Compliments of C. S. Darrow

Cf. *Nation's* editorial on "Gov't by Injunction" 4 Apr. 95 p. 255

IN THE

Supreme Court of the United States.

TO THE OCTOBER TERM, A. D. 1894.

EX PARTE EUGENE V. DEBS et al.	}	*Habeas Corpus.*	**No. 11.** **Original.**

BRIEF AND ARGUMENT FOR PETITIONERS.

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ARGUMENT FOR PETITIONERS.

The petitioners, Eugene V. Debs, George W. Howard, L. W. Rogers, Sylvester Keliher, William E. Burns, Roy Goodwin, Martin J. Elliott and James Hogan, are the president, vice-president, secretary, and board of directors, of the American Railway Union, an organization of railway employes engaged in all branches of the railway service and extending throughout the various railway centers of the United States.

On July 2, 1894, an injunction was issued by William A. Woods and P. S. Grosscup, Judges respectively of the Circuit and District courts of the Northern District of Illinois, which injunction was directed against these petitioners and meant to enjoin and restrain them from certain acts and conduct in connection with the general strike which was called and carried on under the author-

ity and direction of said American Railway Union. This injunction was published in the daily papers, in Chicago, Illinois, on the 3d day of July, 1894, and first served upon some of these defendants on the 4th day of July, 1894.

On the 17th day of July, 1894, an information was filed against Debs, Howard, Rogers, and Keliher, by Thomas E. Milchrist, signing himself as an attorney for the United States of America, and which information alleges various acts, especially the sending of certain telegrams therein set out, and declares that the acts alleged and the sending of these telegrams constituted a contempt of court. On August 1st, another information called a supplemental information was filed against petitioners Hogan, Burns, Goodwin and Elliott, and also one J. F. McVean. This information is substantially like the first.

Upon the hearing of this case before William A. Woods, United States Circuit Judge for the Northern District of Illinois, said Judge Woods adjudged these petitioners to be in contempt of court, and sentenced said Eugene V. Debs to six months imprisonment in the County jail at Woodstock, Illinois, and said other defendants to three months imprisonment in the County jail at Woodstock, Illinois. These petitioners presented their petition to this court, praying to be released from said custody on the ground that the court had no authority or jurisdiction to make said order; that the acts complained of in the information were not illegal, or such as to give the court any jurisdiction in the premises.

In this brief it is proposed to discuss only two questions in connection with this case.

First, is the law of 1890, known as the "Anti-Trust "Law," or the Sherman act, applicable to this case?

Secondly, may workingmen lawfully organize and engage in a strike to redress real or fancied grievances, and are any of the acts charged in this information unlawful, or such acts as the court would have the right to enjoin, even assuming that a court had jurisdiction of the case? And incidental to this last question we submit the sufficiency of the verification of the information and the supplemental information.

I.

The Anti-Trust Law Not Applicable to This Case.

In the case of *The United States* v. *Egner*, 62 Fed. Rep., 824, Judge Baker of the District court uses the following language:

"Prior to the second day of July, 1890, it was entirely clear that the United States, as a municipal corporation, had no power either by petition or bill, to go into the courts of equity of the United States, and invoke the aid of those courts by their restraining power to prevent interference with the carriage of the mails, or with the carriage of inter-state commerce. Prior to that time the sole remedy was on the criminal side of the court. The sole method in which the United States as a government could prosecute violators of the interfering with the carriage of mails, or interfering with the instrumentalities used in the conduct of inter-state commerce, was by indictment or information on the criminal side of the court."

The anti-trust law, passed July 2, 1890, is entitled, "An Act to protect commerce against unlawful acts," and reads as follows:

Section 1. Every contract, combination in form of trust or otherwise, or conspiracy in restraint of trade,

or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make such contract, or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments in the discretion of the court.

SEC. 2. Every person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 3. (Extends the provisions of Section 1 to the territories, and the District of Columbia.)

SEC. 4. The several Circuit courts of the United States are hereby invested with the jurisdiction to prevent and restrain violations of this act, and it shall be the duty of the several district attorneys of the United States in their respective districts, under the direction of the attorney general, to institute proceedings in equity to prevent and restrain such violations.

Such proceedings may be by way of petition, setting forth the case, and praying that such violation shall be enjoined, or otherwise prohibited.

When the parties complained of shall have been duly notified of such petition, the court shall proceed as soon as may be to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 5. Whenever it shall appear to the court before which any proceeding under Section 4 of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpœnas

to that end may be served in any district by the marshal thereof.

SEC. 6. Any property owned under any contract, or by any combination, or pursuant to any conspiracy (and being the subject thereof), mentioned in Section 1 of this act, and being in the course of transportation from one state to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure and condemnation of property imported into the United States contrary to law.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of any thing forbidden or declared to be unlawful by this act, may sue therefore in any Circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit including a reasonable attorney's fees.

SEC. 8. (Provides the word person or persons may be deemed to include corporations and associations.)

INTENTION OF THE LEGISLATURE GOVERNS.

The application of this act will be discussed in the light of some of the well known rules for the construction of statutes. Statute law has been defined to be the will of the legislature, and it is the province of courts to determine what was the intention of the legislative body in passing any act under consideration.

Wilkinson v. *Leland*, 2 Peters, 662.

Sutherland on Statutory Construction, Sec. 234.

United States v. *Winn*, 3 Sumner, 209-211

United States v. *Rhodes*, 1 Abbott (U.S.), 36.

Atkins v. *Disintegrating Co.*, 18 Wallace, 301.

United States v. *Freeman*, 3 Howard, (U. S.), 565.

American and English Encyclopedia of Law, Vol. 23, 297.

Koch v. *Bridges*, 45 Miss., 259.

Winslow v. *Kimball*, 25 Me., 493.

The intention of the legislature should absolutely control the action of the judiciary, and technical rules of construction, if they should be in conflict with such intention, should yield.

The court in the case of *Wilkinson* v. *Leland*, *supra*, said with reference to this matter:

"Every technical rule as to the construction or force of particular terms must yield to the clear expression of the paramount will of the legislature."

Again it is said in the case of *Atkins* v. *Disintegrating Co.*, *supra:*

"The intention of the law makers constitutes the law."

And again in the case of *The United States* v. *Freeman*, *supra*, the following language used by the court in 4 Dallas, 14, is quoted with approval:

"The intention of the legislature when discovered must prevail, any rule of construction declared by previous acts to the contrary notwithstanding."

Sutherland on Statuatory Construction, Section 234, says:

"If a statute is valid it has to have effect according to the purpose and intent of the law maker. The intent is the vital part, the essence of the law."

In the case of *The United States* v. *Winn*, *supra*, Justice STORY said in part:

"It appears to me that the proper course in all these cases is to search out and follow the true intent of the legislature."

In the American and English Encyclopedia of Law, Vol. 23, 297, the same principle is stated in the following language:

"Statute law is the will of the legislature, and the object of all judicial interpretation of statutes is to determine what intention is conveyed, whether expressly or by implication, by the language used."

The court in *Koch* v. *Bridges*, said:

"The intention of the legislature should control absolutely the action of the judiciary. Where that intention is clearly ascertained the courts have no other duty to perform than to execute the legislative will. * * * *And courts should adhere to the cardinal rule that the judiciary functions are always best discharged* by an honest and earnest desire *to ascertain and carry into effect the intention of the law-making body.*"

In *Winslow* v. *Kimball*, *supra*, this language is used:

"But statutes are to receive such a construction as must evidently have been intended by the legislature. To ascertain this we must look to the object in view; to the remedy intended to be afforded; and to the mischief intended to be remedied."

This intention is first of all to be gathered from the act itself. It is assumed that any words or phrases used in the act shall be construed in their popular and common acceptance, unless the subject-matter itself indicates that they are to be used in some technical sense. If the language of this act is in no way ambiguous then it is unnecessary to resort to any special rules of construction to determine the meaning of Congress in the passage of this law.

Such Intention Gathered From the History of the Times.

If the provisions of this act shall seem in any wise ambiguous reference should be made to the various rules of construction to determine what the legislature had in mind when it enacted the law. And in such case, statutes should be interpreted according to the light of the history of the time, and with a view to the common law before the passage of the act.

In the construction of the statutory or local law the state of the country may be recurred to in order to ascertain the reason, as well as the meaning, of the law.

Preston v. *Brouder*, 1 Wheaton, 121.

Aldridge v. *Williams*, 3 Howard (U.S.), 24.

United States v. *Union Pacific Railway Co.*, 91 U. S., 79.

Platt v. *Union Pacific Railway Co.*, 99 U. S., 48, 64.

Sibley v. *Smith*, 2 Mich., 498.

Keith v. *Quinney*, 1 Ore., 366.

People ex rel. v. *Supervisors*, 70 N. Y., 236.

This principle is very well stated in the case of *Preston* v. *Brouder*, *supra*. There it is said:

"In the construction of the statutory or local laws of the state it is frequently necessary to recur to the history and situation of the country in order to ascertain the reason, as well as the meaning, of the many provisions in them, to enable a court to apply with propriety the different rules for construing the statutes."

Again, in the case of *Aldridge* v. *Williams*, *supra*, this court said that it would look, "if necessary, to the public "history of the times in which it was passed."

In the *United States* v. *The Union Pacific Railway Co.*, 91 U. S., 79, the language of the court in that case is as follows:

"But courts, in construing a statute, may, with propriety, recur to the history of the times in which it was passed, and this is frequently necessary in order to ascertain the reason, as well as the meaning, of particular provisions in it."

And again in the case of *Platt* v. *Union Pacific*, *supra*, it is said:

"But in endeavoring to ascertain what the congress of 1862 intended, we must as far as possible place ourselves in the light that Congress enjoyed, look at things as they appeared to it, and discover its purpose from the language used in connection with the attending circumstances."

The courts of the various states are in harmony with the doctrine of this court on that subject.

In *Sibley* v. *Smith*, *supra*, the Supreme court of Michigan enunciated the same rule in the following language:

"We are authorized to collect the intention of the legislature from the occasion and the necessity of the law—from the mischief felt and the object and remedy in view."

So the Supreme court of Oregon in the case *Keith* v. *Quinney*, *supra*, quoted with approval the following language:

"That such an instruction ought to be put upon a statute as may best answer the intention which the makers had in view, and this is sometimes to be collected from the cause or necessity of making it."

And in New York likewise we find the rule supported in the case of *The People ex rel.* v. *Supervisors*, *supra*, where the court said:

"We may look to the occasion of the enactment of a law to assist us in determining its character."

In Ohio the same rule is laid down in the case of

Administratrix Tracy v. *Administrator Card*, 22 Ohio state, 439.

Cincinnati Gas Light & Coke Co. v. *Avondale*, 43 Ohio state, 267.

HISTORY OF THE TIMES AT THE PASSAGE OF THIS ACT.

All who are familiar with current affairs are aware of the prominence that has been given in the past few years to the discussion of economic questions. Perhaps no topic is so prominent in the public mind to-day, and has been so prominent in the last five years as the questions which involve capital and labor and the production and distribution of wealth.

Spelling on Trusts and Monopolies, Sec., 122.

It was doubtless in view of the current discussion of the time that Congress was imbued with the idea of enacting legislation which should deal with some of the abuses and evils incident to the production and distribution of wealth.

Von Halle on Trusts, Chapter II.

The invention of machines and the improved and new methods of distribution have in a few years worked a great change in all industrial and social life. The small farmer, the old-time mechanic, the small tradesman, shoemaker, harness-maker and the like have passed away on account of new and improved methods of production and distribution. The better facilities for trade and commerce brought about by the use of steam and

electricity, and its application to railroads and steamships, together with the invention of wonderful labor-saving machinery, have brought great masses of men together in cities and made it impossible to produce with the hand tools of twenty years ago; this has made production possible only by the aggregation of large numbers of men, expensive machinery and large amounts of capital. The same causes have tended to work similar changes in the industrial life of the country, and to replace the small farms with their old tools, the scythe, the cradle and the flail, with the large farms, with their improved machinery, mowing machine, reaper and threshing machine.

The great railroad corporations and systems, by the aid of modern invention and modern business methods, have aided this tendency to centralization by making transportion comparatively easy and cheap.

Not only have improved machinery and transportation made it economical to do business in large stores, factories, mills and on large farms, but the modern spirit of organization has so far entered into all business pursuits that doing business by wholesale is a much cheaper and more economical way of doing business for this reason alone. The necessity of using expensive machinery and employing a great number of men to produce articles economically, the organization that is necessary to manage great factories, stores and railroads, the advantage coming from organization and large business corporations have also tended to make it impossible for people of small means to successfully carry on the business enterprises of the day. The employment of great numbers of men in one factory or mill, the rapid and easy methods of distribution and the advantage of

organization as shown in great department stores, have naturally built the large city in the place of the small towns and villages of years ago. With all of these commercial and industrial enterprises in the hands of a few men and few corporations, because of the vast amount of capital required for their management, combinations in the shape of pools and trusts must be the logical result. (Von Halle on Trusts, page 117.) The political economist years ago laid down the maxim that "where "combination is possible, competition is impossible."

As these industries constantly tended to fall into the hands of fewer individuals and corporations, increasing in wealth and power, they very soon learned that it was to their mutual advantage to combine, if for nothing else, than to protect themselves. Combination for the limiting of production and combination for controlling prices is the history of all enterprises of the past few years. All the steel rails manufactured in the United States are produced by a few corporations. The prices charged by each are the same, and whether the mills stand idle or are employed, the dividends accruing are the same. The anthracite coal mines are owned by a few railroad companies. The amount of coal that the consumers are allowed to use is limited by the combine, so that the price may be easily regulated by the supply. There are six or eight railroad companies operating lines between Chicago and New York. The charges are the same on all, unless one of them clandestinely furnishes special rates. One great corporation has for years furnished most of the oil consumed in the United States. By "business" methods they are able to control the supply of oil, and also its price.

This centralization of business in the hands of pools

and trusts has been increased in the last few years with a rapidity heretofore unknown in the history of the world. It has been due to natural causes, to the application of steam, and the invention of new machinery, and the improved methods of production and distribution. To causes that are so potent that all the legislation of the world has been powerless to stem the tide. Scarcely a necessity of modern life can be procured except through some trust or combination. Oil, iron, buttons, sugar, matches, whisky, meat, copper, lead, tin, coal, gas, glass, leather, rubber, asphalt, lumber, coffee, as well as a great number of other articles can be procured only from trusts. (See list in Von Halle "Trusts" page 328, *et seq.*) So general is this modern method of transacting business that we are informed by the press that the receiver of the whisky trust, appointed by a court, has also joined a larger trust.

All these matters have been commonly discussed for years. Almost every newspaper, periodical and book that has appeared in the last few years has had some reference to these modern methods of production. On the lecture platforms, in pulpits, in political campaigns allusions to this subject have been so constant as to force all other questions into the background.

Not only has discussion of trusts and pools been persistent and constant but the great organizations of labor, both here and in Europe, have become so much a factor in social life, that even the most ill-informed could not ignore their presence. There is scarcely an industry or trade but what is organized. These various trades and industries are organized into larger bodies. The Knights of Labor, The American Federation of Labor, The American Railway Union, and many other great

organizations are so well known to all students of current affairs, and even to the most casual observer, that it would be a mark of the densest ignorance not to have some information concerning them. Labor organizations and working people have met this great growth of trust and pool by strikes. For many years the word strike and boycott has been as well understood as most any other term, when speaking of industrial life.

For more than 100 years the strike has been a potent factor in industrial life. The increase of strikes in modern days is as phenomenal as the growth of trusts. As it is almost impossible to read a newspaper that does not contain some account of a trust, it is almost equally impossible to find one that does not contain some account of a strike. The literature of the day is filled with this warfare between the contending forces of capital and labor. It may be a railroad strike, a coal miner's strike, street car strike, or a strike in cotton mills or woolen mills, or glass factories, a strike of telegraphers or 'longshoremen, but some strike at least is always confronting the public as a topic for everyday discussion to the unthinking, and for serious consideration by those who have an honest interest in the welfare of the people. It would probably be impossible to find one member of Congress who voted for the anti-trust law, who did not in his campaign for election have some association or dealings with labor organizations, not one single member who did not make speeches to capture the votes of workingmen, who had knowledge more or less of labor organizations and boycotts, not one senator but what had met these great organizations of labor as practical live factors in their election and re-election to the places they occupy. In fact

probably no other factor so largely entered into the immediate consideration of senators and members of Congress as the various labor organizations of the United States. It was in this atmosphere and in the midst of this history that this bill was presented and discussed for months in both houses of Congress. All of its provisions should be interpreted in the light of these common facts that are well known to every man of ordinary intelligence.

In every line of this act is the clear purpose that its provisions were meant to apply to combinations in the shape of trusts and pools, these modern devices that are controlling the necessities of life and the welfare of the people. In no place is there any mention of any labor organization or strike or boycott or the slightest reference that would be construed by men of ordinary intelligence as an intention to apply this law to the combinations of laboring men, or strikes, or boycotts. It is utterly inconceivable that Congress discussing this question for weeks and passing upon this bill, in view of the whole industrial history of the time could have overlooked some of the most important factors of industrial life. The fact that organizations of working people and strikes are not included, clearly shows that they were meant to be omitted from the law.

The title of this act shows plainly that it was meant to affect those great business trusts and combinations that are engaged in trade and commerce, and that injure and despoil the people by monopoly and exaction. For hundreds of years combinations of these kinds, monopolies for the restraint of trade, for the forstalling of the markets have been unlawful and criminal. For years by the common law of both England and America, these

combinations of trade and commerce organized into pools and trusts, combining to regulate production, distribution and prices have been crimes. In most of the states where statute law is the only criminal law combinations of this kind are crimes.

THE DEBATES IN CONGRESS MAY BE REFERRED TO TO SHOW HISTORY OF TIMES.

The general condition of the country during the time of the passage of this act is still further shown by the debate of the United States Senate during the discussion of the bill. This, while not controlling, still furnishes a source from which the court may ascertain the evil aimed at by the law.

United States v. *Patterson* 55 Fed. Rep., 605-631.

Also

Bishop on Statutory Crime, Sec. 76.

And this court in the case of the *Holy Trinity Church* v. *U. S.*, 143 U. S., 457, in interpreting the act of February 6, 1885. "An Act to prohibit the importation and "immigration of foreigners and aliens under contract to "perform labor in the United States," etc., referred to the reports of the committees of both the Senate and the House of Representatives as a circumstance throwing light upon the intention of Congress in passing the act, and said:

"We find, therefore, that the title of the act, the evil which was intended to be remedied, the circumstance surrounding the appeal to Congress, *the reports of the committees of each house*, all concur in affirming that the intent of Congress was to stay the influx of this cheap unskilled labor."

Within the limit and light of the above authorities we respectfully draw the court's attention to the debates had upon the anti-trust law as shown by the Congressional Reord.

In the 21 Congressional Record, part 3, page 2457, Senator Sherman uses the following language:

"But associated enterprises and capital are not satisfied with partnerships and corporations competing with each other and have invented a new form of combination commonly called trusts that seeks to avoid competition by combining and controlling corporations, partnerships and individuals engaged in the same business, and placing the power and property of the combination under the government of a few individuals, and often under the control of a single man called a trustee, a chairman or a president. The sole object of such a combination is to make competion impossible. It can control the market, raise or lower prices as will best promote its selfish interests, reduce prices in a particular locality and break down competition and advance prices at will where competition does not exist. Its governing motive is to increase the profits of the party composing it. The law of selfishness, uncontrolled by competion, compels it to disregard the interest of the consumer. *It dictates terms to transportation companies, it commands the price of labor without fear of strikes, for in its field it allows no competitors.* Such a combination is far more dangerous than any heretofore invented, and when it embraces a great body of all the corporations engaged in a particular industry in all the states of the union, it tends to advance the price to the consumer of any article produced it is a substantial monopoly injurious to the public, and by the rule of both the common and civil law is null and void and the just subject of restraint by the courts or forfeiture of corporate rights and privileges, and in some cases should be denounced as a crime and the individuals engaged in it should be punished as criminals. It is this kind of a combination that we have to deal with now."

And again, on page 2459, Senator Sherman uses the following language:

"I might state the case of all the combinations which now control the transportation and sale of nearly all the leading productions of the country that have recently been made familiar by the public press, such as the cotton trust; the whisky trust, the sugar refiner's trust, the cotton bagging trust, the salt trust, the copper trust, and many others, some of which have been the subject of legislative inquiry and others of judicial process; but it is scarcely necessary to do so as they are all modeled upon the same plan and involve the same principles. They are all combinations of corporations and individuals of many states forming a league and covenant under the control of trustees with power to suspend the production of some and enlarge the productions of others, and absolutely control the supply of the article which they produce, and with a uniform design to prevent competition, to break it down wherever it appears to threaten their interest."

And again, on page 2562, Senator Sherman uses the following language:

"Now, let us look at it. The bill as reported contains three or four simple propositions which relate only to contracts, combinations, agreements made with a view and design to carry out a certain purpose, which the laws of all the states and of every civilized community declare to be unlawful. It does not interfere in the slightest degree with voluntary associations made to effect public opinion to advance the interest of a particular trade or occupation. It does not interfere with the Farmer's Alliance at all, because that is an association of farmers to advance their interests and to improve the growth and manner of the production of their crops, and to secure intelligent growth and to introduce new methods. No organization in the country can be more beneficial in their character than the Farmers Alliance and farmers associations. They are not business combinations. They do not deal with contracts, agreements, etc. They have no connection with them. And so the combinations of workingmen to promote

their interests, promote their welfare, and increase their pay, if you please, to get their fair share in the division of production and are not affected in the slightest degree, nor can they be included in the word or intent of the bill as now reported."

Senator Hoar, in part 4, page 3146, uses the following language:

"The complaint which has come from all parts and all classes of the country of the great monopolies, which are becoming not only in some cases an actual injury to the comfort of ordinary life, but are a menace to republican institutions themselves, has induced Congress to take the matter up."

So on page 3147 Senator George, of Mississippi, expresses the same idea:

"It is well known that the great evil of these combinations, these conspiracies they are called, these monopolies, as they are dominated in the bill, consist in the fact that by combination, by association, there have been gathered together the money and the means of a large number of persons, and under these combinations or conspiracies, or trusts, this great aggregated capital is wielded by a single hand and guided by a single brain, at least by hands and brain acting in complete harmony and co-operation, and that in this way, by this association, by this direction of this immense amount of capital by one organized will, to a very large extent these wrongs have been perpetrated upon the American people.

They come about by an association of men of large capital, living in various states of the union. They come about by corporations organized in the various states of the union acting in concert. They come about too, by single individuals organizing as a single corporation in one state of the union. By the use of this organized force of wealth and money the small men engaged in competition with them are crushed out, and that is the great evil at which all of this legislation ought to be directed."

The whole debate of both the Senate and the House of

Representatives referred to the great combinations of capital, the great pools and trusts which are so large a part of the history at the present time. This history of the condition of the time clearly shows the state of the public mind, the enviroment from which this bill was drafted, the needs it was meant to serve, the class of people intended to be reached and the kind of men and women, the farmers, the working people, the great middle classes sought to be benefited by the passage of the act.

It seems almost unnecessary to call special attention of the court to any particular portion of this act. In view of the history of the country at the time of its passage, and the condition of the law for hundreds of years, it seems as if every section and every line of the act clearly shows that the law was meant for the purpose of preventing the monopolization of trade and commerce by what is known as the forestalling of the market.

The Several Sections of the Act should be Interpreted Together.

It is a well known principle of construction that the whole statute should be interpreted together. It should be construed as one act, and its meaning, object and intent should be gathered from the whole statute. This is particularly true where it is not evident that special sections or special provisions were meant to cover different subjects.

United States v. *Freeman*, 3 Howard, U. S., 565.

Pennington v. *Coxe*, 2 Cranch, 52.

These cases decided by this court are all that it will be necessary to cite to substantiate the proposition above laid down, that in construing an act of the Legislature, its meaning, object and intent should be collected from the whole statute.

In the Freeman case the court said:

"In order to test the legislative intention the whole statute must be inspected."

And in the Coxe case:

"Every part of the act is to be taken in view for the purpose of discovering the mind of the Legislature."

Every section of this act is plainly applicable to the monopolization of trade and commerce. Several of the sections could not possibly have any other application. There is nothing anywhere in the law to show that any special objects are aimed at by the separate provisions.

Section 2 of the act is directed specifically to "persons who shall monopolize or attempt to monopolize, or "shall combine or conspire to monopolize any part of the "trade or commerce," etc. Clearly nothing but combinations of individuals and corporations engaged in business and seeking by modern business methods to monopolize commerce or markets could be included in the terms of this section. Section 6 provides that any property owned under any contract or by any combination of persons in conspiracy and being the subject thereof named in section 1 of this act, etc., * * * shall be forfeited, etc. It could not be claimed that any reference could be drawn from any word in this section, that any application could be made, excepting to such property as is owned, controlled and monopolized by individuals and corporations engaged in forestalling the market. This property is subject to forfeiture by this section, and this

section especially refers to the first section of the act to define the kind of combination or conspiracy under which property must be held to be made subject to the forfeiture provided by the law.

Section 1 of this act, which defines the combinations and conspiracies against which this legislation is directed, is drawn with almost as equal certainty as sections 2 and 6. It provides that every contract or combination, in the form of trust or otherwise, or conspiracy in restraint of trade is illegal. It would not be contended that the phrase "combinations in the form of trusts" had a doubtful meaning. Combinations in the form of trusts are so common and have been made in so many kinds of business that when the phrase is used today every person understands that it means those combinations of corporations or of different business interests which are associated together in one partnership, each having a share of the profit of the common product of all. These trust combinations are dangerous to the public welfare because of the large aggregations of capital engaged in a common enterprise, because of the power given by one corporation furnishing all of a certain kind of product, to control prices, because of the absolute power given these great aggregations of capital to prevent competition and to wholly control the quantity, quality and price of the commodities that the people shall be allowed to use. No doubt there are those who believe that a combination of working men acting together, forming themselves into one great body with common purposes and common interests, with a power in itself to work, or refuse to work except upon such terms as they may dictate, is a power equally dangerous. But it is plain that Congress never meant to provide that such combinations

were illegal; Congress evidently did not mean to provide that members of labor organizations even though their purpose might be to form a complete labor trust and monopolize the labor market should be guilty of a conspiracy for becoming members of such organization. If Congress ever had intended to make criminal combinations of working men organized into a labor union it would have used such plain language as would clearly have indicated its purpose and intent.

"Contracts in restraint of commerce" or "conspiracies "in restraint of trade or commerce" either taken separately or in connection with the rest of this act, evidently meant such contracts and conspiracies in relation to the ownership, control, production or sale of property as tend to change the free laws of supply and demand, as tend to limit production or restrain commerce so that those persons or corporations who make such contracts or enter into conspiracies may be able by means of their resources and power to create scarcity, and to control prices at their will and to prevent that free competition in trade which the common law has ever sought to protect.

It would be a violation of the plain and obvious meaning of words to hold that the restraint of trade meant impeding the progress of a locomotive, by tearing up the rails or by the forming of a mob to prevent the removal of goods or by the refusal of employes to work. It could scarcely be contended that a band of train robbers were engaged in a conspiracy in restraint of trade. The obstruction of trade, the prevention of trade, the refusal of men to work for a railroad company, the ordering of a strike, or the forming of a great railroad organization, each man of whom should voluntarily quit work and re-

fuse to handle goods could not in the meaning of this statute or in the ordinary acceptance of its terms be held to be a restraint of trade.

The Evil Aimed at is an Evil of a Contractual Nature.

The evil aimed at in the legislation against capital is an evil of a contractual character. It was aimed at the growing tendency to combination by voluntary contract in derogation of public rights and public safety. It was for the prevention of associations founded upon a contract between various producers in the various states of the Union, to restrain monopolies of commerce so as to control the prices of the various commodities so controlled and monopolized. These trusts and monopolies were formed by contracts and agreements in the shape of combinations and conspiracies between these various producers among the states, and therefore the evil struck at by the act was an evil of a contractual character. The evil to be feared from these vast aggregations of capital and means of production in the hands of a few was not from fraud or violence, but from the effect of the keeping and performing of such contracts and combinations for the controlling of the productions of the country.

The control and monopoly of the products of the country must be gained by contract and agreement, by combinations and conspiracies between those who produce, whereby the means and capacity of production are placed in the hands of and controlled by a few. When the means of production are placed in the hands of a few, and the quantity of production controlled and regulated by the will of a few, then, and only then, can the product

of the country be monopolized, and it was against such monopolies and trusts, formed as they must be by a common purpose and understanding, by combination and conspiracy among those who have in their hands the means of production. That is the crime and the evil at which the statute in this case was directed. The phrase "in restraint of trade," is almost always used in common law in connection with the word "contract." It was contracts between producers, whereby the production of one passed into the control of the other, that the common law declared constituted a restraint of trade and was illegal, and it is in connection with such contracts that the phrase "restraint of trade" has received its meaning, and has come down to us from the adjudications of the courts of the past. The principles which declared void such contracts in restraint of trade made between two persons were extended and applied to combinations between many persons for the same purpose, for the same reasons which applied to and made void the one, also applied to and made void the other. So that the phrase "in restraint of trade," whether applied to contracts between two individuals or to combinations or conspiracies between many, expresses to us, in accordance with the decisions of the past, some contractual restraints which the parties to the contract or members of the combination or conspiracy have endeavored to place upon their powers of productions by agreements between themselves. The phrase "in restraint of trade" has been inseparably associated with the intention of monopolizing either in a small or a great degree, either by annihilating the production of one, and thereby placing the control of the market in the hands of another, or by placing the pro-

duction of both in the hands and under the control of their joint action. In all cases the danger to the people and to the nation has been the concentration of the production of the country in a few hands. Section 6 of the statute harmonizes with and gives color to the interpretation of the act as herein contended for. That section provides that any property owned under any contract, or by any combination, or pursuant to any conspiracy with and being the object thereof mentioned in Section 1 of this act, and being in course of transportation from one state to another state or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings to those provided by law for the forfeiture, seizure and condemnation of property imported into the United States contrary to the law.

What is the meaning of the phrase "property owned " * * * pursuant to any conspiracy"? It means the property of such trusts and monopolies which as inter-state commerce is passing from one state to another. It certainly can not mean property used in the commission, and for the purpose of committing crimes, such as burglars' tools and counterfeiters' dies. It is property owned pursuant to a conspiracy, and the conspiracy in the statute, therefore, is a conspiracy aiming to control by the making and the furtherance of restraining contracts and the property is the property owned by such conspiracy under the monopolizing contract. A conspiracy which has not for its object an intent to fix control or raise prices to the injury of the public, or in some such way to injure or defraud the public, can not be held to be a contract or conspiracy within the meaning or intention of this statute, although the same may result in raising

prices and may result in restraining trade. Such results would only be the indirect consequences of the conspiracy, and not the purposes and objects thereof, and the conspiracy takes its color and its form, not from its result or effect, but from its intention and its object.

Section 4 of this act, which provides for the enforcement of the law would seem by its terms to contemplate that the provisions of the law apply to property and to the ownership and control and the monopolization of property by individuals, corporations or trusts. To provide for enjoining strikes or strikers, or enjoining labor organizations or mobs would be a procedure not in keeping with the courts of chancery, a remedy wholly inadequate and dangerous of application.

Courts of chancery are concerned with property and property rights. To enjoin trusts engaged in the monopolization of the markets; to restrain contracts and conspiracies forming trusts and combinations to limit production and increase prices, is a legal and salutary power that might well be exercised by courts of chancery. To enjoin the actions of men when those actions have no direct reference to property rights would be to replace the criminal procedure and penal statutes with the chancery powers of courts.

THIS BEING A PENAL STATUTE IT SHOULD NOT BE SO CONSTRUED AS TO EXTEND TO CASES NOT WITHIN ITS OBVIOUS SCOPE.

It is a rule of construction that all penal statutes are to be construed strictly in the light of their plain meaning and purpose and not extended to cases which are not

within the obvious meaning of the language employed in the legislation.

American and English Encyclopedia of Law, Vol. 23, 376.

United States v. *Lacher*, 134 U. S., 624, 629.

In the first citation above, this language is used:

"It is the object of the construction of penal, as of all other statutes, to ascertain the true legislative intent, and *the court will not* * * * *apply such statute to cases which are not within the obvious meaning of the language employed by the legislature.*"

And in the second citation, this language, taken from a quotation, is approved by the court:

"* * * * penal provisions, like all others, are to be fairly construed according to the legislative intent as expressed in the enactment; *the court refusing* * * * *to extend the punishment to cases which are not clearly embraced in them.*"

And the United States Circuit Court of Appeals, for the Eighth circuit, in the case of the *United States* v. *The Trans-Missouri Association*, 58 Federal Reporter, 58. 77. laid down the same rule with reference to the anti-trust act of July 2, 1890. The court, in that case, said:

"The anti-trust act is a criminal statute, and it should not be so construed as to subject persons to penalties thereby imposed, unless the contract complained of is one *that is clearly within the provisions of the statute.*"

Such statutes should be so construed that each person may understand their plain provisions and may know perfectly well what acts constitute a violation of the law. They will not only be punished for a violation of the law, but admonished not to commit one. To construe this statute to include labor organizations, strikes and strikers

would be to go beyond the plain and obvious intent expressed in every line and section. It would have been easy for Congress to have included within the plain meaning of this act those combinations of labor, those strikes and organizations, which every well-informed man understood full well. When Congress left these out of the provisions of the act, it omitted them with a knowledge of the history of the times, with the knowledge of the existence of these organizations and combinations, with the full knowledge of the hundreds of thousands of men forming these combinations, of their prevalance in every portion of the country, and they plainly intended that these should not be included in this act. *To bring them within the pale of this law would mean that judicial interpretations should read into this statute large bodies of men which Congress deliberately left out.* Bodies of men, none of whom supposed they would be included, bodies of men whom public opinion at the time of the passage of the law, did not desire to have included, and the men whom no member of Congress, and no senator would for a minute have thought right or wise to have included in the provisions of this act. We submit that the courts have no right to place within the power or perview of this statute those whom Congress clearly intended to exclude by the terms of this act. To say that a law should be construed to include those things which the legislative body intended to include, is also to say that it should be construed to exclude those things which Congress intended to leave out.

LEGISLATION ON SAME SUBJECTS BY THE STATES.

As further evidence that the purpose and intent of this act was to strike *a blow at trusts* and *kindred monopolies*,

the legislation of the various states of the Union, at about the time of the passage of this act, may be referred to. Acts had been passed by the various states, restraining and making punishable as crimes all such combinations and conspiracies to monopolize and control the industries and productions in various states. The passage of these acts was caused by the popular agitation which swept over the country influencing state legislatures as well as Congress. The growth of trusts had been so fast and alarming as to require the passage of acts declaratory of the common law and fixing to their violation appropriate and severe penalties. Such laws were passed by Alabama, 1890, 1891, Sec. 202; Illinois, 1891, page 206; Iowa, 1890, Chap. 28; Kansas, 1889, Chap. 257; Minnesota, 1891, Chap. 10; Mississippi, 1890, Chap. 36; Nebraska, 1889, Chap. 69; New York, 1892, Chap. 688, Sec. 7; North Carolina, 1889, Chap. 374; South Dakota, 1890, Chap. 154; Tennessee, 1890, Chap. 218; Texas, 1889; Chap. 117. And Ernst Von Halle, in his work on Trusts or Industrial Combinations in the United States (MacMillian & Co., 1895), says: "By the end of 1894, "the federal government, twenty-two states and one ter- "ritory had enacted anti-trust laws."

* * * * *

"Anti-trust laws were passed in 1889 by Kansas, "Maine, Michigan, Missouri, Nebraska, North Carolina, "Tennessee, Texas, and the territories of Idaho, Mon- "tana and North Dakota, and the new states of Wash- "ington and Wyoming introduced provisions in this "direction into their constitutions. In 1890 anti-trust "laws were passed by Iowa, Kentucky, Louisiana, Mis- "souri and South Dakota. In 1891 Kentucky and Mis- "souri introduced provisions into their constitutions. In

"the same year Alabama, Illinois, Minnesota, and the "Territory of New Mexico, in 1892 New York and Wis- "consin legislated to like effect, while in 1893 California "forbade combinations in live-stock, Nebraska in coal "and lumber."

As stated by the brief in another case, "These statutes "in terms simply extend this principle [of common law "*in re trusts*] to combinations or conspiracies to make "such contracts; the object being to get around the prac- "tical difficulty of proving an actual binding contract to "do these acts. In view of the secrecy surrounding "trusts, this difficulty had become a great obstacle in "the way of justice. These acts simply make illegal "any combination organized for the purpose of making "such contracts, whether the contracts are completed or "not. But in almost all it is expressly stated or implied, "that it is combinations proceeding by way of contract "not combinations using fraud or violence, that are "within the contemplation of these statutes. Conspira- "cies to commit frauds or crime were punishable by the "common law of such states."

Federal Legislation Needed.

As shown, at about the time of the passage of this act, many states had passed similar statutes, directed against trusts, monopolies and combinations of a similar nature and kind. Trusts, combinations, and conspiracies to restrict and retrain production and to monopolize the products of the country in the hands of a few, so that prices might be controlled, and the people be compelled to pay what might be asked by those who monopolized the product, have been from time immemorial held to

be against the principle of the common law, in violation of sound public policy, and crimes against the people.

In Liber Assissarum, 27 Edw. III, 138, 139, 1354, we find among other conspiracies to be investigated, that of "merchants who by alliance and covin among themselves "in any year put a certain price on wools which are to "be sold in the country, so that none of them will buy, "or otherwise pass in the purchase of wools beyond the "certain price which they themselves have ordained, to "the great impoverishment of the people."

The power of the states with reference to the matter of trusts and monopolies was necessarily confined to their own boundaries. By the peculiar formation of the political union between the various states, there was a vast domain that lay beyond and above the jurisdiction and power of the state legislatures. Nearly every state in the union has some special production or productions of which it consumes and uses but a small and limited portion; the balance being intended for shipment to other states or to foreign nations for sale and consumption, and immense quantities of the productions of the various states are constantly passing back and forth between the states and foreign nations, from the power and control of the one to the power and control of the other. The volume of this business is such as to form a very considerable portion of the activity of the nation, requiring for its shipment and conveyance innumerable lines of railroad and other avenues, and it is the shipping back and forth of these various commodities from one state to another, and to foreign nations, which constitutes inter-state and international commerce and trade. These avenues of

commerce are the arteries of the nation, and the products and commodities the life-blood and sustaining force of the people. But this vast inter-state and international commerce and trade is without the control of the power and supervision of the various states. With it they can not interfere. Over it they can not throw any mantle of protection, nor can they put any checks or restrictions upon it, for a state has no power to legislate beyond its jurisdiction. If the laws of the United States do not regulate this immense traffic, then the people of the country are without redress, and as the common law is not in force in the United States for punishment of common law crimes, such contracts, combinations and conspiracies, monopolizing and restraining this vast volume of inter-state and international business, and resulting in hardship and oppression to the people, must necessarily have been uncontrolled and the people without a remedy in the courts of the country, either state or federal, until Congress should pass proper acts controlling, restraining and prohibiting such contracts, combinations and conspiracies in restraint of this inter-state and international trade and commerce. Such was the situation which confronted the people of the United States in their battle against the organization of gigantic trusts and monopoly. The action of the states was limited to the trusts formed within their own jurisdictions and their legislation upon the subject was of but little aid or help until the national legislature should co-operate with them in the war against the fast forming and ever growing trust. It was to aid the people of the United States, to meet and cope with this condition of affairs, and to pre-

vent the formation and development of these monopolies of inter-state commerce, and to render adequate protection to the people, that the law of July 2, 1890, was passed.

The Word "Conspiracy" does not Extend Scope of Act.

Judge Woods in his opinion in this case makes a labored argument with reference to the subjects embraced within the provisions of this act, and especially with reference to the scope given to its provisions by the use of the word *conspiracy* in the first section of the act. It seemed to be the opinion of the lower court that the use of the word *conspiracy* made the act much broader in its intent and purposes than if the word had not been used, and that the scope of the provisions of the act by the use of that word brought combinations and conspiracies of working men under and within the intent of the act. The court states that by reason of the use of the word *conspiracy* the act covers more than combinations of a mere contractual character. We think that the attempt to broaden the scope of the act by such an interpretation of the use of the word *conspiracy* is not warranted by a review of the common law cases, and we assert, on the contrary that the use of the word *conspiracy* by the legislature, meant no more than such combinations as may be formed for the purpose and design of engrossing and monopolizing the market, as we have claimed in the preceding part of this brief.

The ownership and control of great enterprises and large amounts of property may be the subject of conspiracy. The statute makes both contracts and conspiracies in restraint of trade unlawful. Those contracts made by large commercial institutions and corporations engaged in trade and commerce whereby they combine for the purpose of controlling production and imposing artificial restraints upon trade are contracts in restraint of trade. The coming together of men and the agreement of men together, the confederating together to form pools and trusts, the planning and conniving of merchants and transportation princes for the purpose of controlling trade and commerce, of enhancing prices of limiting productions, these are conspiracies in restraint of trade and commerce.

The common law has over and over again characterized such confederations, combinations and schemings of the controllers of property and commerce as conspiracies in restraint of trade. It is not necessary to go beyond the plain obvious provisions of this statute, beyond what Congress clearly had in mind at the time of the passage of this statute, to ignore all the history that led up to the enactment of this law for the sake of finding some especial use for the word conspiracy that has for hundreds of years been used in the very sense which Congress plainly intended by the passage of this act.

In framing a law to meet such contracts and combinations, the word *conspiracy* would necessarily and naturally be used by the legislature by reason of the previous use of the word by the courts with reference to just such contracts and combinations in restraint of trade, which use dates back as early as the year 1676, when combinations in restraint of trade by reason of the engrossing and monopolizing of the market were declared to be *conspiracies*, and that therefore the use of the word *con-*

spiracy does not broaden and extend the act to include any other combinations than those formed for the purpose of monopolizing the market. We will see from these cases that courts, from the earliest times, have used the word *conspiracy* in conjunction with the words "contract" and "combination" in denominating such monopolies, and therefore the framers of the act, taking cognizance of and being bound by the common law use of words, properly and rightly used the word *conspiracy* in this act for no other purpose or intent. In the case of *Rex* v. *Sterling et al., brewers*, 1 Keble, 650 (1676), it is said: "Every *conspiracy* to raise the price of pep-"per is punishable, or any other merchandise." In an analogous case in 12 Modern, page 248 (1693), "leave "was granted to file an information against several plate "button makers for combining by covenants not to sell "under a set rate. It is fit that all confederacies by "those of a trade, to raise their rates should be sup-"pressed."

Again, in the case of *King* v. *Norris*, 2 Kenyon 300 (1758), leave was given to file an information against the defendants, who were separate proprietors of salt works in Droitwich for a *conspiracy* to raise the price of salt, and in that case Lord MANSFIELD declared that, "If any "agreement was made to fix the price of salt or any other "necessity of life (which salt emphatically was) by people "dealing in that commodity, the court would be glad to "lay hold of an opportunity * * * to show their "sense of the crime * * * for all such agreements "* * * * ought to be discountenanced."

Wharton, in his work on Criminal Law, Vol. 2, Section 1851, refering to forestalling, regrating and engrossing of the markets, says: "Questions of this kind have usually

"come before the courts on indictment for *conspiracy*, for "it is by *conspiracy* that extortions of this kind are gen-"erally wrought."

AGNUS, J., in delivering the opinion of the court in the case of the *Morris Run Coal Company* v. *Barclay Coal Company*, 68 Pa. State, 173-186, referring to the contract in the case, which was a contract in restraint of trade made between five coal companies to control the price and production of coal, said, "Such a combination "is more than a contract, it is an offense." And again, "Every 'corner,' in the language of the day, whether it "be to affect the price of articles of commerce, such as "bread stuffs, or the price of vendible stocks, when ac-"complished by confederation to raise or depress the "price and operate the markets, is a *conspiracy*. The "ruin often spread abroad by these heartless *conspiracies* "is indescribable, frequently filling the land with starv-"ation, poverty and woe."

In the case of *Hooker* v. *Vandewater*, in 4 Denio Report, 352, the case wherein the proprietors of five several lines of boats engaged in the business of transporting passengers and freight on the Erie and Oswego canals, entered into an agreement among themselves to run for the remainder of the season of navigation at certain rates for freight and passengers then agreed upon * * * and to divide the net earnings among themselves according to certain proportions fixed in the articles, the court said: "The "object of this combination was obviously to destroy com-"petition between the several lines of the business en-"gaged in. It was a *conspiracy* between the individuals "contracting to prevent a free competition among them-"selves in the business of transporting merchandise, "property and passengers upon the public canals."

In Wright on Conspiracy, page 180, the case of *Keene v. Poole & Kent Co.*, a case is mentioned wherein Judge DANIELS, of the Supreme Court of New York, said, "The "law will not permit parties owning property and con- "templating the purchase and sale of more of it, to com- "bine together to keep it off the market, and in that "manner to oblige the public to pay a larger price for "the article than it would otherwise secure. Such a "combination is an unlawful *conspiracy*, punishable as "a crime."

In Ray on Contractual Limitations, it is said, on page 309: "Any agreement between large operators in any "article to combine to thus rule the market and obtain "exorbitant prices, is an unlawful *conspiracy* against "trade, and void."

From the above cases it appears that the word "con- "spiracy" has been used by the courts in conjunction and in connection with the words "contract" and "combination" in denominating and denouncing combinations and contracts in restraint of trade in the form of trust or other contractual nature. Was the use of the word conspiracy by the courts in those cases tautology, the same use runs from the earliest reports down to today? Was the language of the Supreme court of New York useless when it said, "Such a combination is an un- "lawful *conspiracy*, punishable as a crime"? We think that such can not be claimed. The legislature is presumed to know the law and to use words in the meaning given to them by the law. Would any legislature framing an act to prevent monopolies, and to declare illegal contracts and combinations in restraint of trade which were made for the purpose of engrossing, forestalling and

regrating the market, leave out of their act the word *conspiracy*, when the courts themselves when referring to such contracts and combinations had invariably denominated them conspiracies? We therefore see that the use of the word *conspiracy* in this act when referred to in the light of a law which existed and was laid down by the courts prior to its passage, was quite proper and essential as against contracts and combinations to monopolize, and can not be taken to extend the meaning of the act to any other contracts or combinations. That the original purpose of the act was to cover cases of trust and other monopolies and combinations of capital has been repeatedly admitted by all the courts that have construed the act. Such intention is to be gathered from the history of the times when the act was passed, and from the debates on the bill in Congress, showing the history of the evil aimed at, and it is shown above that the use of the word "conspiracy" does not, and can not be taken to extend the act to any further or other object than the original purpose of the act. The court then in considering the intent of this act will find both from the history of the times in which the act was passed and from the terms of the act itself that it was aimed at contracts, combinations and conspiracies to monopolize trade and commerce between the states.

THE MEANING OF THE WORD "CONSPIRACY" WILL BE RESTRAINED IF NECESSARY.

Suppose for the moment, and for the purpose of the present discussion, that we leave out of our consideration the use of the word conspiracy by the courts as above, and only consider, as above

shown, that the intention of the legislature in passing this act, as derived from the history of the times in which it was passed, clearly shows that the act was aimed at the trusts, contracts and combinations in restraint of trade for the purpose of monopolizing the same. The courts will so construe the words of the act as to confine them to such purpose, and will not enlarge or construe the word as meaning anything else than such purpose and intention of the legislature.

In Sutherland on Statutory Construction, Sec. 219, page 290, it is said:

" The application of the words of a single provision may be enlarged or restrained to bring the operation of the act within the intention of the legislature, when violence will not be done by such interpretation to the language of the statute."

Again, in the case of *Maxwell* v. *Collins*, 8 Ind., 40, it is said:

" It is a well settled rule of interpretation of statutes that the application of the words of a single statute may be enlarged or restrained to bring the operation of the act within the intention of the legislature, when violence will not be done by such interpretation to the language of the statute."

In the case of *Pope* v. *Doherty*, 2 De G. & J. Reports, 623, an English court said: " * * * but it is not be- " cause general words are used in an act of parliament, " every case which falls within the words is to be gov- " erned by the act. It is the duty of courts of justice so " to construe the words as to carry into effect the mean- " ing and intention of the legislature."

Hawkins v. *Ghaercole*, 6 De G. M. & G., 1–22, the court said: " * * * we have, therefore, to consider " not merely the words of the act of parliament, but the

" intent of the legislature to be collected from the cause " and necessity of the act being made, from a compari- " son of its several parts, and from foreign (meaning ex- " traneous) circumstances so far as they can justly be " considered to throw light upon the subject." And again, " but in construing acts of parliament the words " which are used are not alone to be regarded. Regard " must also be had to the intent and meaning of the " legislature." Again, referring to the case of *Stradling* v. *Morgan*, they quote the following: " That the judges " of the law in all times past have so far perused the " intent of the makers of the statute that they have ex- " pounded acts which were general in words to be but " particular where the intent was particular." Further on they quote, " statutes which comprehend all things " in the letter, they have expounded to extend to but some " things," and " those which include every person in the " letter they have adjudged to reach to some persons " only, which expositions have always been founded upon " the intent of the legislature, which they have collected " * * * by considering the cause and necessity of " making the act * * * so that they have ever " been guided by the intent of the legislature."

Sutherland on Construction of Statutes, Sec. 219, page 290, says: " The true meaning of any clause or pro- " vision is that which best accords with the subject and " general purpose of the act."

In the *Eureka case*, 4 Sawyer, 302-317, Mr. Justice FIELD said: " Instances without number exist where the " meaning of words in the statutes has been enlarged or " restricted and qualified to carry out the intention of the " legislature. The inquiry, when any uncertainty exists, " always is as to what the legislature intended. When " that is ascertained it controls."

All this is but the statement of an elementary rule, that a thing which is within the letter of a law is not within the law, unless it is also within the meaning of the law. One purpose of the construction and interpretation of the statutes is, as we have before argued, to get at the meaning and intention of the legislature, and we think that in doing that in this case no other construction or interpretation can be placed upon the act of July 2, 1890, than the one for which we have contended.

THE OBJECT AND INTENTION OF CONSPIRACY GOVERN.

It is plain from the whole language of this statute, from the history of the time, and from the previous state of the common law that what was aimed at was such combinations, conspiracies and restraints of trade as tended to raise prices, control commerce and through this generally to injure the public. It was not intended by this statute in any way to settle questions between contending forces, or even to affect insurrections, riots or mobs. It was intended to protect the public, and to protect them against such things as tended to injure them by raising prices, controlling commerce, or thwarting the great natural laws of supply and demand, which have ever been considered by the courts and economists as salutary and necessary forces in industrial and commercial life. It must also have been meant that any damage to the public by reason of interference with prices, and the laws of supply and demand must be permanent in its nature, must be a damage clearly contemplated, must grow out of some act whose purpose was to affect the public by raising prices, and by controlling the

laws of supply and demand. It could not be sufficient that this should accidentally follow from some cause entirely foreign from the result, from some act which was clearly directed to some other purpose, and not the purpose of raising the prices of commodities and thus injuring the general public.

In the case of the *U. S.* v. *Knight*, recently decided by this court, Chief Justice FULLER, delivering the opinion of the court, uses the following language:

"Contracts, combinations or conspiracies to control domestic enterprises in manufacturing, agricultural mining, production in all its forms, or to raise or lower prices or wages might unquestionably tend to restrain external as well as domestic trade, but the restraint would be an indirect result, however inevitable and whatever its extent. And such result would not necessarily determine the object of the contract, combination or conspiracy."

Nothing can be plainer than that the acts complained of in this information, and this bill were not acts for the purpose of raising prices or interferring with the natural law of demand and supply.

Judge WOODS uses an illustration by which he seeks to show that a combination of capitalists might resort to the same means, and would therefore fall under the provisions of this act. In his opinion he uses the following language: "If, for example, the manufacture of "other sleeping cars in their own interests should enlist "the brakemen and switchmen, or other employes of the "railroads, either individually or in associated bodies, in a "conspiracy to prevent or restrain the use of Pullman "sleepers by refusing to move them, by secretly uncoupling "or by other elusive means, the monopolistic character of "the conspiracy would be so evident that even under the

"theory that the statute is aimed at contracts or com-
"binations intended to engross or monopolize the mar-
"ket, it would be agreed that the offense ought to be
"punishable. But in such a case, if the officers or agents
"of the car companies, who might or might not be capi-
"talists, would be individually responsible for violating
"the statute, upon what principle could the brakemen
"or switchmen be exempt."

In view of this illustration it seems really remarkable that Judge Woods could have missed the point of this case. In the example he puts, the object would clearly be the monopolization of trade, the attempt on the part of a rival company to monopolize all the trade to itself. If this were the clear intent and purpose of the conspiracy used as an illustration, it ought plainly to fall under the provisions of this act. If the workmen embarked in that conspiracy for the purpose of monopolizing the carrying trade to some other company, they might be guilty under this statute. If they were simply the tools and instruments, without knowing the purpose, they could then be engaged in no conspiracy to monopolize trade or commerce. Under the illustration of Judge Woods the whole gist of the conspiracy is to monopolize trade. The means have nothing whatever to do with the affair. Under the case made by this information there is plainly no such intent. The acts complained of were not made for the purpose of monopolizing trade to any corporation or to any individual. They were simply made in a general contest between the labor organization on the one side and the Pullman Company upon the other, for the purpose of effecting a settlement of the Pullman strike, not made and not claimed to be made for the purpose of monopolizing the trade or commerce of the country.

Decisions Construing Anti-Trust Law.

Before the strike of last summer, out of which these proceedings grew, the application of this law had been twice called in question, once in a Circuit and once in a District court of the United States.

The first time this question was passed upon, so far as we are informed, was in the opinion rendered in *United States* v. *Patterson*, February 28, 1893, and reported in the 55th Fed. Rep., 605, 640. This case was exhaustively argued and seems to have been better considered than any of the subsequent cases. It was also passed upon when there was no great public excitement, and in a judicial atmosphere where no possible considerations except the plain considerations of the case and the law would be liable to have any influence, however indirect, upon the court. The arguments in this case, as shown in the report, were very exhaustive, and we call the attention of the court to the able argument of Mr. H. W. Chaplin, who represented the defendants in in the case. In passing upon the applicability of this statute, Judge Putnam, United States Circuit Judge, defined its scope and application in such a way as to plainly exclude any such application as was made in this case. The following language used by the judge in that opinion, seems to us to plainly define the application of the law:

"I think it is useful to analyze the statute. Separating it into parts, we have: First, contract in restraint of trade; secondly, combination in restraint of trade; and, third, conspiracy in restraint of trade. There can be no question that the second and third parts, as thus put, receive their color from the first. Moreover, it is important to note the rule that this whole statute must be taken together. The second section is limited by its

terms to monopolies, and evidently has as its basis the engrossing or controlling of the market. The first section is undoubtedly in *pari materia*, and so has, as its basis, the engrossing or control of the market, or lines of trade. The sixth section also leads in the same direction, because it provides for the forfeiture of property acquired pursuant to the conspiracy. Undoubtedly the word 'conspiracy' in that section has reference to the same subject-matter as in the first. If the intention of the statute was that claimed by the United States, I think the natural phraseology would have been 'to injure trade,' 'to restrain trade.'

We are now at the point where the paths separate. Careless or inapt construction of the statute as bearing on this case, while it seems to me to create but a small divergence here, will, if followed out logically, extend into very large fields; because, if the proposition made by the United States is taken with its full force, the inevitable result will be that the federal courts will be compelled to apply this statute to all attempts to restrain commerce among the states, or commerce with foreign nations, by strikes or boycotts, and by every method of interference by the 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. Therefore I conclude that there must be alleged in the indictment that there was a purpose to restrain trade as implied in the common law expression 'contract in restraint of trade' analogous to the word 'monopolies' in the second section. I think this is the basis of the statute. It must appear somewhere in the indictment that there was a conspiracy in restrain of trade by engrossing or monopolizing or grasping the market, and it is not sufficient simply to allege a purpose to drive certain competitors out of the field by violence, annoyance, intimidation or otherwise."

The next time this statute was construed was on March 25, 1893, in an opinion by Judge Billings, a district judge, then sitting in New Orleans. This opinion reported in

54 Fed. Rep., 994, we submit does not show the same consideration of the case nor the same careful research as the one quoted above. Without any effort to reason in relation to the proper construction of this statute or what was intended to be covered by the act; the court still holds that a strike of a labor organization was meant to be included within the province of the statute. This decision has since been sustained by the Court of Appeals, but without going into the reasons which influenced the opinion of the court. We submit that this decision throws no light whatever upon the construction of this act and can in no wise guide the court in their labors in this case.

Since the inauguration of the strike and growing out of the same form of injunction used in this case, and moved from a common center, four United States judges have construed this act as applicable to labor organizations. These four judges were all of them passing upon this same question, upon this same strike, upon this same bill and under exactly the same circumstances and conditions during the strike of July last. Judge Barker, District Judge, sitting at Indianapolis; Judge Taft, Circuit Judge, sitting at Cincinnati; Judge Phillips, District Judge, sitting at St. Louis, and Judge Woods, who made the order in this case. This proceeding is, to all intents and purposes, brought to challenge the correctness of the decision of all of these judges, growing out of the same act, and we believe will be so construed by this court. Judge Taft, in passing upon this case (62 Fed. Rep., 803, the case entitled *Thomas* v. *Cincinnati, N. O. & T. P. R'y Co., in re Phelan*) was not called upon to pass upon the applicability of this statute. That case was brought as a contempt proceeding for interfering with a railroad in the hands of a receiver and the juris-

diction was upheld upon that point; but Judge Taft, after upholding this jurisdiction was pleased to go further and hold that the acts complained of were also in violation of the statute of 1890, giving as authority the order of Judges Woods, Allen and Grosscup, in issuing the injunction complained of in this case. Here, as in the case of Billings, Judge, no effort is made to show the applicability of this statute. It was not brought in question nor necessary to the decision of this case, but in view of the injunction complained of in this proceeding having been issued by Judge Woods, it was thought desirable to hold that this statute was applicable to the case and to disapprove of the decision of Judge Putnam.

On October 24, 1894, District Judge Phillips in the case of *U. S.* v. *Elliott* also held that this statute was applicable to this case. The case herein cited is reported in 64 Fed. Rep., No. 1, page 27. This also arose from the same strike and was decided after the injunction issued in this case and after the opinion of Judge Taft. We submit that the reasoning presented in this case is nither satisfactory nor judicial, and the most of what is said can have no application to the bearing of this law upon the subject-matter and can throw very little light upon this subject to aid the cause and the same remarks will apply to the decision of Judge Baker. While we do not mean to intimate that these four opinions growing out of the strike of last summer were brought about by the state of the public mind, we still believe it fair to call the attention of the court to the fact that all of these injunctions were issued at a time of great public excitement, all growing out of the same strike, none of them in keeping with the commonly established precedents and

the well settled and recognized principles of chancery and each of them plainly connected with the others. It is too much to presume that the environment of the day and the agitation of the public mind has no influence whatever over judges when the same condition seriously influences all other citizens. It is well that these decisions announcing novel doctrines of law should be thus early brought before this court for review, and we have no doubt but what this court, recognizing the vast importance of the question involved, the great interest, direct and personal, to hundreds of thousands of men, members of labor organizations, will consider this largely as an original question which should be settled in the light of well-established principles and with a full view of the industrial and social conditions of the present.

In the case of the *U. S.* v. *Knight*, recently passed upon by this court, this act of 1890 was construed as it affected what is known as the Sugar Trust. While of course the case involved was not like the case at bar, still the opinion contains observations of the court which would seem are clearly in keeping with what we conceive to be the true construction of this act.

In that case a bill was filed under this act for the purporpose of having certain agreements canceled, by which stock was transferred, the redelivery of the stock to the parties respectively, and an injunction against further performance of the agreement and further violation of the act, to use the language of the court: "The bill "charged that the contracts under which these purchases "were made, *constituted combinations in restraint of trade*, "and that in entering into them defendants *combined and* "*conspired to restrain* the trade and commerce in re-"fined sugar among the several states and with foreign

" nations, contrary to the act of July 2, 1890." In that case it was said, with reference to the act: " It was in " the light of well settled principles that the act of July " 2, 1890, was framed."

* * * * *

" What the law struck at was *combinations, con-* " *tracts and conspiracies to monopolize trade and* " *commerce among the several states or with foreign* " *nations* " and all through the opinion the act is referred to as one to prevent monopolies, and the word " monop- " olies" and the phraze " in restraint of trade" are apparently used interchangeably and as meaning the same thing.

To us it seems that the bill was undoubtedly intended to be filed under the act considered as a whole, and not under any special construction. Such appears to us to be the understanding of the court in deciding the case, and consequently the above construction of the intention of the legislature in passing the act was made of the act as a whole, and not of a portion or section thereof. But if it was filed under any section thereof, and not under the whole act, it must have been filed under the first section, because the bill filed has set out that the purchase of the stock, etc., was " for the purpose of restrain- " ing trade thereof with other states," and again, as before quoted, " The bill charged that the contracts under " which these purchases were made constituted a combina- " tion in restraint of trade, and that in entering into " them defendants combined and conspired to restrain the trade and commerce in refined sugar among the var- " ious states and with foreign nations." Section 1 is the only section which refers to contracts, combinations and conspiracies in restraint of trade, so that it would seem

that the bill, if not filed under the entire act, was filed under the first section; so that in either case the construction of the court of the intention of the legislature in passing the act, either extends to the whole act, as it would seem, or construes the intention of the legislature in passing Section 1 of the act, in either of which cases the construction prevents its application to the defendants, for Section 1 is the only section could under any possibility apply to them and it has never been claimed that the so-called and alleged conspiracy of the defendants was " a combination, " contract or conspiracy to monopolize trade or com- " merce among the states or with foreign nations." And Justice HARLAN, in his dissenting opinion in the same case, referring to the act, says: " It does not strike at " the manufacture of simple articles that are legitimate " or recognized subjects of commerce, but at combina- " tions that unduly restrain because they monopolize the " buying and selling of articles which are to go into inter- " state commerce." It seems to us, although the above construction of the act was made in a case where monopoly was claimed, still, that the construction of the intent of the legislature is full and complete.

We submit that the positions herein taken are correct, and we respectfully contend that the Anti-trust act of July 2, 1890, does not apply to the petitions and gave no jurisdiction to the lower court to entertain the bill filed in this case, and consequently no contempt of court can be charged against petitioners for a violation of the injunction issued in the case unless the jurisdiction of the court to entertain the bill can be sustained on other grounds.

II.

THE INFORMATION CHARGED NO ACTS WHICH ARE ILLEGAL, OR WHICH COURTS HAVE THE RIGHT TO ENJOIN, EVEN IF JURISDICTION WERE ASSUMED, AND LACKS PROPER VERIFICATION.

In contempt proceedings it is necessary that an affidavit, or its equivalent, be filed, in order to give the court jurisdiction. An affidavit is jurisdictional. Without a sufficient affidavit a court is without jurisdiction to proceed. To sustain this position we refer to the following authorities:

Wyatt v. *People*, 28 Pac. (Colo.), 964.
State v. *Sweetland*, 54 N. W. (S. D.), 415.
Batchelder v. *Moore*, 42 Cal., 412.
Wilson v. *Territory*, 1 Wyo., 155.
Thomas v. *People*, 14 Colo., 254.
Ludden v. *State*, 48 N. W. (Neb.), 61.
People v. *Murphy*, 1 Daly (N. Y.), 467.
Young v. *Cannon*, 2 Utah, 56.
State v. *Blackwell*, 10 S. C., 35.
State v. *Hawthorn*, 26 Pac., 937.
State v. *Vincent*, 26 Pac., 939.
In re Nickell, 28 Pac., 1077.

In *Wyatt* v. *People*, 28 Pac. (Colo.), 964, it is said:

"A little contrariety of opinion exists as to whether the warrant of commitment or the order of court must recite the jurisdictional facts. But the overwhelming weight of authority sustains the proposition that the affidavit upon which the proceedings for a constructive contempt are based must state facts which, if established, would constitute an offense, and that if the allegations of the affidavit are not sufficient in this respect, the court is without jurisdiction to proceed: Rap. on Contempt, Sec. 93 and 94, and

cases cited; *Mullen* v. *People*, *supra*; *Thomas* v. *People*, *supra*; *Cooper* v. *People*, *supra*; *Wilson* v. *Territory*, 1 Wyo., 155; *Ex parte Peck*, 3 Blatch., 113; *McConnell* v. *State*, 46 Ind., 298; *Phillips* v. *Welch*, 12 Nev., 158; *Gandy* v. *State*, *supra*; *Batchelder* v. *Moore*, 42 Cal., 412.

Some of the opinions above cited refer the authority for the affidavit to statutes similar to Section 322 of our Civil Code (Colorado), *but the statutes mentioned, and others of like tenor, are simply declaratory in this particular of what may fairly be termed the modern common law practice, and the rule concerning the materiality of the affidavit should prevail to the same extent, in the absence of statute.* * * * *The position of these authorities, which hold that when the contempt is constructive the affidavits must show the offense, commends itself with irresistible force.*"

This view was further substantiated by the case of *State* v. *Sweetland*, *supra*, which was a proceeding for contempt, and in which the court said:

"The affidavit upon which the proceedings for constructive contempt are based must state facts which, if established, would constitute an offense over which the court has jurisdiction. * * * *The affidavit then, being jurisdictional in its nature, and no presumptions being permissible to sustain it, should clearly show a state of facts that gives the court jurisdiction over the contempt proceedings.*"

In *People* v. *Murphy*, *supra*, Judge DALY said:

"When the misconduct is not committed in the presence of the court, the statute requires due proof by affidavit of the facts charged. *This is requisite to give the court jurisdiction to act in the matter of a contempt alleged to have been committed out of its presence, and without this a court has no authority to order a person to be arrested and brought before it, and to adjudge upon the matter of the alleged contempt.* This was the law before the Revised Statutes were passed."

In *State* v. *Blackwell*, 10 S. C., 35, the court in a case of constructive contempt, used the following language:

"The rule to show cause appears to have been made without affidavits. This is a material objection. All parties charged otherwise than by the oath of the grand jury with contempts other than those committed in the presence of the court, are intitled to have the matters charged stated under oath, the penalties for false swearing being regarded as a safeguard to the liberties of the citizen."

Other authorities might be dwelt upon at length to further illustrate the doctrine that the affidavit is jurisdictional aud absolutely necessary, but in view of the foregoing, we deem it unnecessary. A question might arise here as to the fact that the affidavit in this instance is supplied by an information or bill by the district attorney, but that this does not dispense with the requirements incident to the affidavit, and that such information must be sworn to and must have all of the requisites of such affidavit is expressly decided by the well known case of *Thomas* v. *People*, 14 Colo., 254, where, in a proceeding for constructive contempt, the court said:

"In the absence of the affidavit the court is without the legal information necessary to warrant the issuance of the attachment. The judge can not act upon mere hearsay statements. Knowledge must be brought home to him by the means prescribed by statute. The statement of facts upon which the court may proceed, must be verified by an oath. An information is not an affidavit, and can not be substituted for an affidavit unless it is duly verified. The report of the committee appointed in this case could by no means perform the office of the affidavit. So far as this proceeding is concerned, the appointment of the committee and its action were extra judicial. It may not be improper to initiate a proceeding to punish for a constructive contempt by information. The affidavit will still be necessary, however, unless the

information contains a statement of the facts and circumstances constituting the contempt. *In such case, the information simply performs the office of the affidavit prescribed by statute. As the affidavit must of necessity be sworn to, it is clear that the information must be verified. In the absence of verification, it is insufficient and confers no jurisdiction upon the court to issue the attachment.*"

As we have seen by several authorities, the statute referred to is declaratory of the common law, and at common law an affidavit is necessary, and hence the same rule applies to the information in this case.

With these observations as to the nature of the proceeding we will now examine the affidavit or information, whatever it may be, and we shall at this point treat of what appear to us to be material objections thereto, viz:

I. That such information is not properly verified, and

II. That such information does not state sufficient facts to give the court power or jurisdiction to entertain contempt proceedings.

The Information is not Verified.

In treating of this subject we shall divide it into two heads:

First. That such information or bill is not verified, and

Second. That even if it were verified, such verification is insufficient.

The certificate of the verification reads as follows:

"Subscribed and sworn to before me, this 17th day of July, A. D. 1894. G. W. Burnham, *Clerk*."

The point of our contention is that a clerk has no authority to take an affidavit. It will be noticed that there is nothing connected with the certificate of verification to identify G. W. Burnham as the clerk of the federal court, or of any court whatsoever, and that there is no seal of any court attached to the certificate or the verification.

In *Robinson* v. *Gregg*, 57 Fed. Rep., 187, it is said:

"The next objection is to the certificate of the verification [which is to an answer filed in the federal court]. It purports to be taken before the clerk of the United States Circuit court of the Eastern District of North Carolina, and is signed in the name of the clerk, by his deputy. *Grave doubts are entertained as to the power of the clerk of the Circuit court of the United States to administer oaths generally; that is to say, in matters wholly disconnected with their courts and the business thereof. No express authority can be found for it.*"

There is nothing in the statutes granting to such clerks any power to take affidavits or administer oaths generally; their powers are limited. The statutes of the United States specify the particular instances in which clerks of court may take oaths, and this case is not included in such specification. They also specify what persons may take affidavits, and clerks of courts are not included therein. These facts sustain us, we believe, in our view that the clerk is not authorized to take such certificate.

In *Haight* v. *Prop. of Morris Aqueduct*, 4 Wash. (C. C.), 601–606, Judge WASHINGTON said:

"I shall now proceed to consider the case which the answer presents, disregarding altogether the affidavits taken to support it, *as they were taken not before one of the judges of this court, or one of the commissioners*

appointed by this court to take affidavits, but by a person unauthorized by any act of Congress to perform this duty."

No presumption can be sustained that the clerk took this affidavit in the presence of the court, and by its direction. Such does not appear on the face of the affidavit, and such we believe was not the case. An affidavit in a proceeding of this kind should be strictly construed.

"The power of the court to punish for an alleged contempt of its authority, though undoubted, is in its nature arbitrary, and its exercise is not to be upheld, *except under the circumstances and in the manner prescribed by law. It is essential for the validity of proceedings in contempt, subjecting a party to fine and imprisonment, that they show a case in point of jurisdiction within the provisions of the law by which such proceeding is authorized; for mere presumptions or intendments are not to be indulged in their support.*"

Batchelder v. *Moore*, 42 Cal., 415.

State v. *Sweetland*, 54 N. W. (S. D.), 415.

Second. Even if it were verified, such verification would be insufficient.

The affidavit is as follows;

"Thomas E. Milchrist, being duly sworn, deposes and swears that he is the United Statcs District Attorney for the Northern District of Illinois. That he has read the foregoing information and knows the contents thereof, and that the same is true in substance and in fact, as he verily believes."

This affidavit is insufficient. It does not set forth the fact that the affiant has witnessed the alleged acts of the defendants constituting the contempt, or that he *knows them to be true*, but simply that he *believes them to be true*. There is no excuse offered as to why such verification is not made on positive knowledge, and why it is simply made on the belief of the affiant.

In re Johnson, 3 Blatch., 148, the following language is used by the court:

"It is a cardinal principle in relation to the summary and imperative proceedings by the attachment, that that writ will not be granted unless a case of clear contempt be established. When the contempt is not committed *in facie curia*, it must be proved by affidavit from persons who witnessed it. 7 Danl. Dig., 307-8."

In *Ludden* v. *State*, 48 N. W. (Neb.), 63, Judge MAXWELL, said:

"A proceeding in contempt for acts not committed in the presence of the court, is instituted by filing an information under oath, stating the facts constituting the alleged contempt. *Gandy* v. *State*, 13 Neb., 446; *People* v. *Nevins*, 1 Hill., 154; *People* v. *Wilson*, 64 Ill., 195; *Worlan* v. *State*, 82 Ind., 49; *Rex* v. *Beardmore*, 2 Burr., 792; *Cartwright's Case*, 114 Mass., 230; *Neal* v. *State*, 9 Ark., 259; *Bishop on Dir. & Forms*, Sec. 317. The charge must be direct that the party has committed the act complained of. In all matters based on the oath of a party charging another with the commission of an offense, by which he may be deprived of his liberty, the charge must be specific and direct; mere hearsay will not do. The affidavit in this case, therefore, is insufficient."

In the case of *State* v. *Blackwell*, 10 S. C., 35, heretofore cited, it was said that the statement of the matters charged under oath was necessary, as the penalties for false swearing were regarded as a safeguard to the liberties of the citizen.

In such a verification as the one under consideration, there could manifestly for all practical purposes be no punishment whatsoever for false swearing, inasmuch as the whole verification is based upon the party's belief, and such a verification as this would defeat the whole object of the affidavit, and would overthrow every safeguard to the liberty of the citizen.

In *Batchelder* v. *Moore*, 42 Cal., 413, it was said:

"If there be no affidavit presented, there is nothing to set the power of the court in motion, and if the affidavit as presented be one, which upon its face fails to state the substantive facts, which in a point of law do or might constitute a contempt on the part of the accused, the same result must follow, for there is no distinction in such a case between the utter absence of an affidavit and the presentation of one which is defective in substance in stating the facts constituting the alleged contempt."

Since such information or affidavit is jurisdictional, and since, as we have heretofore shown, such information is defective and equivalent to no information at all, in the light of the foregoing it would seem that no question could arise but that the whole proceeding is absolutely void.

THE INFORMATION DOES NOT STATE SUFFICIENT FACTS TO GIVE THE COURT POWER OR JURISDICTION TO ENTERTAIN CONTEMPT PROCEEDINGS.

There is nothing in the information which shows that a court of equity has jurisdiction to entertain these proceedings; since the information or affidavit is jurisdictional in its nature, and must set forth the facts which constitute the contempt in a clear and succinct manner, and state facts sufficient to give the court jurisdiction, it is manifest that unless the information shows on its face a cause of action against these defendants, that the whole proceedings are void, inasmuch as the federal court would be without jurisdiction to proceed.

In order to ascertain what was prohibited by the injunction order in this case, we submit the following brief propositions as covering the particular points covered by the injunction.

1. Enjoins any interference with inter-state business of the railroads.

2. With rolling stock, structures and other property of the roads.

3. From using force and persuasion, etc., to induce employes to neglect duty.

4. From using force, etc., to induce employes to leave service of the roads.

5. From using force, etc., to induce persons not to enter the service of the roads.

6. From doing any act in furtherance of a combination or conspiracy to interfere with interstate commerce on the roads.

7. From ordering, aiding, abetting, etc., any person to commit any of the above acts.

In accordance with the familiar rules of construction, the specific acts enjoined must control over the general orders; which virtually makes the injunction restrain against the commission of any of the acts set forth *by violent* or *unlawful means*. If it should be held that the injunction was broader than here interpreted, it is then insisted that the court had no lawful right to make such order and was wholly without jurisdiction in the premises.

Upon examination of the information for contempt we find that in substance it is as follows:

1st. It alleges the filing of the information and issuance of the writ of injunction.

2d. The service of the writ of injunction.

3d. It informs the court of the organization of local unions of the American Railway Union, and

alleges that the defendant, Debs, sent telegrams to the same, and incorporates them for the purpose of showing that defendants, notwithstanding the order of court and in direct and open violation thereof, ordered employes of certain foreign roads to leave the service of said railway companies in a body, and thereby hinder, delay and prevent said railway companies in the discharge of their duties to the public, and especially in the discharge of their duties in reference to the carriage of the mails and carriage of inter-state commerce.

4th. It alleges that Debs sent such telegrams after service of said writ with the approval of the other defendants; that in pursuance of said orders and directions many of the employes were induced to leave the service of said railway companies, and that the so-called railway strikes prevailed generally, hindering, delaying and preventing the transportation of United States mails and inter-state commerce for several days.

5th. It further alleges that as a direct *result* of such orders there was exercised upon some of said lines on the part of many of the strikers and ex-employes, intimidation and open violence; that employes refusing to strike or taking the place of strikers were driven from their posts by violence or threats. That the passage of trains carrying inter-state commerce and mails was prevented. That assaults were made on engines, cars and tracks. That there was a massing of mobs, burning of cars carrying inter-state commerce, wrecking of signal towers, etc., and that employes refusing to obey and remaining faithful to their posts were assaulted, arrested and confined.

6th. It alleges that defendants had full knowledge of prior violence of strikers, and that the orders were issued notwithstanding such knowledge, and knowledge that violence invariably follows all strikes.

7th. It alleges that said strikes were ordered to unlawfully and wrongfully establish a boycott against Pullman palace cars.

8th. It alleges that the defendants have full power to order strikes and boycotts, and to discontinue the same, as shown by letters and the action of the Pan Handle yard men.

9th. It sets forth the publication of an interview in the *Chicago Herald* and the allegation that it appears from the foregoing that they are in contempt, and that the defendant Debs threatens to form local unions and to order strikes, etc.

Such is the scope of the information, which, as heretofore stated, must set forth facts sufficient to constitute contempt, in order that the court may have jurisdiction to punish.

Counsel for the United States are to be congratulated upon their masterly effort to conceal the weakness of their information by the thick veil of irrelevant matter and prejudice which they have tried to throw over the point in issue. This is not a trial for conspiracy, nor are the defendants on trial for a crime, unless contempt constitutes a crime. They are not tried for the result of their actions, but for the acts themselves. The only question involved in this proceeding is whether the defendants are charged with disobedience of a lawful order of a court possessed of competent jurisdiction. If they are the court had jurisdiction to punish for contempt,

otherwise they should be discharged. They can be punished for the *fact* of disobedience and not the results of such disobedience, no matter how serious they may have been.

In the trial of the contempt cases growing out of a violation of an injunction somewhat similar in nature, in the case of *in re Phelan*, 62 Fed. Rep., 803, and on the trial of this case, *U. S.* v. *Debs*, 64 Fed. Rep., 724, the courts seem to take a truly remarkable view of what constitutes contempt. They do not dwell upon the acts themselves which constitute contempt, but they seek to punish the defendant for the result of such acts. We believe that such views are wholly without precedent, and entirely contrary to the very nature of a contempt proceeding.

Divesting the information of all of its melodramatic incidents of war, rapine and violence, by which counsel apparently seek to prejudice the court, we find that the only allegation of the information relevant and pertinent to the commission of contempt consists in the statement that, after the service of the injunction, defendant, Debs, with the approval of the other defendants, sent telegrams to officers or committees of local unions at the more important railway centers or cities, which telegrams ordered and directed employes of the railway companies named in said writ of injunction, which employes were members of the American Railway Union, to leave the services of said corporation in a body. The real charge is nothing more or less than this. It becomes most material, therefore, to examine said orders, and upon so doing it will be found that the strongest of such telegrams consists of a request to certain individuals to use their influence to call out men on certain roads in all departments, by persuasion alone, and in many instances

the recipients of such telegrams were cautioned to commit no violence.

This is all that the information charges. Stripped of its mantle, despoiled of its lion's skin, it simply charges what might be most briefly expresssed. The only questions for the court to determine are whether such orders constitute a violation of the injunction and whether courts have a right to enjoin such acts.

The only parts of the injunction which could possibly be construed as having been violated by the issuance of such telegrams are those parts where defendants and others were enjoined to desist and refrain from "compel- "ling or inducing or attempting to compel or induce by "threats, intimidation, persuasion, force or violence, any "of the employes of any of said railroads to refuse or fail "to perform any of their duties as employes of any of "said railroads, in connection with the inter-state busi- "ness or commerce of said railroads, or the carriage of "the United States mails by such railroads, or the trans- "portation of passengers or property between or among "the states." And "from ordering, directing, aiding, "assisting or abetting in any matter whatever any per- "son or persons to commit any or either of the acts "aforesaid."

It can not be contended that the information shows otherwise than that the defendants ordered or directed or requested certain persons to induce by persuasion other persons to leave their employment in a body. The question then hinges upon whether leaving employment in a body or, in other words, peaceably striking, is a right of employes. If it is, then to do so is no breach of duty, and is not to refuse or fail to perform any of their rights as employes, was not forbidden, and could not be forbidden by the court.

In *U. S. v. Kane*, 23 Fed. Rep., 749, Judge BREWER said:

"Moving on a little further to another matter, supposing Mr. Wheeler had two men employed, and that he finds that in the management of his little farm he is not making enough so that he can afford to employ two laborers, and he says to one of them: 'I will have to get along without your services, and I will do with the services of the other,' and the one leaves. That is all right. Supposing the one that leaves goes to the one who has not left, and says to him: 'Now look here, leave with me,' giving whatever reasons he sees fit; whatever reasons he can adduce, and the other one says, 'Well, I will leave;' and he leaves because his co-laborer has persuaded him to leave; has urged him to leave. That is all right; Mr. Wheeler has nothing to say. He may think that the reasons which the one that is leaving has given to the one that he would like to have stay, are frivolous, not such as ought to induce him to leave, but that is those gentlemen's business. If the one whom he would like to have stay is inclined to go because his friend has urged him, has persuaded him, has induced him to leave, Mr. Wheeler can say nothing. That is the right of both these men, the one to make suggestions, give reasons, and the other to listen to them and act upon them."

This is the undoubted law and the reasons which were given by the courts in the case of *In re Phelan*, 62 Fed. Rep., 602, that because the object of the strike was to boycott the Pullman Palace Car Company the strike was unlawful was, in the light of the foregoing, utterly contrary to law. The defendants, as declared by Judge Brewer, had a right to persuade employes to leave, and such employes had an undoubted right to leave as long as such persuasion was unaccompanied by force, violence, threats or intimidation. As long as it was only persuasion such action was lawful, regardless of what reasons were assigned, and of the fact that it was alleged

that the interests of the Pullman Palace Car Company were hostile to labor. It was the right of the defendants to make suggestions and give reasons, no matter how frivolous such reasons might have been, and it was the right of the other employes to listen to them and act upon them. Surely the Pullman Palace Car Company was competent to take care of itself.

In the case of *In re Doolittle*, 23 Fed. Rep., 547, Judge BREWER again said:

"It is not the mere stopping of work themselves, but it is preventing the owners of the road from managing their own engines and running their own cars, that is where the wrong comes in. Anybody has a right to quit work, but in interfering with other persons' working and preventing the owners of railroad trains from managing those trains as they see fit, there is where the wrong comes in."

In *Arthur* v. *Oaks*, 63 Fed. Rep., 327, it is said:

"We are not prepared in the absence of evidence to hold as a matter of law that a combination among employes having for its object their orderly withdrawal in large numbers or in a body from the service of their employers on account simply of a reduction in their wages is not a strike within the meaning of the word as commonly used. Such a withdrawal, although amounting to a strike, is not, as we have already said, either illegal or criminal."

In *Rogers* v. *Evarts*, 17 N. Y. Sup., 206, the court said:

"The tendency of modern thought and judicial decisions is to the enlargement of the right of combination, whether of capital or labor. All restrictions may not be removed, but I am not willing to hold that the combination which appears in this case in itself, and apart from the methods used, is within the condemnation of the law as it is now interpreted in our courts. 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 all co-laborers to join the combination. This right to persuade co-laborers involves the right to persuade new employes to join the combination. This is but a corollary of the right to combine."

In *People* v. *Kostka*, 4 N. Y. Crim. Rep., 429, the court said that workmen might co-operate to improve their condition, and to increase their wages, and that they might refuse to work for less than the price they have jointly fixed, and that "they may do everything that is lawful and peaceable to secure that price. They may even go to their brethren and beseech them not to work for less than the agreed rate. They may use all lawful arguments to prevent acceptance of less than the agreed standard of wages. All this they may lawfully do. "Argument, reasoning and entreaty are lawful weapons, "but the moment they go beyond these means and "threaten to punish him whom they believe to be their "erring brother, threaten him with violence should he "stand in the way of their success by accepting a lower "rate than that fixed by the co-operators, they bring "themselves face to face with the law. Up to the point "of threat or violence they may do what they please, and "public opinion says, 'Heaven speed you.'"

In *Murdock* v. *Walker*, 25 A. (Pa.), 1893, 492, it was said:

"The right of workingmen to organize in associations can not be questioned, and the right of the members of such associations, either as individuals or as an organization, to cease work for any employer, and to use all lawful means to induce others to refuse to work for such employer, are equally well founded."

In *People* v. *Wilzig*, 4 N. Y. Crim. Law Rep., 413, the court in instructing the jury said:

"They have a right to go to all their friends, make known their wrongs, and say to them, 'If you are a friend of labor, withdraw your patronage from the man who injures us or refuses us justice.' There is no law against that."

In a case which arose in New York City, reported in Vol. 18 of the Central Law Journal, page 200, the court in charging the jury laid down the law that the employe had the legal right to decline to work for his employer, unless the latter consented to pay wages formally demanded. That he had the right to invite others to join him in the course he had determined to pursue; to accost workmen in the street, or elsewhere, and invite them to follow his example or join the union.

In *Reynolds* v. *Everett*, 39 N. E. (N. Y.), 72, a case decided on January 11, 1895, which was a case where an action was brought to obtain an injunction against defendants, by virtue of concessions of counsel, the case came to trial upon the sole issue of the right of defendants to induce persons by persuasion and entreaty to leave the service of their employers or not to enter the service of the plaintiffs, and other cigar manufacturers. The question was decided in the affirmative, the trial justice holding in substance that when the peaceable methods of entreaty and persuasion were adopted, and no resort was had to intimidation, there was no obstruction of plaintiff's rights, and directing a judgment for the defendants dismissed the complaint. At a general term of the Supreme court such judgment was affirmed, and upon appeal to the Court of Appeals of New York, Judge GRAY, in affirming the judgment of both of the lower courts, said in a portion of his opinion:

"The plaintiffs could not be said to have been refused any protection required by the facts of the case. The mere apprehension of some future acts of a wrongful nature, which might be injurious to the plaintiffs, was not a sufficient basis for insisting that the preventive remedy of a final injunction. Such a remedy becomes a necessity only when it is perfectly clear upon the facts that, unless granted, the complainant may be irreparably injured, and that he can have no remedy at law for the mischief occasioned. How can it be asserted that there was any such necessity? There were absent the elements of intimidation, or, as the trial judge observed, of such circumstances surrounding the acts of persuasion and entreaty as would characterize them as intimidation."

It is lawful for workmen to endeavor by a reasonable argument and persuasion to induce others, who have not heretofore acted with them, to do so, but it is unlawful for them by threats, intimidation, molestation, or by any form of coercion or compulsion, to interfere with the exercise of the free will of such other workmen.

Perkins v. *Rogg*, 28 Weekly Law Bulletin, 32.

In the case of *Richter* v. *The Journeyman Tailors and others*, 2d Ohio Cases, reported in the Weekly Law Bulletin, Vol. 24, 189, it was alleged that the defendant sought to break up the business of the plaintiffs, and that to accomplish said purpose they maliciously compelled the employes of the plaintiff to cease working for them. The court in considering that phase of the case touched upon the right of employes to persuade others to join them. The language of the court is as follows: "The "defendants may lawfully persuade the workmen of the "plaintiffs to abandon the employment in which they "were engaged, as long as they use only argument or "reason."

The early English cases, which are greatly relied upon by those who seek to contend that a mere combination of workmen, without any acts of force or violence, are unlawful, treated the abandonment of service by workmen, by a preconcerted arrangement, as criminal conspiracy, regardless of the reasons for such abandonment. This fact is, however, explained by an extract from the opinion of Judge DALY in the case of the *Master Stevedores* v. *Walsh*, 2d Daly, 19, relative to the right of combination by workmen, which extract is as follows:

"The absence of any adjudication upon this question of the common law, may be attributable to the fact that there were statutes in England from the passage of the Laborers' Act, in the reign of Edward III, down to the reign of George IV, regulating the rate of wages, and forbidding agreements or combinations to evade these statutes. Laws made in the interest of employes, in the creation of which those who are most affected by them had no share."

In the same case Judge DALY also used the following language:

"These early English statutes regulating the price of labor, being wholly inapplicable to us in our colonial condition, were never in force in this country and formed no part of the laws of the colony of New York at the adoption of our state constitution, in 1787. This decision, therefore, was limited to England [referring to the case of *King* v. *The Journeymen Tailors of Cambridge*, 8 Mod., 11], deriving its whole effect from the English statutes, the provisions of which it was held that the defendants had conspired to defeat."

These early English statutes, some of which were passed in 1349 and 1350, have been repealed. They were the relics of the old feudal system.

To indicate the present law in England on this subject, and the justice which the English people have

seen fit to render to the workingman, we shall cite a few cases.

In *Regina* v. *Selby*, 5 Cox, C. C., 495 (note) which was a criminal case under the act of 6th George IV, Chapter 129, where the pickets of the strikers pursued such a system of annoyance, by watching and interfering with the workmen, that such workmen were compelled to abandon the work, the court held, that under the statute picketing was not unlawful unless accompanied by violence to the person or property or by threats, intimidation or molestation.

In *Regina* v. *Druitt*, 10 Cox, C. C., 593, it was held that mere picketing, if so done as not to excite reasonable alarm, or not to coerce, was no offense at law. That it was lawful to endeavor to persuade, but that if the pickets indulged in abusive language and alarming gestures, it was otherwise.

In Vol. 24 of the Am. & Eng. Enc. of Law, 124, we find the following:

"In the United States, the doctrine announced by the earlier cases tended strongly toward this view of the law (referring to the early English cases), but of late years the doctrine has been modified and softened and it is conceded that workmen or employes possess the right to quit work singly or in a body by a preconcerted agreement, provided only that they do not interfere with the rights of others, whether co-employes, employers or the public. They have a right to seek an increase of wages by all peaceable means and meetings and combinations to that end, if unaccompanied by threats, violence, disorder, or attempts to coerce unlawfully. They may agree in a body that they will not work below certain rates and a strike to this end, if unaccompanied by any of the foregoing elements, is not an offense."

Sinsheimer v. *United States Garment Workers*, 28 N. Y. S., 321, is a very well considered case and fully sus-

stan th e position here contended for; and the right of the working men to persuade others not to deal with the employer is upheld. It was there held that a trade union against whose members plaintiff discriminated in employing labor would not be enjoined from sending circulars to plaintiff's customers to induce them to withdraw their custom from plaintiff. The court said: "The defend-" ants notified persons engaged in the trade of the con-" troversies which were existing, and virtually requested " such persons not to deal with the plaintiff's firm unless " such differences should be adjusted. I fail to see that " there is any infringement of any provision of law in the " issuance of such a circular."

The Law—Labor Organizations and the Industrial Situation.

It is true that some judges overlooking the history of labor organizations and labor struggles and the history of the decisions of courts, have failed to distinguish between the earlier laws that once restricted and confined the working people, and the more humane and enlightened decisions of later days. At times also courts have viewed only the consequences that frequently result from great strikes, and in view of these consequences have declared acts unlawful when such consequences might reasonably follow in their train. It is believed, however, that neither by logic nor authority can any such system of reasoning be supported; that it is neither wise nor humane to say that an act is unlawful simply because dangerous results may follow as incident to the act.

This whole information plainly shows that since the

granting of the injunction not one act was committed by these defendants, or any of them, that was in any way unlawful, or that could be forbidden by the court if working men are to have the right to organize and the right to strike. The whole information is a cunning device to cover up the weakness that is inherent, and will be manifest upon close scrutiny. Not one single affirmative act is stated, not one single command is shown whereby any one of these parties ever urged the violation of the law, a breach of the peace, or a commission of any act that could be rightfully forbidden by the courts; not one single word or act is charged but such as every free man should have the right to say and do.

It is simply sought to charge these men with violating an injunction, because some one was guilty of unlawful conduct, and upon the allegation that this unlawful conduct followed on these defendants committing a lawful act.

It is charged that these men ordered a strike, but over and over again the courts have declared that a strike is lawful. It is charged that in pursuance of the orders of a strike, a great number of telegrams were sent out to various sections of the country, directing and ordering men to join the strike. Telegrams sent before the injunction and after are recited together in the information, but not one telegram can be cited that in any way could fall within the inhibition of the injunction, or that the court could have the power and jurisdiction to forbid. In the whole list of telegrams there is but one that could be tortured into any instruction or counsel to do an unlawful act, and this is the telegram dated Chicago, July 2, 1894, and sent to Courthead, South Butte, Montana, which is evidently and plainly meant without any inten-

tion of violence, but as a playful statement or a joke. It would be doing violence to reason and common sense to say that this telegram was meant to incite violence, or urge the commission of any unlawful act. This telegram is inserted in this information, although plainly harmless, and although sent two days before the injunction was served, and one day before it was published by the press.

The information charges that as a result of the order for a strike, certain violent and unlawful acts were committed at various places after the order was issued. It does not state a single fact to show that any man officially connected with this union, or any man deprived of his liberty by the order of court was connected with one of these unlawful acts, or did more than to counsel, advise or order this strike. To say that such acts as are directly charged to these parties would give a court of chancery the power to enjoin, would be to leave a labor organization entirely helpless to resist a cut of wages, or to aid their fellow workmen by ordering a strike.

As a further excuse for charging these men with a violation of the injunction order, it is alleged that what was done was done in furtherance of a boycott, and, therefore, was a proper subject for the injunction of a court. The word "boycott" has been variously applied. It has sometimes been applied to acts which can not properly be specified as boycotts, and sometimes those acts which are boycotts are designated as something else. If the American Railway Union had not the right to strike for the grievances set up by the bill of complaint, and which in this particular must perhaps be referred to in order to show what is meant by the word "boycott" in the in-

formation, then any strike of more than a single individual is enjoinable by the courts.

It is charged in the bill that the employes of the Pullman Company were engaged in a strike against their employers. The bill does not allege whether this strike was just or unjust. It simply shows that in May, 1894, some difference between the Pullman Palace Car Company and its employes arose, and that growing out of said differences, a considerable portion of the employes left the service of the company; that the Pullman Palace Car Company failing to adjust the differences with their employes, the American Railway Union determined that they would refuse longer to handle the Pullman cars. The American Railway Union, as shown in this bill, is a body of men composed of employes in all departments of the railway service. They are banded together, like every other labor organization, for mutual protection and benefit. The bill charges what is undoubtedly the fact, that this organization has the right to engage in strikes, and no doubt the strike was one of the means by which the members of this organization believed they could better the condition of themselves and their fellow workers. If these various railroad employes representing thousands of men engaged in all classes of railway service, believed that it was for their mutual advantage to form an organization that they might act together to a common end, that for the purpose of increasing wages, preventing a reduction of wages, or aiding their fellow laborers in like struggles, they could readily and easily unite and strike, they plainly had the right under the law and under the inalienable liberties of free men to form themselves into an organization of this kind. If this body of men forming

themselves into one organization, believed it was to their best interests and those of their fellow workmen, or any others, that they should refuse to haul certain cars, and if they preferred to relinquish their employment rather than haul such cars, they certainly had the right to refuse to perform that service, or else they were not free. The employes of the Pullman Palace Car Company were working men like themselves. True, they were engaged in a different line of railway service but it was a line of service directly connected with their own. They doubtless believed that their fellow laborers were unjustly treated, and did not desire to handle the cars of a corporation that was unjustly treating their brothers who were then engaged in a struggle with this company.

Under the allegations of this bill and information it simply appears that the American Railway Union recognizing the difficulty between the Pullman Palace Car Company and its employes, served notice that unless the Pullman Palace Car Company should settle their difficulties with their employes, they would refuse longer to haul their cars. If a man engaged for service with a farmer should decline to perform a certain service, for instance, to work in the hay field, he would certainly have the right to refuse to perform this service, and if this service were required by the master, would have the right to cease his employment, and no court of chancery would have the power to enjoin him from leaving the service of his master if he saw fit to leave on account of the duty required.

If for the reason that certain car manufacturers were treating their workmen unjustly, they refused to handle the cars of such company, and if their employers demanded that they should handle such cars, they would have the

right to cease to handle them, or to quit the service if the employer demanded this labor which they did not desire to perform. It is not for the employer, and it is not for the court to say, whether their reason for working or not working is good or bad. So long as they simply desire to quit the service, whether for good cause or for bad, the reason must be left to the individual judgment of the men, and if courts seek to prevent the exercise of that individual judgment, they are then by their orders holding the employes in involuntary servitude, contrary to the principles of liberty and the direct provisions of the constitution.

Whether the cause for striking grew out of a direct injury to the railway employes, or what is known as a sympathetic strike, is a matter that can not affect the legality or the illegality of the act. If no man could strike except he were personally aggrieved, there could be no strike of a combination of working men. Under modern industrial conditions, where hundreds of men are working together to a common purpose, and where the business of the country is intertwined more or less directly, a strike would be impossible unless those who are not directly and personally aggrieved, have the right to cease labor for the benefit of their fellows. The theory on which all labor organizations are based is that workingmen have a common interest, and that "an injury to one is the con-"cern of all." They are organizations whose principle and whose purpose is to help redress the grievances of each other, and to aid one another in establishing better conditions and fairer relations. If it should be said that if one man should suffer a special grievance, the others could not unite to redress it, then to what purpose can an organization of laboring men exist? If it could be

said that a railroad company might arbitrarily discharge all of its engineers, and that the firemen for this reason could not strike, then any general organization of railroad men would be of no avail. If it is said that the switchmen and the conductors, the section men and the brakemen have no common cause and can not aid each other, then all organizations of workingmen are a worthless, useless mockery. The logic of any such position followed to its end would prevent any one working man refusing to give his service because of the grievances of another working man, and would leave each individual worker completely isolated and unaided to fight his battle alone against the combined capital everywhere vigilant and aggressive, to add to its own profit by reducing the wages and condition of those who work.

If it shall be admitted that any one working man has the right to combine with any other working man, and following that combination to cease to labor for the benefit of the other, then it must be admitted that any organization of workingmen, or any number of workingmen have the right to cease to labor because they believe any other workingman, or any other organization of workingmen is not fairly treated by their employers. If the courts by any interpretation of the law should prevent this right, and hold that no men, or no body of men could strike except they were personally interested, they would deal a death blow to all labor organizations, and resolve all the assemblies and unions of workingmen into individual units to combat singly with great combinations against whom they would be utterly powerless to cope.

It is believed that in America, as well as in England, labor unions are so firmly established that no such blow against organization will be dealt by the court. Intelli-

gent employers, who have any regard for the interests of their workingmen, and who have any regard for the well-being of their country, have long since found it best to treat with labor organizations. They have long since regarded them as useful instruments in industrial and social life. To deprive them of the power to cease working as a body for any cause which to them shall seem sufficient, would be to declare unlawful that which for nearly half a century in England and America has been considered lawful, and also believed by all wise students and historians to have done more for the elevation of the working people, and through them of the great mass of both nations, than any other agency in social life.

True it is that here and there some modern judge, failing to view the broad principle as it exists, failing to understand the beneficence of these organizations of workingmen, have pronounced whole masses of men as conspirators, and all strikes and practically all organizations as crimes. One of the most startling statements of this kind is to be found in the case of *Arthur* v. *Oakes*, and in the language used by Judge JENKINS, which reads as follows:

" It is idle to talk of a peaceful strike. None such ever occurred. The suggestion is an impeachment of intelligence. All combinations to interfere with perfect freedom in the proper management of one's lawful business, to dictate the terms upon which such business shall be conducted, by means of threats or by interference with property or traffic, or with the lawful employment of others, are within the condemnation of the law. It has been well said that the wit of man could not devise a legal strike, because compulsion is the leading idea of it. A strike is essentially a conspiracy to extort by violence; the means employed to effect the end being not only the

cessation of labor by the conspirat rs, but by the necessary prevention of labor by those who are willing to assume their places, and as a last resort, and in many instances an essential element of success, the disabling and destruction of the property of the master; and so by intimidation and by the compulsion of force, to accomplish the end designed."

It would probably be impossible to find a stronger statement pronounced by any judge against the right to strike and the liberties of workingmen than this. It is believed that no respectable authority within the last fifty years can be found to sustain the doctrine here enunciated. Happily for workingmen and for the country, this doctrine was expressly disaffirmed and overruled by the opinion of Justice Harlan, sitting in the Circuit Court of Appeals for the Seventh circuit, and reported in the 63d Federal Reporter, page 310, in the case of *Arthur* v. *Oakes*. In this opinion Justice HARLAN used the following language:

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

"The rule, we think, is without exception that equity will not compel the actual affirmative performance by an employe of merely personal services, any more than it will compel an employer to retain in his personal service one who, no matter for what cause, is not acceptable to him for services of that character. The right of an employe engaged to perform personal service to quit that service rests upon the same basis as the right of his employer to discharge him from further personal service. If the quitting in the one place or the discharging in the other is in violation of the contract between the parties, the one injured by the breach has his action for damages; and a court of equity will not, indirectly or negatively, by means of an injunction restraining the violation of the contract, compel the affirmative performance from day to day or the affirmative acceptance of merely personal service." * * *

"In the absence of legislation to the contrary, the right of one in the service of a *quasi* public corporation to withdraw therefrom at such time as he sees fit, and the right of the managers of such a corporation to discharge an employe from service whenever they see fit, must be deemed so far absolute that no court of equity will compel him, against his will, to remain in such service, or actually to perform the personal acts required in such employments, or compel such managers against their will to keep a particular employe in their service." * * *

"The fact that employes of railroads may quit under circumstances that would show bad faith upon their part, or a reckless disregard of their contract or of the convenience and interests of both employer and the public, does not justify a departure from the general rule that equity will not compel the actual, affirmative performance of merely personal services, or (which is the same thing) require employes, against their will, to remain in the personal service of their employers." * * *

"We have said that, if employes were unwilling to remain in the service of the receivers for the compensation prescribed for them by the revised schedules, it was the right of each one on that account to withdraw from such service. It was equally their right, without reference to the effect upon the property or upon the operation of the road, to confer with each other upon the subject of the proposed reduction in wages, and to withdraw in a body from the service of the receivers because of the proposed change." * * *

"These employes having taken service first with the company and afterward with the receivers, under a gen-

eral contract of employment, which did not limit the exercise of the right to quit the service, their peaceful co-operation as the result of friendly argument, persuasion or conferences among themselves, in ascertaining the right of each and all to refuse further service under a schedule of reduced wages, would not have been illegal or criminal, although they may have so acted in the firm belief and expectation that a simultaneous quitting without notice would temporarily inconvenience the receivers andthe public." * * *

Such a loss under the circumstances stated, would be incidental to the situation and could not be attributed to employes exercising lawful rights in orderly ways, or to the receivers, when in good faith and in fidelity to their trust they declared a reduction of wages, and thereby caused dissatisfaction among employes and their withdrawal from service."

And again expressly referring to the language of Judge JENKINS quoted above, the court says:

"We are not prepared, in the absence of evidence, to hold as matter of law that a combination among employes having for its object their orderly withdrawal in large numbers or in a body from the service of their employers on account simply of a reduction in wages, is not a 'strike' within the meaning of the word as commonly used. Such a withdrawal, although amounting to a strike, is not, as we have already said, either illegal or criminal."

In this case it was expressly held that no injunction could lie except against the commission of such acts as were essentially violent and unlawful. Viewed in the light of this decision, it would seem impossible to point to a single line in this information that is contrary to the law, or which any man or body of men had not a perfect right to do.

It will not do in any given case to say that an act may be restrained because it will produce injury to some one else; that an injunction would lie to prevent a strike be-

cause a strike would injure the property of a railroad company or inconvenience the public who use the road. It is many times impossible to benefit yourself except by injuring some one else. In every case where the employe attempts to receive higher wages he injures his employer because he takes from him a certain amount of money which otherwise he could appropriate himself. In every case where an employer reduces the wages of his servants he injures them by taking from them an amount of money which they otherwise would have. In every case where the employes cease working for the sake of a raise of wages or maintaining their old rate, they injure their employer, but this injury is the only means by which the workingman can help himself, and is, therefore, not such an injury as will authorize the courts to interfere. In our present industrial and social life there is no complete ideal harmony among the various units which make up society as a whole. No doubt the world would be far better and far happier if men could so adjust their conduct that complete harmony would result so that the good of each individual should be likewise the good of all the rest. But in a life based largely upon selfishness, and a mean and narrow selfishness at that, life is largely a struggle to each person, and in this combat each amasses by what he gets and keeps from some one else. The manufacturer is interested in injuring his employes by paying them the smallest wages that the market will allow. He is interested in despoiling his customer by charging him all that the course of trade and custom will permit. The common carrier by means of system and organization, by means of combination and association, is interested in charging the highest rates that he can

possibly obtain to the detriment both of the manufacturer and the consumer of the goods, to the farmer on the prairie and to the manufacturer in the town. Likewise he is directly interested in injuring his employe by paying him the smallest wages that the hard conditions of his competitive existence compels him to accept. The merchant induces the manufacturer and the jobber to sell at the lowest prices by offering him his money in exchange for goods, or trading where he can to the best advantage to himself, and he turns to his customer and receives from him the highest possible price that his wit and ingenuity can devise a way to take. Each one is profiting directly, not by helping some one else, but by seeking an advantage of his fellow, but it can not be said for this that his conduct is unlawful or that courts will restrain his acts. It is impossible in the present competitive system of industry and of life that any one should seek his own best good without in some way conspiring to harm or injure his fellow man.

True, this organization might have known full well that their benefit, and the benefit of their fellow-workers at Pullman, could only be obtained by lessening the dividends of the corporations whom they served, and by temporarily inconveniencing the public, who were bound to depend both upon the corporations and the employes operating the various lines of road. But this injury was not inflicted wilfully or maliciously because they desired to harm their fellows, but was inflicted for the purpose of bettering the condition of their fellow workingmen, and giving greater opportunity and more comforts to those engaged in toil.

Neither will it do to say, as charged in this information, that the complainants were aware that violence

usually followed strikes. The telegrams set out in this information show that in no way did they counsel violence, but, on the contrary, often exhorted their followers to keep the peace and preserve the law. If men could not do lawful acts because violence might possibly or reasonably result, then the most innocent deeds might be crimes. To make men responsible for the remote consequences of their acts would be to destroy individual liberty and make men slaves. No one can tell either the cause or the consequences of an act. Each act is in turn connected with every one that goes before and every one that comes after. Men can only be made responsible for their acts and their direct and immediate and necessary consequences. To do more than this would involve every act of man in uncertainty and doubt.

This information does not say that these men committed violence, but that they did certain lawful acts, and that violence resulted from those lawful acts. The same can be said of any body of men who build a railroad or a steamship or a factory or mill. Violence might have resulted which would not have occurred excepting for a general strike. A general strike no doubt occurred, which would not have happened except for the injustice and oppression of those intrusted with great amounts of capital, who should use it for good means, as well as purely personal ends.

The relation in this information and bill of many circumstances and details of violence and crime, certainly can have no bearing on this case. In the light of the law and in the light of truth it can not be said that this extraordinary power of the court which is invoked to prevent men from combining and striking is in any way necessary to conserve the peace.

An injunction was never intended to prevent a mob or to disband a crowd. It was never meant to prevent arson, riot or murder. It was never intended to do this, and it never can do this, and any argument that this power of the court is necessary for such purposes, can only be meant to conceal the inherent weakness of resorting to any such means in a case like this. The police power of the state is amply sufficient to prevent riot, arson, insurrection and murder. If it were not amply sufficient the power of the courts would be utterly impotent to aid or to assist. There is no power or resource at the command of the courts which in any conceivable case could be greater than the power in the command of the various cities, states and federal government. It is not as prompt, it could not be as effective, and it was not as effective in this case and could not be in any other. The law has provided a plain, certain and prompt method for dealing with all acts of violence and crime. This method was open to all the authorities in the case at bar, and no injunction of any court either aided in preserving the peace or in preventing a single act of violence or crime. The police power of the city, the police power of the state, and if these were insufficient the whole power of the federal government were at the command of the authorities, and ready at any moment to preserve order and command obedience to the law. All of these resources could not be at the command of the federal court. It was impossible for the federal court to act as promptly, as thoroughly and as efficiently as the executive branch of the government, and any attempt to make the federal court take the place of the executive is an attempt to force one co-ordinant branch of the government to invade that of the other, and can only result in great harm to both.

Every allegation in this information that charges any unlawful acts, any acts of violence and crime, and every argument used by which the power of the court is sought for the purpose of preventing these acts or crimes, are the very best arguments that could possibly be adduced to show that this whole case is outside the chancery power of the court, and that all such facts and circumstances should be left to be promptly dealt with by the police power of the government that is responsible for the preservation of the peace and the maintenance of the law.

In the consideration of cases presented by the counsel for the government this court will, we believe, consider the times, circumstances and conditions under which such opinions were announced.

It is not only in the light of the past that any true principle can be enunciated by this court. An opinion that will result in such vast and sweeping consequences to organized labor, the relations between capital and labor, the social problems of the future, and the industrial evolution through which America, together with all the world is now passing, must be one which considers not only the past, but the present and future as well. The decisions of all other courts must be viewed in the light of the conditions from which they sprung. In considering them the court must also consider the ancient social position of the workingmen, the old industrial methods now passing away, the great industrial changes that have come to the present, the new social adjustment and harmonies which grow out of the vexed problems of to-day.

It is often charged that judges and lawyers are too

strictly bound to the past, and that they do not give sufficent attention to the new questions and new adjustments that constantly arise in a changing time. The whole industrial world has been made over in the last fifty years. It has practically been made anew in the last quarter of a century, And rules and regulations which concerned the interest and welfare of the small communities of the middle ages, with their isolated farms, their small shops and mills and their primitive tools can not equally conserve the changed industrial conditions of today. Those rules and regulations that once prevailed might even exist up to the last quarter of a century, but since man learned to use the forces of nature, and invented cunning machinery to do his work, all industrial conditions, all methods of production and distribution, the whole relation of employer and employed, has been completely changed.

Not only is it to be remembered that the application of steam and electricity to all the industrial affairs of the world has changed social conditions, but the position and status of the working men in the eye of the law and in the eye of humanity, has changed as well. Originally the workingman was a slave, absolutely and literally.

His social status in the ancient civilizations of Greece and Rome was that of a serf. He had no rights of citizenship, no concern in the government. He was allowed to live only to work and produce for some one else. He had no rights which the privileged class were bound to respect, he existed to make their lot happier, and for nothing else.

As said by Sampson in his remarkable argument in the case of Journeymen Cordwainers of the City of New York in 1809, Yates Select Cases, in speaking of the workingmen:

"Throughout the habitable world luxury, vanity, and even fancy, is satiated by the productions of their industry; but like the worm that spins its bowels and perishes in the act, so they, whose hands impart to the tissues its luster and its hue, to flatter the voluptuous and the gay, pine themselves and decay in obscurity and want. And a late tourist has too justly remarked that from poverty and pain the workmen in certain manufacturing towns in England exhibit the strange phenomenon of green hair and red eyes."

In England he was bought and sold, treated like other chattels, and had no rights. Even down to the seventeenth century he was still virtually a slave. He was forbidden by law to leave the county without the consent of the authorities. He was forbidden then to stay a longer time than was specified by their permission. He was forbidden to receive more than a certain price for his services, and was made a criminal if he received and worked for a greater sum than stipulated by the law. His clothing, his food, his social relations were regulated by the law for the purpose of keeping him in the status to which his master saw fit to place him. And not only would not the law let him help himself, but it prevented others from helping him. In the time of 5 George 1, 23 George 2, and 14 George 3, statutes were passed inflicting fines, imprisonments, pillories, and ear slitting upon such as encouraged any artisans to seek a better lot. For this they called "seducing artisans."

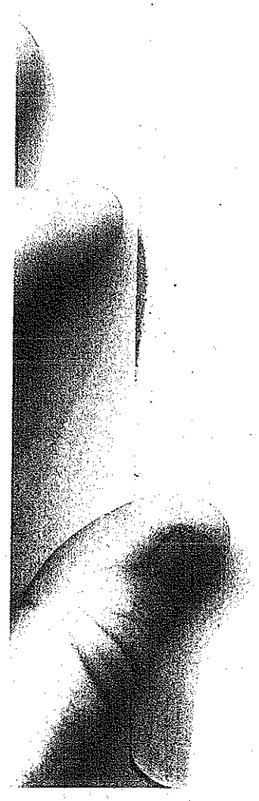
A long series of harsh, unjust and barbarous decisions of courts served to forge the fetters still more securely upon him. To meet and discuss his grievances with his fellowmen was conspiracy. To form a labor organization of any kind was a crime. To agree with two or three more of his class as to hours and service, and rate of wages was a felony. It was presumed that work-

ingmen could not meet for discussion without plotting treason to the state, or treason to their masters. The early trade unions were all conspiracies, and the early organizers of these unions, to whom all the world is indebted, were criminals and outlaws. They met at night, in forest and mountain. They hid their records and archives in the earth. They were pursued, captured and imprisoned for the crime of seeking to get a larger share of the product of their labor.

History of Trades Unionism in England by Sidney and Beatrice Webb.

It was out of the unjust and degraded status of the workingmen, out of these barbarous enactments of parliament and decisions of judges, and out of the social and industrial conditions of the middle ages, that later laws and regulations have sprung. Politically and theorically the laborer is now a freeman, the equal of the employer, the equal of the lawyer or the judge. But freedom does not consist alone in political rights, or in theories of government, or in theories as to man's relations and the state. Under the present system of industry hundreds and thousands of men must work for single employers. So long as steam and electricity are applied to machines in any such manner as at present this must be the rule. To operate a rolling mill, a railroad, a shoe factory, a cotton mill, or any industrial institution, requires great masses of men working together to a common end, and subject to regulations from a common head.

In the evolution of industry vast capital is necessarily accumulated under the control of a single head and directed to a single purpose. This capital is thoroughly



organized to serve the interests of its owners. Not only is the capital in each particular plant or industry organized, but various plants and industries are organized together for the purpose of uniform methods for the transaction of their business for the greater advantage of the organizers of these industries.

The rate of wages, like that of products, is governed by the great law of supply and demand. This supply and demand means the supply and demand of labor. The great manufacturers, the great refiners, the great distillers, and brewers are able to regulate the price of their commodities by limiting the supply and thus relatively increasing the demand. In the employment of labor governed by the rules of business, the market treats labor as a commodity, a commodity like any other regulated by supply and demand. Under this rule of business which prevails, and perhaps must prevail unless the present industrial system is some way modified, the employer purchases the commodity of labor at the lowest wages for which the workman's service can be obtained.

The great business princes, organizing and systemizing their affairs, agreeing with each other, and working to a common end, are able to fix a uniform rate at which workmen will be employed. If the supply of workingmen is limited and the demand is great, then wages will be relatively high. If the demend for labor is limited, and the supply relatively large then wages must be low.

With a constant tendency in their business to replace men with machines, to replace skilled labor with unskilled, to replace men with women, and women with children, for women and children can feed machines as well as men, the tendency must constantly be to limit

the demand for labor and increase its supply. The old political economists were wont to teach that where labor is displaced by machinery, the energies of the unemployed could be turned in some other direction. But the facts of life and business show that this theory can not prevail under the conditions of the present. With machinery displacing labor in every line of industrial activity the supply of labor is constantly gaining over the demand.

Under an ideal state, where all machines and implements of production would be operated for the purpose of feeding, clothing and otherwise serving man, each new machine might add to the wages of labor, but under the law of business where all enterprises are owned and controlled by individuals and corporations, and operated for profit, the displacement of labor under the law of supply and demand enables the operator to obtain services at a constantly lessening rate.

Under the industrial conditions of both the past and the present there has never been but one way for the workingman to increase or even maintain his wages. And that way has ever been to refuse to work except upon such terms as he thought fit to demand. Under the old system of industry, where one or two or a few men were employed by a master, the laborer could individually refuse to work unless the master saw fit to pay the wages he desired. The refusal to work has been the only way that the laborer has thus far found to regulate the supply of the commodity that he has to sell, and without controlling the supply, there is no way under the conditions of the present, to regulate the price. With the change of industrial institutions, with the introduction of the factory, the railroad and the great

farm, in short with the organization and combination of capital, the laborer has been obliged, for self preservation, to form counter organizations and combinations of his own. As in the olden times, the only way that he could increase his wages or maintain the ones he then received, was to refuse to work, and with capital organized, the only refusal to work that could possibly prevail was the refusal by such combined organizations of working men as would limit the supply of labor, and thus relatively increase the demand.

The refusal of one man to work in a factory, where thousands are employed, the refusal of one railroad employe, or numbers of the employes on one steam railroad would, under modern industrial conditions, be wholly ineffectual to control the supply of labor, and thus increase the price.

Much has been written about the harmony existing between capital and labor, and much has been said to show that in reality these two are in sympathy, and that no conflict exists between them. But in actual life we know that these statements are not true. The old political economists understood the relations of capital and labor and laid down the principle that it was the business of the employer to pay as little as possible, and of the employed to demand as much as possible. They understood, as did the business men, that the more money paid for labor the less can be divided in profits; and the less that is paid for labor the greater is the reward of capital.

No one would question the right of a great mill or railroad or a combination of mills and railroads to discharge their employes singly or collectively at will. No one would question their right to cut wages whenever or

however they saw fit. It is a right they have long enjoyed and often used, and it would be difficult to find where courts have ever been asked to interfere with this privilege.

Equally any number of men have the right to raise their wages and limit their commodity by refusing individually and collectively to serve their employers except upon such terms as they see fit to impose. To say that the employers are inconvenienced or injured, or that the public is inconvenienced or injured is no sufficient reason for denying them the right that belongs, or should belong, to every free man to give or withhold his services as he sees fit.

To say that working men may organize and still have no power to avail themselves of the purposes of organization is a mockery and a cheat. If they have the right to organization they must have the right to act together else the purpose of organization will be destroyed. If working men may organize for their self protection, and if they believe that this self protection is served by leaving their employment, they must have this right or orgaization is of no avail. The right to work, or not to work, implies the right to choose your own cause for working or not working. The cause may be good or bad. It is an incident of freedom to be allowed to determine that cause for yourself. And if one person may work or not work according to any cause or whim he sees fit to entertain, likewise a body of men may work or not work for any cause that may seem best to them. If their cause is first to be subject to the approval of the courts they are not free.

If men have the right to cease working, or to strike, it must also be held that they have the right to advise

others to cease to work or strike as well. If they have a right to strike for their own grievances they have the right to strike for all their fellow workmen. The very object of combination and association is mutual aid. An organization of laboring men is necessarily an organization where each person binds himself to help his fellow workmen, that the good of all may be best conserved. Unless one workman may assist his fellow workmen the whole use and purpose of trade unions and labor organizations will be destroyed.

It is difficult to understand how either in law or morals it can be claimed that one has the right to strike for the redress of his own grievance and not the right to strike for the redress of the wrongs of his fellow workmen. No doubt it is difficult for some people to understand a motive sufficiently high to cause men to lay down their employment not to serve themselves but to help some one else. But until this is understood, the teachings of religionists and moralists will have been in vain.

If it is lawful for men to organize, and in accordance with the organization to cease to labor, they can not be regarded as criminals because violence, bloodshed or crime follows such a general strike. Mankind in his progress from the lower order still retains many instincts of the brute, and at times of great public excitement, or in the presence of great emergencies, these brute instincts are ever liable to control. It has been sometimes held by courts that every strike is attended with violence and bloodshed, and that, therefore, no men have the right collectively to cease work. While, in the light of history, if it were conceded that violence generally followed strikes, it would by no means follow that a great body of men would not have the right to lay

down the tools and implements of their trade to better the conditions of themselves and their fellow-men, although growing out of this violence, bloodshed and crime would surely come.

As violence and bloodshed frequently follow strikes, so do they frequently follow lockouts and reductions of wages, but these facts are not sufficient to deprive men of their free moral agency and make their acts subject to the control of courts.

It is not claimed in this argument, neither would it be claimed by any parties to this suit, that the present social system is an ideal state. Strikes are deplorable, and so are their causes. All men who engage in them hope for a time when better social relations will make them as unnecessary as any other form of warfare will some day be. But under the present conditions of industrial life, with the present conflicting interests of capital and labor, each perhaps blindly seeking for more perfect social adjustments, strikes and lockouts are incidents of industrial life. They are not justified because men love social strife and industrial war, but because in the present system of industrial evolution to deprive workingmen of this power would be to strip and bind them and leave them helpless as the prey of the great and strong. It would be to despoil one army of every means of defense and aggression while on the field of battle, and in the present of an enemy with boundless resources and all the equipments of warfare at their command.

It is confidently believed that this court, creating a precedent of the greatest importance to millions of men, will view this question in the light of all the past, in the light of all the social and industrial conditions of the present day; will fully protect the rights of workingmen to organ-

ize and unite for mutual defense, for the betterment of their condition, to work or cease to work—in short, to be free men, responsible as every other free man only for the direct consequences of their acts.

Respectfully submitted.

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