a crime, nor shall such agreement, combination, or contract be considered as in restraint of trade or commerce, nor shall any restraining order or injunction be issued with relation thereto. Nothing in this act shall exempt from punishment, otherwise than as herein excepted, any persons guilty of conspiracy, for which punishment is now provided by any act of Congress, but such act of Congress shall, as to the agreements, combinations, and contracts hereinbefore referred to, be construed as if this act were therein contained.

The CHAIRMAN. Are the gentlemen here who desire to be heard regarding this proposition?

Mr. MORRISON. Mr. Chairman, as representing the Federation of Labor, we have here Mr. Darrow, who would like to be heard.

The CHAIRMAN. What is your name?

Mr. MORRISON. Frank Morrison, secretary of the American Federation of Labor.

The CHAIRMAN. Where do you live?

Mr. MORRISON. 423 G street.

The CHAIRMAN. Who are the other gentlemen?

Mr. MORRISON. The others are Mr. C. S. Darrow, of Chicago, Ill.; Mr. Thomas I. Kidd, of Chicago, vice-president of the American Federation of Labor; Mr. John B. Lennon, of Bloomington, Ill., treasurer of the American Federation of Labor; Mr. Max. Morris, of Denver, Colo., vice-president of the American Federation of Labor, and Mr.

Andrew Furuseth. I will state that we expect Mr. Gompers, president of the American Federation of Labor, and Mr. Mitchell, another vice-president, here at a later date.

The CHAIRMAN. We will hear them when they come. You must recollect that you have only an hour and a quarter, and you gentlemen must divide the time among yourselves.

Mr. MORRISON. I will ask that Mr. Darrow be heard.

STATEMENT OF MR. C. S. DARROW, OF CHICAGO, ILL.

Mr. DARROW. Mr. Chairman and gentlemen of the committee, I do not know what your rules are as to how long you want to hear one. I prefer, if any of you wish to ask any questions in reference to what our people desire, to have you do that at any time.

The CHAIRMAN. Let me remind you that the House meets at 12 o'clock and I suppose the members of the committee will want to be present at the meeting of the House and you will have to bear yourselves accordingly.

Mr. CLAYTON. I suggest that they divide the time among themselves.

Mr. DARROW. If you gentlemen have that much time; I assumed you had considerable other business, and we would not have all that time.

The CHAIRMAN. Make your remarks as brief as possible. We have other business, but we want to give you all the time we have at our disposal.

Mr. DARROW. This bill as presented is meant, I take it, to provide against what the working people think are very flagrant violations of their personal liberties and their personal rights by the issuing of injunctions in the various Federal courts of the United States. This matter has grown to an alarming extent within the last few years, to an alarming extent to all the people who believe these injunctions are wrongfully issued, and certainly to an amazing extent from whatever view of the question you may take.

Commencing with the great railroad strike in which the Debs injunction was issued, and running on down to the present time, there is scarcely a labor trouble of any consequence anywhere in the United States but what the first act of the employer is to rush off to the court and get an injunction. In the Debs case, which is, perhaps, a typical case, and it can be referred to because it was typical, a blanket injunction was issued, somewhat uncertain in its terms, but still it could fairly be said to have been an injunction issued against Debs and all his associates, and all other people whomsoever, specifically mentioning every officer and director of what was called the American Railway Union, and perhaps a hundred other men, and then with a general clause of all other people whomsoever, and this injunction was served by serving copies, by publishing it in newspapers, by tacking it on telegraph poles and freight cars, and in every possible way, and the court held that everbody was under injunction, and they are bound to obey it. It was served by reading it to a great crowd of people, strikers and others, who had assembled where there was trouble and difficulty. It was not an injunction which, properly and rightfully construed, meant to enjoin these men against committing any act of

violence. At the same time all these people were indicted by the grand jury—the Federal grand jury.

After a few weeks a hearing was had before the court as to whether this injunction had been violated. Judge Woods on hearing found that it had been; that Mr. Debs and his associates had violated this injunction. No effort was made to punish any person excepting officers of the American Railway Union. While nobody contended that any single member of this organization had committed any offense or any overt act of any sort, it was contended, and truthfully, that some other people had committed some offense, yet no effort was made to enforce this injunction against any person excepting the officers of the American Railway Union, simply because this prosecution was in the hands of the officers of the railroad company who had been appointed special agents by the Government, and the object and purpose of it——

Mr. LITTLEFIELD. You say "prosecution." Do you mean the injunction proceedings?

Mr. DARROW. The injunction proceedings. It was a prosecution under the Sherman Act, which provided that the Attorney-General might file information——

Mr. LITTLEFIELD. That is, the antitrust law?

Mr. DARROW. Yes; the antitrust law. A bill was filed under that act, and Mr. Edwin Walker was appointed special counsel for the Government in Chicago, and he at the same time was general counsel for the General Managers' Association, which included every railroad centering in Chicago, so it is safe to say that he was there in a dual capacity, as representing the railroads to use what power the Government could give him to put down the strike; and, secondly, as the special agent of the Government to enforce this law against the men he was after.

Judge Woods held in that case that these men were all guilty of contempt, although not one man had ever been present where any unlawful act was done; not one word was ever proven that anyone had ever spoken a word counseling any unlawful act, or written letters, or sent a telegram, and that every single word that they had uttered had been in favor of observing law and peace. On the trial of the case, which lasted three weeks, just before it closed, a juror was taken ill and we, on the part of the defense, asked to proceed with eleven jurors, which the Government refused promptly to do, and compelled a continuance of the case. The next term we were ready, and they refused to prosecute, and dismissed the case. I undertake to say that no jury could have been found that would have convicted one of those men; that there was not one single fact—one single fact—upon which to warrant a conviction, not one; but the matter was decided by the judge instead of by the jury. It was brought to the Supreme Court of the United States upon a writ of habeas corpus.

The only question that the Supreme Court could examine was the question of jurisdiction; as to whether the men were rightfully convicted. That question was not examined and passed upon by the Supreme Court of the United States. Those men were enjoined purely and simply from committing a criminal offense. If they did anything, it was the commision of a criminal act, and a criminal act only. The commission of assault and battery——

The CHAIRMAN. You are mistaken about that, I think. The Supreme

Court of the United States decided the case upon the simple and sole question as to whether or not a public highway carrying interstate commerce and the Unite States mails was obstructed by what amounted to a nuisance.

Mr. LITTLEFIELD. What is the title of the case?

The CHAIRMAN. And the court below decided it was so obstructed, and that obstruction interfered with interstate commerce and the transportation of the mails, and they held that the courts of the United States had the right to restrain and prevent such obstruction by an injunction.

Mr. LITTLEFIELD. What is the case?

Mr. DARROW. The Debs case.

The CHAIRMAN. The case is In re Debs (158 U. S., p. 564).

Mr. DARROW. In that case the Supreme Court held rightly that they had power to inquire into the question whether the conviction was right or wrong, whether there was any facts that would warrant the decision of the circuit court who decided this case——

The CHAIRMAN. That is, whether or not the injunction had been violated?

Mr. DARROW. Yes; whether the injunction had been violated or not.

Mr. LITTLEFIELD. Was that a new proposition peculiar to this case, or is it not general?

Mr. DARROW. I think perhaps it is a general proposition upon the writ of habeas corpus.

Mr. LITTLEFIELD. You do not state that any exception was made in this particular case?

Mr. DARROW. No; excepting this is under procedure in a Federal court, and in these courts you can not appeal and the judgment is final. In most of the State courts, perhaps not all, but in ours an appeal——

Mr. LITTLEFIELD. That is statutory; you would not have any if the statute did not give it to you?

Mr. DARROW. No.

The CHAIRMAN. The Supreme Court in that case expressly held and decided that the court never interfered by injunction to enjoin the commission of a crime as a crime, but only used the power or remedy where property rights were being interfered with and there was no adequate, full, and complete remedy at law.

Mr. DARROW. There were no property rights in any way interfered with on the part of the Government in this case. It was a simple, flimsy excuse, such as can be gotten up in any case that arises when the court wants to act.

Mr. LITTLEFIELD. Were there such allegations?

Mr. DARROW. In the bill, possibly, as to the United States mails, but when the troops were sent to Chicago——

Mr. LITTLEFIELD. You do not mean to say that no property was interfered with in connection with that?

Mr. DARROW. No United States property, no property of the Government of the United States. The United States Government would have no right to take an appeal under this act because the property of some specific railroad was interfered with.

The CHAIRMAN. The Supreme Court of the United States expressly held in this case that the property of the United States was interfered with. They expressly held that the Government of the United States

has property rights in the mails. I have been all through this case carefully in investigating the trust question, and I have called attention to that case because I wanted the argument directed to the point of the case as connected with your bill. I simply call attention to that.

Mr. DARROW. It is entirely right, and I am glad to have you do so. The Supreme Court of course held the facts as charged in the bill—nothing else. There is no discussion of evidence; no record coming up here. The case came to the Supreme Court upon practically the bill, upon the theory that the United States Government upon their bill had no jurisdiction. The Supreme Court held, among other things, that there was an allegation in the bill in reference to the obstruction of mail; but, while there was such an allegation, and while Judge Woods, in deciding the case, said he supposed the United States Government owned the mail bags and had property interest in the mail bags, still there was no claim upon anybody's part that any mail bag was interfered with or anything of that sort, and when the Federal troops were sent to Chicago they were all sent to the stock-yards district, where there were no mail trains and nothing except the strike. That course was not taken on account of any mail; it was taken because it was a great strike; that is all. It is very easy, as all you gentlemen know—most of you, I take it, being lawyers—it is very easy for courts to give good excuses for any act which they are willing to justify or think they ought to justify.

Mr. ALEXANDER. Do I understand there were no mail cars and no mail trains interfered with in any shape or manner during that strike?

Mr. DARROW. There was some claim that by reason of the strike mails were delayed.

Mr. LITTLEFIELD. Was it not an absolute fact that they were delayed?

Mr. DARROW. No doubt——

Mr. LITTLEFIELD. And delayed how long?

Mr. DARROW. The longest was once, I think, ten or twelve hours.

Mr. LITTLEFIELD. In other words, traffic was absolutely interrupted at times?

Mr. DARROW. Yes, sir; by reason of the strike.

Mr. LITTLEFIELD. And designedly and intentionally so?

Mr. DARROW. No doubt. There was, gentlemen, a strike——

Mr. LITTLEFIELD. For the specific purpose of interrupting traffic. That is what its object was, and it succeeded in its purpose to a certain extent.

Mr. DARROW. Certainly. The railroad employees inaugurated a general strike. They had what they believed was a just cause; that is, there was a question between Pullman and his employees. They said that so long as the Pullman Company carried on its business in the way in which it was carrying it on that they would refuse to haul the Pullman cars, and until the railroads would cease hauling the Pullman cars they would not work; and of course it did result, in many instances, in stopping the mails, in stopping traffic; there is no doubt about that, and that was the object, as you suggest.

Mr. ALEXANDER. Let me ask you. There are some trains made up exclusively of mail cars and no day coaches or Pullman coaches. Were those trains interfered with during the strike? I simply ask for information.

Mr. DARROW. No; in almost every instance, in every instance, there was no train that did not have a Pullman car attacked.

Mr. ALEXANDER. My question is, were those exclusively mail trains interrupted or delayed at any time during this strike in Chicago?

Mr. DARROW. I would not pretend to answer you without knowing exactly about it. I do know they offered to haul any mail trains and in every instance the railroad companies persistently refused.

Mr. ALEXANDER. Persistently refused to do it?

Mr. DARROW. Refused to do it, and persisted in putting mail coaches behind Pullmans.

Mr. ALEXANDER. In other words, doing business as they had been doing business right along all the while?

Mr. DARROW. Yes; and these men insisted on striking, as they had the right to strike. I take it it is too far along in the discussion of this problem for anybody to say that a great body of men have not the right to strike whenever they see fit, no matter whether it delays traffic or not. That is an incident upon the one side. The capitalist organizes, and he has a right to do it to a certain extent under the law, and he does it whether he has the right or not; and, on the other hand, the laboring men organize, and whenever workmen think they can get shorter hours, get more pay, or to redress any grievances, real or fancied, they have the right to strike.

Mr. OVERSTREET. Is not the controversy, not what you have just indicated, a controversy in regard to the right to strike, but was it not a controversy on the point of the right to interfere with those who wanted to work on the part of the strikers. I quite agree with the gentleman that the labor men have a right to strike, but now those gentlemen go further and say in their right to strike they have a right to interfere with others?

Mr. DARROW. You mean by physical force? No; I would say we have no such right——

Mr. OVERSTREET. Was not that question raised in this strike that you are now describing?

Mr. DARROW. Beyond a doubt it was raised—beyond question.

Mr. OVERSTREET. Was it not so much a question of privilege to quit work as the question of the right to interfere with others?

Mr. DARROW. A gentleman here raised the question of whether the result of the strike was to tie up the mails, and to that question I will say it was. Now, as to your question. Of course, the law is that a man may work if he sees fit, whether he belongs to a union or not. I may go to him and say, "The good of myself and my comrades demands that you do not work and take my place." I can use moral suasion as far as I can, but I can not lay my hands on him. Suppose I do; then what? Then, we insist, it is for the police power of the Government to deal with it; nothing else. We are not here before this committee nor Congress with this bill upon any theory that the workmen have a right to stand any differently from any other body of men—they do not—or that they should be exempt from obedience to any criminal statutes of the United States, or any State of the Union, but that when they are charged with a crime they should be tried like everybody else—by a jury of their peers—and not sent to jail by order of courts, as has been done over and over again in the United States courts, and is being done every day.

Mr. ALEXANDER. Simply for contempt?

Mr. DARROW. Yes; for contempt. In this particular case these men were indicted for the very act that was enjoined——

Mr. KAHN. Will the gentleman permit? Is there a law in any State of the Union which gives a man pronounced guilty of contempt a trial by jury? Is it not always an act of the court in judging them guilty of contempt?

Mr. FLEMING. The State of Illinois passed a law saying that the question of contempt should be submitted to a jury.

Mr. LITTLEFIELD. Independent of special legislation?

Mr. DARROW. There are a number of States, but let me say as to that, it will not do, gentlemen, to say simply that——

Mr. LITTLEFIELD. Are you quite correct in calling it a crime in a popular sense or a legal sense? A man is imprisoned if he does not obey the order of the court, but are you quite correct in designating it as a crime? I mean that the offense of contempt, of course, is punished by imprisonment if he does not obey the order. That is the theory upon which it goes; he is punished either by a fine or imprisonment.

Mr. DARROW. They punish an act, which act constitutes a crime under the penal code.

Mr. LITTLEFIELD. The only reason this can be done is because they are assumed or they are proven to have violated some order of the court.

Mr. DARROW. To be sure, as for instance——

Mr. FLEMING. And always in connection with the protection of property.

Mr. DARROW. As for instance, I say to the court——

Mr. LITTLEFIELD. While the order may be based on some act which you say may be a crime——

Mr. DARROW. In these cases which we are specially after and which the bill provides for, it is only such acts as do constitute a crime.

Mr. CLAYTON. Whether it is a crime or not, it is the punishment without trial by jury that you complain of?

Mr. DARROW. Yes.

Mr. CLAYTON. And it does not make any difference whether it is called a crime or contempt or not.

Mr. DARROW. Yes; it is punishment without trial by jury.

Mr. LITTLEFIELD. The contempt itself consists of simply disobeying the order of the court. That is all there is of it; and the order may be based, as my friend suggested here, perhaps on the proposition that the man intends to commit a crime. That is your claim?

Mr. DARROW. Yes. Suppose, for instance, you go to the court here and say this man Smith here has made up his mind he is going to shoot me. The judge says, "All right I will fix it." If he shoots me he will make bullet holes through my clothes, and therefore property is involved, and he issues an order.

Mr. CLAYTON. You complain that it is now in the discretion of the judge to adjudge you guilty of contempt and punish you without the intervention of a judge or a jury or an indictment; that is your contention?

Mr. DARROW. That is it, that is the complaint, exactly.

Mr. CLAYTON. This bill seeks to obviate that?

Mr. DARROW. Yes, sir.

Mr. CLAYTON. Does it?

Mr. DARROW. I do not think it does perfectly, and I was going to make a suggestion or two here.

The CHAIRMAN. Let me ask you a question. You contend here that if I go to the court room with my pockets full of brickbats, and for some fancied or real injury at the hands of the court, and when the court is in session, throw brickbats at the court and hit the court in the face, that because that is an assault and battery and a crime—and it might be a felony, depending upon my intent, but clearly a crime—and also a contempt of court, that I should not be punished for the contempt, but for the crime only?

Mr. DARROW. Yes; standing right in the presence of the court it is a contempt.

The CHAIRMAN. Now, do you contend here in such a case as that, which is an extreme one I admit, that the court should impanel a jury, and that there should be a trial of that question of fact of whether or not I was guilty of a contempt of court?

Mr. DARROW. I think you should; but this, as you say, is an extreme case. It is very feasible to make exceptions to matters transpiring in the presence of the court.

The CHAIRMAN. Of course, but in the other case, in the Debs case, the alleged contempt did not transpire in the presence of the court, but was a violation of the order made by the court.

The question can be presented in two forms: First, whether there should be a jury trial in a case where the act of contempt occurs in the very presence of the court, and secondly whether a jury trial should be awarded in a case where the act of contempt is not committed in the presence of the court but consists in a violation of an order granted by it.

Mr. DARROW. Yes, that is a very proper division.

The CHAIRMAN. Which do you contend for, one or both, that in all cases of contempt, whether the act is committed in the presence of the court or not, there shall be a jury trial?

Mr. DARROW. I think it is very much safer and very much better for the enforcement and administration of justice that in every case where the act constitutes a criminal offense a jury should be empaneled to try the case.

Mr. LITTLEFIELD. Suppose it constitutes at the same time a trespass, which is entirely possible. Suppose your act constitutes a trespass upon the property, and at the same time might be indictable as a criminal offense. In other words, you might have injured personal property; it would be a civil action; but in the same act you might have a prosecution for malicious mischief. How would your proposition operate in that respect?

Mr. DARROW. It would operate all right.

Mr. LITTLEFIELD. Could you protect property? In the one case you would be protecting property and in the other case you would be prohibiting from the commission of a crime——

Mr. DARROW. To be sure, because the property is better protected by the enforcement of the criminal statutes. They are safer, more expeditious, and it is not necessary to have the chancery power of the court invoked to prevent murder or arson.

Mr. LITTLEFIELD. You do not mean to say that it is more expeditious to prevent a man destroying property after——

Mr. DARROW (interrupting). Take the Debs case.

Mr. WARNER. Is not the purpose of this bill to prevent the issuance of an injunction restraining an act——

Mr. DARROW. I did not catch the first part of your question.

Mr. WARNER. Is not the object of this bill to prevent the issuance of an injunction restraining an act which will result in the impairment in an unlawful manner of property and compel the parties to wait until the act is committed and the damage done and then the result will be a suit at law?

Mr. DARROW. That is not the object.

Mr. WARNER. Will not that be the effect?

Mr. DARROW. No; we do not think so. Let us look at that question you put, because that is one that naturally suggests itself. Take an extreme case. Here are a body of men who are about to commit an assault on property, and the court issues an order. That does not prevent it. It simply places him in a position where he is punishable for contempt if he does. The whole police power of the State is ready at any moment to prevent the committing of an offense, and that is the only thing that can. The simple order of the court not to burn somebody's building or not to commit a criminal offense is not the slightest restraint—not the slightest—on anybody who would do it. It serves some kind of purpose, to be sure; it puts a cloud on a title to property, and prevents transfers; but in the end, if you are an evil doer, you must be deterred by the police power, which is the only thing that does it, and no punishment for contempt could be had until the act is really committed. Nothing else could run but an order; nothing else in the world.

Mr. OVERSTREET. You are not opposing a restraining order, but you are advocating that if that order is violated then it becomes instantly a fact to be determined by a jury before the individual can be incarcerated for contempt. Am I right?

Mr. DARROW. Either one of those conditions would be satisfactory to us.

Mr. OVERSTREET. Are you advocating, or are you not advocating, a restraining order, or the abolition of a restraining order?

Mr. DARROW. My own idea is that a restraining order in itself is mischievous; that it should not issue.

Mr. OVERSTREET. I thought you were arguing on the question of contempt; that it must be submitted through a trial by jury to ascertain the facts.

Mr. DARROW. I was arguing that these injunctions as they have been issued result in the imprisonment of men without trial by jury. Now, if you prevent either by preventing the issuing of injunctions under these conditions or by providing that in such cases as they amount to a crime there should be no conviction without trial by jury, either one of the two——

Mr. OVERSTREET. Which do you advocate?

Mr. DARROW. Personally, if I were to pass upon it, I should prevent the issuing of injunctions entirely; but I do not know how you gentlemen may look at it; I do not know how Congress may look at it.

Mr. OVERSTREET. Is there not a distinction between a restraining order and an injunction?

Mr. DARROW. The bill is to prevent the issuing of an injunction in all these labor troubles, and it seems to me it should pass.

Mr. OVERSTREET. I do not think you quite catch my distinction. I think there is a difference between an injunction and a restraining order. The whole end of a restraining order is to give the court

opportunity to inquire into it before the injunction takes place. Do you think there ought not to be any restraining order allowed?

Mr. DARROW. I think no restraining should ever be allowed in one of these cases.

Mr. OVERSTREET. In no case?

Mr. DARROW. No; I could not say in no case. I think there are cases where a restraining order might be issued, but not in any of these disputes involving purely criminal matters, as these cases do.

Mr. CLAYTON. That is, any disputes between employers and employees; that is the language of the bill.

Mr. DARROW. That is what we are asking now.

The CHAIRMAN. Let me call attention to what the court decided:

Again, it is objected that it is outside of the jurisdiction of a court of equity to enjoin the commission of crime. This, as a general proposition, is unquestionable. A chancellor has no criminal jurisdiction. Something more than the threatened commission of an offense against the laws of the land is necessary to call into exercise the injunctive powers of the court. There must be some interferences, actual or threatened, with property or rights of a pecuniary nature, but when such interferences appear the jurisdiction of a court of equity arises, and it is not destroyed by the fact that they are accompanied by or are themselves a violation of the criminal law.

Mr. LITTLEFIELD. That is precisely my point.

The CHAIRMAN (reading).

The mere fact that an act is criminal does not divest the jurisdiction of equity to prevent it by injunction, if it be also a violation of property rights, and the party aggrieved has no other remedy for the prevention of the irreparable injury which will result from the failure or the inability of a court of law to redress such rights.

Mr. DARROW. Is there any criminal case where there is no property interest involved?

The CHAIRMAN. Does not the court hold clearly that there is no jurisdiction in any court to restrain the commission of a crime as such but the power of the court to restrain an unlawful act, the destruction of property or interference with property rights, can not be divested because the act involves also an offense against the criminal laws of the land?

Mr. DARROW. That is what they say. What we claim is, that they are doing it every day.

Mr. LITTLEFIELD. Have you got cases where they are now pending where these orders have been issued?

Mr. DARROW. This Debs case is one.

Mr. LITTLEFIELD. That is ancient history.

Mr. DARROW. There is the American Steel and Wire Company.

Mr. LITTLEFIELD. Where is that pending?

Mr. DARROW. That has been decided by the United States circuit court. I do not know whether it is pending now or not.

Mr. LITTLEFIELD. What district did that arise in?

Mr. DARROW. It arose in Cleveland, Ohio.

Mr. LITTLEFIELD. I just wanted to get it if you had it in your mind.

Mr. DARROW. Then, there are the coal cases, when we had the coal strike.

Mr. LITTLEFIELD. Are they pending now?

Mr. DARROW. I will not be sure whether they are pending now or not. I think the most of those injunctions were made permanent. In Chicago we are having them all the time in the State courts now, following in the line of the Federal courts.

Mr. LITTLEFIELD. What harm would come if we all concede that the men have the right to strike just as much as the employers have the right to combine——

Mr. DARROW. Yes.

Mr. LITTLEFIELD. I mean, now, a strike unaccompanied by assaults or overt acts. How can they be injured in any way?

Mr. DARROW. Because the judge decided that they committed overt acts when Mr. Debs was as innocent of the charge as any man in this room. There was not one word, or one act, or one utterance of any sort proven against Mr. Debs or one of his associates.

Mr. CLAYTON. You think the only remedy to prevent this abuse by Federal judges is to deprive them of the power to issue injunctions in such cases?

Mr. DARROW. Or to punish contempt with trial by jury.

Mr. LITTLEFIELD. That would emasculate the whole thing, of course.

Mr. DARROW. It would prevent this.

Mr. LITTLEFIELD. Of course you can see the power to punish for contempt if it is limited to conviction by jury of an offense would simply, of course, emasculate the whole power.

Mr. DARROW. No. The jury would pass upon the question of whether the offense had been committed.

Now, let me call attention to a few matters before we get strayed off on some of these questions, which I am glad to discuss in this way, because there are difficulties in all of these questions. Suppose a man threatens to burn my house, and I go to the judge and say, "John Smith is about to burn my house," and he says, "I will take care of John Smith," and he will issue an order restraining him from doing it.

There is a crime which involves property rights—the destruction of my house. To-morrow I go to the judge and say, "John Smith has burned my house," and he hauls him up and sends him to the penitentiary for twenty years for contempt of court. There is a matter which is more clear and direct than any of these cases could possibly be, and the same which is true of arson is true of any crime involving property—burglary, larceny, or anything; but the trouble with it is the experience of all of us has shown that no individual rights are safe with courts, not that courts are different from the rest, but because they are like the rest.

Mr. LITTLEFIELD. We have a statute in my State which allows the court to issue an injunction against a man selling rum—

Mr. DARROW. That must be Vermont.

Mr. LITTLEFIELD. No; Maine. What would you say about that?

Mr. DARROW. I suppose it is on the theory that it is a nuisance?

Mr. LITTLEFIELD. Yes.

Mr. DARROW. I do not believe in it, but the people can do anything they want to if they wish it badly enough, of course.

Mr. LITTLEFIELD. Of course, that is statutory; that is not common law.

Mr. DARROW. Of course, I do not believe in any of it. I know there was a man sent to the penitentiary for sixty or seventy years up in Vermont by cumulative sentences, but it will not do to say that wherever property interests are involved a judge may try the case. It is not the province of a judge, and when you do it it absolutely takes away the trial by jury; and all over the United States there are work-

men, perfectly honest, who have been sent to jail by a court that could be sent to penitentiary by court just the same, and in every single instance because they committed an offense, a crime, and have generally been indicted as well as an injunction asked, and in almost every instance they have not been convicted. Of course, they have sometimes been.

Mr. LITTLEFIELD. How many were jailed in the Debs case, by the way?

Mr. DARROW. Six; sent for three and six months. Gentlemen, you may think it is a strange statement to make that there was not a word of evidence in that case. Of course you can look it up, if you care.

Mr. CLAYTON. And they were sent not because they violated any specific criminal law, but simply because the court adjudged them guilty of contempt in violating its order?

Mr. DARROW. Of course that was the theory, the same as in the arson case I put. I come into court and I say, "I have got to have a trial by jury as to whether I burned this building," and the judge says, "Of course that is true, but I am not trying you for that, I am trying you to see whether you violated my order not to burn." And it comes in every case, and it is nothing else. Now, why should there be this power; what is the object of it? Why can not I get protection just as I can against a man cutting my throat? The police power of the State and the police power of the nation, why is that not good enough in any of these cases between employer and employee? It is never invoked on the part of the men against the employer.

It is impracticable and impossible to do so, but there is no case arising to-day where there is difficulty between employers and employees but what the first thing done is for the employer to rush off to court and the court order an injunction. Now, in the Frazier and Chalmer's case in Chicago, Mr. Chalmer went into the court and got an injunction and went before the grand jury and got an indictment, and within six weeks his attorney was in my office to get these men to sign that they would not prosecute civilly for having indicted them, and they dismissed every single case.

Mr. LITTLEFIELD. For malicious prosecution?

Mr. DARROW. Yes; they dismissed every single case. Now you gentlemen know how it is, especially you who are lawyers. I am not making any charges against the courts, they are just like the rest of us. They go upon the bench with exactly surroundings in which they have lived. Very few of the Federal judges go upon the bench except as corporation lawyers accustomed to view a property right as the greatest right, disregarding individual rights and considering property rights as everything. Very few of them have made a careful study of the interests of the working people or thought anything about it. There is no doubt they are as good men as anybody else, but that side of the case has never been presented to them, and they go upon the bench with the prejudice of the class from which they come almost invariably; and in these Federal courts men who are experienced in trying cases in both courts invariably know that in the Federal courts property rights are much more protected and in the State courts personal rights are much more protected.

Take Chicago, where I practice, and in every case against the Chicago, Milwaukee and St. Paul Railroad Company, against the Grand Trunk—in every case a change of venue is taken by the company from

the State to the Federal court, not because the judges are not as good, but simply because they come from that atmosphere hostile to the interests of the common people, and we insist that their hands should be tied to some extent. I remember in reading in one of Jerry Black's celebrated arguments in the Milligan case, where he contended in regard to the right of the trial by jury, he stated that King Alfred was obliged to hang 60 judges in order to maintain trial by jury in England. The tendency is to enlarge. If you give men arbitrary powers the tendency is to enlarge from year to year and from day to day; the tendency of the courts is to reach out and take more and more power. Thomas May, in his constitutional history of England, stated the judges of England had never been defenders of liberty, but its opponents.

Mr. LITTLEFIELD. But lawyers were.

Mr. DARROW. But lawyers were believed to be for it. But in the latter days we are so anxious after these big corporation fees that we seem sometimes to forget it; but lawyers have always been called upon for it, but I suppose the tendencies of the judges of courts and the prosecutor have been very close together, and that is the reason we did not have trial by jury. Now we believe that their right of trial by jury is being constantly undermined by the courts; that workmen all over the United States are being sent to jail purely on the charge that they have committed a crime.

Mr. FLEMING. In this particular bill you ask us now to pass, this bill that is especially before us, do we understand this bill to be drawn for the simple purpose of giving the right of trial by jury to men charged with violating a contempt order not in the presence of the court?

Mr. DARROW. No: this does not; this prevents the issuing of an injunction——

Mr. FLEMING. At all?

Mr. DARROW. At all. I think that bill ought to pass as it is. But the other would serve the purpose just as well. It would accomplish the same thing undoubtedly.

Mr. FLEMING. It would be much more easily passed.

Mr. DARROW. I think it will serve the purpose, and I think our people would believe that it was what they were entitled to and their petition had been fairly heard.

Mr. LITTLEFIELD. Do you think it is wise legislation to discriminate between any cases where a trial by jury should be had?

Mr. DARROW. No; or between any classes of men.

Mr. LITTLEFIELD. Of course this does.

Mr. JENKINS. Two cases arose in Wisconsin in which this particular question was involved. One was in regard to a street-car matter and the other was a lumber matter. Now, you speak about the influences surrounding the judges. Now, the judge that tried that case was a Democrat in politics, a Catholic in religion, and never tried a corporation case in his life, and yet he held that the mayor and city council were guilty of contempt, and enjoined him from proceeding, on the ground that he did not have any jurisdiction at all. They insisted that if they could be tried by jury a jury would have acquitted them; and the same question was involved in the lumber case. There they were restrained by restraining order of the court from crossing the

plaintiff's land. There the court passed upon the question instead of allowing it to go before the jury.

Mr. DARROW. In the street-car case—I am only familiar with it from the newspapers; I do not pretend to know all about it—but in the street-car case I believe the judge issued an injunction against the common council and mayor from passing its ordinance, which of course I think was all wrong.

Mr. LITTLEFIELD. An ordinance or order?

Mr. DARROW. It was an ordinance. It was a question involving the extension of a franchise. Now, they claimed the city council had no right to extend the franchise, and a nisi prius judge issued an injunction restraining them. But, of course, an injunction against rich men is very different in practice from an injunction against a poor man, not that the court means to make any difference, but a rich man can defend his rights, he can take care of them well, whereas the other fellows, when the injunction comes, that, generally, is the end of it. But the supreme court of Wisconsin reversed that. They held that the court had no right to issue that injunction, and they reversed it. I do not believe, as my friend here suggests, in special legislation. I think that anything that is good for one man ought to be good for another. I have hastily prepared——

Mr. LITTLEFIELD. Does not your bill here on its face indicate special legislation?

Mr. DARROW. Yes; I think it does.

Mr. LITTLEFIELD. Now, if the proposition is sound, why should not it be applied to everything? Of course, laboring men do not ask for anything they are not willing to apply to other people?

Mr. DARROW. No; but they have been specially legislated against, because all these things have been applied against workmen and have never been applied against anybody else; the general law ought to be enough.

Mr. LITTLEFIELD. You do not want to get a law against trusts and conspiracies that will not apply to everybody else?

Mr. DARROW. The Sherman Act was——

Mr. LITTLEFIELD. I mean the general common law.

Mr. DARROW. The Sherman law was passed directly against corporations.

Mr. LITTLEFIELD. You remember the case where laboring men recovered large damages against blacklisting?

Mr. DARROW. I do not think any have been collected. You mean the Ohio case?

Mr. LITTLEFIELD. I have forgotten where it was.

Mr. DARROW. Twenty thousand dollars was recovered in Chicago. Now, the Sherman antitrust law was held not to apply in Massachusetts between manufacturing establishments.

Mr. LITTLEFIELD. On account of interstate commerce?

Mr. DARROW. It was stated that the bill was not meant for them; it was meant more for people engaged in commerce.

Mr. LITTLEFIELD. Interstate commerce?

Mr. DARROW. Largely that; and there never was found a case it would fit until they got to these workmen, the Debs case; but when they got to the Debs case they found a case where it would fit and used it in the Debs case. Judge Woods, when he decided it, placed it on the Sherman Act. The Supreme Court expressly refused to

place it on that, but placed it on the common law. Of course it was the same to Debs; it did not make any difference after he served his sentence.

The CHAIRMAN. As the court states—

We enter into no examination of the act of July 2, 1890, upon which the circuit court relied mainly to sustain its jurisdiction. It must not be understood from this that we dissent from the conclusions of that court in reference to the scope of the act, but simply that we prefer to rest our judgment on the broader ground which has been discussed in this opinion, believing it of importance that the principles underlying it should be fully stated and confirmed.

Mr. DARROW. Yes; they did not decide on that ground. They did not pass upon whether it did apply or not. Judge Woods spent three-fourths of his opinion in discussing the common-law question, and he wound up, as they have stated, that he will not decide whether the common law covered it or not, but that he placed it on the antitrust act.

Mr. FLEMING. On the second page it says none of these acts specified beforehand "shall be deemed criminal, nor shall those engaged therein be indictable or otherwise punishable for the crime of conspiracy, if such act committed by one person could not be punishable as a crime, nor shall such agreement, combination, or contract be considered as in restraint of trade or commerce, nor shall any restraining order or injunction be issued with relation thereto." If that principle was inaugurated in this bill, would not it prevent the issuance of any court restraining order against a trust as violating the interstate-commerce act?

Mr. DARROW. I do not think there is much danger of any issuing.

Mr. FLEMING. Confining it merely to other combinations?

Mr. DARROW. These trade disputes between employer and employees, as you see by the first part.

Mr. FLEMING. I understood you to say you thought that was special legislation which you ought to broaden so as to apply to all people?

Mr. DARROW. You could put a clause in saying it should not apply to issuing an injunction against combining in the restraint of trade. I want to call attention to the first part of the bill, which seems to me assuredly ought to be the law whether broadened or not, and that is against criminal conspiracy. Now it provides that nobody shall be punished for criminal conspiracy unless the act has been committed which in itself would constitute a crime. Now, certainly that ought to be a law, and it has been held for years, in many of the States—I think I can safely say in most of the States, that it has been held that anything which is legally done by a single person can be legally done by a combination. In the Flood case, which is one of the last cases, that is laid down as law.

Mr. LITTLEFIELD. What is the case?

Mr. DARROW. I can not give the citation, but it is the Flood case.

Mr. LITTLEFIELD. How late?

Mr. DARROW. It is about two years ago in the House of Lords. It is a very long case and very well worthy of reading. It is one of the strongest cases on the question. In that case they decided against interfering with these combinations. The lower court held that a simple combination amongst people to boycott—the question arose where certain men were boycotted in case they employed certain other men, and the lower court held that that combination was a conspiracy, and the House of Lords determined in this case that it was not a con-

spiracy or an unlawful act for several persons to do a thing that by one person would not be considered unlawful or illegal.

Mr. LITTLEFIELD. What was it, a criminal proceeding or an action at law?

Mr. DARROW. A criminal proceeding.

Mr. LITTLEFIELD. How would this proposition affect an action at law? Of course I assume you concede if a man is deprived of work by reason of a combination of laboring men he would have an action to recover any damages he might sustain by reason of that?

Mr. DARROW. Well, I do not know whether he would; I think he ought to have.

Mr. LITTLEFIELD. Is that the law——

Mr. DARROW. Perhaps he would if they conspired for that exact purpose.

Mr. LITTLEFIELD. How would that act affect this? There have been cases where the court held that specific thing, and two men recovered $400 or $500 or $600 from eight or ten other men.

Mr. DARROW. In this case it might be, but they are generally impracticable.

Mr. LITTLEFIELD. Then, how would this affect your legal right?

Mr. DARROW. It would not affect any legal right.

Mr. LITTLEFIELD. Does not this really eliminate conspiracy?

Mr. DARROW. No; it simply says "shall be deemed criminal, nor shall those engaged therein be indictable or otherwise punishable for the crime of conspiracy." Now, of course, the act may be subject to tort, civil damages, when it is not subject to a criminal prosecution.

Mr. LITTLEFIELD. Oh, yes.

Mr. DARROW. You know, away back in the old times in England they held any combination of men was illegal. If a man stepped up to his neighbor and solicited him to ask for more wages it was a felony in the early times. Any request of a workman to better his condition was a crime, and early combinations were all illegal in England, no matter how harmless. Now they are seeking to enforce that doctrine in America constantly. In this Debs case it was argued the simple association of these men together and agreeing to strike together for the purpose of helping out the Pullman strike was a boycott and illegal.

Mr. LITTLEFIELD. Did the courts sustain that position?

Mr. DARROW. They did not find it necessary to.

Mr. LITTLEFIELD. Did they discuss it?

Mr. DARROW. Yes; but they did not pass upon it. The Supreme Court did not discuss it; it was not raised there at all. In all these things it has been persistently urged by counsel, and practically against the workingmen, that a strike in itself is illegal; that a body of men can not combine for the purpose of coercing their employers, as they put it—coercing; that a combination in itself is illegal. I am inclined to think that the majority of the Federal courts would hold that law to-day—that in the Debs case, for instance, where the American Railway Union served notice on the Pullman Company that unless they acceded to the demands that the employees had made that they would have a general strike upon the railroad companies to prevent the running of Pullman cars, now that would probably be held illegal, if necessary.

The CHAIRMAN. Why?

Mr. DARROW. Because it was a boycott—a combination of a large number of people to accomplish a certain end.

The CHAIRMAN. Because it was a combination to prevent the carrying on of a lawful business by a person who had a lawful right to carry it on?

Mr. DARROW. There is the point exactly. That is what the courts say. Now, was it? If so, then every single strike is illegal.

The CHAIRMAN. This is the grounds upon which they put it, not that it is a boycott, but upon the ground it is to destroy or unlawfully interfere with business and property rights, and interfere, by force, with the carrying on of lawful business.

Mr. LITTLEFIELD. Does not that involve an overt act as a result of that combination? Is not that the connecting link?

Mr. DARROW. That is what it ought to be—the connecting link, but it is not, as a matter of fact, the connecting link. There are numerous cases where no acts have taken place and where it has been held the crime grows out of coercion to prevent a party carrying on business, and a boycott. Now, of course it is a boycott; and what of it? It will not do to say that when a man does something himself which is interfering with somebody else's business, therefore he is guilty, because we all do that when we carry on our own business. Of course if a large body of men go from their employers together and tie up his business it is an interference; it is practically an interference with his business, but it is not a criminal interference any more than if the employer shuts up arbitrarily and throws all his men out together for the sake of reducing them, as is done over and over again. The law should be drawn at some overt act, and no conviction be had for conspiracy unless some overt act has been committed; and it has been drawn, I think I may safely say, in most of the States at that.

The CHAIRMAN. Let me ask you right there, suppose that a conspiracy is formed—admit that it is formed—by a large number of persons who have the power to destroy a legal business; if it can be clearly proven that they have agreed to do the illegal act and fixed the time when they are to go and enter upon the commission of the act, you claim that the courts should not have the power under the law to interfere until the conspirators have actually entered upon the destruction of the property?

Mr. DARROW. Your terms are very uncertain. I may form a conspiracy in New York to destroy the dry goods stores in Washington by building a department store and drive them out of business, which is done every day in the big cities.

The CHAIRMAN. You say that in no case should the court interfere with the conspiracy or agreement to do an unlawful act until an overt act has been committed?

Mr. DARROW. Until some overt act has been committed; yes.

The CHAIRMAN. Do you contend for this: That if 1,000 men combine together—in a writing, if you please, so there is no dispute about it—to come to Washington and destroy the railroad depot and the tracks at different points, so as to cut off communication between Washington and other points, the courts should wait until those men are on the ground, engaged in the destruction of this property, stopping the mails, etc., before they can interfere?

Mr. DARROW. No; but they must wait until somebody starts, and that is the general doctrine of the common law.

The CHAIRMAN. Well, I simply wanted to know if you contended for that.

Mr. DARROW. The permission is, if you allow the use of the term, we, all of us together, combine to do some illegal act; we agree that we shall go out, for instance, and loot a bank; the law permits that until we do it.

Mr. JENKINS. You want to be put on the same footing as the employers. Take the case of the lumbermen during Cleveland's Administration where all the lumbermen of the Northwest went to Minneapolis and entered into an agreement to stop sawing, because it was in their interest, and every mill was shut down and every man thrown out of employment. There was no need of an injunction in a case of that kind.

Mr. DARROW. Yes; it is done all the time. Take all our coal lockouts. Take Springvalley, Ill. Here Mr. Scott and his associates shut down the mines and destroyed a whole city—absolutely wiped it out, or practically did so, because they wanted to. What are you going to do? You can not make Mr. Scott go on with that work. You can not say that he must pay a certain amount of wages if he does not want to, or give any employment whatever.

The CHAIRMAN. Do you concede that the law is now that these conspiracies can not be interfered with until some overt act has been committed?

Mr. DARROW. I do not think it is in a boycott case. I think they would call a conspiracy of that sort to strike a crime in the Federal courts where it amounted to a boycott.

The CHAIRMAN. Under what act?

Mr. DARROW. Under the construction of the courts.

The CHAIRMAN. Can not you point out some case?

Mr. DARROW. There are a number East here. I often argue otherwise, but I think the law is now that a combination of men who interfere with their employer by concerted action or a strike is a criminal boycott. In the woodworkers' strike, the Kidd Case (Mr. Kidd is here now), where we sought to enforce the doctrine and brought numerous authorities, but——

Mr. OVERSTREET. Will you be kind enough to inform the committee whether this bill accomplishes what you have been asking. If you will pardon me, I will say that it occurs to me that this bill does not do what you have been advocating.

Mr. DARROW. I do not think the bill is explicit enough.

Mr. OVERSTREET. And now do you want this bill passed as it is?

Mr. DARROW. No; I think it should be changed somewhat, and I am glad you called my attention expressly to it. Now, commencing at the sixth line of the second page there, that is the business line as far as injunctions are concerned:

"Nor shall any restraining order or injunction be issued with relation thereto."

What does "thereto" mean. That, I think, would be construed to mean a conspiracy where any overt act had been committed, and would exactly destroy what we want. If "thereto" means that no injunction should be issued in labor troubles; if "thereto" should be so construed, then it would prevent it. But I do not think it would be so construed. The first part of this act provides that no criminal conspiracy shall exist unless an overt act has been committed. Then this section says:

Nor shall any restraining order or injunction be issued in relation thereto.

Now, does that mean in relation to the act, unless the overt act has been committed, or does it mean in relation to the dispute between the employer and employee. If it should mean that in order to accomplish the purpose it will not do to say that the injunction may be issued where an overt act has been committed, and I fear the court would so construe, and that is the very point we want to effect. We do not want an injunction issued where it is claimed an overt act has been committed, but we want a trial by jury. That, to make it perfectly safe, should read this way:

Nor shall any restraining order or injunction be issued in any court of the United States to enjoin any act or conduct which by the law of the United States, or the State in which the court is sitting, is punishable as a crime or misdemeanor.

Mr. JENKINS. Why not consider this bill now as legislation to prohibit both employer and employee; prevent the employee from entering into any combinations, and also to prohibit the employer?

Mr. DARROW. I should think it might. I have not considered that, and really I have only considered this specific bill for a very few moments.

Mr. JENKINS. And then if any contempt is committed outside of the court, that is, not in the presence of the court, they should be triable by jury, and when committed in the presence of the court they should be tried by the court alone.

Mr. DARROW. I am afraid I am trespassing too long upon the time of the committee, but I will just read this. I wrote this very hastily, and I will read it.

The CHAIRMAN. Was your attention ever called to a bill dividing contempt into two classes, direct and indirect, and providing for jury trial for the indirect offense?

Mr. DARROW. I have never seen it.

The CHAIRMAN. It was reported by Senator Hill in the Fifty-fourth Congress, passed the Senate and came here, and I reported it from this committee with an amendment, and the same bill is now pending before this committee.

Mr. DARROW. I think something might be worked out of that all right. Of course the question of contempt of court has always been a matter that is hedged about with more or less difficulty, and the tendency has been to constantly enlarge the sphere of it. I am afraid I have taken up too much of your time.

STATEMENT OF MR. SAMUEL GOMPERS.

Mr. GOMPERS. Mr. Chairman and gentlemen of the committee, I do not think I shall take up fifteen minutes of your time to discuss this bill. I can not say that I am prepared to discuss it. There is a feature, however, connected with the applications and the granting of injunctions to which your attention should be called. Injunctions are granted to employers during industrial disputes with the view of crushing them. There is no reason for granting them against workmen. We not only want a trial by jury when any citizen is charged with an offense, but we also insist that there shall be no injunctions in labor disputes as such. All others in society have an opportunity to remedy a wrong which may be inflicted upon them when enjoined; but for working people, engaged in a labor dispute, after the injunction has been granted, there is no remedy.

I speak as a layman, and, perhaps, with too little knowledge of the law; but I know enough to warrant me in saying something in regard to this. When an injunction has been issued restraining any person from doing a certain thing, say, building a house, tearing down a house, invading land, or anything else, and in the event that it transpires during the trial of the case in court that the injunction was wrongly applied for or mistakenly granted, the party who secured the injunction may be mulcted in damages, and thus remedy the wrong inflicted upon the party enjoined. But, if men are engaged in a strike either to prevent a reduction in wages or to secure an advance, or who have been locked out by their employers, whether they were previously united or become organized by reason of the controversy, and these men are enjoined from doing what every other citizen has the right to do, that is, to unite, to counsel, to advise, to communicate, and use every needful and lawful means within their power, and they are enjoined from doing those things by the court, that injunction simply means that these men are dispersed. No suit, no case at law can remedy the wrong that is inflicted upon the men thus enjoined. Their protest, their uniting to redress a wrong or a grievance, have been destroyed.

Let me repeat that not only do we insist that a man shall be tried by a jury of his peers, if he is charged with an offense; not only do we insist that in law there can not and ought not to be an injunction restraining a crime, but we also demand that in labor disputes between employers and employees there shall be absolutely no injunction issued. There is no necessity for it; there is no remedy for the wrong inflicted when issued. It can only inflict an injury never contemplated by the writ of injunction. Should any workman commit an offense while engaged in a trade dispute, he is amenable to the law the same as if there existed no industrial trouble; and, therefore, a writ of injunction should not be issued.

We readily realize the trend of events, the development of industry, and we understand, too, that there are certain political declarations and rights granting and limiting the rights of personal action, but the granting or withholding of these rights should never be covered by the writ of injunction, and can have no application to them.

We have seen a wonderful industrial and commercial development in our country since the Constitution of the United States was adopted. Industry and commerce can not be contracted, and it is regrettable that constitutional or statute law has not been changed to meet the new industrial conditions or that the courts have failed to interpret the Constitution and laws to conform to the new industrial and commercial conditions. I have no purpose to speak lightly of the power of the courts to interpret the Constitution or the laws, but you gentlemen appointed upon the Judiciary Committee by reason of your very proficiency and knowledge of the law, I think, will not dispute that there have been very broad interpretations of the Constitution when occasion on the other side required.

Industry can not go back; industry can not be confined within old definitions and declarations. Statute law and legal declarations must conform to the new industrial conditions.

One of the results of our industrial development is the combination of the working people to defend their interests against the invasion of the ever-growing concentration of those who possess the wealth of

our country. If labor is to possess any rights in the future, if the working people who, as ex-Senator Higgins, of Missouri, said before the Committee on Labor, "the working people, the bone and sinew of our country, and upon whom the wealth of our country so much depends," if the working people of our country expect to remain participants in the constitutional liberties that were fought for by the fathers of our country, even if the liberties which we now enjoy are to be maintained, and if we are to become a larger sharer of the product of our labor, we must maintain our position as free, independent sovereigns to take our part side by side with all our fellow-citizens, to maintain this Republic, to perpetuate our liberties for our children and those who are to follow them, it is as essential for the working people to unite in the organizations of labor as it is for man to breathe the air on which he lives.

It is essential not only now but it becomes more so daily. The demands of the courts to exercise and grant these writs of injunction, without let or hindrance, restraining the organizations of labor from performing those things which, as ordinary citizens, they have with every other man the right to do, will simply encourage a general contempt for the courts.

I am free to say here and now that if I believed that I was exercising my right as a citizen of this country, and that it was being invaded by an injunction of a court, I would not obey that injunction, no matter by which court issued.

We strongly urge you to pass a statute law, and thus restore to us the right of which we have been deprived by court-made law. We advise it, because we are peace-loving citizens, because we recognize that peace is essential to successful industrial and civilized life. We ask you to restore to us the right to do those things collectively we have the right to do singly and alone as individuals. We do not want to see the time when these writs shall be issued and generally ignored by men who revere the institutions of our country, who revere the memory of every man who has contributed by voice, pen, or sword to the glorious gems which embellish the structure of our country. We want this legislation, because that there is a pressing necessity for it can not be disputed. We ask it because of the possible growth of contempt for our courts, and which will grow unless you restore to the workers the rights to which we know we are entitled. Restore that right and you will avoid the encouraging of lawbreaking or disputing the mandates of the courts. We come to you, demanding the legislation that shall make the wrongs and injuries from which many of our men have suffered in the past impossible in the future.

I should like to ask the committee if the committee in its entirety or through a subcommittee will grant us the privilege of another hearing?

The CHAIRMAN. I will submit to the full committee whether they desire to hear you or that you present your matter before a subcommittee. The subcommittee consists of three, Mr. Overstreet, Mr. Littlefield, and Mr. Lanham, and they are all here.

Mr. OVERSTREET. May I inquire whether you will be willing to present briefs or prefer to have an oral hearing?

Mr. GOMPERS. You will pardon me. If I were before a court in a special case, I should have no hesitation at all in submitting briefs; but you gentlemen, members of the committee, are members also of the

various other important committees; and with your duties in the House and various other duties, I am afraid you will not have time to think of the briefs that we may submit, and we would likely command your attention, perhaps in a better way, by an oral hearing.

Mr. OVERSTREET. I asked you this because of the lack of time, and the gentleman who sought this hearing, I understood, stated that altogether there would be but two people who wanted to be heard and three-quarters of an hour would be ample time. Now, we have given an hour and a half, and I wondered how much longer you really wanted, as we have doubled the time suggested already.

Mr. GOMPERS. Then I will withdraw the request.

Mr. OVERSTREET. No; I want to know how long you will want, because if it comes to our subcommittee the question of granting a hearing would have something to do with the time.

Mr. ALEXANDER. For one, I would like to hear this question discussed to a finish, and hear the gentlemen here. I would like to hear it before the full committee, or at least have an opportunity of coming here.

The CHAIRMAN. I will submit to the committee the question whether the committee desires to have this discussion continued or not.

The committee agreed to continue the hearing at 10.30 on Monday next.

Thereupon the committee adjourned.

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Monday, March 26, 1900.

The committee met at 10.30 o'clock a. m., Hon. George W. Ray, chairman, presiding.

STATEMENT OF MR. HUGH R. FULLER, REPRESENTING THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, THE BROTHERHOOD OF LOCOMOTIVE FIREMEN, THE ORDER OF RAILWAY CONDUCTORS, THE BROTHERHOOD OF RAILWAY TRAINMEN, AND THE ORDER OF RAILROAD TELEGRAPHERS.

Mr. FULLER. Mr. Chairman and members of the committee, I do not desire to take up very much time, but I desire to explain, in my way, the experience that the railroad employees have had with the injunction question and why we come here and ask for the passage of this bill. Some years ago, during a strike on the Toledo, Ann Arbor and North Michigan Railroad, Federal Judges Ricks and Taft issued injunctions upon employees, requiring them to do certain work against their will.

Some time after this Judge Jenkins, of the Federal court of Wisconsin, enjoined employees of the Northern Pacific Railroad from quitting the service in a way that would hinder the operation of the road. This was practically compelling them to work against their will, for it must be understood that no considerable number of men could quit the service together without hindering the operation of the road.

The restraining order was, however, modified by a higher court so as to allow the employees to quit if they desired to do so; but it, like

the ones of Judges Ricks and Taft, was so radical and sweeping that great protests were made by the railroad employees all over this country, and much adverse criticism was indulged in, and from that time up until the present day there has been a growing sentiment among not only railroad employees, but other classes of labor, that their liberties are being encroached upon and gradually taken away by our courts. This feeling has not grown up without a good reason, for the Ricks decision seemed to furnish a precedent, and from that time on there has hardly been a strike of any importance in which the judicial hand has not been felt by the workingmen.

Mr. KAHN. Can you give us the title of that case, the Ricks decision that you refer to?

Mr. FULLER. I can not; I have it at home and can furnish it for the committee, but I did not bring it with me. It was during the engineers and firemen's strike; I think it was in 1893.

Mr. PARKER. What court?

Mr. FULLER. The United States court for the district of Ohio.

Mr. KERR. The circuit court of the United States district?

Mr. FULLER. Yes.

Mr. KAHN. Are you familiar with the case?

Mr. FULLER. I do not know that I can say I am.

The Ricks decision, as I say, seemed to furnish a precedent, and in almost every strike of importance the judicial hand has been felt by the workingmen. This has not been confined to any one class of judges, for we find the judges from the Federal courts down to the county courts issuing injunctions restraining employees from holding meetings or assembling on the public highways, and forbidding them from going to the homes of the employees who have taken their places, to induce them to quit work, and many other things that might be mentioned.

When the railroad employees began to protest against this new mode of oppression we were told that it was wrong to indulge in such criticism of our courts. We were told that these injunctions were necessary to protect property and other rights; that the courts of equity were more beneficial to the weak than to the strong, as they would protect the weak from the strong. Indeed, we were told that even where there was no protection by statutory law these courts of equity would protect us from irreparable wrong by injunctions, and the time would come when it would be our turn to reap the benefit of these injunctions.

In 1894, only a few months after the railroad strike, during which a large part of our country was covered with injunctions, issued at the instance of railroad corporations, the Philadelphia and Reading Railroad, which was then in the hands of receivers appointed by the Federal court, notified its employees that they must either withdraw from the Brotherhood of Railroad Trainmen or leave its service.

The men had belonged to this organization for a number of years, and had paid in a considerable amount of money in monthly dues in order to receive financial aid in case of sickness. They also carried insurance policies which entitled them to $1,000 in case they were disabled, or, in case of death, would go to their wives and families. To leave the brotherhood meant to forfeit this protection to themselves and families, and many of them had grown so old in the service or had been so badly crippled that they could not procure protection in any

of the old-line insurance companies. To leave their brotherhood also meant to surrender their manhood and their liberties. It meant to strip them of their only means of defense against the avaricious encroachments of a soulless corporation, whose principal object was to make its employees serfs.

A serious condition confronted these men. They counseled together. They thought that to take away from them these rights was to take away from them rights which were as dear as any property right could be. They thought the wrong inflicted by depriving them and their families of protection in case of injury and death was an irreparable wrong. They thought that the Federal court, whose agents these receivers were, would never allow such a wrong to be perpetrated upon them. They thought the time had now come when they could appeal to the courts for redress, and they concluded they would try the injunction and see whether it would do all that was promised for it. They appealed to the circuit court of the United States of the district of Pennsylvania for an injunction restraining the receivers from carrying out their intended action. The case, coming up in such a short time after the railroad strike, created considerable interest, and Hon. Richard Olney, then Attorney-General of the United States, was so much impressed with the gravity of the situation that he wrote a letter to that court, giving many reasons why these employees should be protected. I have a copy of that letter of Mr. Olney, Mr. Chairman, and if you desire it I would like to leave it here.

The CHAIRMAN. Certainly; it will be handed to the reporter to be incorporated with your remarks, and it will be regarded as read and inserted at this point.

Circuit court of the United States, district of Pennsylvania. In equity.

THOMAS C. PLATT *v.* PHILADELPHIA AND READING RAILROAD COMPANY ET AL.

Suggestions respecting questions raised by petitions of Hicks, Riley, and other members of the Brotherhood of Railroad Trainmen. The pendency of this petition having been incidentally brought to my attention, the issues raised impressed me as of great gravity and importance, not only as between the parties immediately concerned, but as regards the country at large. In that view—in which I could not doubt the court would share—it seemed to me that the court would not object to a brief discussion of the case from a public point of view merely and uninfluenced by the wishes and interests of the particular litigants before it. Upon this suggestion being made to the court it was most cordially assented to. The considerations following, therefore, are submitted by me as amicus curiæ merely and by express leave of the court.

I.—THE FACTS.

The material facts may be briefly stated. The petitioners are members of the Brotherhood of Railroad Trainmen. Some of them have been members for seven or eight years—have each year paid annual dues and assessments which now amount to considerable sums of money—and by continuing their membership will, in case of death or permanent disability, become entitled by themselves or their representatives to large pecuniary payments from the funds of the brotherhood. On the other hand, by ceasing to be members, they lose all benefit from assessments and dues already paid and forfeit all claims upon the brotherhood treasury.

The constitution and rules of the brotherhood and of the subordinate lodges are before the court as part of the petition. No controversy or antagonism has ever arisen or existed between the Reading Railroad and the brotherhood or any of its lodges, or between the Reading Railroad and any members of the brotherhood as such members. If, as is claimed, the Reading Railroad has for some years adopted the rule that it would not have in its service any member of a labor organization, it is a rule which has not been uniformly nor invariably acted upon, since there has

been a Philadelphia lodge of the brotherhood on the Reading line for nearly eight years, and its existence can not have been unknown to the Reading officials. What has now happened and what has led to the present petition is this: The Reading receivers have notified the members of the brotherhood on its line that unless they cease to be such members they will be discharged from their present employment on or before October 8. The receivers make no complaint of the manner in which the brotherhood employees discharge their respective duties. The notice has been given simply because of said employees' membership of the brotherhood, as is conclusively shown by the following telegram received by Grand Master Wilkinson in reply to his remonstrance against the course proposed to be taken:

"The policy of the company is well known to be that it will not consent that persons in its service shall owe allegiance to other organization which may make claims upon them which are incompatible with their duties to their employers. This position was taken advisedly, and we have no intention of departing from it. (Signed) Joseph S. Harris, Prest. and Receiver."

Thus, if the receivers are right and their rule is to prevail, membership of the brotherhood by and of itself incapacitates for service on the Reading Railroad. It is respectfully submitted that the receivers are wrong, and that the action proposed by them ought not to be sanctioned by the court.

II.—Question before the court.

It will help to make plain the precise question before the court to note the opening words of the telegram just quoted. "The policy of the company is well known to be, etc." Mr. Harris, who signs the telegram both as president and receiver, evidently forgets that the company is no longer in control; that it can have no present policy on the subject, and that what its past policy was is of slight consequence.

The Reading Railroad being now in the hands of receivers, the receivers and all the employees of the company are officers of the court. The court, therefore, and not the company, is the employer of all the persons engaged in the operation of the road. The present policy of the court, and not the past policy of the company, is the material thing to be considered. And hence the precise question is, Will the court now lay down the rule that the members of the Brotherhood of Trainmen, because they are such members, be discharged from the service of the road?

III.—Strikes are not necessarily unlawful.

The court, it is submitted, ought not and can not lay down any such rule on the ground that either the purposes and objects of the brotherhood, or the means by which they are to be obtained, are shown to be illegal.

1. The general purposes and objects of the brotherhood are stated in the preamble to the constitution, as follows:

"To unite the railroad trainmen; to promote their general welfare and advance their interests, social, moral, and intellectual; to protect their families by the exercise of a systematic benevolence very needful in a calling so hazardous as ours, this fraternity has been organized.

"Persuaded that it is for the interests both of our members and their employers that a good understanding should at all times exist between the two, it will be the constant endeavor of this organization to establish mutual confidence and create and maintain harmonious relations.

"Such are the aims and purposes of the Brotherhood of Railroad Trainmen."

Certainly these objects must be regarded as laudable in the highest degree and as deserving the approbation and support of every good citizen. They are indeed practically the same as those for which working people are expressly authorized to incorporate themselves by act of Congress, the statutory description of such objects being—

"For the purpose of aiding its members to become more skillful and efficient workers, the promotion of their general intelligence, the elevation of their character, the regulation of their wages and their hours and conditions of labor, the protection of their individual rights in the prosecution of their trade or trades, the raising of funds for the benefit of sick, disabled, or unemployed members, or the families of deceased members, or for such other object or objects for which working people may lawfully combine, having in view their mutual protection or benefit."

2. If the means to these praiseworthy ends be now examined, there is nothing in them to which the most captious critic can object except the provisions made for strikes.

It is well to note that even these provisions are of an eminently conservative character; that great care is taken to guard against the abuse of a weapon which is

edged sword and generally proves as damaging to those who use it as to those against whom it is used.

Thus, by the brotherhood constitution and rules, a strike does not take effect till approved first by the local grievance committee, second by the general grievance committee, third by a board of adjustment, and fourth by a grand master, with the consent of two-thirds of the members involved; while striking or inciting to strike except in accordance with the above rules is punished by expulsion from the brotherhood.

3. Nevertheless, among the means of accomplishing the ends of the brotherhood is the bringing about of a "strike." As to what a "strike" is is not defined by the brotherhood constitution and rules; its precise nature must be determined by the court. And, as the brotherhood is entitled to the ordinary presumption of lawfulness for its methods as well as its objects until the contrary is shown, the court will hold the thing termed "strike" in the brotherhood constitution and rules to be something lawful unless there can not be such a thing as a lawful "strike."

4. But whatever may be the customary or probable incidents or accompaniments of a strike, it can not be ruled that there is no such a thing as a legal strike—that every strike must be unlawful.

The necessary elements of a strike are only three—(1) the quitting of work (2) by concert between two or more (3) simultaneously—and in and of themselves involve no taint of illegality.

A strike becomes illegal when to these necessary features are added others, such as malicious intent, followed by actual injury, intimidation, violence, the creation of a public nuisance, or a breach of the peace of any sort.

5. But it is unnecessary to elaborate the proposition that a strike is not necessarily unlawful, since it is emphatically sustained by the recent decision of the circuit court of appeals in Farmers' Loan and Trust Company *v.* Northern Pacific Railroad Company, just decided in Chicago. And it is hardly necessary to point out that the attending circumstances, which only too often make strikes unlawful, are none of them provided for by the brotherhood constitution and rules and can not therefore be assumed to be necessary incidents of any strike occurring pursuant to them.

IV.—Right of labor to organize.

If the rule that a member of the Brotherhood of Railroad Trainmen shall not work on the Reading Road can not be justified because of anything inherently unlawful in the constitution and rules of the Brotherhood, the only remaining ground on which it can be defended is that of business expediency.

Discretion of the court.—That question is presented because in operating the Reading Railroad so as to secure the best results for the public and all private parties interested, the court is unhampered by any express statutory provisions and has all the liberty of choice belonging to employers generally.

It is conceivable, therefore, though the spectacle would be a curious one, that a court of the United States may, on business grounds, refuse employment to persons for no other reason than their membership of an association whose purposes the laws of the United States expressly sanction.

It is conceivable also that a court of the United States, also on business grounds, may attach to employment by its receivers a condition which employers of labor generally in very many States of the Union are prohibited from imposing under penalty of fine and imprisonment.

But it is safe to say that the considerations of business policy impelling the court to the course suggested should be of the clearest and most cogent character, and that the question presented is one which the court will recognize as of the greatest interest and importance.

Scope of the question.—It involves the right of labor to organize for the settlement of differences between it and capital, whose right to organize is apparently not denied.

How the ordinary employer of labor may answer such a question, whether mistakenly or otherwise, is of comparatively little consequence.

Effect of a wrongful decision.—But when the court is the employer any mistaken decision may work infinite mischief, both because until corrected it lays down a rule of action for other like cases and because so far as the mistake is recognized it impairs the confidence of either the employer or the employed, or both in the impartiality or capacity of the judiciary.

Business expediency.—In considering the question of the business expediency of the employment of Brotherhood men, such objection as there is to it must arise from the fact that under its constitution and rules the employees may engage in a strike, with all the natural and possible incidents and consequences. It can hardly be denied that otherwise the Brotherhood organization is not only not objectionable, but is

salutary in its operation, both as regards the employers and the employed. It is the strike feature and that alone which, from a business point of view, can induce the court to brand the Brotherhood men as unfit for its service. It is submitted that that feature should not be allowed to have that effect for various reasons.

Risks of a strike not obviated by excluding organized labor from employment.—It should be remembered, in the first place, that the risks of a strike are not obviated by excluding the members of the Brotherhood from the receivers' service. Men deeming themselves aggrieved and seeking relief or redress, though not associated in any formal way or for any general purposes, may easily unite for the single purpose of a strike. In that view the Brotherhood constitution and rules may well be regarded as operating in restraint of strikes. By compelling the question of strike or no strike to be acted upon affirmatively by four or five different and independent tribunals, they certainly tend to prohibit a strike that is rash, or reckless, or for other than weighty cause. Let it be borne in mind in the same connection that when a railroad or any other business concern is operated by receivers, the violence and lawlessness and other abuses of a strike are both less likely to develop than in other cases, and, if developed, are much more readily dealt with. Employees who understand they are officers of the court, will be slow to antagonize its authority, and if they do can be summarily controlled and punished through the process of contempt.

Organized labor improves the service.—While, therefore, under the circumstances of the present case, the possible evils of a strike would seem to be minimized, it should not be forgotten, in the second place, that the receivers' proposed remedy, to wit, a rule excluding or discharging from service any and all members of the Brotherhood, is itself open to serious objections and disadvantages. The best service is not to be expected from employees who smart under a sense of injustice and are in a chronic state of discontent. Yet such is the inevitable condition of employees whose right to organize for mutual protection and benefit is attacked and whose opportunity to labor is conditioned upon the sacrifice of that right. They can not help noting that organized capital is not so restricted. And when treatment so apparently unfair and discriminating is administered through the instrumentality of a court, the resulting discontent and resentment of employees are inevitably intensified because the law itself seems to have got wrong and in some unaccountable manner to have taken sides against them.

Thus the mischiefs apprehended from membership of the Brotherhood by the receivers' employees lie wholly in the future and are as small as is possible in the nature of things, while the mischiefs to arise from enforcing the receivers' proposed rule are real and immediate. Whether and how far they may be regarded as offsetting one another need not be discussed. The rejection of the proposed rule may reasonably be expected to be attended with such substantial advantages that the court can hardly hesitate as to the course which sound business policy dictates.

Advantages of labor organizations.—To begin with, not the least of such advantages is the avoidance of the necessarily invidious, if not illegal, position that a man shall go without work unless he give up a legal right—a right he may properly deem essential to his safety and welfare.

A correlative advantage is the conciliation of the employed through the full recognition of their rights and the clear indication of an honest purpose that no injustice to them is meditated.

Another advantage is the practical proof thus given that the greatest social problem of the day and the phase it has now assumed are fully appreciated. Whatever else may remain for the future to determine, it must now be regarded as substantially settled that the mass of wage-earners can no longer be dealt with by capital as so many isolated units. The time has passed when the individual workman is called upon to pit his feeble single strength against the might of organized capital. Organized labor now confronts organized capital—they are best off when friends, but are inevitably often at variance; as antagonists neither can afford to despise the other—and the burning question of modern times is, How shall the ever-recurring controversies between them be adjusted and terminated? If the combatants are left to fight out their battles between themselves by the ordinary agencies, nothing is more certain than that each will inflict incalculable injury upon the other; while, whichever may triumph will have won a victory only less disastrous and less regrettable than defeat.

Arbitration—The court as arbitrator.—No better mode for the settlement of contests between capital and labor has yet been devised or tried than arbitration; and another crowning advantage of the course of action here advocated is that arbitration as the mode of settling differences between capital and labor must necessarily be applied in the course of the receivership, and arbitration in its best and most effective form. The court, by appointing receivers, constitutes itself not only an employer of labor,

but the arbitrator of all disputes between it and the receivers, who may justly be regarded as representatives of capital. It occupies the dual capacity of employer and arbitrator, naturally and inevitably. It is an arbitrator whose wisdom and impartiality are—certainly should be, and must be assumed to be—beyond suspicion. It is an arbitrator capable of acting rapidly and summarily, if need be, and invested with power to enforce its own awards. It is an arbitrator with whom both parties have reason to be satisfied, both from its character and its ability to make its award effective, and might well be expected to furnish, should circumstances permit or require, a conspicuous object lesson illustrative of the value of the arbitration principle.

In short, the question being whether business policy requires the court to approve the rule that a member of the Brotherhood of Railroad Trainmen is ipso facto ineligible as an employee of the receivers of the Reading Railroad and an officer of the court, the conclusive considerations against the rule may be summed up as follows:

CONCLUSIONS.

1. The rule is of doubtful value as a preventive of strikes, because it leaves employees to act upon impulse and from passion and freed from the restraints of the Brotherhood regulations.

2. The rule is of doubtful value when the court is the real employer, both from the reluctance of the employed to defy the court's authority and from the power of the latter to speedily and summarily vindicate it.

3. The rule is of positively injurious tendency in the disaffection and discontent engendered among employees by the denial to them of rights enjoyed by citizens generally and deemed necessary for their security and comfort.

4. The repudiation of the rule, on the other hand, has the positive merit—

(*a*) Of tending to secure for the service the good will of employees, and thus promoting its efficiency;

(*b*) Of recognizing the real conditions of the capital and labor problem and the fact that labor both has the right to organize and is organized;

(*c*) Of illustrating the working under the most favorable auspices of the principle of arbitration as the means of adjusting the differences between capital and labor;

(*d*) Of demonstrating that there is not one law for one class of the community and another for another, but the same for all, and of thus tending to preserve for the law and for the judiciary by which it is administered that general respect and confidence which have always been a marked characteristic as well as excellence of our institutions.

RICHARD OLNEY.

Mr. FULLER. A lawyer will understand more about this letter than I would. But this able argument of the Attorney-General, together with that of eminent counsel from Washington and Philadelphia, did not impress the court, and the injunction was refused. One of the reasons of the court for refusing the order was the absence of law forbidding the discharge of employees for being members of labor organizations. The employees in Pennsylvania, then, after a hard struggle—and I desire to emphasize that by saying that it was against all of the influences that the Philadelphia and Reading Railroad Company could bring to bear upon the legislators, in all the ways familiar to corporations like it—procured the enactment of a law in Pennsylvania forbidding the discharge of employees on account of their being members of labor organizations. The courts then declared this law unconstitutional. This is our experience with injunctions, or, I might say, only a part of it. It has opened our eyes and we will not close them until a check is put upon the use of this machine, which has only one handle, and that handle made to fit the hands of the corporations.

There is no one question that has received more attention and caused more protestations by the railroad employees than has this glaring abuse of power by the judicial branch of our Government. It has been the subject of discussion in their meetings, secret and public, and the various magazines of these organizations contain many articles condemning it. That the committee may know how the rail-

road employees feel on this question I submit to you the following resolutions passed by them in their conventions and union meetings; also a few editorials from their official organs:

[Resolution of union meeting of organized railroad employees of America, held at New York May 28, 1894.]

We strongly condemn the action of Judge Jenkins in issuing the aggressive and un-American writs which have emanated from his court, and applaud and approve the straightforward and fearless manner in which the Committee on the Judiciary of the House of Representatives have laid bare such flagrant abuses of the powers and privileges of a court of equity.

We view with intense satisfaction the consistent manner in which Judges Caldwell and Reiner have given labor organizations just and proper recognition in the courts. We assert that the time has come when organized labor should apply a power which it possesses, and which has long lain dormant, by discarding entirely political affiliation and, by united action and the ballot box, and upon legislative lines, exert an influence that will be heeded. (Railroad Trainmen's Journal for July, 1894, p. 585.)

[Resolution of the Second Biennial Convention of the Brotherhood of Railroad Trainmen, passed at Galesburg, Ill., June 4, 1895.]

Whereas we deem this a fitting time to express our opinions on some of the decisions of our judiciary in respect to the relations of capital and labor, and as it appears to us that there is something radically wrong when the laws of our country can be so construed by one man that a thousand may be oppressed to the benefit of a few: Therefore, be it

Resolved, That the Brotherhood of Railroad Trainmen, in convention assembled, do denounce in unmeasured terms the infamous decisions of Judges Ricks, Jenkins, and Dallas, and in contrast to these commend the one crumb of justice awarded to us by a man whom all fair-minded men admire, namely, Judge Caldwell, of the eighth judicial circuit, Arkansas; and be it further

Resolved, That we, the representatives of 30,000 trainmen, do hereby pledge ourselves to support for office only such men as will pledge themselves to administer the laws in keeping with their construction; and be it further

Resolved, That these resolutions be spread upon the minutes of this convention, and a copy sent to the Associated Press. (Proceedings of the Second Biennial Convention B. of R. T., p. 85.)

[Resolution of union meeting of organized railroad employees, held at San Antonio, Tex., September 9, 1896.]

Whereas there are three bills now pending in Congress, viz, the contempt bill, the arbitration bill, and the Phillips bill, which are intended to promote the best interests of railroad employees engaged in interstate traffic: Therefore, be it

Resolved, That we, the railroad employees of Texas, in union meeting assembled, do most heartily indorse the said bills, and request that the Senators and Congressmen from the Lone Star State give their influence and support to the aforesaid measures. (Railway Conductor for October, 1896, p. 612.)

[Resolution adopted at union meeting of organized railroad employees at McKees Rocks, Pa., September 9, 1897.]

Whereas the present condition of political and industrial affairs of our country are such as to command an expression from the wage-workers of the land: Therefore, be it

Resolved, That we, the members of the Brotherhood of Locomotive Engineers, Brotherhood of Locomtive Firemen, Order of Railway Conductors, Order of Railroad Telegraphers, and Brotherhood of Railroad Trainmen, of western Pennsylvania, in joint meeting here assembled, denounce government by injunction, and believe that by it our liberties are being gradually taken away from us; and we demand of Congress that some limit be placed on the power of Federal judges.

[Resolution of State legislative board of railroad employees of Pennsylvania, passed at Scranton, Pa., September 23, 1897.]

Whereas we view with alarm the arbitrary interference of Federal judicial authorities in local affairs, and denounce it as a violation of the Constitution of the United States and a crime against free institutions, and we especially object to government by injunction as a new and highly dangerous form of oppression by which Federal

judges, in contempt of the laws of the States and rights of the citizens, become at once legislators, judges, and executors; and

Whereas a bill passed at the last regular session of the United States Senate relative to contempts in Federal courts, and providing for trials by jury in certain cases of contempts, be it

Resolved, In convention assembled of the State Legislative Board of Railroad Employees of Pennsylvania, held in the city of Scranton, Pa., September 23, 1897, we do respectfully urge and pray the speedy passage at the next regular session of Congress the above referred to bill, or a bill similar in character, so as to restrict the Federal judges in cases of contempts; that the spirit as well as the letter of the Constitution of the United States shall be fully preserved to the people, and that the greatest liberty and freedom consistent with the common good of all shall be enjoyed, as was intended by our forefathers and by them bequeathed to us, their descendants; and be it further

Resolved, That this board recommend each lodge and division of railroad employees in the State to appoint a committee to obtain the name and signature of each citizen who loves liberty and a republic above a selfish greed of gain to a petition to the next Congress of the United States pertaining to this subject; be it further

Resolved, That the honorable president, the honorable vice-president, and the honorable secretary of this board be hereby constituted a committee to confer with the railroad legislative boards of sister States and Territories and urge them to like action in the premises, and also to solicit the cooperation of all organized labor bodies to unite with us in petition, to the end that a uniformity of action may be taken throughout the United States in this matter; be it further

Resolved, That the president appoint a committee of five to prepare a suitable form or head to a petition to be sent each lodge and division in the State. (Proceedings of Biennial Convention of State Legislative Board, p. 45.)

[Resolution of the second biennial convention of the Order of Railroad Telegraphers, passed at Peoria, Ill., May 25, 1899.]

Whereas we view with alarm the arbitrary interference of Federal judicial authorities in local and national affairs, and denounce it as a violation of the Constitution of the United States and a crime against free institutions, and we especially object to government by injunction as a new and highly dangerous form of oppression by which Federal judges, in contempt of the laws of the States and rights of citizens, become at once legislators, judges, and executors: Therefore be it

Resolved, That the Order of Railroad Telegraphers, in convention assembled in the city of Peoria, Ill., May 23, 1899, do respectfully urge and pray that Congress may pass a law so as to restrict the Federal judges in cases of contempt; that the spirit as well as the letter of the Constitution of the United States shall be fully preserved to the people, and that the greatest liberty and freedom consistent with the common good of all shall be enjoyed, as was intended by our forefathers, and by them bequeathed to us, their descendants. (Supplement to the Railroad Telegrapher, July, 1899, p. 135.)

[Editorial from Railroad Trainmen's Journal for July, 1893, page 561.]

* * * The most dangerous question which confronts the country and the people of to-day is the one question of the encroachment of capital on the rights of labor and the assistance given capital by an ever-willing judiciary, eager to construe the statutes in favor of corporations and against labor. This is a question which our next Congress will have to give all the consideration which the gravity of the situation demands. If the fault is in the laws, then let them be modified or repealed altogether, and if the fault is in the misinterpretation of them, then let the interpreters be removed. Laboring men would rest easier under a decision founded upon the true intent of a law, even though the decision were against them, than they could under a distorted one, though the conditions were more favorable. It is not the intention to have decided as right or legal the placing or leaving of trains or engines where the lives and property of the public would be jeopardized, but the right to quit when proper precautions have been taken to avoid all danger without being held and punished as a deserter from the Army or Navy is the right of every man, and he should be given that right legally, or the right of discharge should be taken from corporations unless the employee sees fit to quit. Let one law be made to govern both sides of the question; let each receive the same advantages or reverses. It is true that the decisions have placed the employees on the same level with their employers, but of what use would it be to them should they seek redress under the same law?

Labor has been the unwilling witness of many object lessons the past year. It has

been the disgusted spectator at courts where prejudice overcame justice, until patience has ceased, and it demands that wrongs be righted and that laws placing men on the same level be enacted. * * *

[Editorial from Railroad Trainmen's Journal for October, 1894, p. 884.]

* * * Experience has brought the opinion that the power of the courts is too far-reaching in this respect, and that it is too arbitrary. It is against the American idea of fair play and not in keeping with the personal freedom of action which is one of the attributes of free government. The trial of the A. R. U. officers under the charge of contempt of court furnishes an idea of what power the courts can assume. Trial by jury was denied on the same grounds that the bench has taken in regard to injunctions and strikes, and which is far from popular with the great body of the people. The courts have taken to themselves power and jurisdiction that threaten the personal liberty of every inhabitant of the United States. There is crying need of legislation taking from the courts the power of judging arbitrarily the limit of personal action. Government by injunction is not good government, and must, in the interest of general safety, give way to government by law. There is great dissatisfaction of the people, and there will continue to be as long as they know there are defects in the law and its administration. * * *

[Editorial from the Railroad Trainmen's Journal for September, 1897, p. 830.]

The injunctions issued by the judges of West Virginia have aroused the indignation of men the country over, and the expression coming from them is anything but complimentary to the jurists who have disgraced their profession at the mandates of the coal-mine owners. The right of free speech, as guaranteed by the Constitution, has been taken away by the bench, and the action has been so high-handed and utterly outrageous that every sense of decency rebels at the ruling of the tools of the corporation. The people of the United States are about on the point of protesting against the sweeping assumption of authority by the bench. * * *

[Editorial from the Railway Conductor for September, 1896, p. 544.]

* * * The courts are working the injunction overtime, and if they do not moderate their devotion to this latest discovery in the science of legalized tyranny, they may be made to suffer for some portion, at least, of the crimes they have committed in its name.

[Editorial from the Railway Conductor for November, 1898, p. 766.]

THE HAMMOND INJUNCTION.

If the reports given by the daily papers are to be accepted as accurate, the American Steel and Wire Company, of Cleveland, Ohio, is the beneficiary of the most drastic injunction yet issued by the Federal courts. This company is a member of the wire-nail trust, and when its employees went on a strike the whole force of the combination was brought to bear to secure the aid of the courts in keeping the strikers in subjection. In response to the demands thus made, Judge Hammond, of the United States circuit court, issued an injunction which virtually makes it unlawful for the employees to talk to each other about strikes. According to the published synopsis of this document, the striker must not interfere with, obstruct, or stop any of the business of the company or its agents, servants, or employees in any of its works anywhere; he must not enter upon the company's grounds for the purpose of interfering therewith in any manner; he must not compel or induce or attempt to compel or induce, by threat, intimidation, or persuasion, force, or violence, any of the employees to refuse or fail to perform their duties; he must not congregate for the purpose of intimidation; he must not post pickets or establish a patrol; he must not go "singly or collectively" to the homes of company employees for the purpose of intimidation; he must not threaten in any manner the wives and families of the employees at their homes.

When taken by themselves, some of these prohibitions would be accepted without question, but when persuasion is included in the general inhibition, it at once becomes apparent that the purpose of the court was to leave the employees in the hands of their employers, with no recourse save in abject submission. It is true the injunction very carefully adds "for purposes of intimidation," when it forbids the congregating of the strikers; but since it is left for a hostile court to determine in every case what that purpose is, the right of peaceful assembly must be a dead letter to those men. This despotic invasion of the constitutional rights of freedom should open the eyes of

honest men everywhere to the dangers which must attend every invasion of those rights, no matter how specious the reasons given for that invasion may be. All who believe in our form of government and hope for its perpetuity have a vital interest in this great wrong and should make common cause against it. The injunction in question should be challenged in the courts, as was the one issued by Judge Jenkins against the Northern Pacific employees and the officers of the railroad brotherhoods, and it should not be allowed to rest until the last court of resort has been reached. The right of free speech is not yet dead. The courts are growing constantly bolder in their invasions of the domain supposed to have been set apart for the legislative departments of our Government, and not another session of Congress should be allowed to pass without the enactment of such legislation as will forever restrict them to their proper sphere of action.

[Editorial from the Brotherhood of Locomotive Engineers' Journal for September, 1896, p. 789.]

* * * We do not understand that "curbing" means taking away any rightful authority, in the light of the present age of moral and intellectual thought, which understands so much better where the right of one factor of our social organization ends and the other begins than was conceived in the past. The ninth blue law of the New Haven colony says: "The judges shall determine controversies without a jury;" but out of abuse of this authority has come "curbing" of authority. The most exalted opinion of a citizen cloaked with judicial authority, with life tenure as the means of purification of character and unselfish purpose to follow lines of absolute justice without bias, has been shaken to the very foundation by decisions that convey to the minds of all that the judges rendering the decision were not impervious to favoritism, bias, and passion that moved them out of the correct line of the judicial functions into that of personal spleen and demagoguery; and the restrictions wanted by those who would preserve order and give to every factor of society equality under the law, which guarantees that they shall not be deprived of liberty without trial by jury, is to restrict the possibility of snap judgments, which are the products of passion, spleen, and favoritism, backed by authority, that should be restricted until this abuse of authority finds a cure. * * *

The misuse of judicial authority of Judge Jenkins and others demonstrated the necessity for some legislation restricting the scope of their authority. * * * That it is necessary for some action in this direction there is no question, nor can there be any question that laboring men should use every influence they possess to assist in securing suitable legislation to maintain liberty and preserve the dignity of the court, which on several occasions has been dwarfed and warped into a powerful means of fostering personal ends and selfish purposes. * * *

These are the expressions of the laboring classes themselves, and, having personally talked with thousands of them and heard their individual opinions on this question, I am safe in saying that the papers here quoted are not an exaggeration. If it is thought these criticisms are too severe, I would invite a comparison of them with the expressions made by some of our great public men on this subject, including judges, attorneys-general, Congressmen, United States Senators, and the governors of several of our States; and when it is considered that in one case the expressions come from the men who have suffered, and in the other they come from those who are not so directly interested, I believe the expressions of the employees will be considered comparatively moderate.

Chief Justice McCabe, of the supreme court of Indiana, in writing on the subject of injunctions in the Chicago Times-Herald of September 19, 1897, said:

* * * Yes; I am inclined to believe that the use of the power interferes with the constitutional right of trial by jury, and in so far as it does this it endangers the highest and most sacred safeguard of the people. * * *

Judge John Gibbons, of the circuit court of Illinois, in the same paper, said:

* * * I desire to say that in my opinion there is a danger to-day threatening the very existence of the Republic as gigantic as that which precipitated the rebellion and well-nigh wrought the ruin of our Union. Now it comes, as ever, in the

seductive guise of the law and under the solemn authority of the court. * * * In their efforts to regulate or restrain strikes by injunction they are sowing dragons' teeth and blazing the path of revolution. * * *

Judge M. F. Tuley, of the appellate court of Illinois, in the same paper gave expression to these words:

* * * Such use of the right of injunction by the courts is judicial tyranny, which endangers not only the right of trial by jury, but all the rights and liberties of the citizens. * * * If Congress has the power it should promptly put an end to "government by injunction" by defining and limiting the power of the Federal courts in the use of the writ. * * *

During the coal miners' strike in 1897, on the question of injunctions, Governor Sadler, of Nevada, expressed himself as follows:

* * * The tendency at present is to have committees make the laws, and to have the courts enforce them by injunction, both of which methods, in my opinion, are subversive of good government and the liberties of the people. * * * (Railroad Trainmen's Journal for September, 1897, p. 833.)

On the same question Governor Jones, of Arkansas, said:

* * * Freedom of speech and of the press is inviolable in this Government, and we should not tolerate for a moment any encroachment upon this sacred right. Judge Jackson's order is revolutionary, and if upheld by the Federal Supreme Court and submitted to by the people will overturn our system of government and destroy our liberties. It is not only illegal and unadvisable, but is such an act as calls for his impeachment and removal from his office. (Railroad Trainmen's Journal for September, 1897, p. 833.)

Governor Pingree, of Michigan, expressed himself in these words:

* * * I consider government by injunction, unless stopped, the beginning of the end of liberty. Tyranny on the bench is as objectionable as tyranny on the throne. It is even more dangerous, because judges claim immunity from criticism, and foolish people acquiesce in their claims. To enjoin people from assembling peaceably to discuss their wrongs is a violation of first principles. * * * (Railroad Trainmen's Journal for September, 1897, p. 832.)

The House Committee on the Judiciary of the Fifty-third Congress, which was directed to make an investigation of the Jenkins injunction and report to the House what action should be taken by the House or Congress, reported as follows:

The power to punish for contempt is limited by the laws of most of the States, and we can see no reason why a like limitation should not be placed upon the powers of Federal judges. Your committee therefore recommends the adoption of the following resolution:

Resolved, That the action of Judge James G. Jenkins in issuing said order of December 19, 1893, being an order and writ of injunction, at the instance of the receivers of the Northern Pacific Railroad Company, directed against the employees of said railroad company, and in effect forbidding the employees of said Northern Pacific Railroad Company from quitting its service under the limitations therein stated, and in issuing a similar order of December 22, 1893, in effect forbidding the officers of labor organizations with which said employees were affiliated from exercising the lawful functions of their office and position, was an oppressive exercise of the process of his court, an abuse of judicial power, and a wrongful restraint upon said employees and the officers of said labor organizations; that said orders have no sanction in legal precedent, were an invasion of the rights of American citizens, and contrary to the genius and freedom of American institutions, and therefore deserving of the condemnation of the Representatives of the American people. (House Report 1049, Fifty-third Congress, second session.)

I have quoted these resolutions and editorials to show the committee the way the employees view the recent actions of our courts; but, Mr. Chairman, the railroad employees of this country did not pass these resolutions and not endeavor to put them into effect. For the last five or six years they have kept a man here at this capital urging upon the

members of Congress to pass some kind of a law that would limit and define the power of courts in issuing injunctions. In addition to this, the lodges and individual members have, I might say, stormed Congressmen with petitions, memorials, letters, and telegrams, earnestly praying for the passage of the various measures that have been before Congress from time to time, They plead for this legislation for so long and it did not come that they came to the conclusion that a more effective plan should be adopted to impress upon Congressmen the necessity for such legislation, and on March 20, 1898, a large union meeting of members of these organizations in the State of Pennsylvania was held at Pittsburg, Pa, for the sole purpose of urging the passage of the bills then pending before Congress, and to prepare plans to put the various candidates for the next Congress on record in regard to such legislation, and a committee was appointed to carry out the work of the meeting. I hand you a copy of the circular prepared by that committee, which was sent to each candidate for the United States Senate and House:

BEAVER FALLS, PA., ———, *1898*.

Mr. ——— ———,
Candidate for Congress.

DEAR SIR: At a union meeting of 500 delegates from various parts of Pennsylvania, representing the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen, Order of Railway Conductors, Brotherhood of Railroad Trainmen, and Order of Railroad Telegraphers, held in Pittsburg, Pa., March 20, 1898, for the purpose of taking action regarding injunctions and other questions which vitally affect labor, the following resolution was unanimously adopted:

Whereas our experience of the past few years with some of our courts in their actions in cases of injunctions and contempts has convinced us of the wisdom of the expressions and actions of our forefathers when they said, "The liberties of the people were endangered by the aggressions of the courts," and when they declared to the world that "one of their reasons for severing their allegiance to the British throne was because they were deprived of the benefit of trial by jury," and when they placed a clause in our Constitution which says that "trials of all crimes shall be by jury," and as there was a bill introduced in the first session of the Fifty-fifth Congress which provides for trial by jury in certain cases of contempt: Therefore, be it

Resolved, That we believe the right of trial by jury is just as sacred to-day as it ever has been, and that we view with alarm the aggressive tendency of some of our judges in their attempts to serve corporate interests through the guise of equity proceedings whereby both the spirit and the letter of the Constitution are violated, and we denounce such actions as judicial tyranny; and we urge our two United States Senators and Congressmen to use their influence and vote in behalf of the bill referred to; and be it further

Resolved, That a committee composed of one member from each organization here represented be appointed by the chairman of this meeting, and if the above bill or a similar one is not passed at this session of Congress, said committee shall interview, or cause to be interviewed, each candidate for United States Senator and Congressman and ascertain their views, and whether or not, if elected, they will use their efforts in behalf of such legislation, and said committee shall publish the result of such interviews in all labor and industrial journals in Pennsylvania, and also in the public press; that a copy of this resolution be sent to the President, the United States Senate, and the House of Representatives.

As the bill referred to in this resolution was not enacted into law at the last session of Congress, therefore, we, the committee appointed by that meeting to interview each candidate for Congress and United States Senator, do respectfully submit to you the following questions:

What are your views on the power and practice of courts in issuing injunctions in labor disputes?

How is such power derived, and is it misused?

Do injunctions interfere with the constitutional guaranty of trial by jury?

Should Congress specifically define and limit the power of courts in issuing injunctions?

If you are elected, will you vote for a law which will define and limit the power of courts in issuing injunctions?

A copy of this letter has also been given to the press.

Respectfully, yours,

CLARE L. HINSDALE,
B. of L. F., Chairman,
H. R. FULLER,
B. of R. T., Secretary,
C. H. LANGHURST, *B. of L. E.,*
WM. BOATE, *O. R. C.,*
S. H. EAKIN, *O. R. T.,*
Committee.

Kindly address your answer to H. R. Fuller, secretary, 213 Tenth street, Beaver Falls, Pa.

Several of the candidates made no answer to this circular, ignoring it entirely. Thirty made replies, and not one of them upheld injunctions, and twenty-seven of them agreed if elected to vote for a bill which would limit and define the power of the courts in issuing injunctions. Thirteen of those who were pledged were elected. In one district one candidate refused to make reply to the questions, while his opponent made a favorable reply, and we were successful in electing the man who was favorable by a majority of 34 votes. The circular and answers were all made public at the time; I have the answers with me, and if the committee desires to see them, I am at liberty to furnish them.

Mr. Chairman, I wish to be thoroughly understood in this part of my remarks. I simply do this to show you that we have endeavored to carry out our resolutions. We do not pass resolutions and then sit down. We have appealed to this means at different times, and in the State of Pennsylvania used it against candidates who would not agree that there should be something done. It was for that purpose that that committee was appointed. These answers which I have here were publicly given to the press—the circulars and the answers—and there are some very valuable arguments in these answers which were made public, as I have said.

I have here also the opinions of two firms of attorneys of these organizations on this bill, and I would be glad to submit them to you also.

The CHAIRMAN. They will all be printed together.

The opinions of the attorneys referred to are as follows:

CLEVELAND, OHIO, *March 2, 1900.*

P. M. ARTHUR, Esq.,
G. C. E. B. of L. E., Society for Savings Building, City.

DEAR SIR: I have examined the draft of a proposed bill entitled "An act to limit the meaning of the word 'conspiracy' and also the 'use of restraining orders and injunctions' as applied to disputes between employers and employees in the District of Columbia, etc.," which you handed me on the 28th ultimo, and, in connection therewith, I have carefully read the opinion of Messrs. Ralston & Siddons regarding the same. I have also carefully compared the proposed act with the act of Parliament of 1875 and the act of the Maryland legislature of 1884, referred to in said opinion, and I find that the proposed act is a substantial copy of those two acts in so far as it relates to what conspiracy shall be considered a crime.

The law passed by Parliament in 1875 was one that received very careful consideration not only by members of both Houses of Parliament, but also by employers of labor in Great Britain and the representatives of labor organizations, and also by leading lawyers, judges, and public-spirited citizens of the realm. That law was the result of their combined wisdom, and fairly represents their united judgment on the subject. So far as I have been able to examine, it has been given a fair and liberal construction by English judges when cases have arisen to which it was applicable.

It was regarded in England, and certainly was, a substantial step in the direction of making the crime of conspiracy one that did not bear down unequally upon workmen engaged in a struggle for that which they deemed to be due them. It is somewhat remarkable, with this example of Great Britain in existence for a quarter of a century, that Maryland is the only one of the United States which should take the same forward step. I will say, in passing, however, that we do not need such a law in Ohio, because there is no such crime in Ohio as conspiracy. But in all States which have a common-law jurisdiction of crimes and offenses the definition given by Messrs. Ralston & Siddons is substantially correct, and the crime is recognized and commissions of it punished in those States.

I am of opinion, therefore, that this part of the measure is entitled to support and that its adoption into a law shall be of service to all concerned.

The proposed law, however, outlines a very radical departure from ordinary proceedings when it undertakes to apply the same definition of the word "conspiracy" to any case in which an injunction or a restraining order is issued. Neither the English act nor that of Maryland undertook to enter this field. Consequently, there are no decisions which will serve as a guide as to how this part of the law would operate in practice. I can see no possible harm to come from it, however, although I am somewhat apprehensive that some of our Federal courts might undertake to strangle that part of the law by construction. This, however, is only my guess, and I may be entirely wrong about it. I regard the measure, as a whole, as a step in the right direction and one which I believe if enacted into a law will be beneficial in its operation. I have not seen any of the other bills which have been proposed and which are referred to in the opinion of Messrs. Ralston & Siddons, and therefore do not undertake to compare this measure with any of those. I concur with those gentlemen in that part of their opinion in which they express the necessity for caution in proposing measures and in their disinclination to attack beneficial existing remedies in the hope of getting the relief to which workingmen believe themselves entitled.

Respectfully submitted.

ALEX. HADDEN.

CLEVELAND, OHIO, *March 21, 1900.*

BROTHERHOOD OF RAILROAD TRAINMEN,
P. H. Morrissey, Grand Master, City.

DEAR SIR: We are in receipt of several bills introduced into the United States Senate and House of Representatives, the purport of which is to restrict the power of the courts to grant promiscuous injunctions and restraining orders. An examination of the bills shows us that they are all of the same purport, and many of them almost identical in wording. Senate bill No. 326 we consider a very good one of this kind; perhaps the best of the set. Upon a careful reading, however, of the bill submitted by Ralston & Siddons, we consider the latter the best bill because of the fact that it gets at the root of the whole matter. Before entering upon a discussion of its merits, we desire to call the attention of the originators of the bill to the fact that the word "and," in the fifth line of the heading, should be changed to "or" in order to make the meaning and sense of the bill complete.

The bills which have been introduced by the Senators and Representatives do not define what shall constitute conspiracy or contempt of court, but only deal with the subject after the contempt has been committed, and leave the court perfectly free to determine what is contempt. The other bill, however, defines the term conspiracy and clearly sets out the fact that it is not contempt of court for the members of an organization to do or not to do a certain thing, provided the same would be lawful for one member to do. Most of these injunctions and restraining orders have been issued upon the theory that the doing or refraining to do a certain act by labor organizations amounted to conspiracy. If, however, the court can be shorn of this enlarged meaning of the word which they have assumed to themselves, it seems to us that it will very much curtail the powers of the courts in this direction.

After a careful study of the matter we would prefer to recommend the Ralston & Siddons bill as affording more and better relief to the labor organizations throughout the entire country. It would not leave the courts such a wide discretionary power if the interpretation of the word conspiracy is defined, that the object of all the other bills would be already achieved, and there would be only a few contempt proceedings.

The question, however, presents itself to our minds whether or not the introduction of the Ralston & Siddons bill might not defeat the passage of any of the others. It occurs to us that the best thing to be done is to unite all forces on one bill, and

pass the best one that can be agreed upon. If the Senators and Representatives who have introduced the various bills would not agree to the Ralston & Siddons bill, we would advocate the uniting upon some bill and passing it, and one which would afford as much relief as possible during this session of Congress.

Very truly, yours,

NOBLE, PINNEY & WILLARD.

STATEMENT OF MR. SAMUEL GOMPERS.

Mr. GOMPERS. Mr. Chairman and gentlemen of the committee, one of the gentlemen who drafted the bill now before you expressed the opinion, in which I concur, that he should conclude the argument, and I shall therefore try to say what I have to say in as succinct a manner as I possibly can. Last week, when I had the honor of appearing before the committee, I called attention to the fact that the difficulty from which labor suffers in this particular regard is the fact that the injunction when issued has already committed the injury and the wrong for which there is no remedy or redress. Let me say that one of the peculiar features in the issuance of these injunctions is this: When the injunction is issued it is usually made returnable about four, five, or six weeks after the date of its issuance. In other words, the hearing, whether the injunction is to be made permanent or dismissed is set—the day for the hearing is set—usually after the termination of the labor dispute, and hence the interest is lost in it and the injury is done. And though the injunction may be vacated or dismissed, the wrong is already committed. Should it be made permanent, and upon appeal to a higher ceurt, the higher court reverse the decision of the judge granting the injunction, the wrong is done, the injury is committed. No remedy! No redress!

One of the honorable members of this committee, during the course of Mr. Darrow's remarks, inquired, substantially, whether it would not be advisable to enact a law to enjoin employers of labor as well as laborers; in other words, as I gathered from the questions, whether a law might not be enacted enjoining employers of labor from doing certain things. That, I would say, might be necessarily answered in the affirmative; but if there would be a wrong committed against an employer of labor by the issuance of an injunction, that in itself would imply the power on the part of the employer to obtain damages from those who should secure the issuance of the injunction, for we would be compelled also to give bonds to indemnify the employer, and the employer, through the power of dollars and cents, might be in a position to show his loss, whereas, as a matter of fact, the workingmen can not demonstrate their loss to the satisfaction of a court and a jury.

There were more damages inflicted on the Government and the commerce and the people of the United States, indirectly, in the Alabama outrages than were compensated for by what was secured under the treaty which gave to the United States $15,000,000 by reason of direct damages; and you will remember that the International Board of Arbitration, which was called upon to discuss this question and make an award, ruled out the indirect damages. Then, again, there are those damages which result from a defeat of the workingmen which can not be calculated in dollars and cents.

Now, it was my pleasure last week to briefly call attention to the language of some of these injunctions. I have with me quite a large number.

First, permit me to call attention to the phraseology of some of these injunctions. We are enjoined—"restrained from entering upon the property of the owners of the said Monongah Coal and Coke Company for the purpose of interfering with the employees of said company, either by intimidation or the holding of either public or private assemblages upon said property, or in any wise molesting, interfering with, or intimidating the employees of said Monongah Coal and Coke Company, so as to induce them to abandon their work in said mines." In other words, this eliminates those things which we did not claim that we had the right to do. We have not the right to molest, but we insist that we have the right to interfere, so long as we do not intimidate, coerce, or use force——

Mr. ALEXANDER. That injunction does not say that you have not that right, but what it says is that you must not go upon the property of these people to do it.

Mr. GOMPERS. I desire to call attention to the next paragraph of the same injunction, which says:

And the defendants are further restrained from assembling in the paths, approaches, and roads upon said property leading to and from their homes and residences to the mines——

The roads leading to and from the mines, the approaches to the mines; the approaches and roads leading to the miners' homes.

Mr. PARKER. Is that all of the phrase? Just read the whole of it.

Mr. GOMPERS. I am quoting the paragraph.

And the defendants are further restrained from assembling in the paths, approaches, and roads upon said property leading to and from their homes and residences to the mines, along which the employees of the Monongah Coal and Coke Company are compelled to travel to get to them, or in any way interfering with the employees of said company in passing to and from their work, either by threats, menaces, or intimidation, and the defendants are further restrained from entering the said mines and interfering with the employees in their mining operations within said mines, or assembling upon said property at or near the entrance of said mines.

The literal construction of those phrases is what? All the paths and roads from this Capitol building to the mines of the Monongah Coal Company are the approaches to it.

Mr. PARKER. This provision is against the assembling, and this committee will put its own interpretation upon that.

Mr. ALEXANDER. It is broad enough to cover all places, wherever they might happen to be.

Mr. KERR. You can start out here, and it is broad enough to cover any assemblage anywhere.

Mr. GOMPERS. And from the homes of the defendants, wherever any of those miners live, no matter where it may be.

The CHAIRMAN. I think you are mistaken. I thought it said they were restrained from assembling in the paths and roads upon said property and leading to and from said property.

Mr. GOMPERS. Shall I read it again?

The CHAIRMAN. Yes; do so.

(Mr. Gompers here read again the above last-quoted paragraph of the injunction.)

Mr. GOMPERS. On an injunction issued by Judge Melville W. Fuller I had the distinguished honor to be enjoined, with a very large number of "confederates, associates, and coconspirators, whose names are unknown," from trespassing in West Virginia during the miners'

strike of 1897. Let me quote a few more phrases employed by some of the justices in the issuance of these injunctions.

The CHAIRMAN. May I ask you there, was that injunction which you read made the subject of judicial inquiry anywhere as to whether it was binding and valid?

Mr. GOMPERS. No, sir; the miners' strike was won in spite of the court's injunctions, and the employers and employees had agreed upon wages and hours and terms and other conditions of labor, and solely by default the injunction was made permanent.

Mr. ALEXANDER. What court did you say it was that made that injunction?

Mr. GOMPERS. The injunction to which I just referred?

Mr. ALEXANDER. Yes.

Mr. GOMPERS. The circuit court of the United States for the district of West Virginia.

Mr. ALEXANDER. Who was the judge?

Mr. GOMPERS. Judge Jackson.

In one of the injunctions, which was issued in the northern district of Ohio in the case of The American Steel and Wire Company *v.* The Wire Drawers and Die Makers' Union No. 1, of Cleveland, Ohio, Walter Gillett, et al., Judge Hammond enjoined the men from—

compelling or inducing, or attempting to compel or induce, by threats, intimidation, persuasion, force, or violence, and so forth, and from ordering, directing, aiding, assisting, or abetting, in any manner whatever, any person or persons to commit any or either of the acts aforesaid.

Mark you, not even were the members of this organization permitted to persuade the employees of that concern, the American Steel and Wire Company. They were not even permitted to persuade, and were enjoined from so persuading, any of the employees from leaving the employment of that company for the purpose of preventing a reduction in wages. And the defendants were further enjoined from in any manner interfering with the American Steel and Wire Company in carrying on its business in its usual and ordinary way, and from in any manner interfering with or molesting any person or persons who might be employed in said employment, or seeking employment, by that company.

And defendants and each and all of them are enjoined and restrained from going, either singly or collectively, to the homes of complainant's employees, or any of them, for the purpose of intimidating or coercing any or all of them to leave the employment of the complainant, or from entering complainant's employment, and, as well, from intimidating or threatening in any manner the wives and families of employees at their said homes.

The CHAIRMAN. What was that case?

Mr. GOMPERS. The case of The American Steel and Wire Company, complainants, *v.* The Wire Drawers and Die Makers' Union, of Cleveland, Ohio, Walter Gillett, et al.

The CHAIRMAN. Was that injunction made the subject of judicial decision as to its validity in all of those broad and sweeping provisions?

Mr. GOMPERS. I am not prepared to say that it was; but it was made permanent, and has never been upset.

The CHAIRMAN. Was it made permanent in that form?

Mr. GOMPERS. In that form; yes, sir.

Mr. OVERSTREET. What effect did it have?

Mr. GOMPERS. It destroyed the union and destroyed the strike and

the wire drawers and die makers of Cleveland and—yes, and throughout several other parts of the country—are almost the abject slaves of this wire and steel trust to-day.

The CHAIRMAN. Maybe they will issue an injunction preventing you from coming here and trying to "persuade" us.

Mr. GOMPERS. Perhaps they may. And I had the honor of saying to this committee—and I want to say to you, gentlemen, that I said it in no vein of bravado, nor in any boastful spirit—that by everything I hold dear or prize, I would rather lose my life than to obey an injunction of such a character, no matter by which court issued.

The CHAIRMAN. Have you any knowledge of any case where a man was ever punished in any way by a court for disobeying that clause of an injunction forbidding him to go to the home of a workman, to meet a workman, and by persuasion, merely, induce him to leave his employment?

Mr. GOMPERS. I can not recollect any particular incident of that character; but I do know that when men belonging to a union have been out on strike to secure a reduction of hours, or an increase of wages, or to secure a redress for a wrong, they have been restrained from going to the homes of their friends, whom they may have heard desired to return to work, and when they desired to go and see these friends and persuade them not to do this the injunctions of the court have prevented them from so doing, and nothing else. The ordinary man wants to be a law-abiding citizen, and he looks upon an edict of the court as a command to him, and it should be so. He has no desire to violate the edict of the court; and what we want to do is, realizing that the courts have invaded certain of our rights, we want a statute law that shall exactly describe what the judge may do under certain circumstances, and these are the circumstances that I have tried to narrate and bring to your attention.

The rights I speak of are the right of the workingman to quit his employment, his right to assert himself with his fellow-workingmen, and thereby through all possible lawful methods endeavor to secure the improvement of his condition and the condition of his fellow-workers. We insist not only that there shall be a trial by jury for any offense that any citizen shall commit, but that in cases of labor disputes the injunction shall not lie—shall not issue—charging a crime or the possibility of a crime, and enjoining a man from committing a crime, when no crime has been committed or contemplated, and by this specious means defeating the very object for which he has organized.

The CHAIRMAN. Will you contend at all that it would be policy, or safe, to limit the right of a court to summarily try and fine or imprison a man who, in the very presence of the court when it was in session, should be guilty of a gross contempt against the dignity and peace of the court, even though in doing it he committed a crime? As I illustrated the other day, suppose I should enter a court in session, and having some grievance against the judge, or not—no matter what my purpose was—I should go in with my pockets filled with brickbats, and stand up in the bar and throw brickbats at the head of the court, and hit the judge. Now, that would be not only an assault and battery, a criminal offense, but it would constitute a gross contempt of the court. Now, would you advocate that in a case like that it would be the duty of the court to have me indicted for assault and battery, and leave the matter there?

Mr. GOMPERS. No, sir; the Constitution of the United States pro-

vides that no man shall be tried twice, or have his life and liberty placed in jeopardy twice, for the same offense. Now, I am not quoting constitutional law, because I know anything about it, but because I think I do——

The CHAIRMAN. That is a settled principle of the law; but suppose the same act constitutes a crime against the peace and dignity of the State and also a contempt of court?

Mr. GOMPERS. I should assume that it would be within the province of the judge to hold the transgressor as guilty of contempt of court; or he may lodge complaint against the offender before a grand jury and have him indicted for assault and battery. He may have his choice, and either would be admissible, but not both.

The CHAIRMAN. Should not the judge have both those remedies and also a third one? For instance, this man is in contempt of court. Now, the judge should protect the dignity of the court from all contempts. Then, if you assume an assault and battery was committed on the person, the judge should have the offender indicted. Suppose the judge was laid up by that assault for several weeks, and suffered pain and other injuries and inconveniences, he might also have a civil remedy to recover damages which he had sustained.

Mr. GOMPERS. Very true; but I should say that I quite agree with the chairman in that; but I would submit that this question is not raised by this bill.

The CHAIRMAN. That is true; but you were speaking generally of these injunctions and contempts, and so forth, and I wanted to see what your idea was on that subject.

Mr. OVERSTREET. Does not your bill provide in terms for an abolition of the power of injunction?

Mr. GOMPERS. No, sir; if it did I should not appear here to advocate its passage, because I believe the writ of injunction a very important right. What we complain of is the abuse of that writ. I should add that the issuance of the injunction in labor disputes would be abolished under the provisions of this bill.

Mr. OVERSTREET. I quote from lines 6 and 7 of the bill: "nor shall any restraining order or injunction be issued with relation thereto." I called Mr. Darrow's attention to that the other day, and he was inclined to think that that language would abolish the writ, and it ought to be amended.

Mr. GOMPERS. We are not wedded to the phraseology of this bill or any bill. After Mr. Darrow had completed his argument he thought that some change might be required, and in speaking of this matter with our attorney, Mr. Ralston, he, I think, agreed with us; but I should prefer that he should deal with that branch of the question—the legal phase of it. I am sure that he is better qualified than I am on that.

I want to just take a few moments of time now to call attention to a few other phrases in certain injunctions. The defendants were restrained from "congregating at or near the premises of the said American mill." They were restrained from "inducing or coercing, by threats or persuasion, the employees to leave the said employment." Mark you, "induce." They were restrained from interfering with any such persons as might be employed. They were further enjoined from either singly or collectively going to the homes of any of complainant's employees. They were restrained from congregating near

the company's premises—how near is not defined. In another injunction, in the case of The Dunn Loop Coal and Coke Company *v.* Fred Dilcher, they were restrained from inducing or causing any of the employees of the plaintiff to quit or abandon work in the mines of the plaintiff. Further, they were restrained from conducting or leading any body or bodies of men up to or upon the premises of the plaintiff. Up to the premises, mark you. Further, they were enjoined from in any manner interfering with the plaintiff's employees "while they may be passing to and from their work in said mines" on and near to the plaintiff's premises.

Mr. KERR. What court was that? Can you give us the State?

Mr. GOMPERS. Yes, sir; the injunction is signed "J. J. Jackson, United States district judge."

Mr. KAHN. Of West Virginia?

Mr. GOMPERS. Yes, sir; the circuit court of the United States for the district of West Virginia, and the date of the injunction is August 14, 1897.

Mr. ALEXANDER. In your investigation of this matter, did you discover that the United States courts in the different districts have some certain form of the restraining injunction which they use, or are they widely different in phraseology, and so forth?

Mr. GOMPERS. There is one policy that runs through them all. Of course, the courts do not prepare these injunctions; the attorneys do that; and the attorneys took usually what they regarded as the most advanced ground of an injunction which has been issued, and when one of these injunctions has not been contested for the reasons I have already referred to they are made permanent, and hence are taken as the basis for other injunctions. The justices are advised, and they know, or should know, that these injunctions have been granted and made permanent, and they accept those as the basis for other injunctions, and frequently go a step further.

Mr. KAHN. Did I understand you to say that you do not know of any case at all where a man has been punished for contempt under one of these injunctions?

Mr. GOMPERS. Oh, yes; numbers of them.

Mr. KAHN. Do you know of anyone who was punished for contempt for a violation of that injunction?

Mr. GOMPERS. No; but let me give you my reasons why they were not. Because the men who were engaged in the work of trying to organize and help the miners of West Virginia, nearly all of them quit the State; but when I heard of that, in 1897, during the miners' strike, I took a particular course. Let me state one instance. One of our men had gone to West Virginia, and these injunctions were issued, and he immediately went over the border into the State of Kentucky. He sent me a telegram stating that he was in Kentucky and wanting to know what he should do. I told him that if he did not go into the State of West Virginia at once he might as well go home; and I then stated publicly that I was going into West Virginia; and I did go, and held public meetings and was served with more injunctions than I had facilities with me to carry, but I continued to hold meetings, and Governor Atkinson at that time took the ground that I was availing myself of my right as an American citizen, and I am sure that the action of the governor contributed something toward influencing the attorneys for the corporations to withhold prosecutions against others and myself.

Now, let me quote from what was published as purporting to be an injunction. I have no doubt in my own mind as to its authenticity, but I do not want to deceive the committee into believing that I am now reading from an official document. It is a case in which Judge Palmer, of the Arapahoe district court of Colorado, issued an injunction against the miners' union of northern Colorado. James Cannon, jr., president of the trust, presented a petition claiming that the miners were likely to use violence to prevent work being done in and around the mines. The record of the complainants was voluminous. It says:

That the defendants, Joseph Smith, E. E. Beckett, George Ransom, George Clark, herein named, and many others whose names are unknown to this complainant, are engaged in a coal strike in the towns of Lafayette, Louisville, Superior, and Marshall, in the county of Boulder, and in the town of Erie, in the county of Weld, all in the State of Colorado, and that the miners' union, herein named as defendant, is an organization comprised of coal miners in the northern part of the State of Colorado, but as to whether it is a corporation, copartnership, or an association this complainant is not advised, and therefore can not allege.

That on the 6th day of June, A. D. 1898, the employees and workmen in said mines, without previous notice to the complainant or to any of its officers, agents, or superintendents, or to the officers, agents, superintendents, or managers of any of the aforesaid mines, quit work in a body and caused great damage to this complainant and assigned no cause therefor; that the quitting of work * * * was the result of a mass meeting of said defendants * * * at which the following resolution was passed.

"*Resolved*, That all coal mines operated by the Northern Coal Company, and all mines selling coal to said company, be suspended, said suspension to go into effect on Monday, June 6, A. D. 1898."

That thereupon and in obedience to said resolution all the men at said mines in a body quit work on the following day, and have since refused to work in said mines or permit the operation thereof by others. * * *

The complainant shows to the honorable court that it is informed and believes, and upon such information and belief charges the fact to be, that the defendants, and each of them, are members of * * * the miners' union; that said defendants and said miners' union have conspired and combined together to injure this complainant by preventing the operation of said coal mines, and by quitting work therein, and by threats, force, intimidation, and violence have prevented the men who are not members of or in sympathy with their union to also quit work at said mines; that there are and have been many men in and about the vicinity of said mines who are ready, anxious, and willing to work in said mines for said complainant, but are prevented from doing so by menace and force and being threatened by said defendants, or some of them, that in the event any of said men should attempt to work for this complainant, or in any of the mines furnishing coal to this complainant, they will be summarily dealt with, and that said miners who are ready and willing to work are advised that they had better refuse the said employment——

That, too, is considered a crime.

And are warned that unless they do so they will have cause to regret it to their sorrow.

Certainly they will have cause to regret it to their sorrow if they attempt to secure an increase of wages or a decrease of the hours of labor.

There is a question in this that commends itself to the attention of all of us. The question is whether these injunctions are issued upon the theory that the employers have some property rights in the workingmen. Of course, it is all assumed to be in the exercise, in some form or other, of the police power of the State, but it is not so much in the minds of those who seek these injunctions to save property from destruction as is the idea conveyed in the notion or theory that the employer has some property rights in the workingman himself.

This bill seeks to define exactly the right of the man to own himself, and his right to quit work, as well as his right to combine with his

fellow-workers to exercise the natural right of association to protect himself, with others, from an encroachment upon this natural right. I beg to say that I should like to enlarge upon that thought, and I have written some thoughts upon the question of the right to strike and the right to picket an establishment, as well as the question of boycotts, and with your permission I should like to have it incorporated in my remarks.

The CHAIRMAN. Very well. Hand it to the reporter.

The statement referred to is as follows:

THE RIGHT TO STRIKE.

The daily papers have commented with considerable satisfaction and glee upon a so-called labor "conspiracy trial," which recently occurred at Buffalo before an eminent judge who had a short while previously declined an appointment to the appellate bench. Court and jury, it was said, had rebuked the "tyranny" of unionism and asserted the right of a workman to earn a livelihood. The truth is, as a little reflection will show, that the court compelled the jury to return an unjust verdict and virtually violated a well-established principle in law.

Judges never tire of assuring us in and out of season that the law recognizes the right of labor to dictate its own terms and to combine for all legitimate purposes; and in nearly every adverse decision we find a disclaimer of the intention of negativing the right to strike. Let us see how far the Buffalo judgment harmonizes with these protestations.

The facts are briefly these: A skilled machinist and a member of the Buffalo Machinists' Union was employed on a newspaper of that city. The typographical union requested him to join its membership as a condition of retaining his job, that union being in control of the composing room of the newspaper in question. He refused, for reasons that we need not inquire into. Whether he was right or wrong is irrelevant. The typographical union demanded his discharge and threatened a strike. The proprietor of the paper preferred to avoid trouble with the union and dismissed the machinist. He tried to secure work elsewhere and failed. He therefore brought suit against the officers of the union, asking damages equal to the wages he had lost during his enforced idleness. The total amount was $650. The court explicitly instructed the jury to assess damages, stating that under the laws of the State the plaintiff was entitled to recover. The jury was without discretion. The court took upon itself the responsibility of construing the law of conspiracy, and the jury was restricted to the question of fact—the amount of damages actually sustained.

An exact statement of the facts thus disposes of the pretense that the jury manifested any hostility to the defendants and the union they represented, and any sympathy for the plaintiff. It did what it had to do under the law and the court's instructions. It had no right to ignore the court's interpretation of the law.

But what is the position of the judge? Here is the language he is reported as having used in his charge:

"The union had a right, if a man obnoxious to them was employed, to withdraw, and they had a right to fix wages and hours of work, but they had no right to force this man out of his position."

Study this remarkable utterance with care. Is it possible to reconcile the admission that "the union had a right to withdraw" if a man obnoxious to them was employed with the statement that they had "no right to force this man out of his position?" How did the union force the plaintiff out? By threatening "to withdraw," that is, to strike, for they can not suppose the court to be guilty of juggling with the word "withdraw." When a union strikes it withdraws, and, conversely, when it withdraws it strikes. Now, if the union had a right to strike, it certainly had the right to warn or threaten the employer that a strike would be ordered if he did not discharge the obnoxious man. This is all the union did. It threatened a strike, as it had a right to do. The employer, confronted with the necessity of choosing between the defendant and the members of the union, elected to dismiss the former, as he had a legal and moral right to do. The plaintiff thus lost his position, was "forced out" by the threat of the union to withdraw. It is a well-known saying in logic that "he who intends the cause intends the consequences of it." The forcing out was the consequence of the legitimate threat to withdraw. What kind of logic is it which says that a union has a right to strike when an obnoxious man is employed, but has no right to get rid of the obnoxious man by threatening to strike? Was such self-contradiction ever heard outside of bedlam?

There is no escape from the conclusion that the court denied the right of the union to order or threaten a strike as a means of securing the discharge of an obnoxious person, nullifying and violating his own admission that a strike for such a purpose, or any other, is lawful. If this be disputed, let the fair-minded man ask himself what other course was open to the union if it was determined not to work with the obnoxious man—what other way it had to exercise its "right to withdraw."

Suppose the union had withdrawn without assigning any reason, and suppose the employer had requested an explanation of the strike. Would not the union have had the right to name the cause—the presence of the obnoxious person? No one can answer this in the negative. There is no principle of law or morals forbidding strikers to state the cause of their action. Now, suppose the union had stated the reason, and the employer had then, in order to get the union men back, discharged the man. Would not the union have forced him out of his position by the strike? Is there any difference between the case supposed and the actual case?

The Buffalo court, by its ruling, attacked the right to strike—a right it acknowledged in terms and trampled upon in the direction to the jury to assess damages. The ruling is against the spirit of the New York law. It is a direct and plain violation of the right to strike. We can not believe the higher courts will affirm the judgment, and an appeal, we hope, has been taken.

We must assert and vindicate the right to strike against all quibbling and illogical courts and against more frank and blunt assailants.

THE BOYCOTT AS A LEGITIMATE WEAPON.

Organized labor has claimed, and continues the claim, the right to use the boycott. On the other hand, its opponents, and particularly the newspapers, have not ceased denouncing the boycott as an unlawful, aggressive, un-American, intolerable mode of warfare. There are several court decisions, though none from any of the ultimate courts of appeal, in which the same view is taken. One or two judges have upheld the boycott, and even in the antiboycott opinions certain significant admissions may be noted which, we will presently show, logically surrender the whole case against the practice in question. No fair-minded man will deny that the subject is an open one, and it is therefore profitable and proper to review the controversy and state labor's view of the matter.

What is the boycott? There is, fortunately, no reason for any difference upon the right definition of the term. In Anderson's Law Dictionary, a boycott is defined as "A combination between persons to suspend or discontinue dealings or patronage with another person or persons, because of a refusal to comply with a request of him or them. The purpose is to constrain acquiescence or to force submission on the part of the individual who, by noncompliance with the demand, has rendered himself obnoxious to the immediate parties, and perhaps to their personal and fraternal associates."

The first question to be answered is whether the criminal laws of the United States or of the several component States plainly, directly, and unequivocally declare "a combination between persons to suspend patronage"—the essence of the definition—to be illegal. The answer is a negative one. There is no law in any State or in the nation forbidding any or all combinations to discontinue dealings with obnoxious persons.

In connection with the pending boycott operations in New York and Ohio it has been acknowledged (though not without regret on the part of some) that in neither of the great States named is boycotting a statutory offense. Indeed, it would be impossible to frame a law rendering all forms of boycotting criminal. No one has ventured to advance so absurd and monstrous a proposal, and the courts themselves have had to recognize the perfect legitimacy of at least one form of boycotting. Thus, Judge Spring, of New York, whose decision in the Buffalo Express case, rendered a year or so ago, has recently been given wide publicity on account of its supposed strength, lucidity, and thoroughness, distinctly declared:

"The labor organizations had the right to refuse to patronize the Express, or to give support to any patron of that paper."

If words have meaning, this sentence establishes the legality of boycotting. We must bear in mind that the difficulty with the Express involved a number of separate organizations—compositors, pressmen, stereotypers—and that they all acted in concert as members of the Buffalo allied printers' unions. If these unions had the right to boycott—that is, discontinue dealings with the Express and all its patrons, it can only be because a combination of any number of men having community of interest to boycott an obnoxious person or persons is not unlawful. So far, then, as the aggrieved workmen were concerned there was no issue. Judge Spring conceded, then, the right to boycott the Express and its patrons, or advertisers and readers.

Can it be contended that the New York judge went too far and erred on the side of laxity or generosity to the boycotters? Not with any show of reason. Any other view is nonsensical on its face. Neither the Express nor its patrons had any vested claim or right to the patronage of the strikers. The strikers were free to bestow their patronage upon whom they pleased, and none could call upon them to assign reasons for their preferences. They were not obliged to purchase the Express, nor were they under obligations to deal with the merchants who used the advertising pages of the newspaper. We take it, therefore, that any court would feel itself bound to affirm the principle laid down in the sentence quoted from Judge Spring's opinion. And that sentence, we repeat, establishes the propriety and legality of simple, passive boycotting by people having a common grievance against one or more persons, even if that grievance be wholly imaginary or trivial.

At what point, then, does boycotting become criminal and a combination to suspend dealings pass into a conspiracy? This is the crucial question.

The Buffalo Express case being typical, we may continue to use it as the basis for our argument. The offense of the boycotters, according to Judge Spring, consisted in this—that they did not limit the combination to members of allied printers' unions, who were directly interested in the dispute, but proceeded to enlist all other labor unions "in Buffalo" in the common undertaking to root out the Express or to coerce it into assenting to the domination of this union. The "other" labor unions joined in the boycott and passed resolutions refusing to patronize the paper and its advertisers, and a special organ was established to push the company and spread the boycott. The consummation of this "scheme," the judge says, was not "insidious, but open, defiant, and unmistakable." In other words, the original boycotters, who acted within their right in suspending their dealings with the Express and its advertisers, openly appealed, requested, and urged others, not concerned in the difficulty, to become parties to the boycott.

Now, for the sake of simplicity, assume first that this "open and defiant" appeal was accompanied by no threats of any kind. Let us assume that the original boycotters limited themselves to moral suasion and, in the name of such principles as the solidarity of labor, the justice of the demand for fair wages, the economic advantage of strong labor organizations, and so on, they merely requested and exhorted other workmen, and elements in sympathy with labor, to join in their boycott, would such a course be unlawful? If such appeals and arguments are successful and extend the boycott to outsiders, do we have a case of criminal conspiracy? Are the appellants also guilty of any wrongdoing, and are those who respond to the appeal guilty of some sort of crime?

There is nothing in law or morality to warrant affirmative answers to these queries. There are no decisions upon the hypothetical point raised. We may take it for granted, however, that the most rabid antiboycott agitator will not venture to assert that boycotters may not resort to moral suasion in trying to enlist others or that outsiders may not heed boycotters' appeals, and of their own free will suspend dealings with the persons or firms that had incurred the displeasure of their friends, associates, or patrons. Strikers have the right to appeal to their friends to aid them by going out on a sympathetic strike, and that their friends have the right to act upon such an appeal. Precisely the same principle applies to boycotters. A sympathetic boycott is as legal and legitimate as a sympathetic strike. Just as men may strike for any reason, or without reason at all, so may they suspend dealings with merchants or others for any reason or for no reason at all. Thus a boycott may extend to an entire community without falling under the condemnation of any moral or constitutional or statutory law.

But we shall be triumphantly told: Boycotters never do confine themselves to moral suasion and appeal; that they resort to threats, intimidation, and coercion, and it is this which makes what is called "compound boycotting"—that is, boycotting which extends to parties not concerned in the original dispute, criminal and aggressive. Under the criminal code of New York and other States, it is a criminal conspiracy to prevent a person or persons "from exercising a lawful trade or calling, or doing any other lawful act, by force, threats, intimidation, or by interfering, or threatening to interfere, with tools, implements, or property, or with the use and employment thereof." Boycotters who try to coerce people into complying with their demands by threats and intimidation clearly come within the definition of conspiracy. Hence, in the last analysis, the objection to boycotting is an objection to threats and intimidations.

This sounds very plausible. It is easy to deduce from such premises that boycotters interfere with property rights and the pursuit of lawful callings, and that under the national and State constitutions, to say nothing about explicit anticonspiracy laws, they are to be held civilly and criminally liable. It is easy to talk about protection

of property rights, the tyranny of preventing people from earning a livelihood, the duty of the Government to secure the equal protection of the laws, etc.

But this argument about the employment of threats and intimidation is fallacious and superficial. Its apparent validity disappears when, not satisfied with ugly-looking words, we demand precise definitions. No one pretends for a moment that it would be proper for a boycotter to approach a merchant and say: "You must join us in suspending all dealings with that employer or newspaper or advertiser on pain of having your house set on fire or of a physical assault." This would be an unlawful threat, and people who try to enlist others in their campaign by threats of this character would certainly be guilty of a criminal conspiracy.

Do boycotters use such threats? Do they contend for the right to employ force or threats of force? Our worst enemies do not contend that they do. They "threaten," but what do they threaten? They "intimidate," but how? Let Judge Taft, who issued his sweeping antiboycott injunction, be a witness on this point. He said:

"As usually understood, a boycott is a combination of many to cause a loss to one person by coercing others, against their will, to withdraw from him their beneficial interests through threats that unless those others do so the many will cause similar loss to them."

This, then, is the threat; this the intimidation. The boycotters threaten third parties to boycott, then, if they refuse to join in the boycott of the original subjects of the campaign. In other words, the boycotters say to the "others": If you decline to aid us in our struggle, we will suspend dealings with you and transfer our custom to those who do sympathize with us and will support us. The question which the judges and editors who glibly denounce boycotting have never paused to explain is how a mere threat to suspend dealings can be a criminal threat, like a threat to assault person or property. No man in his senses will dispute this axiomatic proposition, namely, that a man has a right to threaten that which he has a right to carry out. You may not threaten murder, arson, assault, battery, libel, because these things are crimes or torts. But you may threaten to cease admiring him or taking his advice, because he has no claim to your admiration or obedience, and you are at liberty to cease doing that which you have freely and voluntarily done. Similarly you may tell a man that if he does a certain thing, you will never speak to him or call at his house. This is a threat, but it is a threat that you have a right to make. Why? Because you have a right to do that which you threaten.

The same thing is strictly true of boycotting—of suspension of dealings with merchants, publishers, carriers, cabmen, and others. You may threaten to take your custom away from them and assign any reason you choose. They are not entitled to your custom as a matter of legal or moral right, and you are at liberty to withdraw and transfer it any time and for any conceivable reason. It follows beyond all question that you have a perfect right to threaten to withdrawn your custom. The principle is the same, whether you threaten one man or a hundred men, whether you are alone in threatening the withdrawal of your custom or a member of a vast combination of people acting together in the premises.

Is not the result coercion of men to do certain things against their will? Very likely, but not all forms of coercion are criminal. Coercion is another term with an ugly and ominous sound which is freely used to intimidate the thoughtless. The legality or illegality of coercion depends on the method used. A man may be coerced by actual force, by the threat of force, or by indirect means which the law can not and does not prohibit. Coercion by a threat to suspend dealings is, to revert to our illustration, in the same category with coercion through a threat to cease friendly intercourse.

With this elementary principle in mind, the case against the boycott utterly collapses. An agreement to boycott any number of persons is not a criminal conspiracy, and a fortiori an agreement among any number to threaten a boycott can not be a criminal conspiracy. Let us consider briefly a few of the propositions and pseudo arguments which we find in judicial pronouncements upon the subject.

In a New York case it was said: "The word in itself (meaning the term boycott) implies a threat." Granted, but what kind of a threat? A threat to boycott. To say that boycotting is criminal because the word boycott implies a threat to boycott is truly extraordinary reasoning. It is worse than reasoning in a vicious circle. It is an attempt at proving a less doubtful proposition by assuming a more doubtful one to be indisputably true. Further in the same case: "In popular acceptation it (the boycott) is an organized effort to exclude a person from business relations with others by persuasion, intimidation, and other acts which tend to violence (!), and they coerce him, through fear of resulting injury, to submit to dictation." We have already exposed the question-begging and superficial use of the terms, intimidations, coercions, and threats, but the insinuation that threats of boycotting "tend to violence" is particularly gratuitous and absurd.

Why does boycotting or the threats of boycotting tend to violence? What connection is there between suspending dealings and violence? To suspend dealings is every man's right; to use violence, save in self-defense, no man's.

In another New York case we read: "A conspiracy to injure a person's business by threatening persons from entering his employment, by threats and intimidation, is a crime at common law." How clear and forcible! What does "threatening persons by threats" mean? Leave out the terrifying and favorite word "threat" and the proposition is this: It is a crime to injure a person by telling others that if they do not discontinue dealings with him, dealings with them will be discontinued. It is quite possible that this was a crime under the old common law. An agreement to strike for higher wages was a crime in the early days of our Government, under the common law. The common law was vague, obscure, and, as interpreted in less enlightened days, tyrannical. The common law as to strikes has been abandoned, and it will have to be abandoned as to the boycott.

Men have a right to do business, but this is one-half of the truth. The men with whom business is done have a right to withdraw and transfer their custom. This is the other half, which is always ignored in antiboycott arguments. Keep the two halves in view and boycotting on any scale and for any reason becomes a direct, unavoidable deduction.

Labor claims the right to suspend dealings with any and all who refuse to support what it considers its legitimate demands. The decisions are confused, and the question is new, but ultimately the right of any man to do with his patronage what he pleases must be recognized.

Workmen have a right to say that they will not patronize those who are unfriendly to them and those who support their adversaries. This is all that boycotting implies. There is no aggression here; no criminal purpose, and no criminal way of accomplishing a proper purpose.

THE RIGHT OF PICKETING.

Chicago has been the scene of many labor troubles, strikes, and disturbances for the past several months. Arrests, injunction proceedings, and contempt cases have grown out of these difficulties, and to some of the latter attention must be called. Recently a striker was adjudged justly of contempt of court by Judge Holdom, because he had disregarded an injunction which, among other things, restrained him and his fellow-strikers from "picketing." The court had no hesitation in declaring picketing to be an illegal act.

Is this true? Is picket duty unlawful in Illinois or in any other State? Certainly not under any statute. No American legislature has ever prohibited picket duty on the part of striking workmen, and none is ever likely to do so. It must be, then, under the principles of the common law that picketing is declared to be unlawful, and it is interesting to inquire how this conclusion is reached.

What is picketing? It is the stationing of certain members of trade unions near factories or establishments involved in strikes (or lockouts) for the purpose of inducing, persuading, and prevailing upon nonunion men to respect the cause of labor and refrain from taking the places vacated by the unionists. How can this be unlawful? It is certainly the right of strikers or their sympathizers to use the public highway peaceably and in a way not obstructive of the equal rights of others. The claim of labor to free exercise of picketing does not include obstruction of the streets and highways, and it can not be honorably alleged that a few pickets, placed at considerable intervals, interfere with the general liberty of using the highways. We must, therefore, reject this ground of objection to the performing of picket duty of union men.

There is but one other possible ground. If it be criminal to plead, argue, or reason with men intending to take the places of strikers; if it be wrong and illegal to employ moral suasion in such cases, then, indeed, it logically follows that picketing is unlawful. One Illinois judge was bold enough to take this position. He issued a sweeping injunction prohibiting strikers from threatening, molesting, coercing, interfering with, inducing, or persuading men from taking employment under the person who had sought the protection of the court. That order was certainly wide enough to satisfy the most arrogant enemies of unionism, but it was too "advanced" for the judiciary of Illinois, and a prompt modification of it was obtained from another judge of equal jurisdiction. The right to use moral suasion, of inducing men to quit work, or refuse to take it in the first place, was held to be inviolable.

And Judge Holdom justifies his ruling by asserting that no picket ever limits himself to moral suasion; that whatever the unions may say to the contrary, in practice their pickets almost invariably resort to physical coercion, intimidation, threats, and

aggression. It is because of this fact that picketing, all picketing, is unlawful. To peaceable picketing there would be no objection, but physical interference and molestation are of the essence of the definition of "picketing," and hence the courts are bound to forbid it, along with other forms of criminal aggression.

This is the argument—the excuse—in brief. Is it necessary to waste many words on it? Is not the fallacy which vitiates it painfully manifest? Who has so defined "picketing" as to make aggression an essential attribute of the thing? And if some courts had chosen to frame such a definition, is organized labor bound by it, and must other courts adopt it as a legal and correct definition? Judge Holdom cites no authority for his arbitrary direction, and it will be interesting to see how the appel late and supreme courts will look upon the matter (for an appeal has been taken from his extraordinary ruling).

Union labor asserts the legal and moral rights of employing the picket system, just as it asserts the right to strike and to boycott. None of these weapons is necessarily offensive, but they are all clearly defenses. Violence is not a recognized part of labor's plan of campaign. There can be no success for any strike or boycott which defends an assault on person and property. Labor needs to be strong through numbers, effective organization, the justice of its cause, and the reasonableness of its methods. It relies on moral suasion, because of its conviction that its demands are generally equitable, and picketing is as necessary to the employment of moral influence as the boycott is necessary to the proper use of the moral power wielded by labor and its sympathizers.

The pernicious injunction habit, which betrays so many courts into outrageous injustice, into prohibiting even the most innocent acts, is responsible for the absurd misclassification of picketing. A little common sense and calm reflection would suggest to the courts that no sane unionist would venture to maintain in court or before the public the right of strikers or of locked-out workmen to patrol the streets for the purpose of catching and assulting other workmen, who, either from incapacity or lack of opportunity, have remained outside the progressive labor movement. Yet courts have no hesitation about restraining large bodies of men from "inducing" others to appeal an argument to cooperate with them in admitting legal enterprises, or, at least, to refrain from doing them injury and wrong. It is becoming clearer and clearer that organized labor will have to fight for its rights in the courts. Every unjust decision should be contested stubbornly with the aid of the best talent and advice.

UNITED STATES OF AMERICA, *District of West Virginia, ss:*

The President of the United States of America to the marshal of the district of West Virginia, greeting:

You are commanded to summon M. D. Ratchford and W. H. Miller, citizens of the State of Ohio; Samuel Gompers, a citizen and resident of the District of Columbia; J. R. Sovereign, a citizen and resident of the State of Pennsylvania: W. D. Mahon, a citizen of the State of Michigan; James O'Connell, a citizen and resident of the State of Pennsylvania; Christ. Evans, not a citizen of the State of Maryland, whose citizenship and residence is to the plaintiff unknown; J. W. Rea and James Wood, citizens of the State of Illinois; John Burdess, P. F. Burgh, William Burdess, W. A. Bennett, John Cunningham, H. Costella, D. D. Edwards, R. Hall, D. Grace, G. W. Ernst, A. W. Hamrick, N. M. Knott, Lewis Voyle, Nich. Loss, N. McMasters, John Ruthkowski, D. C. Masch, H. Parker, W. T. Richards, G. Richards, John O. Reese, D. C. Rayl, James Skadden, G. B. Skinner, Thomas Sharkey, Joseph Vengle, James Voyle, Paul Girod, A. R. Watkins, Ben Holdsworth, Jess Soles, John Howard, John McNeemer, Bailey Bunnell, J. L. Higganbotham, Frank Stevens, Frank Dunn, Staats Dunn, Fleming Merrifield, S. P. Rowland, L. H. Hall, John E. McIntyre, Tony Franks, George Kisner, Calvin Tarleton, William Girod, Weyman Level, Boss Harker, Charles Weaver, and E. L. Davis, citizens of the State of West Virginia, their confederates, associates, and coconspirators, whose names are unknown, and citizens of the State of West Virginia, if they be found in your district, to be and appear in the circuit court of the United States for the district of West Virginia aforesaid, at rules to be held in the clerk's office of said court, at Parkersburg, on the first Monday in October next, to answer a certain bill in chancery, now filed and exhibited in said court against them by Charles Mackall, a resident and citizen of the State of Maryland, in his own behalf and in the behalf of the other remaining bondholders of the Montana Coal and Coke Company, or such of them as may come in and be made parties and contribute to the prosecution of this cause.

Hereof you are not to fail under the penalty of the law thence ensuing. And have then and there this writ.

Witness, the Hon. Melville W. Fuller, chief justice of the United States, this 16th day of August, A. D. 1897, and in the one hundred and twenty-second year of the independence of the United States of America.

Attest: L. B. DELLICKER, *Clerk.*

Memorandum.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of October, 1897, otherwise the said bill may be taken pro confesso.

L. B. DELLICKER, *Clerk.*

Attest:
L. B. DELLICKER, *Clerk.*

ORDER.

At a circuit court of the United States for the district of West Virginia, continued and held at Parkersburg, in said district, on the 16th day of August, 1897, the following order was made and entered of record, to wit: Charles Mackall, complainant, *v.* M. D. Ratchford et al., defendants in equity.

On this the 16th day of August, 1897, the complainant in this action, by A. B. Fleming, his counsel, presented to the undersigned, one of the judges of the circuit court of the United States for the district of West Virginia, his bill of complaint, alleging, among other things, that the defendants, in conjunction with other defendants in the bill named, were conspiring together to interfere with the operating and conducting of the coal mines operated by the Montana Coal and Coke Company from mining and producing coal in and from the said mines, and that unless the court granted an immediate restraining order preventing them from interfering with the employees of the owners of said mines there was great danger of irremediable injury, damages, and loss to the owners of said mines.

Upon the consideration whereof the bill is ordered to be filed and process issued thereon, and a temporary restraining order is allowed, restraining and inhibiting the defendants and all others associated and connected with them from in any wise interfering with the management, operation, or conducting of said mines by their owners or those operating them, either by menaces, threats, or any character of intimidation used to prevent the employees of said mines from going to or from said mines, or from engaging in the business of mining in said mines.

And the defendants are further restrained from entering upon the property of the owners of the said the Montana Coal and Coke Company for the purpose of interfering with the employees of said company, either by intimidation or the holding of either public or private assemblages upon said property, or in any wise molesting, interfering with, or intimidating the employees of the said the Montana Coal and Coke Company so as to induce them to abandon their work in said mines.

And the defendants are further restrained from assembling in the paths, approaches, and roads upon said property leading to and from their homes and residences to the mines, along which the employees of the Montana Coal and Coke Company are compelled to travel to get to them, or in any way interfering with the employees of said company in passing to and from their work, either by threats, menaces, or intimidation; and the defendants are further restrained from entering the said mines and interfering with the employees in their mining operations within said mines, or assembling upon said property at or near the entrance of said mines.

The purpose and object of this restraining order is to prevent all unlawful combinations and conspiracies, and to restrain all the defendants engaged in the promotion of such unlawful combinations and conspiracies from entering upon the property of the Montana Coal and Coke Company described in this order, and from in any wise interfering with the employees of said company in their mining operations, either within the mines or in passing from their homes to the mines and upon their return to their homes, and from unlawfully inciting persons who are engaged in working the mines from ceasing to work in the mines, or in any way advising such acts as may result in violations and destruction of the rights of the plaintiff in this property.

The motion for a permanent injunction is set down for hearing in the United States court room at Wheeling on the 20th day of September, 1897.

This injunction is not to take effect until the plaintiff, or some responsible person for him, shall enter into bond in the sum of $5,000, conditioned to pay all such costs and damages that will accrue to the defendants by reason of the plaintiff suing out this injunction.

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, hereby certify that the foregoing is a true copy of an order entered of

record in said court on the 16th day of August, 1897, in the equity cause of Charles Mackall *v.* M. D. Ratchford et al. therein pending. Bond, in accordance with the foregoing order, has been given.

Given under my hand and seal of said court at Parkersburg, in said district, this 16th day of August, 1897.

L. B. DELLICKER,
Clerk Circuit Court United States, District of West Virginia.

THE STATE OF WEST VIRGINIA.

To the sheriff of Marion County, greeting:

You are hereby commanded, in the name of the State of West Virginia, to summons J. W. Rea, John Burdess, P. F. Burgh, William Burdess, W. A. Bennett, John Cunningham, H. Costella, D. D. Edwards, R. Hull, D. Grace, G. W. Ernst, A. W. Hamrick, N. M. Knotts, Lewis Voyle, Nich. Loss, N. McMaster, John Rutthkowski, D. C. Masch, H. Parker, W. T. Richards, John O. Reese, B. C. Rayle, James S. Kadden, G. B. Skinner, Thomas Sharkey, Joseph Vengle, James Voyle, A. R. Watkins, Ben Holdsworth, Jesse Soles, John Howard, John McNeemar, Bailey Bunnell, J. L. Higganbotham, Frank Stevens, Frank Dunn, Staats Dunn, S. P. Rowland, L. H. Hall, John E. McIntyre, Tony Franks, Elijah Freeman, E. E. Mosholder, N. L. Feathers, Robert Conaway, Marion Conaway, Charles Fortney, Charles McDaniel, Joseph Murphey, G. B. Liston, Charles Clark, B. F. Vanmeter, John S. Brannon, William Shaver, Ruben Shaver, William Davidson, William Collins, W. A. Davis, J. E. Davis, Ed. L. Davis, W. D. Mahon, James Wood, W. A. Carney, James O'Connell, W. H. Wiley, Patrick Harney, George Rowe, their confederates, associates, and coconspirators, whose names are to the plaintiff unknown, to appear before the judge of the circuit court of Marion County, at rules to be held in the clerk's office of the said court on the first Monday in October, 1897, to answer a bill in chancery exhibited against them in said court by the Worthington Coal and Coke Company, a corporation duly organized and existing under the laws of the State of West Virginia.

And have then there this writ.

Witness Benjamin F. Ramage, clerk of our said court, at the court-house in said county, the 2d day of September, 1897, and the thirty-fifth year of the State.

BENJAMIN F. RAMAGE.

A copy. Teste:

B. F. RAMAGE, *Clerk.*

A temporary injunction granted as prayed for in the within bill, restraining and inhibiting the defendants, and all others associated and connected with them, from in any wise interfering with the management, operation, or conducting of the said mines by their owners, or others operating them, either by menaces, threats, or any character of intimidation used to prevent the employees of said mines from going to or from said mines, or from engaging in the business of mining in said mines. And the defendants, their associates, confederates, and coconspirators are further restrained from entering upon the property of the said the Worthington Coal and Coke Company for the purpose of interfering with the employees of the said company, either by intimidation or holding of either public or private assemblages upon said property, or from in any wise molesting, interfering with, or intimidating the employees of the said the Worthington Coal and Coke Company, so as to induce them to abandon their work in and about the said mines. And the said defendants, their associates, confederates, and coconspirators are further restrained from assembling in the paths, approaches, and roads upon said property leading to and from their homes and residences to the mines along which the employees of the said the Worthington Coal and Coke Company travel to get to them, or in any way interfering with the employees of the said company in passing to and from their work, either by threats, menaces or intimidation. And the defendants, their associates, confederates, and coconspirators are further restrained from entering the said mines and interfering with the employees in their mining operations within said mines, or assembling upon the said property at or near the entrance of the said mines.

The purpose and object of this restraining order is to prevent all unlawful combinations and conspiracies, and to restrain all the defendants, their confederates, associates, and coconspirators, engaged in the promotion of such unlawful combination and conspiracy, from entering upon the property of the said the Worthington Coal and Coke Company, described in this order, and from in any wise interfering with the employees of the said company in their mining operations, either within the mines or in passing from their homes to the mines, and upon their return to their homes, by menaces, threats, marching, and countermarching, or patrolling the same

with the intent to intimidate and frighten the employees of the plaintiff and cause them to suspend or cease their employment with the plaintiff, and if the same be instituted, had, and done with the purpose of interfering with the business of the plaintiff, or in any wise inciting, by incendiary acts or threats, such acts as may result in violation or destruction of the rights of the plaintiff in this property.

Bond in the penalty of $1,000, with approved security, has been given by the complainant.

Attest: B. F. RAMAGE, *Clerk.*

UNITED STATES OF AMERICA, *District of West Virginia, ss:*

The President of the United States of America to the marshal of the district of West Virginia:

You are commanded to summon Fred Dilcher, F. J. Weber, W. Haskins, Chris Evans, M. B. Ratchford, citizens and residents of the State of Ohio; Eugene V. Debs, a citizen and resident of the State of Indiana; Pat Nolan, M. D. Mahon, citizens and residents of the State of Michigan; and Joseph Vitchestein, citizen and resident of the State of Pennsylvania, and all their confederates, associates, agents, and promoters, whose citizenship and places of residence are unknown, if they be found in your district, to be and appear in the circuit court of the United States, for the district of West Virginia, aforesaid, at rules to be held in the clerk's office of said court at Charleston, on the first Monday in October next, to answer a certain bill in chancery, now filed and exhibited in said court against them by the McDonald Colliery Company, a corporation, a citizen of and resident in the State of West Virginia, and hereof you are not to fail, under the penalty of the law thence ensuing, and have then and there this writ.

Witness, the Hon. Melville W. Fuller, Chief Justice of the United States, this 16th day of August, A. D. 1897, and the one hundred and twenty-second year of the Independence of the United States of America.

Attest:

[SEAL.] L. B. DELLICKER, *Clerk.*

Memorandum.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of October, 1897, otherwise the said bill may be taken pro confesso.

L. B. DELLICKER, *Clerk.*

Copy. Teste:

L. B. DELLICKER, *Clerk.*

United States of America, circuit court of the United States, fifth judicial circuit and eastern district of Louisiana. United States *v.* The Workingmen's Amalgamated Council of New Orleans, et al., No. 12143.

The President of the United States of America to the Workingmen's Amalgamated Council of New Orleans and State of Louisiana, and James Leonard, John Breen, John M. Callaghan, A. M. Kier, and James E. Porter, the managing committee of said council, as such and individually, greeting.

Whereas it has been represented unto us in our said circuit court on the part of the United States in a bill in equity lately exhibited against you touching certain matters and things therein set forth.

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said the Workingmen's Amalgamated Council of New Orleans and State of Louisiana, and James Leonard, John Breen, John M. Callaghan, A. M. Kier, and James E. Porter, the managing committee of said council, as such and individually, your attorneys, and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from combining by violence or intimidation or in any other manner to interrupt the trade or commerce among the States of the United States and foreign nations and from combining by violence and intimidation to interrupt or hinder those who are at work in conducting or carrying on the interstate and foreign commerce or who are engaged in moving the goods and merchandise which is passing through the city of New Orleans from State to State or to and from foreign countries; and that you remain so inhibited and enjoined until the further order of our said court in the premises.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 27th day of March, in the year of our Lord, 1893.

[SEAL.] E. R. HUNT, *Clerk.*

The following order was entered in the following cases by Judge Jackson after consultation with Judge Goff:

In the circuit court of the United States, district of West Virginia. James Sloan, jr., *v.* Eugene V. Debs, et al., in equity. Charles Mackall *v.* Eugene V. Debs, et al., in equity. Charles Mackall *v.* M. D. Ratchford, et al., in equity.

On motion of A. B. Fleming, counsel for plaintiffs in foregoing cases, it is ordered that the marshal of this district do notify and warn the strikers that marching to and fro through the company's property at any time in the above cases will be regarded as an effort to intimidate the miners of said companies, and such marching will be considered as a violation of the injunction heretofore awarded in the above cases.

J. J. JACKSON,
United States District Judge.

AUGUST 17, 1897.

ORDER.

At a circuit court of the United States for the district of West Virginia, continued and held at Parkersburg in said district, on the 4th day of August, 1897, the following order was made and entered of record, to wit: James Sloan, jr., complainant, *v.* Eugene V. Debs et al., defendants. In equity.

On this the 4th day of August, 1897, the complainant in this action, by A. B. Fleming, his counsel, presented to the undersigned, one of the judges of the circuit court of the United States for the district of West Virginia, his bill of complaint alleging among other things that the defendant, in conjunction with other defendants in the bill named, were conspiring together to interfere with the operating and conducting of the coal mines operated by the Monongah Coal and Coke Company, and by such interference preventing the employees of the Monongah Coal and Coke Company from mining and producing coal in and from the said mines; and that unless the court granted an immediate restraining order, preventing them from interfering with the employees of the owners of said mines, there was great danger of irremediable injury, damage, and loss to the owners of said mines.

Upon consideration whereof the bill is ordered to be filed and process issued thereon, and a temporary restraining order is allowed restraining and inhibiting the defendants and all others associated and connected with them from in anywise interfering with the management, operation, or conducting of said mines by their owners or those operating them, either by menaces, threats, or any character of intimidation used to prevent the employees of said mines from going to or from said mines or from engaging in the business of mining in said mines.

And the defendants are further restrained from entering upon the property of the owners of the said Monongah Coal and Coke Company for the purpose of interfering with the employees of said company, either by intimidation or the holding of either public or private assemblages upon said property, or in anywise molesting, interfering with, or intimidating the employees of the said Monongah Coal and Coke Company so as to induce them to abandon their work in said mines.

And the defendants are further restrained from assembling in the paths, approaches, and roads upon said property leading to and from their homes and residences to the mines, along which the employees of the Monongah Coal and Coke Company are compelled to travel to get to them, or in any way interfering with the employees of said company in passing to and from their work, either by threats, menaces, or intimidation; and the defendants are further restrained from entering the said mines and interfering with the employees in their mining operations within said mines, or assembling upon said property at or near the entrance of said mines.

The purpose and object of this restraining order is to prevent all unlawful combinations and conspiracies from entering upon the property of the Monongah Coal and Coke Company described in this order, and from in any wise interfering with the employees of said company in their mining operation, either within the mines or in passing from their homes to the mines and upon their return to their homes, and from unlawfully inciting persons who are engaged in working the mines from ceasing to work in the mines, or in any wise advising such acts as may result in violations and destruction of the rights of the plaintiff in this property.

The motion for a permanent injunction is set down for hearing at the United States court room at Wheeling on the 20th day of September, 1897.

This injunction is not to take effect until the plaintiff, or some responsible person for him, shall enter into bond in the sum of $5,000, conditioned to pay all such costs

and damages that will accrue to the defendants by reason of the plaintiff suing out this injunction.

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, hereby certify that the foregoing is a true copy of an order entered of record in said court on the 4th day of August, 1897, in the equity cause of James Sloan, jr., *v.* Eugene V. Debs et al., therein pending. Bond, in accordance with the foregoing order, has been given.

Given under my hand and seal of said court, at Parkersburg, in said district, this 4th day of August, 1897.

L. B. DELLICKER,
Clerk Circuit Court of the United States, District of West Virginia.

ALLEGHENY COUNTY, *ss.*

The Commonwealth of Pennsylvania to the United Mine Workers of America; Patrick Dolan, president; Edward McKay, vice-president, and William Warner, secretary and treasurer, of district No. 5 of the said United Mine Workers of America; and Patrick Dolan, Edward McKay, William Warner, Andrew Savage, Thomas Kissop, Lawrence Magdalene, John Larimer, Silas Cole, and Paul Trimmer, greeting:

Whereas on the 12th day of August, A. D. 1897, a bill in equity was filed in our court of common pleas No. 1, for the county of Allegheny, against you at the suit of the New York and Cleveland Gas Coal Company.

And whereas on the 12th day of August, 1897, the cause aforesaid came on to be heard upon a motion for a preliminary injunction, and was argued by counsel, whereupon it was ordered, adjudged, and decreed that a preliminary injunction do issue forthwith restraining and enjoining the said defendants and others associated or cooperating with them in the matters complained of in the said bill, restraining and enjoining them, and each of them, from assembling, marching, or encamping in proximity of the said mines and the houses of miners of the plaintiff company in Allegheny County, Pa., for the purpose of intimidation, menaces, threats, and opprobrious words, of preventing said miners of said plaintiff company from working in said mines; and further restraining and enjoining them, and each of them, from inducing or compelling any of the employees or miners of the said plaintiff now employed, or who may hereafter be employed, to quit their work or to leave the plaintiff's service by any threats, menace, and show of force or other intimidation. And it is further ordered that the application that this restraining order shall be made permanent shall be heard on Monday, August 16, 1897, at 10 o'clock a. m.

And it is ordered that the said complainant file a bond in the sum of $5,000, with sureties to be approved by the court, to answer for such damages as may be lawfully suffered by the defendants by reason of this order.

Now, therefore, we command you, the said defendants, and each of you (the bond above referred to having been duly approved and filed), that you desist, and that you cause your servants, agents, and employees to desist, from doing the things specified in the order of the court. And this as you shall answer the contrary at your peril.

Witness, the Hon. Edwin H. Stowe, president judge of our said court, at Pittsburg, this 12th day of August, A. D. 1897.

[SEAL.] A. J. MCQUITTY,
Prothonotary.

HARVEY A. LOWRY, *Sheriff.*

UNITED STATES OF AMERICA, *District of West Virginia, ss:*

The President of the United States of America to the marshal of the district of West Virginia, greeting:

You are commanded to summon Eugene V. Debs and J. D. Coslett, citizens of the State of Indiana; M. D. Ratchford and W. H. Miller, citizens of the State of Ohio; W. D. Mahon, a citizen of the State of Michigan; H. B. McDonald and Thomas S. Owens, citizens of the State of Pennsylvania; J. W. Rea and James Wood, citizens of the State of Illinois; John Burdess, P. F. Burgh, William Burdess, W. A. Bennett, John Cunningham, H. Costella, D. D. Edwards, R. Hall, D. Grace, G. W. Erust, A. W. Hamrick, N. M. Knott, Lewis Voyle, Nich Loss, N. McMaster, John Ruthkowski, D. C. Masch, H. Parker, W. T. Richards, John O. Reese, D. C. Rayl, James S. Kadden, G. B. Skinner, Thomas Sharkey, Joseph Vengle, James Voyle, F. L. Watson, A. R. Watkins, Hen Holdsworth, Jess Soles, John Howard, John McNeemer, Bailey Bunnell, J. L. Higganbotham, Frank Stevens, Frank Dunn, Staats Dunn, Fleming Merrifield, S. P. Rowland, L. H. Hall, John E. McIntyre, Tony Franks, citizens of the State

of West Virginia, their confederates, associates, and coconspirators, whose names are to your orator unknown, and citizens of the State of West Virginia, if they be found in your district, to be and appear in the circuit court of the United States for the district of West Virginia aforesaid, at rules to be held in the clerk's office of said court at Parkersburg, on the first Monday in September next, to answer a certain bill in chancery, now filed and exhibited in said court against them by James Sloan, jr., a resident and citizen of the State of Maryland. Hereof you are not to fail under the penalty of the law thence ensuing.

And have then and there this writ.

Witness, the Hon. Melville W. Fuller, Chief Justice of the United States, this 4th day of August, A. D. 1897, and in the one hundred and twenty-second year of the Independence of the United States of America.

Attest: L. B. DELLICKER, *Clerk.*

Memorandum.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of September, 1897, otherwise the said bill may be taken pro confesso.

L. B. DELLICKER, *Clerk.*

Attest:
L. B. DELLICKER, *Clerk.*

UNITED STATES OF AMERICA, *District of West Virginia, ss:*

The President of the United States of America to the marshal of the district of West Virginia, greeting:

You are commanded to summon Eugene V. Debs and J. D. Coslett, citizens of the State of Indiana; M. D. Ratchford and W. H. Miller, citizens of the State of Ohio; W. D. Mahon, a citizen of the State of Michigan; H. B. McDonald, Hugh McDonald, and Thomas S. Owens, citizens of the State of Pennsylvania; S. W. Rea and James Wood, citizens of the State of Illinois; John Burdess, P. F. Burgh, William Burdess, W. A. Bennett, John Cunningham, H. Costella, D. D. Edwards, R. Hall, D. Grace, G. W. Erust, A. W. Hamrick, N. M. Knott, Lewis Voyle, Nich Loss, N. McMaster, John Ruthkowski, D. C. Masch, H. Parker, W. T. Richards, John O. Reese, D. C. Rayl, James Skadden, G. B. Skinner, Thomas Sharkey, Joseph Vengle, James Voyle, Paul Girod, A. R. Watkins, Hen Holdsworth, Jess Soles, John Howard, John McNeemer, Bailey Bunnell, J. L. Higganbotham, Frank Stevens, Frank Dunn, Staats Dunn, Fleming Merrifield, S. P. Rowland, L. H. Hall, John McIntyre, Tony Franks, citizens of the State of West Virginia, their confederates, associates, and coconspirators, whose names are unknown, and citizens of the State of West Virginia, if they be found in your district, to be and appear in the circuit court of the United States for the district of West Virginia aforesaid, at rules to be held in the clerk's office of said court at Parkersburg, on the first Monday in October next, to answer a certain bill in chancery, now filed and exhibited in said court against them by Charles Mackall, a resident and citizen of the State of Maryland, in his own behalf and in the behalf of the other stockholders of the West Fairmont Coal and Coke Company, or such of them as may come in and be made parties and contribute to the prosecution of this cause. Hereof you are not to fail, under the penalty of the law thence ensuing.

And have then and there this writ.

Witness, the Hon. Melville W. Fuller, Chief Justice of the United States, this 16th day of August, A. D. 1897, and in the one hundred and twenty-second year of the Independence of the United States of America.

Attest: L. B. DELLICKER, *Clerk.*

Memorandum.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of October, 1897, otherwise the said bill may be taken pro confesso.

L. B. DELLICKER, *Clerk.*

Attest:
L. B. DELLICKER, *Clerk.*

UNITED STATES OF AMERICA, *District of West Virginia, ss:*

The President of the United States of America to the marshal of the district of West Virginia, greeting:

You are commanded to summon Eugene V. Debs and J. D. Coslett, citizens of the State of Indiana; M. D. Ratchford and W. H. Miller, citizens of the State of Ohio; W. D. Mahon, a citizen of the State of Michigan; H. B. Mc-

Donald, Hugh McDonald, and Thomas S. Owens, citizens of the State of Pennsylvania; J. W. Rea and James Wood, citizens of the State of Illinois; John Burdess, P. F. Burgh, William Burdess, W. A. Bennett, John Cunningham, H. Costella, D. D. Edwards, R. Hall, D. Grace, G. W. Erust, A. W. Hamrick, N. M. Knott, Lewis Voyle, Nich Loss, N. McMaster, John Ruthkowski, D. C. Masch, H. Parker, W. T. Richards, G. Richards, John O. Reese, D. C. Rayl, James S. Kadden, G. B. Skinner, Thomas Sharkey, Joseph Vengle, James Voyle, F. L. Watson, A. R. Watkins, Hen Holdsworth, Jess Soles, John Howard, John McNeemer, Bailey Bunnell, J. L. Higganbotham, Frank Stevens, Frank Dunn, Staats Dunn, Fleming Merrifield, S. P. Rowland, L. H. Hall, John E. McIntyre, Tony Franks, citizens of the State of West Virginia, their confederates, associates, and coconspirators, whose names are to your orator unknown, and citizens of the State of West Virginia, if they be found in your district, to be and appear in the circuit court of the United States for the district of West Virginia aforesaid, at rules to be held in the clerk's office of said court at Parkersburg, on the first Monday in September next, to answer a certain bill in chancery, now filed and exhibited in said court against them by James Sloan, jr., a resident and citizen of the State of Maryland. Hereof you are not to fail under the penalty of the law thence ensuing.

And have then and there this writ.

Witness, the Hon. Melville W. Fuller, Chief Justice of the United States, this 4th day of August, A. D. 1897, and in the one hundred and twenty-second year of the independence of the United States of America.

Attest: L. B. DELLICKER, *Clerk.*

Memorandum.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of September, 1897, otherwise the said bill may be taken pro confesso.

L. B. DELLICKER, *Clerk.*

Attest:
L. B. DELLICKER, *Clerk.*

Charles Mackall, complainant, *v.* M. D. Ratchford et al., defendants. In equity.

On this the 16th day of August, 1897, the complainant in this action, by A. B. Fleming, his counsel, presented to the undersigned, one of the judges of the circuit court of the United States for the district of West Virginia, his bill of complaint, alleging, among other things, that the defendants, in conjunction with other defendants in the bill named, were conspiring together to interfere with the operating and conducting of the coal mines owned and operated by the Montana Coal and Coke Company, and by such interference preventing the employees of the Montana Coal and Coke Company from mining and producing coal in and from the said mines; and unless the court granted an immediate restraining order, preventing them from interfering with the employees of the owners of said mines, there was great danger of irremediable injury, damages, and loss to the owners of said mines.

Upon consideration whereof the bill is ordered to be filed and process issued thereon, and a temporary restraining order is allowed restraining and inhibiting the defendants and all others associated or connected with them from in any wise interfering with the management, operation, or conducting of said mines by their owners or those operating them, either by menaces, threats, or any character of intimidation used to prevent the employees of said mines from going to or from said mines, or from engaging in the business of mining in said mines.

And the defendants are further restrained from entering upon the property of the owners of the said the Montana Coal and Coke Company for the purpose of interfering with the employees of said company, either by intimidation or the holding of either public or private assemblages on said property, or in any wise molesting, interfering with, or intimidating the employees of the said the Montana Coal and Coke Company so as to induce them to abandon their work in said mines.

And the defendants are further restrained from assembling in the paths, approaches, and roads upon said property leading to and from their homes and residences to the mines, along which the employees of the Montana Coal and Coke Company are compelled to travel to get to them, or in any way interfering with the employees of said company in passing to and from their work, either by threats, menaces, or intimidation; and the defendants are further restrained from entering the said mines and interfering with the employees in their mining operations within said mines, or assembling upon said property at or near the entrance of said mines.

The purpose and object of this restraining order is to prevent all unlawful combinations and conspiracies, and to restrain all the defendants engaged in the promo-

tion of such unlawful conspiracies and combinations from entering upon the property of the Montana Coal and Coke Company described in this order, and from in any wise interfering with the employees of said company in their mining operations, either within the mines or in passing from their homes to the mines and upon their return to their homes, and from unlawfully inciting persons who are engaged in working the mines from ceasing to work in the mines, or in any way advising such acts as may result in violations and destruction of the rights of the plaintiff in this property.

The motion for a permanent injunction is set down for hearing at the United States court room at Wheeling on the 20th day of September, 1897.

This injunction is not to take effect until the plaintiff, or some responsible person for him, shall enter into bond in the sum of $5,000, conditioned to pay all such costs and damages that will accrue to the defendants by reason of the plaintiff suing out this injunction.

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, hereby certify that the foregoing is a true copy of an order entered of record in said court on the 16th day of August, 1897, in the equity cause of Charles Mackall *v.* M. D. Ratchford et al., therein pending. Bond in accordance with the foregoing order has been given.

Given under my hand and seal of said court at Parkersburg, in said district, this 16th day of August, 1897.

L. B. DELLICKER,
Clerk United States Circuit Court, District of West Virginia.

A copy. Attest:
L. B. DELLICKER, *Clerk.*

UNITED STATES OF AMERICA, *District of West Virginia, ss:*

The President of the United States of America, to the marshal of the district of West Virginia:

You are commanded to summon Fred Dilcher, F. J. Weber, W. Haskins, Chris Evans, M. B. Ratchford, citizens and residents of the State of Ohio; Eugene V. Debs, a citizen and resident of the State of Indiana; Pat Nolan, M. D. Mahon, citizens and residents of the State of Michigan, and Joseph Vitchestein, citizen and resident of the State of Pennsylvania, and all their confederates, associate agents, and promoters, whose citizenship and places of residence are unknown, if they be found in your district, to be and appear in the circuit court of the United States for the district of West Virginia aforesaid, at rules to be held in the clerk's office of said court at Charleston, on the first Monday in October next, to answer a certain bill in chancery, now filed and exhibited in said court against them by the McDonald Colliery Company, a corporation, a citizen of and resident in the State of West Virginia, and hereof you are not to fail, under the penalty of the law thence ensuing, and have then and there this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 16th day of August, A. D. 1897, and in the one hundred and twenty-second year of the Independence of the United States of America.

Attest:
[SEAL.] L. B. DELLICKER, *Clerk.*

Memorandum.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court, on or before the first Monday of October, 1897, otherwise the said bill may be taken pro confesso.

L. B. DELLICKER, *Clerk.*

Copy. Teste:
L. B. DELLICKER, *Clerk.*

United States of America, circuit court of the United States, fifth judicial circuit and eastern district of Louisiana. United States *v.* The Workingmen's Amalgamated Council of New Orleans et al., No. 12143.

The President of the United States of America to the Workingmen's Amalgamated Council of New Orleans and State of Louisiana, and James Leonard, John Breen, John M. Callaghan, A. M. Kier, and James E. Porter, the managing committee of said council as such and individually, greeting:

Whereas it has been represented unto us in our said circuit court on the part of the United States in a bill in equity lately exhibited against you touching certain matters and things therein set forth:

Now, therefore, in consideration of the premises and of the allegations in said bill

contained, you, the said The Workingmen's Amalgamated Council of New Orleans and State of Louisiana, and James Leonard, John Breen, John M. Callaghan, A. M. Kier, and James E. Porter, the managing committee of said council as such and individually, your attorneys, and each of you, are hereby commanded and strictly enjoined under the penalty of the law, that you absolutely refrain and desist from combining by violence or intimidation or in any other manner to interrupt the trade or commerce among the States of the United States and foreign nations, and from combining by violence and intimidation to interrupt or hinder those who are at work in conducting or carrying on the interstate and foreign commerce, or who are engaged in moving the goods and merchandise which is passing through the city of New Orleans from State to State or to and from foreign countries; and that you remain so inhibited and enjoined until the further order of our said court in the premises.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the city of New Orleans this 27th day of March, in the year of our Lord 1893.

[SEAL.] E. R. HUNT, *Clerk.*

UNITED STATES OF AMERICA, *District of West Virginia, ss:*

The President of the United States of America to the marshal of the district of West Virginia:

You are commanded to summon Fred Dilcher, F. J. Weber, W. H. Haskins, Chris Evans, M. B. Ratchford, citizens and residents of the State of Michigan, and Joseph Vitchestein, citizen and resident of the State of Pennsylvania, and all their confederates, associates, agents, and promoters, whose citizenship and places of residence are unknown, if they be found in your district, to be and appear in the circuit court of the United States for the district of West Virginia aforesaid, at rules to be held in the clerk's office of said court, at Charleston, on the first Monday in October next, to answer a certain bill in chancery now filed and exhibited in said court against them by the Harvey Coal and Coke Company, a corporation, a citizen of and resident in the State of West Virginia, and hereof you are not to fail under the penalty of the law thence ensuing, and have then and there this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 16th day of August, A. D. 1897, and in the one hundred and twenty-second year of the Independence of the United States of America.

Attest:

[SEAL.] L. B. DELLICKER, *Clerk.*

Memorandum.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of October, 1897, otherwise the said bill may be taken pro confesso.

L. B. DELLICKER, *Clerk.*

The Dunn Loop Coal and Coke Company *v.* Fred Dilcher and others, in equity.

On this the 14th day of August, 1897, in chambers, the complainant in this suit, by Charles E. Hogg, esq., its counsel, presented to the undersigned, one of the judges of the circuit court of the United States for the district of West Virginia, its bill of complaint, alleging, among other things, that the defendants named in its said bill are about to interfere with the operating and conducting of its coal plant and mines, and by such interference are about to prevent the employees of the plaintiff from mining and producing coal in and from its mines; and that unless the undersigned judge granted an immediate restraining order preventing them from interfering with the employees of the said plaintiff there was great danger of irreparable injury and damage and loss to the said plaintiff, inasmuch as the defendants are insolvent and wholly irresponsible in damages in an action at law.

Upon consideration whereof, it is ordered that the plaintiff's bill be filed with the clerk of this court at the city of Charleston, in the State of West Virginia, and that process do issue thereon; and a temporary restraining order is hereby allowed restraining and inhibiting the defendants, their confederates, and all others associated with them from in any manner interfering with the plaintiff's employees now in its employment at or upon its premises, or from in any manner interfering with any person in or upon its premises who may desire to enter its employment hereafter, by the use of threats, personal violence, or intimidation, or by any other means whatsoever calculated to intimidate, terrorize, and alarm or place in fear any of the employees of the plaintiff in any manner whatsoever at or upon its premises.

And the said defendants and all other persons associated with them are hereby enjoined from undertaking by any of the means or agencies mentioned in the plaintiff's bill from going upon the plaintiff's land to induce or cause any of the employees

of the plaintiff to quit or abandon work in the mines of the plaintiff, as set forth and described in its said bill; and said defendants and their associates are hereby enjoined from congregating in or about the premises of the plaintiff for the purpose of inducing the employees of said mines to quit and abandon their work in them.

And the said defendants, their confederates and associates, are further restrained from conducting or leading any body or bodies of men up to or upon the premises of the plaintiff for the purpose of inducing or causing plaintiff's employees to quit and abandon working for the plaintiff or from in any manner interfering with, directing, or controlling plaintiff's employees on its land, or from in any manner interfering with the business of the plaintiff upon its land, as set forth in the plaintiff's said bill.

And the said defendants and their associates are hereby enjoined from going on any part of the plaintiff's lands and premises for the purpose of intimidating, coercing, or endeavoring to procure and induce the plaintiff's employees from working in its mines and upon its premises by any improper threats, unlawful means or agencies whatsoever; and the said defendants are further enjoined, as well as their confederates and associates, from in any manner interfering with the plaintiff's employees while they be passing to and from their work in said mines on and near to the plaintiff's premises.

The plaintiff's motion for a permanent injunction now made in chambers is set down for hearing in the United States court room at the city of Charleston on the 10th day of November, 1897, that being the first day of the next term thereof; but a motion to dissolve this injunction will be considered at Charleston on the 7th day of September next, upon ten days' notice of such motion to the plaintiff.

This injunction is not to take effect until the plaintiff, or some responsible person on its behalf, shall enter into bond in the sum of $5,000, conditioned to pay all such costs and damages as may accrue to the defendants by reason of the plaintiff's suing out this injunction, should the same be hereafter dissolved.

Enter:

J. J. JACKSON,
United States District Judge.

To the clerk at Charleston.

AUGUST 14, 1897.

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, hereby certify that the foregoing is a true copy of an order entered of record in said court on the 14th day of August, 1897, in the equity cause of The Dunn Loop Coal and Coke Company *v.* Fred. Dilcher et al. therein pending. Bond in accordance with the foregoing order has been given.

Given under my hand and seal of said court, at Charleston, in said district, this 16th day of August, 1897.

[SEAL.]

L. B. DELLICKER,
Clerk Circuit Court of the United States, District of West Virginia.

The McDonald Colliery Company *v.* Fred. Dilcher and others, in equity.

On this the 14th day of August, 1897, in chambers, the complainant in this suit, by L. G. Gaines, its counsel, presented to the undersigned, one of the judges of the circuit court of the United States for the district of West Virginia, its bill of complaint, alleging among other things that the defendants named in its said bill are about to interfere with the operating and conducting of its coal plant and mines, and by such interference are about to prevent the employees of the plaintiff from mining and producing coal in and from its mines, and that unless the undersigned judge granted an immediate restraining order preventing them from interfering with the employees of the said plaintiff there was great danger of irreparable injury and damage and loss to the said plaintiff, inasmuch as the defendants are insolvent and wholly irresponsible in damages in an action at law.

Upon consideration whereof it is ordered that the plaintiff's bill be filed with the clerk of this court at the city of Charleston, in the State of West Virginia, and that process do issue thereon; and a temporary restraining order is hereby allowed restraining and inhibiting the defendants, their confederates, and all others associated with them from in any manner interfering with any person in or upon its premises who may desire to enter its employment hereafter, by the use of threats, personal violence, or intimidation, or by any other means whatsoever calculated to intimidate, terrorize, and alarm, or place in fear any of the employees of the plaintiff in any manner whatsoever, at or upon its premises.

And the said defendants and all other persons associated with them are hereby enjoined from undertaking by any of the means or agencies mentioned in the plaintiff's bill from going upon the plaintiff's land to induce or cause any of the employees of the plaintiff to quit or abandon work in the mines of the plaintiff, as set forth and

described in its said bill; and said defendants and their associates are hereby enjoined from congregating in, on, or about the premises of the plaintiff for the purpose of inducing the employees in said mines to quit and abandon their work in them.

And the said defendants, their confederates and associates, are further restrained from conducting or leading any body or bodies of men up to or upon the premises of the plaintiff for the purpose of inducing or causing plaintiff's employees to quit and abandon working for the plaintiff or from in any manner interfering with, directing, or controlling plaintiff's employees on its land, or from in any manner interfering with the business of the plaintiff upon its land, as set forth in the plaintiff's said bill.

And the said defendants and their associates are hereby enjoined from going on any part of the plaintiff's land and premises for the purpose of intimidating, coercing, or endeavoring to procure and induce the plaintiff's employees from working in its mines and upon its premises by any improper threats, unlawful means or agencies whatsoever; and the said defendants are further enjoined, as well as their confederates and associates, from in any manner interfering with the plaintiff's employees while they may be passing to and from their work in said mines on or near to the plaintiff's premises.

The plaintiff's motion for a permanent injunction now made in chambers is set down for hearing at the United States court room at the city of Charleston on the 10th day of November, 1897, that being the first day of the next term thereof; but a motion to dissolve this injunction will be considered at Charleston on the 7th day of September next, upon ten days' notice of such motion to the plaintiff.

This injunction is not to take effect until the plaintiff, or some responsible person on its behalf, shall enter into bond in the sum of $5,000, conditioned to pay all such costs and damages as may accrue to the defendants by reason of the plaintiff's suing out this injunction, should the same be hereafter dissolved.

Enter:

J. J. JACKSON,
United States District Judge.

To the clerk at Charleston.

AUGUST 4, 1897.

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, hereby certify that the foregoing is a true copy of an order entered of record in said court on the 14th day of August, 1897, in the equity cause of The McDonald Colliery Company *v.* Fred. Dilcher et al. therein pending. Bond in accordance with the foregoing order has been given.

Given under my hand and seal of said court, at Charleston, in said district, this 16th day of August, 1897.

L. B. DELLICKER,
Clerk Circuit Court of the United States, District of West Virginia.

A copy. Teste:
L. B. DELLICKER, *Clerk.*

UNITED STATES OF AMERICA, *Northern District of Ohio:*

I, M. A. Smalley, United States marshal, hereby certify the above and foregoing s a true copy of the original order placed in my hands for service.

Attest: M. A. SMALLEY,
United States Marshal.

THE UNITED STATES OF AMERICA, *Northern District of Ohio, Eastern Division, ss:*

At a stated term of the circuit court of the United States within and for the eastern division of the northern district of Ohio, begun and held at the city of Cleveland, in said district, on the first Tuesday in October, being the fourth day of said month, in the year of our Lord one thousand eight hundred and ninety-eight, and of the independence of the United States of America the one hundred and twenty-third, to wit, on Tuesday, the 18th day of October, A. D. 1898.

Present, the Hon. Eli S. Hammond, district judge.
Among the proceedings then and there had were the following, to wit:

The American Steel and Wire Company, complainant, *v.* Wire-Drawers' and Die-Makers' Union, No. 1, of Cleveland, Ohio, Walter Gillett et al., defendants. Order No. 5812.

This cause came on for hearing upon the bill of complaint and complainants' application for a temporary injunction, upon the answers of certain of the defend-

ahts, and affidavits filed on the behalf of complainant and defendants, and the testimony by way of cross-examination of certain of the witnesses in open court; and the court, being fully advised in the premises, finds that the complainant is entitled to a temporary injunction, as follows:

It is hereby ordered, adjudged, and decreed that the Wire-Drawers and Die Makers' Union, No. 1, of Cleveland, Ohio; Walter Gillett, its president, and the officers and members of said union, and each and all of the other defendants named in the complainant's bill, and any and all other persons associated with them in committing the acts and grievances complained of in said bill, be, and they are hereby, ordered and commanded to desist and refrain in any manner interfering with, hindering, obstructing, or stopping any of the business of the complainant, the American Steel and Wire Company, or its agents, servants, or employees, in the operation of its said American mill, or its other mills in the city of Cleveland, county of Cuyahoga, and State of Ohio, or elsewhere; and from entering upon the grounds or premises of the complainant for the purpose of interfering with, hindering, or obstructing its business in any form or manner; and from compelling or inducing, or attempting to compel or induce, by threats, intimidation, persuasion, force, or violence, any of the employees of the American Steel and Wire Company to refuse or fail to perform their duties as such employees; and from compelling or inducing, or attempting to compel or induce, by threats, intimidation, force, or violence, from entering the service of complainant, the American Steel and Wire Company, and from doing any act whatever in furtherance of any conspiracy or combination to restrain either the American Steel and Wire Company or its officers or employees in the free and unhindered control of the business of the American Steel and Wire Company; and from ordering, directing, aiding, assisting, or abetting, in any manner whatever, any person or persons to commit any or either of the acts aforesaid.

And the said defendants, and each and all of them, are forbidden and restrained from congregating at or near the premises of the said American mill, or other mills of the American Steel and Wire Company in said city of Cleveland, for the purpose of intimidating its employees or coercing said employees or preventing them from rendering their service to said company; and from inducing or coercing by threats said employees to leave the employment of the American Steel and Wire Company in carrying on its business in its usual and ordinary way; and from in any manner interfering with or molesting any person or persons who may be employed or seeking employment by the American Steel and Wire Company in the operation of its said American mill and other mills.

And the said defendants, and each and all of them, are hereby restrained and forbidden, either singly or in combination with others, from collecting in or about the approaches to said complainant's American mill or other mills for the purpose of picketing or patroling or guarding the streets, avenues, gates, and approaches to the property of the American Steel and Wire Company for the purpose of intimidating, threatening, or coercing any of the employees of complainant or any person seeking the employment of complainant and from interfering with the employees of said company in going to and from their daily work at the mill of complainant.

And defendants and each and all of them are enjoined and restrained from going, either singly or collectively, to the homes of complainant's employees, or any of them, for the purpose of intimidating or coercing any or all of them to leave the employment of the complainant or from entering complainant's employment, and, as well, from intimidating or threatening in any manner the wives and families of said employees at their said homes.

And it is further ordered that the aforesaid injunction and writ of injunction shall be in force and binding upon each of the said defendants and all or them so named in said bill from and after service upon them severally of a copy of this order by delivering to them severally a copy of this order, or by reading the same to them; and shall be binding upon each and every member of said Wire Drawers and Die Makers' Union, No. 3, of Cleveland, Ohio, from the time of notice or service of a copy of this order upon the said Walter Gillett and Fred Walker, and other members of said union, parties defendant herein; and shall be binding upon said defendants whose names are alleged to be unknown, from and after the service of a copy of this order upon them, respectively, by reading of the same to them or by publication thereof by posting or printing, and shall be binding upon the said defendants and all other persons whatsoever who are not named herein from and after the time when they severally have knowledge of the entry of this order and the existence of this injunction.

This order to continue in effect until the further order of this court, and upon said complainants entering into bond in the sum of $2,500, conditioned for the payment of costs and moneys adjudged against them in case this injunction shall be dissolved.

And thereupon came said defendants by their counsel, and in open court gave

notice of their intention to appeal this cause, and the court do allow said appeal upon the filing of an appeal bond in the sum of $1,000.

THE UNITED STATES OF AMERICA, *ss:*

I, Irvin Belford, clerk of the circuit court of the United States within and for the northern district for the State of Ohio, do hereby certify that I have compared the within and foregoing transcript with the original order of the court, entered upon the journal of the proceedings of said court in the therein-entitled cause, at the term and on the day therein named, and do further certify that the same is a true, full, and complete transcript and copy thereof.

Witness my official signature and the seal of said court at Cleveland, in said district, this 18th day of October, A. D. 1898, and in the one hundred and twenty-third year of the independence of the United States of America.

[SEAL.] IRVIN BELFORD, *Clerk.*

Speaking of the injunction issued by Judge Palmer, of the Arapahoe district court, against the Montana Union of northern Colorado, the Industrial Advocate says:

This is the preliminary step to importing cheap labor into Colorado. Much as it may be denied by the trust, that is the intention. That the attempt would be backed by the courts of the State very few believed. But the legal fight is now on, and will be pushed to the bitter end.

On the one side is organized capital. On the other is the force of organized labor throughout the West. All Colorado, all the Western Continent, will support the miners in their determination.

It is safe to say that one judge of the district court has decided to retire to private life. People may talk of the uprightness of courts and say judges are incorruptible. Judge Palmer is not accused of being bought; but he has plainly set aside the rights of thousands of working people at the request of a rich corporation without so much as giving the people a chance to be heard. For some time in city affairs nothing has received more severe censure than this issuance of ex parte injunctions. When it comes to applying the same sort of thing to other affairs it becomes more distasteful than ever. Judge Palmer and his injunction will be remembered by the working people.

The complaint of the corporation was voluminous. It said: "That the defendants, Joseph Smith, E. E. Beckett, George Ransom, George Clark, herein named, and many others whose names are unknown to this complainant, are engaged in a coal strike in the towns of Lafayette, Louisville, Superior, and Marshall, in the county of Boulder, and in the town of Erie, in the county of Weld, all in the State of Colorado, and that the miners' union herein named as defendant is an organization comprised of coal miners in the northern part of the State of Colorado; but as to whether it is a corporation, copartnership, or an association this complainant is not advised and therefore can not allege.

"That on the 6th day of June, A. D. 1898, the employees and workmen in said mines, without previous notice to the complainant or to any of its officers, agents, or superintendents, or to the officers, agents, superintendents, or managers of any of the aforesaid mines, quit work in a body and caused great damage to this complainant, and assigned no cause therefor; that the quitting of work * * * was the result of a mass meeting of said defendants, * * * at which the following resolution was passed:

"*Resolved*, That all coal mines operated by the Northern Coal Company and all mines selling coal to said company be suspended, said suspension to go into effect on Monday, June 6, A. D. 1898.

"That thereupon and in obedience to said resolution all the men at said mines in a body quit work on the following day, and have since refused to work in said mines or permit the operation thereof by others.

"The complainant shows to the honorable court that it is informed and believes, and upon such information and belief charges the fact to be, that the defendants and each of them are members of * * * the miners' union; that said defendants and said miners' union have conspired and combined together to injure this complainant by preventing the operation of said coal mines, and by quitting work therein, and by threats, force, intimidation, and violence have prevented the men who are not members of or in sympathy with their union also to quit work at said mines; that there are and have been many men in and about the vicinity of said mines who are ready, anxious, and willing to work in said mines for said complainant, but are prevented from doing so by menace and force and being threatened by said defendants, or some

of them, that in event any of said men should attempt to work for this complainant, they will be summarily dealt with, and that said miners who are ready and willing to work are advised that they had better refuse the said employment, and are warned that unless they do so they will have cause to regret it to their sorrow; that the said miners are in constant fear that should they attempt to work * * * they will * * * be either driven from the community or in danger of great bodily harm and possibly death, and that their families are in constant fear that * * * their houses will be burned and their lives endangered; therefore * * * this complainant is unable to hire men; * * * its business is damaged in every way; * * * it has various contracts to supply coal to consumers that can not be kept; * * * the loss and damage to this complainant will be enormous, no part of which can be collected from these defendants or any of them, for the reason that they and all of them are insolvent.

"That said miners' union now has committees in the southern part of the State attempting to have the men quit work on all of the mines operated by selling coal to this complainant; said defendants are attempting to boycott the business of this complainant, all of which is contrary to the law of this State.

"This complainant alleges the fact to be that the reason the members of said miners' organization refused to work or to permit others to work in said mines is that the operators have closed some of the mines in the Lafayette district, for the reason that they could not be operated at a profit, and that unless and until the said operators of said Lafayette mines resume work and employ members of the miners' union at the price, upon the terms, and in the manner indicated by the said defendants and the said miners' union, none of the coal mines in the northern Colorado district operated by or shipping coal to this complainant shall be operated in any manner.

"That the mines and mining properties owned and operated by this complainant * * * are worth $3,000,000, and that a very large part of said property is of such a nature that it can be easily destroyed by malicious persons, and this complainant is powerless to properly protect said property from strikers or any attempt on their part to destroy the same; that the complainant believes that said property is in great danger of being by said strikers burned or destroyed by dynamite or other explosives; that * * * the agents, employees, and workmen of this complainant are in constant fear of being driven from their duty and the property and mines totally destroyed.

"Wherefore this complainant prays that the defendants and all persons combined and conspiring with them, and all persons whomsoever, be restrained and enjoined and absolutely desist and refrain from in any way or manner interfering with, influencing, or hindering, or stopping the operation of any of the mines.

"That said writ of injunction be enforced and binding upon such of the defendants as are named in this bill, and from and after the service upon them severally of said writ, by delivering to them severally a copy of said writ, and by reading the same to them and the service upon them, respectively, of the writ of subpœna herein, and shall be binding upon the defendants whose names are alleged to be unknown from and after service of said writ upon them, respectively, by the reading of the same to them or by publication thereof, or by posting or printing, and after service of subpœna upon any of the defendants herein named shall be binding upon said defendants, and upon all other persons whatsoever who are not named herein, from and after the time when they shall severally have notice of the issuance of such order and the existence of said injunction, this complainant shall have judgment against the defendants, or each of them, for all damages it may sustain, and for costs in its behalf herein expended, and for such other and further relief as to the court may seem proper."

James Cannon, jr., president of the Northern Coal Company, deposed and said that he believed the contents of the above complaint were true.

Judge Palmer issued thereupon an injunction and order, of which the following are extracts:

"It is therefore ordered, adjudged, and decreed that the defendants, Joseph Smith, George Ransom, George Clark, the miners' union, and E. E. Beckett, as secretary thereof, and all other persons combining and conspiring with them, and all other persons whomsoever, desist from interfering, obstructing, or stopping any of the business of any of the mines.

"That said defendants be, and they are hereby, restrained and enjoined from trespassing upon, damaging, attempting to damage, or in any way destroying or attempting to destroy any of the mines or mining property of this complainant, or any of the mines or mining property mentioned in the order, or from compelling or inducing or attempting to compel or induce by threats, intimidation, force, or vio-

lence any of the employees of this complainant, or at or in any of the aforesaid mines from doing their duty. * * *

"That said defendants be, and they are hereby, restrained and enjoined from preventing any person or persons whomsoever by threats, intimidation, force, or violence from entering the service of this complainant and working in or about any of the said mines. * * *

"It is further ordered that the defendants and each of them are restrained and enjoined from going near or interfering with any of the above-mentioned mines or mining property or the employees therein."

STATEMENT OF MR. JACKSON H. RALSTON.

Mr. RALSTON. Mr. Chairman and gentlemen, if I may ask your indulgence for perhaps ten minutes, I think I can say all that there is occasion for me to add to the remarks of Mr. Gompers. When Mr. Gompers and the other gentlemen of the Federation of Labor came to me about preparing a bill of this character, they handed me certain bills which had been submitted to the House of Representatives, defining contempts as being direct and indirect, and providing for a jury trial as to the latter class. It seemed to me, and those gentlemen agreed with me—and I was very glad to be fortified by very distinguished legal authority in the conclusion—that it was not advisable to restrict the general right and efficacy of the writ of injunction; that for the benefit of the wealthy as well as the poor, one equally with the other at least, the power of the court over the writ in proper cases ought to be amply preserved, and the question, as I submitted to them, was whether injunctions had been rightfully issued in the various cases.

If it were wrongly issued, then that wrongful issue ought to be stopped; but if rightfully issued, I was inclined to believe that the present method of carrying out injunctions—that is, by the summary process of contempt—was a good thing. With that idea in mind I examined, at least casually, the cases in which injunctions had been issued, and, as I believe, wrongfully issued, and, assuming such wrongful issuance, I endeavored to get at the respects in which it was wrongful, and having found these respects, to meet the difficulty, if I could, having relation, perhaps, to the laws already established in other jurisdictions and having relation to what seemed to me the true interpretation of the common law. Now, I found, and I think the gentlemen of this committee will find upon examination, that the writ of injunction had been issued (and in this all the difficulty comes) against acts which in themselves, if committed by an individual, were absolutely right, or, if committed by an individual, could not be subject to the writ of injunction, because if they were punishable at all they were properly punishable in a criminal court.

I want to say that upon examination of the statute law of other jurisdictions I found that the Parliament of England had met the very condition that seemed to be confronting the labor organization here, and in the act known as the "trades-union act of 1875" Parliament had provided that where an act could be committed by an individual and not be criminal, the same act, if committed by a number of individuals in combination, could not be made the subject of the criminal conspiracy law or could not be deemed a criminal act.

The CHAIRMAN. What was the date of that act?

Mr. RALSTON. That act was passed in 1875.

Mr. PARKER. Does it apply to all acts, no matter what they are?

Mr. RALSTON. In relation to trades disputes.

Mr. PARKER. It would not, therefore, apply to a boycott?

Mr. RALSTON. Yes; it would apply there, absolutely.

The CHAIRMAN. Even if they starved the man to death?

Mr. RALSTON. Yes, sir; it would apply to an act of that kind, and for this reason, that any man has a legal right to purchase from any other man that he chooses, and there is a correlative right in every man to refuse to sell him his goods. That is a right.

Mr. OVERSTREET. Do you mean to say that I would not have the right to buy a railroad ticket, for instance, from anybody I wished?

Mr. RALSTON. Oh, no; the committee will recognize the absolute distinction.

Mr. PARKER. There have been cases where a man has refused to sell another bread.

Mr. OVERSTREET. I understand you to say that no man has a right to purchase from another?

Mr. RALSTON. My statement may have appeared to be that broad, but the committee will correct or limit the statement. It is another thing where a corporation is performing certain public functions——

The CHAIRMAN. Do you mean to say that if a man is engaged in the bakery business, selling bread, and a man comes in peaceably, with the money, and tenders it, and demands a loaf of bread, that the salesman has a perfect right to say, "No, you can not have bread?"

Mr. RALSTON. Yes, sir.

Mr. PARKER. And so with the meat man?

Mr. RALSTON. Yes, sir.

Mr. PARKER. And they might all conspire together?

Mr. RALSTON. Yes, sir. The principle about conspiracies to raise the prices of things by agreeing not to sell them except for a certain price has been ruled upon both ways by the courts.

Mr. PARKER. Would this apply to that sort of thing?

Mr. RALSTON. No, sir. It has no relation to cases of that kind.

Continuing the argument I had in mind, I have stated, I think correctly, the law under this act of 1875. Now, the trades-union act was followed in Maryland in the act of 1884. I have here the Maryland act as it was incorporated in the Code of 1888. The language is as follows:

> An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy, if such act committed by one person would not be punishable as an offense; nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or any offense against any person or against property.

That is, as I say, the language of the Maryland act of 1884.

Mr. PARKER. And that was the language of the English act of 1875.

Mr. RALSTON. Almost identically the language of the English act and the language which has been followed in the bill now before the committee.

Mr. PARKER. Is that the act you want put before us?

Mr. RALSTON. Yes, sir; but there is one exception in the bill before us, namely, that it shall not apply to a combination of persons. It of necessity is longer. There is one reason for the exception that I would suggest to the committee, and that is that Congress has nothing

to do with unlawful assembly, breach of the peace, or any offense against person or property.

The CHAIRMAN. Why not?

Mr. RALSTON. Those are purely matters for the State to deal with.

The CHAIRMAN. Under the interstate-commerce act, for the purpose of carrying on interstate commerce and the mail, can not Congress deal with those matters?

Mr. RALSTON. It is sufficient to say that Congress has not dealt with them.

Mr. KERR. There are no Federal statutes dealing with them in that spirit and language.

Mr. FLEMING. There are statutes in regard to the property of foreigners and nonresidents.

The CHAIRMAN. The proposition is that the Congress of the United States can not pass a law restraining unlawful assemblages and acts of riot having for their purpose the destruction and stoppage of interstate commerce or having for their purpose the destruction or stoppage of the carrying of the United States mails?

Mr. RALSTON. I do not think there is any difference of opinion between us. At least I am not contending that Congress has not the right to pass certain acts; but these acts are relating to local police matters, and Congress, as I understand it, never has passed an act coming within the provisions of the Maryland statute.

Mr. KERR. The purpose of that statute is not to interfere with the existing statutes of Maryland, and there would be no occasion for United States to interfere with the Maryland statute.

Mr. RALSTON. Yes, sir.

Mr. FLEMING. Suppose, in the State of Maryland, a lockout should occur in a factory, and violence was threatened against the property, and some of the stockholders in that factory were nonresidents of the State; could not one of those nonresidents go into the United States courts and seek protection for his property, he being a nonresident?

Mr. RALSTON. He might go into the Maryland courts.

Mr. FLEMING. But suppose he chose to go to the United States courts?

Mr. RALSTON. Undoubtedly; and I do not understand that this Maryland act would be in control, so far as the question under discussion was concerned, so far as relates to the United States courts in the State of Maryland.

Mr. PARKER. Then, if it was a crime indictable in the State of Maryland, would the United States courts have jurisdiction?

Mr. RALSTON. This Maryland act in itself, it will be understood, does not relate to the matter of injunctions. It relates merely to the matter of criminal law. A resident of the State of Virginia would not go into the United States court in the State of Maryland for the purpose of enforcing a Maryland criminal statute, so that I do not see that the Maryland statute, considering it barely upon the face and from the present point of view, would cut any figure in such litigation as Colonel Fleming speaks of. This bill reads, "No agreement, combination, or contract by or between two or more persons to do, or procure to be done, or not to do, or procure not to be done, any act in contemplation or furtherance of any trade dispute between employers and employees in the District of Columbia or in any Territory of the United States"—following identically the language of the antitrust

act for the purpose of classifying the acts with which Congress has power to deal—"shall be deemed criminal, nor shall those engaged therein be indictable or otherwise punishable for the crime of conspiracy, if such act committed by one person would not be punishable as a crime."

Up to that point I think it is evident that we have followed the language of the English act and also the act of Maryland; and we are not asking legislation that is unusual or unprecedented, but, on the contrary, not alone are we not asking legislation that is unusual, but we are asking for a clear limitation—a limitation which has been many times expressed by the courts—a clear limitation upon the meaning of the word "conspiracy."

The CHAIRMAN. What is the necessity for any such legislation as that? Do you contend that there is any statute or law now in force that would make it a crime for Mr. Alexander and myself to do a thing, or to agree to do a thing, to conspire to do a thing or an act which would not be a crime if committed by either one of us individually, unless it be to do a lawful act by illegal means? If so, where is the law?

Mr. RALSTON. I do not contend that there is any such statute. If there is any——

The CHAIRMAN. Then why is it necessary to enact a statute to the effect that that which is not now law shall not be law?

Mr. RALSTON. For this reason: Some courts have indulged in bad law, and more than one court has held that the gist of the crime of conspiracy lay in the combination, and that there might be things not criminal when done by one person which would be criminal when done by a number.

The CHAIRMAN. Then you want us to make the act declaratory of what the law should be?

Mr. RALSTON. Declaratory of what the common law should be, declared by all the courts.

Mr. ALEXANDER. Please read the balance of that statute.

Mr. RALSTON (reading):

> Nor shall such agreement, combination, or contract be considered as in restraint of trade or commerce——

That seemed to be necessary, because some courts have had an inclination to regard certain things as in restraint of trade or commerce, and to regard them as criminal, viewing them from that standpoint.

Mr. OVERSTREET. Would not a railroad strike, delaying shipments, be in restraint of commerce?

Mr. RALSTON. So would any other act delaying shipments.

Mr. OVERSTREET. How can you pass an act declaring it not to be, when the language you use makes it so? You declare it not to be when it must necessarily be.

Mr. RALSTON. There may be ten thousand acts that are in fact in restraint of trade or commerce where those acts are not criminal.

Mr. OVERSTREET. I see the difference there; those are the words in regard to criminality. But when you add a clause to the effect that they shall not be in restraint of trade and commerce, that is a fact, and you can not alter that fact by this provision of the law.

Mr. RALSTON. It seems to me that it could not be made any clearer by inserting the word "criminal" with restraint of trade, because that

is what we are dealing with, what is criminal. You can consider the word "criminal" read into that if you please. It is read into that by the very intention and purport of the statute.

The CHAIRMAN. Is not this the purpose and gist of your bill—to enact that no agreement, combination, or contract made by a number of people shall be considered by any court as in restraint of trade or commerce, even if it is so in fact, unless the commission of the act is a criminal offense? And then you further provide that no such act shall be restrained by any court unless the act constitutes a crime?

Mr. RALSTON. Not altogether, Mr. Chairman. The first part of your statement would leave open the fact as to what acts are and what are not criminal. We want a distinct declaration that certain acts are not criminal, and that, we think, we get in this bill. I do not remember that I quite recall the second part of your proposition.

The CHAIRMAN. You say that no such agreement, combination, or contract shall be considered as in restraint of trade or commerce, even if it is so; but you provide that it shall not be in the law so considered?

Mr. RALSTON. Yes, sir.

The CHAIRMAN. And therefore not subject to restraint by injunction by the court, even though it does restrain trade or commerce, unless the acts committed by these people are a criminal offense, if committed by any one of them; because you only apply it, when done by several individuals, to matters that would be a crime if committed by one. Therefore it must be a crime, and next, the agreement, combination, or contract is not to be considered in restraint of trade or commerce unless the act to be done is a crime, even if, in fact, it does restrain commerce and trade. Unless it is a crime when the act is committed by one person the courts can not restrain it by injunction.

Mr. RALSTON. If it is a crime, and we declare that certain things shall not be a crime.

Mr. KAHN. Could not this be fixed by reading this sentence into the bill? On page 2 add—

even if such agreement, combination, or contract by or between two or more persons to do, or procure to be done, or not to do, or procure not to be done, any act in contemplation or furtherance of any trade dispute between employers and employees——

Mr. RALSTON. It possibly adds to its clearness, although it would not occur to me as necessary, because there is a limitation of the agreement referred to in the provision; since it is not any agreement, but an agreement to do an act which would be innocent if done by one person. Take the next part of it. We do not desire to be understood as agreeing to the interpretation made by the chairman.

The CHAIRMAN. I make it only as a suggestion.

Mr. RALSTON. We do not stand here as not recognizing the authority of a court of equity to issue a restraining order. We stand here asking that injunction shall not issue to restrain crime, and in taking that position we wish it to be understood that we are not taking an unusual position, and we are not departing from what has been until lately considered to be well-recognized common law principles.

The CHAIRMAN. But the Supreme Court of the United States has plainly decided that it may not, and has no power to restrain the commission of an act by one or more persons, simply because it is a crime.

Mr. RALSTON. Yes, sir.

The CHAIRMAN. But they may restrain the commission of the act if destructive of property and property rights, even though it be a crime, as, for instance, if I go with a body of fifty or one hundred men, with force and arms, threatening to burn a large number of buildings, and I have the force and power to do it. Now, the civil officers in the neighborhood might not be able to arrest us and restrain the commis sion of that act. Possibly the court might see fit to issue an injunction restraining the commission of that crime. If committed, it would be arson. But the court would restrain it, not because it is arson, or a crime, but because we threaten to destroy property and commit an irreparable injury, all of us being worthless so far as property is concerned. Now, there is a case where the court might issue the writ, because it would be restraining the commission of an irreparable injury to property. They would not restrain the act because it is a crime, but because it would produce an irreparable injury to property, and no adequate legal remedy exists.

Mr. RALSTON. That is the position taken by the Supreme Court of the United States in the Debs case.

The CHAIRMAN. You do not like that position?

Mr. RALSTON. No, sir; I am not finding any fault with that, but I do find fault with the disposition to issue the injunction against an assumed crime which there may never have been any intention of committing. Mr. Gompers has read you injunctions which clearly went beyond any such decision as has been cited of the Supreme Court of the United States, and he has read you injunctions which have gone far beyond the common-law rule. For instance, he has read you injunctions restraining trespasses. Now, I take it that it is very clearly established at common law that an injunction may not issue to restrain a trespass except the trespass be of such a nature as to involve the question of a right in the thing trespassed upon.

The CHAIRMAN. Suppose I am the owner of 100 acres of very valuable timber land and the cutting off and destruction of that timber would destroy the value of my land, and would be to me an irreparable injury, because I hold it for my farming purposes. Now, a body of men, one or more, come on there with force and arms, possibly threatening, and they commence to denude my land of that timber. The courts in all the States, everywhere, interfere by injunction to restrain such a trespass?

Mr. RALSTON. Yes, sir.

The CHAIRMAN. They do not interfere to restrain the trespass merely, they interfere to restrain the commission of an act which results in irreparable damage to me and my property rights.

Mr. RALSTON. Yes, sir; and I am quite willing, and I am quite sure that the organization which I am here striving in part to represent is also to accept the limitations placed by the chairman. Injunction will issue to restrain irreparable injury, but it will issue as readily to restrain one man from committing that irreparable injury as it will to restrain one hundred men, and numbers have nothing to do with it; and the element of conspiracy does not enter at all into that kind of injury.

The CHAIRMAN. Is that quite true?

Mr. RALSTON. That is merely a suggestion. One man might start out with a threat to do a thing which everybody would know the min-

ute he mentioned it that it was impossible for him to do; that there was no possible danger that he would do it.

Mr. ALEXANDER. Keep to your first illustration, about your timber land. That was a good illustration.

The CHAIRMAN (continuing). Now, there is a case where one man starts out to do a thing but he is powerless, and the court will not interfere, but if he should get together a number of men, all irresponsible, and they should agree to do that act, and they combined and had the power to do it, and should then start out with threats to do it, and with the instruments to carry the threat into execution, that would present a very different case, and might it not present a case where a court of equity should interfere by injunction, and in such case a question of conspiracy does enter into it? But the true test is, does the man acting alone have the power to accomplish his object?

Mr. RALSTON. The single man would not.

The CHAIRMAN. And a dozen men would have. And if a man threatening injury has the ability to accomplish his desired ends, and the end, if accomplished, inflicts irreparable injury, then a court of equity will issue an injunction. But in that case the question of conspiracy does not enter the case; no persons conspire.

Mr. RALSTON. It has not, because a dozen men conspire to do a thing; and because a superior instrumentality has power to do a thing. It is a clear distinction.

The CHAIRMAN. It is wise, then, to say, in view of my suggestion, that a court should not in any case issue an injunction to restrain an act of 500 men acting together, threatening, where they would not restrain an individual threatening to commit the same act. In one case the 500 have the power, and in the other case the individual has no power.

Mr. RALSTON. That would have to be determined in each particular case, and quite apart from this question of conspiracy. I have no doubt that the courts will continue to act on, irrespective of this statute, as they should, issuing injunctions against one man, or twenty men, engaged in doing an act capable of inflicting irreparable injury. And it is the capability of the one man or the twenty men to commit such an act, and never the conspiracy of the one man or a dozen men.

But this discussion overlooks the important fact of the character of the act sought to be enjoined, to which I have before alluded. The acts which have been sought to be enjoined in the injunctions read to you were not acts threatening such irreparable injury as has been spoken of in the common law. They were issued to prevent men from trespassing on a road. No injury is wrought by an act of trespass of that nature at all, but it is just such an act of trespass as courts of equity in the past have never been issuing any injunctions against, and they now start to issuing injunctions because 20 men trespass. It is not an act in which there is any injury, but it is an act against which they issue an injunction when 20 men do it. As I say, there is no element of irreparable injury. Then to what does that expression "irreparable injury" apply? Injury to property, of course. Now, say the injury is done by 20 or 100 men together, and is trespass on the public highway. There is no injury to property.

It remains intact as much after as before the act, and the issuance of an injunction under such circumstances, as we contend, is a wrong in itself. But the suggestion will be made that there is an injury

done because these men go on the premises or go on the road for the purpose of affecting the action of some other men who happened to be on the premises. But what business is that, for instance, of the employer? Does he own those men?

The CHAIRMAN. This is simply to bring out your ideas. I am not expressing any opinion. Suppose here is a company running a coal mine and it has 1,000 men employed in and about the coal mine in mining coal. Now, if I should go there to those premises alone and unarmed, and say, "I have come here for the purpose of intimidating these men and stopping this coal mine," everyone would laugh at me, and the men themselves would laugh at me, and my act would not amount to anything. But suppose I should go there with 2,000 men with guns, and we should all say, "We have agreed together to come here and stop the running this mine and the working of this mine by your men, and we have the power to do it." Of course, what I undertake to do and say I will do when alone amounts to nothing; but when the thousand men go, although it may not be a crime, a different case is presented, and are you going to say that the courts should apply no different rule to the thousand than what they will to the one?

Mr. RALSTON. We will take the rulings of the court on that subject. If the thousand men go there with guns, they go there with threats; they go there with an attempt, with a conspiracy, if you will, to do a legal thing by illegal means. That brings you to what is the definition of conspiracy, clearly, and that part of the definition of conspiracy is not in any degree altered by this bill.

Mr. SMITH. Mr. Ralston, I would like to ask you why a proposition of this kind would not reach this matter in a better way than in your bill:

> No injunction or restraining order shall be issued by any United States court or judge to restrain any person, combination, or organization of persons from doing any act in furtherance of a trade dispute which does not involve an assault and battery or threats of personal danger.

That would cut off the right to issue injunctions in that class of cases.

Mr. RALSTON. I am inclined to think that the suggestion of Judge Smith would be a better one than the law as now often carried out by the court, but I am not entirely certain that the suggestion meets the exigencies of the case, because it does recognize the right to issue injunction as against crime.

Mr. SMITH. Nothing against anything short of force or theatened force.

Mr. RALSTON. Perhaps not.

Mr. SMITH. That is the point which has been suggested by some gentlemen as that at which the line should be drawn—that these laboring people have a right to strike, to organize and hold their meetings, and do whatever is necessary to do to bring success to them as long as they do not use physical force or threaten physical force upon the opposition. Now, if we cut off the courts from going to that extent, have not you done all that can reasonably be done in that direction?

Mr. RALSTON. We are not attempting to defend the moral right of any body of men to go with guns and to influence by intimidation or coercion the action of others. Of course that is a different question. But we do believe that for the courts to issue injunction for the pur-

pose of preventing the commission of an illegal act which is threatened is wrongful, because it substitutes the mind of the court to the mind of a jury. It substitutes the judgment of the court as to acts that are criminal or likely to be criminal instead of the judgment of twelve men. On that point the organizations here represented prefer the judgment of the criminal jury, and prefer that questions of that kind shall be so passed upon rather than——

Mr. ALEXANDER. I wish you would reply to Colonel Ray on the proposition he just announced. I would like to hear from you upon that.

Mr. RALSTON. In which respect, may I ask?

Mr. SMITH. About the thousand armed men going onto the premises.

The CHAIRMAN. That the courts should apply the same rules to the thousand men going upon the premises, say, of a coal company, with power, and having combined for that purpose, to stop the working of the mines; that they would apply to me as an individual if I should go there alone, without any power to do a thing except talk. In other words, apply the same rule in both cases.

Mr. RALSTON. That question involves in part, at least, what we have already discussed measurably, and that is whether the combination does constitute the crime. I submit that the combination itself can not constitute the crime. If they go there with arms, then they are committing a crime.

The CHAIRMAN. Suppose they do not go with arms, but without them.

Mr. RALSTON. If they go there in a threatening manner, probably they are committing a crime. If they go there for persuasion, therefore, and if they commit a crime under those circumstances, you have authorities to deal with them—a jury which can weigh all the circumstances of the case, and will weigh all the circumstances, and will bring the witnesses before the accused and confront him with the accusers, and the jury will arrive at some sort of proper conclusion, which is something that a court of equity, with its limited facilities for arriving at the truth, under the circumstances can not effect. The effects can not be the measure of the legal right under such circumstances. The effect of the thousand men going on the premises may be very serious, and it may be that the men so engaged ought to be seriously punished, but the effects have nothing to do with the case. The question is as to the proper powers of courts of equity and the proper powers of criminal courts, and those are the things that we must keep in mind all the time.

The CHAIRMAN. If a man had a farm here, a cornfield of 10 acres, and I should threaten to walk over that cornfield, and he should ask for an injunction, the court would say, "We will not give you this injunction, because it will be a mere trespass, and you will have an ample remedy at law, anyway." But suppose I should threaten to go there and start with 2,000 men to walk over that cornfield, spreading out across it in a line of sufficient length to cover the whole of it, about 10 men deep, and he should apply to the court for an injunction, what do you think the court would do then, provided the men were all irresponsible?

Mr. RALSTON. I must come back to the proposition I made—that the court would grant it, not because of the conspiracy, but because of the irreparable damage to be inflicted.

The CHAIRMAN. Well, we will put it in another way. If the one man walks there and threatens to walk there no injunction will be granted, but if an irresponsible man threatens to drive through there and all over the field with a harvester and cut down everything in the way out of season the injunction will be granted.

Mr. RALSTON. It is clearly the character of the inflicted injury that makes the injunction permissible, and not the crime.

The CHAIRMAN. There would not be a crime committed or threatened in either of these cases, except, of course, destruction of property.

Mr. RALSTON. That might depend on local law.

Mr. KERR. Do you think an injunction would issue to prevent a man from running through a cornfield?

Mr. RALSTON. No; the illustration was not a happy one. It might issue to prevent irreparable damage.

The CHAIRMAN. I beg pardon, but in nearly every State there is a remedy by injunction against irresponsible parties committing irreparable injuries.

Mr. KERR. Against a responsible man there would be an adequate remedy at law, but it might be there would have to be a multiplicity of trespasses and a multiplicity of suits to justify the injunction. The illustration you have given would be a simple trespass. If the party doing it should be entirely irresponsible it might give equity jurisdiction.

The CHAIRMAN. It is the nature of the act and the responsibility of the parties that seek to commit it that many times govern the court.

Mr. RALSTON. Responsibility is a point which some courts have recognized and others have not, but the damage threatened must be irreparable. We were assuming that the destruction of the corn would be irreparable.

The CHAIRMAN. You can, of course, grow corn or buy corn, but if it were young fruit trees that you threatened to destroy, for instance——

Mr. RALSTON. That, of course, would be considered irreparable.

Mr. KERR (reading from bill):

> Nothing in this act shall exempt from punishment, otherwise than as herein excepted, any persons guilty of conspiracy for which punishment is now provided by any act of Congress.

Will you put on the record just what acts there are now of that sort and then provide that they shall be read as though contained herein?

Mr. RALSTON. The only ones that occur to me now are those in regard to the elective franchise.

(Thereupon, at 1 o'clock p. m., the committee adjourned.)

[From Bulletin 33 of the United States Department of Labor.]

THE BRITISH CONSPIRACY AND PROTECTION OF PROPERTY ACT AND ITS OPERATION.

BY A. MAURICE LOW.

In the November, 1899, Bulletin of the Department of Labor a lucid presentation was made, by Mr. Willoughby, of the Trade Union Act (Great Britain) of 1871 and its amendment of 1876, and the Conspiracy and Protection of Property Act of 1875. The aim of the present article is to show the effect of the last-named act and what its influence, if any, has been on the relations between capital and labor.

Mr. Willoughby gave a succinct account of the history of labor legislation in the United Kingdom since the beginning of the century. It is not necessary, therefore, in the present article to go into that subject at any length, but merely to trace the causes which brought about the passage of the Conspiracy and Protection of Property Act, 1875 (38 and 39 Vict., c. 86), and in no better way can this be done than to quote from the report made by Mr. John Burnett (*a*), of the Board of Trade. Mr. Burnett says:

Within the last 20 years the laws relating to strikes have been much modified and a considerable amount of pains has been taken to define accurately the things which men on strike may do and those they may not do. Stated simply as an abstract proposition that workmen may now go on strike and have full liberty to do what they please as long as they do not encroach upon the liberty of others, workingmen, as a rule, would perfectly agree with it and admit its justice. To draw the line is, however, by no means so easy, and the difficulty is to decide exactly how far a man may go without crossing the line which separates his right from that of another. The practical question really to be decided is, How far may a workman on strike go in his efforts to keep another man from taking his place in the situation he has vacated. Perhaps the most common of all features in strikes is that when the workmen are out the employers endeavor to obtain other men to fill their places. If efficient men in sufficient numbers can be obtained to replace the strikers it is obvious that the dispute must come to a speedy termination in favor of the employers. It is, therefore, the object of those on strike to prevent other workmen taking their places. How far may they go in this direction has been the much-debated question of recent years, and as yet there has been fixed no absolutely clear and unmistakable limit, and conflicting decisions are sometimes given under the existing law. To make plain the existing situation on this point,

a Report on the Strikes and Lockouts of 1888, by the labor correspondent of the Board of Trade.

it may be as well to give a brief summary of the course that legislation has taken on the subject.

Previous to 1824 strikes of any magnitude or duration were almost impossible, as all attempts at organization for such a purpose were prevented as far as ever possible by the law against combination then in force. The great labor disputes which took place previous to that time, and indeed for many years after, were rather outbreaks of actual industrial revolt against grievances become intolerable than deliberately arranged and skillfully organized movements for bringing about changes in existing conditions.

There were then very few disputes during which the leaders of the men were not sent to prison, and in which there were not committed some acts of violence against property or persons.

The combination laws in operation from 1799 to the time of their repeal in 1825 were very stringent in their character, and a brief summary of a few of their provisions and penalties will show how workmen on strike might be dealt with. The preamble of the act of 1799 (39 Geo. III, c. 8) strikes the keynote of the industrial legislation of that period. It says: "Whereas great numbers of journeymen manufacturers and workmen in various parts of this Kingdom have by unlawful meetings and combinations endeavored to obtain advance of their wages and to effectuate other illegal purposes; and the laws at present in force against such unlawful conduct have been found to be inadequate to the suppression thereof, whereby it is become necessary that more effectual provision should be made against such unlawful combinations, and for preventing such unlawful practices in the future and for bringing such offenders to more speedy and exemplary justice."

The act then goes on to declare null and void all agreements "between journeymen manufacturers or workmen" for obtaining an advance of wages or for lessening or altering their hours of labor, and for various other stated purposes. Workmen entering into any such agreement were, upon conviction before a magistrate, to be committed to jail for 3 months or to the house of correction for 2 months with hard labor. The same punishment was also to be awarded to any journeymen or workmen who entered into any combination to "obtain an advance of wages, lessen or alter the hours of work, decrease the quantity of work, or who by giving money or by persuasion, solicitation, or intimidation endeavor to prevent any unhired or unemployed journeyman or other person wanting employment from hiring himself to any manufacturer or tradesman; or who should, for any purpose contrary to the provisions of the act, directly or indirectly, decoy, persuade, solicit, intimidate, influence, or prevail, or attempt to prevail on any journeyman hired or to be hired to quit or leave his work, service, or employment, or who should hinder or prevent, or attempt to hinder or prevent, any employer from hiring such workman as he might think proper, or who (being hired or employed) should refuse to work with any other journeymen employed therein." Like penalties were enacted for those who attended meetings held for making agreements rendered unlawful by the act, or who should pay money in support of such a meeting, or collect money from other persons, or by any means induce other persons to attend such a meeting. Nor might anyone contribute to the support of persons who had quitted work. Any sums so collected were forfeit one-half to the King and one-half to the informer.

A subsequent act (40 Geo. III, c. 60) somewhat qualified these stringent provisions, but only by inserting such words as "falsely and maliciously" before the various prohibited acts. It will thus be seen that the work of attempting in any way to better his condition was rendered extremely hazardous to the workman. It was even an offense to assist in maintaining men on strike. Stringent as was this legislation, however, it failed in its object; secret societies began to multiply, and trade disputes took place in spite of the law, if not, indeed, by reason of it.

THE ACTS OF 1824 AND 1825.

In 1824 an act was passed "to repeal the laws relative to combinations of workmen," which repealed many acts and parts of acts dating back as far as the reign of Edward I. The passage of this act was marked by numerous strikes and labor disputes, and in the following year Parliament appointed a committee to inquire further into the subject. As a result of this investigation the act of 1825 was passed, one of its most important provisions being that it should not be held unlawful for persons to meet "for the purpose of consulting upon and determining the rate of wages or prices which the persons present at such meeting should demand for their work." But the interpretation of the law was left to the courts, and the judges soon declared labor combinations to be unlawful at common law on the ground that they were in restraint of trade. This led to further agitation and the passage in 1859 (22 Vict., c. 34) of a law which enacted that workmen were not to be held guilty of "molestation" or "obstruction," under the act of 1825, simply for entering into agreements to fix the rate of wages or the hours of labor, or to endeavor peaceably to persuade others to cease or abstain from work to produce the same results. Here again the decisions of the courts gave the law an effect which was unsatisfactory to its creators, and in 1867 a commission was appointed to inquire and report on the subject. The result of this investigation brought forth two acts in 1871—the Trade Union Act and the Criminal Law Amendment Act, the latter repealing the acts of 1825 and 1859. This new act made stringent provisions, both as against masters and men, to prevent coercion, violence, threats, following, molestation, and obstruction, but there was no prohibition against doing or conspiring to do any act on the ground that it was in restraint of trade, unless it came within the scope of the enumerated prohibitions.

FURTHER LEGISLATION DEMANDED.

The foregoing has given a concise account of labor legislation down to the year 1871. An event which happened in the following year showed that a further change in the laws was necessary to suit modern conditions. To again quote Mr. Burnett's report:

It was now thought that strikes as ordinarily conducted were legal and safe, provided the limits here set forth were not exceeded, and it

was certainly assumed that men on strike were not now liable to prosecution for criminal conspiracy. In the following year, however, this opinion was disturbed by a decision given by Justice Brett at the Old Bailey. The gas stokers at the Beckton gas works came out on strike under circumstances which rendered them liable for breach of contract, for which they might under the statute have been sentenced to 3 months' imprisonment.

The sudden stoppage of work had caused a large part of London to be kept in darkness for some nights. The men were indicted for conspiracy, and the judge held that there had been such a conspiracy, and that a threat of simultaneous breach of contract by the men was conduct which the jury ought to regard as a conspiracy to prevent the gas company carrying on its business. The defendants were sentenced to 12 months' imprisonment. The severity of the sentence, however, caused a great deal of agitation in the country, a special fund was raised to support the wives and families of the men convicted, and eventually a remission of 8 months of their punishment was obtained. The feeling thus raised resulted in the appointment of another commission, which reported in favor of further alterations in the law.

In 1875 Mr. R. A. Cross, the home secretary, introduced his conspiracy and protection of property act, which received the royal assent on the 13th of August of that year. While general in its scope and intended to further liberalize the rights of workmen, the animating cause of the act was the decision in the case of the stokers of the Beckton gas works and the desire to substitute for the drastic penalties of conspiracy a milder punishment. In the course of his speech on the first reading of the bill Mr. Cross said:

There is another exposition of the law which was given by a right honorable and learned gentleman for whom we all have the highest respect. I mean the recorder of London (Mr. Russell Gurney), and there can not, in my opinion, be any clearer exposition of the law of 1871 than he laid down to the grand jury in the case of five men who were sent to prison. The right honorable and learned gentleman said: "Among the acts forbidden by that act was this: The molesting or obstructing any person by watching or besetting any place, or the approach to such place where his business was carried on, with the view to coerce such person to alter his mode of carrying on his business. That, then, was the question the jury would have to consider—whether the evidence laid before them was sufficient to establish a *prima facie* case that the defendants did conspire to molest or obstruct the prosecutors by watching or besetting their place of business, in order to coerce them to alter their mode of carrying on their business. And there the grand jury must observe a distinction. The question was not whether they had endeavored to cause them to alter their mode by themselves refusing to work, or by persuading others not to work. That they had a right to do, but the question was whether they agreed to effect their object in the way forbidden by the act. That they did watch the place of business there would probably be no doubt, but there were some purposes for which they had a perfect right to watch. When a contest of that sort was going on it was not unusual, he believed, to watch in order to see that none of the men who received what was

called strike pay were also receiving wages from the employers; but the more important object that the watchers had in view was to inform all comers, who, for instance, might have been brought by advertisement, of the existence of the strike, and to endeavor to persuade them to join in it. All that was lawful so long as it was done peaceably, and without any interference with the perfect exercise of free will by those who otherwise would have been willing to work on the terms proposed by the prosecutors. The sort of questions which the grand jury would have to ask themselves was, whether the evidence showed that the defendants were guilty of obstructing and rendering difficult the access to the prosecutors' place of business, or whether there was anything in their conduct calculated to deter or intimidate those who were passing to and fro, or whether there was an exhibition of force calculated to produce fear in the minds of ordinary men, and whether the defendants or any of them combined for that purpose? If they thought that was proved, it would be their duty to find a true bill, but if they thought their conduct might be accounted for by the desire to ascertain who were the persons working there, and peaceably to persuade them or any others who were proposing to work there to join their fellow-workmen who were contending for what, rightly or wrongly, they thought was for the interests of the general body, then they would ignore the bill."

COMBINATIONS MADE LEGAL.

Emphasis must be laid on the important addition made by the act of 1875 to that of 1871, which was not repealed by later legislation, but became amplified. Practically the picketing clauses of the act of 1871 were retained in the new law, but the important addition made by Mr. Cross was contained in the first paragraph of section 3, reading as follows:

An agreement or combination of two or more persons to do, or to procure to be done, any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be punishable as a conspiracy if such act as aforesaid, when committed by one person, would not be punishable as a crime.

Had this law been in operation in 1872 the Beckton gas stokers could not have been convicted of conspiracy, and had they been convicted under the new law, instead of being sentenced to 12 months' imprisonment the maximum punishment would have been 3 months, as provided for by section 4, as follows:

Where a person employed by a municipal authority or by any company or contractor upon whom is imposed by act of Parliament the duty, or who have otherwise assumed the duty of supplying any city, borough, town, or place, or any part thereof, with gas or water, willfully and maliciously breaks a contract of service with that authority or company or contractor, knowing, or having reasonable cause to believe, that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of the city, borough, town, or place, or part, wholly, or to a great extent, of

their supply of gas or water, he shall, on conviction thereof by a court of summary jurisdiction or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding £20 [$97.33] or to be imprisoned for a term not exceeding 3 months, with or without hard labor.

One other citation must be made from Mr. Burnett's report before dismissing this branch of the subject. He says:

In a striking passage, summarizing his general history of all the changes in the laws affecting labor disputes, Sir James Stephen says: "It is one of the most characteristic and interesting passages in the whole history of the criminal law. First, there is no law at all, either written or unwritten. Then a long series of statutes aim at regulating the wages of labor, and ends in general provisions preventing and punishing as far as possible all combinations to raise wages. During the latter part of this period an opinion grows up that to combine for the purpose of raising wages is an indictable conspiracy at common law. In 1825 the statute law is put upon an entirely new basis, and all the old statutes are repealed, but in such a way as to countenance the doctrine about conspiracies in restraint of trade at common law. From 1825 to 1871 a series of cases are decided which give form to the doctrine of conspiracy in restraint of trade at common law, and carry it so far as to say that any agreement between two people to compel any one to do anything he does not like is an indictable conspiracy independently of statute. In 1871 the old doctrine as to agreements in restraint of trade being criminal conspiracies is repealed by statute. But the common law expands as the statute law is narrowed, and the doctrine of a conspiracy to coerce or injure is so interpreted as to diminish greatly the protection supposed to be afforded by the act of 1871. Thereupon the act of 1875 specifically protects all combinations in contemplation or furtherance of trade disputes, and, with respect to such questions at least, provides positively that no agreement shall be treated as an indictable conspiracy unless the act agreed upon would be criminal if done by a single person. * * * In a legal point of view no part of the whole story is so remarkable as the part played by the judges in defining, and, indeed, in a sense creating, the offense of conspiracy. They defined it, I think, too widely; but that their definition was substantially right is proved by the fact that the act of 1875 has made provision for punishing practically all the acts which they declared to be offenses at common law."

EFFECT OF THE ACT OF 1875.

The passage of the act of 1875 was hailed by the workmen with great satisfaction. It was regarded by them as conceding all for which they had so long contended—the right to enter into a legal combination to thwart or restrict the efforts of their employers; to more narrowly define their rights, and to lighten the punishment which they might incur in case of any violation of the law. The employers did not regard the law without apprehension.

How far these hopes on the one side and fears on the other have been realized is a striking commentary on the effect of judicial inter-

pretation of statute law. Dealing for the time being with the law as viewed from the standpoint of the employer, the fact stands forth in bold relief that the law which the employers dreaded twenty-five years ago they would not to-day repeal had they the power. This is not the opinion of a single employer. It is the composite opinion of what may fairly be termed the representative employers of labor in the United Kingdom, men speaking for the basic industries on which must rest all commercial prosperity. The reason given by employers why they are satisfied with the existing law is that it is easier now to prosecute and convict men endeavoring to interfere with their business or their employees than it was prior to the passage of the act, and that the rights of both parties being more narrowly defined, both know precisely what they may or may not be permitted to do, and generally endeavor to keep within those limitations.

The right of workmen to do in combination that which they might do legally as individuals, feared by the employers at the time of the passage of the act and hailed by the workmen as placing a powerful weapon in their hands, has in practice not been either so dangerous or as beneficial as was imagined at the time. That men can strike, either as individuals or in combination, and do other things in combination which would have been illegal under previous laws, does not apparently cause the employers much concern. So long as men go on strike and do not by intimidation or violence prevent other men from taking their places, employers feel able to cope with the situation. It is in dealing with this question that employers believe they have been distinct gainers by the passage of the Conspiracy and Protection of Property Act.

PENALTY FOR INTIMIDATION.

The penalty for intimidation, annoyance, and violence is set forth in section 7 in these words:

Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority—(1) uses violence to or intimidates such other person or his wife or children, or injures his property; or (2) persistently follows such other person about from place to place; or (3) hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or (4) watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or (5) follows such other person with two or more other persons in a disorderly manner in or through any street or road, shall, on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding £20 [$97.33] or to be imprisoned for a term not exceeding 3 months, with or without hard labor.

Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.

JUDICIAL INTERPRETATION.

Under the above section many prosecutions have been brought. What constitutes "intimidation" or "violence," how far a person may "communicate information" and yet not be deemed guilty of "watching or besetting," are questions which have provided much material for the lawyers and given rise to numerous judicial decisions, generally more satisfactory to the employer than to the employee.

As a general thing it may be said that the courts have given a broad construction to the act and have been inclined to protect workmen against "intimidation," even when that method of coercion has not been attended by violence. A few decisions of recent years are quoted to show the trend of judicial opinion. In all cases, except where otherwise stated, these decisions have been abridged from the Labor Gazette, the official publication of the labor department of the Board of Trade, and therefore are to be regarded as official. The prosecutions were brought under the act of 1875.

In July, 1896, a carpenter was sentenced by the Portsmouth quarter sessions to 21 days' imprisonment with hard labor for having "unlawfully, wrongfully, and without legal authority followed another carpenter with a view to compel him to abstain from doing a certain act." During a carpenters' strike the defendant collected a crowd of persons on three different occasions and followed the defendant about from place to place. There was no violence offered, but the evidence showed that the conduct of the crowd was disorderly and calculated to result in a breach of the peace.

The court of queen's bench devoted 3 days to the hearing of a case in July, 1896, in which a pianoforte maker and his foreman sued three trade societies and six other defendants for damages and an injunction to restrain the defendants from watching or besetting the house where the plaintiffs resided or carried on their business, and from illegally interfering with the business of the plaintiffs, whether by intimidation, the publication of a blacklist, or otherwise. The facts showed that a foreman had been dismissed and another man engaged in his place. In consequence plaintiffs' premises were picketed. The name of the foreman had been blacklisted. The defense claimed that they were acting within their legal rights. In summing up the judge said that what the defendants had done was illegal unless merely for the purpose of obtaining or imparting information. He further added: "If the persuasion be used for the indirect purpose

of injuring the plaintiffs, it is a malicious act, which is in law and in fact a wrong act, and therefore a wrongful act, and therefore an actionable act, if injury ensues from it." A verdict was rendered for the plaintiffs. Damages were awarded to the pianoforte maker in the sum of £300 ($1,460); to the foreman in the sum of £20 ($97.33). An injunction was also granted.

In the sheriff's summary court, Edinburgh, November 1, 1897, two engineers were sentenced to 14 days' imprisonment for having with a large crowd of other persons followed three iron turners with a view to compel them to abstain from working for a certain firm.

CASE OF ALLEN v. FLOOD.

Attention must now be called to one of the most important decisions in English jurisprudence. It is quoted by every employer and every representative laboring man; it is constantly referred to by lawyers; it has governed all subsequent decisions, and, curiously enough, like other things connected with this law, regarded at the time as a great victory for labor, it has since then been relied upon by employers to support their contentions. The case was deemed of so much importance that when it came up on appeal before the House of Lords, the court consisting of Lord Chancellor Halsbury and Lords Watson, Ashbourne, Herschell, Macnaghten, Morris, Shand, Davey, and James of Hereford, their lordships did a thing done once in a generation, viz, requested the attendance of eight of the most eminent judges—Hawkins, Mathew, Cave, North, Wills, Grantham, Lawrance, and Wright—to give their opinion on questions of law, and Parliament ordered these opinions to be printed as a parliamentary paper. The case is officially known as "Allen *v.* Flood and Another." The abstract following is briefed from the parliamentary paper referred to, the Law Journal Reports (Vol. LXVII, Feb., 1898), and the Law Times (Vol. CIV, No. 2863, Feb. 12, 1898). The case was originally heard in the court of queen's bench, appealed to the court of appeal, and thence appealed to the House of Lords, the court of last resort. The substantial facts of the case are as follows:

Flood and Taylor were shipwrights working for the Glengall Iron Company. They were employed by the day, but the particular job on which they were then engaged was expected to last about a fortnight, and there was every reason to suppose that they would be retained until its completion. These two men had previously served an apprenticeship with the Glengall Iron Company. They had been taught to work both in wood and iron, but at the time were employed on woodwork only. They were men of excellent character, had always behaved themselves, and had done their work properly and satisfactorily. There had been no collision between these men and the other men

working for the company. The Independent Society of Boiler Makers and Iron and Steel Shipbuilders, a powerful trade union consisting of about 40,000 members, objected to the employment of shipwrights who were both iron and wood workers. Members of this union employed by the Glengall Iron Company demanded the discharge of Flood and Taylor on this ground. Allen, the London delegate of the union, at the request of its members, had an interview with Mr. Halkett, the managing director of the company, and demanded the discharge of the two obnoxious men, threatening that unless his demand was granted all of the boiler makers then in the employ of the company would leave work that day. Halkett protested against this interference, but Allen was firm. He frankly admitted that his union had no ill feeling against their employers or against any men in particular, but that the union had determined to prevent the employment of shipwrights who had done ironwork; that wherever they were employed the boiler makers would cease work, and tha' the employers had no option in the matter, as the decision of the union would be enforced in every case. Referring specifically to Flood and Taylor, he said the men were known, and wherever they were employed the same action would be taken. The result of the interview was that Halkett gave instructions to his manager to discharge the two men, and that same day they were discharged.

The men brought suit against Allen, the case being heard before Mr. Justice Kennedy and a jury in the queen's bench. Verdict was rendered for the plaintiffs, who were each awarded damages of £20 ($97.33). From this decision Allen appealed to the court of appeal. The decision of the court below was affirmed. Allen took a further appeal to the House of Lords. The case was argued before the Lords on December 10, 12, 16, and 17, 1895. Their lordships required further argument and on March 25, 26, 29, 30, and April 1 and 2, 1897, the case was reheard, when the judges were called in. The case was argued at great length and with signal ability, eminent counsel being retained on both sides. At the conclusion of the arguments the law lords propounded the following question to the judges: "Assuming the evidence given by the plaintiffs' witnesses to be correct, was there any evidence of a cause of action fit to be left to the jury?"

The judges asked for time to consider the question. On June 3, 1897, they delivered their opinions, the majority of them of considerable length. Of the eight judges, six of them agreed with the two lower courts, Justices Mathew and Wright answering their lordships' question in the negative. The opinions of the judges, however, were simply to assist the law lords, and was not the action of the court. On December 14, 1897, the decision was rendered, the judgment of the court below being reversed (the lord chancellor and Lords Ashbourne and Morris dissenting) and the appellant granted the costs of prosecuting the appeal, in the court below, including the costs of the trial.

MEANING OF THE DECISION.

Put in its concisest form the judgment of the highest court of the British Empire is: Where an act is lawful in itself the motive with which it is done is immaterial. To induce a master to discharge a servant, if the discharge does not involve a breach of contract, or to induce a person not to employ a servant, though done maliciously, and resulting in injury to the servant, does not give him any cause of action.

The vast and far-reaching importance of this decision can be swiftly appreciated. Not only did it break down many of the restraints of the law both civil and criminal, but, as Lord Morris said, it overturned the overwhelming judicial opinion of England. During the course of argument by counsel, and in the delivery of the opinion of the judges, frequent reference was made to two celebrated cases which it was supposed had settled the law relating to malicious discharge. These two cases were Lumley *v.* Gye and Temperton *v.* Russell.

Sir Henry Hawkins, one of the judges who answered their lordships' question in the affirmative, but whose opinion was disregarded by the majority vote of the law lords, in the course of his opinion said:

I look upon the case of Lumley *v.* Gye (2 E. and B., 216) as a binding authority, that if any person, with knowledge of the existence of a contract of service between two other persons, the one to employ the other to render service, willfully causes and induces the employed to break his contract, and an injury to the employer is the result of that breach, an action on the case will lie against him, at the suit of the employer. I see no reason to doubt that a corresponding right of action exists in law at the suit of the employed against a person who wrongfully induces the employer to break his contract, to the injury of the employed. This principle is, in my opinion, sound and in accordance with good sense. * * * Wrongfully to induce an employer to break his contract and discharge his workman, is wrongfully to injure that workman by disabling him from earning his wages. Wrongfully to coerce an employer to terminate an existing contract before its appointed time, brings upon the employed precisely the same character of injury.

Justice North, one of the majority judges, in delivering his opinion, quoted approvingly the decision of the court of appeals in Bowen *v.* Hall:

Merely to persuade a person to break his contract may not be wrongful. But if the persuasion is used for the indirect purpose of injuring the plaintiff, or of benefiting the defendant at the expense of the plaintiff, it is a malicious act, which is in law and in fact a wrong act, and, therefore, a wrongful act, and, therefore, an actionable act if injury ensues from it.

In closing his opinion the lord chancellor said:

I regret that I am compelled to differ so widely with some of your lordships, but my difference is founded on the belief that in denying these plaintiffs a remedy we are departing from the principles which have hitherto guided our courts in the preservation of individual liberty to all. I am encouraged, however, by the consideration that the adverse views appear to me to overrule the views of most distinguished judges, going back now for certainly 200 years, and that up to the period when this case reached your lordships' house there was an unanimous consensus of opinion; and that of eight judges who have given us the benefit of their opinions, six have concurred in the judgments which your lordships are now asked to overrule.

Lord Ashbourne in his dissenting opinion said:

I need not go in detail through the celebrated case of Lumley *v.* Gye, which for nearly half a century has passed into the regular current of legal authority, and which was followed by Lord Selborne and Lord Esher in Bowen *v.* Hall. * * * To intimidate an employer into breaking a contract with a particular workman, and to coerce or maliciously induce an otherwise willing employer not to give him future employment, alike does that workman serious damage in his trade and prevents him from earning his wages. The object of the wrongdoer is the same in each case.

And, again, Lord Morris in his dissenting opinion said:

In my opinion, it is actionable to disturb a man in his business by procuring the determination of a contract at will, or by even preventing the formation of a contract, when the motive is malicious and damage ensues. * * * At common law a workman had a right to work for any person who was willing to employ him. Both had a right to trade in labor as in any other commodity, and as they thought fit. This was part of the personal liberty enjoyed by every man, and, like personal liberty, was the subject of peculiar safeguards; notably, it was a right which, like that of personal liberty, could not be bartered away—a contract restraining one's right to trade, with certain exceptions not material here, was like a contract to become a slave, null and void—the one right as well as the other was inalienable. The existence of this right to trade was established at least as far back as the reign of Queen Anne.

EFFECT OF THE DECISION UPON CAPITAL AND LABOR.

This case of Allen *v.* Flood has been quoted at considerable length because of its far-reaching importance. When the decision was first rendered by the House of Lords it was regarded by the workmen as a sweeping victory won by them. They considered that their position had been immensely strengthened and that by being legally permitted to hold over an employer the threat of a strike, unless men obnoxious to them were discharged, they had a powerful weapon in their hands which could not fail to be effective. But the employers were not slow to perceive that the decision also put a weapon into their hands, which as used by them might become equally effective. If the law permitted officials or members of trade unions to threaten nonunionists or others

with loss of employment, or to threaten employers with suspension of work unless they discharged objectionable men, so also employers could legally refuse to employ members of a trade union in case of molestation of nonunionists by their fellow-workmen. In other words, both threats to strike and threats to lock out had been legalized, and the threat might be converted into an act without subjecting the doer of the act to a civil or criminal prosecution.

The effect of this decision has been to make it impossible to secure a conviction for maliciously causing the dismissal of a workman by his employer, or causing persons not to enter into contracts with him. Swift upon entering judgment by the Lords in Allen *v.* Flood, the court of queen's bench decided a case on all fours to that of Allen *v.* Flood, but in the lower court judgment was deferred until the decision of the highest tribunal was known. The action brought in the court of queen's bench was that of a cabman against three other cabmen who, being then on strike, informed their employer that the strikers would never return to work unless this man was discharged, which was done. In rendering judgment for the defendants the judge stated that the judgment of the House of Lords in Allen *v.* Flood established that nothing proved to have been done by the defendants in the present case amounted to an actionable wrong, and the fact of their having conspired to do those things did not give plaintiff a right of action.

MORE JUDICIAL INTERPRETATION.

What constitutes intimidation and to what lengths men may go in picketing and yet not contravene the seventh section of the act are questions which have frequently occupied the attention of the courts. Of recent years strikers have used picketing as their chief weapon, finding it to be more efficacious than other methods in preventing their places being filled, and the employers, naturally, have endeavored to prove that picketing was of itself an illegal act. The trend of the decisions is clearly to countenance picketing when the purpose of the pickets is to acquire legitimate information, but to hold it to be illegal when persuasion or intimidation is employed.

On July 5, 1876, Baron Huddleston, in pronouncing judgment upon a picketing case (Regina *v.* Bauld), involving charges of intimidation arising out of an engineers' strike, after pointing out that the seventh section of the conspiracy act excludes from criminal restraint action for the purpose of obtaining legitimate information, said:

It is so dangerous a thing to do at all that it is difficult to guard against the abuse of the practice, and, therefore, if you assert a right to "picket" you are almost certain to get into difficulty, for whatever you may intend by it, others will go beyond it. Most certainly watching and besetting, unless it is only for information, is illegal. If, then, you do not wish to go beyond the law, it is better to avoid such acts altogether, as it is illegal to follow anyone about in the streets.

He further stated in pronouncing judgment:

The intention of the legislature, in inserting this clause in the section, was for the purpose of enabling workmen on strike to find out whether any of their fellow-workmen, who, as members of their trade union, might be drawing strike allowances, were "traitors" to their union, and were going back to work and so getting money from both sides.

The case of Bailey *v.* Pye attracted considerable attention at the time. It was tried before Baron Pollock and a special jury in January, 1897. The plaintiffs, J. and W. O. Bailey, glass merchants, silverers, and bevelers, claimed damages for injury to their business by the acts of the defendants, the members of the National Plate Glass Bevelers' Trade Union, of which Pye was secretary, and they also demanded a perpetual injunction to restrain the defendants from a repetition of their unlawful and malicious conduct. Until this dispute the plaintiffs had had no labor troubles, as they had not objected to employing trade-unionists and had paid rates which accorded with trade-union demands. In September, 1895, however, the firm arranged with an apprentice, on the expiration of his indentures, to employ him as underforeman, and to pay him by the hour instead of by the piece. He accepted the terms offered; but the union ordered that he should be paid piece rates or dismissed. The firm declined to cancel the agreement with their employee. The union thereupon compelled a strike. The following day the firm received a deputation of strikers, who, on matters being explained to them, expressed a desire to return to work. Messrs. Bailey agreed to take them all back, with the exception of one man who had assaulted one of the old hands for continuing to work. The union, however, determined that all must be taken back or none. Messrs. Bailey refused, and within half an hour their premises were "picketed" by their own men and strangers. Messrs. Bailey were awarded damages, and the injunction prayed for was granted.

In order to obtain the opinion of an eminent authority on the interpretation of section 7, the Labor Commission procured from Sir Frederick Pollock this expression:

There is no doubt that the intention of this section was to draw the line between legitimate and illegitimate picketing. The enactment is sufficiently clear, with one exception; and subject to that exception, the difficulties that occur in its application are such difficulties in obtaining sufficient evidence against ascertained persons as can not be established by the wisdom of any legislation or the skill of any legislator. The exception lies in the word "intimidates." Must intimidation be a threat of something which, if executed, would be a criminal offense against persons or tangible property? Or does it include the threat of doing that which would be civilly, though not criminally, wrongful? Or, lastly, can it include the announcement of an intent to do, or cause to be done, something which, without being in itself

wrongful, is capable of putting moral compulsion on the person threatened? A specially constituted court of the queen's bench division, proceeding on the intention of Parliament, as shown in the Trade Union Act of 1871, as well as in the act of 1875, has pronounced the first of these interpretations to be the correct one. * * * It is to be regretted that (notwithstanding express warning uttered by members of Parliament learned in the law when the bill was in commitee) the language of the act of 1875 was left uncertain.

It is only necessary in this connection to call attention to one other case to show that the judicial interpretation of the section depends, and probably will continue to depend, very largely upon the personal view of the interpreter. In January, 1891, the recorder of Plymouth (Mr. Bompas, Q. C.) delivered a decision which caused the widest comment. Treleaven, an employer, had a dispute with his union men, whose leaders issued this notice: "Inasmuch as Mr. Treleaven still insists on employing nonunion men, we, your officials, call upon all union men to leave their work. Use no violence, use no immoderate language, but quietly cease to work, and go home." The question before the recorder was whether this was intimidation within the meaning of the act. The recorder held that it was intimidation, on the ground that it was a strike not to benefit the workmen, but to injure the master. He held that a strike to benefit workmen was a legal combination, but that a strike to injure an employer was an illegal combination. The case was carried to the court of appeal and there reversed, the judges holding that "intimidation" must be confined to the use of violence to the person or to actual damage done to property; a contingent injury to the business of an employer did not, in their opinion, come within the scope of intimidation.

There are two other cases second only to that of Allen *v.* Flood which may be briefly noticed. At the Belfast summer assizes, July, 1896, Leathem, a Lisburn merchant, brought suit (Leathem *v.* Craig) against certain members of the Journeymen Butchers' and Assistants' Association to recover damages for maliciously and wrongfully enticing and procuring persons, workmen in the employment of the plaintiff, to break contracts into which they had entered, and not to enter into other contracts with him, with intent to injure the plaintiff, and intimidating and coercing certain persons to break contracts with the plaintiff. The defense was a traverse of the acts complained of, and that they were not unlawful. The trial was before Lord Justice Fitzgibbon and a special jury, which found for the plaintiff and awarded damages against the defendants. Judgment, however, was reserved until after the lords' decision in Allen *v.* Flood, when it was entered in favor of the plaintiff. An appeal was taken to the Irish queen's bench division and upheld by a divided court, the lord chief baron alone expressing the opinion that Allen *v.* Flood had decided the principle otherwise. As a matter of fact, the latter case did not determine

whether to persuade a person to break his contract is wrongful in law. In Leathem *v.* Craig the question was whether a conspiracy had been entered into. The lord chief baron held that, following the dictum in Allen *v.* Flood, the conspiracy was not criminal, but the court held that "the action complained of was a wreaking of vengeance on the plaintiff," and, as such, not in the same category as Allen *v.* Flood. In Leathem *v.* Craig the question was whether there was a conspiracy against the employer. From the decision of the queen's bench an appeal was taken to the court of appeal, the appeal being argued before the lord chancellor, the master of the rolls, and Lord Justices Walker and Holmes. The verdicts of the courts below were upheld.

The other case referred to is that of Lyons *v.* Wilkins, also regarded as of very great importance. The plaintiffs having become involved in a dispute with their workmen their premises were picketed in the usual manner. They applied for an interlocutory injunction to restrain the defendants from watching or besetting except for the purpose of obtaining or communicating information. This injunction was granted by Mr. Justice North and made perpetual by Mr. Justice Byrne in the chancery division of the high court of justice. An appeal was taken to the court of appeal and came on for hearing before the master of the rolls and Lord Justices Chitty and Vaughan Williams. Judgment was given upholding the original decision. In the course of his judgment the master of the rolls said:

> The truth was that to watch or beset a man's house with a view to compel him to do or not to do what it was lawful for him to do was wrongful and without lawful authority, unless some reasonable justification for it was consistent with the evidence. Such conduct interfered with the ordinary comfort of human existence and the ordinary enjoyment of the house beset, and would support an action for nuisance at common law; and proof that the nuisance was for the purpose of peacefully persuading other people would afford no defense to such action. Persons might be peacefully persuaded, provided that the method employed to persuade was not a nuisance to other people. * * * It was all very well to talk about peaceable persuasion, and to draw fine lines between persuasion and giving information. The line might be fine; but in this case there was no difficulty whatever in coming to the conclusion that what was done was watching and besetting, as distinguished from attending in order merely to obtain or communicate information.

GENERAL CONCLUSIONS.

What effect the passage of the law of 1875 has had in improving the relations between capital and labor is a question so difficult of exact determination, or of mathematical demonstration, that it can only be answered in the most cautious manner and by inference rather than by direct statement. Despite the frequent reference which has been made in this article to litigation—which, perhaps, is always the

natural corollary of any legislative action or a complete change from the old established order—and the admitted discontent with some of the phases of the law, that these relations have been improved must be conceded, and the acknowledgment is frankly made by the representatives of both capital and labor. One of the chief causes for this improvement is the power given to the workmen to do in combination that which they were before permitted to do as individuals only. That permission has removed one source of friction; it has with exactness limited the rights of the men, and there has been no attempt on the part of employers to interfere with this legal right. On the other hand, section 7, as judicially interpreted, enables the employers to prevent intimidation, or coercion, or interference with the carrying on of their business in their own way, and when an attempt is made to interfere with them a ready means is provided for obtaining relief. Perhaps the answer to the question as to the effect of the law on the relations between capital and labor can be best given in the words of two men, one entitled to speak as the representative of federated capital, the other as the representative of federated labor. The representative of capital said:

We are satisfied with the law. We would not change it if we could, except to make clearer the definition of intimidation and coercion. Before the law came into effect we were harassed by picketing and besetting, and it was extremely difficult to secure a conviction. Now, we are far less troubled by these forms of violence, and when it becomes necessary to appeal to the protection of the law it is quickly given us and where the case is a just one we can rely on securing a conviction. But there is another reason why we think the law is a good thing and why it is mutually advantageous, both to capital and labor. Prior to 1875 the relations between masters and men were vague, indefinite, barbaric, archaic. The men were denied the right to improve their condition, to obtain an increase of wages, to reduce their hours of labor; I mean they were denied the right to attempt to do these things by peaceful means, a right which certainly belonged to them. These restrictions have been removed. We are often, I admit, dictated to by trade unions, often severe and burdensome restrictions are imposed upon us in the conduct of our business; still, I concede that the men have a right to try and obtain an amelioration of their condition provided they do not resort to illegal methods. Nor can it be denied that what we now recognize as legitimate was in the old days regarded as illegal; prosecutions were frequently instituted on frivolous grounds. The law has removed this cause of complaint. It has brought the relations between capital and labor into greater harmony. These relations are not yet perfect; but they are better than they were.

From the standpoint of the representative of labor the following:

Speaking broadly, I have no hesitation in saying that the relations between capital and labor are better to-day than they were 25 years ago. I do not attribute all of this improvement to the passage of the law of 1875. I attribute part of that improvement to the law of that year, part to the better understanding which now exists between

employer and employed, to the recognition that both have equal rights, to the recognition that both are mutually dependent on each other, that nothing can be to the advantage of the one without being to the advantage of the other, and, conversely, if one side is dissatisfied the other is sure to be, with the results that the consequences are injurious to both. Referring more directly to the law of 1875, its advantages to labor have been these: It has permitted us to do in combination what we were permitted to do as individuals, but which we were prohibited from doing in association before that law came into effect; it has more particularly established our rights; it has given us certain privileges and restrictions, and at the same time has laid equal privileges and restrictions upon employers; it has made us feel that we are not in a class by ourselves but stand equal in the eye of the law with other men, which has had the effect of removing much of the bitterness, much of the feeling of injustice and inequality which formerly existed between capital and labor. The law is not to be regarded as perfect. It has not quite fulfilled all of our expectations. The courts, in the opinion of labor, have been too prone to construe the law in favor of capital. Some of the convictions under section 7 we regard as unwarranted by the law and the facts. The decision in Allen *v.* Flood was a great victory for us, but the limitation of the power to picket, the restrictions which are imposed upon us, the restraint under which we are held, the fact that we can only do certain negative things, and have no power to act affirmatively, have weakened instead of strengthened us when we are engaged in a conflict with capital. We should like to see the law amended; its amendment has often been discussed by us, but I am frank to say I do not see any prospect of the law being modified to make it more acceptable to the workmen. Still if the question were put to a vote, if we were asked whether we would have the law repealed or let it stand as it now is, faulty although we know it to be, I have no hesitation in saying that a majority of the intelligent workmen of Great Britain would vote in favor of the law being retained on the statute books.

SOCIAL REFORM CLUB,

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INJUNCTIONS IN LABOR DISPUTES.

[This report was read at a meeting of the Social Reform Club of the city of New York on May 22, 1900, and is published pursuant to a resolution, unanimously passed, adopting its recommendations and directing that it be printed and sent to all Federal and higher State judges, and circulated generally.]

To the Social Reform Club:

The committee appointed to inquire into the use of injunctions in labor disputes report as follows:

The case which has attracted the largest share of public attention, and which may properly be considered as the leading one on the subject, is that of ex parte Debs in 1894 (158 U. S., 564). Your committee believe that there has been much popular misunderstanding as to the extent and character of this decision.

Briefly stated, the Supreme Court held that the right of regulating interstate commerce and the right of transmission of the mails furnish adequate grounds on which to found the jurisdiction of a United States court of equity to prevent, by injunction, the forcible obstruction of a public highway in such a manner as to impair those rights; that this jurisdiction to issue an injunction involves the right to punish as a contempt the violation of such injunction, though the acts complained of might constitute a crime punishable at law, and that the fact that the acts complained of were being done by a large number of men did not deprive the court of a jurisdiction, which had for many years been exercised where the obstructors of the highway were few in number.

The court, however, made certain limitations, which seem to have been overlooked or forgotten, not only by the general public, but also by many of the lower courts, which have since used that decision as if it were a warrant for injunctions, which can fitly be characterized in no other way than as gross usurpations of judicial power, and which have given rise to the now famous phrase, "government by injunction."

Speaking by Judge Brewer, the Supreme Court distinctly said:

> It must be borne in mind that this bill was not simply to enjoin a mob and mob violence. It was not a bill to command a keeping of the peace; much less was its purport to restrain the defendants from abandoning whatever employment they were engaged in. The right of any laborer or any number of laborers to quit work was not challenged. The scope and purpose of the bill was only to restrain forcible obstructions of the highways along which interstate commerce travels and the mails are carried. And the facts set forth at length are only those facts which tended to show that the defendants are engaged in such obstructions.

From this summary it will be seen that a number of points, popularly supposed to have been decided by the Debs case, were not passed on, viz:

(1) That persons not made parties may be enjoined.

(2) That lawful gatherings on the highway may be enjoined.
(3) That the exercise of the right of free speech may be enjoined.
(4) That any lawful act may be enjoined.

It is not too much to infer from the quotation above given that if any of those points were to be presented to that court the outcome would be in favor of what has generally been taken by both public and legal profession to be the law. It is true that there were some parts of the injunction as granted by the lower court in the Debs case which violated one or other of those principles—which principles must be regarded as pertaining to fundamental rights. The parties actually punished in that case were, however, parties to the action, and it does not appear that any objections to the injunction, on which the Supreme Court did not pass, were specially urged upon its attention. Therefore it can not be held to have approved them. In the passage above quoted the force of the word "only" should ever be taken into account: "The scope and purpose of the bill was only to restrain forcible obstructions of the highways along which interstate commerce travels and the mails are carried." It is a matter of course that the injunction had no legality as to acts outside "the scope and purpose of the bill."

It should also be remembered that the Supreme Court was bound by the findings of fact of the lower court, and so stated in express terms: "Its (the lower court's) finding of the fact of disobedience is not open to review on habeas corpus in this or any other court." In this connection the committee disclaim any intention of entering into the actual facts of the Debs case, they not being within the inquiry as directed.

Your committee are of the opinion that the popular misapprehension, above mentioned, has been largely due to the fact that in subsequent decisions of the lower courts, particularly the Federal, the points above emphasized, as in no way decided by the Debs case, have been, as your committee believe, improperly assumed to be logical deductions from that decision.

A few examples will suffice:

In a suit brought by the American Steel and Wire Company, in Cleveland, Ohio, in 1898, the defendants were, among other things, enjoined "from in any manner interfering with" the company's business.

In the case of The Sun Printing and Publishing Company *v.* Delaney and others, in December last, the supreme court of New York, among other things, enjoined the defendants from the exercise of their right to give the public their side of their controversy with the Sun as an argument against advertising in a paper which they claimed had treated them unjustly. It also forbade them from attempting to persuade news dealers from selling the paper; and, finally, wound up with a sweeping restraint "from in any other manner or by any other means interfering with the property, property rights, or business of the plaintiff." It should be added that, on appeal, the appellate division struck out these commands; but they were so plainly subversive of fundamental rights that it is difficult to see how they could have been granted in the first instance.

In still another case last year (The Wheeling Railway Company *v.* John Smith and others, so runs the title of the action, without naming the others, in the United States circuit court, West Virginia) two

men not parties to the action, nor found to be agents of "John Smith and others," whoever they may have been, were punished for contempt of court for, among other things, "reviling" and "cursing"—the court? Not at all, but for "reviling" and "cursing" employees of the railroad company. If these men had not actually served out an imprisonment in jail for thirty days as a punishment for contempt of corporation, it might be thought that your committee had taken this example from opera bouffe. The legality of this punishment was never passed on by the Supreme Court, for the reason, as your committee understand, that the parties were unable to bear the expense of taking it there, and so served their term in jail.

During the final drafting of our report a temporary injunction has been granted by a justice of the supreme court in New York City, of which it is difficult to speak in moderate terms; but as it is now under consideration by the court, we shall refrain from any comment upon it except to say that, in our opinion, some of its commands are plainly void, because they require the defendants to abstain from perfectly lawful acts. We refer to the case of Levy *v.* The Cigar Makers' International Union and others, in which last month the officers of the union and the other defendants were prohibited not only from "picketing" (which when peaceable has not yet, in this State, been decided by our highest court to be unlawful; see Reynolds *v.* Everett, 144 N. Y., 189, and 67 Hun., 294); not only from "accosting" the plaintiffs and their new hands or persons seeking their employment; not only from doing "any act or thing" which has the tendency of "molesting" the plaintiffs, whatever that may mean; not only "from any interference with" the plaintiffs and their employees and persons seeking work in their factory, in the adjacent streets, "or in any other place," but also from paying or offering any money to former employees for the purpose of "continuing organized, concerted, and combined action" on the part of the strikers with the object of interfering with the plaintiffs' business.

In other words, this injunction forbids the defendants even from approaching their former employers for the laudable purpose of reaching an amicable result; it forbids them from making their case known to the public if the tendency of that is to vex the plaintiffs or make them uneasy; it forbids them from trying in a perfectly peaceable way in any place in the city, even in the privacy of a man's own home, to persuade a new employee that justice is on their side, and that he ought to sympathize with them sufficiently not to work for unjust employers; and, finally, it forbids the union from paying money to the strikers to support their families during the strike.

It is only justice to the judge who granted this injunction to suggest that he signed it hastily and without fully taking in these provisions, which are buried in a mass of verbiage and so, it is to be hoped, escaped his notice. These portions of the injunction are so plain a violation of the rights of the defendants at common law, under the Constitution, and especially under section 171 of the Penal Code, that we are of the opinion that they will be set aside as soon as brought to the serious attention of the court.

It can not be necessary to multiply instances of injunctions which, whether valid or not in some respects, are in others plain usurpations of power. It is, however, worth while to call attention to a strange freak of a court last year, which as it did not happen in a labor dispute

is all the more noteworthy as showing that it may become just as necessary in the future to teach our judiciary that there is no such thing as the divine right of a judge, as it was in the past to upset the doctrines of the "divine right of kings," and the "divine right of bishops."

The Texas court of appeals (ex parte Warfield, 50 S. W. Rep., 933) upheld the validity of an injunction, which it is safe to say is without parallel in the history of jurisprudence. A husband claiming damages from Warfield for alienating the affections of his wife, obtained an injunction commanding him not to speak to nor communicate with the wife, nor to go near her at the house where he boarded, nor at "any other house or place in the city of Dallas, or State of Texas." Shortly afterwards the defendant happened to meet the wife, and had some casual conversation with her, for doing which he was found guilty of contempt of court and fined $100 and sent to jail for three days. He naturally tried to get out on habeas corpus, and, incredible to relate, failed to do so. It has, therefore, been solemnly adjudged to be the law of Texas that a jealous husband, upon proof that he fears a breach by his wife of the seventh commandment, can have the aid of a court of equity to prevent correspondence between the parties by which it might be brought about. This may be styled marital fidelity by injunction. We may come in time to have etiquette by injunction. If our judges ought to become regulators of conduct and enforce the Ten Commandments by mandatory injunctions, then it were better to confer the power upon them by due act of legislature than to allow them to take it without right.

The tendency of the courts to stretch their jurisdiction beyond the bounds set in the Debs case is so general, and the consequent mischief of allowing a usurping court to act as a jury in its own cause so serious, that your committee are of opinion that legal measures in restraint should be adopted, if respect for law is to be preserved. He is the worst enemy of this Republic who does anything to break down reverence for law or respect for the courts. It is matter for grave foreboding that in late years so many of our judges, especially of United States courts, have been offenders of this sort.

In view of their vast power through injunctions and otherwise, and of the great opportunity of abuse and oppression presented through the appointive system, and also because of changed conditions, the question arises whether United States circuit and district judges ought not now to be elected by the people?

When the United States Constitution was adopted, it was not through wise or safe by the property classes, whose judgment predominated in framing that instrument, that judges should be elected by the people, and hence the anomalous principle under republican government was adopted of having them appointed for life. There has been no change in this regard since that time, and the judical department of the National Government is still entirely free from the direct control of the people. Substantially the same method of choosing the judiciary was adopted in the early State constitutions, but such a change of sentiment in regard to this question arose that we now find that judges are elected by the people for specified terms in at least thirty-two of the largest and most important States of the Union. In view of this change and and of the satisfactory results of the elective system and of the great power exercised by United States courts, the question is suggested for consideration whether it would not be wise to provide that United

States circuit and district judges shall hereafter be elected by the people, and the selection of judges of the Supreme Court of the United States be confined to judges of national and the higher State courts who have served at least ten years upon the bench immediately prior to their appointment.

Whether so radical a departure from our national policy be wise or not, yet by reason of the inherent tendency of courts to enlarge their jurisdiction, and of the desirability of confining the law in these cases within the bounds of the Debs decision, it would seem clear that there should be imposed certain limitations on the power of the courts in issuing and enforcing injunctions. It is of special significance that so staunch a supporter of the rights of property as the Evening Post, in a deliverance in its issue of May 16, upon the legality of a recent injunction granted by a Federal judge to a street-railway company in Kansas City, sounded this note of warning:

> If these acts are misdemeanors or crimes, the police ought to arrest those who commit them, and the criminal courts ought to inflict the penalties prescribed by law. That is the theory of the law, and if it is not the practice, that is not something which Federal judges out to try to correct. No doubt the injunction in this case was legally issued, but the objection is that the punishment of crime is not judiciously administered by means of proceedings to inflict punishment for contempt of court. It is a distortion and an abuse of remedies, and it may lead in the end to much greater evils than those which it is now used to suppress.

In conclusion your committee recommend as follows:

That an attempt be made to obtain concerted action throughout the country in favor of urging upon the national and State legislatures the passage of acts providing—

(1) That injunctions shall not be issued against any but parties to the action, their agents, servants, and attorneys.

(2) That when an injunction, however valid in part, prohibits the lawful use of the highway or the right of free speech or lawful combination to advance joint interests it shall be void in toto.

(3) That all persons who are charged with disobedience of an injunction in respect of a matter which might be the subject of indictment shall have the right to demand a trial by jury upon issues of fact to be properly framed.

(4) That whenever the question whether an injunction, pending an action, should be granted in a labor dispute depends upon the determination of questions of fact arising on conflicting affidavits, either side shall have the right to demand that a jury be forthwith impaneled to try the same upon issues properly settled.

And lastly, that it be recommended to labor organizations to have the questions arising under existing law carried to the highest courts under the direction of the general body in each trade, rather than of local associations, to the end that any usurpation of judicial power in any corner of the land, however distant or obscure, may be effectually restrained and brought to naught.

All of which is respectfully submitted.

JOHN BROOKS LEAVITT.
JOHN D. KERNAN.
ERNEST H. CROSBY.
MORNAY WILLIAMS.
ROBERT VAN IDERSTINE.

Dated May 22, 1900.

APPENDIX.

[For the benefit of members of the club not familiar with the theory on which injunctions are granted, the chairman prefaced the reading of the report with a short account of their origin and development. At the suggestion of a member, his explanation is here appended.]

The scheme of government adopted by our fathers as best calculated to preserve our liberties and promote our welfare was that of a threefold division into legislative, executive, and judicial functions; the first to make the laws, the second to execute them, and the third to pass on the rights and duties of the citizen under the guaranties of the Constitution.

Unconstitutional acts by a President or governor can be punished by impeachment in the legislative branch. Unconstitutional acts of Congress or State legislatures can be declared null by the courts. But the only tribunal where errors of the judiciary can be corrected is that of public opinion.

The jurisdiction of the courts is of two kinds, civil and criminal. The criminal courts only try cases involving crimes and misdemeanors upon complaint of the people through their duly elected or appointed officials. The controversies between private citizens can only be tried in the civil courts.

We inherit from England our system of administering justice, and in England there very early grew up a custom which has a direct bearing here, and one which it is necessary to know historically in order to fully understand the subject in hand.

Originally in England the only thing a man could do when injured by his neighbor was either to have the wrongdoer punished in the criminal court or to sue him in the civil court for damages; that is, for an amount of money which twelve jurymen should consider proper compensation for failure to carry out a contract or to observe another's rights. This measurement of men by dollars was as unsatisfactory to our ancestors as it is to us. The remedy thus afforded by the law courts was in many cases inadequate. A noble lord might be guilty of some act of oppression, or of interfering with a right of private way over his premises, or of obstructing the public highway; and the humble citizen would find that neither punishment nor money would be sufficient reparation. The courts could, however, give him no other redress. In those days the King was looked upon as the fountain of power, of justice, of goodness. "The King could do no wrong." To him, therefore, the citizen, who had no adequate remedy in the courts, made humble petition that the King would of his great power and goodness make his oppressor respect his rights. The King, who in theory was a benevolent tyrant, in fact was more interested in the pleasures of war, the tourney, the chase, the table, or the chamber. He had no time to look into the matter, unless it was something that could be settled offhand. He would therefore refer a pertinacious suitor to one of his officers with instructions to the latter to examine into the affair and report his opinion as to what the King ought to do. As such controversies involved equitable rather than legal questions, they were generally sent to the "keeper of his conscience," as he was styled, an official called his "chancellor," usually a priest. He heard the parties, reported to the King, who would then either dismiss the matter or decree that the offender do what he ought to do or refrain from doing what he ought not to do. Thus the deficiencies of legal procedure were supplemented by decrees of the King.

As time went on the system became crystallized. His chancellor became a judge, who sat in a court of equity, as it was called, heard cases as the law judges did, but without a jury, and in the name of the King granted decrees which recited the facts, pointed out that there was no adequate remedy at law, and commanded the defendant what he should do or leave undone.

It will easily be seen that if a chancellor were to be guided by nothing but caprice his court would become a terrible engine for tyranny. It used often to be sneeringly said that equity decisions depended on the length of the chancellor's foot. So there came into existence certain set rules under which equity was administered. Those rules were admirably adapted to the end of keeping the chancellor within proper bounds. "Equity follows the law;" "Equality is equity;" "He who asks equity must do equity;" "He who comes into a court of equity must come with clean hands," and the like. The general rule was that wherever money damages for a wrong would be adequate compensation a court of equity would not interfere. There grew up this stereotyped phrase, that the plaintiff had no adequate remedy at law. If he could show that the defendant was doing or threatened to do him a continuing injury, irreparable in its nature, and for which money would not be compensation, he could obtain in an otherwise proper case a decree enjoining the defendant from continuing to do the act or from carrying out his threat. In order that the complainant might not be injured while the court was examining into the case, it would, on affidavits showing the necessity, grant a preliminary writ, called a temporary injunction, commanding the defendant to abstain from doing the thing during the pendency of the action.

In our country the system of separate courts, one to give money judgments after a trial by a jury, the other to issue decrees after hearing before a judge, has been changed in most States so that one court does both. This is the fact also as to the Federal courts. We have still, however, in theory kept up the rule that a party asking for a command rather than money must satisfy the court that compensation in dollars will not meet his case and that precedents warrant the command.

Right here is where the danger point is touched. The power of command has in all ages been a dangerous one. Its subjective results are often lost sight of in the presence of the oppression and wrong it has worked objectively. Kings and presidents, generals and judges, capitalists and walking delegates, if they search their own hearts, must know the evil effects upon themselves of the power of command. All persons know its pernicious consequences upon others when exercised unjustly. So long as our courts of equity wield the power of command under well-settled rules and within carefully marked bounds of precedent there is nothing to fear. It is open to question whether in every case where an employer has asked for an injunction against striking employees the court has inquired whether he acted justly in the beginning of the quarrel. Yet the time-honored rules say, "He who asks equity must do equity," and "He who comes into equity must come with clean hands." No wrongful act of a defendant should ever be allowed by a court of equity to affect its mind to the point of ignoring a contributing act of injustice by the plaintiff. Of late years the failure of judges to satisfy themselves on such points when granting preliminary

injunctions has resulted in making the preliminary injunction, instead of the final judgment, the chief objective point of the suit. And so our courts of equity are being gradually turned into criminal courts for the enforcement of law and order through the medium of the power of command. Such an evolution of judicial jurisdiction from kingly prerogative was hardly expectable under a republican form of government.

The value of an organization like the Social Reform Club is that, composed as it is of men from all walks of life—professional men, capitalists, workingmen—such subjects are discussed impersonally and from different points of view.

This report presents the question from the point of view of lawyers. The members of the legal profession are by their training necessarily conservative, yet their duty to their clients requires them to be watchful of their courts. They are the champions of liberty in civil life. So long as they are neither too blind nor too cowardly to rebuke courts for illegal exercise of the power of command we need have no fear for the rights of our citizens at the hands of our judges.

This report constitutes no reflection upon any just judge. The right-minded judge exercises the power of command in fear and trembling; fear for the results upon his own character, trembling less the results to his neighbors may not be consonant with equal and exact justice to all.

THE MODERN USE OF INJUNCTIONS.

THE RALEIGH,
Washington, D. C., February 6, 1902.

EDITOR POLITICAL SCIENCE QUARTERLY,
Columbia College, New York City.

DEAR SIR: I inclose herewith a copy of an antiinjunction bill (S. 1118) which was introduced and reported from the Senate Committee on the Judiciary by Hon. George F. Hoar, of Massachusetts. This bill was introduced at the instance of the labor organizations, representing a large majority of the workingmen of the United States, with the hope that if it is enacted into law it will serve to at least check to some degree the unwarranted use of the writ of injunction by some of our Federal judges.

This measure is now on the Senate Calendar, and we expect it will be called up for consideration soon, and in order to strengthen our side we are collecting several articles on the injunction question, written by eminent authorities, which we intend to ask the Senate to print as a public document, and we would like very much to include in this the article which appears in the Political Science Quarterly for June, 1895, written by F. J. Stimson, and entitled "The Modern Use of Injunctions." As I understand, this article is protected by copyright. On behalf of the railroad brotherhoods, I write to kindly ask you if you would please grant us permission to have this article printed in the manner above described. If you can consistently do this, I assure you it will be appreciated very much.

Very truly, yours,

H. R. FULLER.

POLITICAL SCIENCE QUARTERLY,
COLUMBIA UNIVERSITY,
New York City, February 10, 1902.

H. R. FULLER, ESQ.,
Washington, D. C.

DEAR SIR: You are hereby authorized to have reprinted as a public document by the Senate the article on "The Modern Use of Injunctions," by F. J. Stimson, which appeared in this Quarterly for June, 1895.

Very truly, yours,

WM. A. DUNNING,
Managing Editor

[From Political Science Quarterly, June, 1895.]

THE MODERN USE OF INJUNCTIONS.*

We have all felt that there is in the public mind much doubt and uneasiness concerning the novel attitude taken by the Federal courts, of active interference in the labor troubles of the past two years. This doubt, though shared by many lawyers, is not confined to them; it exists more strongly, if less definitely, in the minds of the thoughtful public as well as of the laborers themselves. I believe it is never wise to ignore a general sentiment of this magnitude; for I believe that our race has inherited a general sense of liberty which, in a thousand years of transmission, has grown almost to an instinct that warns the people of a threatened invasion of their liberties even before it becomes the subject of cognizance by courts and legislators. And I believe that in the particular case at hand this disquiet or doubt is reasonable; that it may be formulated and based upon important principles, and that it may be justified by a reference to the facts which gave it rise.

What are the facts? Briefly these:

We have seen, in private lawsuits between individuals or corporations, courts of equity—civil, not criminal, courts—invoked to restrain, not alone parties to the suit, but anybody, the whole world, with or without actual notice of a court order or injunction, not merely from interfering with property which is the subject of the suits, but also from committing or conspiring to commit, or aiding or advising others to commit, acts which are criminal; and sometimes only on the ground that they are criminal acts—criminal at common law, or made so by the recent statutes known as the antitrust law and the interstate-commerce law. We have seen more: We have seen persons committing, or about to commit, or said to be about to commit, such acts, arrested by these civil courts, deprived of their liberty and punished by imprisonment; and this, as in the Debs case and others, after the emergency which furnished the excuse for invoking the protective jurisdiction of the equity court has long gone by. And we have seen persons so punished without the usual safeguards of liberty afforded by the criminal law—without indictment, without right to counsel, without being confronted with witnesses, without trial by jury—and sentenced without uniform statute, at the discretion of the judge.

We have seen more: We have seen courts, not content with ordering all the world what not to do, order at a word the ten or twenty thousand employees of a railroad system to carry out each and every the definite or indefinite duties of their employment as directed by any of their superior officers, or by receivers of the courts themselves, so that for any failure or omission or merely negative act on the part of one of these employees he may be summarily brought into court and punished, either at that time or later, as the court may find leisure to sentence or its attorneys to file complaints. Take one example of many. Judge Ross, in the case of the Southern California Railroad *v.* Rutherford, where the bill alleged that the defendants continued in the employment of the complainant company, and yet refused to perform their regular and accustomed duties as such employees, said:

> It is manifest that for this state of affairs the law—neither civil nor criminal—affords an adequate remedy. But the proud boast of equity is: Ubi jus, ibi remedium. It

* Address delivered March 15, 1895, to the Young Men's Democratic Club of Massachusetts.

is the maxim which forms the root of all equitable decisions. Why should not men who remain it the employment of another perform the duties they contract and engage to perform? It is certainly just and right that they should do so, or else quit the employment. [And in conclusion.] I shall award an injunction requiring the defendants to perform all of their regular and accustomed duties so long as they remain in the employment of the complainant company, which injunction, it may be as well to state, will be strictly and rigidly enforced.[a]

We have seen yet more. By the act of 1890, commonly known as the antitrust law, it is declared that "every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States," is illegal; and by the fourth section, the Attorney-General, or any district attorney, upon the information of any individual, is authorized to institute proceedings in equity, in the name of the United States, to prevent and restrain violations of the act. Furthermore, by the interstate-commerce act of 1887 it is made a criminal offense for railroads, their officers or employees, to refuse to perform their duties as common carriers, and to refuse to receive the cars and passengers of other railroads or companies; as a result of this a strike of such employees becomes in effect also a conspiracy against interstate commerce.

The first attempt to enforce the antitrust law was made in a case here in Boston, before Judge Putnam, of the Federal court. Judge Putnam wisely refused to extend the meaning of this act beyond its expressed words, and said: "It is not to be presumed that Congress intended to extend the jurisdiction of the courts of the United States to repressing strikes and boycotts, without very clear language."[b] If the courts had stopped there, there would be little need for this address. But since then what changes have happened.

The Attorney-General of the United States, or his district attorneys, acting for the United States in the exercise of its sovereignty as a nation, has sued out injunctions in nearly every large city west of the Allegheny Mountains. Injunction writs have covered the sides of cars; deputy marshals and Federal soldiers have patrolled railway yards; chancery process has been executed by bullets and bayonets. Equity jurisdiction has passed from the theory of public rights to the domain of political prerogative. In 1888 the basis of jurisdiction was the protection of the private right of civil property; in 1893 it was the preservation of public rights; in 1894 it has become the enforcement of political powers.[c]

From being applied to parties to a suit, the process of contempt has come to be applied to large bodies of men who may never have heard of the suit which gave it rise. For instance, the Chicago "omnibus bill" of last summer was filed to prevent interference with twenty-three great railroad systems, and the injunction issued not only against several members of the American Railway Union by name, but against as many thousands unnamed; and, to prevent a possible confusion of identity in the defendants, it was further directed to "all other presons whomsover."

The history of jurisprudence surely furnishes no precedent in which the chancery has called out the military in aid of an injunction writ. The antitrust law has not yet, it is true, reached its final interpretation in the Supreme Court; but it is fairly a subject of public discussion. The judges themselves who issued these injunctions and sentenced offenders to imprisonment for contempt of their orders, did so avowedly on the ground that the common law had failed—that the peace of the country demanded extraordinary remedies. Judge Woods, at

[a] S. C. R. R. Co. *v.* Rutherford, 62 Cal., 796.
[b] U. S. *v.* Patterson, 55 Fed. Rep., 641.
[c] C. C. Allen, address before the American Bar Association, 1894.

Chicago, is reported to have said: "The only reason for issuing an order at all is that it is a means of meeting the present emergency, for the process of arrest and indictment is too slow."[a]

Now, let us formulate the objections to all this; and I think we shall find that the public anxiety has some legal ground. Briefly, the objections are three:

1. This course of things does away with the criminal law and its safeguards of indictment, proof by witnesses, jury trial, and a fixed and uniform punishment. Most of these offenses might well have been the subject of criminal prosecution; and the bill of rights of our Constitution says that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

2. 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. More briefly and picturesquely: The Federal courts may thus grow into mere star-chambers and run the country—as they already run nearly half the railroads.

3. It tends to make our judiciary either tyrannical or contemptible. If we do not fall under a tyranny such as might have existed in the England of Charles I or such as does exist in the South America of to-day, we shall fall into the almost worse plight of finding an injunction of our highest courts a mere brutum fulmen—an empty threat, a jest, and a byword; so that through their own contempt process the courts themselves will be brought into contempt. An example or two will illustrate this possibility.

One such injunction as these I have mentioned was issued by Judge Beatty in the Coeur d'Alene mining-right cases. That injunction stated that a wrong existed, that unoffending citizens had been maltreated, and that the courts might successfully be invoked to bring relief; and it was ordered that the defendants be restrained from entering upon the complainant's mines, or from interfering with the working thereof, or by the use of force, threats, or intimidations, or by other means, from interfering with or preventing complainant's employees from working upon its mines. That was granted on the 12th of July, 1892. What effect did it have? On that very night the nonunion miners who had been ordered out of that mining district, and were escaping across the mountain range through the snow, were attacked, despite the injunction, by the striking miners themselves and 70 men were shot down or drowned in the river, save perhaps some few that escaped back into the snows of the mountains; and this was just twelve hours before the Federal troops arrived. So much for the tragedy of the ineffectual injunction. Now turn to its comedy.

In West Virginia, in the summer of 1894, a similar injunction was granted to the Baltimore and Ohio Railroad, restraining strikers from preventing the moving of cars. I quote from its attorney, Mr. Joel W. Tyler, of Ohio. He says:

So far as we have had any trouble, it was not in getting our injunction. It was not any trouble to get a swarm of soldiers of the State, as well as Federal soldiers, to

[a] St. Louis Globe-Democrat, July 3, 1894.

surround our cars. We got them along the Ohio River all ready to protect those cars and allow them to start; but when we supposed everything was ready and we were going to move that coal, lo! a squadron of women appeared, starting from the other side of Wheeling Creek, wading through the creek, and they got aboard those cars and pulled out the coupling pins and threw them in the river, and the wonder was that they had not a solitary particle of wet on any of their garments. The soldiers could not do anything against those women, and of course we could not move the cars without coupling pins.

So much for the comedy of the useless injunction.

There is nothing new under the sun. Just as trusts were discovered, objected to, and legislated against in England in 1354, you may make the curious discovery that precisely this same substitution of equity for common-law methods of dealing with crimes has occurred before, and that some five hundred years ago. It was resorted to in England then for the same reasons, with the same objections on the part of the people and the common-law courts, as here to-day, and with, I hope, the same results. But it is still more curious that one side is now invoking the power of the King, the special prerogative of the sovereign, upon the same old plea that the common law, with whose safeguards that prerogative interferes, is no longer adequate to protect the public or the State against disorder and oppression. For our courts are the direct successors to that extraordinary power of special help or personal mandate which is derived from the English sovereign (to whom our State succeeds) through his chancellor. In the old times this equity power of injunction was commonly invoked to protect the weak against the strong, who overrode the slower remedies of the common law; it is now invoked by the few against the many. Yet the justification it may have to-day must rest on the same old plea, that the owner of property, the individual—or the woman traveler whose train is deserted by strikers and who is left to starve and freeze on a prairie—is really the weak, while the organized thousands of strikers have become the strong.

I can not show you this more vividly than by calling your attention to a few passages in one of the oldest books on the history of equity courts. Our courts of equity are the successors to the powers and jurisdiction of the English chancellor; and the English chancellor was originally the representative of the King himself, the officer to whom the monarch deputed his powers and authority by way of special grace, to do justice outside the ordinary process of the courts. Spence tells us that in 1327—which, by the way, was the very time when trial by jury as known to us was first established, that is, when the jury ceased to be the witnesses of the crime and became a jury to find facts upon the evidence of the witnesses, as we have it to-day—in 1327 King Edward III found it necessary to adopt some more effectual measures of police than those which already existed. For this purpose justices of the peace were first instituted throughout the country, with power to take security for the peace and bind over parties who threatened offense. Fifty years later, in the reign of Richard II, it was found necessary to provide further measures for repressing forcible entries on lands. The course of justice was interrupted, and all these provisions were rendered in a great degree ineffectual by the lawless spirit of the times. In 1382 the Commons complained to the King of grievous oppressions caused by the power of great barons, who rendered the remedies of the common-law courts of no avail. Accordingly the judges of these courts themselves were placed under the special supervision of the chancellor, and the chancellor began to exercise his authority in repressing dis-

orderly obstructions to the course of law, and in affording civil remedy in cases of outrage which for any reason whatever could not be effectually redressed through the ordinary tribunals. Thereupon, however, the Commons took great umbrage at the exercise of such authority on the part of the chancellor, claiming that his jurisdiction was an interference with the common law; but the King persevered, stating that he would preserve his prerogative; and a resort to the chancellor under his ordinary jurisdiction was thus secured for the poor, the weak, and the friendless, to protect them from the injuries to which they were exposed.[a]

Here already, then, are the two principles established—the common-law courts and the ordinary criminal process, on the one hand, and the extraordinary remedies of chancery or the equity courts, on the other. Spence points out the special advantages in going before the chancellor—the same that exist to-day, and that caused the recourse to the Federal judges in the strike last summer. First there is the power of chancery to exercise what is called preventive or protective jurisdiction, that is, to prohibit the doing of certain acts before the acts have been committed and the harm has been done; and, further, there is the practice in chancery of proving facts by personal examination of the parties, or upon written affidavits, and the power of awarding compensation to the person injured by a criminal offense. Even the court of star-chamber had originally a similar jurisdiction, and it was first used to prevent cases of oppression and other exorbitant offenses of great men, where, as Lord Coke says, inferior judges would, in respect to the greatness of the offenders, be afraid to take jurisdiction. Coke particularly mentions as part of the jurisdiction of star-chamber the suppression of those who spread false and dangerous rumors, of frauds, deceits, conspiracies, and of great and horrible riots, routs and unlawful assemblies, leaving ordinary offenses to the courts of common law; and he complains of it as "a court of criminal equity."

Thus nearly five hundred years ago was this modern equity power established—founded then, as now, on the inefficiency of the ordinary tribunals to do complete justice in matters which were really criminal. And Clarendon says that while the court of Star Chamber was gravely and moderately governed, it was an excellent expedient to preserve the dignity of the King and the peace and security of the Kingdom, which is precisely the same argument that is now made to defend the jurisdiction assumed by the Federal judges last summer. The court of Star Chamber, as Spence explains, was perverted from its original purposes; and, having become odious by the tyrannical exercise of its powers, it was abolished by statute in the time of Charles I, just before the Commonwealth was established. But for two or three hundred years previous to that we find existing this old chancery jurisdiction, which has now been revived in our Federal courts largely in consequence of the antitrust act. The court of chancery could require surety for the good behavior of any person from whom offense was apprehended, and could command anybody having notice of its order to refrain from interfering with anybody's rights; and very often in these old cases a bill prayed both for an injunction and for surety to keep the peace—which is practically the kind of decree that was granted by the circuit court for Illinois last summer against Debbs and others.[b]

[a] 1 Spence, 342–344.
[b] U. S. *v.* Debbs and others, 64 Fed. Rep., 724.

The great advantage of the court of chancery, says Spence, was that no writ imposed any fetter of form; and the court, not being tied to forms, was able to modify its decrees to suit particular exigencies, to direct many things to be mutually done and suffered, and to outline the conduct to be observed respectively by the several parties to a suit; and the method of enforcing these orders was by confinement in prison. This describes precisely the kind of decree granted by Judge Ross in California last summer against all the employees of the Southern California Railroad. So old this matter really is. Spence tells us that at a very early period the Norman sovereigns claimed and exercised the right of interfering for the prevention of injury to property; and Lord Coke notices how far preferable is preventive to remedial justice—that is, an order of the chancellor, which prescribes what people shall or shall not do, to the slow and unsatisfactory remedy of trial and punishment by common law after the thing has been done. Spence, in speaking of the practice about the time of Richard II, says that the court of chancery was applied to to afford redress for outrages, assaults, trespasses, forcible entries, riotous proceedings, and illegal seizures of property; and the bills commonly alleged that the common law could not help, or that the plaintiff could not obtain redress at common law by reason of the powers or numbers of the persons complained of, or that they were supported by the sheriff, or some person holding office (the prototype, for instance, of the governor of Illinois).

Could any words more exactly than the allegations of these bills, drawn five hundred years ago, embody the arguments of the Western Federal courts last summer? But now note that Spence goes on to say that at the time he writes—that is, fifty years ago—the court of chancery in exercising such jurisdiction would be regarded as assuming an unwarrantable authority, since many of the matters were regulated by the police; and that only in looking back upon the state of society at the earlier time could the conclusion be reached that such jurisdiction was as necessary then as it had since become superflous.

Now, the precise question I wish to ask is, whether it can really be true that we have so retrograded in our civilization as to go back again to that necessity. Spence tells us that the old civil wars in England greatly increased the lawless violence already existing, and that down to the time of Elizabeth the court of chancery had to intervene and apply its coercive power; but that when an improved state of society diminished the frequency of crime and the state of the country permitted the powers of the magistracy and of the ordinary tribunals to be efficiently exerted for the repression of outrage and violence, the necessity for the interference of the court of chancery in such matters ceased; it renounced its jurisdiction, and since about the time of Queen Elizabeth has refused to exercise any jurisdiction for the repression of crimes; that is, from about 1590 until 1894, just three hundred years, this extraordinary jurisdiction in the equity courts has been given up or has lain dormant.

So far, history. And I think you will say it has but repeated itself. Are we to go back? Have liberty and property again grown so insecure under the common law that the extraordinary power of the sovereign acting through his chancellor—that is, of the United States Government acting through its equity courts—is again to be invoked? And will the Federal Government, stretching to the last point of prerogative the phrase of the Constitution giving it power to regulate

commerce among the several States—for the meaning of those simple words has grown from the mere prohibition of imposts and interstate duties or taxes upon the carrier to the control of the reward of the carrier, and from that (as the United States Labor Commissioner demands) to the wages of the carrier's servants; and from that to criminal jurisdiction over all persons concerned in transportation; and from that, now, to an executive ordering of the whole business by the Federal courts—will the Federal Government, through its courts or the statutes of Congress, reply to popular criticism as did King Richard II in 1382 to the Commons?—The Sovereign will preserve his prerogative.

Before suggesting remedies, I want to call to mind again the fact that the revival of these old equity powers has been caused chiefly by one particular law, passed by the Congress of the United States four years since supposedly in the interest of the people and of the laborer, and known as the antitrust law. A striking example this of the danger of extraordinary legislation, whether demanded by the masses or by the classes. Were it not for this act the question would be much simpler; but this statute expressly provides in its fourth section that any conspiracy or combination to restrain interstate trade shall be prevented and restrained by the United States directly, acting through its Attorney-General. Up to this time I think I may state that there has been no legal authority in the United States under which the Government could directly institute a suit in equity against men, or any combination of men, whether laborers or railway directors, who threatened such offenses; but the effect of this most radical and far-reaching statute has been to impose upon every receiver of an insolvent corporation and upon every district attorney in the country, on the complaint of any citizen, when a railroad is concerned, the duty of bringing a suit in the name of the National Government whenever, by reason of labor troubles, any interference with the management of such corporations is effected or attempted. Now, it is at least arguable that this part of the statute should be repealed. I think it is dangerous to require the National Government to interfere by this extraordinary equity remedy, abandoned, as I have tried to show, these three hundred years, in any of the great questions caused by combinations either of labor or of capital. I agree with Mr. Wright that if this goes on, the nation will have to own and run the railroads in theory as well as in fact; and Democrats at least should not believe that this is any part of the duties of our National Government. Nor do I think the machinery of any true democratic government is arbitrary and tyrannical enough to stand such a strain.

Leaving out the question of this antitrust law and its provisions, and the interstate-commerce law, which, on one short clause in the Constitution of the United States that "Congress shall have power to regulate commerce among the several States," hang all this extraordinary jurisdiction and lawmaking—leaving aside these two radical and extraordinary statutes, it seems as if the question we have asked might be thus solved:

First. Let the courts of equity go back to their proper jurisdiction as civil courts. Let them not try to prevent crimes as crimes, where there is no property right in jeopardy, and let them in such cases freely grant injunctions only against acts which are not in themselves crimes; for when you have a crime, the civil offense is merged in it—the pri-

vate wrong in the wrong to the public. The public wrong deserves a punishment which shall be permanently established and avowedly inflicted upon the offender as a criminal and which shall be regulated by law and by the constitutional protections of a fair trial, before a jury, with witnesses and counsel. If it be argued that under an Altgeld the State criminal laws are insufficient, I admit that some States may need the lesson of a too lax criminal law. But the offenses under consideration are all Federal offenses also. Let the United States troops be called in, not as a kind of assistant marshal to an equity court, but to enforce the criminal laws of the United States; to maintain order; to put down insurrection; and to guarantee, as the Constitution demands, a republican form of government. Then the people will understand why the troops are there, and I believe the murmuring at their presence will cease.

Second. Let no person be punished in an equity action for contempt not committed in presence of the court, unless he is a party to the suit, or the servant or agent of a party, or has been personally served with a copy of the injunction order. It is perfectly easy to observe this rule, and I have said enough as to the danger when one judge sitting in equity attempts to control the actions of the world. Furthermore, since the very essence of the injunction is a definite prohibition, upon which a contempt may be shown as precise as an indictment, let us beware of the mandatory injunction giving indefinite orders to an army of men to do their duties.

Third. In any case where both a crime and an infringement of a property right are involved the injunction will have to issue as to the property right and be valid as a concurrent remedy with the criminal process; but let not ex post facto punishment be inflicted where there is a criminal penalty. For the object of process for contempt is only to meet an emergency or to prevent a threatened disobedience. After the emergency and the possibility of disobedience have gone by, and the need of equity preventive jurisdiction has ended, let not an equity judge sentence as a criminal judge, for what is now simply a crime or a misdemeanor, without any trial. It is probable that our courts may settle back to this position, logical, simple, and justified by all equity authority up to five years ago; if not, a simple statute so defining their powers in injunction and contempt would be defensible; if a change is not effected in the one way or the other, there is danger that all equity jurisdiction, so valuable and so effective, which was established in many States only after a fifty years' struggle with the suspicion of the people and the jealousy of the common-law courts, may be repealed at a blow. It would be easy to provide that the finding of a judge in the contempt process should take effect as the presentment of a grand jury. Then Debs, or any other person complained of, could be at once handed over to an ordinary officer of the criminal courts, to be locked up or bailed until the time of trial, then to be tried by a jury of twelve men, and, if found guilty, to be sentenced, as a criminal, according to the law of the land and the Constitution of the United States.

F. J. Stimson.

House Report No. 1049, Fifty-third Congress, second session.

RECEIVERSHIP OF THE NORTHERN PACIFIC RAILROAD COMPANY.

JUNE 8, 1894.—Referred to the House Calendar and ordered to be printed.

Mr. BOATNER, from the Committee on the Judiciary, submitted the following

REPORT:

In accordance with the following resolution of the House of Representatives, adopted on the 6th of March ultimo:

Resolved, That the Committee on the Judiciary of the House be, and is hereby, authorized to speedily investigate and inquire into all the circumstances connected with the issuance of writs of injunction in the case of the Farmers' Loan and Trust Company, complainant, against the Northern Pacific Railroad Company, defendant, in the United States circuit court for the eastern district of Wisconsin, and the several matters and things referred to in the resolution introduced on the 5th day of February instant, charging illegalities and abuse of the process of said court therein, and report to this House whether in any of said matters or things the Hon. J. G. Jenkins, judge of said court, has exceeded his jurisdiction in granting said writs, abused the powers or process of said court or oppressively exercised the same, or has used his office as judge to intimidate or wrongfully restrain the employés of the Northern Pacific Railway Company, or the officers of the labor organizations with which said employés or any of them were affiliated in the exercise of their rights and privileges under the laws of the United States, and, if so, what action should be taken by this House or by Congress.

a subcommittee of the judiciary proceeded to the city of Milwaukee, Wis., and on the 9th and 10th of the present month investigated all the circumstances connected with the issuance of writs of injunction in the case referred to in the resolution now pending in said court, being a proceeding by which the Northern Pacific Railroad Company had been placed in the hands of receivers by order of Hon. J. G. Jenkins, judge of said court. The testimony taken by the subcommittee is herewith presented as a part of this report.

The facts as found are substantially as follows:

On the 15th of August, 1893, Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse were appointed receivers of the Northern Pacific Railroad Company by Judge Jenkins, judge of the circuit court for the eastern district of Wisconsin.

On the 18th of October following another proceeding was instituted in the same court by the Farmers' Loan and Trust Company, which, by order of the court, was consolidated with the suit previously filed, and the receivers previously appointed continued in office. Ancillary proceedings were had in all the courts through whose territorial jurisdiction the line extended, and the receivers thus appointed by Judge Jenkins were recognized by the other courts and acquired full control of the entire system.

On the 17th of August, 1893, the receivers ordered a reduction in the salaries of all employés, which amounted to $1,200 per annum or more, the reduction varying from 10 to 20 per cent, to take effect from and after the 15th of August. This reduction, it is said, was cheerfully accepted by the employés affected by it.

On the 25th of August, in view (as the receivers state) of the insolvent condition of the company, and increasing depression in the transportation business, and consequent falling off of earnings, and the obvious necessity of further reducing operating expenses, the receivers adopted the following order:

Ordered, That a further reduction be made in salaries and wages of employés of 5 per cent of all salaries aggregating $50 per month and under $75, and that a 10 per cent reduction be ordered to apply on all salaries from $75 to $100 per month. This order to take effect at once.

Thereafter the receivers, considering it best not to make a horizontal reduction in salaries and wages, but to establish an entirely new schedule, adapted, as they say, to present conditions, framed a general schedule, and on the 28th of October, 1893, issued the following order:

Resolved, That existing conditions, both with respect to the decreasing traffic and the rates received therefor and the consequent heavy decrease in gross and net earnings, make it necessary to extend the reduction of salaries and wages to all classes of the service, the rates of pay of engineers, firemen, conductors, brakemen, dispatchers, and telegraph operators which have been established by the various schedules adopted from time to time:

It is now ordered, That all existing schedules in which are recorded rates of pay to be received by employés will, upon the 1st of January, 1894, be abrogated or canceled.

Ordered, That the general manager be instructed to put into force and effect the amended schedules prepared for enginemen and trainmen, and that the new schedules shall take effect January 1, 1894, and after that date the pay of employés mentioned therein shall be governed thereby.

Ordered, That the general manager be instructed to put into force and effect January 1, 1894, the revised list prepared of salaries of employés in the telegraph service.

Ordered, That the general manager be instructed to reduce salaries and wages of all other employés upon January 1, 1894, as follows: All salaries and wages aggregating $50 per month and less than $75 per month, 5 per cent; all salaries and wages aggregating $75 per month and less than $100 per month, 10 per cent.

Great dissatisfaction among the employés of the road having been created by this order, the receivers applied to the court on the 18th of December, 1893, for authority to make the reduction of wages proposed by the schedule which they had adopted, and filed an injunction against the employés affected thereby, restraining and prohibiting them from the commission of all sorts of unlawful acts which could injuriously affect the company in its property, the operation of its trains, and the conduct of its business, and, in addition—

from combining and conspiring to quit, with or without notice, the service of said receivers, with the object and intent of crippling the property in their custody, or embarrassing the operation of said railroad, and from so quitting the service of said receivers, with or without notice, as to cripple the property, or to prevent or hinder the operation of said railroad.

Both applications were granted by the following order rendered at chambers and *ex parte*:

Order on said petition.

Circuit court of the United States for the eastern district of Wisconsin. Farmers' Loan and Trust Company, complainant, *v.* Northern Pacific Railroad Company *et al.*, defendants.

On reading and filing the petition of Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, receivers of the Northern Pacific Railroad Company, appointed by this

court, as in said petition set forth, said petition being verified by Henry C. Payne, one of said receivers, and after considering the same and the court being fully advised in the premises; now, therefore:

It is ordered, adjudged, and decreed that the said receivers, Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, be, and they are hereby, authorized and instructed to put in operation and maintain upon the Northern Pacific Railroad the revised schedule and rates, more specifically in said petition described, and ordered by said receivers to take effect January 1, A. D. 1894, and for that purpose and to that end, their action in abrogating and revoking the schedules in force on said railroad at the time of their appointment as such receivers, August 15, A. D. 1893, is hereby confirmed.

And it is further ordered and adjudged and decreed that the said receivers, Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, are entitled to a writ of injunction, as prayed for in their said petition, and the clerk of this court is hereby directed to issue the same in due form, under the seal of this court, and to deliver the same to the marshal for execution, who is hereby ordered to protect the receivers of the Northern Pacific Railroad Company in their possession of the property of the Northern Pacific Railroad and in their operation thereof.

It is further ordered, adjudged, and decreed that said receivers, Thomas F. Oates, Henry C. Payne, and Henry C. Rouse, file in the courts wherein they have been appointed receivers of said property upon ancillary bills a petition similar to that upon which this order is based, to the end that the power of each court may be seasonably invoked for the protection of the receivers in the possession and enjoyment of the property within its territorial jurisdiction.

December 19, 1893.

BY THE COURT,
JAS. G. JENKINS, *Judge.*

A writ of injunction, mandatory in terms, and in accordance with the allegations of the bill of complaint, was issued on the same day, the words used in the writ to which exception has been taken being as follows: "And from combining and conspiring to quit, with or without notice, the service of the said receivers, with the object and intent of crippling the property in their custody, or embarrassing the operation of the said railroad, and from so quitting the service of the said receivers, with or without notice, as to cripple the property or prevent or hinder the operation of the said railroad."

The receivers, in support of their application to the court for authority to enforce the schedule they had proposed and for the injunction to accompany the same, made the following allegations:

Your receivers further show unto the court that the reductions made in salaries and wages, as herein above set forth, are not greater than should be made in view of the paucity of business upon the railroad controlled by your receivers, and in view of the insolvency of the company and the continuing decrease in its earnings, and that the rates of compensation provided for by said revised schedules and the order of the receivers is a fair and just rate of compensation, all things considered, to the employés to whom they relate, and that the schedules, as revised, are, in the opinion of your receivers, just to the different classes of employés to which they severally relate.

* * * * * * *

Your receivers further represent that they conceived it to be within their power as such receivers, and to be their duty, to make and carry into effect such reductions and such revision of the schedules, without application first made to the court in that behalf, and that they have been and are now so advised by counsel, and that this, their petition for instruction in the premises, is made for the reason that your receivers are informed, and aver the fact to be, that among the employés affected by said schedules and said rates so proposed by said receivers to be put in force on the 1st day of January, 1894, are many who claim that the schedules and rates in force when your receivers took possession of said property and entered upon the administration thereof constituted contracts between the said several classes of employés and your receivers, terminable only by their consent; whereas your receivers aver that the same were not and are not contracts binding upon them, and have refused and do refuse to adopt the same for the reasons hereinbefore stated, and because they deem them, in their operation, unjust and burdensome to the trust. Your receivers further aver that it is claimed by the employés to be effected by said schedules and rates, as aforesaid, that they have in good faith rendered the services and performed the conditions to be by them performed by and for the company and for your receiv-

ers, under said schedules and rates of compensation, loyally and faithfully, which your receivers admit to be true.

Your receivers further represent and aver the fact to be that there is, among the employés to be affected as aforesaid by said revised schedules and rates, discontent and opposition to the enforcement thereof, based upon the assumption that the receivers have no right or power to make or enforce the same in the premises, without their consent, they being contracts, and that it is therefore important in the interests of said trust and of the safe and continued operation of said railroad that the power of your receivers in the premises, if the same exists, as your receivers aver it does, should be declared by the court.

Your receivers further represent that they are informed and believe, and aver the fact to be, that among the employés to be affected by said proposed revised schedules and rates there are some who give out and threaten that if the said schedules and rates are enforced they will themselves suddenly quit the employment and service of the receivers; that they will compel by threats and force and violence other employés to quit the service of the receivers; that they will prevent by an organized effort and by force and intimidation others from taking the places in the service of the receivers of those who quit said service as aforesaid, and that they will thereby, as a means of forcing the receivers to abandon their purpose of revising the rates and schedules as aforesaid, disable the receivers from operating the said railroad and from discharging their duty to the public as common carriers.

And your receivers further represent that they are informed and believe, and so charge the fact to be, that there are among said employés those who give out and threaten that if the said revised schedule and rates are put in force, they will disable locomotives and cars so that the same can not be safely used, or used at all without expensive repairs; that they will take possession of the cars, engines, shops, roadbeds, and other property in the possession of your receivers under and by virtue of their appointment by this court and the said courts aforesaid, and that they will otherwise destroy and prevent the use of the property of the company, and will so conduct themselves with regard thereto as to hinder and embarrass the receivers and their officers and agents in the management of said property and the operation of the trains thereover, and to bring upon said trust incalculable loss and upon the public great inconvenience and hardship.

And your receivers are informed and believe, and aver the fact to be, that unless restrained and prohibited by order of the court the said threats will be carried out and your receivers prevented from operating the said road and carrying the mails of the United States thereover, performing the duties of a common carrier thereon, and that great loss of property and jeopardy to life may ensue; and your receivers are unable to ascertain or state the names of the employés who give out and threaten and who are contriving secretly to perpetrate the violence and wrongs hereinbefore referred to, and to interfere, as aforesaid, with the possession and operation by the court through your receivers of the said property. That the said combination includes, not simply dissatisfied employés of the receivers, but others who are not in the service of your receivers, but who, from a spirit of sympathy or mischief, threaten to join the said employés in perpetrating the said wrongful acts and things hereinbefore set forth, and will so do unless restrained and prohibited by this honorable court.

That your receivers, being advised of the said combination and conspiracy, as aforesaid, and being powerless, without the aid of the court, to prevent the same or to protect the property in their custody as such receivers, have felt it to be their duty to bring the subject to the attention of the court seasonably, to the end that the court may, by such orders and writs as to the court shall seem proper in the premises, take measures to protect the property so in its care, and to enable the receivers, as its officers, to continue, without interruption or obstruction, the management and operation of the said property, and the performance of the duties of common carrier in relation thereto.

Wherefore your receivers respectfully pray the court—

First. That they be instructed as to their power and duty to carry out and enforce the revised schedules and rates so promulgated and proposed to be put in force on the first day of January, 1894, as aforesaid.

Second. That it may please the court to grant a writ of injunction, restraining, enjoining, and prohibiting any and all persons, associations, or combinations, voluntary or otherwise, whether employés of your receivers or not, from disabling or rendering in any wise unfit for convenient and immediate use any engines, cars, or other property of the receivers, and from interfering with the possession of locomotives, cars, or property of the receivers, or in their custody, and from interfering in any manner by force, threats, or otherwise with men who desire to continue in the service of the receivers, and from interfering in any manner by force, threat, or otherwise with men employed by the receivers to take the places of those who quit the service as aforesaid, or from interfering with or obstructing in any wise the

operation of the railroad or the running of engines and trains thereon and thereover as usual, and from any interference with the telegraph lines or the operation thereof, and from combining and conspiring to quit, with or without notice, the service of the receivers, with the object and intent of crippling the property in their custody or embarrassing its operation, and from so quitting the service of the receivers, with or without notice, as to cripple the property or to prevent or hinder its operation, and generally from interfering with the officers and agents of the receivers or their employés in any manner, by actual violence, or by intimidation, threats, or otherwise, in the full, complete, and peaceable possession and management of the said railway, and all of the property thereunto appertaining, being in the custody of the court, and from interference with any and all property in the custody of the receivers, whether belonging to the receivers or to shippers or other owners, and from interfering with, intimidating, or otherwise injuring or inconveniencing or delaying passengers being transported, or about to be transported, over the railway or any portion thereof, by your receivers, or from interfering in any manner, by actual violence or threats, or otherwise preventing or endeavoring to prevent the shipment of freight or the transportation of the mails of the United States over the roads operated by your receivers.

Third. Your receivers pray that an order may be issued to the marshal and his deputies to carry out and enforce the provisions of such injunction when issued.

Fourth. For such other and further relief as to the court shall seem just and proper in the premises.

THOMAS F. OAKES,
HENRY C. PAYNE,
HENRY C. ROUSE,
Receivers.
By HENRY C. PAYNE,
Receiver.

On the 22d of December, 1893, the receivers presented a supplemental petition praying for a supplemental order and writ of injunction. The order was granted and writ issued on same. The petition, order, and writ are as follows:

[No. 29.]

Supplemental petition to foregoing.

U. S. circuit court, eastern district of Wisconsin. Farmers' Loan and Trust Company, complainant, *v.* Northern Pacific Railroad Company *et al.*, defendants.

The supplemental petition of Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, as receivers of the Northern Pacific Railroad Company, respectfully shows to the court:

That, on December 18, 1893, they did file in the above-entitled action with the clerk of this court their certain petition, which petition was verified by Receiver Payne on December 18, 1893, and to which petition, and the exhibits thereto attached, your petitioners beg leave to refer for greater certainty, with the same force and effect as if as an exhibit hereto attached. That this petition is made as an amendment and as supplemental to said petition aforesaid. Your petitioners further show that the different employés of the Northern Pacific Railroad Company affected by the orders issued by your receivers abrogating previous schedules in force at the time of their appointment as receivers, and by the new schedules and rates of compensation to be in force from January 1, 1894, are divided into engineers, conductors, firemen, trainmen, switchmen, operators, and shopmen. That each of said classes of labor among the employés of your receivers along the line of the Northern Pacific Railroad have appointed committees to confer with the operating officers of your receivers at St. Paul, Minn., in reference to the proposed change in schedules. That the persons who are serving upon the different employé committees now in St. Paul, as far as known to your petitioners, are as follows: J. Horan, E. S. Johnson, Jno. Collins, J. J. Foster, S. P. Olson, Jos. Wood, M. Vetter, C. Barrett, M. L. Porter, J. W. Gribble, J. B. Quimby, E. J. Shea, F. J. Woodward, F. A. Ressor, Jesse W. Rees, J. M. Rapelje, Jno. Dowdel, J. B. W. Johnston, O. S. Humes, F. E. Bradbury, A. D. Jenkins, J. Mackey, B. Goodall, H. O. Shepard, W. Y. Pheal, C. M. Dorsey, T. F. Hagan, J. S. Burns, P. T. Boleyn, R. B. Kelly, J. W. Mapleson, M. O. Graves, G. Olson, J. K. Porter, F. E. Moyer, Jno. Ryan, W. J. Gillespie, F. J. Becker, P. H. Campbell, C. E. Baker, Patrick Harty, Con. Keefe, Matt. Conlin, T. N. Gleason, L. C. Mann, M. H. Williams, P. Schmidt, W. G. Hogg, L. F. Hare, S.

Craig, H. L. Shuppert, S. J. Grouthwait, J. Moriarty, J. K. Bingham, Burt Hines, F. G. Kellogg, Thos. A. Leason, P. H. Miller, D. McClelland, Edward Crust, R. Reed, Harry Ripley, S. E. Garrett, D. D. McInniss, A. O. Wishard. That such representatives or committees of the employés affected by the change of schedules have federated and agreed to cooperate, and report to the various classes of employés along the line whom each such committee especially represents, a joint recommendation. That is to say, should said committee jointly agree to report and recommend a strike along the line of said railroad, then the separate committees above mentioned, representing the different classes of employés along said line will report, and recommend particularly and separately to the employés represented by them, to strike.

Your petitioners further show that a subcommittee of 32 persons has been appointed by the joint committee above mentioned to confer with the operating officers of your receivers and to make report and recommendation to the joint committee aforesaid. That shoulds aid subcommittee recommend a strike, thereupon the general and joint committee will report or recommend a strike which the separate committees in turn will recommend or report to the different orders or classes of labor to which they belong upon the line of said railroad. Your petitioners further show that they are informed and verily believe that the subcommittee of said joint general committee intend and are about to recommend and advise the said general joint committee to recommend that the employés of your receivers strike on or about January 1, 1894, and that said general joint committee and the several separate committees therein contained are about to recommend to the several classes of labor in the employ of your receivers, to strike and quit the employ of your receivers on or about said 1st day of January, 1894. Your petitioners further show that they are informed and verily believe that if said committees, as aforesaid, recommend a strike, the individual employés along said railroad will, on the day recommended, join in a general strike along said railroad, unless the members of said committees aforesaid are enjoined by this honorable court from issuing or making any order or recommendation in the premises.

Your petitioners further show that they are informed and verily believe, that if the said committees aforesaid issue their recommendation or order on the subject, that the employés of your receivers are more likely to obey the order or recommendation of said committees than any injunction or order of this honorable court.

Your petitioners further show that they are informed and verily believe that almost all the employés of the Northern Pacific Railroad Company belong to one of the 8 labor organizations above referred to, that is to say of engineers, conductors, firemen, trainmen, switchmen, operators, or shopmen; and also to a national labor organization comprising the employés in similar lines on almost all other lines of railroads in the United States, to-wit, the Brotherhood of Locomotive Engineers, the Order of Railway Conductors, the Brotherwood of Locomotive Firemen, the Order of Railway Telegraphers, and the Brotherhood of Railway Trainmen; that the executive heads of each of said national labor organization are, as your petitioners are informed and believe, as follows: Of the Brotherhood of Locomotive Engineers, P. M. Arthur, grand chief engineer, so called; ———Youngsen, assistant grand chief engineer, so called; of the Order of Railroad Conductors, E. C. Clark, grand chief conductor, so called; Brotherhood of Locomotive Firemen, F. P. Sargent, grand chief fireman, so called; Order Railway Telegraphers, D. G. Ramsey, grand chief telegrapher, so called; Brotherhood of Railway Trainmen, S. E. Wilkinson, grand master, so called; F. H. Morrison, first vice-grand master, so called; A. E. Brown, second vice-grand master, so called; Geo. W. Newman, third vice-grand master, so called.

Your petitioners further show that they are informed, and verily believe, that the employés of your receivers along the line of the Northern Pacific Railroad will not strike unless such strike is ordered by one or more of the executive heads of said national labor organizations aforesaid, and that without such order from the executive head of one or more of said national labor organizations no assistance will be given to the employés of your receivers, if they should attempt to strike, by the other members of said labor organizations not included among the employés of said Northern Pacific Railroad.

Your petitioners further show that if the executive heads, or any of them, of said national labor organizations aforesaid issue an order directing a strike, or recommending a strike, along the line of railroad now operated by your receivers, that the employés of your receivers are more likely to follow the instructions or orders of said executive heads of said national labor organizations than the injunction of this honorable court.

Your petitioners further show that a strike along the line of road operated by your receivers will not only cause irreparable damage to the trust property in their charge, but to a large portion of the country traversed by the Northern Pacific Railroad, because not reached by any other line of railroad or telegraph line or express com-

pany; that there are many communities along said line of railroad whose entire commercial facilities are furnished by the three departments of said railroad now operated by your receivers—the railroad, the telegraph, and the express; and that all classes of business men in a large portion of the country traversed by the railroad operated by your receivers are dependent to a very large extent upon these three departments of service; and that large sections of country are dependent upon the railroad trains operated by your receivers for their necessary daily supply of fuel, provisions, and clothing.

That the line of railroad operated by your petitioners is engaged in interstate commerce.

Wherefore your petitioners respectfully pray that J. K. Bingham, Burt. Hines, F. G. Kellogg, Thos. A. Leason, P. H. Miller, D. McClelland, Edward Crust, R. Reed, Harry Riley, S. E. Garrett, D. D. McInniss, A. O. Wishard, J. Horan, S. P. Olson, C. Barrett, E. S. Johnson, Jos. Wood, M. L. Porter, Jno. Collins, M. Vetter, J. W. Gribble, J. J. Foster, J. B. Quimby, Jesse W. Rees, O. S. Humes, E. J. Shea, J. M. Rapelje, F. E. Bradbury, F. J. Woodward, Jno. Dowdel, A. D. Jenkins, F. A. Resser, J. B. W. Johnston, J. Mackey, C. N. Dorsey, P. T. Boleyn, B. Goodall, T. F. Hagan, R. B. Kelly, H. L. Shepard, J. S. Burns, J. W. Mapleson, W. Y. Pheal, M. O. Graves, E. E. Moyer, F. J. Becker, G. Olson, Jno. Ryan, P. H. Campbell, J. K. Porter, W. J. Gillepsie, C. E. Baker, Con. Keefe, T. N. Gleason, Patrick Harty, Matt. Conlin, L. C. Mann, P. Schmidt, L. F. Hare, M. H. Williams, W. G. Hogg, S. Craig, S. J. Groutwait, J. Moriarity, H. L. Shupert, P. M. Arthur, ——— Youngsen, E. E. Clark, T. P. Sargent, D. G. Ramsey, S. E. Wilkinson, F. H. Morrison, A. E. Brown, and George W. Newman, and each, every, and all of them and all their agents, subagents, representatives and employés, and all persons generally, whether employés of said receivers or not, may be enjoined by this honorable court from combining or conspiring, together or with others either jointly or severally or as committees, or as officers of any so-called labor organization, with the design or purpose of causing a strike upon the lines of railroad operated by said receivers, and from ordering, recommending, approving, or advising others to quit the service of the receivers of the Northern Pacific Railroad Company on January 1, 1894, or at any other time, and from ordering, recommending, advising, or approving, by communication or instruction or otherwise, the employés of your receivers, or any of them, or of said Northern Pacific Railroad Company, to join in a strike on said January 1, 1894, or at any other time, and from ordering, recommending, or advising any committee or committees, or class or classes of employés, of your receivers, to strike, or join in a strike, on January 1, 1894, or at any other time, and that the order of court heretofore entered herein on December 19 may be so amended as to include the foregoing prayer, and that the writ of injunction heretofore issued herein on December 19, 1893, may be so amended as to include specially the injunction herewith prayed for.

THOMAS F. OAKES,
HENRY C. PAYNE,
HENRY C. ROUSE,
Receivers.

By HENRY C. PAYNE,
Receiver.

STATE OF WISCONSIN, *Milwaukee County, ss:*

Henry C. Payne, being first duly sworn, deposes and says that he has read the foregoing supplemental petition, and believes the same to be true to the best of his knowledge, information, and belief.

HENRY C. PAYNE.

Subscribed and sworn to before me this 22d day of December, A. D. 1893.
[NOTARIAL SEAL.] EDWIN S. MACK,
Notary Public, Milwaukee County, Wis.

(Indorsed:) Filed December 22, 1893.

EDW. KURTZ,
Clerk.

Order on foregoing supplemental petition.

U. S. circuit court, eastern district of Wisconsin, Farmers' Loan and Trust Company, complainant, *v.* Northern Pacific Railroad Company, *et al.*, defendants.

On reading and filing the supplemental petition of Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, receivers of the Northern Pacific Railroad Company, said petition being verified by Henry C. Payne, one of said receivers, and after considering the same and the original petition filed herein December 18, 1893, and the court being fully advised in the premises, now, therefore,

It is ordered, adjudged, and decreed, That said receivers, Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, be, and they are hereby, authorized and instructed to put in operation and maintain upon the Northern Pacific Railroad the revised schedule and rates more specifically in the petition filed herein on December 18, 1893, described and ordered by said receivers to take effect January 1, 1894, and for that purpose and to that end their action in abrogating and revoking the schedules in force on said railroad at the time of their appointment as such receivers, August 15, 1893, is hereby confirmed.

It is further ordered, adjudged, and decreed, That the said receivers, Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, are entitled to a writ of injunction as prayed for in their said petition filed herein December 18, 1893, and as prayed for in their said supplemental petition this day filed herein; and the clerk of this court is hereby directed to issue the said writ of injunction in due form, under the seal of this court, and to deliver the same to the marshal for execution, who is hereby directed to protect the receivers of the Northern Pacific Railroad Company in their possession of the property of the Northern Pacific Railroad and in their operation thereof.

It is further ordered, adjudged, and decreed, That said receivers, Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, file in the courts wherein they have been appointed receivers of said property, upon ancillary bills, petitions similar to those upon which this order is based to the end that the power of each court may be seasonably invoked for the protection of the receivers in the possession and enjoyment of the property within its territorial jurisdiction.

DECEMBER 22, 1893.

JAS. G. JENKINS,
U. S. Circuit Judge.

Supplemental injunction.

U. S. circuit court, eastern district of Wisconsin.

The President of the United States of America to J. Horan, S. P. Olson, C. Barrett, E. S. Johnson, Jos. Wood, M. L. Porter, Jno. Collins, M. Vetter, J. W. Gribble, J. J. Foster, J. B. Quimby, Jesse W. Rees, O. S. Humes, E. J. Shea, J. M. Rapelje, F. E. Bradbury, F. J. Woodward, Jno. Dowdel, A. D. Jenkins, F. A. Resser, J. B. W. Johnston, J. Mackey, C. N. Dorsey, P. T. Boleyn, B. Goodall, T. F. Hagan, R. B. Kelly, H. L. Shepard, J. S. Burns, J. W. Mapleson, W. Y. Pheal, M. O. Graves, E. E. Moyer, F. J. Becker, G. Olson, Jno. Ryan, P. H. Campbell, J. K. Porter, W. J. Gillespie, C. E. Baker, Con. Keefe, T. N. Glesson, Patrick Harty, Matt. Conlin, L. C. Mann, P. Schmidt, L. F. Hare, M. H. Williams, W. G. Hogg, S. Craig, S. J. Groutwait, J. Moriarty, H. L. Shupert, P. M. Arthur, ——— Youngsen, E. E. Clark, T. P. Sargent, D. G. Ramsey, S. E. Wilkinson, F. H. Morrison, A. E. Brown, and George W. Newman, J. K. Bingham, Burt Hines, F. G. Kellogg, Thos. A. Leason, P. H. Miller, D. McClelland, Edward Crust, R. Reed, Harry Rifley, S. E. Garrett, D. D. McInnis, and each, every and all of them and all their agents, subagents, representatives, and employés, and each and everyone of you, jointly and severally, and to the officers, agents, and employés of Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, as receivers of the Northern Pacific Railroad Company, and to the engineers, firemen, trainmen, train dispatchers, telegraphers, conductors, switchmen, and all other employés of said Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, as receivers of the Northern Pacific Railroad Company, and to each and everyone of you, and to all persons, associations, and combinations, voluntary or otherwise, whether employés of said receivers or not, and to all persons generally, and to each and everyone of you, greeting:

Whereas, it has been represented to the U. S. circuit court for the eastern district of Wisconsin, on the part of Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, as receivers of the Northern Pacific Railroad Company, as by their certain verified petition filed in said cause on December 18, 1893, and by their supplemental petition filed in said cause on December 22, 1893, and that said Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, as Receivers of the Northern Pacific Railroad Company, ought to be relieved touching the matters in said petitions more particularly described; and

Whereas, the U. S. circuit court for the eastern district of Wisconsin, in a certain cause there pending, in which the Farmers' Loan and Trust Company is the complainant and the Northern Pacific Railroad Company, Phillip B. Winston, William C. Sheldon, George R. Sheldon, William S. P. Prentice, and William C. Sheldon, and Thomas F. Oakes, and Henry C. Payne, and Henry C. Rouse, as receivers of the Northern Pacific Railroad Company, are defendants, did make orders directing that

the writ of injunction issue as prayed for in said petition and supplemental petition of said receivers;

Now, therefore, in consideration thereof, and of the matters in said petition set forth, you, the above named, and the officers, agents, and employés of Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, as receivers of the Northern Pacific Railroad Company, and the engineers, firemen, trainmen, train dispatchers, telegraphers, conductors, switchmen, and all other employés of said Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, as receivers of the Northern Pacific Railroad Company, and each and every one of you, and all persons, associations, and combinations, voluntary or otherwise, whether employés of said receivers or not, and all persons generally, and each and every one of you, in the penalty which may ensue, are hereby strictly charged and commanded that you, and each and every of you, do absolutely desist and refrain from disabling or rendering in anywise unfit for convenient and immediate use any engines, cars, or other property of Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, as receivers for the Northern Pacific Railroad Company, and from interfering in any manner with the possession of locomotives, cars, or property of the said receivers or in their custody, and from interfering in any manner, by force, threats, or otherwise, with men who desire to continue in the service of the said receivers, and from interfering in any manner, by force, threats, or otherwise, with men employed by the said receivers to take the place of those who quit the service of said receivers, or from interfering with or obstructing in anywise the operation of the railroad or any portion thereof, or the running of engines and trains thereon and thereover as usual, and from any interference with the telegraph lines of said receivers or along the lines of railways operated by said receivers, or the operation thereof, and from combining and conspiring to quit, with or without notice, the service of said receivers, with the object and intent of crippling the property in their custody, or embarrassing the operation of said railroad, and from so quitting the service of the said receivers, with or without notice, as to cripple the property or to prevent or hinder the operation of said railroad, and generally from interfering with the officers and agents of said receivers or their employés, in any manner, by actual violence or by intimidation, threats, or otherwise, in the full and complete possession and management of the said railroad, and of all the property thereunto pertaining, and from interfering with any and all property in the custody of the said receivers, whether belonging to the receivers or shippers, or other owners, and from interfering, intimidating, or otherwise injuring or inconveniencing or delaying the passengers being transported, or about to be transported, over the railway of said receivers, or any portion thereof, by said receivers, or by interfering in any manner, by actual violence or threats, or otherwise preventing or endeavoring to prevent the shipment of freight or the transportation of the mails of the United States over the road operated by said receivers and from combining or conspiring together, or with others, either jointly or severally, or as committees, or as officers of any so-called labor organization, with the design or purpose of causing a strike upon the lines of railroad operated by said receivers, and from ordering, recommending, approving, or advising others to quit the service of the receivers of the Northern Pacific Railroad Company on January 1, 1894, or at any other time, and from ordering, recommending, advising, or approving, by communication or instruction, or otherwise, the employés of said receivers, or any of them, or of said Northern Pacific Railroad Company, to join in a strike on said January 1, 1894, or at any other time, and from ordering, recommending, or advising any committee or committees, or class or classes of employés of said receivers, to strike or join in a strike, on January 1, 1894, or at any other time until the further order of this court.

This process is directed to the marshal for the eastern district of Wisconsin, who is hereby commanded to execute the same within his jurisdiction and to make due return thereof without delay.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the eastern district of Wisconsin, this twenty-second day of December, in the year of our Lord one thousand eight hundred and ninety-three, and of the independence of the United States the one hundred and eighteenth.

[Seal U. S circuit court, eastern district of Wisconsin.] EDWARD KURTZ, *Clerk.*

It appears from the testimony that at the time application was made for the writ of injunction issued on the 19th the officers of the company had been notified of the desire on the part of the men for a conference with respect to the proposed change in the schedule of wages. It also appears that on the 21st of December, the day before the supplemental petition was filed and order of injunction granted restraining the rep-

resentatives of the several labor organizations from taking the action indicated in the writ of injunction, James McNaught, general counsel for the receivers at St. Paul, Minn., addressed a letter to George P. Miller, one of the attorneys for the receivers at Milwaukee, Wis., inclosing a communication delivered to him that day at St. Paul by J. W. Kendrick, general manager of the company, in which it is suggested that the order of injunction obtained on the 19th—

concerning a strike, is very full and admirably drawn, yet there is one feature of the case which it seems to him this order does not fully cover, and in this view of the case Mr. Oakes, Mr. Kendrick, and all the operating officers here agree. It is this, that we ought to have another order issued prohibiting the controlling powers of these various organizations from ordering a strike. There are a very large number of Northern Pacific employés, in each of the 8 branches mentioned in Mr. Kendrick's letter, who will not strike unless ordered to do so by their superior officers, and it is to prevent this order being issued that I think we ought to address our very best attention to now.

* * * * * * *

If a strike is ordered, the 8 departments mentioned will undoubtedly obey it, and all walk out in a body, and this will paralyze the road for many weeks and prevent its moving trains. *It is impossible for us to procure sufficient men between now and the 1st of January to move the trains and handle the business.*

Under the order which has already been obtained, if they strike I think they would be liable for contempt, but that will not prevent great loss and damage to the trust estate.

The counsel then proceeds to give in detail the loss which he anticipates would fall upon the company and the damage which would be done to the general public if the representatives of the labor organizations should order a strike, which, he says, the men would obey, and all walk out in a body. He further adds:

The petition should be broad enough to prevent the various labor organizations from taking any steps tending to facilitate or assist in the making of an order to strike. It should prevent the 32 people, with whom our operating officers are to meet and have conferences to-morrow, from making reports advising a strike. It should also prevent the officers of each of the local organizations from taking any part in ordering or promulgating a strike, and the committees of such organizations should also be included. It will be necessary, of course, to include the head officers who declare or order strikes in the first instance.

The letter from Mr. Kendrick to James McNaught, esq., contains the statement that the men had shown a disposition not to act as individuals, but through their respective labor organizations, or through a federation of the men without respect to their calling; that on or about the 17th of December "a large number of our men, representing eight different crafts, as follows: Engineers, firemen, conductors, brakemen, telegraphers, machinists, boiler-makers, and switchmen," arrived at St. Paul, and that there were at that time (21st of December) about 70 delegates, chosen from the above various classes.

No message was received from the men, or from any of their representatives, until the afternoon of the 16th, when the conductors' committee asked if it would be practicable for him (Mr. Kendrick) to give them a hearing on Tuesday, the 19th. On the afternoon of that day the committee appeared, but only to say that it had been decided to have a union committee to wait upon the railroad officials. They desired to ascertain how many men could be accommodated at the hearing, and thinking it best to have the committee as large as practicable, Mr. Kendrick notified them that he would receive 32, being 4 from each of the classes above referred to. The appointment was made for 11 o'clock on the 21st, but he was not able to meet them on account of the pressure of other business, and the meeting was postponed until the next day (the 22d) at the same hour.

This shows [he says] that the men have made no effort to acquaint us with their attitude with respect to the reduction appointed by the receivers and the court, until to-day the 21st instant, and that, consequently, there remain but nine days in which to make the changes that will be necessary to find men to take their places, in case they decide to stop work. As a matter of fact it is entirely improbable that we shall know definitely what the men intend to do, by any statement from them, before the first of the year. The union committee will report to the union meeting of all the committees now in St. Paul. The matter will be discussed, and the several committees will then report to the various organizations to which they belong between this city and Tacoma—probably by wire.

* * * * * * *

The information which I have received from all sources indicates a design upon the part of the men to stop work in a body, for the purpose of crippling the road. Some of the reports which I have received are most incendiary in their character, and the men threaten freely and quite generally to destroy the company's property in various ways. In case the men strike, as they evidently propose to do, it will be necessary to send men to take their places from St. Paul. As the line passes through a sparsely settled country and contains no surplus of railroad men, it will be probably necessary to employ the men in St. Paul, Chicago, and other large Eastern cities. If our men leave the service of the company in a body *an interval will ensue during which we shall be unable to run trains.*

* * * * * * *

It seems to me that it is entirely equitable and just to the men to require them to give proper notice in writing to their division superintendents of their desire to quit work, fifteen days before taking such action, for it will require that time to secure the necessary number of men for the operation of our trains.

It then appears, from the official communication of the general manager of the receivers, that on the 18th of December, when the first application for an injunction was made, a committee, representing the men in the employ of the Northern Pacific Railway Company, were at St. Paul expecting and desiring to confer with the officers of the company with respect to the proposed reduction in wages to take effect, by order of the court and receivers, on the 1st of January, and that on the 21st of December, when the counsel at St. Paul wrote the counsel at Milwaukee suggesting the necessity for obtaining a second order of injunction, a conference had been proposed by the committee representing the employés and accepted by the company, to be held at 11 o'clock on the 22d of that month.

Mr. Miller, the counsel for the receivers, to whom the letter from which quotations have been made was addressed, states that on receiving the letters he submitted them to the judge and that they were read by him. He says:

I took these two letters, in the same shape that I have them here to-day, to Judge Jenkins and informed him that I had been requested to draft a petition in regard to the matters stated in these petitions, and I handed him the two letters. He read these two letters. He stated to me that it would not be necessary to file a petition in reference to any notice of quitting work and that the men had a right to quit work whenever they pleased, as long as they did so in a decent way. Thereupon I proceeded to draft the supplemental petition and omitted any reference in the supplemental petition to the request of Mr. McNaught that we secure an order from Judge Jenkins in reference to giving fifteen days' notice.

Your committee is of the opinion that the text of the order signed by the judge is utterly inconsistent with the qualification which the counsel states he made verbally before the order was signed and with the construction which he has since attempted to place upon it. He was fully advised by the letters of the object for which the injunction was sought and of the effect which it was expected to have. The general manager of the road stated explicitly that if the men withdrew from the service of the road on the 1st of January it would be impossible to replace them under fifteen days, and that the business of the company would thereby be suspended, greatly to the damage of the "trust estate," as he calls

it, and of the people who are dependent upon the road for their materials and supplies of provisions and fuel.

The letter of Mr. McNaught was even more explicit. He is of the opinion that—

> Under the order which has already been obtained, if they should strike they would be liable for contempt, but that will not prevent great loss and damage to the trust estate.

It will be observed that in neither one of these letters does there appear any fear of damage to the property of the company or of any unlawful interference with the officers of the company in procuring the services of men to take the places of those whom they apprehended would leave its service, but merely the damage to the road and inconvenience to the general public which would result from their quitting in a body.

It appears nakedly and without any attempt at disguise in these two communications that, in the opinion of the writers, they were entitled to receive the compulsory services of the men then in the employ of the receivers, on the sole ground that if the men withdrew in a body their places could not be supplied; that great damage would accrue to the railroad and to the general public; and that it could not be known what the men would do until the 1st of January, when it would be too late to prevent the damage which would result if they quit work. It does not seem to have occurred either to the counsel or the court that this condition of things was directly attributable to the failure of the receivers to confer with the men to be affected by this order, and to have ascertained seasonably whether they accepted or rejected the terms proposed. That such an order, rendered with full and complete information furnished by counsel for the receivers of the object in view and the effect to be served by it, was a gross abuse of judicial authority on the part of the judge who granted it your committee entertains no doubt.

It is very true that ex-Senator John C. Spooner, who, it appears, was furnished by Mr. McNaught with a copy of the letter from Mr. Kendrick, and who was thereby fully advised of the object in view in obtaining the supplemental order of injunction, declares that the purpose neither of the first nor of the second injunction was to coerce the services of the men affected by it, and that the judge himself, in his opinion on the motion to modify the injunction, declares that the court did not put any such construction upon the two orders when rendered. Yet, in the judgment of your committee, this contention is utterly inconsistent with the plain language used and with the conditions confessedly existing at that time.

The receivers had, with the sanction of the court, issued an order reducing to a greater or less extent the wages of all the employés engaged in the service of the Northern Pacific Railway Company—about 12,000 in number. The new schedule, which was to go into effect on the 1st of January, had been made without any consultation whatever with the men to be affected by it, and no effort appears to have been made to ascertain whether it would be accepted or refused by them. The receivers acted upon the hypothesis that they had the absolute right, without consultation with their employés, to propose a new schedule of wages and to fix the time from and after which it should go into effect. But because their employés had not, up to the 21st of December, advised them whether they would accept or reject the proposition, and because it would be impossible for their places to be supplied within fifteen days after the 1st of January, the time fixed for the new scale of wages to take effect, the receivers applied to the court

and the court granted an injunction prohibiting the men from "combining and conspiring to quit, with or without notice, the service of said receivers, with the object and intent of crippling the property in their custody, or embarrassing the operation of said railroad, *and from so quitting the service of said receivers, with or without notice, as to cripple the property or prevent or hinder the operation of said railroad.*"

It is to be observed that this mandate embraces two clauses, the one prohibiting employés from combining and conspiring to quit, *with intent* to cripple the property or embarrass the operation of the road, and the other from so quitting the service of said receivers, with or without notice, *as to cripple the property or to prevent or hinder the operation of said railroad.* The latter clause was a clear command to render involuntary service if the refusal to render such service would have the effect to cripple the property or prevent or hinder the operation of the railroad. That the men could not have quit, either in a body or to the extent of any considerable number, without embarrassing the operation of the road or crippling the property, is perfectly clear under the statements both of the general manager (Mr. Kendrick) and that of Mr. McNaught, which, it appears, were laid before the judge before he rendered the second order. The command, then, not "to quit," under the circumstances stated, was a command to *serve* until the road could be successfully operated without them.

Your committee finds itself utterly unable to agree with the judge in his opinion that the decision rendered by Judge Taft (Toledo *v.* Pennsylvania, 54 Federal Reporter, p. 730), sustains the position he has assumed in this, nor have they been able to find any case which sustains the contention that a court can, under any circumstances, compel the performance of involuntary service by a writ of injunction. In the case cited P. M. Arthur, chief of the Brotherhood of Locomotive Engineers, was restrained by a writ of injunction from issuing an order to put in force what was known as the twelfth rule of his organization, which is as follows:

Twelfth. That hereafter, when an issue has been sustained by the grand chief, and carried into effect by the Brotherhood of Locomotive Engineers, it shall be recognized as a violation of obligation for a member of the Brotherhood of Locomotive Engineers Association who may be employed on a railroad running in connection with or adjacent to said road, to handle the property belonging to said railroad or system in any way that may benefit said company in which the Brotherhood of Locomotive Engineers is at issue until the grievance or issue of whatever nature or kind has been amicably settled.

That is to say, that whenever the Brotherhood of Locomotive Engineers were engaged in a strike against any one line or system of roads, the proclamation that rule 12 was in force would prevent the engineers belonging to the brotherhood engaged on any other line from handling any freight or business of the line against which the strike had been declared.

Judge Taft held that Chief Arthur would, by putting in force the rule cited, not only violate the provisions of what is known as the interstate-commerce act, but would commit an offense against the criminal laws of the United States. The court quotes section 10 of the act as amended (25 Stat. L., p. 855), which declares that—

Any common carrier subject to the provisions of this act, or, when such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, or lessee, agent, or person, acting for or employed by such corporation, who alone, or with any other corporation, company, person, or party, * * * shall willfully omit or fail to do any act, matter, or thing in this respect required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this act to be done not to be done, or shall aid or abet such omission

or failure, * * * shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not exceeding $5,000.

And under the provisions of section 5440 of the Revised Statutes of the United States, if Chief Arthur had directed or advised, either of which would have amounted to a conspiracy, any engineer to commit the offense of violating any of the provisions of the interstate-commerce act, he would have been liable to a penalty of not more than $10,000 and to imprisonment for not more than two years, or both, at the discretion of the court. It was made to appear clearly to the court in this case that Chief Arthur was about to do an act which was not only contrary to the provisions of the interstate-commerce act, but also in violation of the section of the Revised Statutes we have just quoted. There was no question whatever of compulsory service involved. Not only does not the decision sustain the action taken by the court in the matter under investigation, but the dictum of the judge absolutely negatives the position assumed by Judge Jenkins. The judge says:

But it is said that it can not be unlawful for an employé either to threaten to quit or actually to quit the service when not in violation of his contract, because a man has the inalienable right to bestow his labor where he will and to withhold his labor as he will. Generally speaking, this is true, but not absolutely. If he uses the benefit which his labor is or will be to another, by threatening to withhold it or agreeing to bestow it, or by actually withholding it or bestowing it, for the purpose of inducing, procuring, or compelling that other to commit an unlawful or criminal act, the withholding or bestowing of his labor for such a purpose is itself an unlawful or criminal act. The same thing is true with regard to the exercise of the right of property. A man has the right to give or sell his property where he will, but if he give or sell it, or refuse to give or sell it, as a means of inducing or compelling another to commit an unlawful act, his giving or selling it or refusal to do so is itself unlawful.

Herein is found the difference between the act of the employés of the complainant company in combining to withhold the benefit of their labor from it, and the act of the employés of the defendant companies in combining to withhold their labor from them; that is, the difference between the strike and boycott. The one combination [that is, the strike], so far as its character is shown in the evidence, was lawful, because it was for the lawful purpose of selling the labor of those engaged in it for the highest price obtainable, and on the best terms. *The probable inconvenience or loss* which its employés might impose on the complainant company by withholding their labor would, under ordinary circumstances, be a legitimate means available to them for inducing a compliance with their demands.

Nor does the decision of Judge Ricks (54 Federal Reporter, p. 746) afford any more justification for the order rendered in the case under investigation. In that case the judge lays down the doctrine that—

Railway employés accept their places under the implied condition that they will not quit their employer's service under circumstances rendering such conduct a peril to the lives and property committed to its care, or in such a manner as to subject it to legal penalties or forfeitures; and although in ordinary circumstances the employer must rely upon his action at law for a breach of the condition, a court of equity has power to restrain employés from acts of violence and intimidation, and from enforcing rules of labor unions which result in irremediable injuries to their employers and the public, such as those requiring an arbitrary strike without cause, merely to enforce a boycott against a connecting line.

But while laying down this general rule, he declares that engineers who refuse to haul cars in obedience to a rule of the labor union, "and in good faith quit their employment before starting on their run, may not be in contempt."

In dealing with this question, i. e., the obligation of employés to remain in the service of the road against their will, the court says:

The proof is clear that all of these engineers and firemen fully understood the order of the court, and knew that if they continued in the company's service they would be compelled to obey it. Rather than do that they quit their employment.

Had they the right to do so under the circumstances surrounding them? The train which they refused to haul was safely stored in the company's yard. No special injury resulted from their refusal to continue in the service. No lives were imperiled and no property jeopardized by their act. These facts clearly present extreme cases, when a court of equity is asked to enforce the performance of contracts for personal service. The engineers were all bound by their terms of employment to haul that train to Detroit. They had been regularly called for service and entered upon it, and were in law obligated to continue in that service for the period of twelve hours, which covered their run. They have broken their contract, and their employer has its remedy at law, inadequate though it be.

But this court recognizes to its fullest extent the large measure of personal liberty permitted to employés, and, while it feels they have violated their contract of service, it disclaims any power to compel them to continue that service against their will, under the facts of this case. The insuperable difficulties attending an attempt to enforce the performance of contracts for continuous personal service have heretofore deterred courts of equity from undertaking to grant relief in such cases. But in the varying circumstances under which the employer's right to such relief are presented it often happens that adequate protection is possible by restraining the employés from refraining to do acts which they have combined and conspired to do, and the inhibiting of which secures the relief to which the employer is clearly entitled. By such modes of procedure courts of equity are often able to afford protection where they could not do it by attempting to enforce specific performance. But it is urged that, while the court might not have had the power to compel performance of service in these cases, it has power to punish for contempt those who who refuse to obey its orders. But if the court could not compel the employé to perform by continuing in service, it would not be a contempt of court on the employé's part to exercise the right to quit the service. If the employé quits in good faith, unconditionally and absolutely, under such circumstances as are now under consideration, he is exercising a personal right which can not be denied him.

When it is considered that the court in the case above cited held that it could not compel a continuance of service of employés who were already under contract, and that the employé "is exercising a personal right in quitting, unconditionally and absolutely, which can not be denied him," it will be perceived what a long step has been taken by Judge Jenkins when he holds not only that can employés be held to the terms of service under an existing contract, but that they can, in effect, be compelled to assent to a new contract where a refusal to do so would result in "crippling the property or preventing or hindering the operation of said railroad"—a consideration which Judge Taft held could not be entertained by the court.

The case of Blindell v. Hagan (54 Federal Reporter, p. 40), does not to any greater extent support the contention of the judge, but does support the principle that any court of equity has the jurisdiction to enjoin unlawful combinations and the unlawful acts of irresponsible persons which prevent or interfere with the exercise of the lawful rights of others. All the cases cited fail in the essential particular that the injunctions are aimed at acts which would themselves be unlawful and injurious to those who sought the protection of the court. In the case under consideration the judge went beyond any action heretofore taken. He seemed oblivious of the fact that the receivers had, by their own act, terminated all contract relations with their employés on and after the 1st of January, and that all who remained in its service after that time would do so on other terms and for less compensation; yet he not only enjoined the employés of the Northern Pacific Railroad Company from the commission of any unlawful act with reference to the management and conduct of its business, but further restrained them from the exercise of the very highest right of an American citizen, the right of personal freedom.

It does not seem to have occurred to him that there was any impropriety in the conference of the receivers and executive officers of this railroad with a view to ascertain whether the compensation which was

being paid to its employés was excessive or the rates ill-adjusted. On the presentation to him of the new schedule accompanied by the statement of the receivers that it was more just in its operation and was as much as the financial condition of the company would permit, he unhesitatingly approved their action and ordered that it take effect on the 1st of January. He did not consider it necessary to hear from the other servants of the court (under the supposition that all those employed in the operation of the road were such servants) who were to be affected by the decree he was making. But, from his opinion rendered on the motion to modify the order and decree, it does appear that, in his opinion, any conference among those who were affected by the order, any joint action on their part in resistance to it, would be unlawful, for the sole reason that the effect of such joint action, if it resulted in a refusal to accept the lower rate of wages proposed and to withdraw their services from the road on the 1st of January, would embarrass the receivers in its operation and cripple the property.

It does not appear from the testimony introduced before your committee that any of the employés rendered compulsory services, or that at any time the labor organizations to which they belonged had a strike in view; on the contrary, it is testified by all of those who appeared before your committee that no steps had been taken in this direction, and, therefore, that it can not be said that they have been deprived of their constitutional right to withhold their services if they had seen proper to do so. It does appear, however, that in the opinion of the men they could not have withdrawn from the service of the road, if so doing had embarrassed the receivers or crippled the property, without violating the writ and laying themselves liable to be proceeded against for contempt, and they have, until recently, been denied the right of consultation with the executive officers of the several labor organizations or unions in regard to the new schedule of wages and propriety of accepting it.

Your committee is clearly of the opinion that the order of Judge Jenkins on the first application for an injunction is far beyond any heretofore rendered; that it is not sustained either by reason or authority, and that in so far as it restrained the men from quitting the service of the road on the 1st of January, or at any other time that they desired to do so, was in violation of a constitutional provision, an abuse of judicial power, and without authority of law.

Your committee is of the further opinion that the order rendered on the supplemental petition in which the representatives of the labor organizations named therein were prohibited from—

ordering, recommending, approving, or advising others to quit the service of the receivers of the Northern Pacific Railroad Company on the 1st of January, 1894, or at any other time, and from ordering, recommending, advising, or approving, by communication, or instruction, or otherwise, the employés of said receivers, or any of them, or of said Northern Pacific Railroad Company, to join in a strike on said January 1, 1894, or at any other time, and from ordering, recommending, or advising any committee or committees, or class or classes of employés of said receivers, to strike or join in a strike on January 1, 1894, or at any other time, until the further order of this court,

was more reprehensible than the first order rendered in said cause, for the reason that the judge was fully advised of the unlawful and oppressive object which the receivers had in view at the time they applied for the order, of the effect which it was expected to have, and that it unlawfully prevented the officers of lawful organizations from the lawful discharge of the duties of their several positions.

The by-laws and constitutions of the several orders affected were submitted to your committee. They find that in each instance they are lawful combinations or associations, and the objects and purposes, as declared therein, are strictly within the laws of the United States, particularly the act approved June 29, 1886, entitled "An act to legalize the incorporation of trades unions." By the provisions of that act the objects and purposes of the associations whose constitutions were submitted to us authorize them to corporate existence and to impose lawfully upon their officers the execution of such duties as are necessary to carry out the lawful objects of the association. It appears that under the constitution of the several orders the executive officers could not, on their own authority, have advised, recommended, or ordered a lawful strike. It is admitted that before this resort could be had to attract the attention or enforce concessions from any company employing the members the complaint of the individual, or of the class affected, must have been submitted to the grievance committee of the association. This committee is required to lay the matter before the executive officers of the company and to ask redress.

On failure of negotiations, if the executive officers decide that the matter is one of sufficient importance to require community of action, the rules require that the question of whether a strike should be ordered or not shall be submitted to the membership of the order. If two-thirds of the members vote in favor of a strike, and their conclusion is ratified by the chief executive officer, then a legal strike is ordered. This legal strike means simply the withdrawal of all members of the association from the service of the offending corporation. It does not carry with it a command to do any unlawful act. On the contrary, the commission of any unlawful act during the existence of a strike by any member of the association is a cause for immediate expulsion—this being the highest penalty which could be inflicted upon the offending member by the order.

The contention of Judge Jenkins that there can be no lawful strike would take away from the laboring classes of the country the only means which they have of resisting what they may consider oppression and of calling the attention of the country to it. If this contention be correct it strikes a fatal blow at all labor organizations and associations. If it be unlawful to strike it is unlawful to provide the means by which a strike may be ordered, and, as the constitutions of all these organizations contain provisions for ordering, advising, and recommending strikes, this would constitute them unlawful combinations. Yet the employers of labor may, without violation of any principle or provision of law, according to the theory now advanced, make any agreement with respect to the wages which shall be paid and graduation of the same, and any rules as they may see fit, which must be complied with by their employés, under penalty of dismissal; in other words, while they may cooperate in all respects for their joint interest it would be unlawful for the laboring classes to combine for the same purpose.

Your committee can not give its sanction to any such proposition. That the employés have a perfect right by lawful combination to procure the best rate of wages obtainable, the shortest and best hours of labor, and the greatest advantages generally for themselves, we entertain no doubt. Any attempt to prevent others from accepting the service which they have voluntarily laid down, any destruction or

attempt at destruction of the property of their late employers, any interference with the conduct of their business, would not only be unlawful, but criminal, and, we suppose, punishable under the criminal laws of all the States of this Union. But that they have the right to peaceably withdraw from the service at any time that in their judgment their interests require they should do so, and that they should do this, not only singly, but as a body, is as clear as any proposition in American law.

The testimony adduced before us fails to show any corrupt intent on the part of the judge. It is altogether possible that he sincerely believes the orders granted by him were sanctioned by law and a legitimate exercise of his jurisdiction, and, therefore, the errors which your committee believes he has committed, gross as they are, and affecting the very highest rights of citizenship, afford no sufficient ground for any proceedings against him. Your committe recommends, however, that all possible doubt as to the powers of judges of the courts of the United States to enforce specific performance of labor contracts by legal process, or to compel any person to render involuntary service under any pretext, be set at rest by a prohibitory statute.

Your committee feels constrained, in addition, to call attention to the practically unlimited authority claimed and exercised by the courts of the United States in matters of receiverships, and that by this evolution of equity jurisdiction the United States, through the judicial arm of the Government, has been practically in many instances engaged in the business of "common carriers."

Under the practice established in this class of cases, immediately upon the appointment of a receiver all the employés of the corporation become, *pro hac vice*, the servants and officers of the court, and subject to be proceeded against, under its power to punish for contempt for any infraction of its orders. Third persons interfering in any manner with the operation of the property, or with the officers of the court conducting it, likewise become subject to be proceeded against in like manner.

The court (Pardee, judge) in the case reported, Federal Reporter, p. 443 (*in re* Higgins), asserts that the power of the court in punishing for contempt is unlimited, both as to amount of fine and duration of imprisonment, and this decision has been cited by other judges with approval. Without taking issue with the judge as to what the law is, your committee is of opinion that the power should be defined and limited by statute.

Doubtless it is much more convenient to Federal judges and those who invoke the remedy to punish acts which are offenses against the criminal laws of the States, and by judicial construction also constitute contempts of court by summary proceedings for contempt, in which the judge decides without appeal not only as to the guilt of party, but all questions which arise and inflicts such punishment as judicial discretion prescribes, but such proceedings are not in harmony with the spirit of our institutions, are liable to abuse and ignore the tribunals of the States and local authorities provided by law for the protection of property, and punishment of offenses against both person and property.

The power to punish for contempt is limited by the laws of most of the States and we can see no reason why a like limitation should not be placed upon the powers of Federal judges.

Your committee therefore recommends the adoption of the following resolution:

Resolved, That the action of Judge James G. Jenkins in issuing said order of December 19, 1893, being an order and writ of injunction, at the instance of the receivers of the Northern Pacific Railroad Company, directed against the employés of said railroad company, and in effect forbidding the employés of said Northern Pacific Railroad Company from quitting its service under the limitations therein stated, and in issuing a similar order of December 22, 1893, in effect forbidding the officers of labor organizations with which said employés were affiliated from exercising the lawful functions of their office and position, was an oppressive exercise of the process of his court, an abuse of judicial power, and a wrongful restraint upon said employés and the officers of said labor organizations; that said orders have no sanction in legal precedent, were an invasion of the rights of American citizens, and contrary to the genius and freedom of American institutions, and therefore deserving of the condemnation of the Representatives of the American people.

VIEWS OF THE MINORITY.

Hon. James G. Jenkins is, and was at the time of the granting of the injunctions complained of, the U. S. circuit judge for the eastern district of Wisconsin, having been appointed to that office by President Cleveland. On August 15, 1893, receivers were appointed by Judge Jenkins for the Northern Pacific Railroad Company. Later in the month of August, 1893, the receivers ordered a reduction of wages of the employés of the road, and on December 18 applied to Judge Jenkins for authority to make the reduction of wages, and for an order restraining and prohibiting the employés from the commission of all sorts of unlawful acts. The order enjoined the employés—

from combining and conspiring to quit, with or without notice, the service of said receivers, with the object and intent of crippling the property in their custody, or embarassing the operation of said railroad, and from so quitting the service of said receivers, with or without notice, as to cripple the property, or to prevent or hinder the operation of said railroad.

Later, a supplementary injunction was granted by Judge Jenkins enjoining and restraining the chiefs of the labor organizations to which the employés of the railroad belonged from ordering, directing, or encouraging a strike upon said road. No strike did occur, nor has there been any one adjudged to be in contempt for violating the injunctions, nor has any proceeding to punish for contempt been instituted against any person under these orders.

The employés, with the aid of the chiefs of the labor organizations, subsequent to the granting of these injunctions, effected a settlement and adjustment of the scale of wages to be paid the employés, under which they have since continued to perform services for the road. Under a resolution of the House, the Judiciary Committee, by a subcommittee, took testimony at Milwaukee, which has been published for the use of the House.

It appears by the testimony that the employés understood the injunctions to prevent them from leaving the service of the railroad in any manner without the consent of the receivers. A motion was made before Judge Jenkins to modify the terms of his orders, and in an opinion filed, which is published with the testimony in this case, he disclaims any intention by his injunctions to prevent any of the employés from quitting the service of the company in a peaceable, decent, or reasonable way. In his opinion, he says:

None will dispute the general proposition of the right of every one to choose his employer and to determine the times and conditions of service, or his right to abandon such service peaceably and decently.

An appeal to the court of appeals of that district from these injunctions, granted by Judge Jenkins, was taken, where the same is now pending, with the expectation of a decision in the near future. The

committee find what was an undisputed fact in the case, that Judge Jenkins acted in good faith, and they say in their report:

> The testimony adduced before us fails to show any corrupt intent on the part of the judge. It is altogether possible that he sincerely believes the orders granted by him were sanctioned by law and a legitimate exercise of his jurisdiction, and, therefore, the errors which your committee believes he has committed, gross as they are, and affecting the very highest rights of citizenship, afford no sufficient grounds for any proceedings against him.

The committee have reported at some length, taking issue with Judge Jenkins solely upon the law of the case, and holding that he committed grave legal errors, and was guilty of an abuse of legal process, and have submitted a resolution for adoption by the House, and also recommended a statute prohibiting the enforcement of specific performance of labor contracts by legal process.

As the minority do not represent the governing power of the House, they do not feel called upon to indulge in any affirmative proposition in relation to the subject-matter of the report. Their recommendations would have no power, and therefore it is not worth while to make them. The labor question, in its relation with railroads, is one full of complication, because of the public interest which intervenes. In ordinary cases between employers and employed, the public have only a remote interest, but here they have a direct one; not only free passage from place to place is prevented, but supplies are cut off and business paralyzed. On the one hand it is for nobody's interest to cripple the railroad owners, for injury to them, when made systematic and general, would be death to all improvements and a hindrance to other railroad building; on the other hand, men are entitled to a fair wage in the settlement of the amount of which they must have a reasonable combined voice. It must be still further said that some method of adjustment must be had which will secure public traffic and the business of all the people from being interrupted by the disputes of those immediately interested. It can be seen at a glance that such a question can not be settled by mere language or by bids of partisans, but must be settled by the concurrence of both parties on a common ground.

The basis of settlement will be found when the people interested have had the benefit of many failures on both sides. We have great hopes that a basis will soon be reached, first by finding what the law is, and second by agreeing to what it ought to be. We therefore must decline to follow the majority into any disquisition as to what the law is. That seems to be under control of another branch and already in train to be settled authoritatively.

But the attitude of the majority is one which ought not to pass without animadversion. If, as the committee says, "the testimony adduced before us fails to show any corrupt intent on the part of the judge;" if, also, "it is altogether possible that he sincerely believes the orders granted by him were sanctioned by law," then the question should be left to the appellate tribunal. A Federal judge, in the exercise of his function, having arrived at a conclusion without "any corrupt intent," a conclusion "he sincerely believes in," ought hardly to be harassed by a Congressional committee, since he is quite as likely to be right on a point of law as they.

Individually, we may not believe his law was sound, and may not think it will be so pronounced by the tribunal of appeal, but if he was honest and has given his honest opinion honestly, it would seem as if the correction should come from another source and that the law should be settled by the proper tribunal prior to legislation. It may be that

no legislation is required and the appellate court will afford all the relief the country needs.

If, on the other hand, Judge Jenkins has been, we will not say corrupt, but unduly swayed in the exercise of his functions by improper influences, or has stated law so badly that it is plain that he has violated his evident duty as a holder of the scales of justice, as an arbiter between rival interests, then he should be impeached.

In a word, if he has been corrupt, or has so wrested the law of the land that injustice has been done, so evident that it carries with it the proof of evil intent, then Congress has a plain duty to perform. But if it be a mere question of law, then the judiciary have the duty to perform, and Congress, by granting a court of appeals, has ended its duty. Of course when the case is finished, if the final appeal should demonstrate that the law is defective, then remedies should be applied, but we ought to know what the law is before we act. If it should be finally determined that Judge Jenkins was wrong, then the law may not need amendment. The committee think he was wrong, and yet they propose to act as if he were right.

So much for the legislation originally proposed. As for the resolution proposed later, we do not see how it could be justified. Were it demanded that we should vote condemnation of any proposition that involuntary servitude should be established by any interpretation of law all sensible men would be agreed, and Republicans first of all, but to propose that a judge who, as the majority declare, had no "corrupt intent" and "who sincerely believes" in his conclusions, shall, without impeachment, be censured by the legislative branch of the Government, is to confound all distinctions between the legislative and the judicial powers and create a side tribunal of appeal where justice would be for sale to the suitor who could poll the largest vote.

WM. A. STONE.
GEO. W. RAY.
H. HENRY POWERS.
THOS. UPDEGROFF.

REPORT OF CASE, ARGUMENTS, AND DECISION OF THE COURT IN COMMONWEALTH v. HUNT (4 METC.)

COMMONWEALTH *v.* JOHN HUNT AND OTHERS.

The general rules of the common law, making conspiracy an indictable offense, had been used and approved in Massachusetts before the adoption of the constitution of the Commonwealth, and were continued in force by Chapter VI, section 6, of that instrument. Aliter, of the English laws regulating the settlement of paupers, the wages of laborers, and making it penal for anyone to use a trade or handicraft to which he had not served a full apprenticeship.

To constitute an indictable conspiracy there must be a combination of two or more persons by some concerted action to accomplish some criminal or unlawful purpose; or to accomplish some purpose, not in itself criminal or unlawful, by criminal or unlawful means.

An association the object of which is to adopt measures that have a tendency to impoverish a person—that is, to diminish his gains and profits—is lawful or unlawful as the means by which that object is to be effected are lawful or unlawful.

An indictment for a conspiracy to compass or promote a criminal or unlawful purpose must set forth that purpose fully and clearly.

An indictment for a conspiracy to compass or promote a purpose not in itself criminal or unlawful, by the use of criminal or unlawful means, must set forth the means intended to be used.

An indictment for a conspiracy which does not directly aver facts sufficient to constitute the offense is not aided by matter which precedes or follows the direct averments, nor by qualifying epithets (as "unlawful, deceitful, pernicious," etc.) attached to the facts averred.

An indictment alleged that the defendants, being journeymen bootmakers, unlawfully, etc., confederated and formed themselves into a club, and agreed together not to work for any master bootmaker or other person who should employ any journeyman or other workman who should not be a member of said club, after notice given to such master or other person to discharge such workman. *Held*, that there was no sufficient averment of any unlawful purpose or means.

So of an indictment which alleged that the defendants, being journeymen bootmakers, unlawfully, etc., conspired, confederated, and agreed together not to work for any person who should employ any workman not being a member of a club called the Journeymen Bootmakers' Society, or who should break any of their by-laws, unless such persons should pay to said club such sums as should be agreed upon as a penalty for the breach of such by-laws; and, by means of said conspiracy, did compel one W., a master cordwainer, to turn out of his employ one H., a journeyman bootmaker, because said H. would not pay a sum of money to said club for an alleged penalty of some of said by-laws.

So of an indictment which alleged that the defendants intending, unlawfully and by indirect means, to impoverish one H., a journeyman bootmaker, and hinder him from following his trade, did unlawfully conspire, etc., by wrongful and indirect means, to impoverish him and to deprive and hinder him from following his trade of journeyman bootmaker, and from getting his livelihood and support thereby; and, in pursuance of said conspiracy, they did unlawfully, etc., prevent him from following said trade and did greatly impoverish him.

So of an indictment which alleged that the defendants, designing to injure one W. and divers others, all being master bootmakers, employing journeymen, unlawfully, etc., did conspire and agree together by indirect means to prejudice and impoverish one W. and divers others, all being master cordwainers and employing journeymen bootmakers, and to hinder them from employing any journeymen who should not, after notice, become members of a club called the Journeymen Bootmakers' Society, or who should break or violate any of the by-laws of said club, or refuse or neglect to pay any sum of money demanded from them by said club as a penalty for such breach of said by-laws.

This was an indictment against the defendants (seven in number) for a conspiracy. The first count alleged that the defendants, together with divers other persons unknown to the grand jurors, "on the first Monday of September, 1840, at Boston, being workmen and journeymen in the art and manual occupation of bootmakers, unlawfully, perniciously, and deceitfully designing and intending to continue, keep up, form, and unite themselves into an unlawful club, society, and combination, and make unlawful by-laws, rules, and orders among themselves, and thereby govern themselves and other workmen in said art, and unlawfully and unjustly to extort great sums of money by means thereof, did unlawfully assemble and meet together, and, being so assembled, did then and there unjustly and corruptly combine, confederate, and agree together that none of them should thereafter, and that none of them would, work for any master or person whatsoever in the said art, mystery, or occupation who should employ any workman or journeyman or other person in the said art who was not a member of said club, society, or combination, after notice given him to discharge such workman from the employ of such master, to the great damage and oppression, not only of their said masters employing them in said art and occupation, but also of divers other workmen and journeymen in the said art mystery, and occupation, to the evil example of all others in like case offending and against the peace and dignity of the Commonwealth."

The second count charged that the defendants and others unknown, at the time and place mentioned in the first count, "did unlawfully assemble, meet, conspire, confederate, and agree together, not to work for any master or person who should employ any workman not being a member of a club, society, or combination called the Boston Journeymen Bootmakers' Society, in Boston, in Massachusetts, or who should break any of their by-laws, unless such workman should pay to said club and society such sum as should be agreed upon as a penalty for the breach of such unlawful rules, orders, and by-laws; and by means of said conspiracy they did compel one Isaac B. Wait, a master cordwainer in said Boston, to turn out of his employ one Jeremiah Horne, a journeyman bootmaker, because said Horne would not pay a sum of money to said society for an alleged penalty of some of said unjust rules, orders, and by-laws."

The third count averred that the defendants and others unknown, "wickedly and unjustly intending unlawfully and by indirect means to impoverish one Jeremiah Horne, a journeyman bootmaker, and hinder him from following his trade, did" (at the time and place mentioned in the former counts) "unlawfully conspire, combine, confederate, and agree together by wrongful and indirect means to impoverish said Horne, and to deprive and hinder him from following his said art and trade of a journeyman bootmaker, and from getting his livelihood and support thereby; and in pursuance of said conspiracy they did wrongfully, unlawfully, and indirectly prevent him, the said Horne, from following his said art, occupation, trade, and business, and did greatly impoverish him."

In the fourth count it was alleged that the defendants (at the time and place before mentioned), "unjustly intending to injure and impoverish one Jeremiah Horne, and to deprive him of work and employment, and to prevent his earning a livelihood and support by following his trade of a journeyman bootmaker, did unlawfully conspire, com-

bine, confederate, and agree together by indirect means wrongfully to prejudice the said Horne and prevent him from exercising his trade as a journeyman bootmaker, and impoverish him."

The fifth count set forth that the defendants, at Boston, on the first Monday of November, 1839, "unlawfully, designedly, to prejudice and impoverish one Isaac B. Wait, one Elias P. Blanchard, one David Howard, and divers other persons, whose names to the jurors are not known, all being master cordwainers and bootmakers in said Boston, employing journeymen bootmakers, did unlawfully, wrongfully, and corruptly conspire, combine, confederate, and agree together, by indirect means unjustly to prejudice and impoverish said Wait, Blanchard, Howard, and said other master cordwainers, whose names are unknown as aforesaid, and to prevent and hinder them from employing any journeymen bootmakers, who would not, after being notified, become members of a certain club, society, or combination called the Boston Journeymen Bootmakers' Society in Boston, Mass., or who should break or violate any of the rules, orders, or by-laws of said society, or refuse or neglect to pay any sum of money demanded from them by said society as a penalty for such breach of said by-laws."

The defendants were found guilty at the October term, 1840, of the municipal court, and thereupon several exceptions were alleged by them to the ruling of the judge at the trial. The only exception which was considered in this court was this: "The defendants' counsel contended that the indictment did not set forth any agreement to do a criminal act, or to do any unlawful act by criminal means, and that the agreements therein set forth did not constitute a conspiracy indictable by any law of this Commonwealth; and they moved the court so to instruct the jury. But the judge refused so to do, and instructed the jury that the indictment against the defendants did, in his opinion, describe a confederacy among the defendants to do an unlawful act, and to effect the same by unlawful means. That the society, organized and associated for the purpose described in the indictment, was an unlawful conspiracy, against the laws of this Commonwealth; and that if the jury believed from the evidence in the case that the defendants, or any of them, had engaged in such confederacy they were bound to find such of them guilty."

A printed copy of the constitution of the Boston Journeymen Bootmakers' Society was given in evidence against the defendants at the trial, and it was agreed that the same might be referred to by the counsel in the argument, and by the court in considering the exceptions.

This case was argued at the last March term on all the exceptions alleged at the trial, but the argument on those points only which were decided by the court is here inserted.

Rantoul, for the defendants. As we have no statute concerning conspiracy, the facts alleged in the indictment constitute an offense, if any, at common law. But the English common law of conspiracy is not in force in this State. We have not adopted the whole mass of the common law of England indiscriminately, nor of the English statute law which passed either before or after the settlement of our country. So much only of the common law has been adopted as is applicable to our situation, excluding "the artificial refinements and distinctions incident to the property of a great commercial people; the laws of revenue and police; such especially as are enforced by pen-

alties." 1 Bl. Com., 107, et seq.; 1 Tucker's Black., Appx., 406. Statutes do not bind colonies unless they are expressly named. 2 P. W., 75; Chit. on Prerog., 33. The English law as to acts in restraint of trade is generally local in its nature and not suited to our condition. It has never been adopted here, and the colonies are not named in the statutes on that subject which have been passed in England since they were settled. Van Ness *v.* Pacard, 2 Pet., 144; Wheaton *v.* Peters, 8 Pet., 658, 659; Dawson *v.* Shaver, 1 Blackf., 205, The Sts. 1 Edw. VI, c. 3; 5 Geo. I, c. 27; 23 Geo. II, c. 13; 14 Geo. III, c. 71; the innumerable statutes of laborers and the statutes against seducing artisans, etc., illustrate this point. All the law we ever had on these subjects was domestic, and is now obsolete. See Plymouth Colony Laws, 28, 72, 76; Anc. Chart., 210; 6 Mass., 73.

The original of the law of conspiracy is in St. Edw. I (A. D. 1304), and includes in its definition only false and malicious indictments. 2 Inst., 561, 562; 2 Reeves Hist. (2d ed.), 239, et seq.; 1 Hawk., c. 72, §§ 1, 2; 6 Petersd. Ab., 96. The early cases were those of such indictments. See Yelv., 116; 9 Co., 55 b; Cro. Eliz., 563, 871, 900.

The next stage of the law of conspiracy appears in the early editions of 1 Hawk., c. 72, § 2: "That all confederacies wrongfully to prejudice a third person are criminal at common law; as a confederacy by indirect means to impoverish a third person, or falsely and maliciously to charge a man with being the reputed father of a bastard child, or to maintain one another in any matter, whether it be true or false." By "indirect means" unlawful means are meant.

The case of The King *v.* Journeymen Tailors, 8 Mod., 10, was decided after Hawkins's work was published, and is not a part of the law laid down by him in his first editions. In that case it was held that a conspiracy among workmen to refuse to work under certain wages is an indictable offense. This case, if correctly reported, introduced new law, unless it was decided on the statutes of laborers. (See a compend of these statutes in Jacob and Tomlins's Law Dict. Laborers. See also 1 Bl. Com., 426; 14 East, 395.) The doctrine of that case, therefore, is not a part of the law adopted in this State. It was not the doctrine of the common law when our ancestors came hither, and is not suited to our condition.

But the report of the case in 8 Mod., 10, is not to be depended upon. The book is no authority, and is entitled to no respect. 1 Bur., 386; 3 Bur., 1326. The doctrine of the case is not supported by any previous decision. Yet this is the only authority for the repetition of the same doctrine in the numerous books in which it is now found.

Probably the indictment in that case was sustained on the statutes of laborers. Though the old precedents of indictments are contra pacem only, yet that is because a conspiracy to do acts contrary to those statutes is punishable at common law in England. The King *v.* Smith, 2 Doug. 441. 1 Bolton's Just. 170. 2 ib. 2.

The statutes of laborers were blind struggles of the feudal nobles to avert from themselves the effects of great national calamities. Every one of these statutes had a local and temporary cause. In the famine of 1315 and the plague of 1316 Parliament vainly strove to alleviate the universal distress by fixing a legal price for provisions. Yet the scarcity increased, so that the King, going to St. Albans, "had much ado to get victuals to sustain his family." 1 Parl. Hist. 152. And some months later mothers ate their children. Monk of

Malmsb. 166. Walsingham's Chronicles, 107, 108. From the same motives, and with no better success, the plague of 1349 was followed by that remarkable statute de servientibus, from which have been derived all subsequent statutes of laborers. St. 25 Edw. III. 1 Parl. Hist. 274. 2 Reeves Hist. (2d ed.) 388. This pestilence was as general and destructive as any recorded in history. The deaths in London were mostly of the laboring classes: Maxime operariorum et servientum. 5 Rymer's Fœd. 693. King Edward had just been debasing his coin. Daniel in 1 Kennet's Hist. 224. From these causes the wages of labor rose rapidly, and the law undertook to fix them. But in spite of fines, imprisonment, and the pillory, wages and prices continued to rise. Knyghton's Chronicles, 2600.[a]

The case in 8 Mod. 10 was about the time of the bursting of the South Sea bubble, when laborers sought to withstand the operation of the state of affairs then existing.

It appears from Rex *v.* Hammond, 2 Esp. R. 717, that masters may be indicted for showing too great indulgence to their workmen, by raising their wages above the usual rate. Is this the law of Massachusetts?

In most of the United States, conspiracies that have been held indictable at common law are all for acts that are indictable, immoral, or forbidden by statute. The State *v.* Cawood, 2 Stew. 360. The State *v.* Buchanan, 5 Har. & J. 317. Respublica *v.* Hevice, 2 Yeates, 114. Collins *v.* Commonwealth, 3 S. & R. 220. Commonwealth *v.* M'Kisson, 8 S. & R. 420. The State *v.* Murray, 3 Shepley, 100. The State *v.* Younger, 1 Dev. 357. The State *v.* Tom, 2 Dev. 569. The State *v.* De Witt, 2 Hill's (S. C.) Rep. 282.

In New York and Massachusetts the cases have gone further, and in Commonwealth *v.* Judd, 2 Mass. 337, Parsons, C. J., says a conspiracy is "the unlawful confederacy to do an unlawful act, or even a lawful act for unlawful purposes." And all the Massachusetts cases come within this definition. Commonwealth *v.* Ward, 1 Mass. 473. Commonwealth *v.* Tibbetts, 2 Mass. 536. Commonwealth *v.* Kingsbury, 5 Mass. 106. Commonwealth *v.* Warren, 6 Mass. 74. Commonwealth *v.* Davis, 9 Mass. 415. Commonwealth *v.* Manley, 12 Pick. 173. So all the New York cases come within the same definition until since the revised statutes of that State were passed. Under those statutes it is held indictable for workmen to conspire to raise their wages by combining to compel journeymen and master workmen to conform to rules established by the persons so combining for the

[a] Mr. Rantoul examined, in the same manner, the subsequent statutes of laborers—34 Edw. III c. 10. 12 Rich. II c. 4. 7 Hen. IV c. 17. 4 Hen. V c. 4. 2 Hen. VI c. 18. 3 Hen. VI c. 1. 23 Hen. VI c. 12.—and especially 1 Edw. VI c. 3. (A. D. 1547.) 2 and 3 Edw. VI c. 15. 3 and 4 Edw. VI c. 16; which statutes, continued or modified by 5 Eliz. c. 4 (A. D. 1562), and 1 Jac. I c. 6 (A. D. 1604), were the law of England at the time of the settlement of Massachusetts, and were afterwards continued by 3 Car. I c. 5, and 16 Car. I. c. 4, and were unrepealed at the time of the American Revolution.

By these statutes (said Mr. R.) a mere refusal to work was criminal in an individual; and by 2 and 3 Edw. VI c. 15, a combination to refuse to work became criminal, for the first time. Such combinations are now legalized by 4 and 5 Wm. IV c. 40.

In 1355 the commons petitioned "that the points of confederacy may be declared; considering how the judges judge rashly thereof." The King made answer: "None shall be punished for confederacy, but where the statute speaketh expressly upon the point contained in the same statute." 1 Parl. Hist. 289. This petition related to rash judgments on St. Edw. I concerning confederacies.

purpose of regulating the price of labor. This was decided to be a conspiracy "to commit an act injurious to trade or commerce." People *v.* Fisher, 14 Wend. 1.

A conspiracy to commit a mere civil injury to an individual is not indictable. The State *v.* Rickey, 4 Halst., 293; The King *v.* Turner, 13 East., 228; Rex *v.* Pywell, 1 Stark. R., 402. Yet nothing more is properly alleged against the present defendants.

A conspiracy to raise wages would not be indictable in England if it were not unlawful for an individual to attempt to raise his wages. And the indictment in the case at bar is bad, because each of the defendants had a right to do that which is charged against them jointly.

All the counts in the present indictment are fatally defective; first, in not averring any unlawful acts or means; secondly, if any such acts or means are averred, in not setting them forth. The vagueness and generality of the charges are such that autrefois convict could not be pleaded to a second indictment for the same acts. When the end is not unlawful, the means should be set forth. Commonwealth *v.* Warren, 6 Mass., 74; Lambert *v.* The People, 9 Cow., 578. Mere combination is nowhere said to be unlawful, except in 8 Mod., 10.

Austin (attorney-general), for the Commonwealth. The common-law doctrine of conspiracy is part of the law of this Commonwealth. It has been recognized by the legislature, in Rev. Stats., c. 82, § 28, and c. 86, § 10, and was long since enforced by this court. Commonwealth *v.* Boynton and Commonwealth *v.* Pierpont, 3 L. Rep., 295.

The charge against the defendants is, in effect, an attempt to monopolize by them certain labor, on their own terms, and to prevent others from obtaining or giving employment. This is an indictable offense. Rex *v.* Bykerdike, 1 M. & Rob., 179; 3 Chit. Crim. Law, 1138, et seq; Archb. Crim. Pl. (1st ed.), 390; Davis Just. (1st ed.), 335; The People *v.* Melvin and others, 2 Wheeler's Crim. Cas., 262.

The case in 8 Mod., 10 (whatever may be the authority of the book), shows the fact that defendants were convicted of an offense like that with which the present defendants are charged; and that decision is cited by text writers and by judges, without any question as to its soundness or as to the accuracy of the report.

The old statutes of laborers, which have been referred to, do not at all affect the common-law doctrine. No reference is made to them in the English books of criminal law, or in the reports of the cases of conspiracy by workmen.

A conspiracy to raise wages is indictable in England, not because it is unlawful for an individual to attempt to raise his wages—as the defendants' counsel suggests—but because a combination for that purpose is criminal and punishable. 6 T. R., 636, per Grose, J. So there are many other cases in which an act done by a single person would not be cognizable by law, but which becomes the subject of indictment, if effected by several with a joint design. 3 Chit. Crim. Law, 1139, 1140; 12 Connect., 112.

Where the means of carrying a conspiracy into effect are alleged in the indictment to be unlawful, it is not necessary to set forth those means. If there could be a case in which the defendants could not well make their defense without being informed of the means imputed to them, perhaps the court might order a specification to be furnished to them. Rex *v.* Hamilton, 7 Car. & P., 448. In the case in 2 Wheeler's Crim. Cas., ubi sup., the indictment was like the one at bar.

The decision in Lambert *v.* The People, 9 Cow., 578, was by a casting vote, reversing the unanimous opinion of the supreme court, and is therefore hardly to be regarded as an authority. 12 Connect., 110, per Bissell, J. See The King *v.* Eccles, 3 Doug., 337. The King *v.* Gill, 2 Barn. & Ald., 204.

It is not necessary, in order to render a conspiracy indictable, that the means devised to carry it into effect should be acts that are indictable. It is sufficient if they are unlawful. In Commonwealth *v.* Boynton, already cited, the conspiracy was to cheat by false pretences. Yet false pretences were not then indictable in Massachusetts. 6 Mass., 73.

The People *v.* Fisher, 14 Wend., 1, is a strong authority in support of the present indictment. It is true that it was under the revised statutes of New York, and proceeded on the ground that the conspiracy was "injurious to trade or commerce." But the question, what is injurious to trade or commerce, is to be determined by the common law.

Shaw, C. J. Considerable time has elapsed since the argument of this case. It has been retained long under advisement, partly because we were desirous of examining, with some attention, the great number of cases cited at the argument, and others which have presented themselves in course, and partly because we considered it a question of great importance to the commonwealth, and one which had been much examined and considered by the learned judge of the municipal court.

We have no doubt that by the operation of the constitution of this commonwealth the general rules of the common law, making conspiracy an indictable offense, are in force here, and that this is included in the description of laws which had, before the adoption of the constitution, been used and approved in the province, colony, or State of Massachusetts Bay, and usually practiced in the courts of law. Const. of Mass., c. VI, § 6. It was so held in Commonwealth *v.* Boynton, and Commonwealth *v.* Pierpont, cases decided before reports of cases were regularly published,* and in many cases since. Commonwealth *v.* Ward, 1 Mass., 473. Commonwealth *v.* Judd, and Commonwealth *v.* Tibbetts, 2 Mass., 329, 536. Commonwealth *v.* Warren, 6 Mass., 74. Still, it is proper in this connection to remark that although the common law in regard to conspiracy in this commonwealth is in force, yet it will not necessarily follow that every indictment at common law for this offense is a precedent for a similar indictment in this State. The general rule of the common law is that it is a criminal and indictable offense for two or more to confederate and combine together, by concerted means to do that which is unlawful or criminal, to the injury of the public, or portions or classes of the community, or even to the rights of an individual. This rule of law may be equally in force as a rule of the common law in England and in this commonwealth; and yet it must depend upon the local laws of each country to determine whether the purpose to be accomplished by the combination, or the concerted means of accomplishing it, be unlawful or criminal in the respective countries. All those laws of the parent country, whether rules of the common law or early English statutes, which were made for the purpose of regulating the wages of laborers, the settlement of paupers, and making it penal for any one to use a trade or handicraft

*See a statement of these cases in 3 Law Reporter, 295, 296.

to which he had not served a full apprenticeship—not being adapted to the circumstances of our colonial condition—were not adopted, used, or approved, and therefore do not come within the description of the laws adopted and confirmed by the provision of the constitution already cited. This consideration will do something toward reconciling the English and American cases, and may indicate how far the principles of the English cases will apply in this commonwealth, and show why a conviction in England in many cases would not be a precedent for a like conviction here. The King *v.* Journeymen Tailors of Cambridge, 8 Mod., 10, for instance, is commonly cited as an authority for an indictment at common law, and a conviction of journeymen mechanics of a conspiracy to raise their wages. It was there held that the indictment need not conclude contra formam statuti, because the gist of the offense was the conspiracy, which was an offense at common law. At the same time it was conceded that the unlawful object to be accomplished was the raising of wages above the rate fixed by a general act of parliament. It was therefore a conspiracy to violate a general statute law, made for the regulation of a large branch of trade, affecting the comfort and interest of the public; and thus the object to be accomplished by the conspiracy was unlawful, if not criminal.

But the rule of law that an illegal conspiracy, whatever may be the facts which constitute it, is an offense punishable by the laws of this commonwealth is established as well by legislative as by judicial authority. Like many other cases, that of murder, for instance, it leaves the definition or description of the offense to the common law, and provides modes for its prosecution and punishment. The Revised Statutes, c. 82, § 28, and c. 86, § 10, allowed an appeal from the court of common pleas and the municipal court, respectively, in cases of a conviction for conspiracy, and thereby recognized it as one of the class of offenses so difficult of investigation, or so aggravated in their nature and punishment, as to render it fit that the party accused should have the benefit of a trial before the highest court of the Commonwealth. And though this right of appeal is since taken away, by statute of 1839, c. 161, this does not diminish the force of the evidence tending to show that the offense is known and recognized by the legislature as a high indictable offense.

But the great difficulty is in framing any definition or description to be drawn from the decided cases which shall specifically identify this offense—a description broad enough to include all cases punishable under this description without including acts which are not punishable. Without attempting to review and reconcile all the cases, we are of opinion that, as a general description, though perhaps not a precise and accurate definition, a conspiracy must be a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means. We use the terms criminal or unlawful, because it is manifest that many acts are unlawful which are not punishable by indictment or other public prosecution; and yet there is no doubt, we think, that a combination by numbers to do them would be an unlawful conspiracy and punishable by indictment. Of this character was a conspiracy to cheat by false pretenses, without false tokens, when a cheat by false pretenses only by a single person was not a punishable offense. (Commonwealth *v.* Boynton, before referred to.) So a combination to destroy

the reputation of an individual by verbal calumny, which is not indictable. So a conspiracy to induce and persuade a young female, by false representations, to leave the protection of her parent's house with a view to facilitate her prostitution. (Rex *v.* Lord Grey, 3 Hargrave's State Trials, 519.)

But yet it is clear that it is not every combination to do unlawful acts to the prejudice of another by a concerted action which is punishable as conspiracy. Such was the case of The King *v.* Turner (13 East, 228), which was a combination to commit a trespass on the land of another, though alleged to be with force, and by striking terror by carrying offensive weapons in the night. The conclusion to which Mr. Chitty comes in his elaborate work on criminal law (Vol. III, p. 1140), after an enumeration of the leading authorities, is that "we can rest, therefore, only on the individual cases decided, which depend in general on particular circumstances, and which are not to be extended."

The American cases are not much more satisfactory. The leading one is that of Lambert *v.* People of New York (9 Cow., 578). On the principal point the court of errors were equally divided, and the case was decided in favor of the plaintiff in error, who had been convicted before the supreme court by the casting vote of the president. The principal question was whether an indictment charging that several persons intending unlawfully, by indirect means, to cheat and defraud an incorporated company and divers others unknown of their effects did fraudulently and unlawfully conspire together, injuriously and unjustly, by wrongful and indirect means, to cheat and defraud the company and others of divers effects, and that in execution thereof they did, by certain undue, indirect, and unlawful means, cheat and defraud the company, etc., was a good and valid indictment. As two distinguished senators and members of the court of errors took different sides of this question the subject was fully and elaborately discussed, the authorities were all reviewed, and the case may be referred to as a full and able exposition of the learning on the subject.

Let us then first consider how the subject of criminal conspiracy is treated by elementary writers. The position cited by Chitty from Hawkins, by way of summing up the result of the cases, is this: "In a word, all confederacies wrongfully to prejudice another are misdemeanors at common law, whether the intention is to injure his property, his person, or his character." And Chitty adds that "the object of conspiracy is not confined to an immediate wrong to individuals; it may be to injure public trade, to affect public health, to violate public police, to insult public justice, or to do any act in itself illegal." (3 Chit. Crim. Law., 1139.)

Several rules upon the subject seem to be well established, to wit, that the unlawful agreement constitutes the gist of the offense, and therefore that it is not necessary to charge the execution of the unlawful agreement. (Commonwealth *v.* Judd, 2 Mass., 337.) And when such execution is charged, it is to be regarded as proof of the intent, or as an aggravation of the criminality of the unlawful combination.

Another rule is a necessary consequence of the former, which is that the crime is consummate and complete by the fact of unlawful combination, and therefore that if the execution of the unlawful purpose is averred, it is by way of aggravation, and proof of it is not necessary to conviction; and therefore the jury may find the conspiracy, and negative the execution, and it will be a good conviction.

And it follows as another necessary legal consequence from the same principle that the indictment must—by averring the unlawful purpose of the conspiracy, or the unlawful means by which it is contemplated and agreed to accomplish a lawful purpose, or a purpose not of itself criminally punishable—set out an offense complete in itself, without the aid of any averment of illegal acts done in pursuance of such an agreement, and that an illegal combination imperfectly and insufficiently set out in the indictment will not be aided by averments of acts done in pursuance of it.

From this view of the law respecting conspiracy we think it an offense which especially demands the application of that wise and humane rule of the common law, that an indictment shall state, with as much certainty as the nature of the case will admit, the facts which constitute the crime intended to be charged. This is required to enable the defendant to meet the charge and prepare for his defense, and in case of acquittal or conviction to show by the record the identity of the charge, so that he may not be indicted a second time for the same offense. It is also necessary in order that a person charged by the grand jury for one offense may not substantially be convicted on his trial of another. This fundamental rule is confirmed by the Declaration of Rights, which declares that no subject shall be held to answer for any crime or offense until the same is fully and plainly, substantially and formally described to him.

From these views of the rules of criminal pleading it appears to us to follow as a necessary legal conclusion that when the criminality of a conspiracy consists in an unlawful agreement of two or more persons to compass or promote some criminal or illegal purpose, that purpose must be fully and clearly stated in the indictment; and if the criminality of the offense which is intended to be charged consists in the agreement to compass or promote some purpose not of itself criminal or unlawful by the use of fraud, force, falsehood, or other criminal or unlawful means, such intended use of fraud, force, falsehood, or other criminal or unlawful means must be set out in the indictment. Such, we think, is, on the whole, the result of the English authorities, although they are not quite uniform. (1 East P. C., 461. 1 Stark. Crim. Pl. (2d ed.), 156. Opinion of Spencer, Senator, 9 Cow., 586 et seq.)

In the case of a conspiracy to induce a person to marry a pauper in order to change the burden of her support from one parish to another, it was held by Buller, J., that as the marriage itself was not unlawful some violence, fraud, or falsehood, or some artful or sinister contrivance must be averred, as the means intended to be employed to effect the marriage in order to make the agreement indictable as a conspiracy. (Rex *v.* Fowler, 2 Russell on Crimes (1st ed.), 1812. S. C. 1 East P. C., 461.)

Perhaps the cases of The King *v.* Eccles (3 Doug., 337), and The King *v.* Gill (2 Barn. & Ald., 204), cited and relied on as having a contrary tendency, may be reconciled with the current of cases and the principle on which they are founded by the fact that the court did consider that the indictment set forth a criminal, or at least an unlawful, purpose, and so rendered it unnecessary to set forth the means, because a confederacy to accomplish such purpose by any means must be considered an indictable conspiracy, and so the averment of any intended means was not necessary.

With these general views of the law, it became necessary to consider the circumstances of the present case, as they appear from the indictment itself, and from the bill of exceptions filed and allowed.

One of the exceptions, though not the first in the order of time, yet by far the most important, was this:

The counsel for the defendants contended, and requested the court to instruct the jury, that the indictment did not set forth any agreement to do a criminal act, or to do any lawful act by any specified criminal means, and that the agreements therein set forth did not constitute a conspiracy indictable by any law of this Commonwealth. But the judge refused so to do and instructed the jury that the indictment did, in his opinion, describe a confederacy among the defendants to do an unlawful act, and to effect the same by unlawful means; that the society, organized and associated for the purposes described in the indictment, was an unlawful conspiracy against the laws of this Commonwealth; and that if the jury believed from the evidence in the case that the defendants, or any of them, had engaged in such a confederacy they were bound to find such of them guilty.

We are here carefully to distinguish between the confederacy set forth in the indictment and the confederacy or association contained in the constitution of the Boston Journeymen Bootmakers' Society as stated in the little printed book which was admitted as evidence on the trial; because, though it was thus admitted as evidence, it would not warrant a conviction for any thing not stated in the indictment. It was proof, as far as it went to support the averments in the indictment. If it contained any criminal matter not set forth in the indictment it is of no avail. The question then presents itself in the same form as on a motion in arrest of judgment.

The first count set forth that the defendants, with divers others unknown, on the day and at the place named, being workmen and journeymen in the art and occupation of bootmakers, unlawfully, perniciously, and deceitfully designing and intending to continue, keep up, form, and unite themselves into an unlawful club, society, and combination, and make unlawful by-laws, rules, and orders among themselves, and thereby govern themselves and other workmen in the said art, and unlawfully and unjustly to extort great sums of money by means thereof, did unlawfully assemble and meet together, and being so assembled did unjustly and corruptly conspire, combine, confederate, and agree together that none of them should thereafter, and that none of them would, work for any master or person whatsoever in the said art, mystery, and occupation who should employ any workman or journeyman, or other person, in the said art who was not a member of said club, society, or combination, after notice given him to discharge such workman from the employ of such master; to the great damage and oppression, etc.

Now it is to be considered that the preamble and introductory matter in the indictment—such as unlawfully and deceitfully designing and intending unjustly to extort great sums, etc.—is mere recital and not traversable, and therefore can not aid an imperfect averment of the facts constituting the description of the offence. The same may be said of the concluding matter, which follows the averment, as to the great damage and oppression, not only of their said masters employing them in said art and occupation, but also divers other workmen in the said art, mystery, and occupation to the evil example, etc. If the

facts averred constitute the crime, these are properly stated as the legal inferences to be drawn from them. If they do not constitute the charge of such an offense, they can not be aided by these alleged consequences.

Stripped then of these introductory recitals and alleged injurious consequences, and of the qualifying epithets attached to the facts, the averment is this: That the defendants and others formed themselves into a society and agreed not to work for any person who should employ any journeyman or other person not a member of such society after notice given him to discharge such workman.

The manifest intent of the association is to induce all those engaged in the same occupation to become members of it. Such a purpose is not unlawful. It would give them a power which might be exerted for useful and honorable purposes, or for dangerous and pernicious ones. If the latter were the real and actual object, and susceptible of proof, it should have been specially charged. Such an association might be used to afford each other assistance in times of poverty, sickness, and distress; or to raise their intellectual, moral, and social condition; or to make improvement in their art; or for other proper purposes. Or the association might be designed for purposes of oppression and injustice. But in order to charge all those who become members of an association with the guilt of a criminal conspiracy, it must be averred and proved that the actual, if not the avowed, object of the association was criminal. An association may be formed the declared objects of which are innocent and laudable, and yet they may have secret articles, or an agreement communicated only to the members, by which they are banded together for purposes injurious to the peace of society or the rights of its members. Such would undoubtedly be a criminal conspiracy, on proof of the fact, however meritorious and praiseworthy the declared objects might be. The law is not to be hoodwinked by colorable pretenses. It looks at truth and reality, through whatever disguise it may assume. But to make such an association, ostensibly innocent, the subject of prosecution as a criminal conspiracy, the secret agreement, which makes it so, is to be averred and proved as the gist of the offense. But when an association is formed for purposes actually innocent, and afterwards its powers are abused by those who have the control and management of it to purposes of oppression and injustice, it will be criminal in those who thus misuse it, or give consent thereto, but not in the other members of the association. In this case no such secret agreement, varying the objects of the association from those avowed, is set forth in this count of the indictment.

Nor can we perceive that the objects of this association, whatever they may have been, were to be attained by criminal means. The means which they proposed to employ, as averred in this count, and which, as we are now to presume, were established by the proof, were that they would not work for a person who, after due notice, should employ a journeyman not a member of their society. Supposing the object of the association to be laudable and lawful, or at least not unlawful, are these means criminal? The case supposes that these persons are not bound by contract, but free to work for whom they please, or not to work, if they so prefer. In this state of things we can not perceive that it is criminal for men to agree together to exercise their own acknowledged rights in such a manner as best to sub-

serve their own interests. One way to test this is to consider the effect of such an agreement, where the object of the association is acknowledged on all hands to be a laudable one. Suppose a class of workmen, impressed with the manifold evils of intemperance, should agree with each other not to work in a shop in which ardent spirit was furnished, or not to work in a shop with anyone who used it, or not to work for an employer who should, after notice, employ a journeyman who habitually used it. The consequences might be the same. A workman who should still persist in the use of ardent spirit would find it more difficult to get employment; a master employing such an one might, at times, experience inconvenience in his work, in losing the services of a skillful but intemperate workman. Still it seems to us, that as the object would be lawful and the means not unlawful, such an agreement could not be pronounced a criminal conspiracy.

From this count in the indictment we do not understand that the agreement was that the defendants would refuse to work for an employer to whom they were bound by contract for a certain time, in violation of that contract; nor that they would insist that an employer should discharge a workman engaged by contract for a certain time, in violation of such contract. It is perfectly consistent with everything stated in this count that the effect of the agreement was, that when they were free to act, they would not engage with an employer or continue in his employment, if such employer, when free to act, should engage with a workman or continue a workman in his employment not a member of the association. If a large number of men, engaged for a certain time, should combine together to violate their contract and quit their employment together, it would present a very different question. Suppose a farmer, employing a large number of men engaged for the year at fair monthly wages, and suppose that just at the moment that his crops were ready to harvest they should all combine to quit his service unless he would advance their wages, at a time when other laborers could not be obtained. It would surely be a conspiracy to do an unlawful act, though of such a character that if done by an individual it would lay the foundation of a civil action only, and not of a criminal prosecution. It would be a case very different from that stated in this count.

The second count, omitting the recital of unlawful intent and evil disposition, and omitting the direct averment of an unlawful club or society, alleges that the defendants, with others unknown, did assemble, conspire, confederate, and agree together not to work for any master or person who should employ any workman not being a member of a certain club, society, or combination called the Boston Journeymen Bootmakers' Society, or who should break any of their by-laws, unless such workmen should pay to said club such sum as should be agreed upon as a penalty for the breach of such unlawful rules, etc., and that by means of said conspiracy they did compel one Isaac B. Wait, a master cordwainer, to turn out of his employ one Jeremiah Horne, a journeyman bootmaker, etc., in evil example, etc. So far as the averment of a conspiracy is concerned, all the remarks made in reference to the first count are equally applicable to this. It is simply an averment of an agreement among themselves not to work for a person who should employ any person not a member of a certain association. It sets forth no illegal or criminal purpose to be accomplished, nor any illegal or criminal means to be adopted for the accomplish-

ment of any purpose. It was an agreement as to the manner in which they would exercise an acknowledged right to contract with others for their labor. It does not aver a conspiracy or even an intention to raise their wages, and it appears by the bill of exceptions that the case was not put upon the footing of a conspiracy to raise their wages. Such an agreement, as set forth in this count, would be perfectly justifiable under the recent English statute by which this subject is regulated (St. 6 Geo. IV, c. 129). (See Roscoe Crim. Ev. [2d Amer. ed.], 368, 369.)

As to the latter part of this count, which avers that by means of said conspiracy the defendants did compel one Wait to turn out of his employ one Jeremiah Horne, we remark, in the first place, that as the acts done in pursuance of a conspiracy, as we have before seen, are stated by way of aggravation, and not as a substantive charge, if no criminal or unlawful conspiracy is stated, it can not be aided and made good by mere matter of aggravation. If the principal charge falls, the aggravation falls with it. (State *v.* Rickey, 4 Halst., 293.)

But further, if this is to be considered as a substantive charge it would depend altogether upon the force of the word "compel," which may be used in the sense of coercion, or duress, by force or fraud. It would therefore depend upon the context and the connection with other words to determine the sense in which it was used in the indictment. If, for instance, the indictment had averred a conspiracy, by the defendants, to compel Wait to turn Horne out of his employment, and to accomplish that object by the use of force or fraud, it would have been a very different case, especially if it might be fairly construed, as perhaps in that case it might have been, that Wait was under obligation, by contract, for an unexpired term of time to employ and pay Horne. As before remarked, it would have been a conspiracy to do an unlawful, though not a criminal, act to induce Wait to violate his engagement to the actual injury of Horne. To mark the difference between the case of a journeyman or a servant and master, mutually bound by contract, and the same parties when free to engage anew, I should have before cited the case of the Boston Glass Company *v.* Binney (4 Pick., 425). In that case it was held actionable to entice another person's hired servant to quit his employment during the time for which he was engaged, but not actionable to treat with such hired servant, while actually hired and employed by another, to leave his service and engage in the employment of the person making the proposal, when the term for which he is engaged shall expire. It acknowledges the established principle that every free man, whether skilled laborer, mechanic, farmer, or domestic servant, may work or not work, or work or refuse to work with any company or individual, at his own option, except so far as he is bound by contract. But whatever might be the force of the word "compel," unexplained by its connection, it is disarmed and rendered harmless by the precise statement of the means by which such compulsion was to be effected. It was the agreement not to work for him by which they compelled Wait to decline employing Horne longer. On both of these grounds we are of opinion that the statement made in this second count, that the unlawful agreement was carried into execution, makes no essential difference between this and the first count.

The third count, reciting a wicked and unlawful intent to impoverish one Jeremiah Horne and hinder him from following his trade as a bootmaker, charges the defendants, with others unknown, with an unlawful

conspiracy, by wrongful and indirect means, to impoverish said Horne and to deprive and hinder him from his said art and trade and getting his support thereby, and that, in pursuance of said unlawful combination, they did unlawfully and indirectly hinder and prevent, etc., and greatly impoverish him.

If the fact of depriving Jeremiah Horne of the profits of his business, by whatever means it might be done, would be unlawful and criminal, a combination to compass that object would be an unlawful conspiracy, and it would be unnecessary to state the means. Such seems to have been the view of the court in The King *v.* Eccles (3 Doug., 337), though the case is so briefly reported that the reasons on which it rests are not very obvious. The case seems to have gone on the ground that the means were matter of evidence and not of averment, and that after verdict it was to be presumed that the means contemplated and used were such as to render the combination unlawful and constitute a conspiracy.

Suppose a baker in a small village had the exclusive custom of his neighborhood and was making large profits by the sale of his bread. Supposing a number of those neighbors, believing the price of his bread too high, should propose to him to reduce his prices, or if he did not that they would introduce another baker, and on his refusal such other baker should, under their encouragement, set up a rival establishment and sell his bread at lower prices. The effect would be to diminish the profit of the former baker and to the same extent to impoverish him. And it might be said and proved that the purpose of the associates was to diminish his profits, and thus impoverish him, though the ultimate and laudable object of the combination was to reduce the cost of bread to themselves and their neighbors. The same thing may be said of all competition in every branch of trade and industry, and yet it is through that competition that the best interests of trade and industry are promoted. It is scarcely necessary to allude to the familiar instances of opposition lines of conveyance, rival hotels, and the thousand other instances where each strives to gain custom to himself by ingenious improvements, by increased industry, and by all the means by which he may lessen the price of commodities, and thereby diminish the profits of others.

We think, therefore, that associations may be entered into, the object of which is to adopt measures that may have a tendency to impoverish another, that is, to diminish his gains and profits, and yet, so far from being criminal or unlawful, the object may be highly meritorious and public spirited. The legality of such an association will therefore depend upon the means to be used for its accomplishment. If it is to be carried into effect by fair or honorable and lawful means, it is, to say the least, innocent; if by falsehood or force, it may be stamped with the character of conspiracy. It follows, as a necessary consequence, that if criminal and indictable, it is so by reason of the criminal means intended to be employed for its accomplishment, and as a further legal consequence that, as the criminality will depend on the means, those means must be stated in the indictment. If the same rule were to prevail in criminal which holds in civil proceedings—that a case defectively stated may be aided by a verdict—then a court might presume, after verdict, that the indictment was supported by proof of criminal or unlawful means to effect the object. But it is an established rule in criminal cases that the indictment must state a complete indictable offense and can not be aided by the proof offered at the trial.

The fourth count avers a conspiracy to impoverish Jeremiah Horne, without stating any means; and the fifth alleges a conspiracy to impoverish employers by preventing and hindering them from employing persons not members of the Bootmakers' Society; and these require no remarks which have not been already made in reference to the other counts.

One case was cited which was supposed to be much in point, and which is certainly deserving of great respect. (The People *v.* Fisher, 14 Wend., 1.) But it is obvious that this decision was founded on the construction of the revised statutes of New York, by which this matter of conspiracy is now regulated. It was a conspiracy by journeymen to raise their wages, and it was decided to be a violation of the statutes making it criminal to commit any act injurious to trade or commerce. It has, therefore, an indirect application only to the present case.

A caution on this subject, suggested by the commissioners for revising the statutes of New York, is entitled to great consideration. They are alluding to the question whether the law of conspiracy should be so extended as to embrace every case where two or more unite in some fraudulent measure to injure an individual by means not in themselves criminal. "The great difficulty," say they, "in enlarging the definition of this offense consists in the inevitable result of depriving the courts of equity of the most effectual means of detecting fraud by compelling a discovery on oath. It is a sound principle of our institutions that no man shall be compelled to accuse himself of any crime, which ought not to be violated in any case. Yet such must be the result or the ordinary jurisdiction of courts of equity must be destroyed by declaring any private fraud, when committed by two, or any concert to commit it, criminal." (9 Cow., 625.) In New Jersey, in a case which was much considered, it was held that an indictment will not lie for a conspiracy to commit a civil injury. (State *v.* Rickey, 4 Halst., 293.) And such seemed to be the opinion of Lord Ellenborough in The King *v.* Turner (13 East, 231), in which he considered that the case of The King *v.* Eccles (3 Doug., 337), though in form an indictment for a conspiracy to prevent an individual from carrying on his trade, yet in substance was an indictment for a conspiracy in restraint of trade affecting the public.

It appears by the bill of exceptions that it was contended on the part of the defendants that this indictment did not set forth any agreement to do a criminal act or to do any lawful act by criminal means, and that the agreement therein set forth did not constitute a conspiracy indictable by the law of this State, and that the court was requested so to instruct the jury. This the court declined doing, but instructed the jury that the indictment did describe a confederacy among the defendants to do an unlawful act, and to effect the same by unlawful means; that the society, organized and associated for the purposes described in the indictment, was an unlawful conspiracy against the laws of this State, and that if the jury believed from the evidence that the defendants, or any of them, had engaged in such confederacy they were bound to find such of them guilty.

In this opinion of the learned judge this court, for the reasons stated, can not concur. Whatever illegal purpose can be found in the constitution of the Bootmakers' Society, it not being clearly set forth in the indictment, can not be relied upon to support this conviction. So if

any facts were disclosed at the trial which, if properly averred, would have given a different character to the indictment, they do not appear in the bill of exceptions, nor could they, after verdict, aid the indictment. But looking solely at the indictment, disregarding the qualifying epithets, recitals, and immaterial allegations, and confining ourselves to facts so averred as to be capable of being traversed and put in issue, we can not perceive that it charges a criminal conspiracy punishable by law. The exceptions must therefore be sustained and the judgment arrested.

Several other exceptions were taken and have been argued, but this decision on the main question has rendered it unnecessary to consider them.

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