THE LAW

—OF—

STRIKES, LOCKOUTS

—AND—

LABOR ORGANIZATIONS.

—BY—

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CHAPTER IX.

CIVIL REMEDIES.—IN EQUITY.

§ 33. By Injunction.

An injunction will lie to restrain boycotts[1] and picketing for the purpose of preventing by intimidation, molestation or coercion in any form, employes from entering the service of an employer. This will be done to stop proceedings, whether connected with crime or not, which go to the immediate, or tend to the ultimate, destruction of property.[2] Acts which amount to a nuisance, such as carrying intimidating banners, with inscriptions calculated to injure one's business or deter workmen from entering or continuing in the service of an employer, in front of the employer's place of business,[3] or any acts of intimidation calculated to injure one's business, provided they exist and continue at the time of the application or

[1] Brace Bros. *v.* Evans, 3 R. and Corp. Law J. 561; Casey *v.* Cincinnati Typographical Union, No. 3, 45 Fed. Rep., 135; 12 L. R. A., 193; State *v.* Glidden, 55 Conn., 46; Moores & Co. *v.* The Bricklayers' Union No. 1, 23 Weekly Law Bul., 48; Springhead Spinning Co. *v.* Riley, 6 Law Rep. (Eng. Eq.), 551; Mogul Steamship Co. *v.* McGregor, 15 L. R. Q. B. D., 476; 23 *Id.*, 598. (For a statement of these cases see section 9 ante.)

[2] Perkins *v.* Rogg, 18 Weekly Law Bul., 32; Rogers *v.* Evarts, 17 N. Y. S., 264.

[3] Sherry *v.* Perkins, 147 Mass., 212.

hearing, will be enjoined.[1] Equity will also interfere to restrain the use of the funds of an industrial society in aid of a strike.[2] An interim injunction was granted to restrain the publication of placards and circulars falsely representing that a strike was on at a certain manufacturing establishment, which injuriously affected its business.[3] An injunction was entertained to restrain a combination of persons from interfering with and preventing the shipping of a crew on a vessel, as being in restraint of trade and commerce under section 1 of the Act of Congress of July 2, 1890, 26 Stat. L. 209, known as the interstate commerce act. Held, that the injunction would lie to prevent a multiplicity of suits at law, and for the reason that damages at law for interrupting the business and intercepting the profits of pending enterprises and voyages must, in their nature, be conjectural and not susceptible of proof and there was not an adequate remedy at law.[4] The circuit courts of the United States have jurisdiction to restrain violations of the interstate commerce law to the irreparable injury of complainant, without regard to the citizenship of the parties. Therefore a combination to induce the officers of a common carrier corporation subject to the provisions of the interstate commerce law, and its locomotive engineers, to refuse to receive, handle, and haul interstate freight from another like common carrier, in order to injure the latter, is a conspiracy described in section ten of the interstate commerce act, and all

[1] Sweeny *v.* Torrence, 11 County Ct. Rep., (Pa.) 497; 1 Pa. Dist. Rep., 622.

[2] Warburton *v.* Hiddlesfield Industrial Society, 1 Q. B. Div., (1892) 213.

[3] Collard *v.* Marshall, Law Rep., [Eng.] [1892] 1 Ch. 571.

[4] Hagan, et al. *v.* Blindellet, et al., 54 Fed. Rep. 40; 56 *Id.* 696.

persons engaged in it are guilty, and the common carrier against which the conspiracy is directed has a cause of action against those participating in it. If the injury will be irreparable a preliminary and temporary mandatory injunction will issue against the company and its employes threatening the injury, restraining them from refusing to afford the proper interchange of interstate freight and traffic facilities. Also a preliminary injunction may issue against the chief member of such a conspiracy to restrain him from giving the order and signal which will result and is intended to result in unlawful and irreparable injuries. Where such chief member has already issued such an unlawful, willful and criminal order, the injurious effect of which will be continuing, the court may by mandatory injunction compel him to rescind the same, especially when the necessary effect of the order or signal is to induce and procure flagrant violations of an injunction previously issued.[1] Where a labor organization has declared a boycott against a railroad, and connecting roads are therefore refusing or seem about to refuse to afford equal facilities to the boycotted road, in violation of section three of the interstate commerce act, they may be compelled to do so by mandatory injunction, since the case is urgent, the rights of parties free from reasonable doubt and the duty sought to be enforced is imposed by law. Such injunction is binding upon all officers and employes of companies enjoined having notice thereof, whether they are made parties or not.[2]

Where an injunction is asked against the interference with interstate commerce by combinations of striking workmen, the fact that the strike has ended

1 Toledo A. A. & N. M. Ry. Co. *v.* Pa. Co., 54 Fed. Rep., 730.
2 Toledo A. A. & N. M. Ry. Co. *v.* Pa. Co., 54 Fed. Rep., 746.

and labor been resumed since the filing of the bill is no ground for refusing the injunction. The court said, "I know of no rule which is better settled than the question as to the maintenance of a bill, and the granting of relief to a complainant is to be determined by the status existing at the time of filing the bill. Rights do not ebb and flow. If they are invaded, and recourse to courts of justice is rendered necessary, it is no defense to the invasion of a right, either admitted or proved, that since the institution of the suit the invasion has ceased." The combination declared illegal by the interstate commerce act applies to combinations of laborers as well as capitalists. And the fact that the combination is in its origin and general purposes innocent and lawful is no ground of defense when the combination is turned to the unlawful purpose of restraining interstate and foreign commerce. A combination of men to secure or compel the employment of none but union men becomes a combination in restraint of interstate commerce within the meaning of the statute, when in order to gain its ends it seeks to enforce, and does enforce by violence and intimidation, a discontinuance of labor in all departments of business, including the transportation of goods from state to state, and to and from foreign nations.[1]

A court of equity will not interfere by injunction to restrain a committee of an illegal trade-union from expelling one of its members.[2]

An injunction will lie to restrain a trespass to the property of an employer by employes on a strike,[3]

1 United States *v.* Workingmen's Amalgamated Council of New Orleans, (C. C.) 54 Fed. Rep. 994.
2 Rigby *v.* Connel, 42 Law Times Rep. (N. S.) 139.
3 New York, Lake Shore & West. R. Co. *v.* Wenger, 17 Weekly Law Bul. 306.

and to restrain a combination of persons from enticing away servants, if violence, force, intimidation or coercion is used against the workmen.[1] Also to restrain members of a society known as the "London West End Farriers' Trade Society" from using its funds in carrying out an amalgamation of the society with the "Permanent Amalgamated Farriers' Protection Society." While it was admitted that the first named society, but for the statute of 34 and 35 Vict. c. 31, would have been an unlawful association, as some of its purposes were in restraint of trade, yet by virtue of said statute the plaintiffs having contributed to the fund were entitled to prevent a misapplication thereof. The rule in Rigby *v.* Connol held not to apply in this case.[2]

§ 34. By Mandamus.

Mandamus will lie to compel members of an unincorporated and voluntary lawful association of workmen receiving and depositing in their own names as trustees, in a bank, money of such association, to draw an order on said bank in favor of a committee thereof, and appointed for the purpose to enable the association to withdraw its funds.[3] But where there are two separate bodies of men applying to be registered under the same name as a trade union, under and by virtue of the trade union act of 1871, (34 and 35 Vict. c. 31), the registrar cannot be compelled by mandate to register either.[4] Mandamus was refused to compel a board of supervisors of a county to pay the expenses of the sheriff in protecting property

[1] Harvester *v.* Meinhardt, 9 Abb. New Cases (N. Y.) 393.
[2] Wolfe *v.* Matthews, L. R. 21 Ch. Div. (1882) 194.
[3] Snow *v.* Wheeler, 113 Mass. 179.
[4] Queen *v.* Registrar of Friendly Societies, Law Rep. 7 Q. B. 741.

thought to have been in danger during a strike, which had been paid to the sheriff by the owner of the property, and to whom the sheriff assigned the bill, for the reason that there was no attack or threatened attack upon the property, the strikers not having disturbed it.[1]

§ 35. Receivers—Contempt of Court.

A receiver appointed by a court of equity represents the court in the management of property which in law is considered in the possession of the court. The receiver also represents the court in employing, discharging and managing the employes necessary to care for and use the property placed in his hands for the purposes for which a receiver is appointed. The court, therefore, will hear and determine disagreements and controversies between a receiver and employes under him, and make such orders in respect thereto as right and justice may require.[2] The court may give advice to the receiver or employes, or both, and direct the receiver whom to discharge or employ, and arrange the terms of the contract.[3]

It is punishable as a contempt of court for employes of a railroad company, members of labor organizations, or any one else, to interfere with or molest by violence, or threatened violence, threats expressed or implied, or intimidation in any form, the receiver in the management of the road, with its rolling-stock or other property, or by said means, and by overawing by preconcerted demonstrations of force by assembling

[1] People ex rel. Nichols *v.* Bd. Supervisors Queens Co. 15 N. Y. Sup. 461.
[2] Frank *v.* Denver & R. G. Ry. Co., 23 Fed. Rep. 757; In re Doolittle 43 Fed. Rep. 544; Waterhonse *v.* Corner (C. C.) 55 Fed. Rep. 149.
[3] Waterhouse *v.* Corner (C. C.) 55 Fed. Rep. 149; Frank et al *v.* Denver & R. G. Ry. Co. (C. C.) 23 Fed. Rep. 757.

in large numbers, interfering with and molesting the employes in the discharge of their duties.[1] While as a general proposition, railroad like all other employes have the right to quit when they please if they have not entered into a contract for a specified time, yet in their case the proposition is subject to qualifications and exceptions, especially when considered in the light of the interstate commerce law. Under certain circumstances some classes of such employes may quit the service of a company to avoid obeying an order of court which they know has been made without being guilty of contempt. But the quitting must be actual and in good faith, and not pretended, as a trick to escape obeying the order. An injunction is binding on the employes of a road as well as upon the officers, whether they are made parties to the proceedings or not. Therefore, where, during a strike and boycott by a trade-union and railroads and their employes against a common carrier railroad having the right to transport over connecting roads interstate freight and passengers, a locomotive engineer (a member of the "Brotherhood of Locomotive Engineers," which organization was conducting the boycott, knowing or having the means of knowing that an injunction had been granted by the court restraining interference with or obstruction of interstate freight in the cars of the boycotted common carrier) refused to haul over the connecting road a car of the boycotted road loaded with interstate freight, until he received orders to do so from the "Brotherhood of Locomotive Engineers," was guilty of contempt of court. The engineer claimed that he was not liable for contempt,

[1] In re Doolittle, 23 Fed. Rep. 544; United States *v.* Berry et al, 24 Fed. Rep. 780; In re Wabash R. Co. 24 Fed. Rep. 217; United States *v.* Kane, 23 Fed. Rep. 748.

for the reason that he had quit the service of his company at the time of the alleged contempt. In reference to that the court said, "I cannot conceive of any principle of law under which such conduct can be justified. An engineer cannot be permitted to pretend to quit the service of his company in the manner stated, with his train on the main track ten miles from his destination, and for the evident purpose of evading an order of court which was equally in force against employer and employe. If such an abandonment of service could be excused in law it would leave this great corporation, operating 1,500 miles of railway, and moving several hundred trains of cars per day, at the mercy of its employes, and subject the public with its multitude of interests and rights to irremediable injuries and losses. Upon the facts of the case made against engineer James Lennon I find that he did not quit the service of the company in fact, and did not intend to do so, and that his pretense to do so was a trick to evade the order of the court. Being in the service of the company when he refused to switch the Ann Arbor car into the train at Alexis, and having then full knowledge of the terms and meaning of the order of court, that order was then in full force and commanded him to do the very thing he refused to do. He, therefore, deliberately and knowingly violated the mandate of the court and was guilty of contempt."[1] Contempt being a criminal offense, a United

[1] Toledo A. A. & N. M. Ry. Co. *v.* Pa. Co., 54 Fed. Rep. 746, 730.

Lennon was committed to the custody of the United States marshall for failure to pay the fine assessed against him for contempt. He sued out a writ of *habeas corpus* in the United States Circuit Court for the Northern District of Ohio, the decision of which was adverse to him. From that decision he appealed to the Supreme Court of the United States. The Circuit Court certified to the Supreme Court for its decision the following points:—

1. Is the suit in which the order was made one arising under the

States court has not jurisdiction over it out of the district where it was committed.[1]

constitution or laws of the United States?

2. Did the court have jurisdiction of the person of the petitioner by reason of his having had sufficient notice of the proceedings and orders set out in the petition?

3. Was it beyond the jurisdiction of a court of equity to issue the orders made in said case?

November 27, 1893, the Supreme Court, by Chief Justice Fuller, declined to interfere on the ground that the court did not have jurisdiction, and the appeal was dismissed.

It is a well-known rule that an appeal will not lie from the order of a court assessing punishment for contempt. The appeal in this case was not from such order, but from a refusal of the court making it to entertain a petition of *habeas corpus* based on the ground that the court did not have constitutional authority and jurisdiction to render such decision. When the cobwebs are brushed away it looks like a ruse to escape the rule of law inhibiting an appeal from a judgment for contempt. The petitioner denying the jurisdiction of the court to order him into the custody of the marshall for refusing to pay a fine of fifty dollars, admits, by filing his petition in that same court, its jurisdiction to issue a writ of *habeas corpus*, and asks the court to pass judgment on the validity of its own acts; having assumed the jurisdiction forced upon it, and having rendered a decision as it certainly must have been expected would have been done, appealed from that decision. On this phase of the case the Supreme Court of the United States says that the jurisdiction invoked by the petitioner to discharge him from custody carried with it the jurisdiction to remand as well as discharge, or the power to hear and determine whether he was lawfully held in custody.

On the question of appeal the court bases its judgment on the precedent of Cross *v.* Burke, 146 U. S., 82, a case of homicide arising in the District of Columbia, in which a careful examination was made of the various statutes relating to appeals from judgments of Circuit Courts on *habeas corpus*. *Held*, that the case did not come within any of the classes of cases in section 5 of the act of Congress of March 3, 1891, in which appeals may be taken, and particularly in that class "in which the jurisdiction of the court is in issue; in such case the question of jurisdiction alone shall be certified from the court below to the Supreme Court for decision." That neither could the case be brought within the class of cases in which the construction of the Constitution is involved, or that the petitioner was deprived of his liberty without due process of law.

Ex parte Lennon, October Term, 1893.

[1] Frank *v.* Denver & R. G. Ry. Co., 23 Fed. Rep. 757.