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NOTES

TO WHAT EXTENT IS THE REMEDY BY INJUNCTION AVAILABLE IN BEHALF OF PRIVATE AND PUBLIC INTERESTS IN CONTROVERSIES BETWEEN CAPITAL AND ORGANIZED LABOR

The availability of the injunction in labor controversies is a subject beset with difficulties due to the maze of conflicting decisions. The various jurisdictions are in direct conflict on practically all the important subdivisions of the subject and within each jurisdiction there are many discordant cases. Labor controversies are of such vital economic and political importance that it is impossible to expect a dispassionate solution upon legal principles alone. The prejudices, as well as the economic and political views of the judges, cannot but

be projected into the decision of such cases. Thus we see that Massachusetts with its appointive judiciary takes a very restricted view of the rights of labor organizations, and is liberal in the use of the injunction, whereas, a State like Montana, where organized labor is strong and influential, is inclined to be very indulgent.

The Federal law in labor controversies had been fairly well worked out at the time of the enactment of the Clayton Act.¹ This law, however, has thrown the very important subject of the boycott, as well as many minor points, into considerable doubt. Although the act has not thus far been construed by the Supreme Court, there are dicta in a recent case² indicating that the members of the court are not in accord upon the application of the law.

The decree below, denying the injunction, was made before the enactment of the Clayton Act, and the majority of the court affirmed the decree on general equitable principles; but Holmes, J., in the course of the majority opinion said that, in addition to the grounds upon which the decision was based, the Clayton Act established a policy inconsistent with the granting of an injunction in the case, whereas, the minority held that "the appellants are now entitled to an injunction under Section 16 of the Clayton Act." Several decisions of inferior Federal courts under the act exhibit a divergence of opinion.³ In the face of this, any discussion of the changes effected by the Clayton Act must be mere speculation until it has been construed by the court of last resort, and such remarks as we may hereafter make in reference thereto should be construed in that light.

Any discussion of the Lever Act⁴ and the cases decided thereunder would be outside the scope of this thesis, as it was purely temporary legislation under the war powers; by Section 12, of the act, it is provided that "The provisions of this act shall cease to be in effect when the national emergency resulting from the existing state of war shall have passed, the date of which shall be ascertained and proclaimed by the President." It seems that "the national emergency resulting from the existing state of war" has not yet passed and is not likely to pass until some solution is found to the present treaty

1. 38 Stat. at Large, 730.

2. *Paine Lumber Co. v. Neal*, 244 U. S., 459. "The solution of the puzzle raised by a statute so blindly drawn as this one is not easy, and the intimation as to the present division of the Supreme Court given (purely obiter) in *Paine, etc., Co. v. Neal*, 244 U. S., 459, merely adds embarrassment." *Duplex Printing Press Co. v. Deering*, 252 Fed., 722, 747.

3. *U. S. v. King*, 250 Fed, 908.

Duplex Printing Press Co. v. Deering, *Supra*.

Kroger Grocery Co. v. Retail Clerks' I. P. Ass'n., 250 Fed., 522.

4. 40 Stat. at Large, 276.

muddle at Washington. We are, until then, under war legislation and an injunction may still be invoked under the Lever Act as in the present coal strike.

Whatever may have been ancient common law upon the right of workmen to organize for mutual benefit, there has never been any doubt upon that point in this country. Labor organizations were held subject to the provisions of the Sherman Act,⁵ and although no attempt was ever made to dissolve them on that ground, labor leaders declared such a power existed.⁶ Section 6 of the Clayton Act⁷ does no more than declare them lawful organizations, which they always were, and prevents their dissolution under the anti-trust acts as organizations per se in restraint of trade. It is further provided in Section 6 that "nothing contained in the anti-trust laws shall be construed . . . to forbid or restrain individual members of such organizations from lawfully carrying on the legitimate objects thereof." This provision is only declaratory of the law then existing;⁸ as stated in *Paine Lumber Co. v. Neal*,⁹ neither in the language of the section, nor in the committee reports, is there any indication of a purpose to render lawful or legitimate anything that before the act was unlawful, whether in the objects of such an organization or its members or in the measures adopted to accomplish them."

In discussing the subdivisions of the subject no attempt will be made to go into particular situations; in a thesis of this length such a procedure is impossible, and only the underlying principles will be considered, together with a consideration of the probable effect of the Clayton Act upon Federal law.

By the weight of authority peaceful picketing is permissible. . . ." The view taken by the majority of decisions, and which is best supported by reason, is that picketing, if not conducted in such numbers as will in itself amount to intimidation and when confined to the seeking of information such as the number and names and places of residence of those at work or seeking work on the premises against which the strike is in operation, and to the use of peaceful argument

5. *Loewe v. Lawlor*, 208 U. S., 274, same case 235 U. S., 522.

U. S. v. Workingmen's Council, 57 Fed., 85.

6. 63rd Cong., 2nd Sess. Senate Report No. 698, p. 10.

7. "Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor . . . organizations instituted for the purpose of mutual help . . . nor shall such organizations or the members thereof be held or constituted to be illegal combinations or conspiracies in restraint of trade, under the anti-trust acts."

8. "The intention of Congress becomes manifest to make this Section 6 a mere declaratory statement of existing law."—Address of Ex-Pres. Taft, Proceedings of A. B. A. 1914, p. 374.

9. Cited supra, at p. 484.

and entreaty for the purpose of procuring such workmen to support the strike by quitting the work, is not unlawful, and will furnish no ground for injunction. . . . That the views set forth in this section are correct will admit of no doubt.* Another line of decisions holds all picketing is per se unlawful, and no distinction is made between the modes or objects of the picketing.¹⁰

In those jurisdictions where picketing is permitted, any threats, intimidation, or coercion will be enjoined, and such intimidation or coercion need not consist of violence or words conveying an active threat of bodily harm; it is enough if the picketing is done in such numbers or in such a manner that a reasonably courageous man would be deterred from offering his service to the employer.¹¹ Even though the picketing is peaceful, it may, nevertheless, be restrained if the object is unlawful. Thus, peaceful picketing will be restrained if its object is to persuade workmen to break their contracts to serve for a definite period,¹² and picketing, irrespective of its methods, would likewise be enjoined if it were done with express malice, or for the purpose of injuring the person against whom it is directed and not to benefit the labor organization.¹³

The Federal courts fully recognize peaceful picketing as lawful.¹⁴ In *Iron Moulders' Union v. Allis Chalmers Co.*, cited below, the injunction in the trial court enjoined picketing simpliciter and the Appellate Court modified the injunction to read "picketing in a threatening and intimidating manner." The Clayton Act, in so far as

9a. *Martin's Modern Law of Labor Unions*, Sec. 169.

The same conclusion is reached in a note in 4 L. R. A. (N. S.) 302. *Karges Furniture Co. v. Amalgamated Woodworkers*, 165 Ind. 421. *Jones v. E. Van Winkle Gun & Mach. Works*, 131 Ga., 336. *Butterick Pattern Co. v. Typographical Union*, 10 N. Y. Supp., 292. *Everett Waddey Co. v. Typographical Union*, 105 Va., 188. *Jensen v. Cooks' & Waiters' Union*, 39 Wash., 531.

10. *Vegeahn v. Gunter*, 167 Mass., 92.

Beck v. Ry. Teamsters' Protective Union, 118 Mich., 497.

Barnes v. Chicago Typographical Union, 232 Ill., 424.

A recent Missouri case, *Hughes v. Motion Picture Operators' Union*, not yet reported, seems to put Missouri in the minority on this question. Press reports indicate that this case will overrule or qualify *Berry Foundry Co. v. International Moulders' Union*, 177 Mo. App. 84, and *Ex parte Heffron*, 179 Mo. App., 639, both of which approved in clear terms peaceful picketing.

11. *Cumberland Glass Mfg. Co. v. Glass Bottle Blowers' Ass'n.*, 59 N. J. Eq., 49.

Herzog v. Fitzgerald, 74 N. Y. App. Div., 110.

Everett Waddey Co. v. Typographical Union, 105 Va., 188.

See *New Jersey Printing Co. v. Cassidy*, 63 N. J. Eq., 759, for a novel theory of the employers' rights to the labor market.

12. *Iron Moulders' Union v. Allis Chalmers Co.*, 166 Fed., 45.

13. *Parkinson v. Trades Council*, 154 Cal., 581, 603.

14. *Iron Moulders' Union v. Allis Chalmers Co.*, 166 Fed., 45.

it respects picketing, is merely declaratory of existing Federal law. It provides in Section 20 that "No such restraining order or injunction . . . shall prohibit any person or persons, whether singly or in concert, . . . from recommending, persuading or advising others by *peaceful* means" to terminate the relation of employment or cease to perform any work or labor, "or from attending at any place where any such person or persons may *lawfully* be, for the purpose of *peacefully* persuading any person to work or refrain from working . . . or from *peacefully* assembling in a *lawful* manner for *lawful* purposes." What are peaceful means, peaceful persuasion, and peaceful assemblages in a lawful manner for lawful purposes is left undefined, and they can only be what the Federal courts have already defined or passed upon as peaceful and lawful. These provisions do not in any way affect the present body of Federal law on picketing or assembling during strikes.¹⁵

The law of the boycott is a confused tangle and we shall only consider some of the controlling principles and the broad lines of conflict. The basis of injunctive relief in the boycott is conspiracy against property or civil rights. The accepted definition of common law conspiracy is an agreement between two or more persons to do an unlawful act or a lawful act in an unlawful manner. From this we pass to the much controverted question whether many can lawfully do in concert what one can do singly. Strict logic would lead to the conclusion that the uniting of two or more persons in the doing of an act which any one of them could do singly cannot change the essential character of the act or the manner of doing it so as to render either of them unlawful,¹⁶ although it may accomplish results which are oppressive or socially disastrous. The weight of authority, however, is against what seems to be the strict logic of the situation. "It is also broadly stated in many decisions that what one may lawfully do singly, any number of men acting in combination can do without rendering themselves liable to civil action. . . . Nevertheless, this is against the great weight of authority, which is to the effect that while the act of an individual may not be unlawful, yet the same act when committed by a combination of individuals may be unlawful both in the

Trades Council v. American Steel Foundries, 238 Fed., 738.

Southern Ry. Co. v. Machinists' Local Union, 111 Fed., 54.

Aluminum Casting Co. v. Local No. 84, 197 Fed., 221.

15. Montgomery v. Pacific Ry. Co., 258 Fed., 389.

Stephens v. Telephone Co., 240 Fed., 759.

Alaska S. S. Co. v. International Longshoremen's Ass'n., 236 Fed., 964.

16. Bohn Mfg. Co. v. Hallis, 55 Minn., 223.

Lindsay v. Montana Fed. of Labor, 37 Mont., 264.

sense of rendering the members of the combination liable to a criminal prosecution, or to an action on the case for damages or to injunctive process."¹⁷

The so-called primary boycott is by the great weight of authority and on principle clearly lawful. The primary boycott consists of an agreement on the part of the members of the union or of any organization to cease business relations with a certain person or persons against whom they have a grievance.¹⁸ Strictly speaking, the primary boycott is not a boycott in the true sense of the term; as the Court says, through Van Orsdel, J., in *American Fed. of Labor v. Buck Stove & Range Co.*¹⁹ "It will be observed that there is no boycott until the members of the organization have passed the point of refusing to patronize the person or corporation themselves, and have entered the field where, by coercion or threats, they prevent others from dealing with such persons or corporation. I fully agree with the distinction. So long, then, as the American Federation of Labor, and those acting under its advice, refused to patronize complainants, the combination had not risen to the dignity of an unlawful conspiracy or boycott." This is in accord with the much quoted definition of a boycott in *Toledo, etc., Ry. Co. v. Pennsylvania Co.*,²⁰ "A boycott is a combination of many to cause loss to one person by *coercing others*, against their will, to withdraw from him their beneficial business intercourse, through threats that, unless those others do so, the many will cause a similar loss to them."

When the union passes beyond the point of peaceful persuasion or agreeing inter se not to deal with its opponents and seeks to coerce others not to deal with them through threats of strikes or boycotts of such others, we have the secondary boycott. By the weight of authority the secondary boycott is illegal and will be enjoined.²¹ There are, however, a few States in which the secondary boycott is legal

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17. *Martin's Modern Law of Labor Unions*, Sec. 28.
Buck's Stove & Range Co. v. Am. Fed. of Labor, 35 App. D. C., 797.
Pickett v. Walsh, 192 Mass., 272.
A. R. Barnes & Co., v. Chicago Typo. Union, 232 Ill., 424, etc.
 18. *Martin's Modern Law of Labor Unions*, Sec. 71.
Bohn Mfg. Co. v. Hallis, 54 Minn., 223.
Pierce v. Stablemen's Union, 156 Cal., 70.
33 App. D. C., 83, 117.
 19. 54 Fed., 730, 738.
 20. *Gray v. Building Trades' Council*, 91 Minn., 17.
Lohse Patent Door Co. v. Fuelle, 215 Mo., 421.
Beck v. Ry. Teamsters' Protective Union, 118 Mich., 497.
Jensen v. Cooks' & Waiters' Union, 39 Wash., 531, etc.

and no injunction will issue on that ground alone.²² According to one of these cases, they may not only concertedly withdraw all business relations and induce others to do the same, but "they may even go further than this, and request of another that he withdraw his patronage from the employer, or may use the moral intimidation and coercion of threatening a like boycott against him, if he refuse to do so."²³ Even in these jurisdictions, however, the boycott will be enjoined if the purpose is not the promotion of the interest of the members, but malicious, and for the express purpose of injuring the person against whom it is directed.²⁴

The Federal laws, up to the time of the enactment of the Clayton Act, held the primary boycott legal, and the secondary boycott illegal and enjoined.²⁵ The Clayton Act has cast serious doubts upon the present body of Federal law relating to the boycott. The pertinent portion of the act is the following extract from Section 20: "No restraining order or injunction shall be granted by any court of the United States or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees . . . involving or growing out of a dispute concerning terms and conditions of employment unless necessary to prevent irreparable injury to property, or a property right, of the person making the application. . . . And no such restraining order or injunction shall prohibit any person or persons , , , from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do." This does not affect the prior stand of the court on the primary boycott, but it seems, if such were necessary, to settle it beyond any doubt. Whether it affects the present law of the secondary boycott, there is much doubt.

The case which threatens to make profound and fundamental changes in the Federal law on boycotting is *Duplex Printing Press Co. v. Deering*,²⁶ decided by a divided court in the Circuit Court of Appeals. Complainant, a manufacturer of printing presses, ran an

22. *National Protective Ass'n. v. Commings*, 170 N. Y., 315.

Bossert v. Dhuy, 221 N. Y., 342.

Pierce v. Stablemen's Union, 156 Cal., 70.

Lindsay v. Montana Fed. of Labor, 37 Mont., 264.

23. *Pierce v. Stablemen's Union*, supra.

24. See *Bossert v. Dhuy*, supra.

25. *American Federation of Labor v. Buck Stove & Range Co.*, supra.
Montgomery Ward & Co. v. S. D. Retail, etc., Dealers' Ass'n. 150 Fed., 413.

Hopkins v. Oxley Stave Co., 83 Fed., 912.

26. 252 Fed., 722.—The advance sheets of the Federal Reporter indicate that this case has not been taken up to the Supreme Court on certiorari.

open shop in the State of Michigan, defendants are officers and members of the International Association of Machinists. The defendants, in order to force complainant to unionize its business, visited its customers in New York and told them that complainant was unfair and that union men would not handle or install complainant's presses, and in several instances called strikes to prevent truckmen from hauling them and mechanics from installing them for complainant's customers. They also threatened that they would call a strike of such customers' employees if they insisted on installing them. None of the defendants had ever been employees of the complainant; complainant asks an injunction against these acts. We have here a secondary boycott, and, more than that, a case indistinguishable from *Loewe v. Lawlor*,²⁷ a fact which both majority and minority of the court recognized and emphasized.²⁸

The Court refused the injunction, holding that the Clayton Act had legalized the secondary boycott.²⁹ This is a revolutionary change in the Federal law of boycott and conspiracy. In arriving at this conclusion, the construction of certain portions of Section 20 is of far-reaching effect. The act provides that no injunction shall issue in any controversy between employer and employee, or employers and employees. In the instant case the relationship of employer and employee had never existed between complainant and respondents, and the Court held that these terms referred to the hirer and the hired in the generic sense of the term, and that the prohibition of the statute was not limited to those cases in which the relation of the employer and employee exists or formerly existed. In this the Court does not seem to be in accord with certain observations of the Supreme Court in *Paine Lumber Co. v. Neal*,³⁰ and the opinions of several distinguished commentators on the act.³¹ It may readily be seen that this is a matter of profound importance; the construction adopted in the *Duplex* case would prevent injunctions in those cases where the complainant

27. 208 U. S., 274; 235 U. S., 522.

28. See pp. 742, 747.

29. See *U. S. v. King*, 250 Fed., 908.—Secondary boycott conducted by an agricultural association not conducted for profit and so within Sec. 6 of Clayton Act. Held: Secondary boycott illegal, organizations described in Clayton Act not permitted to adopt methods of carrying on their affairs forbidden to other lawful associations. Although not a labor case, opinion includes them in its conclusions.

See also opinion expressed by Ex-Pres. Taft in address before A. B. A. contra to decision in case. "It therefore follows that, in spite of Sec. 20, parties to a labor dispute on one side may have an injunction against parties on the other side to prevent the latter from using as a weapon in the fight such a boycott of outsiders."—Proceeding of A. B. A. 1914, p. 377.

30. 244 U. S., 459, 484.

31. Address of Ex-Pres. Taft, Proceeding of A. B. A., 1914, pp. 375-6.

is no party to the controversy, whereas the other interpretation would limit the prohibition against injunctions exclusively to the parties to the dispute.

The result of this case seems to be that labor unions are exempted from the operation of the anti-trust laws. Under the Sherman Act the right to an injunction for a violation thereof was exclusively in the United States, while Section 16 of the Clayton Act provides "that any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage under the anti-trust laws." As this case was conceded by the court to be precisely the same as *Loewe v. Lawlor*, in other words, a violation of Section 1 of the Sherman Act, it called for an injunction under the Clayton Act, if *Loewe v. Lawlor* is still law. It does not seem possible in view of Section 16, that no injunction will issue, but that nevertheless the labor organization is liable under the triple damage clause.³² The effect of this can only be that the Clayton Act has exempted labor unions from the operation of the anti-trust laws and that no injunction is available on the ground that their action is in restraint of trade and commerce among the several states. This result, however, seems contrary to the intention of Congress, at least so far as expressed in committee proceedings,³³ and of commentators on the law.³⁴ There are also dicta to the contrary in *Paine Lumber Co. v. Neal* at page 485. "There is no grant, in terms or by necessary inference, of *immunity in favor of boycott of traders in interstate commerce, violative of the provisions of the Sherman Act*, to which the Clayton Act is supplemental." A question of this importance, which would so seriously affect Federal law on such a vital economic and social problem, will certainly be passed upon by the Supreme Court in the near future and, until it is, all consideration of the question

32. Sec. 4 of the Clayton Act, a re-enactment of Sec. 7 of the Sherman Act.

See *Dowd v. Unitel Mine Workers of America*, 235 Fed., 423.

33. "It is not proposed by the bill or amendments, to alter, amend or change in any respect the original Sherman Anti-Trust Act of July 2, 1890. The purpose is only to supplement that act and the other anti-trust acts," and further, "The bill does not interfere with the Sherman Anti-Trust; it leaves the law of conspiracy untouched."

Report of the Judiciary Committee, 63rd Cong., 2nd Sess., Senate Report No. 698, p. 37.

34. Address of Ex-Pres. Taft cited *supra* at p. 378.—"It follows that the new statute does not affect *Loewe v. Lawlor* at all."

"The net result of Sec 20 . . . is also to leave the prohibitions of the Sherman Act untouched; the labor union which restrains interstate trade by unlawful acts, or by the pursuit of an illegitimate end is still liable to the fate of the Danbury Hatters." 32 *Harvard L. R.*, 635.

is only speculation. However, there seems to be good grounds for doubting the Duplex case.

It should be noted that the prohibition of Section 20 extends only to cases involving or growing out of a dispute concerning terms and conditions of employment. The injunction is still available, as before the enactment of the act, where the action of the labor organization arises from malice, or from an intent to injure the person against whom it is directed and not to forward the interests of the association. The Federal courts still have ample power under the Clayton Act to enjoin acts of violence or other unlawful acts whenever "necessary to prevent irreparable injury to property, or a property right," of the party making the application.³⁵

The principle that equity will not compel the performance of a contract for personal services nor enjoin anyone from quitting the service of an employer needs no citation of authority. In *Farmers' Loan & Trust Co. v. Northern Pacific Ry. Co.*³⁶ the District Court enjoined the employees "from so quitting the service of the said receiver, with or without notice, as to cripple the property or prevent or hinder the operation of said railroad." On appeal³⁷ the quoted portion was stricken out, since the employees had the right to quit singly or unitedly at any time for any reason which might seem proper to them, and whatever damage might result to the employer thereby is *damnum absque injuria*. They cannot be enjoined from quitting no matter what might be the result; such an injunction would amount to enforcing involuntary servitude. "The fact that employees of the railroad may quit *under circumstances that show bad faith on their part, or reckless disregard of their contract; or of the convenience and interest of both employer and public*, does not justify a departure from the general rule that equity will not compel the actual, affirmative performance of purely personal services or . . . require employees, against their wills, to remain in the personal service of their employer."³⁸ The provisions of the Clayton Act are merely declaratory of these well settled principles. It provides in Section 20 that "no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment or from ceasing to perform any work or labor."

Although workmen themselves cannot be restrained from quitting,

35. *Montgomery v. Pacific Ry. Co.*, 258 Fed., 389.
Kroger Grocery Co. v. Retail Clerks', etc., Ass'n., 250 Fed., 890.
Alaska S. S. Co. v. Int. Longshoremen's Ass'n., 236 Fed., 964.

36. 60 Fed., 803.

37. *Arthur v. Oakes*, 63 Fed., 310.

38. *Arthur v. Oakes*, *supra*.

officers of a union may be restrained from calling a strike for an unlawful purpose. They will be enjoined where compliance with the strike order would result in breaches of contracts of employment,³⁹ or where the object is to compel the employer to breach a contract with a third party,⁴⁰ or to cause a violation of the Interstate Commerce Act.⁴¹ Even though there is no contract of employment for any definite period, equity will intervene to prevent unlawful interference with the relationship. "The fact that the employment is at the will of the parties respectively does not make it one at the will of others . . . and the unjustifiable interference of third persons is actionable although the employment is at will."⁴²

In many cases dicta are to be found that employees of public service corporations charged with duties in which the public is concerned stand upon a different basis than others. In *Toledo, etc., Ry. Co. v. Pennsylvania Co.*,⁴³ the court says, "Holding to that employer (the railroad), so engaged in this great public undertaking, the relation they did, they owed to him and to the public a higher duty than though their services had been due to a private person. . . . In ordinary conditions as between employer and employee, the privilege of the latter to quit the former's service at his option cannot be prevented by restraint or force. . . . *But those relative rights and powers may become quite different in the case of the employees of a great public corporation, charged by the law with certain great trusts and duties to the public.*" These expressions seem erroneous; they are expressly negatived in *Arthur v. Oakes*. It is impossible to understand how the employee's constitutional right to work or cease working is affected by the nature of the employment. We may conclude, therefore, that the fact that the employment is one which vitally affects the public is not in itself a ground for injunctive relief, nor is it an additional circumstance which would cause an injunction to issue where there is no other equitable ground for an injunction. Relief by injunction in such cases stands upon the same equitable principles as in others.

Under the Sherman Act the government was given the right to an injunction to prevent violations of the act, and in one case this was exercised against a strike which interfered with interstate com-

39. *Hitchman Coal & Coke Co. v. Mitchell*, 245 U. S., 229.
Barnes & Co. v. Berry, 156 Fed., 72.

Wabash Ry. Co. v. Harnahan, 121 Fed., 563.

40. *Thomas v. Cincinatti, etc., Ry. Co.*, 62 Fed., 563.

41. *Toledo, etc., Ry. Co. v. Pennsylvania Co.*, 54 Fed., 730

42. *Truax v. Raich*, 239 U. S., 33, 38.

See *U. S. ex rel. Guaranty Trust Co. v. Haggerty et al.*, 116 Fed., 510.

43. 54 Fed., 746, 752.

merce.⁴⁴ The Clayton Act extends this remedy to private persons to prevent the injury or threatened injury from a violation of the anti-trust laws, but it remains to be seen how far private persons will be able to use this against labor organizations as it is doubtful to what extent they are now subject to the anti-trust laws. The Clayton Act, however, extended the prohibition of the injunction only to cases between employers and employees, and it has not in any way affected the right of the government in the interest of the public to an injunction under the anti-trust laws. But above any remedy given by statutes, the government has an inherent right by virtue of its constitutional power over commerce and transportation to enjoin any obstruction thereto.⁴⁵ In the Debs case the court makes it plain that they do not rest their decision on the Sherman Act nor on the fact that the government has a property right in the mails such as to enable it to appear as a party plaintiff, but on a broader ground than either of these, "Every government, entrusted, by the very terms of its being, with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper assistance in the exercise of the one and the discharge of the other, and it is no sufficient answer to its appeal to one of these courts that it has no pecuniary interest in the matter. *The obligation which it is under to promote the interest of all, and to prevent the wrong-doing of one resulting in injury to the general welfare is often in itself sufficient to give it a standing in court.*"⁴⁶ and further, "In the exercise of those powers (over commerce and the transportation of the mails) it is competent for the government to remove all obstructions upon highways, natural or artificial, to the passage of interstate commerce or the carrying of the mail; that while it may be competent for the government (through the executive branch and in the use of the entire executive power of the nation) to forcibly remove all such obstructions, it is equally within its competence to appeal to the civil courts for an inquiry and determination into the existence and character of any alleged obstructions, and if such are found to exist, or threaten to occur, to invoke the powers of those courts to remove or restrain such obstructions."⁴⁷ The Federal government would seem to have the right to an injunction to restrain any unlawful interference with its powers or functions by either party to a labor dispute outside of any express statute.

44. U. S. v. Workingmen's Council, 54 Fed., 994, affirmed in 57 Fed., 85.

45. In re Debs, 158 U. S., 564.

46. In re Debs, p. 584.

47. At p. 599.

A recent case, which seems to be of novel impression, is full of possibilities for the protection of public rights by injunction on the initiative of one of the public.⁴⁸ Complainants, subscribers of defendant company, sued in a representative capacity in the interest of all persons similarly situated, to compel the defendant to perform its statutory duty of furnishing adequate service to all subscribers; the defendant was unable to do so because of a strike in progress. The court enforced this duty by decreeing that "all said persons and parties are enjoined and restrained from doing any act or thing which may interfere in any respect with the performance of the duties and obligations of the defendant company as a common carrier." Under this doctrine, any person interested in the performance of a statutory duty by a public service corporation can sue in the interest of all persons similarly interested to enforce the performance of that duty and to prevent anyone from unlawfully interfering with the performance thereof.

The Clayton Act is only the beginning of legislation to limit the use of injunctions in labor controversies. Organized labor is carrying on an active propaganda with this end in view. In two instances certain features of these statutes have been declared unconstitutional.⁴⁹ To deny a property right or a constitutional right, the only remedy which can effectively protect it, amounts to a denial of the right itself. The Supreme Court has held that employer and employee have the right of freely contracting for the purchase and sale of labor under the 5th and 14th amendments,⁵⁰ and any legislation withdrawing the employment of the injunction to protect and preserve these rights would be unconstitutional. The courts will not permit the legislature to encroach upon constitutional rights by denying them the full protection of the law, and we may depend upon the Federal and State constitutions to prevent the abolition of the injunction where constitutional rights are involved.

48. *Stephens v. Ohio Telephone Co.*, 240 Fed., 759, in the District Court.

49. *Bogni v. Perotti*, 224 Mass., 152.

Goldberg Bowen & Co. v. Stablemen's Union, 149 Cal., 429, 434.

50. *Adair v. U. S.*, 208 U. S., 161.

Coppage v. Kansas, 236 U. S., 1.

See *Roraback v. Motion Picture Operators' Union*, 140 Minn., 481, 486.