

Duplex Printing Press Co. Vs. Deering

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Appeal No. : 254 U.S. 443

Appellant : Duplex Printing Press Co.

Respondent : Deering

Judgement :

Duplex Printing Press Co. v. Deering - 254 U.S. 443 (1921)

U.S. Supreme Court Duplex Printing Press Co. v. Deering, 254 U.S. 443 (1921)

Duplex Printing Press Co. v. Deering

No. 45

Argued January 22, 1920

Decided January 3, 1921

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APPEAL FROM THE CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

SYLLABUS

1. The Act of October 15, 1914, known as the Clayton Act, in so far as it grants relief by injunction to private suitors, or affixes conditions and otherwise modifies the Sherman Act, is applicable to a suit for an injunction pending at the time of its enactment. P. [254 U. S. 464](#) .

2. For the purpose of compelling a manufacturer of printing presses to unionize its factory in Michigan, in which there had been an unsuccessful strike, and to enforce there the "closed shop," the eight-hour day and the union scale of wages, organizations of machinists with headquarters at New York City, and a larger organization of national scope with which they were affiliated, entered into a combination to interfere with and restrain the manufacturer's interstate trade by means of a "secondary" boycott, centered particularly at New York City and vicinity where many of the presses were marketed, in pursuance of which this manufacturer's customers in and near New York were warned, with threats of loss and of sympathetic strikes in other trades, not to purchase or install its presses; a trucking company usually employed by customers

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was notified, with threats, not to haul them; employees of the trucking company and of customers were incited to strike in order to prevent both hauling and installation; repair hops were notified not to repair them; union men were coerced by threats of the loss of their union cards and of being blacklisted as "scabs" if they assisted in installing them; an exposition company was threatened with a strike, if it allowed them to be exhibited, etc., etc. -- all of which seriously interfered with the interstate trade of the manufacturer and caused great loss to its business. *Held*, a combination and conspiracy to restrain interstate commerce against which the manufacturer was entitled to relief by injunction under the Sherman Act, as amended by the Clayton Act. Pp. [254 U. S. 461](#) *et seq.*

3. A conspiracy is a combination of two or more by concerted action to accomplish an unlawful purpose or to accomplish a purpose not in itself unlawful by unlawful

means. If the purpose be unlawful, it may not be carried out by means otherwise lawful; and although it be lawful, it may not be carried out by means that are unlawful. P. [254 U. S. 465](#) .

4. A "secondary boycott" is a combination not merely to refrain from dealing with the person aimed at, or to advise or by peaceful means persuade his customers to refrain, but to exercise coercive pressure upon such customers, actual or prospective, in order to cause them to withhold or withdraw patronage through fear of loss or damage to themselves. P. [254 U. S. 466](#) .

5. In determining the right to an injunction under the Clayton and Sherman Acts, the legality or illegality of a boycott under the common law or under the statutes of a particular State is of minor consequence, since the acts of Congress are paramount in their field, and must be given full, independent effect. P. [254 U. S. 466](#) .

6. It is settled by decisions of this court that a restraint of interstate commerce produced by peaceable persuasion violates the Sherman Act, and is not justified by the fact that the participants in the combination or conspiracy have an object beneficial to themselves or their associates which they might have been at liberty to pursue in the absence of the statute. P. [254 U. S. 468](#) .

7. Section 6 of the Clayton Act, in declaring that nothing in the antitrust laws shall be construed to forbid the existence and operation of labor organizations or to forbid their members from lawfully carrying out the legitimate objects thereof, and that such organizations or their members shall not be construed to be illegal combinations or conspiracies in restraint of trade, assumes that the normal objects of such organizations are legitimate, but contains nothing

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to exempt them or their members from accountability when they depart from objects that are normal and legitimate and engage in an actual combination or conspiracy in restraint of trade. It does not authorize any activity otherwise unlawful, or enable a normally lawful organization to cloak such an illegal

combination or conspiracy. P. [254 U. S. 468](#) .

8. The first paragraph of 20 of the Clayton Act -- which provides that injunctions shall not be granted in any case between an employer and employees, etc., growing out of a dispute concerning the terms and conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and that such property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney -- is merely declaratory of the law as it stood before. P. [254 U. S. 469](#)

9. The second paragraph of 20 of the Clayton Act, which provides that "no such . . . injunction shall prohibit" certain specified acts, manifestly refers to injunctions in any case of the character mentioned in the paragraph preceding, namely, "a case between an employer and employees . . . involving, or growing out of, a dispute concerning terms or conditions of employment;" and the concluding words of the second paragraph, "nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States," are to be read in the light of the context, and mean only that those acts are not to be so held when committed by parties concerned in a "dispute concerning terms or conditions of employment." P. [254 U. S. 469](#) .

10. As the section imposes an exceptional and extraordinary restriction upon the equity powers of the federal courts, and upon the general operation of the antitrust laws, conferring a special privilege or immunity upon a particular class to the detriment of the general public, the rules of statutory construction forbid that the privilege be enlarged by resorting to a loose construction or by ignoring or slighting the qualifying words of the section. P. [254 U. S. 471](#) .

11. This section confines the exceptional privilege to those who are proximately and substantially concerned in an actual dispute respecting the terms or conditions of their own employment, past, present or prospective; it does not use the words "employers and employees" in a general class sense, or treat all the members of a

labor organization as parties to a dispute which proximately affects but a few of them. Pp. [254 U. S. 471](#) *et seq.*

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12. That the Clayton Act was not intended to legalize the secondary boycott is shown by its legislative history. P. [254 U. S. 474](#) .

13. In construing an act of Congress, debates expressing views and motives of individual members may not be resorted to, but reports of committees and explanatory statement in the nature of a supplemental report made by the committee member in charge of the bill in course of passage, may. *Id.*

252 Fed.Rep. 722, reversed.

The case is stated in the opinion.

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MR. JUSTICE PITNEY delivered the opinion of the Court.

This was a suit in equity brought by appellant in the District Court for the Southern District of New York for an injunction to restrain a course of conduct carried on by defendants in that district and vicinity in maintaining a boycott against the products of complainant's factory, in furtherance of a conspiracy to injure and destroy its goodwill, trade, and business -- especially to obstruct and destroy its interstate trade. There was also a prayer for damages, but this has not been pressed, and calls for no further mention. Complainant is a Michigan corporation, and manufactures printing presses at a factory in Battle Creek, in that state, employing about 200 machinists in the factory, in addition to 50 office employees, traveling salesmen, and expert machinists or road men, who supervise the erection of the presses for complainant's customers at their various places of business. The defendants who were brought into court and answered the bill are Emil J. Deering and William Bramley, sued individually and as business agents and

representatives of District No. 15 of the International Association of Machinists, and Michael T. Neyland, sued individually and as business agent and representative of Local Lodge No. 328 of the same association. The District

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Council and the Lodge are unincorporated associations having headquarters in New York City, with numerous members resident in that city and vicinity. There were averments and proof to show that it was impracticable to bring all the members before the court and that the named defendants properly represented them; and those named were called upon to defend for all, pursuant to equity rule 38 (226 U.S. 659). Other jurisdictional averments need no particular mention. The District Court, on final hearing, dismissed the bill, 247 Fed. 192, the Circuit Court of Appeals affirmed its decree, 252 Fed. 722, and the present appeal was taken.

The jurisdiction of the federal court was invoked both by reason of diverse citizenship and on the ground that defendants were engaged in a conspiracy to restrain complainant's interstate trade and commerce in printing presses, contrary to the Sherman Antitrust Act of July 2, 1890, c. 647, 26 Stat. 209. (Comp. St. 8820-8823, 8827-8830). The suit was begun before but brought to hearing after the passage of the Clayton Act of October 15, 1914, c. 323, 38 Stat. 730. Both parties invoked the provisions of the latter act, and both courts treated them as applicable. Complainant relied also upon the common law; but we shall deal first with the effect of the acts of Congress.

The facts of the case and the nature of the relief prayed are sufficiently set forth in the report of the decision of the Circuit Court of Appeals. 252 Fed. 722. The case was heard before Circuit Judges Rogers and Hough and District Judge Learned Hand. Judge Rogers, although in the minority, stated the case and the pleadings for the court (pp. 723-727), and delivered an opinion for reversal in which he correctly outlined (pp. 734-737) the facts as shown by the undisputed evidence -- defendants having introduced none. Judges Hough and Hand followed with separate opinions for affirmance, not, however, disagreeing with Judge Rogers as to the facts. These may

be summarized as follows:

Complainant conducts its business on the "open shop" policy, without discrimination against either union or non-union men. The individual defendants and the local organizations of which they are the representatives are affiliated with the International Association of Machinists, an unincorporated association having a membership of more than 60,000, and are united in a combination, to which the International Association also is a party, having the object of compelling complainant to unionize its factory and enforce the "closed shop," the eight-hour day, and the union scale of wages, by means of interfering with and restraining its interstate trade in the products of the factory. Complainant's principal manufacture is newspaper presses of large size and complicated mechanism, varying in weight from 10,000 to 100,000 pounds, and requiring a considerable force of labor and a considerable expenditure of time -- a week or more -- to handle, haul, and erect them at the point of delivery. These presses are sold throughout the United States and in foreign countries; and, as they are especially designed for the production of daily papers, there is a large market for them in and about the city of New York. They are delivered there in the ordinary course of interstate commerce, the handling, hauling, and installation work at destination being done by employees of the purchaser under the supervision of a specially skilled machinist supplied by complainant. The acts complained of and sought to be restrained have nothing to do with the conduct or management of the factory in Michigan, but solely with the installation and operation of the presses by complainant's customers. None of the defendants is or ever was an employee of complainant, and complainant at no time has had relations with either of the organizations that they represent. In August, 1913 (eight months before the filing of the bill), the International Association called a strike at complainant's

factory in Battle Creek, as a result of which union machinists to the member of about 11 in the factory and 3 who supervised the erection of presses in the field

left complainant's employ. But the defection of so small a number did not materially interfere with the operation of the factory, and sales and shipments in interstate commerce continued.

The acts complained of made up the details of an elaborate programme adopted and carried out by defendants and their organizations in and about the city of New York as part of a countrywide programme adopted by the International Association, for the purpose of enforcing a boycott of complainant's product. The acts embraced the following, with others: warning customers that it would be better for them not to purchase, or, having purchased, not to install, presses made by complainant, and threatening them with loss should they do so; threatening customers with sympathetic strikes in other trades; notifying a trucking company, usually employed by customers to haul the presses, not to do so, and threatening it with trouble if it should; inciting employees of the trucking company, and other men employed by customers of complainant, to strike against their respective employers in order to interfere with the hauling and installation of presses, and thus bring pressure to bear upon the customers; notifying repair shops not to do repair work on Duplex presses; coercing union men, by threatening them with loss of union cards and with being blacklisted as "scabs" if they assisted in installing the presses; threatening an exposition company with a strike if it permitted complainant's presses to be exhibited; and resorting to a variety of other modes of preventing the sale of presses of complainant's manufacture in or about New York City, and delivery of them in interstate commerce, such as injuring and threatening to injure complainant's customers and prospective customers, and persons concerned

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in hauling, handling, or installing the presses. In some cases, the threats were undisguised; in other cases, polite in form, but nonetheless sinister in purpose and effect.

All the judges of the Circuit Court of Appeals concurred in the view that defendants' consisted essentially of efforts to render it impossible for complainant

to carry on any commerce in printing presses between Michigan and New York, and that defendants had agreed to do and were endeavoring to accomplish the very thing pronounced unlawful by this court in *Loewe v. Lawlor*, [208 U. S. 274](#) , and *Lawlor v. Loewe*, [235 U. S. 522](#) . The judges also agreed that the interference with interstate commerce was such as ought to be enjoined unless the Clayton Act of October 15, 1914, forbade such injunction.

That act was passed after the beginning of the suit, but more than two years before it was brought to hearing. We are clear that the courts below were right in giving effect to it; the real question being whether they gave it the proper effect. Insofar as the act (a) provided for relief by injunction to private suitors, (b) imposed conditions upon granting such relief under particular circumstances, and (c) otherwise modified the Sherman Act, it was effective from the time of its passage, and applicable to pending suits for injunction. Obviously, this form of relief operates only *in futuro*, and the right to it must be determined as of the time of the hearing. *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 18 How. 421, [59 U. S. 431](#) , [59 U. S. 432](#) . See also *United States v. Schooner Peggy*, 1 Cranch, 103, [5 U. S. 110](#) ; *Sampeyreac v. United States*, 7 Pet. 222, [32 U. S. 239](#) , 240; *Mills v. Green*, [159 U. S. 651](#) , [159 U. S. 653](#) ; *Dinsmore v. Southern Express Co.*, [183 U. S. 115](#) , [183 U. S. 120](#) ; *Berry v. Davis*, [242 U. S. 468](#) , [242 U. S. 470](#) .

The Clayton Act, in section 1, includes the Sherman Act in a definition of "antitrust laws," and in section 16 (38 Stat. 737) gives to private parties a right to relief by injunction in any court of the United States against threatened loss or

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damage by a violation of the antitrust laws, under the conditions and principles regulating the granting of such relief by courts of equity. Evidently this provision was intended to supplement the Sherman Act, under which some of the federal courts had held, as this court afterwards held in *Paine Lumber Co. v. Neal*, [244 U. S. 459](#) , [244 U. S. 471](#) , that a private party could not maintain a suit for injunction.

That complainant's business of manufacturing printing presses and disposing of them in commerce is a property right, entitled to protection against unlawful injury or interference; that unrestrained access to the channels of interstate commerce is necessary for the successful conduct of the business; that a widespread combination exists, to which defendants and the associations represented by them are parties, to hinder and obstruct complainant's interstate trade and commerce by the means that have been indicated; and that, as a result of it, complainant has sustained substantial damage to its interstate trade, and is threatened with further and irreparable loss and damage in the future -- is proved by clear and undisputed evidence. Hence, the right to an injunction is clear if the threatened loss is due to a violation of the Sherman Act as amended by the Clayton Act.

Looking first to the former act, the thing declared illegal by its first section (26 Stat. 209) is:

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations."

The accepted definition of a conspiracy is a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means. *Pettibone v. United States*, [148 U. S. 197](#) , [148 U. S. 203](#) . If the purpose be unlawful, it may not be carried out, even by means that otherwise would be legal; and, although

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the purpose be lawful, it may not be carried out by criminal or unlawful means.

The substance of the matters here complained of is an interference with complainant's interstate trade, intended to have coercive effect upon complainant, and produced by what is commonly known as a "secondary boycott" -- that is, a combination not merely to refrain from dealing with complainant, or to advise or by peaceful means persuade complainant's customers to refrain ("primary boycott"), but to exercise coercive pressure upon such customers, actual or prospective, in

order to cause them to withhold or withdraw patronage from complainant through fear of loss or damage to themselves should they deal with it.

As we shall see, the recognized distinction between a primary and a secondary boycott is material to be considered upon the question of the proper construction of the Clayton Act. But, in determining the right to an injunction under that and the Sherman Act, it is of minor consequence whether either kind of boycott is lawful or unlawful at common law or under the statutes of particular states. Those acts, passed in the exercise of the power of Congress to regulate commerce among the states, are of paramount authority, and their prohibitions must be given full effect, irrespective of whether the things prohibited are lawful or unlawful at common law or under local statutes.

In *Loewe v. Lawlor*, [208 U. S. 274](#) , where there was an effort to compel plaintiffs to unionize their factory by preventing them from manufacturing articles intended for transportation beyond the state, and also by preventing vendees from reselling articles purchased from plaintiffs and negotiating with plaintiffs for further purchases, by means of a boycott of plaintiffs' products and of dealers who handled them, this court held that there was a conspiracy in restraint of trade actionable under section 7 of the

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Sherman Act, and, in that connection, said (p. 293):

"The act prohibits any combination whatever to secure action which essentially obstructs the free flow of commerce between the states, or restricts, in that regard, the liberty of a trader to engage in business. The combination charged falls within the class of restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of trade except on conditions that the combination imposes. And when the case came before the court a second time, [235 U. S. 235](#) U.S. 522, [235 U. S. 534](#) , it was held that the use of the primary and secondary boycott and the circulation of a list of 'unfair dealers,' intended to influence customers of plaintiffs and thus subdue the latter to the demands of the

defendants, and having the effect of interfering with plaintiffs' interstate trade, was actionable."

In *Eastern States Retail Lumber Dealers' Association v. United States*, [234 U. S. 600](#) , wholesale dealers were subjected to coercion merely through the circulation among retailers, who were members of the association, of information in the form of a kind of "blacklist," intended to influence the retailers to refrain from dealing with the listed wholesalers, and it was held that this constituted a violation of the Sherman Act. Referring to this decision, the court said, in *Lawlor v. Loewe*, [235 U. S. 522](#) , [235 U. S. 534](#) :

"That case establishes that, irrespective of compulsion or even agreement to observe its intimation, the circulation of a list of 'unfair dealers,' manifestly intended to put the ban upon those whose names appear therein, among an important body of possible customers combined with a view to joint action and in anticipation of such reports, is within the prohibitions of the Sherman Act if it is intended to restrain and restrains commerce among the states."

It is settled by these decisions that such a restraint produced by peaceable persuasion is as much within the

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prohibition as one accomplished by force or threats of force, and it is not to be justified by the fact that the participants in the combination or conspiracy may have some object beneficial to themselves or their associates which possibly they might have been at liberty to pursue in the absence of the statute.

Upon the question whether the provisions of the Clayton Act forbade the grant of an injunction under the circumstances of the present case, the Circuit Court of Appeals was divided, the majority holding that, under section 20, "perhaps in conjunction with section 6," there could be no injunction. These sections are set forth in the margin. [[Footnote 1](#)] Defendants seek to derive from them some

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authority for their conduct. As to section 6, it seems to us its principal importance in this discussion is for what it does not authorize, and for the limit it sets to the immunity conferred. The section assumes the normal objects of a labor organization to be legitimate, and declares that nothing in the antitrust laws shall be construed to forbid the existence and operation of such organizations or to forbid their members from *lawfully* carrying out their legitimate objects; and that such an organization shall not be held in itself -- merely because of its existence and operation -- to be an illegal combination or conspiracy in restraint of trade. But there is nothing in the section to exempt such an organization or its members from accountability where it or they depart from its normal and legitimate objects and engage in an actual combination or conspiracy in restraint of trade. And by no fair or permissible construction can it be taken as authorizing any activity otherwise unlawful, or enabling a normally lawful organization to become a cloak for an illegal combination or conspiracy in restraint of trade as defined by the antitrust laws.

The principal reliance is upon section 20. This regulates the granting of restraining orders and injunctions by the courts of the United States in a designated class of cases, with respect to (a) the terms and conditions of the relief and the practice to be pursued, and (b) the character of

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acts that are to be exempted from the restraint, and, in the concluding words, it declares (c) that none of the acts specified shall be held to be violations of any law of the United States. All its provisions are subject to a general qualification respecting the nature of the controversy and the parties affected. It is to be a

"case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment."

The first paragraph merely puts into statutory form familiar restrictions upon the granting of injunctions already established and of general application in the equity practice of the courts of the United States. It is but declaratory of the law as it stood before. The second paragraph declares that "no such restraining order or injunction" shall prohibit certain conduct specified -- manifestly still referring to a "case between an employer and employees, . . . involving, or growing out of, a dispute concerning terms or condition of employment," as designated in the first paragraph. It is very clear that the restriction upon the use of the injunction is in favor only of those concerned as parties to such a dispute as is described. The words defining the permitted conduct include particular qualifications consistent with the general one respecting the nature of the case and dispute intended; and the concluding words, "nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States," are to be read in the light of the context, and mean only that those acts are not to be so held when committed by parties concerned in "a dispute concerning terms or conditions of employment." If the qualifying words are to have any effect, they must operate to confine the restriction upon the granting of injunctions, and also the relaxation

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of the provisions of the antitrust and other laws of the United States, to parties standing in proximate relation to a controversy such as is particularly described.

The majority of the Circuit Court of Appeals appear to have entertained the view that the words "employers and employees," as used in section 20, should be treated as referring to "the business class or clan to which the parties litigant respectively belong," and that, as there had been a dispute at complainant's factory in Michigan concerning the conditions of employment there -- a dispute created, it is said, if it did not exist before, by the act of the Machinists' Union in calling a strike at the factory -- 20 operated to permit members of the Machinists' Union elsewhere, some 60,000 in number, although standing in no relation of employment under complainant, past, present, or prospective, to make that dispute their own and proceed to instigate sympathetic strikes, picketing, and boycotting against employers wholly unconnected with complainant's factory and

having relations with complainant only in the way of purchasing its product in the ordinary course of interstate commerce, and this where there was no dispute between such employers and their employees respecting terms or conditions of employment.

We deem this construction altogether inadmissible. Section 20 must be given full effect according to its terms as an expression of the purpose of Congress; but it must be borne in mind that the section imposes an exceptional and extraordinary restriction upon the equity powers of the courts of the United States and upon the general operation of the antitrust laws, a restriction in the nature of a special privilege or immunity to a particular class, with corresponding detriment to the general public; and it would violate rules of statutory construction having general application and far-reaching importance to enlarge that special privilege by resorting to a loose construction of

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the section, not to speak of ignoring or slighting the qualifying words that are found in it. Full and fair effect will be given to every word if the exceptional privilege be confined -- as the natural meaning of the words confines it -- to those who are proximately and substantially concerned as parties to an actual dispute respecting the terms or conditions of their own employment, past, present, or prospective. The extensive construction adopted by the majority of the court below virtually ignores the effect of the qualifying words. Congress had in mind particular industrial controversies, not a general class war. "Terms or conditions of employment" are the only grounds of dispute recognized as adequate to bring into play the exemptions, and it would do violence to the guarded language employed were the exemption extended beyond the parties affected in a proximate and substantial, not merely a sentimental or sympathetic, sense by the cause of dispute.

Nor can 20 be regarded as bringing in all members of a labor organization as parties to a "dispute concerning terms or conditions of employment," which proximately affects only a few of them, with the result of conferring upon any and

all members -- no matter how many thousands there may be, nor how remote from the actual conflict -- those exemptions which Congress in terms conferred only upon parties to the dispute. That would enlarge by construction the provisions of 20, which contain no mention of labor organizations, so as to produce an inconsistency with 6, which deals specifically with the subject and must be deemed to express the measure and limit of the immunity intended by Congress to be incident to mere membership in such an organization. At the same time, it would virtually repeal by implication the prohibition of the Sherman Act, so far as labor organizations are concerned, notwithstanding repeals by implication are not favored, and in effect, as

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was noted in *Loewe v. Lawlor*, [208 U. S. 274](#) , [208 U. S. 303](#) , [208 U. S. 304](#) , would confer upon voluntary associations of individuals formed within the states a control over commerce among the states that is denied to the governments of the states themselves.

The qualifying effect of the words descriptive of the nature of the dispute and the parties concerned is further borne out by the phrases defining the conduct that is not to be subjected to injunction or treated as a violation of the laws of the United States, that it to say: (a) "Terminating any relation of employment, . . . or persuading others by peaceful means so to do;" (b) "attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working;" (c) "ceasing to patronize or to employ any party to such dispute, or . . . recommending, advising, or persuading others by peaceful and lawful means so to do;" (d) "paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits; . . ." (e) "doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto." The emphasis placed on the words "lawful" and "lawfully," "peaceful" and "peacefully," and the references to the dispute and the parties to it, strongly rebut a legislative intent to confer a general immunity for conduct violative of the antitrust laws, or otherwise unlawful. The subject of the boycott is dealt with specifically in

the "ceasing to patronize" provision, and, by the clear force of the language employed, the exemption is limited to pressure exerted upon a "party to such dispute" by means of "peaceful and *lawful* " influence upon neutrals. There is nothing here to justify defendants or the organizations they represent in using either threats or persuasion to bring about strikes or a cessation of work

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on the part of employees of complainant's customers or prospective customers, or of the trucking company employed by the customers, with the object of compelling such customers to withdraw or refrain from commercial relations with complainant, and of thereby constraining complainant to yield the matter in dispute. To instigate a sympathetic strike in aid of a secondary boycott cannot be deemed "peaceful and lawful" persuasion. In essence, it is a threat to inflict damage upon the immediate employer, between whom and his employees no dispute exists, in order to bring him against his will into a concerted plan to inflict damage upon another employer who is in dispute with his employees.

The majority of the Circuit Court of Appeals, very properly treating the case as involving a secondary boycott, based the decision upon the view that it was the purpose of 20 to legalize the secondary boycott "at least in so far as it rests on or consists of refusing to work for any one who deals with the principal offender." Characterizing the section as "blindly drawn," and conceding that the meaning attributed to it was broad, the court referred to the legislative history of the enactment as a warrant for the construction adopted. Let us consider this.

By repeated decisions of this court, it has come to be well established that the debates in Congress expressive of the views and motives of individual members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the lawmaking body. [*Aldridge v. Williams*, 3 How. 9, 44 U. S. 24](#) ; *United States v. Union Pacific R. R. Co.*, [91 U. S. 72](#) , [91 U. S. 79](#) ; *United States v. Freight Association*, [166 U. S. 290](#) , [166 U. S. 318](#) . But reports of committees of House or Senate stand upon a more solid footing, and may be regarded as an exposition of the legislative intent in a case where otherwise the

meaning of a statute is obscure. [Binns v. United States](#),

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[194 U. S. 486](#) , [194 U. S. 495](#) . And this has been extended to include explanatory statements in the nature of a supplemental report made by the committee member in charge of a bill in course of passage. *Binns v. United States, supra*; *Pennsylvania R. R. Co. v. International Coal Co.*, [230 U. S. 184](#) , [230 U. S. 198](#) -199; *United States v. Coca Cola Co.*, [241 U. S. 265](#) , [241 U. S. 281](#) ; *United States v. St. Paul, M. & M. Ry. Co.*, [247 U. S. 310](#) , [247 U. S. 318](#) .

In the case of the Clayton Act, the printed committee reports are not explicit with respect to the meaning of the "ceasing to patronize" clause of what is now 20. See House Rept. No. 627, 63d Cong., 2d Sess., pp. 33-36; Senate Rept. No. 698, 63 Cong., 2d Sess., pp. 29-31; the latter being a reproduction of the former. But they contain extracts from judicial opinions and a then recent textbook sustaining the "primary boycott," and, expressing an adverse view as to the secondary or coercive boycott, and, on the whole, are far from manifesting a purpose to relax the prohibition against restraints of trade in favor of the secondary boycott.

Moreover, the report was supplemented in this regard by the spokesman of the House committee (Mr. Webb) who had the bill in charge when it was under consideration by the House. The question whether the bill legalized the secondary boycott having been raised, it was emphatically and unequivocally answered by him in the negative. [[Footnote 2](#)] The subject -- he declared in substance or

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effect -- was under consideration when the bill was framed, and the section as reported was carefully prepared with the settled purpose of excluding the secondary boycott and confining boycotting to the parties to the dispute, allowing parties to cease to patronize and to ask other to cease

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to patronize a party to the dispute; it was the opinion of the committee that it did not legalize the secondary boycott; it was not their purpose to authorize such a boycott, not a member of the committee would vote to do so; clarifying amendment was unnecessary; the section as reported expressed the real purpose so well that it could not be tortured into a meaning authorizing the secondary boycott. This was the final word of the House committee on the subject, and was uttered under such circumstances and with such impressive emphasis that it is not going too far to say that, except for this exposition of the meaning of the section, it would not have been enacted in the form which it was reported. In substantially that form, it became law; and since, in our opinion, its proper construction is entirely in accord with its purpose as thus declared, little need be added.

The extreme and harmful consequences of the construction adopted in the court below are not to be ignored. The present case furnishes an apt and convincing example. An ordinary controversy in a manufacturing establishment, said to concern the terms or conditions of employment there, has been held a sufficient occasion for imposing a general embargo upon the products of the establishment and a nationwide blockade of the channels of interstate commerce against them, carried out by inciting sympathetic strikes and a secondary boycott against complainant's customers, to the great and incalculable damage of many innocent people far remote from any connection with or control over the original and actual dispute -- people constituting, indeed, the general public

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upon whom the cost must ultimately fall, and whose vital interest in unobstructed commerce constituted the prime and paramount concern of Congress in enacting the antitrust laws, of which the section under consideration forms after all a part.

Reaching the conclusion, as we do, that complainant has a clear right to an injunction under the Sherman Act as amended by the Clayton Act, it becomes unnecessary to consider whether a like result would follow under the common law or local statutes, there being no suggestion that relief thereunder could be broader than that to which complainant is entitled under the acts of Congress.

There should be an injunction against defendants and the associations represented by them, and all members of those associations, restraining them, according to the prayer of the bill, from interfering or attempting to interfere with the sale, transportation, or delivery in interstate commerce of any printing press or presses manufactured by complainant, or the transportation, carting, installation, use, operation, exhibition, display, or repairing of any such press or presses, or the performance of any contract or contracts made by complainant respecting the sale, transportation, delivery, or installation of any such press or presses, by causing or threatening to cause loss, damage, trouble, or inconvenience to any person, firm, or corporation concerned in the purchase, transportation, carting, installation, use, operation, exhibition, display, or repairing of any such press or presses, or the performance of any such contract or contracts, and also and especially from using any force, threats, command, direction, or even persuasion with the object or having the effect of causing any person or persons to decline employment, cease employment, or not seek employment, or to refrain from work or cease working under any person, firm, or corporation being a purchaser or prospective purchaser of any printing press or presses from complainant,

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or engaged in hauling, carting, delivering installing, handling, using, operating, or repairing any such press or presses for any customer of complainant. Other threatened conduct by defendants or the associations they represent, or the members of such associations, in furtherance of the secondary boycott should be included in the injunction according to the proofs.

Complainant is entitled to its costs in this court and in both courts below.

Decree reversed, and the cause remanded to the District Court for further proceedings in conformity with this opinion.

[[Footnote 1](#)]

"Sec. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the

existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws."

"Sec. 20. That 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, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application which must be in writing and sworn to by the applicant or by his agent or attorney."

"And 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 or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or 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; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

[[Footnote 2](#)]

Extracts from Congressional Record, vol. 51, part 10, 63d Cong., 2d Sess.:

(Page 9652.)

"Mr. Volstead. Would not this also legalize the secondary boycott? . . ."

"Mr. Webb. Mr. Chairman, I do not think it legalizes a secondary boycott."

"Mr. Volstead. Let me read the lines, if the gentleman will permit. And no such restraining order or injunction shall prohibit anyone --"

"from ceasing to patronize *those who* [or to] employ any party to such dispute, or from recommending, advising, or persuading others by peaceful means so to do."

"Now, does not the word 'others' in that instance refer to other than parties to the dispute?"

"Mr. Webb. No, because it says in line 15:"

"from ceasing to patronize or employ any parties to such dispute."

"Mr. Volstead. . . . Can there be any doubt this is intended or does, in fact, legalize the secondary boycott?"

"Mr. Webb. I will say frankly to my friend, when this section was drawn, it was drawn with the careful purpose not to legalize the secondary boycott, and we do not think it does. There may be a difference of opinion about it, but it is the opinion of the committee that it does not legalize the secondary boycott, and is not intended to do so. It does legalize the primary boycott; it does legalize the strike; it does legalize persuading others to strike, to quit work, and the other acts mentioned in section 18 [now section 20], but we did not intend, I will say frankly, to legalize the secondary boycott."

(Page 9653.)

"Mr. Webb. I will say this section was drawn two years or more ago, and was drawn carefully, and those who drew this section drew it with the idea of excluding the secondary boycott. It passed the House, I think, by about 243 to 16, and the question of the secondary boycott was not raised then, because we understood so clearly it did not refer to or authorize the secondary boycott."

(Page 9658.)

"Mr. Webb. Mr. Chairman, I should vote for the amendment offered by the gentleman from Minnesota [Mr. Volstead] if I were not perfectly satisfied that it is taken care of in this section. The language the gentleman reads does not authorize the secondary boycott, and he could not torture it into any such meaning. While it does authorize persons to cease to patronize the party to the dispute and to recommend to others to cease to patronize that same party to the dispute, that is not a secondary boycott, and you cannot possibly make it mean a secondary boycott. Therefore, this section does not authorize the secondary boycott."

"I say again -- and I speak for, I believe, practically every member of the Judiciary committee -- that if this section did legalize the secondary boycott, there would not be a man vote for it. It is not the purpose of the committee to authorize it, and I do not think any person in this House wants to do it. We confine the boycotting to the parties to the dispute, allowing parties to cease to patronize that party and to ask others to cease to patronize the party to the dispute."

MR. JUSTICE BRANDEIS, dissenting, with whom MR. JUSTICE HOLMES and MR. JUSTICE CLARKE, concur.

The Duplex Company, a manufacturer of newspaper printing presses, seeks to enjoin officials of the machinists' and affiliated unions from interfering with its business by inducing their members not to work for plaintiff or its customers in connection with the setting up of presses made by it. Unlike *Hitchman Coal & Coke Co. v. Mitchell*, [245 U. S. 229](#) , there is here no charge that defendants are inducing employees to break their contracts. Nor is it now urged that defendants

threaten acts of violence. But plaintiff insists that the acts complained of violate both the common law of New York and the Sherman Act, and that, accordingly, it is entitled to relief by injunction under the state law and under 16 of the Clayton Act, October 15, 1914, c. 323, 38 Stat. 730, 737.

The defendants admit interference with plaintiff's business, but justify on the following ground: there are in the United States only four manufacturers of such presses, and they are in active competition. Between 1909 and 1913, the machinists' union induced three of

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them to recognize and deal with the union, to grant to eight-hour day, to establish a minimum wage scale, and to comply with other union requirements. The fourth, the Duplex Company, refused to recognize the union; insisted upon conducting its factory on the open shop principle; refused to introduce the eight-hour day and operated, for the most part, ten hours a day; refused to establish a minimum wage scale; and disregarded other union standards. Thereupon, two of the three manufacturers who had assented to union conditions notified the union that they should be obliged to terminate their agreements with it unless their competitor, the Duplex Company, also entered into the agreement with the union, which, in giving more favorable terms to labor, imposed correspondingly greater burdens upon the employer. Because the Duplex Company refused to enter into such an agreement, and in order to induce it to do so, the machinists' union declared a strike at its factory, and, in aid of that strike, instructed its members and the members of affiliated unions not to work on the installation of presses which plaintiff had delivered in New York. Defendants insisted that, by the common law of New York, where the acts complained of were done and where this suit was brought, and also by 20 of the Clayton Act, 38 Stat. 730, 738, the facts constitute a justification for this interference with plaintiff's business.

First. As to the rights at common law: defendants' justification is that of self-interest. They have supported the strike at the employer's factory by a strike elsewhere against its product. They have injured the plaintiff not maliciously, but in

self-defense. They contend that the Duplex Company's refusal to deal with the machinists' union and to observe its standards threatened the interest not only of such union members as were its factory employees, but even more of all members of the several affiliated unions employed by plaintiff's competitors, and

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by others whose more advanced standards the plaintiff was, in reality, attacking; and that none of the defendants and no person whom they are endeavoring to induce to refrain from working in connection with the setting up of presses made by plaintiff is an outsider, an interloper. In other words, that the contest between the company and the machinists' union involves vitally the interest of every person whose cooperation is sought. May not all with a common interest join in refusing to expend their labor upon articles whose very production constitutes an attack upon their standard of living and the institution which they are convinced supports it? Applying common law principles, the answer should, in my opinion, be yes if, as a matter of fact, those who so cooperate have a common interest.

The change in the law by which strikes once illegal and even criminal are now recognized as lawful was effected in America largely without the intervention of legislation. This reversal of a common law rule was not due to the rejection by the courts of one principle and the adoption in its stead of another, but to a better realization of the facts of industrial life. It is conceded that, although the strike of the workmen in plaintiff's factory injured its business, the strike was not an actionable wrong, because the obvious self-interest of the strikers constituted a justification. See *Pickett v. Walsh*, 192 Massachusetts 572. Formerly, courts held that self-interests could not be so served. Commons, *History of Labor in the United States*, vol. 2, c. 5. But even after strikes to raise wages or reduce hours were held to be legal because of the self-interest, some courts held that there was not sufficient causal relationship between a strike to unionize a shop and the self-interest of the strikers to justify injuries inflicted. *Plant v. Woods*, 176 Massachusetts 492; *Lucke v. Clothing Cutters' Assembly*, 77 Maryland 396; *Erdman v. Mitchell*, 207 Pa.St. 79.

But other courts, repeating the same legal formula, found that there was justification, because they viewed the facts differently. *National Protective Association v. Cumming*, 170 N.Y. 315; *Kemp v. Division No. 241*, 255 Illinois 213; *Roddy v. United Mine Workers*, 41 Oklahoma 621. When centralization in the control of business brought its corresponding centralization in the organization of workingmen, new facts had to be appraised. A single employer might, as in this case, threaten the standing of the whole organization and the standards of all its members; and when he did so, the union, in order to protect itself, would naturally refuse to work on his materials, wherever found. When such a situation was first presented to the courts, judges concluded that the intervention of the purchaser of the materials established an insulation through which the direct relationship of the employer and the workingmen did not penetrate, and the strike against the material was considered a strike against the purchaser by unaffected third parties. *Burnham v. Dowd*, 217 Massachusetts 351; *Purvis v. United Brotherhood*, 214 Pa.St. 348; *Booth v. Burgess*, 72 N.J.Eq. 181. But other courts, with better appreciation of the facts of industry, recognized the unity of interest throughout the union, and that, in refusing to work on materials which threatened it, the union was only refusing to aid in destroying itself. *Bossert v. Dhuy*, 221 N.Y. 342; *Cohn & Roth Electric Co. v. Bricklayers Union*, 92 Connecticut 161; *Gill Engraving Co. v. Doerr*, 214 Fed.Rep. 111; *State v. Van Pelt*, 136 N.C. 633; *Grant Construction Co. v. St. Paul Building Trades Council*, 136 Minnesota 167; *Pierce v. Stablemen's Union*, 156 California 70, 76.

So, in the case at bar, deciding a question of fact upon the evidence introduced and matters of common knowledge, I should say, as the two lower courts apparently have said, that the defendants and those from whom they

sought cooperation have a common interest which the plaintiff threatened. This view is in harmony with the views of the Court of Appeals of New York. For, in New York, although boycotts like that in *Loewe v. Lawlor*, [208 U. S. 274](#) , are

illegal because they are conducted not against a product, but against those who deal in it and are carried out by a combination of persons not united by common interest, but only by sympathy (*Auburn Draying Co. v. Wardwell*, 227 N.Y. 1), it is lawful for all members of a union by whomever employed to refuse to handle materials whose production weakens the union. *Bossert v. Dhuy, supra*; *P. Reardon, Inc., v. Caton*, 189 App.Div. 501; compare *Paine Lumber Co. v. Neal*, [244 U. S. 459](#) , [244 U. S. 471](#) .

"The voluntary adoption of a rule not to work on nonunion-made material and its enforcement differs only in degree from such voluntary rule and its enforcement in a particular case. Such a determination also differs entirely from a general boycott of a particular dealer or manufacturer with a malicious intent and purpose to destroy the goodwill or business of such dealer or manufacturer."

Bossert v. Dhuy, supra, p. 355. In my opinion, therefore, plaintiff had no cause of action by the common law of New York.

Second. As to the antitrust laws of the United States, Section 20 of the Clayton Act declares:

"Nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

The acts which are thus referred to are whether performed singly or in concert:

"Terminating any relation of employment, or . . . ceasing to perform any work or labor, or . . . recommending, advising or persuading others by peaceful means so to do, or . . . attending at any place where such person or persons may lawfully be, for the purpose of obtaining or communicating information, or . . . peacefully persuading

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any person to work or to abstain from working, or . . . ceasing to patronize or employ any party to such dispute, . . . or . . . recommending, advising, or persuading others by peaceful and lawful means so to do, or . . . paying or giving

to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value, or peacefully assembling in a lawful manner and for lawful purposes, or . . . doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto."

This statute was the fruit of unceasing agitation, which extended over more than 20 years and was designed to equalize before the law the position of workingmen and employer as industrial combatants. Aside from the use of the injunction, the chief source of dissatisfaction with the existing law lay in the doctrine of malicious combination, [[Footnote 2/1](#)] and, in many parts of the country, in the judicial declarations of the illegality at common law of picketing and persuading others to leave work. The grounds for objection to the latter are obvious. The objection to the doctrine of malicious combinations requires some explanation.

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By virtue of that doctrine, damage resulting from conduct such as striking or withholding patronage or persuading others to do either, which without more might be *damnum absque injuria* because the result of trade competition, became actionable when done for a purpose which a judge considered socially or economically harmful and therefore branded as malicious and unlawful. [[Footnote 2/2](#)] It was objected that, due largely to environment, the social and economic ideas of judges, which thus became translated into law, were prejudicial to a position of equality between workingman and employer; that, due to this dependence upon the individual opinion of judges, great confusion existed as to what purposes were lawful and what unlawful; [[Footnote 2/3](#)] and that, in any event, Congress, not the judges, was the body which should declare what public policy in regard to the industrial struggle demands.

By 1914, the ideas of the advocates of legislation had fairly crystalized upon the manner in which the inequality and uncertainty of the law should be removed. It was to

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be done by expressly legalizing certain acts regardless of the effects produced by them upon other persons. As to them, Congress was to extract the element of *injuria* from the damages thereby inflicted, instead of leaving judges to determine according to their own economic and social views whether the damage inflicted on an employer in an industrial struggle was *damnum absque injuria*, because an incident of trade competition, or a legal injury, because in their opinion, economically and socially objectionable. This idea was presented to the committees which reported the Clayton Act. [[Footnote 2/4](#)] The resulting law set out certain acts which had previously been held unlawful, whenever courts had disapproved of the ends for which they were performed; it then declared that, when these acts were committed in the course of an industrial dispute, they should not be held to violate any law of the United States. In other words, the Clayton Act substituted the opinion of Congress as to the propriety of the purpose for that of differing judges, and thereby it declared that the relations between employers of labor and workingmen were competitive relations, that organized competition was not harmful, and that it justified injuries necessarily inflicted in its course. [[Footnote 2/5](#)] Both the

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majority and the minority report of the House committee indicate that such was its purpose. [[Footnote 2/6](#)] If, therefore, the act applies to the case at bar, the acts here complained of cannot "be considered or held to be violations of any law of the United States," and hence do not violate the Sherman Act.

The Duplex Company contends that 20 of the Clayton Act does not apply to the case at bar, because it is restricted to cases

"between an employer and employees, or between employers and employees, or between employees or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment,"

whereas the case at bar arises between an employer in Michigan and workingmen in New York not in its employ, and does not involve their conditions of employment. But Congress did not restrict the provision to employers and workingmen *in their employ*.

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By including "employers and employees" and "persons employed and persons seeking employment," it showed that it was not aiming merely at a legal relationship between a specific employer and his employees. Furthermore, the plaintiff's contention proves too much. If the words are to receive a strict technical construction, the statute will have no application to disputes between employers of labor and workingmen, since the very acts to which it applies sever the continuity of the legal relationship. *Iron Moulders' Union v. Allis-Chalmers Co.*, 166 Fed.Rep. 45, 52-53; *Louisville, Evansville & St. Louis R.R. Co. v. Wilson*, [138 U. S. 501](#) , [138 U. S. 505](#) ; *cf. Rex. v. Neilson*, 44 N.S. 488, 491. The further contention that this case is not one arising out of a dispute concerning the conditions of work of one of the parties is, in my opinion, founded upon a misconception of the facts.

Because I have come to the conclusion that both the common law of a state and a statute of the United States declare the right of industrial combatants to push their struggle to the limits of the justification of self-interest, I do not wish to be understood as attaching any constitutional or moral sanction to that right. All rights are derived from the purposes of the society in which they exist; above all rights rises duty to the community. The conditions developed in industry may be such that those engaged in it cannot continue their struggle without danger to the community. But it is not for judges to determine whether such conditions exist, nor is it their function to set the limits of permissible contest and to declare the duties which the new situation demands. This is the function of the legislature, which, while limiting individual and group rights of aggression and defense, may substitute processes of justice for the more primitive method of trial by combat.

[[Footnote 2/1](#)]

See "Malice and Unlawful Interference," Ernest Freund, 11 Harv.L.Rev. 449, 461; "Rights of Traders and Laborers," Edw. F. McClennen, 16 Harv.L.Rev. 237, 244; "Crucial Issues in Labor Litigation," Jeremiah Smith, 20 Harv.L.Rev. 429, 451; Principles of Labor Legislation, Commons and Andrews, pp. 95-116; Hoxie, Trade Unionism in the United States, p. 231; Groat, Attitude of American Courts towards Labor Cases, pp. 76-77; 221; 246; J. W. Bryan, The Development of the English Law of Conspiracy, p. 147 *et seq.*

Report of the Industrial Commission, 1901, vol. XVII, p. cxiv, p. 515, 556; Report of Royal Commission on Trade Disputes and Trade Combinations, 1906, p. 12; Report of Commission on Industrial Relations, 1915, pp. 135, 377.

For attempts to reach this doctrine by legislation see *also* 52d Congress, H.R. 6640, 1; 56th Congress, H.R. 11667, 7; 57th Congress, S. 649, 7.

[[Footnote 2/2](#)]

See James Wallace Bryan, The Development of the English Law of Conspiracy:

"We find little difficulty in attributing the illegality of combinations to strike or otherwise to advance the interests of labor not to the material loss inflicted upon the employer concerned, but to the harm supposed to result from their activities to the public at large. And since the judge or jury believe the conduct socially bad, and since it is admittedly done intentionally, not inadvertently, they declare that the actors are animated by malice which negatives the justification of 'fair competition,' e.g., Lord Bowen in *Mogul S. S. Co. v. MacGregor, Gow & Co.* 1892 A.C. 25, 'intentionally to do that which is calculated . . . to damage . . . and does damage another in his property or trade is actionable if done without just cause or excuse, and . . . is what the law calls a malicious injury.'"

[[Footnote 2/3](#)]

See A. V. Dicey, "The Combination Laws as Illustrating the Relation Between Law and Opinion in England During the Nineteenth Century," 17 Harv.L.Rev. 511, 532: "The very confusion of the present state of the law corresponds with and illustrates

a confused state of opinion."

[[Footnote 2/4](#)]

It was said that this doctrine

"completely unsettle[d] the law . . . and set up the chancellor in the midst of the labor organization at the inception of a strike as an arbiter of their conduct, as well as a controller or their fates."

62d Congress, 2d Sess. Hearings Before a Subcommittee of the Senate Committee on the judiciary on H.R. 23635, p. 429.

Again, it was pointed out that the incorporation of this idea in the Sherman Law had "done violence to the right to strike -- to cease work collectively . . . and to the right to withhold patronage and to agree to withhold patronage." Brief by Samuel Gompers, Hearings before the House Committee on the Judiciary on Trust Legislation, 63d Congress, 2d Sess., vol. 2, p. 1808.

[[Footnote 2/5](#)]

Compare the following:

"There are apparently, only two lines of action possible: first, to restrict the rights and powers of employers to correspond in substance to the powers and rights now allowed to trade unions, and second, to remove all restriction which now prevent the freedom of action of both parties to industrial disputes, retaining only the ordinary civil and criminal restraints for the preservation of life, property and the public peace. The first method has been tried and failed absolutely. . . . The only method therefore seems to be the removal of all restrictions upon both parties, thus legalizing the strike, the lockout, the boycott, the blacklist, the bringing in or strike-breakers, and peaceful picketing."

Report of the Committee on Industrial Relations, 1915, p. 136.

[[Footnote 2/6](#)]

The majority declared that the section sets out "specific acts which the best opinion of the courts holds to be within the right of parties involved upon one side or the other of a trade dispute," which it has been necessary to affirm because of "the divergent views which the courts have expressed on the subject and the difference between courts in the application of recognized rules." The minority insisted that the section prescribes

"a set rule forbidding under any circumstances the enjoining of certain acts which may or may not be actuated by a malicious motive or for the purpose of working an unlawful injury, etc."

63d Congress, 2nd sess., House Report 627, p. 30; *id.*, Part 2, Appendix A, p. 20.

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