thing worse than death. It is difficult to do justice to the depth and solemnity of such ethical conviction.

THE DEBS CASE AND TRIAL BY JURY.

BY CLARENCE S. DARROW.

In THE CAUSE for August I find an editorial entitled, "Why Was Debs Imprisoned?" This case has attracted so much attention, and the decision made by the Supreme Court of the United States has such an important bearing upon labor organizations, that it is certainly worthy of careful consideration.

The whole facts on which the judgment of the lower court was rendered may be summed up by stating that Mr. Debs and his associates undertook to manage a general railroad strike, whereby they simply advised and directed the employes of various railroads of the United States to peaceably abandon their calling and refuse to work; that, growing out of this general strike, various riots ensued, accompanied sometimes by personal violence or by the destruction of property. From this the court chose arbitrarily to say that the issuing of the original orders to strike was necessarily and reasonably followed by the acts of violence which were participated in by men wholly unrelated to those on trial.

It is true that the original injunction did not pretend to say that these directors could not advise men to cease their occupation. It is true that the Supreme Court expressly said it was not to be so construed. It is true that the trial court expressly stated that the injunction did not mean to interfere with the peaceable cessation from labor of those employed by the railroad company. It is equally true that for this and this alone these men were imprisoned.

The history of all countries shows that judges and prosecutors have ever been very closely associated; that judges have ever inclined to disregard the rights of the people. It was for this reason that the right of trial by jury was established, and that it has been so sacredly guaranteed both in this country and in Europe. It was believed that the liberties of the people were safer in the hands of their fellow-citizens than in the hands of men who, before being placed in a position of power, were intimately associated with the strong and rich, and who carried to the bench all the prejudices, leanings and convictions of their class.

Theoretically in this country, and in most of Europe, no one is to be imprisoned unless a jury of his peers shall first determine that he is guilty. In the Debs case the eight men who were imprisoned were also indicted. If the judgment rendered by Judge Woods is true, these men were guilty of a crime and could be convicted by jury. These eight men were placed on trial, and near the close of the proceedings a juror was taken ill, and the case continued; but it is a matter of common knowledge, undisputed, that practically every juror had determined to acquit the defendants; had found that they were guilty of no offense.

By this decision the courts have held that a judge may issue a general order or a special order against any person or any body of people, forbidding them to do certain acts that are illegal, and afterwards may try these people to determine whether or not such acts were committed, and if they find that those acts were committed, may punish them as for contempt of court. This plainly and clearly annuls the right of trial by jury, which has ever been considered one of the chief safeguards of personal liberty.

Judge Woods, sitting as a Chancellor, determined that these men had committed an offense, and for this offense sent them to jail. Under the provisions of the constitution, as universally construed, this fact should have been determined, not by a judge, but by a jury. Unless the constitution is strong enough to protect each individual in a trial by jury in a case of this nature, then this ancient institution may be easily set aside by the will of a judge whose motives may be corrupt or bad.

In one of his celebrated arguments in favor of trial by jury, Judge Black, of Pennsylvania, said that one of the English kings found it necessary to hang sixty judges in a year for violating the right of trial by jury. The disposition and tendency of judges are the same to-day as they have ever been, anxious for power, eager to maintain their own authority, quick to construe the law to give them jurisdiction in cases where the people intended the power should be somewhere else.

If it was right to issue the original injunction, it would be equally right to enjoin any man from the commission of any offense or from the doing of any wrongful act, and then to punish him because a judge sees fit to believe or assume, for some purpose best known to himself and his friends, that his dictates have been disobeyed.

The theory of the law heretofore has been that all persons should be left free, and that for the commission of any offense they should be legally prosecuted, legally tried and convicted by jury. They are not to be tried beforehand or forbidden beforehand ; they are presumed to do what is right and to obey the law. It is time after a breach of the law to punish men in the regular way for the commission of crime.

It is only recently that a writ of injunction has ever been considered in a case like this. It has generally been used by courts to prevent the conveyance of property, or to prevent some infringement of property rights until a case may be heard, growing purely and solely out of questions relating to property rights, and for the purpose of keeping the thing in *statu quo* until those rights may be ascertained. If the original injunction in this cause was rightfully issued, then in all criminal cases the same sentence may be pronounced against the judgments of courts which the editor has pronounced in this instance, "That the judgment itself was wrong ;" and when these powers are given to courts to determine upon the liberty and upon the life of individuals, the courts of America will soon become what the star chamber courts of England once were, and freedom will be more menaced by the judiciary than by any other governmental institution.

It is to be remembered that the Supreme Court of the United States never passed upon the question of whether or not Mr. Debs and his associates actually violated the injunction. This has been held to be a fact to be settled alone by the court whose dignity is supposed to have been infringed, and not subject to appeal. All that the Supreme Court could pass upon was as to the jurisdiction of the original court to enter the injunction order. After the [original] court entered this order, it and it alone could determine without appeal whether or not these men should be sent to jail. Thus any district or circuit judge of the United States, residing in any portion of the United States in which a strike occurs, may issue such an order, and his finding in the case be absolutely conclusive upon the liberty of the citizen.

MORE LIGHT ON THE SUPREME COURT DECISION IN THE DEBS CASE.

The writer of the above article is a prominent member of the Chicago bar. He was at one time Corporation Counsel for the City, afterwards counsel for the Northwestern Railway, and recently counsel for Mr. Debs before the Supreme Court at Washington.

Mr. Darrow's article is a strong and impressive statement. Our own inquiry (in the August CAUSE) related to a somewhat different issue. We were puzzled to know on just what grounds Mr. Debs had been imprisoned. We are obliged to say that Mr. Darrow does not make the matter any clearer. The substance of his contention is that Judge Woods did not act on the evidence or heed the terms (and limits) of his own injunction, but took the law into his own hands. This may be true in effect, and it may be that we seek in vain for a reason for an unreasonable thing. All the same the *ostensible* ground of action is what we were in search of; for it is not credible that a judge's action to-day should be in *form* as well as in fact without warrant. And, paradoxical as it may sound, it is the *form* of the law that citizens are chiefly interested in; for this it is that gives the rule for judicial decisions in general, while faithfulness or unfaithfulness to the same is an individual matter. How Judge Woods decided in this particular case is a matter now chiefly of historical interest; but how judges may act in the future, or, in other words, what is the accepted rule of judicial action, is something upon which we may all well try to clear up our minds. Cases like Mr. Debs' may come up time and again. We fear they are likely to.

Now, owing to further reflection, and to some conversation and to private correspondence, we have gained light on at least one point, and admit that we were not quite correct in interpreting the language of the Supreme Court as we did in our August issue. To state the matter as briefly and yet as clearly as we can : The same act,

as we now understand matters, may be both an interference with property rights *and* a common-law crime(or at least accomplished by this means). From the former point of view it is subject to the jurisdiction of an equity court (and an injunction may be put on it); from the latter, to the jurisdiction of an ordinary criminal court. Judge Woods dealt with supposed acts of Mr. Debs and his associates only in the former light, *i. e.*, as constituting obstruction to interstate commerce, although it might well be that the obstruction could only be accomplished by acts that would make the doers of them amenable to the ordinary criminal law. Judge Woods' injunction did not take the place of a common-law trial by jury; nor did his judgment. The Supreme Court's language which gave us so much perplexity means, as we see now, that Judge Woods simply looked at the acts of Debs *et al* as an interference with property rights (which in this case the United States had particularly agreed to protect) and did not consider them in the other aspect at all. The Supreme Court cast no doubt on the reality of the acts of violence, as we at first thought, but it regarded them (or rather upheld Judge Woods in regarding them) *in the light of obstructions to interstate commerce* and not as common-law crimes. "If they were [common-law crimes], that matter is for inquiry in other proceedings"—and this language of the Supreme Court we now see that we misinterpreted in our earlier issue.

Hence, we were not right in saying "The Supreme Court does not apparently judge them guilty of inciting to violence, though it does of causing obstruction." We should have said, "The Supreme Court (in effect) judges them guilty of certain acts, *which were obstruction*, and whether they were also violations of the criminal law, it leaves to be passed on elsewhere." A distinguished Judge elsewhere has written us, "The fact that a given act is a crime may have some bearing on the traditional scope of equity and make a court hesitate to enjoin, but the fact that violation of the injunction can be accomplished only by what is also a crime is not the slightest reason why the violation should not be visited with its proper penalty." The Supreme Court itself says in this Debs decision, "There must be [in order that a court of equity may have jurisdiction] 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 *is not destroyed by the fact that they are accompanied by or are themselves violations of the criminal law.*"

The language of the Supreme Court and the ground of action of the lower court are then really quite plain — and probably would always have been to any but a lay mind; but, as we write for laymen, it may not have been altogether a waste of time to expose the processes by which we have reached the necessary clarification.

And yet there is still one puzzling feature in the matter. If peaceful cessation of work on the part of railroad employes cannot be enjoined, it follows that the only thing that can be enjoined in this connection is crime (*i. e.*, violence). It is true that the injunction could be directed against it not *as* crime, but *as* obstruction to interstate commerce (for there are as fine distinctions in law as in metaphysics); all the same, it is an extraordinary result that the only act a court of equity can touch in this connection is one that may, and indeed must, be dealt with also by an ordinary court. And if an equity judge condemns a man and a trial by jury acquits him, what is to be done with the man? On this point we fear our mind is still in a laical condition.

Nothing that we have said should be construed into disagreement, so far as questions of law go, with our honored contributor. Mr. Darrow does but make a powerful plea for the old-time right of trial by jury. If we are right in our conclusion, a judicial decision that was not sustained by the result of a trial by jury would be a contradiction; and that the jury trial in the Debs case was not pushed to a definite conclusion does not look well for the public authorities in Chicago.

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