decisions in social security and workmen's compensation cases which included tips in computing wages or remuneration.[6]

Against the decision in the principal case it can be argued that the policy of the Act—establishment of minimum wages sufficient to enable all persons engaged in interstate commerce to maintain a decent standard of living—would be effectuated if tips were considered a part of wages, so long as the employer made up the difference between tips received and the minimum wages established under the Act.[7] Moreover, the word "wages" could well be construed to harmonize with this result, for in many cases tips have, in fact, become part or all of the employee's remuneration, and are paid with knowledge of that fact.[8] In hat-check concessions, for example, it is well known that the "employees" often pay for the right to receive tips from the public. Thus, remuneration paid in this way by the public which the employee directly serves could be held to be "wages" within the Act. It is at least possible that this result would be reached if the employer and the employee were to contract that tips were to be the property of the employer and applied in part-payment of wages. The court expressly leaves open this question.[9] *Quaere,* whether there would be consideration to support the contract, since the employer is already under a duty to pay the fixed minimum wage.[10]

The decision as it stands will affect all persons engaged in interstate commerce who receive tips,[11] and it may have interesting practical results. Already some railroad terminals have substituted for the familiar tip a flat service charge for carrying parcels, which goes to the employer. If tips cannot be applied in reduction of wages, employers may end by discouraging the practice altogether, thus reducing the direct charge to the public for such services. This result would be in accord with the ideas of those courts, legislatures, and writers that have condemned the custom of tipping.[12]

D. L.

LABOR LAW—INJUNCTION UNDER SHERMAN ACT—EFFECT OF NORRIS-LA GUARDIA ACT—[United States].—Plaintiffs were two dairies, a cooperative association selling milk, and a C. I. O. union of vendors or retail peddlers. The dairies bought milk from the cooperative, processed it, and "sold" it

6. Federal Underwriters Exchange v. Husted (Tex. 1936) 94 S. W. (2d) 540; Sloat v. Rochester Taxicab Co. (1917) 177 App. Div. 57, 163 N. Y. S. 904. See: Note (1931) 75 A. L. R. 1223, 1224; Note (1935) 67 U. S. L. Rev. 548.

7. On the other hand, it is probable that Congress did not intend to take from employees in interstate commerce any advantages which they already enjoyed.

8. Note (1937) 71 U. S. L. Rev. 365.

9. Pickett v. Union Terminal Co. (D. C. N. D. Tex. 1940) 33 F. Supp. 244, 247.

10. Glendale v. Coquat (Ariz. 1935) 52 P. (2d) 1178; Larsen v. Rice (1918) 100 Wash. 642, 171 Pac. 1037.

11. E. g., Pullman porters, airline and busline employees.

12. See: Note (1937) 71 U. S. L. Rev. 365; Jhering, Trinkgeld and Tips (1916) 32 L. Q. Rev. 306; Comment (1917) 3 Va. L. Reg. (N. S.) 206.

at wholesale to the vendors, who used their own trucks in reselling it to various retail dealers. The dairies repurchased, in ordinary course, any milk that the vendors could not dispose of. The resulting prices to the retail stores and consumers were lower than those charged by dairies which owned their own trucks and distributed their milk by means of hired drivers. Defendant, an A. F. of L union of drivers, found its men being displaced by the plaintiffs' "vendor system." It attempted to unionize the vendors on condition that they cease to handle milk as vendors if admitted to the defendant union. When this attempt failed, defendant picketed retail stores which bought from the vendors. Plaintiffs sued to enjoin the picketing on the ground that defendants were conducting a "secondary boycott" in violation of the Sherman Act.[1] The circuit court of appeals held that the Norris-La Guardia Act,[2] restricting the issuance of injunctions in labor disputes, did not apply to suits under the Sherman Act, and issued an injunction.[3] On appeal the United States Supreme Court reversed the decision and *held*, that the controversy was a labor dispute, and that the picketing, even though a violation of the Sherman Act, could not be enjoined except in accordance with the Norris-La Guardia Act. *Milk Wagon Drivers' Union v. Lake Valley Farm Products.*[4]

The instant case marks the end of an era. Since the decision in *Loewe v. Lawlor*[5] in 1907, the Sherman Act has been available to prevent or punish boycotts by trade unions in labor disputes. The Clayton Act[6] in 1914, though hailed as a benefit to labor, gave to private parties the power to sue for an injunction against violators of the Sherman Act, and thus greatly increased the restrictions which the Sherman Act had placed on labor. In *Duplex Printing Press Co. v. Deering*[7] union members in New York refused to handle in any manner the product of a non-union Michigan factory and went on strikes in sympathy with the strikers in Michigan. The Supreme Court held that such strikes and boycotts could be enjoined as a violation of the Sherman Act. And in *Bedford Stone Co. v. Journeymen Stone Cutters*[8] the Court extended this rule to a union which did no more than refuse to let its men work on stone cut partly by non-union workers. The effect of these decisions was to deny to labor the use of its

1. (1890) 26 Stat. 209, c. 647, 15 U. S. C. A. (1927) secs. 1-7.
2. (1932) 47 Stat. 70, c. 90, 29 U. S. C. A. (Supp. 1940) secs. 101-115.
3. Lake Valley Farm Products v. Milk Wagon Drivers' Union (C. C. A. 7, 1939) 108 F. (2d) 436.
4. (1940) 61 S. Ct. 122. See United States v. Hutcheson (1941) C. C. H. Sup. Ct. Serv. 539, where a jurisdictional dispute was held not to subject union officers to a criminal indictment under the Sherman Act, on the grounds of policy expressed in the instant case affirming the provisions of the Norris-La Guardia Act. See Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc. (1941) C. C. H. Sup. Ct. Serv. 667, where an injunction was granted on essentially the same set of facts under the Illinois Anti-Injunction Act (discussed in Comment (1940) 25 WASHINGTON U. LAW QUARTERLY 290).
5. (1907) 208 U. S. 274.
6. (1914) 38 Stat. 730, c. 323, 29 U. S. C. A. (1927) sec. 52.
7. (1921) 254 U. S. 443.
8. (1927) 274 U. S. 37.

most potent weapon of self-protection in unionizing new territory and preventing non-union products from driving union made goods out of the interstate market.[9]

The difference between the earlier decisions and the instant one lies simply in the Norris-La Guardia Act. By that act federal courts are deprived of jurisdiction to issue injunctions in labor disputes except upon certain findings of fact,[10] and then only against fraud and violence.[11] The circuit court of appeals reasoned that the Norris-La Guardia Act did not restrict federal equity jurisdiction in a case involving a "secondary boycott" under the Sherman Act because the boycott was *illegal*.[12] Such construction not only overlooks the rather plainly expressed intent of Congress to overrule the *Duplex* and *Bedford* cases,[13] but it also conflicts with section 5 of the Norris-La Guardia Act which prohibits the granting of an injunction "upon the ground that any of the persons participating * * * in a labor dispute constitute * * * an unlawful combination of conspiracy * * *."[14]

S. M. M.

SALES—CARRYING CHARGE AS USURY—TRIPARTITE CREDIT TRANSACTIONS —[Texas].—Plaintiff purchased an automobile under a conditional sale contract, giving in payment his note for a sum much greater than the regular cash price. The seller immediately assigned the note and the conditional sale contract to the defendant finance company, in whose office the entire transaction was consummated. In return, defendant paid to the seller the cash price of the automobile. After paying the note, plaintiff sued to recover the statutory penalty for usury, claiming that the $151.55 difference between the cash price and the credit price was an excessive interest charge. Defendant contended, on the other hand, that the $151.55 was merely a carrying charge—that the transaction was not a loan or forbearance, but a valid credit sale. *Held*, that the sum of $151.55 was intended as compensation for the use or detention of money loaned, and that the transaction was, therefore, usurious. *Frankfurt Finance Co. v. Cox*.[1]

The decision seems to conflict with the well-established rule that on a contract to secure the price or value of work or labor done, or of property sold, the contracting parties may agree upon one price if cash be paid, and upon as large an addition to the cash price as they wish if credit be given. The courts have uniformly agreed that conditional sales contracts do not involve the lending of money or the forbearance of a debt, unless they are

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9. Cf. 274 U. S. 37, 65, Brandeis, J., dissenting.
10. (1932) 47 Stat. 71, c. 90, 29 U. S. C. A. (Supp. 1940) sec. 107.
11. Id. at sec. 104.
12. (1939) 108 F. (2d) 436, 442. See vigorous criticism of such reasoning under Sherman Act in Frankfurter and Greene, *The Labor Injunction* (1930) 171; Berman, *Labor and the Sherman Act* (1930) 99-110, 170-179.
13. See New Negro Alliance v. Sanitary Grocery Co. (1938) 303 U. S. 552, 562. See also: H. R. Rep. No. 669 (1931) 72nd Cong., 1st Sess., 7, 8; Sen. Rep. No. 163 (1931) 72nd Cong., 1st Sess., 8.
14. (1932) 47 Stat. 71, c. 90, 29 U. S. C. A. (Supp. 1940) sec. 105.

1. (Tex. Civ. App. 1940) 142 S. W. (2d) 553.