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LEGAL RESTRAINT OF LABOR STRIKES.

During the recent Pullman strike, labor leaders assembled at Chicago, and arbitrarily decided whether the industry of the country should be throttled because a stubborn millionaire insisted on his legal rights. It is not supposed that these gentlemen consulted much law, or that any regard for the "fundamental" rights of their fellow citizens to life, liberty and the pursuit of "happiness" played a large part in their deliberations. It is not even supposed that the certain prospect of property destroyed, and the dreadful spectacle of citizens shot down by armed soldiery, in the event of a strike ordered, turned the scale. It is very generally supposed that they decided the question with sole reference to its "expediency" for their various unions.

During the same strike, at least two governors of far distant States telegraphed the leader of the strike for "permission" to run trains in their own territory, and within the jurisdiction of their own laws. The same leader declared in effect, that he had violated no law, either in letter or spirit, in launching strikes whose consequent disorders required suppression by troops in many States, and caused loss of life and great destruction of property; and the declarations of labor leaders very generally justified him.

The events of this strike were, in a large measure, an epitome of the long history of labor disorders. It shows the growth of an arbitrary power within the ostensible government of law, and far more absolute in its control of the working lives of vast numbers. It is a power which largely ignores the law and resents its interference in any strike as tyrannical.[1]

Herbert Spencer, after investigating our political system, declared that it never contemplated the control of thousands of votes by one man, and that its success under such conditions was yet to be proved. It is equally true that our system of law never contemplated that men should act, not as individuals, but in organized masses, powerful enough to practically dictate the terms on which men shall hire and be hired. The groping of judges after firm law in labor cases, and its rapid modification, show this clearly enough.

[1] The repeated denunciation of the U. S. Courts by labor organizations, since the Chicago strikes, bear out this assertion.

The conflict in the cases only mirrors the very obvious conflict between the right of labor to act as an organized unit and the assumed right of the employer and non-organized workmen to follow their occupations without interference. The law has varied much as judges have inclined to the point of view of the employer or the employé. But the trend of the law has been distinctly in favor of organized labor. Up to the present century, a combination of workmen to raise the rate of wages by any means whatever, was a criminal conspiracy at common law.[2]

It required a statute to drive the fact of their legality into the heads of the British Judiciary. But in Regina *v.* Rowlands,[3] it was said, "The intent of the law is at present to allow either of them, employer and employed, to follow the dictates of their own will with respect to their own actions and their own property, and either, I believe, has the right to study to promote his own advantage or to combine with others to promote their mutual advantage."

In Rogers *v.* Evarts,[4] it was said, "irrespective of any statute I think, the law now permits workmen, at least within a limited territory, to combine together, and by peaceable means to seek any legitimate advantage in their trade. The increase of wages is such an advantage. The right to combine involves of necessity the right to persuade co-laborers to join the combination. The right to persuade co-laborers involves the right to persuade new employés to join the combination. This is but a corollary of the right of combination."

In State *v.* Donaldson[5] (1867) it was held a criminal conspiracy for workmen to agree to quit work in a body unless their employer would discharge at their demand objectionable fellow workmen, and Chief Justice Beasley said in his decision: "If the manufacturer can be compelled in this way to discharge two or more hands he can by similar means be coerced to retain such workmen as the conspirators may choose to designate. So his customers may be prescribed and his business may be in other respects controlled. I cannot regard such a course of conduct as lawful. * * * There is this coercion. The men agree to leave simultaneously in large numbers and by concerted action. The threat of workmen to quit the manufacturer under these circumstances is equivalent to a threat that unless he yields to their

2 Anon 12, Mod., 248; Rex. *v.* Journeymen Tailors, 8 Mod. 11; Rex. *v.* Eccles, 1 Leach 276; Rex. *v.* Hammond, 2 Esp. 719; People *v.* Melvein, 2 Wheel. 262; People *v.* Trequier, 1 Wh. Cr. Cas. 142; People *v.* Fisher, 14 Wend. 9; Commonwealth *v.* Hunt, 4 Metc. 111.

3 17 Q. B. 671. 4 17 N. Y. Supp. 265. 5 32 N. J. 155.

unjustifiable demand they will derange his business and thus cast a heavy loss upon him." In Curran *v.* Tredeoven[6] (1891) Lord Chief Justice Coleridge recorded the modern view: "To tell an employer that if he employs workmen of a certain sort the workmen of another sort in his employ will be told to leave him; and to tell the men when the employer will not give way 'to leave their work, use no violence, use no immoderate language, but quietly cease to work and go home,' is certainly not intimidation," and consequently not illegal, and in this country the right to strike unless an employer refuses to employ non-union labor is supported.[7] Nobody is under a legal obligation to cultivate the society of people not agreeable to him. And workmen are under no legal compulsion to work with fellow employés they do not like. The assertion of the right may be senseless and insulting, but for this the law has no remedy. But while workmen may quit working with persons they dislike they cannot undertake to force them to join the union by inducing an employer to discharge them if they refuse. In such a case the court said:[8] "This looks very much like unlawful coercion, or what amounts to the same thing, conspiracy. The defendants had a perfect right, as we have seen, to unite with this or any other labor organization, but they had no right to insist that others should do so, and when they made plaintiff's refusal to join it a pretext for depriving him of his right to labor, they interfered with his personal liberty to an extent the law will not contemplate." But as an employer can legally agree to employ none but union men, the decision has little value as a practical protection to non-union workmen. The true distinction between the legal and illegal action of combined labor is found clearly stated in Walker *v.* Cronin,[9] and reaffirmed in the great case of Mogul Steamship Co. *v.* McGregor.[10] In the first case it was declared: "Everyone has a right to employ the fruits and advantages of his own enterprise, industry, skill and credit. He has no right to be protected against competition, but he has a right to be free from malicious and wanton annoyance. If disturbance or loss come as a result of competition, or the exercise of like rights by others, it is *damnum absque injuria*, unless some superior right, by contract or otherwise, is interfered with. But if it comes from the merely wanton and malicious acts

6 L. R. 2 Q. B. (1891) 564.
7 Rogers *v.* Evarts, 17 N. Y. Supp. 269.
8 Curran *v.* Galen, 22 N. Y. Supp. 826.
9 107 Mass. 565.
10 23 Q. B. 598.

of others without the justification or the service of any lawful interest or lawful purpose it then stands upon a different footing." A merchant may increase his business at the expense and final ruin of his rival. But the rival has no complaint. It is the fortune of war, and the inevitable evil of a competitive business system. So workmen may strike and peaceably persuade others to strike to compel the payment of higher wages by the business losses necessarily resulting. This is the industrial weapon they may use for the attainment of any betterment in their position which is not in itself condemned by law as illegal,[11] and they may voluntarily delegate this right to abandon work to labor union officials who, in the honest performance of the trust, may legally order strikes for any purpose for which the delegators themselves may legally strike.

"The individual may feel himself alone unequal to cope with the conditions that confront him, or unable to comprehend the myriad of considerations that ought to control his conduct. He is entitled to the highest wage that the strategy of work or cessation from work may bring and the limitations upon his intelligence and opportunities may be such that he does not choose to stand upon his own perceptions of strategic or other conditions; his right to choose a leader—one who observes, thinks and wills for him—a brain skilled to observe his interest, is no greater pretension than that which is recognized in every other department of industry."[12]

But where the motive is not to gain a legitimate advantage but primarily or solely to inflict malicious injury, the agreement to strike is a criminal conspiracy and the striking itself illegal.[13] The distinction is technically interesting, but practically its value appears limited. In the vast majority of strikes the intent to injure is so confused with the purpose to attain a legitimate end like higher wages that the law cannot distinguish them. And as men have a right to join unions and agree to their laws, and as unions include employés in different establishments, the union may order sympathetic strikes and undertake peaceable boycotts in all employments, for the purpose of obtaining higher wages or other betterment of labor in one.

It is evident that the principle may be so construed as to legally justify almost any conceivable strike where the intention to coerce by inflicting vindictive injury is not openly proclaimed,

11 Compare Farmer's L. & T. Co. *v.* Nor. Pac. R. Co., U. S. Circuit Court of Appeals (not yet reported); Walker *v.* Cronin, 107 Mass. 576; Rogers *v.* Evarts, 17 N. Y. Supp. 269; Mogul Steamship Co. *v.* McGregor, 23 Q. B. 598.

12 Charge of Judge Grosscup to the Grand Jury in the indictment of the officials of American Railway Union, July, 1894.

13 Cases cited in preceding note. Rogers *v.* Evarts, 17 N. Y. Supp. 269.

or the purpose of the strike is not to compel an employer to do something illegal, as in the Chicago railroad strikes.

The vague and hackneyed assertions of the earlier cases that "any interference" with the free conduct of an employer's business by combined workmen is illegal, must be largely modified in the light of these decisions. Its paraphrase must be that any combined attempt to coerce an employer or employé by force or intimidation is illegal, whether men quit work or do not quit work in its execution. And under these doctrines, what legal habitation or home has the boycott? No mode of enforcing a demand has called forth more stern rebukes from the courts than this method of business assassination. Yet, can any sound legal distinction be drawn between the right of organized strikers to peaceably persuade other workmen to withdraw their labor from an obnoxious employer, and the peaceable persuasion of customers and merchants to withdraw their patronage from him?

A great deal of confused law on labor strikes is due to confused definition. A recent decision that all strikes were illegal[14] caused great perturbation of the general legal mind. The court had, however, defined a strike as in effect an attempt to coerce an employer by force. Naturally, it could not impart an illegal element into the definition, and then declare the thing defined legal. The logical *non-sequitur* of the decision was in assuming that because some strikes, or perhaps most strikes, had been accompanied by force, therefore all combined quitting work *must be* accompanied by the use of violence to attain the demand. Decisions based on such logic might render any act whatever illegal.

The modern decisions hand over a large portion of the personal liberty of society in trust to labor organizations. A non-union workman may be theoretically free—but practically he may be shorn of his ability to obtain work and the very bread of life by the arbitrary opposition of a labor union. The mere existence of such organizations exercises a very real restraint on an employer's free conduct of business; while the members of such unions are enslaved by its laws to any strike policy the majority, under the influence of labor agitators, may adopt. The recognition of the genuine benefits attainable by the coöperation of workmen, and a fair acknowledgement of the necessity of fighting the despotic tendencies of massed capital by organization, cannot conceal the threat to free speech, free action, and free commerce implied in these organizations, and too often emphasized by their history.

14 Farmers L. & T. Co. *v.* Nor. Pac. R. Co., 60 Fed. Rep. 1.

Such a vast power can be consistent with the public welfare only where its use is scrupulously just.

As was said by Judge Powers in State *v.* Stevens, 59 Vt.:

"The exposure of a legitimate business to the control of an association that can order away its employés and frighten away others that may seek its employ, is a condition of things utterly at war with every principle of justice, and every safeguard of protection that citizens under our system of government are entitled to employ."

The use of menace, threat or force, by organized labor, for any purpose whatever, is criminal.[15] Boycotts are usually criminal conspiracies, because their sole aim is too generally to extort compliance by a threatened injury to business. In Crump *v.* Com.[16] it was said: "a wanton, unprovoked interference by a combination of many with the business of another, for the purpose of constraining that other to discharge faithful and long tried servants, or employ whom he does not wish or will to employ; an interference intended to produce or likely to produce annoyance and loss to that business, will be restrained and punished by the criminal law as offensive to the individual, injurious to the prospects of the community; and every attempt by force, threat or intimidation, to deter or control an employer in the determination of whom he will employ, or what wages he will pay, is an act of wrong and oppression, and every and any combination for such a purpose is an unlawful conspiracy. The combination is the offense."[17]

The element of threat or menace possesses high legal interest, because the remarkable use of the injunction in recent cases has been largely based upon it. The principle that a man may hire and be hired without coercion, is as old as the common law. The use of the injunction to restrain the invasion of the principle is a distinctly new development of the law in seeking an effective remedy.[18]

The extremely rare use of the injunction is a surprising fact, in view of the wanton and remediless destruction of property caused by vindictive boycotts. Its justification in such cases

[15] It will also support an action for damages where resultant in injury. Steamship Co. *v.* McKenna, 30 Fed. Rep. 48.

[16] 84 Va. 927.

[17] The same principle is very strongly asserted in State *v.* Stewart, 59 Vt.; State *v.* Glidden, 55 Conn.; People *v.* Wilzig, 4 N. Y. Cr. Rep. 413; *in re* Higgins, 24 Fed. 217; and many other cases there cited.

[18] Previous to 1890 there had been with the exception of receivership cases, but one reported case in this country restraining workmen from interference with business, and this went on the ground of restraining a continuing trespass to land. See Mayer *v.* Journeymen's Asso., 47 N. J. Eq. 519.

was impliedly asserted by Judge Blodgett in Emack *v.* Kane:[19]

"I cannot believe that a man is remediless against persistent and continued attacks upon his business, such as have been perpetrated by these defendants against the complainant, as shown by the proofs in this case. It shocks my sense of justice to say that a Court of Equity cannot restrain systematic and methodical outrages like this, by one man upon another's property rights. If a court of equity cannot restrain an attack like this upon a man's business, then the party is certainly remediless, because an action at law in most cases would do no good, and ruin would be accomplished before an adjudication would be reached. True, it may be said that the injured party has a remedy at law, but that might imply a multiplicity of suits, which equity often interposes to relieve from; but the still more cogent reason seems to be that a court of equity can, by its writ of injunction, restrain a wrong doer, and thus prevent injuries which could not be fully redressed by a verdict and judgment for damages at law. Redress for a mere personal slander or libel may perhaps be properly left to the courts of law, because no falsehood, however gross or malicious, can wholly destroy a man's reputation with those who know him. But statements and charges intended to frighten away a man's customers and intimidate them from dealing with him, may wholly break up and ruin him financially, with no adequate remedy, if a court of equity cannot afford protection by its restraining writ."

In Cœur d'Alene Con. Min. Co. *v.* Miners' Union,[20] the distinctive element of threat or intimidation is shown to distinguish such cases from libel.

"A clear distinction will be observed between the two classes of cases above noted. In the one where the acts complained of consist of such misrepresentations of a business that they tend to its injury and damage to its proprietor, the offense is simply a libel; and in this country the courts have with great unanimity held that they will not interfere by injunction, but that the injured party must rely on his remedy at law. On the contrary, where the attempt to injure consists of acts or words which will operate to intimidate and prevent the customers of a party from dealing with, or laborers from working for him, the courts have with nearly equal unanimity interposed by injunction. In the one case it is an injury to a man's business by libeling it; in the other by force, threats and other like means, he is prevented from pursuing it; and while the damage might be as great in the one case as in the other—but most likely with different consequences to the good order and peace of the community—the courts have determined[21] on different remedies."

Some very significant decisions have been given as to what constitutes a threat. The upshot of them all is that any attitude

[19] Emack *v.* Kane, 34 Fed. Rep. 47, a patent case where defendant tried to ruin plaintiff's business by threatening his customers with suits for infringement of patents.

[20] 51 Fed. Rep. 267.

[21] In Mayer *v.* Journeymen's Asso., 47 N. J. Eq. 519, this distinction is so much ignored that the court declares the only English case in which a court issued an injunction to restrain the circulation of intimidating circulars by a labor union overruled by an entirely different case which declared that an injunction could not restrain a simple libel!

of the workmen which so excites the fears of fellow workmen or customers as to drive them away will justify the use of the injunction to restrain it. The remarks of Mr. Justice Brewer[22] are worth quoting:

"Supposing one (workman) is discharged and the other wants to stay and is satisfied with his employment; and the one that leaves goes around to a number of friends and gathers them, and they come around, a large party of them — as I suggested yesterday — a party with revolvers and muskets — and the one that leaves comes to the one that wants to stay and says to him, 'Now, my friends are here; you had better leave; I request you to leave.' The man looks at the party that is standing there; there is nothing but a simple request — that is, so far as the language which is used; there is no threat; but it is a request backed by a demonstration of force, a demonstration intended to intimidate, calculated to intimidate, and the man says, 'Well, I would like to stay; I am willing to work here, yet there are too many men here; there is too much of a demonstration; I am afraid to stay!' Now the common sense of every man tells him that this is not a mere request; tells him that the language used may be very polite, and be merely in the form of a request, yet it is accompanied with the backing of force intended as a demonstration and calculated to make an impression, and that the man leaves really because he is intimidated."

In Sperry *v.* Perkins,[23] a boy tramped up and down the sidewalk in front of the boycotted factory with a banner inscribed with the peremptory device, "Lasters are requested to keep away from P. P. Sperry's. Per order L. P. U." (Lasters Protective Union). They kept away. The court in enjoining the boy and banner said:

"The act of displaying banners with devices as a means of threats and intimidation to prevent persons from entering or continuing in the employment of the plaintiffs was injurious to the plaintiffs and illegal at common law."

In Casey *v.* Cincinnati Typo. Un.,[24] a union tried to boycott a newspaper by sending the following genial notice to the agents: "This union will consider it a *great favor* for you to give up the agency of the *Commonwealth;* if you do not we will have to consider you the enemy of organized labor." The court enjoined the sending out of such notices, saying that in fact a threat was intended. It appears accordingly that employers may resort to an injunction to restrain any acts whatever tending to constrain by fear or alarm the will of others to his prospective injury.[25]

[22] *In re* Doolittle, 23 Fed. Rep. 547. [23] 147 Mass. 147. [24] 45 Fed. Rep. 143.

[25] See also remarks of Baron Bramwell, Rex *v.* Smith *et al.*, 10 Cox. Cr. Rep. 600; State *v.* Stewart, 59 Vt. 289, where the threat of a labor organization to denounce a shop as a "scab shop," and its workmen as "scab workmen," if it employed non-union labor, was held to constitute criminal conspiracy, the court saying: "The anathemas of a secret organization of men combined for the purpose of controlling the industry of the others by a species of intimidation that works on the mind rather than the body, are quite as dangerous and generally more effective than acts of actual violence."

But the broad injunctions issued during the recent Chicago strikes, covering a score of interstate railroads, and forbidding even the sending of letters and telegrams to instigate strikes on such roads were not based on this inherent jurisdiction of equity merely. They mainly rested on the judicial interpretation of certain sections of the interstate commerce law, and the anti-trust law of 1890.[26]

The use of these statutes to restrain labor organizations has been singularly ironical. They were passed largely at their own instance to control the very railroads they have been fighting, and it is altogether probable that their effect on labor organizations was not considered.[27]

In Toledo, Ann Arbor & N. M. R. Co. *v.* Penn. Co.,[28] it was held that any strike undertaken to compel a railroad to refuse to receive and forward interstate freight was a criminal conspiracy against the laws of the United States, under sections 10, and 3 of the interstate act, and that the court might compel, by a manda-

[26] The second paragraph of Section 3 of the Interstate Commerce Act (24 St. at large, p. 379) provides: "All common carriers subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and for the receiving, forwarding and delivery of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines."

Section 10 of the act as amended (25 St. at large, p. 855) provides 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 not exceeding $5,000."

Section 5440 Rev. St. U. S. provides: "If two or more persons conspire * * * to commit any offense against the United States * * * and one or more parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not more than $10,000, or to imprisonment of not more than two years, or to both fine and imprisonment, in the discretion of the court." U. S. *v.* Stevens, 44 Fed. Rep. 132.

The interstate commerce act (26 Stat. at large, 209) provides: "Every contract or combination, in the form of a trust or otherwise in restraint of trade or commerce among the several states or with foreign nations, is hereby declared to be illegal."

[27] U. S. *v.* Patterson, 55 Fed. Rep. 605. [28] 54 Fed. Rep. 746.

tory injunction, the chief executive officer of a labor organization to rescind a strike order issued for that purpose.

A decision even more far reaching in its consequences was rendered by Judge Billings in United States *v.* Workingmen's Amal. Asso.,[29] where a labor union was enjoined from ordering a boycotting strike on transportation agencies in New Orleans engaged in interstate commerce, to compel the employment of only union men. It was declared that organizations could not enforce their claims by strikes intended to cripple interstate business without becoming conspiracies in restraint of trade under the anti-trust law. Of the control over strikes vested in the United States courts by that decision Speer, J., says, somewhat exultingly, in Waterhouse *v.* Comer:[30]

"In any conceivable strike upon the transportation lines of this country whether main lines or branch roads, there will be interference with and restraint of interstate or foreign commerce. This will be true also of strikes upon telegraph lines for the exchange of telegraphic messages between people of different States in interstate commerce. In the presence of these statutes which we have recited, and in view of the intimate interchange of commodities between people of several States of the Union it will be practically impossible hereafter for a body of men to combine to hinder and delay the work of the transportation companies without becoming amenable to the provisions of the statute. If it should be shown therefore that a strike on a single road carrying interstate commerce was made with the purpose of delaying and hindering this commerce, they would all be guilty of a criminal conspiracy."[31]

But the spirit of this decision extends even further. Its logical result is to vest United States courts with authority to enjoin strikes or any acts in instigation of them whose concerted purpose is to enforce any demand by crippling interstate business in any industry whatever. It would appear that such strikes in importing, wholesale and other establishments engaged in interstate or foreign commerce would be criminal offenses against the laws of the United States, unless the principle is modified by the appellate courts.

The illegality of the recent strikes at Chicago seems clear in the

[29] 54 Fed. Rep. 966. Since affirmed on appeal, 6 Cir. Ct. of Appeals Rep.

[30] Waterhouse *v.* Comer, 55 Fed. Rep. 157.

[31] On the other hand, Putnam, J., in United States *v.* Patterson, 55 Fed. Rep. 605 (Circuit Court D. Mass.), says in regard to act of 1890: "If the proposition made by the United States is taken with its full force the inevitable result will be that the Federal Court will be compelled to apply this statute to all attempts to restrain commerce among the States or commerce with foreign nations by strikes, boycotts, and by every method of interference by way of violence or intimidation. It is not to be presumed that Congress intended thus to extend the jurisdiction of the courts of the United States without very clear language. Such language I do not find in the statute."

light of these decisions since the avowed purpose was to compel railroad companies to refuse to haul Pullman cars in interstate transit. But the same distinction must be made here as at common law. If the strike is undertaken for a legitimate business purpose, as to raise the wages of the strikers, neither the agreement to strike nor the act of striking is illegal, although the incidental effect is to suspend or hamper interstate traffic.[32]

In the Toledo case already quoted, Taft, J., says:[33]

"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."

These cases afford no authority justifying a Court of Equity in restraining strikers from quitting their employment. The purpose with which a strike is undertaken may render it an atrocious illegality. The exhortations, mandates or orders of executive labor officials may be enjoined and their disobedience punished for contempt, but the workmen may for all that quit work as they choose, or when they choose, and the law cannot prevent them, although the act of quitting work may be illegal as a breach of contract. There are, however, scattered dicta in the cases which seems to imply possible circumstances under which compulsory service by equitable process would be justified.

In re Higgins,[34] "employés may quit their employment * * * *provided* they do not thereby intentionally disable the property. But they must quit decently and peaceably." In the Toledo case already quoted[35] Judge Taft said:

"But it is said that it cannot 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

[32] Farmers' Loan & Trust Co. *v.* Nor. Pac. R. Co., U. S. Cir. Ct. of Appeals (not yet reported).

[33] Toledo, A. A. & N. M. Co. *v.* Penn. Co., 54 Fed. Rep. 733.

[34] 27 Fed. Rep. 443.

[35] 54 Fed. Rep. 735.

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."

In Toledo, Ann Arbor & N. M. Co. *v.* Penn. Co.[36] Judge Ricks says: "In ordinary conditions, as between employer and employé, the privilege of the latter to quit the former's service at his option cannot be prevented by restraint or force. The remedy by breach of contract may follow the employer, but the employé has it in his power to arbitrarily terminate the relations and abide the consequences. But these relative rights and powers may become quite different in the case of the employés of a great public corporation charged by law with certain great trusts and duties to the public. An engineer and fireman who start from Toledo with a train of cars filled with passengers destined for Cleveland, begin that journey under contract to drive their engine and draw to the destination agreed upon. Will it be claimed that this engineer and fireman could quit their employment when the train is part way on its route, and abandon it at some point where the lives of the passengers would be imperilled and the safety of the property jeopardized? The simple statement of the proposition carries its own condemnation with it," and in referring to the immense losses and public inconvenience caused by railroad strikes, and the inadequacy of merely enjoining acts of violence and intimidation, "That the necessities growing out of the vast and rapidly multiplying interests following our extending railway business make new and correspondingly efficient measures for relief essential, is evident, and the courts in the exercise of their equity jurisprudence must meet the exigencies." The case itself did not, however, as is supposed, undertake to punish an engineer for quitting employment. The defendant company and its employés had been enjoined from refusing to handle interstate commerce. One of its engineers abandoned a freight train half way on his "run" to avoid hauling cars to a connecting interstate road under the interdict of his labor order. But actually he remained in the employ of the company while pretending to abandon it. And the court decided that the pretence was a blind to evade the injunction, and that while in the employ of the company he could not refuse to handle interstate

[36] 54 Fed. Rep. 746.

freights by quitting work, or in any other way. But it did not decide that he might not have *quit the employment* of the company *outright* without violating the injunction. Judge Taft, in issuing the original injunction, had said:[37] "Nor is the mandatory injunction against the engineers an enforced specific performance of personal service. It is only an order restraining them if they assume to do the work of the defendant companies from doing it in a way which will violate not only the right of the complainant, but also the order of the court made against their employers, * * * they may avoid obedience to the injunction by actually ceasing to be employés of the company, otherwise the injunction would be in effect an order on them to remain in the service of the company, and no such order was ever, so far as the authorities show, issued by a court of equity;" and Judge Ricks explained his own position by saying:

"But so long as he continues in the service, so long as he undertakes to perform the duties of engineer or fireman or conductor, so long the power of the court to compel him to discharge all the duties of his position is unquestionable, and will be exercised. As hereinbefore intimated, the duties of an employé of a public corporation are such that he cannot always choose his own time for quitting that service, and so long as he undertakes to perform, and continues his employment, the mandatory orders of the court to compel all lawful service can reach him and be enforced."

In Farmers' L. & T. Co. *v.* Nor. Pac. R. Co.,[38] the legal experiment was finally made by Judge Jenkins of restraining a strike, threatened for the express purpose of tieing up the entire Northern Pacific road, at that time in the possession of the court by a receivership, by enjoining the workmen from "quitting the service of said receivers, with or without notice, so as to cripple or prevent the operation of such road."

On appeal, the United States Circuit Court of Appeals have stricken out the section quoted, in an opinion which in effect not only denies the power of a Court of Equity to compel personal service in any case, but also denies the power to Congress or legislatures generally to vest it with that power without a constitutional amendment.

"'Under what circumstances,' says the decision, 'may the employés of the receivers of right quit the service in which they are engaged? Much of the argument of counsel was directed to this question. We shall not attempt to lay any rule applicable to every case that may arise between employer and employé. If an employé quits without cause and in violation of an express contract to serve for a stated time, then his quitting would not be of right.

[37] 54 Fed. Rep. 733.
[38] 60 Fed. Rep. 1.

But the vital question remains whether a Court of Equity will, under any circumstances, by injunction prevent one individual from quitting the personal service of another. An affirmative answer to this question is not, we think, justified by any authority to which our attention has been called or of which we are aware. It would be an invasion of one's natural liberty to compel him to work for or remain in the personal service of another. One who is placed in such restraint is in a condition of voluntary servitude — a condition which the supreme law of the land declares shall not exist anywhere within the jurisdiction of the United States.'"

This decision seems eminently wise in view of the somewhat arbitrary power judges might have exercised over workmen by the temporary injunction.

The very extensive powers of the United States courts as revealed in these cases, is the legitimate consequence of the assumption of control over the system of interstate commerce by the federal government, rather than a grasping of doubtful jurisdiction. How far the national government had advanced in its dominance of that system has been written in the decisions of the Supreme Court of the United States, but remained far removed from the ordinary apprehension until the troops of the United States appeared to enforce its protection. This practical but perfectly logical result of legal principles long declared, proved so startling to the governors of four States, that they protested against it as illegal; although none of them undertook to show how the national government could have power to regulate a subject by law, and yet be powerless to enforce obedience to the law."

It has been said by an eminent authority that the United States Courts are "sapping" the liberties of the people by their unlimited power to punish for contempt and determine their own jurisdiction.[39]

An examination of the cases and the admission of the Chicago strike leaders that they were beaten by the injunctions show on the contrary that so far as their interference in strikes is concerned they have been used to protect the liberty of the public and the great commercial system of the country. Recent events also clearly show that if courts are shorn of the protective power the contest will become one of physical force. Is it not rather fortunate than otherwise that judges, whose tenure of office frees them from the subtle influence of National and State politics, have not hesitated to take decisive steps toward the preservation of order, while leaving labor unions abundant scope to pursue the justifiable objects of their existence? *William P. Aiken.*

39 Ex-Senator Lyman Trumbull of Illinois, as reported by *New York World*, Aug. 7, 1894.