YALE LAW JOURNAL

VOL. VI APRIL, 1897 NO. 5

INJUNCTION IN THE FEDERAL COURTS.

The jurisdiction of the National courts to issue the writ of injunction is not peculiar or exceptional. Within the classes of cases of which they may take cognizance those courts grant or refuse that kind of relief by the same rules and principles which from time immemorial have prevailed in the English Chancery and in the equity courts of those States of the Union which derived their jurisprudence from the mother country. Equity as a system, more perhaps than the Common Law, has been enlarged and modified to meet the changing conditions of business and civilization, and it is only natural that there should have been instances in which jurisdiction has been exercised in excess of rightful power, but when error of that kind has occurred it has been promptly corrected, either by direct appeal or by force of contemporary and more authoritative decision, and it is safe to say that no essential departure from recognized principles has become abiding or permanent. Steam power, electricity, railroads, telegraphs, corporate organizations, labor unions, trusts and other agencies and schemes of modern enterprise have vastly extended the field and multiplied the occasions for the exercise of equity powers including the power to enjoin, but the character of the jurisdiction and the principles which govern its exercise have been changed or enlarged no more than the provisions and underlying principles of the National Constitution and the powers of government thereby established have been modified or increased by the admission of new States into the Union. No decision of the Supreme Court, or of any United States Circuit Court of Appeals, touching the subject of injunction, can be said to be founded on or to involve any new doctrine, or any application of established principle which was new save in the circumstances and conditions brought under consideration, and

with two or three exceptions the same is true of the recent Circuit Court decisions, which have been made the subject the country over of discussion and criticism. Brief references to the more notable of these cases will not be out of place.

In the Ann Arbor case, in the United States Circuit Court at Toledo, the Pennsylvania Company and other railroad companies and their employes were enjoined against refusing to receive the cars of a boycotted connecting line, and Mr. Arthur, the chief executive of the Brotherhood of Locomotive Engineers, was forbidden to issue or to continue in force any rule or order of the brotherhood which should require any of the employés of the respondent companies to refuse to receive, handle and deliver cars of freight in course of transportation from one State to another over the boycotted road. An engineer who, without quitting his locomotive, refused to attach to his train cars from the Ann Arbor road, was declared guilty of contempt of court and adjudged to pay a fine.[1]

Serious objection, so far as known, has been made in no respectable quarter to anything actually decided in that case by either the circuit or district judge. Each of them delivered an opinion in which the right of employés individually or collectively to quit work or employment, unhindered by injunction, is distinctly recognized, but in the opinion of the district judge are *dicta* to the effect that it may be proper for a court of equity under peculiar circumstances of danger and hardship to the public, or in dealing with a conspiracy to boycott, to prevent an employé from quitting the service in which he is engaged. As an example of public danger which would justify the writ it is suggested that the engineer and fireman might be enjoined against abandoning a train part way on its route at a place where passengers and property would be imperiled. The suggestion seems impracticable. If the probability of such conduct could be known in time to apply for an injunction, the answer of the court would be: Discharge the men before they start, and if you cannot find trustworthy substitutes take off your train. There might be some danger, however, in such a course, if the law were as declared some years ago by a Judge of the Superior Court at Indianapolis, where, strikers having taken possession of a street railway in such manner as to make the running of cars impossible, the Judge, on motion of a citizen, declared the failure of the company to keep its lines running to be such a dereliction of duty to the public as to call for the appointment of

[1] Toledo, A. A. & N. M. Ry. Co. *v.* Pennsylvania Co., 54 F. R. 730, 746.

a receiver to discharge that duty. In the Southern District of California, upon the petition of a railway company against its own employés, alleging that though remaining in the employment of the company they "refused and still refuse" to move any train with a Pullman car attached, an injunction was granted "requiring the defendants to perform all their regular and accustomed duties so long as they remain in the employment of the complainant company."[2] If not wrong that order is very near the line of error. The company being at liberty to discharge all who refused to do their accustomed duties and to employ others to take their places, why should equity interfere —especially to order the performance of personal service?

The *dicta* of the Ann Arbor case soon ripened into a decision by the United States Circuit Court for the Eastern District of Wisconsin, reported in Farmers Loan and Trust Co. *v.* Northern Pac. R. Co., 60 F. R. 803. By the injunction granted in that case the employés of receivers in charge of the Northern Pacific Railroad, besides being forbidden to do specified acts of depredation and direct interference with the operation of the road, were restrained "from combining and conspiring to quit * * * and from so quitting the service of the said receivers, with or without notice, as to cripple the property or to prevent or hinder the operation of said railroad." That injunction in so far as it undertook to restrain men from quitting the employment of the receivers was annulled by the decision of the United States Circuit Court of Appeals for the Seventh Circuit, in Arthur *v.* Oaks, 24 U. S. App, 239, 11 C. C. A. 209. In the opinion there reported, written by Mr. Justice Harlan of the Supreme Court, it is said: "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 a 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 employé 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 service of that character. If the quitting in the one case 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. * * * The exercise

[2] Sou. Cal. Ry. Co *v.* Rutherford, 62 F. R. 796.

by employés of their right to quit in consequence of a proposed reduction of wages could not be made to depend upon considerations of hardship or inconvenience to those interested in the trust property or to the public. The fact that employés 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 employés against their will to remain in the personal service of their employer."

These utterances, it may be remarked in passing, made it natural and probable, not to say logically necessary, that Justice Harlan should have dissented, as he did, from the recent opinion of the Supreme Court in Robertson *v.* Baldwin, where it was held that, notwithstanding the Thirteenth Amendment to the Constitution, a seaman, who in violation of his contract of service had deserted a vessel, "engaged in a purely private business," could be arrested and remanded against his will to the service of the master.

The opinion in Arthur *v.* Oaks had not been handed down, but what it would be was known to me, when the injunction of July 2, 1894, was ordered against the officers of the American Railway Union and others engaged in riotous interference with interstate commerce and the carrying of the mails upon the railroads entering Chicago, and accordingly, though the application then made was for a writ quite as broad as that against the employés of the receivers of the Northern Pacific, the order proposed was so modified as to impose upon employés, individually or collectively, no restriction against quitting service, or striking, if done without direct and active interference with the operations of the roads engaged in interstate commerce and in carrying the mails. The injunction was disregarded, and when the officers of the Railway Union were arraigned for contempt the jurisdiction of the court to issue the injunction was denied. For an understanding of the many questions raised in the course of the discussion of that case reference must be made to the opinions delivered in the Circuit Court[3] and in the Supreme Court of the United States.[4] The opinion in the Circuit Court was designed to show that the jurisdiction exercised was justifi-

[3] U. S. *v.* Debs, 64 F. R. 724.

[4] 158 U. S. 564.

able both upon general equitable principles and by the Act of Congress of July 2, 1890, known as the Anti-Trust Law. For reasons stated the decision was based upon the statute, though if the hearing had been in a court of last resort the broad equity ground would have been preferred, as it was by the Supreme Court, though that court was careful to say that it must not be understood that they dissented from the conclusions of the Circuit Court in reference to the scope of the Act of Congress, and that they, in fact, concurred in those conclusions is demonstrated by a statement to that effect in the dissenting opinion of Mr. Justice White in United States *v.* Trans-Missouri Freight Association, decided a short while ago—the dissenting criticism being that in its last decision the Supreme Court had given the statute a wider and an unwarranted scope. In the contempt case it was held, or, perhaps it would be more accurate to say, it was assumed, that the contracts, combinations and conspiracies which under the statute might be enjoined were such as would be deemed to be unlawful irrespective of the act; but by this decision the Supreme Court goes much further, holding that every contract, combination or conspiracy, which in fact is in restraint of interstate commerce, being expressly declared unlawful, is thereby brought within the scope of the act. The distinction manifestly is one of very great significance.

The officers of the American Railway Union, when arraigned for contempt, demanded but were denied a trial by jury, and having been found guilty by the court, after a protracted and formal hearing, were sent to jail, one for six months and the others each for three months, and though such had always been the practice, and from the nature of an equity court there could have been no right to a jury trial, this denial of a demand for such trial was made the excuse or pretense for an attempt, not wholly unsuccessful, to excite public sentiment against the power of the courts, both of law and equity, to punish contempts of their authority, though the power, as every intelligent man must know, is essential to the usefulness of a court, and has been exercised, as occasion required, since the Government was founded. As late as April, 1894, a juror in the Federal Court at Indianapolis, detected in an effort to be bribed, was summarily declared guilty of contempt of court and sent to State prison for fifteen months; but that incident excited no fear that the Constitution was being undermined or the liberties of the people endangered. It is hard to believe that any one in his sober senses thinks the imprisonment of Debs a

dangerous precedent; yet at the instigation of Grand Masters and Grand Chiefs of various well-known and reputable organizations, claiming to represent 800,000 railroad employés, in whose behalf they especially urged that in prosecutions for contempt there should be a right of trial by jury, a number of bills on the subject were introduced in the last Congress, one of which was passed by the Senate embracing that provision, together with others which are not essentially objectionable. It is not unreasonable that in a case of contempt committed out of the presence of the court there should be a formal procedure upon affidavit showing the facts supposed to constitute the contempt, to which the defendant should be allowed to make answer, and that the trial should be upon evidence adduced in open court. If the practice in such cases in any court has ever been essentially different the fact was not disclosed in the Senate debate. The bill undertook to put no limit upon the amount of fine or imprisonment in such cases, but contained a provision for an appeal, which the writer thinks ought to be allowed in cases of all sorts when the matter is of importance and especially when personal liberty is involved. It might well be provided, too, that for a contempt infamous punishment should not be inflicted. Such punishment can be appropriate only to infamous crimes. But the privilege of trial by jury is inconsistent with the purpose of the power to punish in such cases and could only result in crippling and demoralizing the courts in the daily administration of justice. In a court of law, if a juror or panel of jurors should refuse to attend, it would be necessary that other jurors be summoned to try them for the contempt, and what if they, too, should refuse to come? And what if the marshal and his deputies should refuse to serve the writs of the court? An equity court has no jury and, unless it is to be supplied with a new and incongruous piece of machinery to be kept on hand, or summoned when needed, solely for the trial of contempts as they may occur, will have to send its contempt cases to a court of law, to be tried when in the course of business in that court they shall be reached, suspending meanwhile its own procedure.

It is well to observe, moreover, that if the trial by jury were allowed, a strike like that of 1894 at Chicago would have no better chance of success. Now that the jurisdiction of the courts in such cases is beyond question, an injunction would certainly issue as before and if not heeded the President, if true to his trust, would send the army as before to compel submission, and that accomplished it would be a matter of comparatively small

importance whether there should be trials for contempt, or whether, if had, they should be by the court or by jury. The question involves no more the rights and liberties of laboring men than of other citizens. Nobody in his right mind believes that there has been usurpation of power by the courts, or that the power exercised is the source or beginning of peril to individual or collective rights. Out of all that has been done by the courts since the Government was founded there can be deduced no sound reason for depriving them of their accustomed and well-understood power to enforce respect and order in their presence, and to compel obedience to their writs and commands wherever lawfully sent.

W. A. Woods.