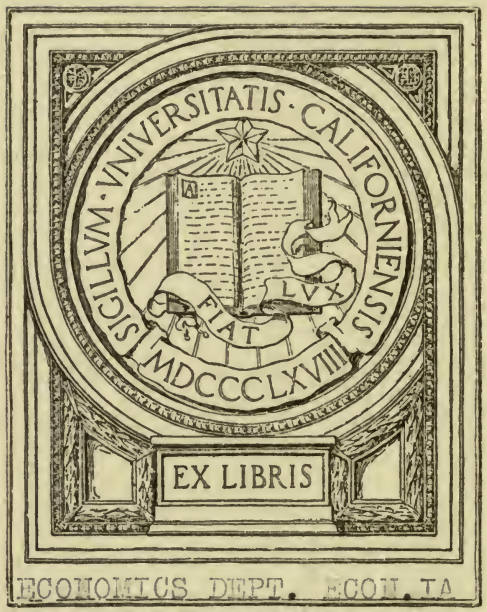

BOYCOTTS
And the Labor Struggle

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And the Labor Struggle

ECONOMIC AND LEGAL ASPECTS

BY

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WITH AN INTRODUCTION BY

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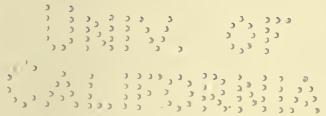

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TO

MY FATHER

AUTHOR'S PREFACE

The boycott has been used repeatedly by widely scattered groups in the community, for many centuries past. The boycott in labor disputes is of comparatively recent origin. The word itself is but a little over a generation old. Yet the employment of this weapon has been evidenced in some of the most spectacular labor wars in the history of this country, and, if present indications do not fail, its future rôle is destined to be a potent one.

Labor on the economic field has thus far used effectively two main weapons, in addition to that ultra-modern and mysterious instrument of warfare, sabotage. The first is the strike, with its universal concomitant, picketing; the second, the boycott. The strike aims to gain better conditions for labor by depriving the "unfair" employer of the labor power necessary to produce goods; the boycott, on the other hand, seeks these same ends by depriving the employer of the market for those goods which labor has created.

The word "boycott" originated in Ireland in the year 1880, during the bitter warfare between the Irish Land League and the English landed gentry. Its introduction into the United States occurred a few years later, when the Knights of Labor were in the ascendancy and the American Federation of Labor was just beginning its activity.

The boycott leapt into prominence again at the time of the famous railroad strikes of the nineties, led by Eugene V. Debs and others, and, more lately, during

the widely heralded controversies popularly known as the Buck's Stove and Danbury Hatters' Cases.

Every session of Congress in recent years has witnessed the introduction of bills to legalize the use of this weapon. In 1912 a measure to prevent the employment of injunctions against secondary boycotts passed the House of Representatives by the overwhelming vote of 244 to 31. Such endeavors will probably be redoubled in the coming session, and a concerted effort will be made to give to labor the advantage which it has so long claimed as its right. The recent judicial decisions in such states as Montana, New York, California, Oklahoma, the recent conspiracy statutes of Maryland and California and the lessons from English history, all lead to the belief that labor is destined to obtain the legal right to use this device.

To what extent is the employment of the boycott legal at present, and how can the present status of the law be legally justified? Is labor in need of the possession of the boycott? Has its past use been beneficial to society, and to what extent and how wisely will it be employed, if legalized? Will labor, if permanently deprived of the boycott, resort to weapons more or less dangerous to the social well-being? These and countless other questions should be answered by the legislator before he commits himself on this important question.

These are among the questions which the author has endeavored to answer in the following pages. It has been the aim of the book to describe the exact part which the boycott has played in the American Labor movement; to differentiate the various forms of the boycott; to analyze the causes leading to the success or failure of its employment; to give a clear idea of the present status of the common law and statute law in the states and in the federal government; to sum-

marize the legal reasoning for outlawing this weapon; and to test the validity of this reasoning in the light of the more recent legal tendencies.

Finally, the social and economic reasons for and against boycotting have been here considered. The social utility of an economic activity cannot be determined by abstracting that activity from its economic environment, but only by observing its use in its relations to the various other activities and influences which call it into play. Therefore, it seems necessary to present, in a measure, a cross-section of the labor struggle, portraying not only the workings of the boycott, but those of the various weapons which the employing class is constantly using against the workers in their fight for a higher standard of life.

In closing, I wish to express my deep appreciation for the assistance of the Faculty of Political Economy of Columbia University; particularly for the many valuable suggestions given by Professor Henry R. Seager. I am also indebted to Dr. Jessie Wallace Hughan and Miss Mary R. Sanford, for their careful reading of the monograph before its publication.

HARRY W. LAIDLER.

New York, December, 1913.

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INTRODUCTION

To most Americans "boycott" is a word of ill-omen. The pictures it calls up are of acts like those charged against the striking coal miners in the Report of the Anthracite Strike Commission of 1902. It says: "A young school mistress of intelligence, character, and attainments was . . . boycotted, and her dismissal from employment compelled for no other reason than that a brother, not living in her immediate family, chose to work contrary to the wishes and will of the striking miners. A lad, about fifteen years old, employed in a drug store, was discharged, owing to the threats made to his employer by a delegation of the strikers, on behalf of their organization, for the reason that his father had chosen to return to work before the strike was ended. In several instances tradesmen were threatened with a boycott—that is, that all connected with the strikers would withhold from them their custom, and persuade others to do so, if they continued to furnish the necessaries of life to the families of certain workmen, who had come under the ban of the displeasure of the striking organization."

Such insistence on the solidarity of the family and punishment of sisters, sons and even wives and infant children for the offenses of their brothers, fathers, and husbands seems unjust. It is the purpose of the law to prevent injustice. Consequently laws against the use of the boycott, whether common or statute, are good laws and should be enforced. This is the line of reasoning that has heretofore dominated public opinion in the United States.

But the issue is not quite so simple. To prevent in-

justice is the purpose of the law; but in an imperfect world it must content itself with a very imperfect accomplishment of that purpose. If in the endeavor to remedy one kind of injustice another kind that is more serious is committed, the cure is clearly worse than the disease. And this is the view which intelligent wage-earners take of the law restricting their right to use the boycott. In their struggle to improve their condition their two most powerful weapons are their right to refuse to work for employers whose policies they disapprove, and their right to refuse to buy commodities of dealers whose policies they disapprove. Through the gradual development of Anglo-American law the first right has come to be more and more completely recognized. Strikes, concerted refusal to work for employers whose policies are disapproved, which were condemned as criminal conspiracies in the first quarter of the last century, are now universally upheld as lawful when their purpose is direct benefit to the strikers. Strikes to secure the discharge of non-members of a union and sympathetic strikes are still condemned in some jurisdictions, but more and more the English view, expressed by Judge Parker in voicing the majority opinion of the New York Court of Appeals in an important labor case,[1] that strikes for any purpose are lawful, so long as unlawful means are not employed, is winning acceptance. This view is not founded on the belief that strikes do not often inflict cruel injustice on individuals. The contrary is notoriously the case. It grows rather out of the principle that, in a free country, the wage-earner must be free to work, or not to work, for whom he will, and that curtailing this freedom and depriving him of his liberty involve, on the whole, more injustice than giving it the widest scope and trusting to his sense of fair-

[1] National Protective Association v. Cummings, 170 N. Y. 315 (1902).

ness, to the controlling influence of public opinion and to the ability of employers to combine on their side to resist unreasonable demands and to curb the unjust acts to which it may lead.

The right of workers to refuse to buy commodities of dealers whose policies they disapprove has not yet been given the same wide extension. In its simple form, the boycott of a dealer who is himself obnoxious to his customers, it is generally upheld. In its compound form, corresponding to the strike to secure the discharge of a third person and the sympathetic strike, it is generally declared unlawful.

In the following monograph Mr. Laidler has undertaken to examine the economic and legal aspects of the boycott. Approaching the problem without prejudice or preconception, he presents to the reader, through a clear summary of important cases, the judicial reasoning that has led some of our courts to condemn the boycott; others to uphold its legality. The use that has actually been made of the boycott and the social and economic arguments for and against such use are reviewed with equal thoroughness. Reenforcing his conclusion that there is no justification either in law or economics for the distinction which most of our courts have drawn between the right to strike and the right to boycott, his concluding chapters show the probable consequences if wage-earners be permanently deprived of the right to boycott and the safeguards, in the self-interest of the workers themselves, in public opinion and in the defensive measures which employers and dealers may adopt, if this right be freely conceded.

The publication of so careful a study of this important phase of the labor problem could hardly be more timely. A Federal Commission on Industrial Relations is just beginning its inquiry. In this monograph it will find all of the facts and arguments on

which its conclusions with reference to the boycott must be based. Congress is certain in the near future to consider the amendment of the Anti-trust act so far as it relates to labor organizations. Here are reviewed the important boycott cases, the Danbury Hatters' case and the Buck's Stove case, which have arisen under that statute and the common law. Lawyers and judges are constantly called upon to advise clients or to settle cases touching the law with reference to boycotts. Mr. Laidler shows clearly the trend of judicial opinion from the conservatism of our Eastern courts to the radicalism of those of Western states, like Washington and California. Finally, in our colleges there is growing interest in the study of the labor problem and increasing appreciation of books which bring students close to the realities of the situation. This is an excellent "case book" on the boycott which could be profitably employed even by instructors who were disposed to dissent from the author's conclusions. Thus, to the Federal Commissioners, to members of Congress, and legislators generally, to lawyers, to judges and to students and teachers of economics, as well as to labor leaders and employers of labor, the book is to be heartily commended. If, as a result of its perusal, light be thrown upon a difficult problem and the way prepared for making the law at once more rational and more uniform in a field where it is now illogical and conflicting, the purpose of the author will be attained.

It is a special gratification that the requirements for the degree of Doctor of Philosophy in Columbia University have resulted in the publication of so excellent and useful a book.

HENRY R. SEAGER.

Columbia University,
New York, December, 1913.

PART I

ECONOMIC ASPECTS OF BOYCOTTS

CHAPTER I

HISTORY OF THE BOYCOTT

Boycott and the Irish League

Few words can boast of as curious and interesting an introduction into the English language as can the subject of this book—the boycott.

"I was dining with Father John O'Malley," writes James Redpath, in his "Talks of Ireland," 1881,[1] "and he asked me why I was not eating. I said, 'I am bothered about a word.' 'What is it?' asked Father John. 'Well,' said I, 'when a people ostracise a landgrabber we call it social excommunication, but we ought to have an entirely different word to signify ostracism applied to a landlord or a land agent like Boycott. Ostracism won't do. The peasantry would not know the meaning of the word, and I can't think of anything.' 'No,' said Father John, 'ostracism wouldn't do.' He looked down, tapped his big forehead, and said, 'How would it do to call it "to boycott him"?'

"Then I was delighted, and I said, 'Tell your people to call it boycotting, so that when the reporters come down from Dublin and London they will hear the word. Use it yourself in the Castlebar *Telegraph*. I'm going to Dublin, and will ask the young orators of the land league to give it that name. I will use it in my correspondence, and between us we will make it famous.' Father John and I kept our compact. He

[1] *Magazine of Western History*, v. 5, pp. 214, 215.

was the first man who uttered the word, and I was the first who wrote it."

It thus happened that through the wit of an Irish priest and an American journalist a name was given, in the summer of 1880, to that method of warfare which was then being resorted to by an enraged people against the exactions of the landlord class, a method which has since been used time without number by oppressed and oppressors throughout the civilized world. Incidentally also the infamies of Captain Boycott were immortalized.

The events giving rise to the conversation between Father O'Malley and Redpath are noteworthy. For years the Irish peasantry had been heavily burdened by the British landlord class. Lands had been confiscated, homes of the peasants destroyed, starvation wages paid. As the year 1880 approached, evictions became more numerous and their causes more trivial. In 1879 there were 1,000 evictions, as against an average of 500, from 1872-1877, and in the first half of 1880 the number exceeded 1,000. The landlords were taking advantage of the famine of 1878 to clear their estates. Intense suffering was the inevitable result. The outcome was the Land League, formed to represent the peasants.[1]

Among the most hated of the retainers of the landlord class was Captain Boycott, an agent of Lord Erne in County Mayo, in the district of Connemara. In the summer of 1880 he sent his tenants to the field to cut oats, offering the men and women 32 and 24 cents a day respectively, instead of 62 and 37 cents, the regular wages. They refused to serve, and Boycott, his wife, nieces, nephews and servants undertook to harvest the crop, but desisted, thoroughly exhausted, after a few hours' labor. The tenants were finally induced by the pleas of Mrs. Boycott to return to work, but on

[1] Herbert Paul, *History of Modern Europe,* v. 4, p. 164.

rent day were confronted by a formidable array of 18 constables equipped with eviction papers. Three papers were served, whereupon the outraged workers called a great mass meeting, induced the servants, herders and drivers to desert Boycott, and secured the pledges of those present to cease all relations with the captain and his family.

At the call of Boycott, a relief expedition, consisting of seven regiments and fifty hired men, was soon rushed to the estate, and the potatoes and other commodities were finally gathered at an expense of between $35,000 and $50,000—many times the value of the crop. Three days after the decree of social ostracism was pronounced, the word "boycott" was invented. It was first used publicly by Redpath in August, 1880, in the village of Deenane. In September of the same year, at Clare Morris and Clonbur, in describing the workings of this device, Redpath declared:

"This great reform, as you can see, can be achieved without shedding a drop of blood, without violence, without breaking any law—English, human or divine. But if a man does take a farm from which a poor tenant has been evicted, I conjure you to do him no bodily harm. . . . Act toward him as the Queen of England would act to you if she lived in Clonbur. Act toward his wife as the Queen of England would act toward your good wife if she lived in Clonbur. Act toward his children as the Queen of England would act toward your children! . . . She would not regard you nor your wife nor your children as her equals. Now, imitate the Queen of England, and don't speak to a landgrabber nor a landgrabber's wife nor to a landgrabber's children. . . . If a landgrabber comes to town and wants to sell anything, don't do him any bodily harm. . . . If you see a landgrabber going to a shop to buy bread, or clothing, or even whiskey, go you to the shopkeeper at once, don't threaten him. . . . Just say to him that under British law he has the undoubted

right to sell his goods to anyone, but that there is no British law to compel you to buy another penny's worth from him, and that you will never do it as long as you live."[1]

Similar advice was given to the peasants by Parnell and others during this period.[2] That the peasantry were not slow in availing themselves of the suggestions given was the opinion of the *London Times*, November 5, 1885:

"It means that a peaceful subject of the Queen is denied food and drink, and that he is run down in his business, that his cattle are unsalable at fairs; that the smith will not shoe his horse nor the carpenter mend his cart; that old friends pass him by on the other side of the street, making the sign of the cross; that his children are hooted at the village school; that he sits apart, like an outcast, in his usual place of worship, all for doing nothing but that the law says that he has a perfect right to do."

The boycott as tried in Ireland was almost universally condemned by the landholding class. However, it was effective. It called the attention of the people of England and Ireland as perhaps did no other weapon to many grave injustices. Doubtless in many instances it worked hardship upon innocent people. It was a crude and often an undiscriminating weapon in the war against greed. It was called into being by that greed. It was a result, as Whiteboyism and Molly Maguirism were results, and, although seemingly harsh in application, was one of the mildest forms of protest experimented with up to that time, and mild indeed when compared with some of the weapons used by the educated ruling class. In fact, it was but a counterpart

[1] *Magazine of Western History*, v. 5, pp. 213 *et seq.*
[2] Barry O'Brien, *Life of Parnell*, pp. 236, 237.

of the weapon used in innumerable instances by the propertied classes in their contests with the peasants.

"You all know that Mr. Gordon is the best shoemaker in Connaught," said Redpath again, in addressing the people of Clonblur, "and that he once employed a dozen workmen. He made all the boots and shoes for the gentry in that part of the country. Just as soon as he addressed a land league meeting his custom fell off, landlords wouldn't buy shoes from him, and my friend Gordon was almost ruined. Now imitate these landlords."[1]

Boycotting in Past History

Although the word "boycott" is of comparatively recent origin, the practice of boycotting, if we disassociate that term from any necessary connection with labor disputes, and define it for the time being as *an organized effort to withdraw and induce others to withdraw from social or business relations with another,* has been resorted to since the dawn of history. The Jews shunned the Samaritans; the Pharisees boycotted the Publicans, as far as social intercourse was concerned. In Greece, for many years, following the rule of Cleisthenes, the people ostracised their unsuccessful claimants for political preference, and in the Roman Empire, by the *ignis et aquæ interdictio,* many of the best Romans were rendered outcasts. Those incurring the wrath of the church of Rome during the Middle Ages, and receiving the interdicts of excommunication, may also be said to have felt the force of at least one form of this weapon.

A unique combination for the purpose of boycotting, and one in many ways strikingly similar to that inaugurated by the Irish Land League, existed in France during the seventeenth and eighteenth centuries.[2] In

[1] *Magazine of Western History,* v. 5, p. 213.
[2] R. E. Prothera, *French Boycott and Its Cure, 19th Century,* v. 28, pp. 778-785.

Picardy, in northern France, the farmers, renters of land, claimed not only the right of perpetual enjoyment of the plot of land which they occupied, but also power to dispose of this right to their representative by sale or will. They also denied the right of the landlord to let or sell their land over their heads, to evict them from their holdings, to raise the rent or to refuse to lease the land to their nominees. For this right, which was in conflict with the French law, the farmers paid a certain premium, and if the landlord had the temerity to refuse to recognize these unwritten laws, the aggrieved renter would hasten to the village cabaret, and indignantly inform his neighbors, *"Je n'ai jamais démonté personne; j'espère que personne ne me démontera."* (I have never yet dispossessed anyone; I hope that no one will dispossess me.) The farm was then boycotted by the countryside. It was almost impossible to rent it. A new tenant was denounced as a landgrabber. He could not hire labor. His sons obtained no employment; his daughters, no husbands. He was ostracised by his neighbors, who refused him assistance. His fields were often sown with tares by men with masks; his implements were broken; his cattle mutilated; his houses burned, and sometimes he himself was fiercely attacked. In one instance, when a farmer was hanged for participating in these onslaughts, his fellow farmers decreed that the wealthiest bachelor in town should marry the dead man's widow, and secure a dower from the town, *"et la chose fut exécuté."* This system lasted from 1679 until far into the nineteenth century, and resulted in many bitter feuds.

The Boycott and the American Revolution

From the year 1327, the date of the boycotting of the monks of Christ's Church by the citizens of Can-

terbury,[1] to the time of the Revolution, many were the instances of boycotting in England.

In America this weapon was first used on a large scale in the troubles with Great Britain leading up to the Revolutionary War. Its frequent practice at that period is often cited by the supporters of boycotts in labor disputes to indicate its thoroughly American character.

Following the passage of the Stamp Act of March, 1765, the Boston, New York and Philadelphia merchants resolved to cease importing British goods until this obnoxious measure should be repealed. Retail merchants refused to sell British goods, and customers to buy them. The Daughters of Liberty were among the most militant of the boycotters. Later on the Sons of Liberty began an active boycotting campaign against merchants dealing with goods imported from the mother country, distributing circulars broadcast and posting them on the doors of the Tory merchants. A typical poster read:

"It is desired that the Sons of Liberty would not buy any one thing of them (naming the merchants), for in so doing they will bring disgrace upon themselves and their posterity forever and ever. Amen."

Perhaps the most famous attempt followed the imposition of the tax on tea, when, in December, 1773, succeeding a period of peaceful boycotting, the Boston Tea Party boarded the British ship in the Boston harbor and threw three hundred chests of tea into the sea. Many of the state legislatures, the Continental Congress and numerous seaports also passed boycotting resolutions,[2] and after the war considerable of this practice was resorted to between the states.[3] In the

[1] Ely, *The Labor Movement*, p. 297.
[2] Coman, *Industrial History of the United States*, p. 104, and *Magazine of Western History*, v. 5, pp. 218-220.
[3] McMaster, *History of the United States*, v. 1, p. 404.

embargoes against British vessels during the War of 1812 we witness another example of the use of this device.

It is thus seen that boycotting in its broader sense has been a potent weapon for many centuries in the hands of state and church, organizations of the agrarian population and of political rebels, and, in fact, of all strata of the population. We will now turn to its employment in America during the last few generations.

CHAPTER II

SOME MODERN FORMS OF BOYCOTTS IN THE UNITED STATES

The Consumers' Boycott

Many forms of boycott have been practiced in recent years in America. A variation generally given wide publicity is the consumers' boycott. It is used chiefly as a protest against the high cost of living, although, organized under the National Consumers' League, it is directed primarily to improving labor conditions.

Meat has been one of the articles most frequently subjected to attack. "Mayor of Boston Boycotts Meat" reads a typical headline in the *New York Herald*.[1] The article declares that Mayor John Fitzgerald calls the people throughout the country to eat as little meat as possible. "We can defeat those who are responsible for the high cost of living," says the Mayor, "by boycotting every kind of food on which the price is raised."

The women of Brooklyn and Philadelphia, in the summer of 1912, forced many butchers to close shop until lower prices were charged. Especially effective was a movement in the Jewish section of New York, where, at one time, according to reports, 6,000 retail dealers in kosher meat in Manhattan, and 400 in Brownsville, Brooklyn, had closed shop, awaiting a reduction in the prices of the wholesalers. During this period a Brooklyn butcher shop was entered by a

[1] *New York Herald,* Aug. 4, 1912.

number of angry housewives and the meat sprinkled with kerosene.[1]

An even more carefully planned campaign against the same industry was instituted in January of 1910, when labor, business men's and other organizations, particularly in the important cities of the middle West, pledged to abstain from the purchase of meat for sixty days, and circulated huge petitions, some of them signed by thirty thousand men and women, against the eating of meat.[2] Secretary Dickinson of the War Department some time ago was said to have ordered the army commissary to cease patronizing the "Standard Oil Trust," and a similar ban was placed on the "Tobacco Trust." The House Wives' League of New York has also been prominent in the use of this weapon against unobliging retailers[3] and high priced butter dealers.

A unique example of a threatened consumers' boycott was witnessed in Chicago in 1911, when the *American Federation of Catholic Societies* menaced the theater managers with their disfavor should they stage Salome and certain other prescribed productions. Other instances may be multiplied.

The effectiveness of these spasmodic efforts is exceedingly difficult to estimate. It usually happens that the public gives heed the first few days, when the organized boycott is widely heralded by the press as a striking news item. When the boycott, however, ceases to be "good copy," and its existence is more or less ignored by the newspapers, the average citizen quickly forgets about the existence of the ban, and continues his purchase of the boycotted article. We are told that, as a result of the meat boycott in Cleveland in 1910, the price of meat was reduced, on the average, two cents

[1] *Brooklyn Eagle,* June 22, 1912.
[2] *Ibid.,* January 21, 1910.
[3] *New York Times,* March 26, 1912.

a pound.[1] Another report of the same general boycott declares, however, that the boycott resulted in decreasing the supply of beef, but not the price. "Report in the Chicago papers yesterday," runs the article, "shows that 16,000 steers had been sent to the slaughter house, whereas 25,000 had been the normal Monday shipment."[2]

Another indirect form of the consumers' boycott, primarily for the purpose of bettering the conditions of women and child labor in department stores and factories, has been employed for a number of years by the National Consumers' League. For years this league maintained and widely distributed a so-called "white-list" of those department stores which supposedly observed certain rules as to wages, hours and sanitation. Although its publication undoubtedly had some effect in diverting trade from department stores not on the list and in improving conditions of labor among these establishments, the difficulty encountered in persuading these stores to give sufficient wages to their help has led the League to discontinue its issuance, at least in New York City. Mrs. Florence Kelley, general secretary of the League, in a communication of September 6, 1912, writes:

"The Consumers' League of the City of New York has abandoned the publication of the white list chiefly by reason of the insufficient wages paid in every department store in New York City. In fact, I think that all discussion of white lists may henceforth be treated as studies in ancient history; and the advocacy of minimum wage boards is likely to take the place formerly held by the advocacy of the white list on the part of officers and members of the Consumers' League. The experience of twenty years is conclusive that wages cannot be dealt with by the method of persuasion. There must be coercion, either through efficient organization

[1] *New York Times,* January 20, 1910.
[2] *New York Call,* February 1, 1910.

of the wage earners—which is impossible in the case of the shifting mass of young department store employees —or by legislation for minimum wage boards."

The League also grants the Consumers' League Label to those factories which, in its opinion, obey the state factory law, make all of the goods on the premises, do not overwork their help and do not employ girls under sixteen years old. The label is used now only on women's apparel. Up to January, 1912, the League had authorized the use of this label in fifty-eight factories of the country, and claimed good results in raising the standard of employment in many industries.

While chief emphasis is laid by the League on the betterment of living conditions for women and girls, the consumer is often urged to purchase labeled goods on the ground that they are more likely to be free from disease. The white list before referred to has often been called the negative boycott. The legality of this form of boycott has not been questioned.

Another unique experiment in inducing friends of labor to purchase garments made under decent conditions, and indirectly to boycott dealers unfair to labor, is the Label Shop, located, at present writing, at 14 W. 37th Street, New York City. The reason for such an establishment is given by Helen Howell Moorhead, one of its officers, as follows:

"A frequent experience of anyone who has spoken about the work of the Consumers' League has been the following: After a stirring appeal to an audience not to buy goods made by sweated labor comes the question in many voices: 'Where can I be sure of buying goods made under proper conditions?' As an answer, the Consumers' League used to give the names of regular shops where label goods were sold. But customers, on asking for these articles, received scant courtesy and sometimes even met with a refusal to display any arti-

cles at all. So a showcase was established in the Women's Trade Union League headquarters, showing samples of underclothes bearing a Trade Union Label. Here orders could be given, and the consumer could be sure that her power—the theoretically immeasurable power of the consumer which seems to individual exercise so infinitesimal—was wisely expended. From this one showcase, and from its conscientious but despairing purchasers, sprang The Label Shop."

The shop has been in existence since 1911. It has a capital stock of $10,000, distributed in $10 shares among about 100 members of The Consumers' League, The Trade Union League and The Association of Collegiate Alumnæ. The business in 1912 amounted to from $15,000 to $20,000, and permitted the company to declare a dividend of 4%.

The shop confines its sales to clothing for women. It carries only goods which bear the label of the Consumers' League and of the Trade Unions. When a protocol label is created, it will probably recognize this. Its sales among the women members of the trade unions are but small, partly on account of the comparatively high prices of the goods.

The shop is constantly sending literature and lecturers to such sympathetic organizations as the Women's Municipal League, and various collegiate and reform organizations, is securing the indorsement of these bodies, conducting exhibits in various parts of the city, and persuading trade unionists to send lecturers throughout their unions advocating the purchase of goods from the shop. Whether or not this experiment will prove a permanent success it is too early to say. Given the proper support, the work has splendid possibilities.

The Employers' Boycott

Another important class of boycotts in the United States is that of the employers' boycotts. These are

of two kinds: those waged against other firms or institutions which show too favorable an attitude toward labor, and those directed primarily against troublesome wage-earners. The latter are generally called *blacklists.*

The *employers' boycott may be defined as an organized effort of employers of labor and monied interests generally, to induce others of their class to cease business relations with those who, in their opinion, are too active in the cause of labor.*

An illustrative instance of this form of boycotting was given in the *American Industries,* the official magazine of the National Association of Manufacturers—an organization bitterly opposed to boycotts as practiced by working men. The Canadian Bank of Commerce of Windsor, Canada, according to an article in this publication, October, 1909, had advertised in the *San Francisco Bulletin* and in several of the *Scripps-McRae* papers, newspapers favorable to organized labor. The bank, on September 9, 1909, received the following letter from C. W. Post, the militant antagonist of so many forms of trade unionism:

"This growth toward Socialism and ultimate confiscation and division of property, set up and kept in motion by those unthrifty individuals consumed with hate for the thrifty, who by hard work and economy acquire a little means, is to a large extent kept alive by certain newspapers which pander to the unthrifty class, believing the numbers in that class to be in the majority. . . . *We have decided not to continue to supply money to such papers to be used in the destructive work they are engaged in, and have therefore withdrawn advertisements from the San Francisco Bulletin and several of the Scripps-McRae papers, particularly the Detroit News and the Akron Press, as well as some others.* Aside from the principle involved, we have good reasons to doubt the earning capacity for advertisers of such papers whose circulation should be most closely

investigated, and the character of the readers observed. Believing it time for the peaceful, law-abiding citizens to stand together in defence of the growing and insidious attacks of the unthrifty, we have been led to place this matter before you. Merchandise can be best sold by advertisers in papers which stand in open support of the thrifty citizens, by far in the majority. On the other hand, support of the papers which pander to the mob is dangerous to the prosperity and well being of the community and nation. Every thoughtful citizen should ponder well, look to the future, and do his share toward preventing the growth of the destructive theories now being taught." (Italics mine.)

The Lincoln Farm Association case provides another instance of this form of boycotting. This association was formed for the purpose of securing a Memorial National Park in commemoration of Abraham Lincoln. Samuel Gompers, president of the American Federation of Labor, was made one of the members of its Board of Trustees, and the union label was used on the association's printing. Several members of the National Association of Manufacturers were asked to give contributions. The National Founders' Association, the Metal Trades' Association and the Board of Directors of the N. A. M. thereupon passed a vigorous resolution in deprecation of the favoritism shown to organized labor, and requested their members to refuse funds until the alleged favoritism ceased. The resolution read in part:

"Whereas there is evidence that the association has adopted the closed shop principle under which the work of the project is to be conducted, inasmuch as it has selected as one of its trustees the President of the American Federation of Labor, and its stationery and other literature bear the union label; . . . whereas we are fighting to save twenty million free men from industrial bondage . . . *we* . . . *emphatically disap-*

prove the use in connection with this enterprise of an insignia which represents and stands for the overthrow of the fundamental rights which Lincoln cherished most dearly. Resolved, That the officers in charge of the sacred memorial be, and they are hereby respectfully but earnestly urged to abandon the objectionable closed shop emblem, which stands for industrial bondage, and publicly assure those from whom the money must come that every vestige of the class domination will be eradicated. . . . We recommend that the members of our Association, as well as all other citizens who believe in industrial freedom, withhold their contributions until the proper assurance is given that the open shop principle will be recognized in all departments of labor in connection therewith."[1]

Letters were also sent by John Kirby, Jr., afterwards president of the N. A. M., and others, to the Memorial Committee, protesting against the label, "the red emblem of anarchy, the emblem of organized effort to prevent those for whom Washington fought and Lincoln died by the hand of an assassin, from earning their bread in the sweat of their brow, except at the pleasure of the organization for which the label stands," and stating that he will not only refuse to subscribe as long as the present attitude is maintained, but that he will use all his influence against such an "unrighteous and infamous proposal." The union label finally disappeared from the letterhead of the Association.[2]

A few years ago, the A. F. of L., in its petition to President Taft, alleged that the U. S. Steel Corporation had been resorting to this weapon.[3] The petition described the boycotting of the hotel in Vandergrift which harbored officers of the Federation, and of em-

[1] *American Industries,* December 15, 1907, pp. 42 *et seq.;* italics are author's.
[2] *Ibid.,* January 1, 1908.
[3] *Statement Against the Steel Trust, etc.,* 1910, pp. 21-23.

ployees who patronized the hotel, and alleged that the company even threatened to boycott the United States Engineering Company if it continued to encourage organizers of labor.

"Following the prohibition of the celebration of Labor Day," runs the report, "the shop committee of the molders employed by the United States Engineering Company of Vandergrift were approached by their employers, and urged to abstain from attending the union meetings because the United States Steel Corporation had threatened to cancel orders for steel castings and rolls if the molders continued to encourage the organizers."

The foregoing instances are particularly interesting in view of the outspoken opposition of the same groups to any form of boycotting by labor.

The Blacklist

The *blacklist* is, perhaps, one of the most insidious forms of the boycott practiced in America. It is a variety of the employers' boycott and may be defined *as an agreement of employers to refuse employment to certain workmen obnoxious to them, generally on account of their activities in behalf of labor.*

In organizing a system of blacklisting, a list of names of workmen is prepared by the employers, accompanied by a number of statements regarding their personal appearance, qualifications, the reasons for their discharge—if they have been dismissed—and other information deemed desirable, which list is open to the inspection of certain other employers. At times a central bureau is maintained where this information is placed on file by all of the business men within the agreement. By means of this list manufacturers and others can readily discover whether or not applicants for work are likely to prove "dangerous labor agita-

tors." Many are the cases in which workers have been refused employment or have been suddenly discharged as a result of the secret use of this weapon.

In describing the workings of the blacklist, Prof. Richard T. Ely writes:

"A man who for any reason, be it even whim, caprice, or personal spite, falls into disfavor with his employer is placed on the blacklist, and his name, at times accompanied by a personal description, is sent to the allied employers all over the country. . . . The blacklist will pursue a man for years, will drive him out of an honest trade . . . and will follow him across the continent, and everywhere defeat his efforts to gain a livelihood."[1]

"Blacklisting has the merit of being very effective," says Woodrow. "Its edict is final; it troubles no jury; sends for no sheriff; its machinery is purely clerical, with the magnificent advantage of being operative wherever its agencies exist. It has its watchdog by every door, and woe to the man who, with its brand on his brow, seeks work and bread in any one of its departments. He is proclaimed by a corporation Czar. He is in Siberia, yet under the dome of Washington."[2]

Mr. John Mitchell thus describes its workings:

"The blacklist . . . is generally covert and secret. In former times, and possibly still to-day, employers frequently wrote letters of recommendation to employees discharged upon some trivial pretext or other, but by a secret sign the employer who read the testimonial would know that the workman was blacklisted. In many cases, in fact, the blacklist has been negative, and has been simply a secret arrangement by employers not to engage any workman without a special recommendation from another employer."[3]

[1] Ely, *The Labor Movement in America*, p. 110.
[2] Woodrow, *Labor Problem*, pp. 288-289.
[3] Mitchell, *Organized Labor*, p. 291.

Since 1832, when a group of merchants and ship owners of Boston resolved to employ no journeymen who belonged to a labor union, or to deal with any master mechanic who gave work to such journeyman,[1] this weapon has been used with great effect in many parts of the country.

Prof. Ely cites an instance a score of years ago in which 33 men were blacklisted in Fall River for asking for an increase of wages,[2] and were compelled to seek work under assumed names. "It is reported on apparently good authority," he declared, "that one railroad corporation has a book containing the names of a thousand blacklisted persons, with a full description of each."

Much evidence of blacklisting, especially in the mining regions and on the railroads, was adduced by the Industrial Commission in their hearings of 1899.

Before this commission, D. C. Coates, president of the Colorado Federation of Labor, testified[3] that, in spite of prohibitory laws, wage earners were blacklisted from one end of the state to the other. He added:

"I know from my own experience that men are kept from positions in all parts of the State of Colorado because of their connection with organized labor. . . . They (the employing class) practically have the power to say that a man shall not have work; to destroy his credit with the merchants; to destroy or make valueless what little property he has; to separate him from his family and make him a wanderer upon the face of the earth."

Mr. John Mitchell again declared before the same commission:[4]

[1] *Ibid.*, p. 290.
[2] Ely, *The Labor Movement in America*, p. 110.
[3] Industrial Commission Report, v. 12, p. 248.
[4] *Ibid.*, v. 12, p. 37 (April 11, 1899).

"The blacklist has been one of the worst weapons organized labor has had to contend against. For instance, if a miner was discharged by a coal company for insisting upon better conditions, or trying to induce his fellow workmen to join his labor organization, he often found it impossible to find employment in the State where he then resided. It has always been difficult for our organization to secure proof that this method has been resorted to by employers. It is a well-known fact, however, that in the State of West Virginia, if a man dares to assert the rights guaranteed, he is deprived of the opportunity to earn a living for himself and family by his employment, and many times is unable to secure employment at any other mine in the State."

Of the same import were the testimonies of Edward McKay of Pennsylvania,[1] George Clark, a miner of Colorado,[2] and Harry Stephenson, also a miner.[3] Clark expressed the belief *that the system of blacklisting was pretty well perfected throughout the state of Colorado.* Stephenson gave the names of a number of mines which, he alleged, used this weapon.

In several instances during the nineties, railroads were held guilty of this practice.[4] Workers prominent in the 1894 strike of the American Railway Union declare that for years numbers of them were victims of the blacklist.

To what extent this device has been used during the last ten years, it is extremely difficult to state, because of the secrecy surrounding its employment. In an effort to gain a more adequate idea of its use, the writer communicated with a number of prominent officers of the national and international unions. Of the twenty who replied, twelve, or more than one-half, stated

[1] Industrial Commission Report, v. 12, p. 65 (April 12, 1899).
[2] *Ibid.*, p. 328 (July 17, 1899).
[3] *Ibid.*, p. 22 (April 10, 1899).
[4] Hundley v. Louisville Railroad Co. (Ken., 1898) and Mattison v. Lake Shore & Michigan Southern R. R. (Ohio, 1895) are examples.

that blacklists were used more or less effectively, while eight replied that they could not cite particular instances.

Those prominent in the engravers', foundry workers', hod carriers', carpenters' and joiners', machine printers' and pipe caulkers' unions declared that, so far as they were aware, the blacklist was not employed to any marked extent in their trades. Mr. Gompers expressed the opinion that it was not at present resorted to extensively. Many officials stated that labor did not fear the blacklist, wherever a strong union existed which embraced a large percentage of the workers in a particular trade, and that, in proportion as the union became strong, in that proportion the blacklist became ineffective.

Officers connected with the railroad, telegraph, textile, garment making, granite, glass, leather saddlery, pattern, mining and machine industries, and with the theatrical profession, on the other hand, wrote that they knew of numerous instances where this list was resorted to. Most of them added that it was exceedingly difficult to obtain legal proof.

In the garment makers' trade it was averred that the blacklist was used in very many instances, and that a card index system for tracing "undesirable" employees was used by one of the employers' associations.

"There are thousands of instances of blacklisting, far too numerous to specify," wrote an official of one of the railroad unions. "There are so many and they come so often that it would be hard to even think of writing a list," stated an officer of another international union. "It is done so quietly and in such an underhanded and secret way that it can't be proved, but happens every day." A leather worker avowed that the members of a certain manufacturers' association in his trade resorted to the blacklist whenever there was a strike in their shops. "There are some dozens of

cases," wrote a member of one of the professional unions, "this especially in Canada and the Southern States."

The machinists averred that the blacklisting system found in many large industrial centers often made it necessary for their members to change their names in order to get work. A journeyman tailor recently told the writer that he was effectively blacklisted a few years ago in Brooklyn, N. Y., because of his activity in a labor struggle. Many other allegations of similar import have been received.

One of the most recent charges of the extensive use of this weapon was made in 1912, in connection with the Steel Trust investigation,[1] by Mr. H. H. Eagle, city editor of the *Pittsburgh Leader*. Mr. Eagle testified that he had in his possession a list of 3,000 former employees of the Carnegie Steel Company, who had caused disturbance in the ranks of labor. This, he said, had been received from one Morgan, who represented himself as a labor agent of the corporation. He further stated that, on interviewing a number of the men on the list, he was informed that they had been absolutely unable to obtain work in the mills of the Steel Corporation.

Again, in a recent strike against lumber firms of Louisiana, in the summer of 1912, the strikers accused the Operators' Association of blacklisting over a thousand men, and of forcing every man applying for a job in the lumber industry to take an anti-union labor oath.[2] A somewhat curious form of blacklist was organized in 1911 by the bankers of New York and vicinity against bank clerks, who testified against Charles W. Morse in the National Bank of North America

[1] *New York Call,* February 16, 1912, testimony before Stanley Investigation Committee, February 15, 1912.

[2] *Coming Nation,* June 22, 1912, on "The Southern Lumber War," by Covington Hall.

investigation, according to United States District Attorney Henry A. Wise.

From the few cases which have actually been brought into court during the last twenty years, we can form some conclusion regarding the existence of this form of the employers' boycott. In 1898 the Louisville Railroad was convicted of agreeing with other companies not to employ any man who had been discharged from any of the companies, and of entering on the books of the company a false reason for the discharge of the defendant employee.[1] In 1895 the Lake Shore and Michigan Railroad was declared guilty of somewhat similar practices,[2] as was, more recently, the Great Northern Railroad Company.[3] The metal trades,[4] the cotton mills,[5] and many other industries furnish examples of blacklists which have brought the alleged offenders into court.

One of the latest of the adjudicated cases occurred in the shoe industry in Haverhill, Mass., where the Shoe Manufacturers' Association of that city was found guilty of preventing the employment of strikers in Haverhill and vicinity, by means of the blacklist, and of bringing pressure on merchants to refuse credit to their former employees.[6]

In many of the cases brought into court, while discrimination against unionists was shown, the court took the position that no such discrimination had been proved as would warrant conviction. Following the American Railway strike of 1894, for instance, a former employee of the Illlnois Central Railroad declared that it had been impossible, for several years, for him

[1] Hundley v. Louisville Railroad (Ken., 1898).
[2] Mattison v. Lake Shore & Michigan Southern (Ct. of Common Pleas, Ohio, 1895).
[3] Joyce v. Great Northern Railway Co. (Minn., 1907).
[4] Atkins v. W. & A. Fletcher Co. (N. J., 1903).
[5] Willis v. Muscogee Man. Co. (Ga., 1904).
[6] A. Cornellier v. Haverhill Shoe Manufacturers' Association, reported in *New York Call,* April 2, 1913.

to secure employment on any of the other railroads, on account of the character of the clearance card which he had received. His loss was estimated at $50,000. The court exonerated the railroad, stating that it was not proved guilty of denying all clearance cards whatsoever, but only such as would enable the complainant to obtain work.[1] Various courts have decided that it was not actionable for railroads to agree not to employ men who had been on strike,[2] or for them to inform other railroads, on request, that a former employee had been a labor agitator,[3] or to discharge a worker because he was a union man.[4] In fact, in the case of Adair v. U. S. (1908), that part of the Erdman law which made it illegal to discharge a workman, because of his union affiliations, was pronounced unconstitutional by the Supreme Court of the United States. In the eyes of some labor leaders this decision practically legalized this war measure.

In view of the many proved instances of the use of the blacklist, the blacklisting possibilities of many of the publications and employment bureaus of the employers' associations have special significance. The American Industrial and Commercial Agency Company, with headquarters at Toledo, Ohio, recently compiled a book which purported to give the rating of workmen as to wages, workmanship, character, production, hours of labor, etc. "Labor men familiar with the plan and scope of the enterprise," stated the *Brooklyn Eagle,* "declare that it is the biggest blacklisting scheme ever attempted, while on the other hand the general manager insists that it holds out to the working man opportunities for advancement not hitherto enjoyed."[5]

[1] McDonald v. Illinois Central Railroad Co. (Ill., 1900).
[2] New York City Street Railway Co. v. Schaffer (Ohio, 1902).
[3] Wabash Railroad Co. v. Young (Ind., 1904).
[4] Boyer v. Western Union Telegraph Company (C. C. E. D., Mo., 1903).
[5] *Brooklyn Daily Eagle,* June 10, 1911.

An employment bureau which could easily be used to blacklist union laborers is described by Dr. Edwards.[1] The organization is known as the Manufacturers' Bureau of Hartford County, and consists of the officers of some thirty factories in Hartford and vicinity. It aims to supply work to applicants in its allied factories, and requires all applying to fill out a comprehensive application card. When the laborer obtains work, a card indicating the place of employment, wages, etc., is filed in the employment office. As soon as the employee leaves, the manufacturer is required to fill out a blank, carefully stating the cause of the worker's withdrawal from the factory, his ability, wages, and other facts of value to the bureau. Many union men claim that a workman dismissed for organizing the workers would look in vain for work in any of the other factories. This association, they contend, is connected with others in New Haven, Springfield, Worcester, Boston, New York and other cities, while all are associated with the National Association of Manufacturers. A somewhat similar bureau of the National Metal Trades' Association, with branches in a dozen large cities, is described in the *World's Work* of December, 1905.

Yet, in spite of this evidence of blacklisting, employers will almost invariably state, when approached, that they are absolutely opposed to its use. Thus, Mr. James W. Van Cleave, then president of the National Association for Manufacturers, stated:

"When I condemn the boycott, I condemn it in all its forms and ramifications, including the blacklist, which is only the boycott in another form. Whether used by the labor organizations to hurt employers or by employers' associations to hurt workers, the boy-

[1] Alba M. Edwards, Ph.D., *American Economic Assoc.*, 1907, 3rd series, v. 8, pp. 578 *et seq.*

cott and the blacklist are un-American, immoral and vicious, and have no place in a country like ours."[1]

Again he said:

"In every instance in which I have heard the blacklist mentioned by the members of the National Association of Manufacturers, or by employers of any sort or in any place, it was condemned as a cowardly oppression of the weak by the strong. For this practice no defense, no apology, has ever been offered, or even can be offered which is worth a moment's consideration. To this statement there are no exceptions, no reservations, no limitations. The question of the blacklist has only one side, and that is base." Mr. Van Cleave then referred to the boycott as equally base, and continued: "The manufacturer or employer who uses or sanctions the use of a blacklist has no right of complaint against the labor organization which employs the boycott as a method, since both are beyond the pale of the moral and the civil law."

By November, 1911, the blacklist had been prohibited specifically in some twenty-three states of the union, and also by federal statute. It was furthermore condemned under conspiracy acts in most of the other states. The states specifically prohibiting it were: Connecticut in New England; Alabama, Florida, North Carolina and Virginia in the Southern Atlantic States; Arkansas, Mississippi, Oklahoma and Texas in the South Central; Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, North Dakota and Wisconsin in the North Central States and Colorado, Montana, Nevada, Oregon, Utah and Washington in the Far West.

The court decisions on the subject are referred to elsewhere.

It will thus be seen that the blacklist is well-nigh universally condemned, both by public opinion and by law, but that, in spite of this prohibition, it has fre-

[1] *American Industries,* February 15, 1908, p. 19.

quently been used in the past, and is being employed at present in many industries, with telling effect. It is doubtless true, as many union men argue, that the only permanent corrective is to be found in a thoroughly organized labor movement.

The Trade Boycott

While employers of labor have, from the very beginning, protested vigorously against the use of that "un-American weapon," the boycott, when practiced by working men, they have repeatedly resorted to this same weapon in their competition with other firms. Among the most frequent offenders have been the retail lumber dealers. During the past few years these dealers have felt the pressure of the large lumber yards and money order businesses which sold directly to the consumer, and have combined to prevent business annihilation. Some of these combinations have formed agreements with associations of manufacturers, and together they have used their purchasing power to injure the business of "irresponsible, unscrupulous, unethical manufacturers, wholesalers and dealers," those, in other words, who did not observe the rules of the association. The bitter experiences of those dealers who were not "in the ring" have often been described.[1]

Many times have these associations been haled into court for misconduct. As far back as 1893, for instance, Mr. Hollis, an official of the Northwestern Lumbermen's Association, at that time comprising one-half of the lumber dealers in Iowa, Minnesota, Nebraska and the Dakotas, was charged with boycotting retail dealers not belonging to the association.

The method followed was to compel those of its members who disobeyed its rules and sold lumber to non-members, to pay ten per cent. of the amount of

[1] *Hearst's Magazine,* April, 1912.

its sales to such members among the retail dealers who resided in the same town with the non-member customers. This practice, however, was not deemed illegal.[1]

Similar lumber organizations in Texas, Indiana,[2] Louisiana and Mississippi[3] have been declared guilty of unlawfully boycotting competitors. A Pennsylvania association, however, accused of attacking a dealer who conceded certain demands to strikers, was exonerated from wrongdoing.[4]

Drug associations, wholesale and retail, have been conspicuous boycotters. Some years ago, the Atlanta Retail Drug Association established a rule that none of its members would purchase anything from a salesman who disposed of his goods to drug stores outside of the group.[5] The National Wholesale Drug Association also at one time indulged in a similar practice.[6]

Other frequent experimenters in the gentle art of boycotting have been the newspapers,[7] news agencies,[8] printers,[9] plumbers,[10] granite manufacturers, produce exchanges, coal associations, liquor associations, real estate, ice, coal and other companies, and, in fact, combinations dealing with almost every conceivable commodity.

Trade boycotts, then, have played quite an important rôle in modern business competition. While they have frequently led to the oppression of small concerns, they have at other times been the salvation of

[1] Bohn Manufacturing Co. v. Hollis (Minn., 1893).
[2] Jackson v. Stanfield (Ind., 1894).
[3] Grenada Lumber Co. v. Mississippi (U. S. Supreme Ct., 1910).
[4] Cote v. Murphy (Penn., 1894).
[5] Brown v. Jacobs Pharmacy Co. (Georgia, 1902).
[6] Park & Sons v. National Wholesale Drug Assoc. (N. Y. Appellate Div., 1898).
[7] Aikens v. Wisconsin (U. S. Supreme Ct., 1905).
[8] Collins v. American News Co. (N. Y. Appellate Div., 1902) and Dunlap's Cable News Co. v. Stone (N. Y. Supreme Ct., 1902).
[9] Employing Printers' Club v. Doctor Blosser Co. (Ga., 1902).
[10] Macauley v. Tierney (R. I., 1895).

such small industries, in their fight against the otherwise overpowering competition of huge aggregations of capital.

The Political Boycott

Political boycotts, involving the refusal to vote for those officials disapproved by labor, are somewhat common in America. In a few instances boycotts in labor disputes have been carried over into the political field, and in at least one case, if we are to credit its promoters, a boycott decided a presidential election and resulted in the defeat of James G. Blaine.

The dispute in question began in 1877, in the office of the *New York Tribune,*[1] in an argument over the ever recurring subjects of wages and the closed shop. The compositors, members of the Typographical Union, who were instigators of the dispute, gained a temporary victory in 1883, but were afterwards discharged. Then followed a country-wide boycott. The unionists published a weekly, *The Boycotter,* and in June, 1884, sent delegates to the National Republican Convention, asking that the *Tribune,* then the mouthpiece of the Republican party, be repudiated. The delegates were treated with scant courtesy, and their demands were rejected. The union, thereupon, at its session of August 3rd, resolved that, until a written repudiation was made of the attitude of this newspaper, their members would boycott the "*Tribune* and James G. Blaine," who was then running as a candidate for president of the United States. When the votes were counted in November, it was found that the Democratic electors were chosen by the citizens of the state by a small margin (1,149 votes), and the printers declared that it was mainly due to their efforts that the Democratic nominee, Grover Cleveland,

[1] Annual Report of Bureau of Labor Statistics, 1911, pp. 284 *et seq.*

was enabled to gain the presidency. The boycott of the *Tribune* was not finally called off until June 5, 1892, when it was announced that a union foreman was to be placed in charge of the composing room, with full power, and it was recommended that a committee be sent to the national convention of that year announcing the agreement. The political nature of the boycott throughout these years was among the elements which led to the final victory of the union.

Another such boycott was threatened in the nineties on the Pacific Coast, when the Multinomah Typographical Union, in furtherance of their fight against the Longshore Printing Co. in Oregon, warned the city council of their displeasure at the polls, should it vote to give the city printing to Longshore.[1]

Among other instances which may be classed under the general heading of political boycotts, although slightly different in their nature from the foregoing, are the boycotting of British goods proposed by Mrs. Martha Wentworth Suffren, vice-chairman of the Woman Suffrage Party, to avenge the imprisonment of Mrs. Pankhurst;[2] the boycotting of the *Seattle Times* in the summer of 1912 by the Socialists of Seattle, because of its contemptuous treatment of the Socialist movement;[3] and the boycotting of a South Salem (New York) postmaster appointed against the wish of the majority of the citizens of that community.[4] In the last named instance the citizens journeyed to another town to post their letters rather than deposit them in the regular office.

The organized effort of the American Federation of Labor and the National Association of Manufacturers, cited elsewhere, to elect representatives favor-

[1] Longshore Printing Co. v. Howell (Oregon, 1894).
[2] *New York Times,* May 28, 1912.
[3] *Appeal to Reason,* June 6, 1912.
[4] New York Report, Bureau of Statistics of Labor, 1885, p. 361.

able to them, may also be included in the list of political boycotts.

The International Boycott

Of late, some curious examples of international boycotts, in which one nation has boycotted the commodities of another, have appeared. Chief among these have been the refusal of the Chinese to purchase certain American goods, and of the Persians and Hindoos to handle British commodities.

The Chinese boycott occurred in 1905, as a protest against the supposed attempt of the United States to force the signing of another exclusion treaty. Protest meetings in Shanghai and elsewhere were held, parades of Chinese girls were organized, cartoons, characterizing the Americans as tyrants, were widely distributed, and everywhere the populace were admonished not to deal in American products. The agitation had a temporary effect in a few provinces in decreasing the sales of American goods, but died out within a few months.[1]

In the Persian boycott, angered at the Shah for giving the tobacco monopoly to an English company for $75,000 annually, the inhabitants in many parts of Persia rose in rebellion and had to be put down by armed force. Some of the nobility stopped smoking, followed by the women of the harem. Meetings in the mosques and bazars were stopped, merchants closed their stores, trade fell to almost nothing, and the government was finally compelled to renounce its concession.[2] In India, the Swadeshi movement, organized to give preference to goods made in India over those from Great Britain, has gained considerable headway.[3]

[1] Hearings, United States Immigration Com., 1906, on "Boycott of American Manufactured Goods by the People of China."

[2] Pavlovitch, *"Le Boycott Économique et la Greve Générale en Perse," Le Mouvement Socialiste,* v. 28, pp. 16-24, July, 1910.

[3] *The Swadeshi Movement, a Symposium,* published by G. A. Natesant & Co., Esplanade, Madras.

As a result of the denunciation of the Russian Treaty in America in 1912, in the province of Kursk, Russia, the assembly met and resolved that the Russian farmers boycott all American agricultural implements. Copies of the resolutions were sent to all of the other provinces, urging that similar action be taken.[1]

Rumor had it in June, 1912, that rich Americans, fond of hunting in the Scottish Highlands, were being boycotted by a semi-political organization called the "Young Scots," who contended that such sport was taking away much of the cultivatable land. Some of the American families were reported to have given up their houses on account of the consequent difficulty of securing provisions locally.[2] A boycott of the Panama Fair by the Germans, in case the "stand-pat" policy on the tariff was continued, was also proposed prior to the 1912 presidential election.[3]

During the Ettor-Giovannitti trial in Lawrence, in the same year, a strong organization of Swedish working men requested the International Trade Union Secretariat to "take steps toward the organization of a world-wide boycott of all American goods," in case of the conviction of these two labor leaders. Many other instances may be cited.

Other Forms of Boycotts

The farmers of the country have also at times urged this method of dealing with their supposed enemies. "Resolved, That farmers buy no implements of those manufacturers or their agents who have entered into any conspiracy agreeing not to sell their implements to farmers' associations," runs a resolution at the Second Bloomington, Ill., Convention, 1873.[4] The

[1] *New York Times,* May 1, 1912.
[2] *Brooklyn Eagle,* dispatch from Edinburgh, June 14, 1912.
[3] *New York Times,* September 12, 1912.
[4] *Documentary History Am. Indust. Soc.,* v. 10, p. 52.

agreement of farmers in North Carolina to refuse to purchase jute bagging so long as the makers charged such high prices, is instanced in a North Carolina boycott case.[1]

The boycott by the abolitionists against slave-made goods before the Civil War and by the prohibitionists against liquor and the liquor dealers, are among the many other instances which may be gathered from American history.

It is thus seen that the working class, in its fight for better and more humane conditions, is not the only element in society which uses its purchasing and selling power to force other groups to grant concessions. The general public resorts to the boycott to force a reduction of monopoly prices; the class conscious capitalist uses it to silence the organs of public opinion; the employer ruthlessly employs it to crush the union spirit among his workmen; the merchant wields it to cut the market from beneath unmanageable competitors; the citizen uses it to place his friends in office; the peoples of one country practice it to gain concessions from other countries or to prevent aggressions; labor, business, social, ethical, religious, political, educational associations fashion it to their ends—some for the weal of society, some to its detriment. We will next see more specifically what service it has rendered to labor.

[1] State v. Van Pelt, N. C., 1901.

CHAPTER III

THE NATURE OF BOYCOTTS EMPLOYED BY LABOR

Reasons for the Boycott

While boycotting has invaded well nigh every field of endeavor, its most important battleground is, perhaps, that of labor. A description of the use of this weapon by the labor forces will occupy the remaining pages of this book. Let us first inquire into some of the reasons for the boycott's popularity.

Labor has a two-fold relationship with the employing class. It supplies that class with the labor power necessary to produce commodities. It also furnishes, to a considerable extent, a market for the commodities produced. In both relationships it can so conduct itself as vitally to affect the profits.

In aiming to better the condition of labor by means of the strike, the worker uses his power of persuasion or coercion, only in his position as producer. The strike cuts off the supply of labor from the employer, and thus deprives him, at least temporarily, of his power to produce. If labor is thoroughly organized, if every man in a certain trade or industry stands staunchly with his fellow in a labor struggle; if the army of the unemployed refuses to "scab," and if, finally, the worker's economic power to resist proves as great as that of the employer, the mere cessation of work, if continued long enough, will probably be sufficient to bring the employing class to terms. A settlement of some

sort, or an absolute stoppage of production, is the alternative.

The unionists of the eighties in the United States discovered that these conditions but rarely existed. They found that in many instances a threat to strike failed greatly to disturb the employer, believing, as he did, that his one problem, in case of such a strike, was to obtain other workers, and that the condition of the labor market made that problem a comparatively simple one. Following the hiring of others, business would proceed as formerly.

The workers therefore came to realize that they had utterly neglected to use their power as consumers, in their struggles for improved conditions.

"If we can tell the unfair employer that he may fill our places with other workmen, but that he will be unable to sell the goods his new employees produce; if we can assure him that, unless he concedes our demands, labor and its friends will leave his goods unsought, and that it will take many a day to regain his former patrons, our argument will gain double weight. Should we not then unite to cease all dealings with 'unfair' firms, and thus cut off, as far as possible, not only their labor force but their market as well?"

Along such lines were they beginning to reason in the early eighties, about the time that the word "boycott," accompanied with tales of the effective ostracism of the English landlord class, was borne in upon them. It was a period in America of widespread labor troubles, waged for the most part by the then prosperous Knights of Labor, an organization especially adapted to appeal effectively to large masses of friendly consumers. The weapon was naturally seized upon with vigor.

The New York Bureau of Statistics of Labor gives

some reasons for the acceptance of this method of industrial warfare.[1]

"It seems likely that if a body of workmen feel that a strike is the only way of enforcing what they consider just and reasonable claims, they will try to make that strike valid, and to bring it to a crisis by adopting any other legal method which will further embarrass the employer and bring him to a decision. The strike is negation. The boycott is action. It is not here a question of morality or even of legality, but simply of logical sequence. Most trades have been content to strike, putting themselves to loss of wages, the greatest deprivation of a poor man known; in many cases, however, the men have argued that they have a right to go further, and to compel a settlement of the issues. Hence the boycott. . . . *If the employer can dismiss his dissatisfied work people and replace them, the burden falls on the shoulders of labor alone, and the employer may profit by the change. If, on the other hand, the workman resorts to boycott and so intercepts the employer's profit, the employer is brought to a quicker sense of the expediency of friendly settlement.*" (Italics are author's.)

Another reason for the use of this weapon was its comparative inexpensiveness:[2]

"Boycotting possesses this one merit over striking—it is less costly. As formerly conducted, strikes were very expensive, and, in the long run, unsuccessful. . . . Now, as soon as a strike is declared hopeless, measured by the old methods of attack, a boycott is declared. In some instances the men return to work and, as far as surface indications go, the war with the firm is at an end. Not so with the boycott. Its work is quietly but persistently directed against the sale of the goods of the firm. The union itself is put to little ex-

[1] Report of New York Bureau of Statistics of Labor, 1886, pp. 713, 714.
[2] New York Report of Statistics of Labor, p. 334.

pense. Beyond printing the boycotting circulars and the expense attending their distribution and the personal expense of committees appointed to visit their organizations throughout the State, the outlay is very small. Where the union or organization is associated or affiliated with a national one, even this last item of expense is saved. If the men conducting the boycott are industrious, it will sooner or later give evidence that the sale of the boycotted article is affected. If it is an article which enters into daily consumption and is of such a character that it can be made the subject of ordinary conversation, it will soon force the employer to expend money in advertising it, in order to counteract the silent influence of the boycott."

The broader social reason given for adopting this weapon appeared in the Illinois reports:[1]

"The theoretic justification of the boycott, as expounded by those who claim for it a legitimate function in industrial differences, may be briefly stated as follows: Behind all economic laws of trade, behind the considerations of supply and demand, is that which creates the demand, that which gives force to all industry, and vivifies all commerce—the social need. The requirements of society are various, intricate and interwoven. It needs food, raiment, dwelling places, means of rapid communication and travel; besides these, and more than any of these, except food and raiment, it needs moral uprightness, business and social integrity, education and moral worth. All industry is carried on because of some social need, because the social need has created a demand for the article produced by such industry; but when persons supplying such demand violate some other social law to protect which is of far more importance than the gratification of this artificial demand, then the demand ceases, and the offending party is crushed. Society, in a broad sense, is the employer not only of all labor but of all

[1] Illinois Report of Bureau of Statistics of Labor, 1886, pp. 446, 447.

capital, and of all who produce or distribute the fruits of labor and capital. When any of its employees violate moral or social laws, the maintenance of which is of more importance than the services of the offenders, society may discharge such employees, that is, refuse to deal with them or use their products—in short, boycott them."

Having considered, in broad outline, the reason for the appearance of the boycott in the labor world, let us analyze more closely its character and forms.

Definitions

A *boycott in labor disputes may be defined as a combination of workmen to cease all dealings with another, an employer or, at times, a fellow worker, and, usually, also to induce or coerce third parties to cease such dealings, the purpose being to persuade or force such others to comply with some demand or to punish him for non-compliance in the past.*[1]

Boycotts may be divided into *negative* and *positive* boycotts. The primary purpose of negative boycotts is to secure for "fair" firms the patronage of labor and its friends. Indirectly, they divert trade from "unfair" employers. In the prosecution of this form of boycotts, a *union label* is usually placed on goods as a guarantee to the trade unionists and to the public generally that the goods are produced under conditions favorable to the unions. "White" or "fair" lists which announce to the public those who have complied with trade union conditions are also printed and distributed.

The Union Label

The union label which is used, as has been stated, in enforcing negative boycotts, is an emblem placed on

[1] See Seligman, *Principles of Economics,* p. 440; Adams and Sumner, *Labor Problems,* p. 197.

commodities produced under union conditions. This design is also printed on shop cards to indicate that the stores in which they are distributed observe union rules, and is, as well, worn on the coat lapels of union men.

The label was first instituted by the Cigar Makers' Association of the Pacific Coast, in 1875, and was placed on all cigars made by white labor, in San Francisco and other cities of the coast, to indicate that the cigars were not made by Chinese labor, then so prevalent in California. The label, in fact, was the outcome of this competition between Chinese and American workmen.[1]

In 1879 the St. Louis Cigar Makers' Union adopted the label, and in 1880 the Cigar Makers' International Union of America, in Chicago, placed a blue label on cigars made by its members. This indicated to labor that the cigars "had been made by a first-class workman, a member of the Cigar Makers' Union, an organization opposed to the inferior rat shop, coolie, prison or filthy tenement house workmanship." [2]

In the second period of the label, from 1880 to 1890, several trades, chief among them the Hatters and Can Makers, adopted the label to combat the foreign low paid labor, and the public was appealed to to purchase union made goods, and thus place their stamp of condemnation on tenement, sweat shop and prison labor. The Knights of Labor were particularly active during this period, and, besides the Hatters and Cigar Makers, the German Typographia (1885), Typographical Union (1886), Garment Workers (1886), Coopers (1886), Boot and Shoe Workers (1887), Bakers (1886), Molders (1887) and Tailors (1886), adopted the label.[3] It was the controversy over the

[1] Spedden, *The Trades Union Label,* p. 10.
[2] *Ibid.,* pp. 14, 15.
[3] *Ibid.,* p. 18.

label of the cigar makers which finally led to the breach between the Knights of Labor and the International Cigar Makers' Union and the edict from the Knights to the effect that all of its members must sever their connections with the Cigar Makers' Union.[1]

Since 1890 the use of the label has grown steadily, and the unions have appealed primarily to organized labor, rather than to the public at large, to purchase union made goods. In 1909 the Union Label Trades Department was established by the American Federation of Labor to encourage the use of the label throughout the country. This department reported in 1912[2] that there were sixty-seven international unions then using the union label, thirty-eight of which were affiliated with the Union Label Department, and that fifty local departments for the spread of the label were in existence in the industrial centers of the country. The department, during the previous year, conducted an aggressive campaign for advertising the label. It distributed over 150,000 pieces of literature, including 55,000 directories containing, in its ninety-three pages, the names of firms permitted the use of this label emblem, and brought the claims of these "fair" firms before the trade unionists in many of the official journals of the international union. It also operated moving picture shows and entertainments illustrating the various labels, and sent a number of organizers into the field. Some idea of the use of the labels may be gleaned from the following figures from a few trades unions:

Name of Union	*No. Labels Used 1912*
Bakery and Confectionery Workers	555,439,000
United Garment Workers	45,430,000
United Brewery Workers	44,239,850

[1] Spedden, *The Trades Union Label,* p. 19.
[2] Convention Proceedings, American Federation of Labor, 1912, pp. 23-25 and 332-334.

Name of Union	*No. Labels Used 1912*
Cigar Makers' International Union	28,600,000
American Federation of Labor	9,423,000
United Cloth Hat and Cap Workers	5,305,000
Journeymen Tailors' Union	529,681
Travelers' Goods and Leather Novelty Workers	47,000

This was a large increase over the figures of the previous year. The Woman's International Union Label Leagues, recently organized, are assisting materially in the label campaigns.

The unionists often impose penalties on their members, to induce them to use the label. The Boot and Shoe Workers' Union fine any member purchasing shoes not containing the union stamp, and the Hatters' Union recently passed a resolution exacting $5 from any man purchasing a non-union cigar.

In several unions no delegate can be seated at the convention unless he can show at least three labels on his various garments.[1]

The effectiveness of the use of the label, according to Dr. Spedden, depends on whether the goods are purchased chiefly by unionists or other classes in the community; whether they are usually purchased by men or by women; whether they are of such a character that other unionists can easily ascertain if their fellow member is buying union or non-union goods, and whether the purchases are made frequently or at long and irregular intervals.

The Positive Boycott

The *positive boycott* generally takes the form of the *"unfair"* or the *"We Don't Patronize"* list and the *boycott proper*.

The unfair list is a list of those firms which, from

[1] Proceedings of the Fourth Convention (1911) Union Label Trades Department, pp. 19, 20.

the standpoint of the trade unionists, are unfair to labor. The list is published for the most part in trade union periodicals under the caption, "Unfair" or "We Don't Patronize," or posted at trade union headquarters. The publication of this list in the papers of one trade often leads through "courtesy" to its publication in other trade journals. Unionists are supposed to cease all dealings with those whose names thus appear. Since February, 1908, following the Danbury Hatters and Buck's Stove decisions, the "We Don't Patronize" list has been of little importance.

The *boycott proper* may be divided into the *primary,* the *secondary* and the *compound* boycott. The appellation, *tertiary* boycott, is also frequently applied to the most indirect forms. A *primary* boycott may be defined as a simple combination of persons to suspend dealings with a party obnoxious to them, involving no attempt to persuade or coerce third parties to suspend dealings also.[1] Thus, if workmen in one industry go on a strike against a firm and agree to refuse to purchase any product from that firm, without endeavoring to persuade others to do likewise, a primary boycott will be the result. This form, however, is rarely used in labor disputes as it is comparatively ineffective.

A *secondary* boycott may be defined as a combination of workmen to *induce or persuade* third parties to cease business relations with those against whom there is a grievance. A *compound* boycott appears when the workmen use *coercive* and *intimidating* measures, as distinguished from mere persuasive measures in preventing third parties from dealing with the boycotted firms.

Compound boycotts are of two kinds—those involving *threats of pecuniary injury* to the parties ap-

[1] Adams and Sumner, *Labor Problems,* p. 197.

proached, and those involving *threats of actual physical force and violence.*

The primary, secondary and compound forms of the positive boycott may be directed against a fellow workman or against an employer of labor. If this weapon is employed against another working man it is sometimes called a *labor boycott.* This form generally appears when a laborer refuses to join a labor organization and the members of such an organization endeavor to induce or coerce the employer, through threats of strike, to discharge the non-unionist unless he allies himself with them. At times efforts are made to prevent storekeepers from selling to such "scabs." This form of boycott, connected, as it is, so intimately with the closed shop, will not be dealt with to any great extent in this book.[1]

There are three important points of attack against a boycotted employer in the use of the secondary and compound boycott. An endeavor is often made to boycott him through *inducing or coercing his employees to quit working for him.* One of the weapons employed in carrying out this form is picketing.

Secondly, the workmen often attack the source of supply, and try to *induce or coerce wholesalers, jobbers, manufacturers or mining companies, as the case may be, to refuse to sell any further supplies to the employer under the ban.* This latter method is used most extensively in the building trades where the products disposed of are not finally sold to the general public, but are used in the construction of buildings.

The third and generally the most important method of injury is the *inducing or coercing of customers to withdraw their patronage* from the obnoxious concern.

The arguments used to obtain the coöperation of these third parties may be merely persuasive or coercive in their nature. The employee may be urged

[1] See Stockton, *The Closed Shop in American Trade Unions.*

simply in the interest of his class to quit his job in order to prevent the employer from winning the dispute. He may be threatened with violence or he may be inconvenienced in the matter of securing a boarding place, or obtaining provisions, on account of the threat of the workers to refuse to patronize those harboring or selling to him.

In the building trades and other industries the supplier of material may be induced through his sense of justice to refuse to sell further supplies to the firm opposed by organized labor. He may be confronted, and often is confronted, on the other hand, with a threat that the members of organized labor in other building trades will refuse to work on material supplied by him, so long as he continues to deal with the "unfair" employer. If this threat does not prove an inducement the workers may then appeal to the building contractors to cease purchasing supplies from this third party, and threaten the contractors with a strike of all the workers on the building if they continue their dealings. By this method the contractors often bring sufficient pressure on the manufacturer to induce him to refuse to supply the obnoxious employer with further goods, and the employer in turn is often thus induced to concede the demands of the workers.

If the firm boycotted supplies wholesalers and retailers with goods, the latter are approached by the boycotters, and are persuaded or coerced, covertly or otherwise, to cease purchasing from the concern under the ban, through fear that they, in turn, will lose the patronage of the friends of labor. Instances may be cited where the boycotters have extorted money from these dealers for continuing their patronage. When it becomes the turn of organized labor to cease patronizing retail dealers, or to cease working on "unfair" jobs, the union either resorts again to persuasion or to

coercion—generally through fines. These latter, however, are imposed by the workers on themselves.

A *tertiary* boycott again may be instituted against those citizens who continue to purchase from stores selling "unfair" supplies. In these cases the second form of compound boycott, where actual violence or threats of violence are used, is comparatively rare.

After a boycott is declared, it is promoted primarily by public addresses, personal conversation, the distribution of circulars and letters, the sending of delegates, the publication of "unfair" lists and by articles in trade union papers.

Circulars setting forth the claims of the union "sinned against" are sent to all of those unions which seem likely to be in a position to aid. When the product sold has a national patronage, the unions throughout the country are frequently circularized. Special letters are sent to many of the unions. Circulars are also distributed among the public generally, if the concern has a local patronage, and if the goods sold are purchased by large numbers of the laboring class. These circulars generally recite the grievances complained of, and call upon the friends of labor to cease dealing with the company named.

The trade unionists are asked to give funds to aid in the boycott, to send their delegates to dealers in the boycotted articles, and to write letters of protest to the unfair establishments. Delegates are frequently sent around the country by the union conducting the boycott. It is the business of these to visit dealers and to present their claims before the trade unionists of the various cities, urging coöperation.

Until 1908 the "We Don't Patronize" list, containing the names of firms which had not conceded labor's demands, was published in the *American Federationist* and other labor papers. As a feeble substitute at the present time, the labor periodicals now often call at-

tention to and recite the facts of union struggle, leaving it to organized labor to "do the right thing."

Members are urged to discuss the matter with their friends, and various devices, such as "sandwich men" and transparencies, are used to draw attention to the fight. The central labor unions of each city are often effective agents to further the interests of boycotters.

The ingenuity of the unionist is frequently put to a test in his endeavor to discover those who deal with the boycotted concern. Many are the complaints of the manufacturers that their goods are followed to the trains, and the names of the patrons secured before shipment. One firm complains that its salesman was followed across the continent to the Pacific Coast by a delegate from the trade union, and that its dealers were visited and induced to cancel their orders. In the case of the newspapers, the paper's advertisers are often seen, and urged to discontinue advertising in the "scab" paper, under penalty of the boycott.

It would be impossible to describe all of the other devices used in connection with labor boycotts, but the foregoing are believed to be the most important.

CHAPTER IV

EARLY BOYCOTTS IN LABOR DISPUTES

Hatters' and Printers' Boycotts

What appears to be the first boycott in the country connected entirely with a labor dispute, was organized by the Baltimore hatters in 1833.[1]

According to the newspaper accounts of that day, all the master hatters of Baltimore, with the exception of seven, had reduced the wages of the journeymen hatters about 25%, and labor throughout the city was justly indignant. The Journeymen Hatters had issued an appeal to the other mechanics of the town and to the citizens generally, asking them to have no more dealings with the combination of employers, and to patronize only the loyal masters. Following this, the Mechanics "of all denominations," on July 24, 1833, held a meeting, indorsed the appeal, and urged the boycotting of the employers. This meeting was in turn followed by one composed of the citizens generally. This agitation brought forth a vigorous reply from the master hatters, who defended their treatment of labor by the declaration that nine persons in one establishment earned the munificent wage of $10.50 a week, and that the average wage was more than $8.

The Mechanics' Resolution viewed the 25% wage reduction as "replete with evil and injustice, and subversive of the dearest principles for which our fore-

[1] *Documentary History Am. Ind. Soc.*, v. 6, pp. 100-107.

fathers bled," expressed its hearty approval of the boycott, and resolved to support only those employers who sternly resisted "the odious proposition of the combination."

About the same time the printers of New York State were active in the promulgation of unfair or "rat" lists, lists of employers and workmen who refused to abide by the rules of the Typographical Union No. 6.[1] On September 17, 1831, the union resolved "that, as soon as a correct list of 'rats' now employed in the city can be obtained, said list be printed and circulated in every city and country in the Union." On October 26, 1833, a publication of a list conducting non-union shops was determined upon at the behest of a fair employer, and three years later it was resolved "that the 'Rat' Committee be instructed to ascertain in the *Union and Transcript* the names of all employers who do, as well as those who do not, conform to the prices." The publication of these lists continued without a set-back until April, 1840, when court proceedings were instituted by one who alleged that he had been libeled by the "Rat" Committee. The result of the suit is not known.

Periods of Boycotting

Shortly after the invention of the word "boycott" by Father O'Malley in 1880, the boycott became a popular and effective weapon in the hands of organized labor in the United States. It was in 1886 that the Knights of Labor came to the zenith of its power, with a membership of some 600,000,[2] and that the Federation of Organized Trades and Labor Unions, afterward the American Federation of Labor, was formed (1881).

[1] Annual Report, New York Bureau of Labor Statistics, 1911, pp. 143 *et seq.*

[2] Adams and Sumner, *Labor Problems*, pp. 219 *et seq.*

The first real wave of boycotting swept over the country in 1885. In that year a careful investigation of its use was published by *Bradstreet's*. This appears to be the only attempt that has yet been made to describe the use of this labor device in the various parts of the United States. The labor commissioners of Illinois and Wisconsin made mention of its employment in their report for 1886, and the Bureau of Statistics of Labor of New York published annually an account of its practice from 1885 to 1892.

Because of the application of the law to suppress various forms of the boycott, and resulting changes in the method of warfare of labor unions, boycotts came to be regarded by the labor commissioners as of too little consequence to report. It thus becomes more and more difficult to obtain adequate reports of their use since about 1890. In many jurisdictions the commissioners proceeded on the theory that, prohibited by law as many forms were, the boycott no longer existed, and, consequently, it was not possible to report that which was not in existence. The last official report, therefore, available in this country is the N. Y. Report of 1892.

The second period of boycotting was that in which the railroad employees of the country were engaged in the early nineties, particularly during the American Railway Strike of 1894.

The national boycotts of the American Federation of Labor, the prominent use by them of the "We Don't Patronize" list, culminating in the great Buck's Stove and Danbury Hatters' boycotts, might be said to constitute the third period of boycotting in labor disputes.

With the exception of the boycott of the Industrial Workers of the World, in conjunction with the Western Federation of Miners in Goldfield, Nevada, there have been no conspicuous boycotts by that organization. The probable reason for this is that the I. W.

W. have thus far organized chiefly in the basic industries, and the members are not generally the consumers of products fashioned in the plants organized by them. The organization, however, believes in using the boycott wherever it can be employed effectively.

Boycotting in the Eighties

In 1885 *Bradstreet's* gathered the first and only boycotting figures of national scope.[1] "Its (the boycott's) growth in the hands of developing trade unions and organizations in the United States has been prodigious within the two years past," comments that journal. Referring to the trades which most prominently used this weapon, *Bradstreet's* summarizes:

"It is noticeable that the typographical unions have resorted to the use of the boycott in excess of all others. Cigar manufacturers and dealers have been boycotted with the next greatest frequency and with the largest proportion of success noted in any line, about 42% of the boycotts being claimed as accomplishing the desired end. Hat manufacturers and dealers have been boycotted with the next greatest frequency, yet the success thus far obtained is less striking, except in individual instances. Boycotts against carpet makers and dealers in 'scab' nails made in Ohio valley have been actively waged. Out of the 119 boycotts in the six lines enumerated, 29 have been successful and 16 have failed, while 85 are still on." [2]

A further analysis of the figures given, shows that of the 196 boycotts, 130, or over 66%, were divided among the six trades: the newspaper (45) and cigar (26) industries, the hat manufacturers and dealers (22) and the clothing (14), the carpet (13) and the nail industries (10). Of the eight ranking first in the

[1] *Bradstreet's*, 1885, v. 12, pp. 394-397 (Dec. 19, 1885).
[2] Italics are the author's.

number of boycotts waged, four of the industries affected were engaged in the production of wearing apparel.

Surveying the entire number of boycotts, exclusive of those against Chinese labor, it is seen that those industries engaged in the making of clothing led in number of boycotts (55), the newspaper business came second (45), and food supplies and furniture, third and fourth (37 and 20), respectively. Then followed iron and steel (10), transportation (7), paper and printing (7), metal (5), personal service (4), post office work (2), amusement (2), and laundry supplies (2).

If we analyze the relative success of boycotts waged in the seven industries credited with the largest number of boycotting cases, we will find that the percentage of successful boycotts to the total number actually ended was highest in transportation (85.7%), next highest in the clothing business (77.8%), followed in turn by the food (69.5%), paper and printing (66.7%), furniture (60%) and newspaper (56.5%) industries. We will observe that transportation leads (85.7%) with food next (43.3%), in the percentage of boycotts brought to a successful conclusion to those actually undertaken.

Considering the first eight items in the table on p. 74, it will be noted that all of the boycotts in the hat and clothing industries—using the latter in its narrower sense—of whose outcome the labor bureau had knowledge, were in favor of the boycotters, giving these trades 100% of victories won over defeats recorded. If, however, we are in quest of the highest percentage of victories reported *among the total number of boycotts waged,* we will discover that the cigar makers' industry takes the lead with 42.3%, and the newspaper and hat industries follow, with the clothing industry far in the rear. Success is claimed for all boycotts instituted against excursion and other steamer

companies, theaters, publishers, postmasters, starch makers, baking powder companies, laundry soap man-

Table compiled from *Bradstreet's*, December 19, 1885, p. 394.

Industries	No. Boycotts	Claimed Gained	Admitted Lost	Still On	Percentage of Successful to Successful and Unsuccessful	Percentage of Successful to Total No.
Newspaper	45	13	10	22	56.5	28.9
Hat Manufacturers	22	4	....	18	100.0	18.2
Cigar Manufacturers	26	11	5	10	68.8	42.3
Carpet	13	....	1	12	0.0	0.0
Clothing (Suits of)	14	1	....	13	100.0	7.1
Nail and Mills	10	....	....	10	0.0	0.0
Drygoods	7	....	....	7	0.0	0.0
Boot & Shoe Mfrs	7	....	1	6	0.0	0.0
Stove Makers	5	3	....	2	100.0	60.0
Flour Mills	3	1	....	2	100.0	33.3
Hotels and Pub. H	4	3	0	1	100.0	75.0
Breweries	4	3	1	0	75.0	75.0
Printers	3	0	0	3	0.0	0.0
Bakers	2	1	1	0	50.0	50.0
Excursion Steamers	5	5	0	0	100.0	100.0
Silver Factories (Watch Cases)	3	0	0	3	0.0	0.0
Tailors	4	2	0	2	100.0	50.0
Theater	2	2	0	0	100.0	100.0
Publishers	2	2	0	0	100.0	100.0
Steam Railway	1	0	1	0	0.0	0.0
Steamship Co	1	1	0	0	100.0	100.0
Sp. Beverage	1	0	0	1	0.0	0.0
Postmaster	2	2	0	0	100.0	100.0
Starchmaker	1	1	0	0	100.0	100.0
Baking Powder Maker	1	1	0	0	100.0	100.0
Washing Soap	1	1	0	0	100.0	100.0
Can Maker	1	1	0	0	100.0	100.0
Stereotype Plates	1	0	0	1	0.0	0.0
Pianos and Organs	1	0	0	1	0.0	0.0
Broom Manufacturers	1	0	1	0	0.0	0.0
Cooper Workers	1	1	0	0	100.0	100.0
Box Manufacturers	1	0	1	0	0.0	0.0
Knit Goods Mfrs	1	0	1	0	0.0	0.0
Chinese Employers	41	40	1	0	97.6	97.6
	237	99	24	114	80.5	41.8
Excluding Chinese	196	59	23	114	72.0	30.0

ufacturers, can makers and cooper workers. As but one or two boycotts were employed in a number of these last named industries, however, the results are not especially significant.

The greatest success of any boycotts waged during this period was found in those conducted in the Western States against the Chinese. Forty out of the forty-one instances were reported as entirely successful. These boycotts, however, often involved more than mere boycotting. They were race wars. In Portland, Oregon, they were organized by an Anti-Coolie Law and Order Association, with a membership of 2,000, formed in seven encampments. The agitation led to the discharge of 400 Chinese in 40 firms. In Squeak Valley, on Puget Sound, seven or eight coolies were reported to have been killed. In Tacoma, Washington, more than 700 Chinese were escorted from the city by prominent citizens. In Idaho and Oregon the workers threatened to hang any coolie who came their way. None came. In Montana these Orientals were forced by the Knights of Labor to leave their localities. The success is therefore not to be wondered at.

In summary it is found that, excluding the boycotts against the Chinese, *72%, or nearly three-fourths of the boycotts actually decided, were declared successful.* Thirty per cent. of all those undertaken were brought to a successful conclusion before the compilation of *Bradstreet's* report. In view of the large percentage of boycotts among those concluded, it might be conjectured with some degree of safety that about one-half of the boycotts begun finally succeeded. The effectiveness of the boycotts in certain trades is thus evidenced.

What is the relative success of strikes and boycotts? It has been estimated that, of those strikes ordered by labor unions in 1885, 62.42% succeeded, 10.58% suc-

ceeded partly, and 27% failed; while, of those not ordered by labor unions, 27.05% succeeded, 6.6% succeeded partly, and 66.35% failed.[1] These percentages take no account of strikes pending, or those whose results were not reported. The percentage of successful boycotts, to the total number reported terminated, is thus greater than that of wholly successful strikes ordered by labor unions, and greater than that of wholly successful strikes ordered by unorganized workers, but not so large as the percentage of wholly and partly successful strikes conducted by unions.

It is of interest also to note, in connection with the boycotts entered into in 1889, that 157 of the 196 boycotts, or *80% of the entire number, were organized in industries which supplied the common necessities of life*—clothing, food, furniture, and reading matter.

About one-fourth of the boycotts engaged in this year were conducted in New York State. The New England States contented themselves for the most part with assisting in the success of those boycotts originating in other regions.

One of the most conspicuous boycotts in the Middle Atlantic States was that waged against J. Kaufman's clothing and furniture store of Philadelphia. So bitter did the antagonism become against this concern, that several employees of the street car lines of that city struck because the cars carried its "ad." A few cases were instanced in New Jersey and Maryland. In the South union men in Wheeling, West Virginia, refused to patronize a barber shop in which "scabs" were shaved. Comparatively infrequent was the use of this weapon in the national capital, in Virginia and Georgia. A number of boycotts were evidenced in the Western States—Ohio, Indiana, Illinois, Michigan, Missouri, Nebraska, Utah, California, and Iowa—principally in the last named state, while instances were

[1] *Statistical Abstract,* 1911, p. 266.

cited in Kentucky, Tennessee, Louisiana, Texas and Arkansas, of the South Central Division. In Galveston, Texas, the telegraph operators were charged with refusing to forward messages to the ships, until a strike in that city had been settled.

Most of the boycotts conducted were instituted by the Knights of Labor. The Knights had great faith in the power of the consumer to assist labor in its struggles and, at times, even credited the boycott with being a more effective instrument than the strike in bettering the conditions of labor. However, many of their leaders, ostensibly, at least, were opposed to boycotting, and placed most emphasis on political and co-operative action. Grand Master Powderly, for instance, was quoted in 1886 as saying: "I hate the word boycott, and have ordered the local executive boards and secretaries to simply tear or burn up the flood of boycott notices and circulars that have been pouring in. It is a bad practice."[1]

Illinois and Wisconsin Boycotts

The following year an investigation of this new labor device was made in the state of Illinois.[2] Some fifty boycotts were observed, twenty-five of which were waged by the Knights of Labor, and twenty-five by the American Federation of Labor.

The most striking features of the boycotting campaigns were the percentage of successful boycotts and the somewhat intimate relation shown between the causes and the success of boycotts.

The number engaged in the trade unions' boycotts was estimated at 4,259; in those of the Knights of Labor, at 5,927, total 10,186. In 13 cases the results

[1] Fourth Annual Report, Illinois Bureau of Labor Statistics, 1886, pp. 446 *et seq.*

[2] *Ibid.*, 1886, pp. 446 *et seq.*

were not stated, and in 6 no results had been reached at the time of the report. Of the 31 where the outcome had been ascertained, 14, or *45.2%, were said to have been completely successful, 16 were partly successful, and only one was reported as a complete failure. It is thus seen that 96.8% of the boycotts whose results were ascertained were successful in whole or in part.*

"Judging from the foregoing returns," runs the report, "the proportion of boycotts which have met with some degree of success is greater than is usually found in a corresponding number of strikes, and of course the cost to the aggressors in this form of boycott is very much less than it would be in conducting strikes."

The outcome of the boycotts in this state was influenced considerably by their underlying motives. Eight boycotts were waged against dealers in prison-made goods, and in every case these were wholly successful. Of the 1,193 union men conducting two boycotts against the reduction of wages and the employment of non-union workers, 1,183, or over 99%, were completely victorious. One boycott was also cited against merchants' high prices, in which 42 were engaged. This also was successful, as was the one participated in by 30 workers for the recognition of the union. Most of those contending for a shorter day, on the other hand, won only part of the demands, while no success at the time of the report was credited to the 250 laborers who conducted a boycott against the employers refusing to hire union men. Commenting on the want of success of the last named endeavors, the commissioner states: "Boycotts based upon the employment of non-union men rarely succeed, because Society is not prepared to assist either in driving men into unions or out of employment." [1]

[1] Fourth Annual Report, Illinois Bureau of Labor Statistics, 1886, p. 447.

In Illinois, as in the country at large, the newspapers were the chief objects of attack, fourteen out of the fifty boycotts having been directed against them. Nine-tenths of the participants in these boycotts claimed to be partly or wholly successful, although less than one-seventh were completely so. Coal companies, nail mills and Chinese laundries also came in for a considerable share of attention at the hands of the boycotters.

While the boycotts were scattered throughout the state, 12, or nearly one-fourth, were organized in Chicago. Over 7,000 persons, about 70% of the total number, were connected with these Chicago contests. One-half were centered in four cities.

Of the trade union boycotts, about one-third (8) were conducted by the cigar makers; 4 by the members of the typographical union; 3 by the glass blowers; 2 by the tailors, and 1 each by the bakers, butchers, coopers, iron molders, nail mill men, and plumbers.

In striking contrast with the boycotts of the trade unionists were those engaged in by the Knights of Labor. Here an effort was made to unite all of the Knights in town—bricklayers, carpenters, blacksmiths, cigar makers, engineers, plasterers, miners, shoe makers, etc.—in injuring the trade of the obnoxious capitalist. In was perhaps for this reason that the Knights appeared the more successful in their campaigns. While in five instances the trade unions report complete victory and in ten cases, a partial success, the Knights claim to have won all demands in nine instances, and part of their demands in six. From the foregoing figures the boycott is seen to have justified itself in this state as an effective labor weapon.

The only remaining state where an investigation was

made with the exception of New York was Wisconsin.[1] Little, however, can be gleaned from this report, as it was devoted chiefly to denunciation rather than to description. "In Wisconsin," the commissioner declares, "the boycott has been an active instrument either of revenge or of an attempt to compel a given person to do something against his will."

For the third time the prominence of the newspaper boycotts may be noted. Three were waged, two successfully. The proprietor of the "Quiet House" was tabooed during an attack on the *Milwaukee Republican,* because he continued to subscribe for that paper, and union men were admonished not to eat or drink in his restaurant. Advertisers of the *Evening Wisconsin* were effectively boycotted during the fight against that organ, and for one year the printers published a *Printers' Bulletin,* with which to oppose this newspaper.

In their fight against Dueber watches, the boycotters so overcrowded an auction room that no further goods could be sold. For his activity in the Kosciusko guards, a well known lawyer and supervisor of Bay View found his business ruined. As elsewhere, a number of industries producing cigars, bread, flour, beer, shoes, trunks, etc., were affected by this weapon. Several arrests were made. The percentage of successful boycotts is not given. The alacrity shown by the employers in starting court proceedings, indicates, however, that this weapon was here attended, as elsewhere, with considerable success.

It is thus seen that, although boycotts in labor conflicts were occasionally resorted to in the first half of the last century, they were not used extensively until the eighties. The glimpses which we have of their workings during this period indicate that their use,

[1] Report of Wisconsin Bureau of Labor Statistics, 1885-1886, pp. 372 *et seq.*

generally speaking, was productive of good results to labor. The biggest fact which stands out as a result of the examination of the *Bradstreet's,* Illinois and Wisconsin reports is, perhaps, that boycotts may be waged most frequently and effectively in connection with common necessities and inexpensive luxuries purchased regularly by the mass of workers, such, for instance, as newspapers, cigars, hats and certain other articles of clothing, food and furniture.

The character of the grievances resulting in the use of the boycott, and the power wielded by labor as consumers of the product boycotted are also factors in the success attending the use of this device.

The most illuminating investigations were those conducted in New York State, which will now be considered.

CHAPTER V

BOYCOTTS IN NEW YORK STATE

1885-1892

The one state which stood foremost as an experiment ground for the boycotts in the eighties was New York. Fortunately, the Bureau of Statistics of Labor in this state made a careful analysis of the situation here between 1885 and 1892. The facts which may be gleaned from these reports are of special significance.

Although the year 1880 witnessed a vigorous boycotting campaign against a starch concern, the first real outburst occurred in the year 1885, when some 59 cases were reported. Among the singular features of this year's fights were the endeavors of some of the workers to compel the boycotted firms to pay the expenses incurred in boycotting;[1] the alleged active encouragement of a cigar boycott, by rival manufacturers,[2] and the threatened boycotting at the polls of public men who continued to patronize the Fifth Avenue Hotel.[3]

The following year boycotting became so popular that the number of instances reported almost trebled, leaping from 59 to 163. This increase was due, according to the Commissioner of Labor, to the great wave of labor disturbances which swept over the coun-

[1] New York Bureau of Statistics of Labor, 1885, p. 339.
[2] *Ibid.*, p. 359.
[3] *Ibid.*, p. 358.

try, obtaining its initial impulse from the strike of the surface railroad employees in New York City.[1]

In the year 1886 the first of the legal prosecutions was noted in connection with the employment of this weapon. Over 100 labor unionists in New York City alone were indicted at this time for conspiracy, coercion and extortion, and sentenced to the state penitentiary.

The same year jealousies between rival labor organizations complicated the use of this labor device in the cigar industry. One manufacturer reported that he had been boycotted by the International Cigar Makers' Union No. 6, and injured thereby to the extent of nearly $10,000, in spite of the fact that all of his actions had been sustained "by the entire Executive Board of Knights of Labor from Mr. Powderly down." The bureau was unable to determine the exact cause of this conflict.

The advantages that sometimes accrue to firms ostracised by labor, when they gain the sympathy of the general public, were suggested in the boycotting of Mrs. Gray's bakery in New York City. In this dispute, the employees, in their fight for a union shop, followed customers to their homes and urged them to cease purchasing bread. At the same time they placed a peripatetic sandwich man in front of the store, bearing huge placards containing the legend, "Boycott Gray's Bakery." The newspapers took up the matter and aroused widespread sympathy for Mrs. Gray. "Prominent citizens sent checks, and hundreds of persons in and out of the city forwarded encouraging letters, enclosing, in most instances, substantial checks and orders for bread, etc., to be sent to charitable institutions. The business of the bakery quadrupled, and the demand for comestibles soon exceeded the resources of the establishment." A number of boycotters were

[1] *Ibid.*, 1886, pp. 744, 745.

finally arrested and the unionists acknowledged themselves defeated.[1]

As a result of the large numbers of arrests in connection with the boycott during 1886, the following year witnessed a considerable diminution in the aggressiveness with which this weapon was used. Boycotts in the building trades were, perhaps, the feature of the year, and held up, it was alleged, the construction of no less than $2,000,000 worth of real estate. For the most part, however, it was declared that the year's boycotts caused only inconvenience and slight loss of business. The brewers' boycotts of these and the succeeding years were also noteworthy.

While the numbers continued to increase the following year, the potency of the weapon diminished, only 40.2% of boycotts actually ended resulting in victory. This, however, was the lowest percentage of any year. Of this year's struggle, the Commissioner of Labor writes:[2]

"The boycott is not as potent a weapon as it used to be. Its power for offence has been very much limited by legal decisions and the interpretations of conspiracy law by the court have discouraged its adoption as a means for redress of grievances."

During 1889, 1890 and 1891 the numbers reported remained approximately the same, 177, 175 and 182, respectively. In 1892, however, the last year in which the bureau collected statistics, the number had decreased to less than half that of each of the three preceding years (88). The growing cautiousness of organized labor, combined with increasing legal complications, probably affected this result.

Partly on account of the supposed non-existence of the boycott, as a result of the law's condemnation, no

[1] New York Bureau of Statistics of Labor, 1886, pp. 749, 750.
[2] *Ibid.*, 1888, p. 214.

further notice of the use of this weapon has appeared in any of the succeeding reports.

Success and Frequency of Boycotts

During this eight-year period—1885 to 1892 inclusive—1,352 boycotts were reported to the Bureau of Labor. In 110 cases no mention was made of their final outcome. Figures are therefore available regarding the success, failure or pendency of but 1,242. Of these, over 500 are marked as pending. A number of those indicated as pending one year may be included in the figures of success or failure of the succeeding year, but there is no way of arriving at the amount of duplication from this source. *Of the 686 cases reported as either succeeding or failing, we find that 461, or about two-thirds, are said to have succeeded (67.2%).* The percentage will be very slightly raised if we include in this number the 13 reported as partially successful. The figures also indicate that *37.2% of the boycotts actually undertaken, including those pending at the time of the various reports, were pursued to a successful issue.*

The first year of the reports, 1885, shows the highest percentage of success over failures. It was then estimated that 81.5% of those actually concluded were wholly successful, while 95.4% were either completely or partially won by the boycotters. The next year the results were not reported so fully, but from the figures available there appears to be a slump in the number of victories, the percentage being lower than in any year except 1888. In this latter year, when the greatest number were waged, only two-fifths succeeded. The second most encouraging season for the unionists was in 1891.

It is perhaps more than a mere coincidence, and

probably indicates a vital truth about the effectiveness of boycotting, that the *greater the number, the less the success, in many cases, of the use of this weapon.* The smallest number of boycotts reported was in 1885, when the proportion of successes was the greatest, and the largest number reported was in 1888, when the percentage of victories was the smallest. In 1889, when a considerable number of boycotts were waged, the success was comparatively small. The results of 1890 are also significant. However, it is not wise to lay too much stress on this relationship, as so many other factors, such as legal complications, inevitably enter in.

Table showing number of boycotts in trades connected with particular industries in New York State from 1886 to 1892, inclusive:

Industries	Successful Boycotts	No. Successful and Unsuccessful	Percentage Successful to Successful plus Unsuccessful	Total No. Boycotts reported	Percentage of Boycotts to cases investigated	Percentage of Boycotts to cases investigated where answers were yes or no
Food	174	245	71.0	596	40.0	45.1
Building	101	121	83.5	242	3.0	3.5
Materials Entering Bldg.	20	28	71.4	47	8.64	11.3
Clothing	32	47	68.1	102	4.6	8.6
Transportation	25	52	48.1	79	18.2	26.3
Printing (Newspapers)	19	38	50.0	53	15.3	17.8
Iron and Steel	10	24	41.6	40	12.7	14.9
Furniture	5	14	35.7	45	8.5	10.1
Clay, etc	1	12	8.3	23	19.8	26.4
Lumber	4	7	57.1	20	13.4	16.7
Metals	1	3	33.3	6	6.7	8.0
Miscellaneous[1]	32	52	61.5	93	29.6	44.0
	424	643	65.9	1,323	9.2	11.5

[1] Miscellaneous includes: barbers, with 73 boycotts, of which the 14 settled were successful; musicians, 7; theaters, 5; coal handlers, engineers, label-makers, storemen and laborers.

Boycotts by Industries and Trades

A further examination of the New York situation will disclose the fact that more boycotts were waged in connection with the food industries than in any other group.

The boycotts in the building trades were next in number, with clothing, transportation, printing, furniture, iron and steel and lumber following. The order given in the table on page 86 is based upon the relative number of successful and unsuccessful boycotts reported.

In examining the third column of figures in the table it will be observed that boycotts in the building trades attained the largest degree of success. These trades showed four victories for every five boycotts instituted and carried to a settlement. The boycotting of the food products came second in the percentage of success attained, with clothing third, lumber fourth, printing fifth, and transportation sixth. The iron and steel, furniture, metal, and clay industries have the lowest percentages. In the last-mentioned occupation only one-third of those reported succeeded.

While boycotts in the building trades were attended with the greatest success, they were waged in that industry in but a very small percentage of the cases investigated (3.5%). Since these cases investigated by the Bureau of Labor corresponded roughly to the number of labor disturbances of which they had cognizance, it is evident that the boycotts in this trade, while numerous, were resorted to in comparatively few labor disputes.

On the other extreme, the boycott was employed in over 40% of the cases examined in the industries connected with the preparation of food products. Of the other larger groups, we find that the workers in the printing and transportation industries report its use

in about one-sixth of the cases investigated, and the iron and steel industry, in one-eighth, while the clothing, furniture and metal industries wielded it only occasionally.

Narrowing our inquiry to specific trades, we discover the preëminence of the bakers' trade as a fertile field for the use of this weapon. In fact, 38% of the boycotts reported during seven years in the food group, and nearly one-half of those resulting in success or failure, were waged in the bakers' industry. *Further, over one-fifth (22%) of all the boycotts in all industries, brought to a successful conclusion during the seven-year period, were waged and won in the bread-making trade.* The brewery business came second in numbers, followed by cigar making and waiting.

Over one-half of the disputes in which the bakers were entangled during these years are seen to have in them an element of the boycott. This was true also of the waiters, while the butchers and the brewers showed a large proportion of boycotts to the total number of labor disputes (45.8% and 34% respectively).

In the building trades the painters and plumbers waged about one-half of the boycotts. These, together with the carpenters, artificial stone masons and framers, conducted nearly three-fourths of the boycotts undertaken among the workers on buildings. A high degree of success was attained in most of the trades, the framers and masons having 100% to their credit, the plumbers over 90%, and the painters 71.5%. In fact, 13 of the 22 building trades reported complete success. The stone masons, in the larger group, resorted to boycotting in about one-fourth of the instances reported. The painters made use of this weapon in but one out of every thirty disputes.

If we group together the trades where work is done on material ultimately entering into building, the same success is noted, as is also the same small proportion of

boycotting compared with the number of controversies. The stone cutters and marble workers are the most active.

Of those connected with transportation, directly and indirectly, it is found that the horseshoers used the boycott to the largest extent, and with a considerable degree of success. In this trade over nine-tenths of the battles decided were won by the boycotters, and in over one-third of the labor contests, this method of warfare was resorted to. Absolutely no success was attained by those employed directly by the railroad companies. Too small a number of cases were cited in the other allied occupations to point to any conclusion as to the boycott's effectiveness.

The printing compositors are seen to have had the greatest number of boycotts to their credit in the printing trades, and to have used this weapon with unqualified success. The employment of this weapon is seen in nearly 30% of the cases of labor disputes investigated in this trade. The locksmiths and railmakers won the highest per cent. of victories in the iron and steel industry, while the iron workers were but rarely successful.

In the other industries the small number of cases observed makes it impossible to generalize on the relative efficacy of this expedient. Among the miscellaneous group, the barbers were the most energetic in their boycotting methods, and their work was productive of good results. According to the figures at hand, they used this weapon in approximately four out of five labor disputes investigated.

If we take the individual trades having the greatest number of boycotts to their credit year by year, from 1886 to 1892, we will find that here again the bakers show the most consistent efforts in this direction. This trade reported boycotting campaigns every year, at no time less than 17 cases being cited, while in 1891 this

number was increased to 66. It held first place in the number of boycotts from 1889 to 1892 inclusive, second place, two years, and fifth, one year. The cigarmakers came next in the number of boycotts, although they totaled less than one-third the number promoted by the bakers. These workers brought this weapon to bear every year, in 1886 having the largest number of any trade, although they occupied a minor place in the contests of the succeeding year. The waiters were the only others reporting the use of this weapon every year.

In 1887 the plumbers excelled in number, and in 1888 the brewers were the foremost. The painters, printing compositors and framers were also active. Should we consider the relative proportion of boycotts to the number of disputes, in the particular trades in which boycotts figured to any extent, we will note that the barbers, bakers and waiters employed this device in more than one-half of their labor wars (81.2%, 63.6% and 54.7% respectively), the printing compositors in more than one-fourth of the cases investigated (31.9%), the cigarmakers in about one-sixth of the cases (17.1%), and the plumbers, painters and framers, connected with the building trades, in less than 7% of the disputes (6.6%, 3.7% and 3.5% respectively). Here again it is noted that trades which have to do with food and drink, as well as such personal services as are performed by the barbers, were most practiced in this weapon.

Boycotts and Strikes—A Comparison

Glancing at the various relationships of boycotts with strikes, we discover that, whereas 1,352 boycotts were reported from 1885 to 1892, some 22,534 strikes had been waged. *The number of boycotts, in other words, was about six per cent. of the number of strikes.*

In one year, 1888, there was one boycott to every four strikes; in 1887, one to every seven; in 1889, one to every eight, while in the years 1885, 1886, 1890, 1891 and 1892 there were from 20 to 35 times as many strikes as boycotts. As the boycotts, during the last few years of the report, were being condemned so vigorously by the law, it may be that a number of the boycotts undertaken by the unions were never reported to the authorities at Albany.

An examination of the two tables will fail to disclose any fixed relation between strikes and boycotts during the different periods. In fact, when the boycotts were greatest in number, 1888, the strikes were the smallest. The year 1890 showed the largest number of strikes, but came fifth in number of boycotts. While 64.1%, or nearly two-thirds of the strikes during these seven years occurred in the three-year period, 1890 to 1892 inclusive, in these same years but 32.9%, or less than one third of the boycotts took place. The hostile attitude of the law, however, undoubtedly affected this result.

If we compare the varying success of strikes and boycotts during these years, we will note a considerable parallelism. The years 1885, 1890 and 1891 showed the highest percentage of success in both boycotts and strikes. In 1885 the highest percentage of success was accredited to the boycotts and the second highest to the strikes. The year 1886 revealed the lowest percentage in successful strikes and the next to the lowest in the success of the boycotts, and the years 1887, 1889 and 1892 occupied from the fourth to the sixth places in the success of the use of both labor weapons. It will also be noted that a larger percentage of strikes during that period resulted in a successful issue than was the case with boycotts (73.23% as compared with 67.1%).

That the boycott is undertaken during the strike

only as a last resort, seems to be a correct deduction from the figures of the relative success of strikes with and without the use of boycotts, in the New York Report of 1889. It is there found that, of the 108 strikes occurring that year, in which the boycott was used, but 31, or 28.4%, were successful, while in that year 80.4% of all strikes were successful, threatened strikes having even a greater percentage of victories to their credit. These figures seem to indicate that the boycott was resorted to only after other measures had proved ineffective, and that its use saved the day in about one-fourth of the cases.

Of the 17 boycotts which accompanied "threatened strikes," 9 were reported as successful, 8 as pending and none as unsuccessful. The use of the boycott here evidently warded off strikes in a number of instances. About 19% of the threatened strikes, not accompanied by the boycott, were reported as unsuccessful. However, a much larger percentage of the total number of threatened strikes, waged without boycotts, succeeded in whole or in part.

In this year a little less than one-third (32.1%) of the boycotts were conducted without the aid of strikes, or threatened strikes, and their percentage of success, in those actually concluded, was about the same as the success of the total number of boycotts (70% as against 68.4%).

Durations of Boycotts

The duration of boycotts was given in the various tables in only a portion of the cases. Enough instances were cited, however, to indicate some idea of the average duration. Of the 322 cases where the length of successful boycotts was noted, from 1886 to 1892 inclusive, it was found that the largest number, 93, were won in from one day, or less, to one

week. Of these, 71 produced the desired results in between three days and a week, 17 in between one and two days, and 5 in one day or less. The next largest number was won in from one to two weeks, and the third, in from two weeks to one month. *Sixty-nine per cent. of the victories among those whose durations were given, occurred before the thirty days' period had expired.* It took from one to two years for seven boycotts to produce results desired, and more than two years for five others. The figures are as follows:

Number succeeding in one day or less, 5; in from one to two days, inclusive, 17; from three to seven days, inclusive, 71; from 8 to 14 days, inclusive, 76; from two weeks to one month, 53; from one to two months, 32; from two to four months, 17; from four to six months, 18; from six months to one year, 21; from one to two years, 7; and from two years and over, 5.

The duration of but 81 boycotts which resulted in failure could be obtained. One-third of these were waged between two and four months. More boycotts were ended in this period than in any other. Over one-fourth, the next largest number, were conducted for from two weeks to one month. The durations were:

Three to seven days, 3; eight to fourteen days, 6; two weeks to one month, 21; one to two months, 12; two to four months, 27; four to six months, 4; six months to one year, 6; one to two years, 2.

From the foregoing figures it is seen that after the expiration of the month the chances of success were comparatively small.

Causes of Boycotts

If we seek to discover the causes of boycotts, we will find that disputes over the employment of non-union

members furnished the basis of the greatest percentage. Other prominent causes were demands for higher wages, for the observance of the union rules, for the reduction of hours, and for the maintenance of present wages. Approximately three-fourths of the fights for an increase of wages, an increase of wages and the reduction of hours, for fellow workers belonging to the union and for the observance of rules of the unions, seem to have succeeded. The boycotts instituted to secure better hours, to obtain the recognition of the union, and to work with unobjectionable fellows were apparently much less successful.

The causes of strikes in the same years are not materially different. If we compare the reasons for striking given in the year 1890 with those for boycotting of that year, we will observe that the four causes which gave rise to the largest number of strikes were included in the group of five causes which were responsible for the largest number of boycotts.

The demand for increased wages came second in order in each strike and boycott. Objections to non-union employees furnished the motive for the greatest number of boycotts and for the fourth largest number of strikes. A demand for the reduction of hours was the shibboleth in the greatest number of strikes, and in the fifth largest number of boycotts, while the desire to assist others gained the fourth place in boycotts and the third in strikes. A combination cause—a violation of an agreement plus an insistence on union workmen—which ties for second place in the boycotts, is scarcely an issue in strikes. The refusal to sign agreements, which holds sixth place in strikes, comes eleventh in the boycotts.

These figures are chiefly of interest when the question of the maliciousness of boycotts, according to legal learning, is considered.

Summary

The New York reports disclose many features of interest and importance concerning the boycott. They indicate that, when used with caution, the boycott may be an exceedingly effective weapon in gaining demands. Over two-thirds of the boycotts which were brought to a final conclusion were reported successful. This is not far from the percentage of successful strikes. "Thus far it is undeniable from the proofs advanced," declared the report of 1885, "that it (the boycott) has proved successful in the settlement of labor disputes."[1]

The reports show that boycotts are used with the greatest frequency and success in connection with the primary necessities of the laboring class, those, in the words of the report, "which enter into daily consumption and are of such a character as to be made subject to ordinary conversation." The largest number of boycotts, for instance, were waged against food products, and the boycotts against these products were attended with the highest amount of success, if we except those in the building trade. It is furthermore to be noted that bread, the most common of these food products, was the subject of nearly three times as many boycotts as any other one product, while the efforts directed against the sale of this article were attended with the greatest degree of success. Meats, beer, cigars and newspapers, all of which are purchased constantly by the laboring class, were frequently and successfully boycotted.

Articles of clothing, which are classed also among necessities, felt the force of this weapon. Here a fair degree of success was noted, although less than was evidenced in the food industry. It was shown that this weapon could be used effectively in trades

[1] Report of Bureau of Statistics of Labor, 1885, p. 353.

involving personal service, such as the barbers' and waiters' occupations. The success of the latter, however, was below the average. The boycott was also found adaptable to the building trades, in which it proved most effective whenever it was used. Its employment, however, was comparatively infrequent. Its effectiveness here may perhaps be attributed, to some extent, to coöperation which held between these various trades.

The reports also indicate that the success of boycotts is likely to be in inverse ratio to their frequency; that those boycotts which do not act effectively within the first few months are much less likely to succeed than those vigorously pushed from the very beginning; also that the causes underlying the boycott are among the determining factors in its success.

The New York experience furthermore teaches that the boycotts are subject to abuse, but that that abuse is liable to prove a boomerang against labor, and that with the continued use of this weapon, the abuse is likely to become less. The chief instances of injustice occurred when labor unions were unduly influenced by rival employers, or were divided into separate camps, as well as when they endeavored to extort money from the victimized firm. In justification of the latter practice, the union men argued that strikes and boycotts constituted a type of war, and that it was just for the victor to force the defeated party to pay the expenses of war. This necessity to bear expenses, it was argued, would teach employers to be more careful in the future about engaging in such frays. Violence, which appeared in some of the early cases, where the foreign element was said to be involved, did not accompany the boycott in the latter period.

Concerning the use and abuse of the boycott, the reports state:

"The boycott is not in this country attended with violence except in the case of foreigners."[1]

"Organized labor has attained that period in its development when it can see the necessity of wielding this potent weapon with extreme caution. Time was when the boycott was declared at the slightest provocation. Not so now, for the record proves that the organizations are loth to use it except in a prudent way, and then as a last resort."[2]

The injury to labor of any abuse is thus stated:[3]

"It (the boycott) has nearly always proved successful when the parties who applied it represented a public or moral sentiment. If it is allowed to degenerate into a simple fight between competing firms, and if the pretended leaders of the labor movement assume to apply it indiscriminately, foolishly and maliciously, it will result in complete disaster to the movement itself."

The attitude of labor leaders concerning the boycott's use is thus set forth:[4]

"It may be remarked that the more advanced thinkers in the ranks of labor disapprove of the boycott except in extreme cases in which no ordinary remedy is attainable."

[1] Report of Bureau of Statistics of Labor, 1886, p. 714.
[2] *Ibid.*, 1892, p. 418.
[3] *Ibid.*, 1885, p. 352.
[4] *Ibid.*, 1887, p. 521.

CHAPTER VI

RAILROAD BOYCOTTS IN THE NINETIES

The Ann Arbor Strike

Two extensive and spectacular railroad strikes took place during the nineties, in which, for the time being, the boycott was employed with telling effect. The first of these occurred in 1893 against the Toledo, Ann Arbor and North Michigan Railroad Companies; the second, the following year, was known as the American Railway or Pullman Strike.

In the Ann Arbor strike an attempt was made by the strikers to induce connecting railroads, and fellow members of the Brotherhood of Locomotive Engineers on other railroads, to refuse to handle the property of the boycotted road.

The strike, resulting in a refusal to pay higher wages, began in February, 1893. Immediately after it was decided upon, Grand Chief Arthur of the Brotherhood issued an order to the eleven chairmen of the general adjustment committees of the various railroads of Ohio to boycott the Ann Arbor roads. The order read:

"There is a strike in force upon the Toledo, Ann Arbor and North Michigan Railroads. See that the men on your road comply with the laws of the Brotherhood. Notify your general manager."

The boycott law of the Brotherhood, to which Mr. Arthur referred, was a provision passed in 1890 at the Denver Convention, but unpublished, which read:

"That hereafter, when an issue has been sustained by the Grand Chief, and carried into effect by the Brotherhood of Locomotive Engineers, *it shall be recognized as a violation of the obligation for membership* of the Brotherhood of Locomotive Engineers who may be employed on the railroad run in connection with said road *to handle the property belonging to said railroad or system in any way that may benefit said company with which the B. of L. E. is at issue,* until the grievance or issue of whatever nature or kind has been amicably settled. Disobedience to this order means expulsion." (Italics mine.)

The chairmen of the various railroads, on receipt of these instructions, requested the general managers of the railroads to order their engineers, "in the interest of peace and harmony," not to handle the freight from the boycotted railroad. A few days later, March 11, this request was suspended during negotiations for settlement, but was continued again on March 16, when negotiations had failed. The very next day, however, Arthur was compelled by the court to rescind his mandate to boycott, and a similar injunction was also issued against eight of the connecting railroads entering Toledo.

The whole question came for decision before Judge Wm. H. Taft, then Circuit Judge of the Northern District of Ohio. Judge Taft declared that the boycott order was a violation of the Interstate Commerce Law, which required that each road give equal facilities to every other connecting road. Every person employed by the railroad, including Arthur, the judge declared, was subject to the penal provisions of the act. In a separate case, brought by the Toledo, Ann Arbor & Southern Railway, one of the engineers, Lemon, was held in contempt for refusing to run a car from the Ann Arbor line, until he had received permission from the officers of the union. These decisions proved a

death knell to the use of the boycott by the Brotherhood.

About the same time the Circuit Court of the Southern District of Georgia decided that it was illegal for an engineer on the Georgia Railroad to refuse to transport the cars of the connecting Savannah Railroad. The Georgia railroad was in the hands of a receiver. The Brotherhood of Locomotive Engineers tried to obtain the reinstatement of their fellow member who had been discharged because of his refusal to handle the cars. The practice was proclaimed in violation of the Sherman Law and the Interstate Commerce Law and of the United States statutes.

The Pullman Strike

The classic example of boycotting in connection with the transportation system of the country, appeared during the great Pullman strike of 1894. This strike was conducted by the American Railway Union, of which Eugene V. Debs was president. The boycott, while in operation, tied up the traffic of nearly two dozen lines converging into Chicago, and vitally affected the business of the entire country.

The American Railway Union, the initiator of this boycott, was formed in June, 1893. It permitted all employees connected with the railroads to become members of the organization, and by June of the following year, had a membership variously estimated at from 150,000 to 250,000. One of the locals included many of the employees of the Pullman Palace Car Company.

As a result of the period of depression which was then sweeping over the country, the wages of the workers in Pullman had been considerably reduced. The Strike Commission appointed by President Cleveland testified that the "percentage of loss (as a result of the depression) borne by labor was much greater than

that sustained by the company upon material."[1] Rents charged by the company were 20 to 25 per cent. greater than in Chicago or in surrounding towns for similar accommodations, and these the company refused to reduce. Great discrimination was shown against organized labor and shop conditions were in need of improvement.[2]

Believing that they would be backed to the limit by the American Railway Union, the employees decided to strike, May 11, 1894. On June 21 this union, in its convention, decided to do all in its power to assist the Pullman strikers, even though it had advised them not to strike at that unfavorable moment. It furthermore urged arbitration. Before adjournment the convention declared that, in case no agreement could be arrived at within five days, the officers of the union should call on the 450 lodges and request them not to handle Pullman cars. All efforts to settle the strike proved fruitless, and on June 26 a telegram announcing a boycott was sent from the union as follows:

"A boycott against the Pullman Company, to take effect at noon to-day, has been declared by the American Railway Union. We earnestly request your aid and coöperation in the fight of organized labor against powerful and oppressive monopoly. Please advise if you can meet with us in conference, and, if not, if you will authorize someone to represent you in this matter. Signed, E. V. Debs."

Some of the other telegrams addressed to members of the union are thus quoted:

"A boycott has been declared against the Pullman Company, and no Pullman cars are to be handled. If men are discharged for refusing to handle Pullman

[1] Report on the Chicago Strike by U. S. Strike Com., p. 32.
[2] *Ibid.*, pp. 25, 26, 35, 36.

cars, every employee should at once leave the service of the company."

On June 28: "There should be no forceful interference with mail trains, but any man who handles trains or cars will be a 'scab.' No man will handle any train at all on your system. Tie up every line possible to enforce a boycott. If your company refuses to boycott Pullman, tie it up."

June 30: "Do no violence, but every man stand pat and firm. All lines in Chicago are paralyzed. Do not interfere with mail trains in any way."

July 2: "Advices from all parts show our position strengthened. The Baltimore & Ohio, the Pan Handle, Big Four, Lake Shore, Erie, Grand Trunk and Michigan Central are now in the fight. Take measures to paralyze all those that now enter Cincinnati. Not a wheel is turning on the Grand Trunk between here and the Canadian line."

July 10: "Debs, Keliher, Rogers in jail. Rest expected to go. This is the last act of the corporation. Our cause is just. Victory certain. Stand pat."

"You will notice," Debs is said to have declared a few days after his arrest, "that it is impossible to buy a ticket to the Pacific Coast in Chicago to-day except by way of the Great Northern Railroad, over which no Pullman cars are running."

The employees of the various railways never refused, according to Mr. Debs, to move mail trains or passenger trains, declining only to haul Pullman cars until the Pullman Company should consent to arbitrate its agreement with its employees. The railroad officials, however, determined that if the Pullman cars were not handled, the mail cars should not move.[1]

A complete paralysis of many of the railroad lines

[1] *Debs, His Life, Writing and Speeches,* pp. 191-192.

followed. Mr. Debs thus describes the situation when the judiciary and the federal government interfered:[1]

"The railroads were paralyzed. Profound peace reigned. The people demanded of the railroads that they operate their trains. They could not do it. Not a man would serve them. They were completely defeated and the banners of organized labor floated triumphantly in the breeze. Beaten at every point, their schemes all frustrated, outgeneraled in tactics and strategy, the corporations played their trump card by an appeal to the Federal judiciary and the Federal administration."

Edwin Walker, counsel for the Chicago, Milwaukee & St. Paul Railroads, was appointed by President Cleveland Special Counsel for the government. At his recommendation and that of the railroad managers, 3,600 deputy marshals, clothed with extraordinary power, were sworn in. Of the anomalous position of these marshals the Strike Commissioners reported:[2]

"United States deputy marshals, to the number of 3,600, were selected by and appointed at the request of the General Managers' Association and of its railroads. They were armed and paid by the railroads, and acted in the double capacity of railroad employees and United States officers. While operating the railroads they assumed and exercised unrestricted United States authority when so ordered by their employers, or whenever they regarded it as necessary. They were not under the direct control of any government officials while exercising authority. This is placing officers of government under direct control of railroads. It is a bad precedent that might lead to serious consequences."

Nearly 2,000 United States troops and 4,000 members of the State militia were afterward ordered to

[1] *Ibid.*, p. 187.
[2] Report of Chicago Strike Commission, p. 49.

Chicago, Pullman and elsewhere by President Cleveland, against the protests of Governor Altgeld and Mayor John P. Hopkins of Chicago.

At the time of the invasion of the militia in Chicago there was undoubtedly disorder, although the strikers, for the most part, were peaceful.

"There is no evidence before the Commission that the officers of the American Railway Union at any time participated in or advised intimidation, violence or destruction of property," declared the Commission. "They knew and fully appreciated that, if mobs ruled, the organized forces of society would crush the mobs and all responsible for them in the remotest degree, and that this means defeat." However, the Commission believed that some strikers were concerned in some of the deeds of violence.[1]

Trouble followed the coming in of the troops. A number of injunctions were issued and arrests were made on the charge of contempt of court, obstruction of the mail, conspiracy in restraint of trade, and other crimes, in the hope, according to the strikers, that the strike and boycott might be crushed. If this was the moving cause of these actions, the results must have produced satisfaction.

On July 2, 1894, a blanket injunction was issued against Debs and others, ordering them to desist from interference with the United States mails and interstate commerce on certain enumerated railroads.

Specifically, it forbade them *"from in any way interfering with, hindering, obstructing or stopping any mail trains, express trains or other trains, whether freight or passenger, engaged in interstate commerce or carrying passengers or freight between or among various States.* From compelling or inducing or attempting to compel or induce by threats, intimidation, *persuasion,* force or violence, *any of the employees of said rail-*

[1] Report of Chicago Strike Commission, p. 45.

roads to refuse or fail to perform any of their duties on said railroads, or the carrying of United States mail by said railroads, or *the transportation of passengers* between or among the several States. *From doing any act whatsoever* in furtherance of any conspiracy or combination to restrain either of said railroad companies or receivers in the free and unlimited control or handling of interstate commerce over the lines of said railroads, and the transportation of persons and freight among the States."[1]

On July 7 the principal officers of the American Railway Union were indicted, and on July 13 an attachment for contempt of court in disobeying the injunction was issued. July 12, at the request of the American Railway Union, twenty-five of the officers of various of the international unions connected with the American Federation of Labor, met in Chicago to discuss the strike, and advised a return to work. The American Railway Union agreed to give up the strike, providing that the strikers, except those convicted of crime, should be returned to their former positions. This adjustment was urged with the General Managers' Association, which had charge of the strike proceedings for the 24 railroads connecting with Chicago, and which was working with the Pullman Company throughout the controversy. The Association declared in advance that it would receive no communications from the American Railway Union, and returned the communication unanswered.

Mr. Debs was duly tried for contempt, and was sentenced to a six months' imprisonment in the Woodstock jail. In his decision Judge Woods asserted that the Sherman Law could be called to the support of the injunction, but that, inasmuch as the property in question was in the custody of the court, any improper interference with the management of the railroad con-

[1] Italics are the author's.

stituted contempt, and that it was unlawful to advise a strike for the purpose of doing, in conspiracy, an unlawful thing, knowing that violence would result.

Mr. Debs was also accused of criminal conspiracy, but during the trial, and immediately after the defendants had called for the record of the proceedings of the General Managers' Association, a juror became ill, and in spite of urgent requests from the defendant's lawyer that the trial be continued, it was finally dropped from the docket.

In the meanwhile, on January 14, 1895, the contempt case was appealed to the Supreme Court of the United States on a writ of error and a writ of *habeas corpus*. The writ of error was denied January 17, on the ground that the order of the circuit court was not a final order or decree. May 27, 1895, the writ of *habeas corpus* was refused. Justice Brewer, who rendered the decision, asserted that the findings of fact of the circuit court were not open to review on *habeas corpus* proceedings. He asserted that the government had power to prevent any unlawful interference with the United States mails and interstate commerce, but did not discuss the relation of the Sherman Anti-Trust law to the case.

Another prominent officer arrested was Mr. Phelan, who was also charged with contempt. July 13, 1894, Judge Taft, then of the Circuit Court of the Southern District of Ohio, declared Phelan guilty of conspiracy, of violating the Sherman law, interfering with United States mails, inducing others to break their contracts, and unlawfully conspiring. The original injunction was issued at the behest of Samuel W. Felton, receiver of the Cincinnati & Ohio Railroad, who claimed that Phelan, in combination with Debs and others, was endeavoring to coerce him to withdraw his patronage from the Pullman Company.

On June 28, 1894, a number of the strikers on the

railroads in California were tried before the District Court of the Southwest District of California, charged with criminal conspiracy and interference with the United States mail. On July 10 another group was brought before the District Court of the Northern District of Illinois, and declared guilty of criminal conspiracy, insurrection, interference with interstate commerce and with the United States mail. In the Circuit Court of Indiana, on July 12, defendant, Agler, was found guilty of contempt of court, and of violating the Sherman Anti-Trust law.

The following day, July 13, another District Court, in the Northern District of California, charged other defendants before the Grand Jury with criminal conspiracy involving the Sherman Law and the United States mails.

A number of other cases were decided in California and Missouri.[1]

The Ann Arbor and Pullman controversies indicate that the particular form of boycott adaptable to railroad disputes can exert a powerful influence in furthering the demands of the workers. In both of these boycotts the concessions asked by the workers were, for the most part, reasonable, although the time for presenting them was probably inopportune. In the American Railway strike the perfect coöperation among the 24 railroads involved through the General Managers' Association seemed to justify similar cooperation among the employees of these railroads by means of this labor contrivance.

If wielded thoughtlessly, the boycott on the transportation system could undoubtedly play havoc with the business of the country. On the other hand, there is no business in which abuse in the conduct of this weapon brings a more immediate and pronounced con-

[1] *Ex parte* Lennon, October 2, 1894, C. C. Appeals, Sixth District; U. S. vs. Elliott, October 24, 1894, C. C. E. D. Mo.; U. S. vs. Cassidy, Ap. 1, 2, 1895, D. C., No. D., Calif.

demnation from the public. These cases, resulting as they did, in the decisions of Judge Taft, Justice Brewer, Judge Woods and others, permanently stopped the employment of the boycott by railroad employees.

Incidentally the American Railway Union boycott and the resulting legal entanglements led to the development of the workingmen's political movement. The leader of the strike, Eugene V. Debs, soon after entered the Socialist movement, and brought with him a considerable following, convinced that the only resort of the workers, after being deprived, in their economic struggle, of the use of the boycott and other weapons, was the political field.

CHAPTER VII

THE AMERICAN FEDERATION OF LABOR AND THE BOYCOTT

A. F. of L. Conventions

During the past twenty-five years, the American Federation of Labor has been the chief representative of organized labor in this country. What has been its official attitude toward the boycott? This attitude can best be studied by reviewing the proceedings of its various conventions.[1]

The negative boycott—the union label—was first mentioned in the American Federation of Labor Convention of 1881. The term "boycott" was first employed in the 1884 convention, in connection with a scathing resolution against the *New York Tribune,* introduced by John F. Hagan of Brooklyn. The resolution mentioned the *Tribune* as an importer of scab labor, while it pretended to be the advocate *par excellence* of protection to American mechanics. It urged that the Federation continue to boycott and denounce Whitelaw Reid and the *Tribune* "while the name of independent American mechanics is known to the land."

The following year (1885) the *Tribune* was again denounced as a newspaper which used its composing room as "a recruiting station for wage pirates and a rendezvous from which gangs of freebooters were

[1] See Reports of Proceedings of Conventions, American Federation of Labor, 1881 to 1912.

sent to prey on the wages of the American worker." In this convention the unscrupulous use of the boycott by other organizations, presumably the Knights of Labor, was vigorously condemned. These organizations were accused of employing this weapon on "frivolous, trivial and imaginary grievances," without giving the question the attention and thorough investigation which it required. The convention voted that no boycott be approved by the Federation, until it had been carefully considered by the legal committee.

Of the same tenor was the convention's position in 1886, when it advocated only the boycott's "careful and energetic use as a last resort."

In 1887 the growing importance of this weapon led to the appointment of a Committee on Label and Boycott. This committee recommended the boycotting of the Douglas shoes, the *Tribune* and five other firms which dealt in cigars, coffee, beer and iron. It condemned the action taken against the *Sun* and against Milwaukee beer.

The list of boycotted firms grew to such proportions by 1889, that a concerted effort was made to decrease the number, and in the following year a resolution was passed that "no boycott be endorsed by the A. F. of L. until ordered by the Executive Council, and then only after arbitration and other means had been exhausted." The first mention of Buck's Stove Company was made at this session, the grievance against the company being referred to the Executive Council.

In 1891, to restrict still further the careless use of the boycott, it was required that the Executive Council thoroughly investigate every threatened boycott, in conjunction with the officers of the national and international unions. The following year the convention resolved that no boycott be considered, unless the A. F. of L. receive a special request from an affiliated body under its seal. In 1893 the Federation decided

to concentrate its attention on a few firms most susceptible to boycotting.

The first issue of the *American Federationist,* the official organ of the Federation, appeared in 1894, and with it the "We Don't Patronize" list. This list grew steadily. It was soon discovered that many of the unions failed to enforce the boycott against the firms which they were instrumental in placing on the list, and in 1897 the delegates decided to erase the names of such firms. To remedy this inertia in the future, it was also resolved that no boycott should be indorsed thereafter until the union members, working for the accused firm, had been given an opportunity to show why the concern should not be placed upon the unfair list. The Federation, in 1898, took a decided stand against the circularizing of its unions with boycott literature without its official indorsement, declaring that "the continuous and overwhelming flood of boycott circulars leads to confusion and ineffectiveness." The same year it took steps toward limiting particularly boycotts of those firms employing union men. The resolution read:

"Whereas the placing of a boycott upon any product the manufacture of which is participated in by two or more crafts may and often does work an injury to union workers; therefore, be it "Resolved, That the American Federation of Labor shall endorse no boycott where the products of several organized unions will be affected thereby until every possible effort has been made to secure a settlement, and all organizations to be affected shall be given a hearing and an opportunity to assist in securing a settlement in which the existing grievance may be settled."[1]

Perhaps its most radical step in the constant agitation for few and effective boycotts was taken in the 1899 convention, when the Federation struck out all

[1] Convention Proceedings, A. F. of L., 1898, p. 131.

of the names from the "unfair" list. These were republished again a few months later, after many settlements had been made. There were 98 names on its list before its temporary abolition. The Federation's desire to limit local boycotts led it the same year to forbid any central labor body of a city to indorse a boycott, unless the local union proclaiming it had submitted the matter in dispute to the central body before the boycott was decided on, and unless the union had made every effort to settle the dispute. The international unions were also strongly advised to place no more than one firm on the unfair list at the same time.

The suspicion with which labor regarded the promiscuous use of this weapon was again indicated in 1900, when the convention refused to indorse any newly ordered boycott. In 1901 it was decided that no international union could have more than three firms on the list at any one time. The Boycott Committee in 1904 clearly voiced the sentiment of the delegates, in its declaration that "if any one is unjustly placed on the unfair list it tends to injure not only the organization directly in interest, but the entire labor movement."

The growing caution of the leaders of the movement in approving boycotts is indicated by the decrease of the number approved in each successive year. From 1902 to 1903, 81 boycotts were indorsed for the list; from 1903 to 1904, 40; from 1904 to 1905, 21; and from 1905 to 1906, 21. Thirty-three names of firms in the latter year were dropped without notice.

A new section was added to the constitution in 1905 (Art. 9, Sec. 4), which provided that the Executive Council present to the convention, before approval, an account of the details leading to the use of each boycott. Perhaps the clearest enunciation of the growing policy of the Federation to concentrate its efforts in the employment of this labor device, was con-

tained in the report of Owen Miller, Chairman of the Boycott Committee, in the 1905 Convention:

"We must recognize the fact that the boycott means war, and to carry on a war successfully we must adopt the tactics that history has shown are most successful in war. The greatest master of war said that war was the trade of a barbarian, and the secret of success was to concentrate all forces upon one point of the enemy, the weakest, if possible.

"In view of these facts the committee *recommends that the State Federations and Central Bodies lay aside minor grievances and concentrate their efforts and energies upon the least number of unfair parties or places in their jurisdiction. One would be preferable.* If every available means at the command of the State Federations and Central Bodies were concentrated upon one such, and kept up until successful, the next on the list would be more easily brought to terms, and within a reasonable time none opposed to fair wages, conditions or hours but would be brought to see the error of its ways, and submit to the inevitable."[1]

Still another plan to increase effectiveness was proposed in the 1907 Convention, namely, that unions which had firms on the list should report every three months the progress made, failure so to do being attended with the withdrawal of the name from the list.

The February, 1908, number was the last issue in which the "We Don't Patronize" list appeared. The decision of the Supreme Court in the Danbury Hatters' case, which rendered unions liable under the Sherman Anti-Trust law for threefold damages due to boycotting, was responsible for this withdrawal. The final list contained 82 names.

Despite this decision, the Boycott Committee was

[1] Proceedings of the A. F. of L., 1905, pp. 200, 201. Italics are author's.

continued, and efforts were made at the succeeding convention to make the use of this weapon still more effective. In the proceedings of the 1909 Convention (p. 281) we note:

"The boycott should only be resorted to after all efforts of adjustment have failed, but, when substituted, it should be made so effective that speedy agreement . . . . will follow. If, in instances where the boycott is now necessary, the right kind of publicity could be had, the boycott would be unnecessary, for an aroused public conscience would speedily compel the manufacturer and the selling malefactor to put his establishment in industrial order or go out of business."[1]

President Gompers, in the same convention, averred that the boycott would only be used as a last resort. He said:

"The workers fully realize that the boycott and strike are means to be used to maintain their rights and to promote their welfare when seriously threatened by hostile, greedy and unfair employers when no other remedy seems available. With the boycott cleared of wrongful charges and misapprehension and recognized as a lawful right, *we will find its use diminishing. It will be a power held in reserve and used only when no other remedy is adequate.*"[2]

The 1910 Boycott Committee approved the sentiment of the 1909 convention, and proposed a few boycotts. The 1911 convention also recommended this action to be taken against a number of firms. In 1912 but three firms were mentioned by the Boycott Committee—the Ward and General Baking Company and the Atkins Saw Manufacturing Company. Organized labor was not called upon directly to boycott these

[1] Proc. A. F. of L., Conv., 1901, pp. 281-282.
[2] *Ibid.*, p. 32. Italics are the author's.

concerns, but simply to give the unions its support, and to do whatever lies within its power to bring about the desired results.

It is thus seen that the history of the boycott in the American Federation of Labor has been the history of the attempt to restrain its indiscriminate and unjust use, and to apply it only as a reserve weapon, after the most thorough investigation and careful thought. When used in this manner it has been truly effective.

The "We Don't Patronize" List

Having considered in a broad way the general policy of the American Federation of Labor, relative to the use of boycotts, let us analyze more carefully the nature and results of the boycotts indorsed by them, as indicated in the "We Don't Patronize" list.

About 437 firms appeared on the "We Don't Patronize" list of the *American Federationist* during the period 1894 to 1908. Of the 360 firms whose locations were given, nine-tenths were situated in the Middle Atlantic, North Central and New England States, and nearly one-half in the first two sections. The industrial States of New York, Illinois, Ohio, Massachusetts, Pennsylvania, Michigan and Missouri led in number of firms on the "We Don't Patronize" list, in the order named. Chicago, New York City, St. Louis, Philadelphia and Boston were the most important centers of these firms. Massachusetts possessed the largest number in the New England group, New York in the Middle Atlantic group, and Illinois and Ohio in the North Central States. Only nine of these firms appeared in the South Atlantic States, and but a dozen in the far West.

The firms boycotted in the Northern Central States and far West seemed to be most effectively attacked, and those in the South, the least so. The firms located

in Chicago and St. Louis apparently felt the boycott more keenly than those in the other centers of population.

If we analyze the "We Don't Patronize" list to find out what industries were chiefly involved, we discover that the greatest number of boycotts appeared in those concerns which dealt with food and kindred products, as in the New York boycotts of the eighties and nineties. Boycotts against firms producing machinery were numerous, much more so than in the New York State figures. Clothing, household goods, printing and paper followed.

It is impossible to state the exact results of the boycotts declared by the American Federation of Labor and given publicity through the "We Don't Patronize" list. Many of the firms appearing on this list were dropped without a word of comment. In January, 1900, the entire 87 firms mentioned the preceding December had completely disappeared. No names were placed on this list until the following May, when 23 concerns were mentioned. Some names were omitted doubtless because the boycott had in reality ceased through the inactivity of the international union first instituting it; some, because the Federation had failed to receive the proper reports from these unions, while others had been settled with the firms in a manner more or less agreeable to the Federation.

When settlement occurred, a notice generally appeared in the *Federationist* on the same page as the "We Don't Patronize" list, which read:

"Notice: The dispute with the ——— firm is now satisfactorily settled. The same (firm) is removed from the 'We Don't Patronize' list. All unions and members are now respectfully notified to cease their antagonism to the products of this firm, and to give it that fair consideration and support to which it is now entitled."

Presumably most of the firms so mentioned had conceded to the demands of the union. Some, after conceding, evidently broke the union regulations, as they were afterward replaced on the list. A few concerns declared to have satisfactorily settled stated to the writer that the boycott proved ineffective, and that their name was removed voluntarily by the union. A large printing house, for instance, wrote: "They took us off of their own volition because they considered it (the boycott) a joke."

It is thus seen that the number of firms reported as having settled is not an absolute indication of the number of successful boycotts, although it is the best that can be obtained. It may also be said that many firms whose names remained on the list, or were removed without any stated settlement, suffered severely from the boycott, and were in all probability led to concede some, at least, of the workers' demands.

During the existence of the "We Don't Patronize" list, from March, 1894—when seven firms were mentioned—to February, 1908, some 437 boycotts were reported against 426 firms. Of these 437, some 105, or 24.1%—practically one-fourth—were declared to have been concluded in a manner satisfactory to the unions. The percentage of successful boycotts was highest in the leather goods, printing and food industries, while in the clothing and household-furnishing businesses settlement was reached in but 15% of the cases.

On account of the resolution in the Scranton Convention of 1901, that no international union could have more than three firms at one time on the list, it is impossible to find out with any great degree of accuracy, from a scrutiny of the list, the relative amount of boycotting practiced by the various unions.

The list shows that among "Food and Kindred Products" the number of boycotts was greatest in the

cigar industry, while the flour mill and cereal, brewery, tobacco and meat industries were next in order. Comparatively few boycotts were directed against bread, an industry which led in importance in the New York State boycotts. This can be explained in part on the ground that bread is made chiefly by local agencies, and that boycotts against bakeries, therefore, must be local and not national in their scope. Boycotts against flour mills, cereal concerns and breweries seem to have met with the largest degree of success, while those against the great tobacco combinations were less effective.

Iron and steel, hardware and bicycle were the chief industries boycotted in the "Machinery Group." In this group the ban against bicycles, which, for a while, were purchased rather extensively by organized labor, seemed the most successful.

Shoes, clothing, collars and cuffs and hats were the special objects of attack in the "Clothing Group." The hatters' boycotts seem to have been the most successful, with clothing next. Apparently the boycott was used with little effect against the great collar and cuff concerns and shoe companies.

Newspapers in the "Printing Group" and furniture and stoves in the "Household Goods" group were the most frequently selected for the application of this weapon. About one-third of the attacks on newspapers and furniture houses were reported to have accomplished the desired results, while but 13.6% of the boycotts against stove firms resulted favorably to the workers.

A decreasing number of settlements agreeable to the unions involved were apparently made during the last few years of the existence of the "We Don't Patronize" list. In fact, of the hundred-odd such settlements in the fourteen years between 1894 and 1908, but eleven, or a little over one-tenth of the entire num-

ber, seem to have been made during the years 1904 and 1908 inclusive. Thirty cases were said to have been settled in 1902 and 1903, and the remainder in previous years, the number varying from 6 to 11 each year. Five or more reported as so settled were continued again after an interval, indicating that the firms later on disobeyed the mandates of the unions.

To indicate the difficulty of waging a successful boycott against large combinations of capital, it might be stated that no boycott on the "We Don't Patronize" list, which was conducted against corporations mentioned in *Moody's Manual of Corporations,* was reported settled after the year 1904. No boycott against a firm with a capitalization of $2,500,000 or over, appearing in this manual, was settled satisfactorily to the union after 1903, nor against a firm with a $5,000,000 capital after 1901.

Of the sixteen firms of this caliber which were reported to have conceded the demands of the union, five sent letters to the writer. Two of these five admitted that the boycott interfered considerably with their business. One of these was a brewery and the other a bicycle company, both sellers of articles purchased to a considerable extent by the members of organized labor. Of the three remaining, two stated that they did not know of any injury which the boycott had done to them, and that they had ignored the boycott until it finally ceased. The last affirmed that the efforts of the workers did not result in serious injury. They did not mention any concessions to the unions.

Of the eleven other corporations appearing in the manual, and said to have duly settled, one was boycotted again after a series of years, and this time no settlement was made. It is reported of another that, throughout the boycott period, 8% dividends were declared yearly, the rate, however, decreasing to 5% the year of the settlement. During the three years of the

boycott, another increased its capital $5,000,000, while still another corporation reported a dividend of 8% per annum until the middle of the duration of the boycott, when this amount was raised to 12%. No information was received from two packing firms or from a tobacco, aluminum, street railway, bicycle or cash register concern.

To secure a more comprehensive idea of the actual effect produced on firms by their appearance on the "We Don't Patronize" list, and the accompanying boycott, the writer corresponded with all of the firms whose addresses were ascertainable. One hundred and thirty-three of these gave information more or less detailed. One, a manufacturer of wagons and agricultural implements, whose name had appeared on the list in practically every issue for five years and nine months, wrote:

"We are not aware of our name appearing on the list you mention, and this is the first time we have ever heard of it." Eleven other replies were received of the same import from a proprietor of a hotel and from firms dealing in tobacco, picks, machinery, medicine, granite, saddlery, gold leaf, lumber, tanning, clothing. The names of these firms had been on the list anywhere from four months to three and a half years. Seven of the firms appeared in the *Federationist* between the years 1902 and 1908, and five between 1897 and 1900. The correspondent in only one case intimated that his ignorance of the boycott might have been due to the use of this weapon prior to his connection with the firm. *Twelve, then, as before mentioned, were unaware of the existence of the boycott. Eleven firms maintained that the publicity given had helped them. Twenty-four declared their positive convictions that no injury had resulted from the boycott; thirty-two, that they were unaware of any injury; thirty-five, that they were injured but slightly, and nineteen,*

or about one-seventh of those replying, that the boycott affected them considerably.

Of the firms which admitted a loss, three were in the food group (cigar concerns, breweries, flour mills), three in the clothing group (shoe, hat and woolen concerns), and three in the furniture group (piano, folding bed and sewing machine firms). Others dealt in bicycles, boilers, lime, brick, granite, gold leaf, cooperage and wire cloth. In nearly all of these cases, the goods handled were either purchased quite extensively by members and friends of organized labor or by employers in industries where strong unions existed.

A dealer in hats appeared to be one of the chief sufferers. He stated that in one-half year his sales had decreased from $932,000 to $376,000. Of his 80 customers in Minneapolis and St. Paul, he asserted that the unions induced all but one to cease their dealings. A cigar firm wrote that it was doubly boycotted by the "Tobacco Trust" and the unions, and that, at the time of the reorganization of the firm with Knights of Labor members, the Cigar Makers' Union so intimidated the jobbers at St. Paul that they canceled the weekly orders of 50,000 cigars. The firm finally went into bankruptcy. A brick concern stated that the boycott cost it about $5,000. A milling company acknowledged that it was still endeavoring to counteract the feeling created some fifteen years before against their flour, but that it was "slow work." A bicycle company affirmed that its chief loss came from the impossibility of filling orders—presumably on account of the strike, and not of the boycott. Another bicycle company said it was the boast of the unions that they had caused the firm to fail.

Of the 19 firms last mentioned, where the boycott was used with some effect, 7 were kept on the list until 1908, 2 until 1907, 2 stopped in 1904, 1 in 1903, 1 in 1902, 1 in 1901, and the remainder from 1897 to

1900. Not one of the names of these firms appeared among the large corporations cited in *Moody's Manual.*

Among the unions concerned in these effective boycotts were those of the metal polishers (3 cases), machinists (2 cases), cigarmakers, brewery workers, flour mill employees, boiler makers, granite cutters, boot and shoe workers, garment workers, sheet and metal workers, piano and organ makers, gold beaters, coopers, wire weavers, and brickmakers.

Various reasons were given for these losses, the chief being that the goods produced were purchased by union men, or by concerns in which strong unions operated. A brewing concern thus wrote: "The boycott was injurious to our business, as the greater part of the product is consumed by working men who are organized." A cooperage company stated: "No brewery is permitted to receive or use any cooperage not stamped with the union stamp. . . . This has resulted in unionizing all factories selling packages to the breweries." A boiler concern stated that the only orders that were canceled were those in breweries strongly organized. A granite concern was hampered because unionists refused to allow their members to work upon the rough stone. Still another firm averred that its loss was caused by the damaging of its goods by workers employed in its patrons' shops.

Thirty-five of the companies replying stated that the boycott subjected them to very slight loss. These included five firms dealing in food and allied products, two in cigars, one in meat, one in preserves and one in oysters; eight in clothing, two in shoes, two in collars and cuffs, and one each in hats, corsets, elastic goring, and clothing proper. Similar reports came from an officer of a street railway and from companies dealing in bicycles (2 cases), iron bolts, lockers, steel tubes, typewriters, rubber belting, stoves (2 cases),

plate glass, cement, fountain pens, baskets, tin foil, burlap, indurated fiber, boxes, and gold leaf, ships, and lumber.

Twenty-four firms were positive that the boycott did not affect their business in any way. These included a hotel proprietor and concerns trading in tobacco, clothes, shoes, cotton, furniture, chairs (2 cases), hardware, machinery (3 cases), lumber (2 cases), cooperage (2 cases), wall paper, leather, cars, carriages (2 cases), steam specialties, billposting and packing.

Some thirty-two firms stated that they had no knowledge of any injurious results. This group contained one flour firm and seven firms producing various kinds of machines and instruments—bicycles, cooperage machines, tacks, cutlery, knives, thermometers, fire apparatus; also firms dealing in clothing—shoes, textiles, underware; household goods—trunks, brooms, sewing machines; pottery—lime, brick, flower pots, cement; bags, boxes, lumber, leather (2 cases), printing, rubber, soap, bill posters. An insurance company was in this list as well. Forty-two additional firms averred that changes in the firm, fear of publicity or other reasons prevented them from giving the required information.

Some ten firms wrote that the boycott had been a distinct advantage to them. Thus a concern dealing in machinery declared that they figured "union antagonism as a rather valuable asset"; a dealer in show cases, that labor's opposition gained for them the sympathy of the larger merchants; collar and packing firms, that it gave them "gratuitous publicity," and stove and paper box concerns, that it increased the number of customers and the size of the orders. Clothing and cigar firms were among others thus benefited.

Still others, four in particular, stated that, while they may have lost a few customers, other methods

during the period of the boycott more than offset any loss. A packing company averred that its business increased two to three hundred per cent. during the boycotting period. A number of the employers expressed the belief that the boycott did more harm than good to organized labor. A shoe concern declared that the boycotters spent $20,000 before they decided to call off the fight.

Many admitted that under other circumstances the boycott might have been very effective. Those who know the almost universal method of business men to put their best foot forward, and refuse to admit losses unless they desire to make some special point in court or elsewhere of the loss sustained, will, no doubt, discount the optimism of some of these replies.

Among the reasons given for the comparative ineffectiveness of some of the foregoing boycotts were: the non-union character of the customers, the national scope of the firm's business, and the absence of any distinguishing label. The unsavory character of competitors and the weakness of labor were among the reasons suggested in some of the other answers.

After declaring that his business did not suffer from the boycott, an officer of a car manufacturing concern cogently put the case: "We are not selling freight cars to the labor unions, and the sale of our product would not be affected by their threats as might be the case with hatters, clothing merchants and some others." Of the same import were the reasonings of heads of ship building, iron and bolt and other manufacturing concerns. Although their dealings were with the public at large, those prominent in a hat and a typewriting concern noted that "the class of merchandise we sell and the class of people to whom we cater" make it unlikely that any effort at boycotting would be successful.

The difficulty of effectively injuring a business which

had its sales in every part of the country was emphasized by a soap and a tub concern, which affirmed that they regarded any attempts "to influence a business of wide scope like ours as purely a phantom."

That it was but a waste of energy and money to attempt to boycott a product which possessed no distinguishing mark of the firm, was the opinion of a shoe concern. "The name which appears on our shoes is the name of the jobber, and very frequently the shoe is copyrighted, or carries the trade mark name belonging to the jobber. Buyers of our shoes would never know by whom they are made, so that you can readily see that the consumer could not in any way influence our sales." A textile concern wrote in the same vein.

A Southern dealer stated that a boycott against him affected him but slightly, inasmuch as 30% to 35% of the chairs manufactured in his section were convict goods, and as customers had only the option either of purchasing his chairs or those manufactured in prison.

International Unions and the Boycott

While it is impossible to obtain a complete knowledge of the attitude of the various international unions toward the use of the boycott, a few indications may be noted. Our chief source of information is the *American Federationist,* where appeared, in connection with the "We Don't Patronize" list, the names of the unions initiating the various boycotts in some three hundred odd cases—in somewhat less than three-fourths of the instances mentioned.

In a number of cases the unions applying for the indorsement of the American Federation of Labor were central labor bodies; in some instances, federal unions; in a considerable number, international unions now defunct or independent of the Federation. Some

fifty-four of the one hundred and fifteen national and international unions, cited by Secretary Morrison in his 1912 report,[1] *or nearly 47% of the unions, were mentioned as having been the originators of the boycotts cited on the list.*

The unions proposing the largest number of boycotts, and having between nine and a dozen firms to their credit, were the garment workers, boot and shoe workers, machinists, metal polishers and coopers. In the next group, with from six to eight boycotts, came the wood workers—now merged with the carpenters—the leather workers, molders, brewery workers and members of the typographical unions.

Among the miscellaneous group with five to their credit, were the cigarmakers, printers and color mixers, blacksmiths and broom workers. The others were as follows: four boycotts—retail clerks, textile workers, elastic goring weavers, carriage and wagon workers, granite cutters; three boycotts—hatters, flour and mill employees, bookbinders, printing pressmen, brick, tile and terra cotta workers, stationary firemen, stove mounters, boiler makers, and street railway employees; two boycotts — railroad telegraphers, carpenters, painters, bakers, tobacco workers, quarrymen, wire weavers, shingle weavers, paper makers, bill posters, piano and organ workers and glove workers; one boycott—musicians, tailors, upholsterers, jewelry workers, wood carvers, metal workers, potters, commercial telegraphers, print cutters, meat cutters, iron and steel workers, sawsmiths, pattern workers, sheet metal workers and foundry employees.

We thus realize what a great variety of unions have used this weapon with more or less effect. The most active of the boycotting unions no longer affiliated with the A. F. of L. were the watch case engravers, the rubber workers and the gold beaters. The leather

[1] Report of Proceedings, A. F. of L. Convention, 1912, pp. 64-65.

workers, coopers, brewers, cigarmakers and granite workers apparently had the best success among those unions waging several boycotts. About one-half of the unions, chiefly those engaged in but one or two boycotts, seemed to have no victories to their credit.

Some further indication of the extent to which the various international unions have brought this weapon to bear in their disputes may also be gleaned from the court records. In addition to some thirty odd of the unions already mentioned, court proceedings have been noted against local unions of teamsters, plumbers and horseshoers. The carpenters, bricklayers and printers have been apparently embroiled in legal controversies more frequently than any of their companion organizations.

To secure a still better idea of the extent to which the individual unions employ this weapon, the writer sent a questionnaire to their officers. Eleven of those replying stated that they did not practice boycotting; three, that they utilized this weapon but rarely; six, or less than one-half of those sending information, admitted its employment.

Of the eleven who denied its use, two wrote that the nature of their trade prevented its successful operation, and two others affirmed that, while not originating boycotts, they assisted in the prosecution of boycotts inaugurated by other unions. One thus explained his negative answer:

"We don't have to boycott any more. We control the skilled workers. Employers desiring skill must employ our members." One remarked that the strikes in his trade required quick action, and that the boycott was, therefore, ineffective.

Six unions admitted that they employed agents to visit and induce dealers to purchase only union-made goods. Fourteen denied the employment of such representatives. One officer averred that during one boy-

cott the union's representative "visited every dealer to persuade them to cease business relations." Five instances of the employment of such representatives were mentioned by one union.

In answer to the question whether their agents used coercion, one replied: "Our representatives point out the fact that the purchasing of unfair goods is not very profitable." Asked whether the agents used threats of boycotts should the dealers refuse to acquiesce in the demand of organized labor, one stated: "A boycott was not threatened, but the firm was given to understand that the patronage would cease. The effect in nearly every instance was successful." "In any boycott where we go to a merchant and ask him to cease buying from a particular firm there is always the implication that, if he fails to do so, we will carry our patronage elsewhere," declares a second. "We show that the purchasing of unfair goods is not very profitable," writes a third.

Good results generally follow the employment of these traveling delegates. A union with two boycotts reports success in one case and an agreement pending in another.

"Such visits," says a member of one of the building trades, "induce the firm to telephone (the quickest means of communication) to their contractors and firms to settle immediately with the union or leave the contract. In one special case the contractor preferred to leave the contract and not deal with the union."

The large majority of those answering, wrote that it is not their custom during labor disputes to circularize the labor unions or the general public. Nine wrote that no circulars whatsoever were distributed; one, that such printed matter was sent but rarely; four others, that none was mailed to unions, and three others, that circulars were not distributed among the general pub-

lic. Four, however, acknowledged that the unions were circularized, and one, that the general public received notices. "We give all of our strikes, if they are of long duration or the number of men involved is sufficient, publicity among labor unions" is one of the acknowledgments. In the circular among the general public, one union stated that it only requested the public to patronize fair firms, not to boycott unfair concerns. The results of the questionnaire seem to indicate that but a minority of the unions use the boycott at present. However, but a small minority of the unions made any reply, and among those failing to answer were, doubtless, a considerable number not wishing to in any wise admit that they were indulging in a practice which so many courts consider reprehensible.

The I. W. W. and the Boycott

While the Industrial Workers of the World favor the use of the boycott wherever it can be employed effectively, they have thus far resorted to this weapon but infrequently, largely because their members are employed primarily in the so-called basic industries, and are not the direct purchasers of goods produced. Their attitude may be gleaned from the following letter received from one of the organization's foremost officers:

"The I. W. W. uses the boycott whenever they can do so effectively. We recognize it at times as an efficient weapon. We do not, however, believe in placing the boycott upon any concerns or products, and to allow it to stay there, even though it is of no effect whatever. There is also a difference between a boycott as practiced and advocated by the I. W. W. and that generally used by the A. F. of L. The difference arises from the fact that the I. W. W. devotes most of its energy toward organizing the basic industries, and,

for that reason, does not use the boycott as consumers, except in rare cases, as the members of the organization are not the consumers of products turned out from the plants in the basic industries.

"The organization, in conjunction with the Western Federation of Miners, boycotted the Goldfield 'Sun,' the daily paper of Goldfield, Nevada, and forced the proprietor of the same to sell out and leave town. We find the boycott effective where we are organized sufficiently strong to make it effective, but under no other circumstances. The organization has not taken any official stand upon the proposition of the boycott."

In the Nevada controversy referred to, the members of the Miners' Unions of the I. W. W. boycotted newspaper proprietors because their employees failed to join the I. W. W. The papers declared that this attack cost them some $25,000. In court, they alleged that the miners visited advertisers and threatened to place them on the "unfair" list if they continued their advertisements; that they induced newsboys to stop selling the papers, posting on a blackboard in public view the names of those who continued their sales; that they persuaded the railroad employees to refuse to handle the papers, and imposed a fine of $15 on any member of the union purchasing a copy. Threats of physical violence were also charged. The union was held guilty.[1]

At Lawrence, Mass., during the strike of the textile workers, the I. W. W. organized a boycott following the flag demonstration, and forbade purchasing, for some time, from those merchants in Essex Street, Lawrence, who took a stand against the strikers. The boycott was said to have been attended with considerable success. The saloons, at Lawrence and in a number of the other strikes, were effectively boycotted by this organization. This taboo on saloons, however, was not

[1] See Branson v. I. W. W., Nevada, 1908.

generally caused by any antagonism to individual saloon keepers, but by the necessity of keeping discipline. On account of this more or less official boycott of the saloons in the silk workers' strike in Paterson in 1913, Mr. Haywood declared that for weeks after the beginning of the strike not one out of the twenty odd thousand strikers was seen intoxicated.

Summary

In the boycotts indorsed by the American Federation of Labor, and given publicity in its organ, we witness this weapon brought into play for the first time against modern industries, many of them highly centralized, doing business on a national scale, and with an exceedingly large capitalization.

In endeavoring to interfere seriously with the sales of these concerns, the Federation has been forced to change its methods of attack. The experience of the last few years indicates that the very necessity of the case compels caution, careful thought and deliberation before any boycott is indorsed. It shows that the Federation can hope to succeed in forcing a settlement, after a boycott is declared, only in a minority of instances. The chances of success are especially small against firms possessing a more or less complete monopoly of the field, against those doing business in every part of the country, and those selling their products largely to the employing class or to elements in the community out of touch with organized labor. Goods purchased chiefly by the employing class, may, however, be effectively boycotted where the boycott is forwarded by strong unions—such as those of the brewery workers—by means of a threatened or actual strike against employers who refuse to discontinue their dealings with the boycotted concern.

The Federation's experience has also demonstrated

that the non-appearance of distinguishing marks on the "unfair" product, the undesirable character of the competitors, and the weakness of a labor union initiating the boycott make success extremely doubtful. On the other hand, the thorough organization of labor often renders boycotting unnecessary.

Other lessons to be drawn are that a boycott will not run itself; that something is necessary in addition to the mere appearance of the name of the firm on the "We Don't Patronize" list; that the unfair character of the firm tabooed must be kept constantly before the eyes of unionists, and that much effort and money must be expended if the boycott is to be a success.

The Federation's boycotts were waged, generally speaking, against the same classes of products as were the New York boycotts of the eighties and nineties. In each group, food products were boycotted most frequently, and with a very large degree of success. In the matter of numbers, clothing comes third, printing fifth and metals and wood among the last in each series. Iron and steel and machine products, which scarcely appear in the New York cases, are important members of the boycott group of the A. F. of L. Because of their local nature, boycotts connected with the building trades were more prominent in the New York experiments. Boycotting of individual bakeries, which headed the list in the New York cases, were, of course, of little significance in the national attacks, although flour and cereal mills were frequently mentioned, and were fought with considerable success. Cigarmakers, breweries and suppliers of meat were mentioned prominently on both lists. Very little success seemed to attend the national boycotts, however, against such highly centralized industries as collar and cuff, tobacco, shoe and meat concerns.

Perhaps one-half of the unions at present connected with the Federation may be said to have battled with

the aid of this weapon. How large a proportion would be employing the boycott at present, were it not for legal interference, it is difficult to state.

Again it is of importance to call attention to the growing conservatism of the unions in using this weapon.

CHAPTER VIII

THE BUCK'S STOVE AND RANGE CASE

The Buck's Stove Case

The crowning attempt of the American Federation of Labor to put into operation its slowly formulated policy of concentrating attention on a few important concerns, was made in the Buck's Stove boycott of recent years, the most extensive and best organized of all of the boycotts waged through the active coöperation of that body. Ending as it did in the conviction of three of the most prominent of the labor leaders of America, Samuel Gompers, president of the A. F. of L., Frank Morrison, its secretary, and John Mitchell, one of its vice-presidents, the attack on this concern has attracted international notice. In its advanced stages it ceased to be a fight merely between the small international unions initiating it and the St. Louis Stove concern, and became a battle royal between the forces of labor, marshaled under the standard of the Federation, on the one hand, and the forces of capital, directed by the National Association of Manufacturers and the Anti-Boycott Association, on the other.

This case illustrates so clearly the methods developed during the past few years, and presents such important legal aspects, that it merits a special treatment.

The Buck's Stove and Range Company, the original employer concerned in the controversy, was an old and well established St. Louis firm, dating back to 1846.

Prior to the boycott, it claimed a business throughout the nation of some $1,250,000 annually, and employed on the average some 750 men, union and non-union. Its president was J. W. Van Cleave, about that time president of the National Association of Manufacturers and of the Citizens' Industrial Alliance.

A few years before the struggle with organized labor, the Stove Founders' National Defense Association, of which the Buck's Stove Co. was a member, entered into an agreement with the Iron Molders' Union and the Metal Polishers', Buffers', Platers', Brass Molders' and Brass and Silver Workers' International Union of North America, providing for a settlement of all disputes between the associations and the unions by a conference committee, and stipulating furthermore, that the decision should be binding, and that, pending adjudication, neither party should discontinue operations.

In the nickel department there were 36 metal polishers, earning, according to the company, from $4 to $5.25 a day. The company contended that the official working day of these polishers was ten hours, from 7 A. M. until 6 P. M. The polishers averred that, for several months they had been working, without any objection from the company, under a nine hour day. They added that the nature of the work was such as to make a nine hour day necessary, if the health of the workers was to be properly conserved. Mr. E. G. Boyd, a metal polisher employed by the Quick Meal Stove and Range Co. of St. Louis, in an affidavit submitted to the court, thus describes the conditions under which the metal polisher toils:

"It takes a number of years to become skillful and efficient in the work of preparing the castings in their rough state for the plater. To prepare this work skillfully and properly considerable physical force is required, especially in the grinding of castings. The

work causes the room in which the polisher is working to be filled with iron dust which he is forced to inhale constantly, which is a cause for consumption. The blower service used in the plant does not by any means carry off all this iron dust. . . . *A very large per cent. of the men engaged as polishers die of consumption.* A buffer is required to put a bright finish on nickel-plated work; in doing this he uses a canvas or felt wheel, and a composition which is composed of lime and grease, which substances are also very injurious to health. This canvas or felt wheel casts off a fine dust which is likewise injurious. *I believe that a nine-hour day would be a very material benefit to their health and happiness. A very large number of firms,* including one at which I am employed, recognize the justice of the nine-hour work day, and *have practically adopted it.*"[1]

The Buck's Stove Company officers averred that they noticed the employees in the nickel department frequently quitting work, sometimes one, sometimes one and a half hours before the ten hours had expired. Shortly before closing the shop in the fall for repairs, they told the men that a notice would be posted three weeks before their reopening the shop in January, 1906, calling attention to the ten hour day, and that the workers' return would indicate a willingness to continue under the ten hour schedule.

The men went back to work, but on August 27 of the same year, on receipt of a letter from A. B. Groat, president of their international union, they left the shop at the expiration of nine hours. The leaders were discharged that day and the next, and on August 29 the men struck because of the refusal of the company to reinstate these discharged employees. The company claims that this action was in violation of an agreement with the Stove Founders' Association.

[1] Italics are the author's.

But the issues involved were more fundamental than the foregoing. Mr. Van Cleave, president of the concern, as has been stated, had recently been elected president of the National Association of Manufacturers. He was also a prominent member of the National Founders' Association, and had openly boasted that he would pursue the same policy toward organized labor which his predecessors in the National Association of Manufacturers had commenced—a policy, for the most part, of bitter opposition. In his dealings with the International Molders' Union, it was alleged that he had employed spies to report union proceedings; that he had refused to confer with the union agent and had ordered him off the premises; that he was secretly plotting to substitute non-union for union men in the concern, and to make his firm a hot bed of opposition to organized labor; that he was watching his chances to break all conference agreements on the pretext of an overt act committed by the union; and that, furthermore, he was encouraging other manufacturers to oppose labor organizations. Such, at least, are the inferences which may be drawn from the letters alleged to have been written by Mr. Van Cleave to Mr. K. J. Turner, president of the Manufacturers' Information Bureau Co., Cleveland, Ohio, May 28 and May 31, 1906, and submitted by Mr. Gompers before the Judiciary Committee of the U. S. Senate, January 6, 1913.[1]

These letters read in part:

"With reference to our trouble (with the molders) and the final ending, the enclosed notices, which were put up in our shop last Friday *just prior to my ordering off the premises one of the business agents of the I. M. U. (International Molders' Union) and giving him to understand that he must not enter these premises again,* are the very best evidences that I can give

[1] Hearings before a sub-committee of the Committee on the Judiciary, etc., on H. R. 23635, 62 Cong., 3rd Session, pp. 11-13.

you that all that the molders have claimed is hot air. . . . I gave Mr. Keough (the union agent) to understand thoroughly and without mincing words that this shop was an 'Open Shop,' whether he was pleased to so recognize the fact or not. *I gave him to understand that we would not recognize the I. M. U. in the shop or any of its methods,* and that we would treat only with the committee provided for in the conference agreements as a representative only of the molders employed in our shop. . . .

"I note that you say that the two men that you refer to are connected with the N. F. A. (National Founders' Association). . . . I wish it had been possible for us too to have helped the N. F. A. by remaining idle a month longer, and it behooves us to bolster up the N. F. A. in every way that may lie in our power, that I would suggest that you may have to stand by Mr. Briggs until this particular fight is over. When this comes about, *it may be possible for us to begin in a quiet, unassuming and systematic way to put into our shop as many of the non-union molders as can be found in this country. I should like to do this, but not under any specially high-priced contract, but to put them in here as a sort of hot bed, and, if necessary, to hold them in line when war again breaks out.*

"I am particularly anxious to have the I. M. U. commit an overt act that will cancel and wipe out of existence all of the conference agreements now in existence between the S. F. N. D. A. (Stove Founders' National Defense Association) and the I. M. U., in the same way that their strike act wiped out of existence all of those obnoxious agreements that they tried to put upon us."[1]

Mr. Van Cleave is further quoted as acknowledging the support he had received from other organizations, and as stating that "Gompers will be frothing at the mouth" when he (Van Cleave) expresses the attitude

[1] Italics are the author's.

of the N. A. M. toward the methods of organized labor.

In his later letter Mr. Van Cleave, it is alleged, thanked Mr. Turner for his comments on the reports of A-2 (the detective reports), and urged him to visit and encourage a number of stove manufacturers, and to instil courage into them. He repeated a conversation of Mr. Keough in the union meeting, which the detective, A-2, had reported to him, declared that it was going to be his business "to get the I. M. U. into a trap," urged Mr. Turner to show the detective reports to other manufacturers, and thus ended: "I was given a quiet tip that if I would just stop this detective business I would stop a great deal of my trouble. Right there I made up my mind that I would not stop it, and if I should make you a suggestion it would be that you want to use the reports, to use them raw."

The unjustifiable action of the Founders' Association, in breaking their agreements with the union, was also referred to. If this was the attitude of Mr. Van Cleave toward the molders' union, was it inconceivable that the same spirit animated him in his dealings with the polishers' union, and was not such an attitude a sufficient menace to organized labor to justify the use of all legitimate weapons at its command to win the battle which the polishers had started?

The causes of the controversy have been entered into at some length because the opponents of the boycott are prone to point to the Buck's Stove case as a glaring example of abuse, and to picture Mr. Van Cleave as a true friend of labor victimized in a most unjustifiable manner by the employment of this weapon.

Immediately following the strike of the polishers in August, a system of picketing and boycotting was inaugurated first by this union, and later by the St. Louis Trades and Labor Council. At the convention of the American Federation of Labor, October, 1906, the

question of boycotting the Buck's Stove and Range Co. was discussed. George Bechtold of the Foundry Workers' and others represented that the metal polishers had enjoyed the nine hour day for 18 months, and that the company was now endeavoring to restore the ten hour day; that Mr. Van Cleave had a "reputation like Parry and Post," and had refused to deal with the committee composed of David Kreyling, business agent of the St. Louis Trade and Labor Council, Edward Lucas, of the Metal Polishers' Union, and himself.

The majority of the committee to whom the matter was referred, recommended that it be considered by the Executive Council in accordance with Article 9, Section 4, of the Constitution, while the minority recommended immediate action, partly on the ground of Mr. Van Cleave's well known antagonism to organized labor.

Joseph Valentine, vice-president of the A. F. of L., and president of the International Iron Workers' Union, was asked to adjust the matter if possible, but in March, 1907, reported that he had seen President McAfee of the Stove Founders' National Defense Association, and had been told that Mr. Van Cleave was in no mood to consider an adjustment. Gompers was also advised by local leaders that the interview which they had had with Mr. Van Cleave indicated to them that it was impossible to reach an agreement, and that several unionists had been discharged because of their activity in their unions.

On the receipt of this information, the name of the firm was placed on the "We Don't Patronize" list in May, 1907, with the usual salutation:

"To Affiliated Unions:

"At the request of the unions interested, and after due investigation and attempt at settlement, the following firm has been declared unfair:

"Buck's Stove and Range Company.

"Secretaries are requested to read this notice in union meetings, and labor and reform press please copy.

"Fraternally yours,
"SAMUEL GOMPERS."

Circulars announcing the boycott were also sent, it is alleged, to the members of the union, patrons and the public.

In the *American Federationist* of October, 1907, the members were admonished to keep the Buck's Stove and Range Company in mind, and to remember that it was on the "Unfair List" of organized labor of America.

On November 26, after legal action had been brought against the Federation, an appeal was sent broadcast to organized labor, urging a more active boycott than ever before.

This circular read:

"To All Organized Labor and Friends:

"You undoubtedly are aware of the fact that the interests of the Foundry Employees and Metal Polishers have been greatly injured on account of the hostile action of the Buck's Stove and Range Company of St. Louis, of which Mr. Van Cleave is president, and he is also president of the National Association of Manufacturers.

"As you are well aware, so inimical to the welfare of labor was the Buck's Stove and Range Company's management that the organization concerned felt obliged to call the products of that company unfair. The workmen's organization appealed to the American Federation of Labor to indorse its action. After due investigation that indorsement was given and is still further affirmed. The circumstances leading to this action are so widely known that they need not here be recounted. . . .

"It would be well for you, as central bodies, local unions, and individual members of organized labor and sympathizers, to call on business men in your respective localities, urge their sympathetic coöperation and ask them to write to the Buck's Stove and Range Company of St. Louis, urging it to make an honorable adjustment of its relation with organized labor. Act energetically and at once. Report the result of your effort to the undersigned.

"SAMUEL GOMPERS,
"President American Federation of Labor.

Attest:

"FRANK MORRISON, Secretary.
"By order of the Executive Council of the A. F. of L."

A nation-wide boycott was entered upon. The patrons of the Buck's Stove received many letters informing them that the firm was on the unfair list as a result of its effort to force the employees to return to a ten hour day. They were urged to return the goods shipped to their firms and to notify Mr. Van Cleave that they would refrain from making any further purchases until he treated his employees more fairly.

Parades were organized by the Metal Polishers', St. Louis Central Union and other bodies in which boycott transparencies were prominent features. These parades were halted in front of stores selling Buck's stoves and denunciatory speeches were made. Stickers and posters were, in some instances, placed on the windows of patrons, and customers were urged to stay away from them.

Central bodies in many cities sent delegations to Van Cleave's customers, who were asked to discontinue the sale of stoves. The St. Louis House Furnishing Company alleged, for instance, that a committee requested it not to dispose of any more of Buck's wares.

The company agreed to this, providing the committee purchased from it the $5,000 worth of stoves on hand. The unionists, of course, refused, and began to place a ban on the store. Other dealers alleged threats of boycott, unless they broke their contract with the Buck's Stove Company, and some testified to threats of violence. Still others asserted that labor delegates promised to allow them to sell the goods which they had on hand and to return, when the contracts had expired.

As a result of this persistent industrial warfare against the company, many large orders were lost, and the business of the company was seriously damaged.

To restrain the continuance of these acts by the labor unions, an injunction against the American Federation of Labor, its officers and the remaining members of the council, and against the Electrotype Molders' and Finishers' Union Number 17, was asked for by the company, and on December 18, 1907, one of the most sweeping orders given in American jurisprudence was granted by Justice Ashley M. Gould of the Supreme Court of the District of Columbia.

This injunction limited the activities of the officers of the union in a most astounding way, restraining them *from "interfering in any manner with the sale of the products of the plaintiff,* and from declaring or threatening any boycott against the complainant, *or in any manner assisting such boycott, or printing or distributing through the mails any paper which contained any reference to the name of the complainant, its business or product in connection with the term 'Unfair' or 'We Don't Patronize' list, or any other word of similar import, or from publishing or otherwise circulating, whether in writing or orally, any statement or notice of any kind or character whatsoever, calling attention to complainant's customers, or of dealers or tradesmen, or the public, to any boycott against the*

complainant, or from coercing or inducing any dealer not to trade with complainant."[1]

The injunction, as one may surmise by looking over the original papers in Washington, D. C., was written by the complainant's lawyers, and signed with scarcely a change in its wording. The order was entered December 18, 1907, and the next day the opinion was filed. The giving of the undertaking required by it was consummated December 23, 1907. The injunction was made permanent by Justice Clabaugh, March 26, 1908.

Thus, for the first time in the existence of the "We Don't Patronize" list, the Federation found itself prevented from placing a firm's name thereon. This portion relating to the unfair list was bitterly assailed by the union, but not so much so as those paragraphs which virtually prohibited the officers of the Federation from orally stating, writing, printing or distributing any word which in any way referred to the fact that the unions had decided to leave Buck's stoves alone.

The January edition of the *American Federationist* contained the name of the Buck's Stove firm in the "Unfair" list, and advertised the printed proceedings of the Norfolk Convention of the A. F. of L., in which the firm was referred to as under the ban of the boycott. Ten thousand copies of the proceedings were hurriedly printed and distributed a few days before the injunction was to go into effect, and some copies, it was alleged, were in the mails on their way to their destination, on December 23, the day the injunction became effective. An urgent appeal for funds was also distributed to all of the local unions in anticipation of the injunction. The name of the Buck's Stove and Range Company, however, was stricken from the February

[1] Italics are the author's.

number of the "We Don't Patronize" list in obedience to the order. The court's mandate was also printed in the February issue, and, in a number of issues following, Gompers edited statements declaring:

"This injunction cannot compel union men or their friends to buy the Buck's stoves and ranges. For this reason the injunction will fail to bolster up the business of this firm, which it claims is so swiftly declining."

Speeches were also made by Gompers at Indianapolis and Baltimore mentioning the Buck's Stove Company, and criticising the injunction. It was for these remarkable reasons that Judge Wright declared Gompers in contempt of court, December 23, 1908, one year after the order had been issued. For taking part in the preparation, publication and distribution of the appeal for funds, of the Norfolk proceedings and of the *Federationist,* Frank Morrison, secretary of the A. F. of L., was also pronounced guilty of contempt.

John Mitchell presided at the convention of the United Mine Workers of America, January 25, 1908, at which a resolution was passed that "the U. M. W. of A. place the Buck's stoves and ranges on the unfair list, and any member of the U. M. W. of A. purchasing a stove of above may be fined $5.00, and, failing to pay the same, be expelled from the organization." This resolution was afterwards printed in the *United Mine Workers' Journal.* Mitchell did not remember hearing the resolution read, but could not deny that it was passed while he was chairman, so he, too, was sentenced for contempt. Gompers was sentenced to one year, Mitchell to nine months and Morrison to six months.

Mr. Gompers thus explains the seemingly trivial reasons for the court's pronouncement:

"Because, by authority of the convention and of the Executive Council, I sent to our fellow workers and friends an appeal for funds in order that we might be in a position to defend ourselves before the courts in the very injunction case involved; because in lectures and on the platform during the presidential campaign I made addresses to the people, giving reasons for my vote as a citizen I was to cast at the then pending presidential election, and because I dared write an editorial to discuss the fundamental principles involved not only in the injunction pending but the entire abuse of the injunction writ; aye, because I published in the *American Federationist* the order of the court to show why we should not be punished for contempt of the injunction, I was pronounced in contempt of court."[1]

During the contempt proceedings an appeal against Judge Gould's injunctive order had been made by the A. F. of L. at the behest of the delegates at their Norfolk Convention. On March 11, 1909, nearly three months after the contempt sentences had been imposed, Judge Robb of the Court of Appeals of the District of Columbia greatly modified Judge Gould's injunction, stating that the court had power only to prevent the appearance of the firm's name on the "We Don't Patronize" list, and to restrain the actual boycott.

The court held:

"The printing of the unfair list was what the court sought to prevent, and what, in our opinion, the court had power to prevent. But the decree should have stopped there, and not attempted to regulate the publication and distribution of other matter over which the court had no control. In other words, this branch of the decree should merely prohibit the printing of complainant, its business or product in the 'We Don't Patronize' or 'Unfair' list in the furtherance of the boy-

[1] *Annals American Academy,* v. 36, pp. 261, 262, September, 1910.

cott. When the conspiracy is at an end the Federation will have the same right that any other association or individual now has to comment upon the relation of the complainant with the employees."

While the appeal was being made to tone down the injunction, the contempt case was also brought before the higher court, and on November 2, 1909, nearly eight months after the modification of the injunction—which practically pronounced legal all of the acts of Gompers and his associates—the defendants were again, to the surprise of many, declared guilty. Judge Van Arsdel rendered the decision. The court concluded that the decree of the lower court must be considered conclusive as to facts. Chief Justice Shepard, however, gave a strong dissenting opinion, "convinced that the court was without authority to make the only order which the defendants Gompers and Morrison can be said to have disobeyed."

A writ of certiorari was then asked for, so that the matter might be brought before the Supreme Court of the United States. Injunction and contempt cases were finally merged into one before the Supreme Court.

The following year, July 19, 1910, after the death of J. W. Van Cleave, president of the Buck's Stove and Range Co., this company came into the hands of new management, and the loss of custom, as a result of the boycott, had been so great, that those then in charge decided to compromise the matter, and make peace with the union. The Buck's Stove Company thereupon appealed for the support of organized labor, on account of the friendliness of the majority stockholder, Frederic W. Gardner, and on account of the opposition which the company was encountering at the hands of the anti-trade union element, as a result of its concessions. The settlement was heralded in the trade union press, and all members of organized labor

were requested to support the company. The following, appearing in the *American Flint,* May, 1911, is a sample of the changed attitude of labor:

"For over twenty years Frederic W. Gardner, the majority stockholder, has been on friendly terms with the officers and members of the International Molders' Union, and his influence during his long connection with the stove manufacturers' industry has been toward the full recognition of the right of workmen to organize for their self-protection and for the purpose of entering into collective bargains with their employers. For its friendly attitude toward organized labor the Buck's Stove and Range Company has now encountered the open opposition and antagonism of the anti-trade union association, who evidently are desirous of seeing its business diminish instead of prosper under its present policy of trade agreements with its organized workmen."

Soon after the settlement, C. W. Post, the well known anti-trade union employer, and a stockholder in the Buck's Stove Company, tried to induce Judge McPherson to issue an injunction preventing the representatives of the firm and of labor from getting together, but without avail.

As employers and employees in this firm were again on friendly terms, the Buck's Stove Company was loth to continue its case in court, and on January 27, 1911, the injunction proceedings were dismissed at the request of the complainant. The contempt case, however, was continued, and on May 15, 1911, the Supreme Court decided that, inasmuch as the main case —the injunction case—was settled, the contempt proceedings depending upon it were also necessarily settled. These proceedings were therefore dismissed, but without prejudice to the power and right of the Supreme Court of the District of Columbia to punish

by a proper proceeding any contempt committed against it.

It was thought at the time that this would be the last of this case, but Justice Wright felt that the court had suffered an indignity which it should not allow to remain unpunished. Much to the amazement of many of the public, the judge appointed a committee of attorneys, consisting of J. J. Darlington, Daniel Davenport and James Beck, three men who had been conspicuous as attorneys for the Anti-Boycott and National Manufacturers' Associations in their support of the Buck's Stove case, to consider the question of contempt, and to recommend further prosecution or dismissal of the charges. The committee, as was expected, recommended that the court prosecute the officers of the Federation. The court acted on the recommendation. The defendants urged that the case be dismissed, on the ground that the indictment in a criminal proceeding should be made within three years of its commission, but the motion was denied. The contempt proceeding, it was decided, was of a civil and not a criminal nature.

On June 24, 1912, Judge Wright again pronounced the defendants guilty, four of the judges concurring, Chief Justice Clabaugh being ill at the time. For a second time the case was appealed, and, on May 5, 1913, the Court of Appeals of the District of Columbia reduced the sentence of Samuel Gompers to 30 days in jail, and remitted the jail sentences of Mitchell and Morrison, imposing fines of $500. Chief Justice Shepard again dissented. On May 22 the mandate of the court was stayed to permit an appeal to the Supreme Court of the United States. In June, 1913, the Supreme Court decided to review the case. The final decision was postponed till the fall.

The boycott against this concern indicates how effective such a weapon can be made, even when wielded

against a firm selling commodities purchased by the workers at such irregular and long intervals, providing the forces of labor properly concentrate, and providing, also, adequate publicity is obtained. It is difficult to judge whether the workmen were, from a technical legal standpoint, justified in beginning the dispute. Considering the broader questions involved, however, one is inclined to the belief that they had sufficient justification for their activity. That occasionally they abused their power during the controversy, seems likely, but such abuse of power certainly had its counterpart in that of at least some of the eminent judges of our federal courts. As in the railroad cases, the court decisions gave an impetus to political action, although of a somewhat different nature from that taken in the former instance.

CHAPTER IX

DANBURY HATTERS' AND OTHER CASES

One of the most conspicuous examples of boycotting in this country carried on primarily by an individual union, and one of fundamental importance from a legal standpoint, was the Danbury Hatters' boycott, originating at Danbury, Connecticut.

It was in this case that the Supreme Court of the United States declared, for the first time, that boycotts could be reached under the provisions of the Sherman Anti-Trust Law, and that labor unions, found guilty of combining to limit the market of goods transported from one state to another, were liable for the payment of threefold damages.

The hatters' boycott started in an effort to unionize the factory of D. E. Loewe and Company of Danbury, Conn. Mr. Loewe refused to grant the demands of the unions for a closed shop, and the Brotherhood of United Hatters of America immediately entered on a nation-wide campaign to reduce the number of Loewe's customers.

The fight against this concern was a part of a national struggle of the hatters' union for the closed shop. President John Moffitt of the International Union declared, in his convention report of 1903, that 187 hatters' concerns had the closed shop, while but 12 were opposed to them. The fight to produce these results was begun in 1897. According to the *Hatters' Journal* of September, 1898, 16 firms were unionized as

a result of the use of the boycott, within a period of 18 months. For eleven months a vigorous boycott was waged against Berg and Company of Orange, N. J., at the cost to the unions of $18,000. Berg's business was reduced from one of 2,400 dozen hats a week to one of from 450 to 500 dozen hats, according to President Moffitt, before he agreed to the closed shop. In April, 1901, Roelof and Company of Philadelphia were especially subjected to the attention of the unionists, and $23,000 was spent by the union in an effort to diminish its sales. It was estimated that Roelof lost some $250,000 during the boycotting period.

Then came Loewe. Unionists claimed that in many instances he gave his employees but one-half of that obtained in closed shops, and that, in some departments, workers secured but $13 a week, toiling from 12 to 15 hours a day, whereas, under closed shop conditions, the compensation was from $22 to $24 a week, for an eight hour day. This state of affairs was largely denied, however, by the firm. Whatever the actual conditions were, the unionists were intent on unionizing the shop. They proposed this to Loewe, referring to the fate of other hatters who had withstood their demands. Loewe, however, refused to concede. On July 25, 1902, two hundred and fifty employees were called out. The shipping clerk was employed by the union to discover the destination of the various assignments. He rode on the wagons, observed in the streets and at railroad stations, and reported the results to the union. Customers' names were immediately sent to the unions in whose towns the goods were to be delivered, and unionists were requested to write to, or call on, the dealers, and to persuade them to cease their dealings. Five organizers were routed among unions and dealers in different parts of the country. Boycott advertisements appeared in the trade and labor journals, and

descriptions—false, according to the company—of labor conditions at Loewe's were sent broadcast.

The company claimed that this warfare was most effective; that, during 1901, the firm made a net profit of $27,000, which decreased into a $17,000 net loss in 1902, after the boycott began, and into one of $15,000 during 1903. In 1903, the company claimed, the loss in gross business from seventeen New York firms alone was $84,700, from 26 other customers, $160,690, and from Triest, a California jobber, $80,000, making a total of $325,390; that the loss of gross business in 1902 was much less, but still very substantial. The company concluded that the net damage caused by the boycott amounted to more than $88,000. These items, the company declared, did not take into consideration the normal increase in business during the years 1902 and 1903.

Loewe and Company first filed a suit against the unions in the United States Circuit Court at Hartford, on August 31, 1903, charging them with violating the Sherman Anti-Trust Law. Various postponements carried the case along until 1907, when Judge James P. Platt of the Circuit Court asked the Supreme Court of the United States for a ruling on the damage clause of the Sherman Law, which reads:

"Section 7—Any person who shall be injured in his business by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and *shall recover threefold the damages by him sustained,* and the costs of the suit, including a reasonable attorney's fee."

Chief Justice Fuller, who delivered the opinion in this case, February 3, 1908, declared that the boycot-

ting case came within the statute as a conspiracy in restraint of trade or commerce among the several states. On October 13, 1909, the case was brought to trial.

Over 200 witnesses testified for the defendants, and the trial lasted nearly five months. In his charge to the jury, Judge Platt, overstepping his authority, made the astonishing declaration that he considered it his duty to direct the jury to bring in a verdict for Loewe, and he asked the jurymen to consider the question of damages as the "only question with which they could properly concern themselves." "It is your duty to accept as the law of this case," continued the judge, "that the defendants now on record are parties to a combination that has been found by the Supreme Court to form a valid basis in this suit."

The jury retired, and shortly afterwards brought in a verdict of $74,000 damages against the union. This amount was trebled under the triple damage provision in the Sherman Law. Adding the costs, the total damages finally assessed were $232,240.

The case, however, did not stop there. It was appealed to the Circuit Court of Appeals of the Second Judicial District, on a writ of error, and on April 10, 1911, the judgment was reversed by Judge Lacombe, Judges Cox and Noyes concurring. The judges declared that Judge Platt had erred in taking upon himself the function of the jury, and in leaving to the jury members only the question of the assessment of damages; also in his assuming that mere membership in the United Hatters' Association made a unionist responsible as a principal for all illegal actions of agents of the officers.

The court said in part:

"The first assignment of error which challenges attention on this appeal, and which is discussed at the

outset of defendant's brief, is the action of the trial judge in taking the case from the jury and himself deciding every question except the amount of damages. Defendants contend that in so doing the trial court assumed the function of the jury in passing upon the credibility of witnesses and weighing the conflicting testimony. We think the assignment of error is well taken for several reasons.

"It is argued here that because an individual defendant was a member of and contributed money to the Treasury of the United Hatters' Association that made him a principal of any and all agents who might be employed by its officers in carrying out the objects of the Association, and responsible as principals if such agents used illegal methods or caused illegal methods to be used in undertaking to carry out those objects.

"We cannot assent to this proposition. The clause of the constitution of the United Hatters which provides that certain of its officers shall use all the means in their power to bring such shops (i. e., non-union shops) into the trade, does not necessarily imply that these officers shall use other than lawful means to accomplish such objects. Surely the fact that an individual joins an association having such a clause in its constitution cannot be taken as expressing assent by him to the perpetration of arson or murder. Something more must be shown, as, for instance, with the knowledge of the members unlawful means had been so frequently used with the express tacit approval of the association that its agents were warranted in assuming that they might use such unlawful means in the future; that its association and its members would approve or tolerate such use whenever the end sought to be obtained might best be obtained thereby."

An unsuccessful effort was then made to have the United States Supreme Court review the case, in January, 1912. On January 15 the court refused the application for a writ of certiorari.

A retrial of the case was held in Connecticut, be-

ginning August 4, and on October 11, 1912, the jury delivered a verdict for $80,000 and costs. The total award was $240,000. The jury took the position that the minutes, resolutions, reports, proclamations and printed discussions which the officers and agents of the association publicly proclaimed and circulated among the membership were approved or warranted by the individual members of the association.

The case was again appealed to the Circuit Court of Appeals, Second Circuit, and is scheduled to be reached for argument in the fall of 1913. The deputy marshal was given an execution under the judgment against 197 members of the hatters' unions in Bethel, Danbury and South Norwalk. January 24, 1913, he returned an execution to the court, with the indorsement that he had been unable to collect even a cent from the hatters.

The question of the justification of the Danbury Hatters' boycott involves the larger question of the right and wrong of the closed shop. In this case, also, some abuses were probably noted, although no more than are generally connected with any extensive labor controversy. Here again the court decisions have undoubtedly led the workers to emphasize, more than formerly, the advantages of political action.

The typographical union, the building trades' organizations, particularly the carpenters' union and that of the miners, have, during the past few years, also furnished noteworthy examples of thoroughly planned and effective boycotts. The boycott of Butterick patterns, first carried on by Typographical Union Number Six, known as "The Big Six," and later by the International Typographical Union, was the most far-reaching of those initiated by that organization. "This boycott," affirmed Mr. Portenar,[1] "was, I verily believe, better

[1] Portenar, *Problems of Organized Labor*, p. 90.

organized, more determined, and more damaging to the parties it was aimed at than any other I have knowledge of, not excepting that against the Buck's Stove and Range Company."

The fight was international, being maintained in Cuba, Germany and Austria, as well as in the United States and Canada. The printers distributed an immense quantity of circulars to stores, dressmakers, organized labor, and the general public; sent out comparatively expensive novelties calling attention to the boycott, routed numbers of organizers and elaborated many unique plans—spending thousands of dollars to this end. It is believed that the boycotting campaign cut considerably into the profits of the company, despite the fact that the patterns were bought for the most part by the women of the community. Some unionists claimed that the Butterick Company, in a single year, lost $360,000, and was compelled to reduce its dividends from 4% to 2%; that, whereas it had a surplus before the agitation of from $750,000 to $1,000,000, soon after it reported one of only a quarter of a million. The pattern business, they averred, was greatly diminished. A competing concern reported an astonishing increase in its sales. The union finally won, and the ban was lifted.

The boycotts of the carpenters and other members of the building trades consist primarily in threatened or actual withdrawal of labor power, instead of custom, from those firms refusing to stop buying from certain proscribed concerns. It is alleged that the United Brotherhood of Carpenters and their local councils have frequently and effectively prevented the sales of non-union trim and other building material, through threats to call strikes against those building contractors who handle supplies fashioned by "unfair" companies. Unfair lists, circulars, walking delegates are also used in their attacks. City carpenters have brought to their

aid joint arbitration agreements with the Building Trades Employers' Association, the Master Carpenters' Association and the Manufacturing Woodworkers' Association. Through these agreements, the carpenters claim that they have succeeded in having nearly a million dollars of their trim made in union shops used in New York City alone. In their endeavor, during a period of 25 years, to secure the closed shop, and to work only on union material with union workmen, this brotherhood spent $1,179,776 prior to the year 1906, according to Frank Duffy, its secretary.[1]

The carpenters' and the typographical unions have been interfered with by court proceedings for their alleged boycotting practices, more, perhaps, than any other organization. Among the latest of their legal controversies is that brought in a number of states by the Paine Lumber Company and others against the New York carpenters, before the United States Circuit Court for the Southern District of New York. This case is being fought vigorously by the Anti-Boycott Association.

One of the best known of the labor boycotts in recent years occurred during the Anthracite Coal Strike of 1902. The miners here directed their chief attention to the "scabs" who took their places. They threatened storekeepers, who sold goods to these "scabs," with loss of the patronage of the strikers; compelled a school board to dismiss a school mistress because her brother, not living in her immediate family, went to work contrary to the wishes of the striking miners; caused the dismissal of a drug clerk because his father was a "scab," and performed many similar acts. These acts were vigorously condemned by Mr. John Mitchell, then president of the United Mine Workers of America, and declared by the Strike Commission as "cruel

[1] Convention Proceedings, United Brotherhood of Carpenters, 1906, p. 159.

and cowardly," and "outside the pale of civilized war."[1] The boycotts among the miners were primarily labor boycotts—boycotts conducted by workers against fellow laborers.

The foregoing boycotts prosecuted by the hatters, members of the building trade, printers and miners have proved, for the most part, effective means of cutting off the market or the employment of the boycotted. Some of the worst abuses were alleged in connection with the labor boycotts organized by the miners—abuses acknowledged and condemned by the responsible heads of organized labor.

[1] Report of Anthracite Coal Strike Commission, pp. 77, 78.

CHAPTER X

ELEMENTS OF SUCCESS IN BOYCOTTS

The success which attends the use of boycotts and the consequent frequency of such use in different industries depend on many factors. A chief factor is *the character of the market* for the article—whether the market consists primarily of unionists and sympathizers or of the employing class. Bread, newspapers, hats, cigars, beer, stoves, shoes and other necessities and inexpensive luxuries have been very frequently and effectively boycotted. Thus, of the 196 boycotts described in *Bradstreet's,* 157, or 80%, center around necessities.

The boycotting of food products held the most prominent place in the New York boycotts of the eighties and nineties and of the A. F. of L. indorsements. Bread, the most important of the foods, was subject to three times as many attacks as any other product in the New York boycotts. Cigars, beer, and meats were prominent in most of the investigated cases. In the early boycotts newspapers, another inexpensive necessity, were most frequently mentioned among the proscribed commodities. Articles of clothing held first place in frequency in the nation-wide boycotts of the eighties and third place in the New York boycotts and in those cited on the "We Don't Patronize" list.

Success followed fairly closely along the same lines. Thus the most successful boycotts in New York, with the exception of the building trades, were connected

with the food boycotts, those against bread showing the largest per cent. of victories. Boycotts against articles of clothing were also generally attended with considerable success. In the instances noted by *Bradstreet's*, the ban against cigars was attended by the greatest proportion of victories, while the use of this weapon against "unfair" newspapers, hats, beer, etc., resulted in many conspicuous gains.

On the other hand, commodities which are sold primarily to the upper middle and the employing classes are generally let alone. Dealers in such articles certify that they have oftentimes been benefited by the boycott, as their well-to-do patrons have come to their rescue and have frequently increased their orders on account of union opposition.

Furthermore, the success of boycotts depends somewhat on *whether the articles boycotted are purchased by men or by women.* It is unusual for the women of the family to feel the keenness of the trade union struggle, and to recognize the utility of inconveniencing themselves in order that other workers might be assisted thereby. Allied associations now being formed among the women, however, are making them more interested than heretofore in the problems of organized labor, and more willing to sacrifice, if need be, in their purchasings. Typographical Union No. 6, of New York, recently stated that the women had waged quite an effective battle against Butterick patterns.

If the articles boycotted are not sold directly to the mass of working people, but to employers, a *strong organization among the employees of such purchasers* may render a boycott successful. The threat of the solidly organized brewery workers to strike, should their employers continue to purchase non-union barrels and boilers, has time and again forced the unionizing of a shop. The decision of the powerful building trades unions to refuse to work on materials bought

from non-union mills, has been the means of boycotting effectively the opponents of organized labor.

The *frequency and regularity of the consumption of an article* are also important. "If it is an article which enters into daily consumption," declares the report of the Bureau of Statistics of Labor in New York,[1] "and is of such a character that it can be made the subject of ordinary conversation, it will soon force the employer to spend money in advertising it, in order to counteract the silent influence of the boycott." Boycotts, however, waged against such articles as stoves have sometimes proved successful when all the forces of labor actively coöperate on a national scale.

If the boycotts are of a local nature, and the trade of the boycotted firm is also for the most part in the surrounding neighborhood, the *character of the population in the locality of the firm* affects, to a considerable extent, the result of the boycott. A bakery or meat market in a working class neighborhood, where goodly numbers of the population are either members of unions or sympathizers, will feel the efforts of the boycotters much more seriously than one situated in a middle class or well-to-do neighborhood.

The strength and capital of the boycotted firm, and the nation-wide character of its sales, are further elements. One soap firm with a business in every state declared that the idea of a boycott against his firm yielding large results was "a phantom of the imagination." An effective boycott against such articles entails an extensive campaign, costing thousands of dollars. If the goods are sold in a few communities, however, it is possible for a small number of organizers, concentrating attention thereon, to do most telling work. The ability of firms with a big capital to withstand a boycott has been pointed out.

[1] Third Annual Report, New York Bureau of Statistics of Labor, 1885, p. 334.

The extent to which the boycotted firm is a monopoly also vitally affects the success of the boycott, for if it is difficult or impossible for the public to obtain the duplicate of the goods manufactured by the boycotted concern, the purchasers are loath to join the crusade of boycotting, especially when the article is considered a necessity. If, for instance, the refusal to patronize the Standard Oil Company or the so-called "Meat Trust" makes it incumbent on one to give up the purchase of oil or meat, it is usually difficult to induce those regularly using such commodities to be enthusiastic about the "Cause."

The unions have concluded that one of the greatest elements in the success of a boycott is the *degree in which the efforts of the entire labor body are concentrated on one or more important firms.* A reading of the minutes of the Convention Proceedings of the A. F. of L. makes this most evident. The method of procedure in the Buck's Stove boycott was in line with the policy of concentration adopted by the unions.

As in other lines, *the amount of favorable publicity* a boycott can secure counts for its success. One labor leader told the writer that it was doubtful whether the Buck's Stove Company would have suffered materially had it not been for the legal proceedings against the A. F. of L. and its officers, and the consequent publicity obtained by the unionists in the non-labor press. The unions endeavor to advertise their boycotts in the various national and international journals in the labor press through the secretaries of the trade unions and through circulars. Unless something of a particularly striking or unusual character occurs in the course of the boycott, the public at large, however, rarely hears of its existence through the medium of the daily press.

Another important consideration is *the character of the distinguishing mark on the goods.* Where boycotted hats, for instance, fail to carry the name or

any other mark of the maker inside, but bear the insignia of the jobbers or the retailers, it is far more difficult to trace the goods, and to diminish sales. One of the reasons set forth for the failure of the miners to boycott coal is the extreme difficulty in tracing coals mined in certain sections.

The character of the competition is still another factor. When competitors are contractors of prison made goods, for instance, and the customer is given the alternative of purchasing prison made or "unfair" goods, he is likely to choose the latter, despite the ban.[1]

The *directness of the boycotting attacks* vitally affects the result. At times citizens have been boycotted for purchasing goods from stores whose owners rode in trolley cars during a car strike. However, such boycotts soon subside. Tertiary boycotts do exist, but they generally become weaker in proportion as they become more remote.

That the *causes leading to the boycott* have a considerable effect on its success is claimed by some. Thus the Commissioner of Labor in Illinois wrote:

"Labor organizations sometimes recognize and insist upon the enforcement of moral and social laws not recognized by society at large, and boycotts based upon these reach no further than the organizations upholding the assumed law. Boycotts based upon the employment of non-union men rarely succeed, because society is not prepared to assist either in driving men into unions or out of employment. During the first street car strike in Chicago the strikers appealed to the public not to patronize the companies for reasons given. In this case the people recognized an infraction of social laws, the maintenance of which was of more importance for the time than the social need of street cars, and consequently refused to ride upon them. On the occasion of a subsequent strike a similar appeal

[1] Report of Illinois Bureau of Statistics of Labor, 1886, pp. 447-448.

was made by the strikers, based upon other grounds not considered valid by society at large, and the boycott failed."

Thus all of the eight boycotts waged against prison made goods were wholly successful in that state; 99% of those engaged in disputes against the reduction of wages were successful, while proportionally fewer boycotts initiated for other purposes were won. When the boycotters depend for their support primarily on organized labor, the cause of the boycott becomes less important. The appeal is usually made to the members of organized labor on the bare ground that the firm boycotted has been "unfair" to labor. Nothing more is said; nothing more is asked. It may be stated that the A. F. of L. has appealed to the members more directly, and has expended much less energy in endeavoring to reach the general public than did its forerunner in the labor field, the Knights of Labor.

The *vigor with which the boycott is pushed at the very outset,* and the effectiveness of the methods employed during the first few weeks, determine, to a very large extent, its ultimate outcome. It has been seen that a large proportion of those local boycotts which succeeded came to a termination within a few weeks. The longer they drag on, the more lukewarm become their supporters, and the more able are their victims to cope with them.

The attitude of the law, of course, is of prime importance. Comparatively few of the unionists are enthusiastic about engaging in a boycotting campaign, if the law declares that their actions are illegal, and if they may, at any time, be brought face to face with civil or criminal procedure.

Finally, it may be said that *the more thorough the deliberation of the organization before employing this*

device, and the greater the discrimination used, the more powerful is the boycott likely to be when resorted to.

We see then that among the factors determining the success of the boycott are the character of the market of the commodities boycotted, the strength of the organization boycotting, the frequency and regularity with which the article is purchased, the location of the firm boycotted, its capital, nation-wide extent of trade, and the degree of monopoly. The manner in which the unionist concentrates on one firm, the publicity secured, the ease with which the boycotted goods are distinguished, the character of the competition against the firm, the directness of boycotting attacks, the causes leading to the institution of the boycott, the vigor with which it is pushed at the very outset, the care used in its inauguration, and the attitude of the law are all factors.

Thus far we have considered primarily the social and economic aspects of the boycott, and have seen that during the last generation it has played a no mean rôle in the labor movement, frequently proving most effective in obtaining more wholesome labor conditions. Let us now examine the legal status of this trade union activity.

PART II

LEGAL ASPECTS OF THE BOYCOTT

CHAPTER XI

SOME BOYCOTT LAWS AND DECISIONS

Having considered the extent to which boycotts have been resorted to in the United States, as well as their effectiveness, let us investigate the attitude of the law toward their various manifestations.

Briefly it may be stated that negative boycotts, prosecuted primarily by means of the union label, are unquestionably legal. Of the positive forms, primary boycotts have met with little opposition from courts. Secondary and compound boycotts, however, are, in this country, generally condemned by judicial decision and statute law. They have been pronounced legal in some of the foreign countries, however, and have recently secured the favor of a number of courts and state legislatures, while in the national government an increasing number of representatives each year are agitating for their legalization.

Legality of Negative Boycotts

The legality of the union label is no longer questioned. In 1891 Justice Williams of the Supreme Court of Pennsylvania, to be sure, declared that, as the unions did not own the product, they could not place a label on goods made by their members. The Minnesota Courts in a cigar maker's case also held[1] that the unions had no redress in cases

[1] Mitchell, *Organized Labor*, p. 296.

of counterfeiting, as they had no property right in the results of their labor. These decisions were reaffirmed in other courts. The complete right to use and protect the label is, however, now universally recognized. In fact, according to Dr. Ernest R. Spedden, "in 1908, laws for the registration and protection of trade union labels were in force in forty-one states and territories." [1] These laws provide for the registration of labels with one of the state officers on the payment of a small fee, and also make the counterfeiting of the labels a misdemeanor.

The Interstate Commerce Law and the Sherman Anti-Trust Law

While negative boycotting has been left free from legal interruption, the positive boycott has generally been declared illegal under both federal and state statutes. The two prominent statutes which have been interpreted as applying to boycotts are the Interstate Commerce and the Sherman Anti-Trust Laws.

The first of these, passed February 2, 1887, and amended frequently since then, made it a misdemeanor (Sec. 10) for any person employed to interfere with interstate transportation. This act came to be applied more and more to railroad employees. The power bestowed upon the government over the railroads by this act gave countenance to the theory that the court of equity could step in at any time necessity required, and prevent, by the injunction process, any interference with the property right of the government in the transportation system.

The second act, the Sherman Anti-Trust Law, has recently been applied with telling effect against this form of trade union activity. This law was passed July 2, 1890. Under it (Sec. 1) "every contract,

[1] Spedden, *The Trade Union Label*, p. 97.

combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states or with foreign nations" is declared illegal, and the one inflicting injury on another through a violation of this act is made (Sec. 7) to pay threefold damages. The power of injunction is thereby also greatly extended to judges of the circuit courts.

That this law was framed primarily against industrial combinations, and that its authors did not mean to include labor unions within its scope was the belief of organized labor at the time of its passage. Samuel Gompers, president of the A. F. of L., declares:

"We know the Sherman Law was intended by Congress to punish illegal trusts and not labor unions, for we had various conferences with the members of Congress while the Sherman act was pending, and remember clearly that such a determination was stated again and again."[1]

He again contends that an amendment to the act, which specifically excluded labor unions and agriculturists from its provisions, was approved at different times by large majorities of both the senate and the house, but owing to the senate committee's neglect to register the wish of these bodies, the amendment was not included in the original bill.

President Gompers avers that on March 25, 1890,[2] Sherman offered a proviso at the end of the first section of the bill reported by the committee on finance, exempting labor unions, stating, as he did so:

"I take this provision from the amendment offered by the Senator from Mississippi. I do not think it necessary, but at the same time, to avoid any confusion, I submit it to come in at the end of the first section: Provided that this act shall not be construed to any arrangements, agreements or combinations between the

[1] *American Federationist,* March, 1910, p. 202.
[2] *Ibid.,* 1908, p. 187.

laborers made with a view of lessening the number of hours of labor or the increase of their wages. Nor any arrangements, agreements or combinations among persons engaged in horticulture or agriculture made with the view of enhancing the price of their own agricultural or horticultural products."

This proposed amendment, Mr. Gompers declared, was discussed in a committee of the whole house by Senators Plumb, Sherman, Ingalls, Teller, Yurpee, and Blair, and agreed to by them.

The discussion ended that day. The next day, March 26, 1890, Senator Stewart of Nevada, said:

"The original bill has been very much improved, and one of the great objections has been removed from it by the amendments offered by Senator Sherman, which relieves the class of persons who would have been first prosecuted under the original bill without the amendment. I am very much gratified that the Senator offered the amendment, and that the Senate adopted it. The bill ought now in some respects to be satisfactory to every person who is opposed to the oppression of labor, and desires to see it properly rewarded."

The following day, Senator Sherman, when the amendment was reached, mistaking this amendment for another one, called the attention of the senate to it. Discussion ensued, in which opposition on the part of one senator was evinced, and when the bill was next reported by the judiciary committee to which it was referred, the amendment did not appear. Mr. Gompers said that he and others were doubtful as to whether they should allow the bill to pass without opposition, but, on being assured that it would not be used as a boomerang against labor, did nothing more concerning it.

Those who believe that Congress intended to bring

organized labor within the inclusion of the act make much of the fact that the Judiciary Committee of the Senate, in their reported bill, omitted any mention of labor unions. However, no conclusion can logically be adduced from this fact, inasmuch as the entire act which originally included any agreement to increase prices, was revised by the committee and greatly narrowed in its scope. Is it unreasonable to suppose, contends labor, that, after thus narrowing the scope of the act, the Committee were of the opinion that it would not be applied to any except organizations of capital, and for this reason omitted the exemption clause?

Some time later, Mr. Gompers averred, a provision similar to the proposed amendment was passed in the House of Representatives by an overwhelming vote, but as the session closed shortly afterwards it did not become a law. The separate approval of this amendment by both houses, and the assurance by the senators and congressmen of the harmless nature of the bill, as far as labor was concerned, demonstrated, according to Mr. Gompers, that the legislators did not intend to include labor unions within the scope of the law.

The declaration some ten years later on the floor of Congress of Senator Hoar, who claimed to be the real father of the bill, that he had no intention of bringing the law to bear against labor unions, is also cited as a proof of labor's contention. Other publicists take a similar position. Mr. F. J. Stimson declares that "it is probable that Congress, when it passed this statute, also had in mind only such combinations among employers and purchasers." [1] However, he believed that, if an exemption clause had been placed therein, the act might not have been held constitutional.

Two other federal statutes relating to conspiracies against the United States (Sec. 5440 of Rev. St., as

[1] Stimson, *Handbook to the Labor Law of the United States*, p. 337.

amended, 1879), and against citizens of the country (Sec. 5508, Rev. St.), have also been applied to boycott cases.

State Legislation and the Boycott

While only five states, at present writing, prohibit the boycott by name, over two-thirds (33) of the states make illegal one or more forms, under statutes relating to "Conspiracy," "Coercion," "Intimidation," "Interference with Employment," and "Enticing Employees." Two legislatures have rendered boycotts non-actionable, as far as criminal prosecution is concerned, while eight have apparently no statutes which can be construed as preventing boycotting.

The five states of the union where boycotts are definitely prohibited by name are Alabama, Colorado, Illinois, Indiana and Texas. In Indiana, Colorado and Alabama boycotting is prohibited even though it is indulged in by but one person. In Indiana any arrangement to prevent a sale is considered illegal. Alabama and Colorado forbid the printing or circulating of any notice of boycott, while Alabama also prohibits a mere declaration that a boycott exists. The last named state also makes illegal the intimidation of any person in his occupation, and likewise a conspiracy of two or more to interfere with one in his business. Colorado adds a section preventing picketing for the purpose of inducing one not to work for or trade with another.

Two states, Texas and Illinois, forbid boycotting only when it involves a combination. The former state does not allow a combination for the purpose of refusing to purchase goods, while the latter condemns one whose object it is to issue or distribute circulars in furtherance of a boycott. Under other clauses, Texas prohibits a group from assembling for the pur-

pose of interfering with the employment of another, while a combination to intimidate or interfere with business by unlawful means is forbidden by the Illinois law.

On the other hand, two states, Maryland and California, have made it possible to boycott without fear of criminal proceedings, by declaring that a deed which is innocent if done by one shall not be indictable if the result of the agreement of two or more. California adds that such an act shall not be prohibited by an injunction, although it specifically legislates against the use of force, violence or threats.

Nine of the states have passed laws against interference with the property or business of another and against intimidation of another's employees by force, threats or violence. These are: Connecticut, Minnesota, New York, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota and Wisconsin. In Minnesota a conspiracy of two or more must be proved. Of the foregoing, New York, North Dakota and Wisconsin also have laws against "conspiracies" to injure business maliciously or by force, while certain injuries are also forbidden under other sections. "Intimidation of Employees," "Interference with Employment," "Intimidation of Employers and Employees," "Coercion," are among the headings of the laws which aim to prevent various kinds of boycotts in these states.

Four states—Iowa, Kansas, Kentucky and Nevada —have provisions only against the injury of business by certain specified means. In three of the states, Iowa, Kansas and Nevada, a combination is essential to their illegality. The "illegal" conspiracy is condemned in Nevada, and the "malicious" conspiracy, in Iowa. Kansas, furthermore, has a statute against obstructing business by intimidation. Kentucky's prohibitive law is under the general title of "Coercion."

In eleven states it is primarily the intimidation of

employees, the labor boycott, which the legislature has declared illegal. These states are: Florida, Georgia, Maine, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, Utah, Vermont and Washington. In three of the foregoing states—Florida, Mississippi and Washington—there must be a conspiracy of two or more to render the act illegal. These acts are entitled "Conspiracy against Workingmen." Washington also has a separate statute against the "Coercion of Workmen" by depriving them of tools. In New Hampshire "to interfere in any way with the lawful business of another" is illegal. All of the other states under this division make threats, force or violence a necessary element in the crime.

Except the provisions other than those against the enticing of a servant to break his contract, nothing that relates directly or indirectly to boycotting may be found in four states—Arkansas, North Carolina, South Carolina and Tennessee. Delaware, Idaho, Louisiana, New Jersey and West Virginia have statutes forbidding the interference with or the intimidation of certain classes of workmen. Acts in Delaware and New Jersey relate to railroad employees; in Idaho and West Virginia, to miners, and in Louisiana to seamen. It is, however, doubtful whether labor disputes were contemplated in the Idaho act. New Jersey also has a general statute of doubtful application to any forms of boycotts. In addition to other laws, Kentucky prohibits particularly interference with the transportation workers; Maine, with the employees of the public utility corporations, such as the gas and railroad companies, and Washington, with coal miners.

Until November, 1911, no laws on the subject had been passed by the legislatures of Arizona, Montana, Nebraska, New Mexico, Ohio, Pennsylvania, Virginia and Wyoming. The Pennsylvania act legalizing strikes, however, specifically provided that the prose-

cution of those interfering with a workman in his employment should not be prevented thereby.

Primary Boycotts and the Courts

Having observed the condemnatory character of the federal and state statutes, let us consider the manner in which these statutes, as well as the slowly evolving system of common law, have been applied by the courts to the use of this labor weapon.

The primary boycott, that is the agreement of one or more to refrain from dealing with another without inducing third parties to stop their patronage, has generally received the sanction of the courts. Mr. Lindley D. Clark, of the U. S. Bureau of Labor, thus concludes:

"The mere withholding of patronage or refusal to trade is not unlawful, and the announcement or publication of such a purpose is within the rights of the persons agreeing together even though it results in the injury of the person against whom the acts are directed." [1]

Mr. Clark cites numerous instances in support of his contention.

As far back as 1842, this right was upheld by a Massachusetts' Court.[2] In 1870, in another oft quoted Massachusetts' case, it was held that it was "no crime for any number of persons, without any unlawful object in view, to associate themselves together, and agree that they will *not work for or deal with certain* men or classes of men." [3]

Judges Scott and Farmer, in an Illinois case, take a similar position:

[1] Clark, *Law of the Employment of Labor,* pp. 286, 287.
[2] Commonwealth v. Hunt, Mass., 1842.
[3] Carew v. Rutherford, Mass., 1870, 106 Mass., 1, 14.

"The law is that an individual may refrain from trading or dealing with any particular person, and that *two or more individuals may agree among themselves that they will not trade or deal with a certain person and may give notice to others that they have made such an agreement.*" [1]

Judge Gould of the Supreme Court of the District of Columbia, a federal court, in the famous Buck's Stove and Range case, also admitted the boycott's legality. He declared that

"Plaintiffs or defendants have a right, either individually or collectively, to sell their labor to whom they please, on such terms as they please, and to decline to buy plaintiff's stoves; they have also a right to decline to traffic with dealers who handle plaintiff's stoves."[2]

A Minnesota Court decides in the same tenor:

"It is perfectly lawful for any man, unless under contract obligations, or unless his employment charges him with some public duty, to refuse to work for or deal with any man or class of men as he sees fit. . . . What one man may lawfully do singly, two or more may agree to do jointly."[3]

Further cases in Indiana,[4] Massachusetts,[5] New Jersey,[6] New York,[7] Oregon,[8] Pennsylvania,[9] Rhode Island,[10] and other states may be cited to the same

[1] Hey v. Wilson (Ill., 1908), 83 N. E. 928, 931. See also Ulery v. Chicago Stock Exchange (Ill., 1894).
[2] Buck's Stove & Range Co. v. A. F. of L., 35 Wash. Law Rep. 797.
[3] Bohn v. Hollis, Minn., 1893, 55 N. W. 1119, 1121.
[4] Karges Furniture Co. v. Amalgamated W. L. U., Ind., 1905, Jackson v. Stanfield, 1895.
[5] Bowen v. Matheson, Mass., 1867.
[6] Barr v. Essex, N. J., 1894.
[7] Nat. Prot. Ass'n. v. Cummings, N. Y., 1902.
[8] Longshore Printing Co. v. Howell, Ore., 1894.
[9] Cote v. Murphy, Pa., 1894.
[10] Macauley v. Tierney, R. I., 1895.

effect. Chief Justice Shepard and Justice Van Orsdel of the Court of Appeals, District of Columbia, have taken the same stand in the Buck's Stove case, the latter even declaring that, in his opinion, the secondary boycott is legal.

We see, therefore, that the negative and primary boycotts are generally considered legal. In the majority of states, laws have been passed which, directly or indirectly, prohibit the employment of the secondary or compound boycott. In the federal government, the Interstate Commerce Law and the Sherman Anti-Trust Law are the chief statutes thus far applied to the suppression of this form of labor activity.

Let us next consider the attitude of the common law toward the use of the boycott.

CHAPTER XII

JUDICIAL REASONS FOR ILLEGALITY OF BOYCOTTS

While the primary boycott has secured the sanction of most courts, secondary and compound boycotts have been vigorously condemned by the majority. The legal reasoning is often not well defined, and, in many instances, is obscured by legal verbiage which, to the layman, often seems unnecessary and confusing.

Generally boycotting has been considered an outlawed weapon on the ground that it constitutes a common law conspiracy. A conspiracy has been defined as a combination of two or more organized to accomplish an illegal end, or a legal end by illegal means.

Some courts have decided that the boycott is reprehensible because the end aimed at is an illegal one; others, because the means employed are illegal. The former position has generally been taken toward the secondary boycott; the latter, toward the compound boycott. The judges holding that the object of the boycott is illegal, declare that it proposes to do one of the following things, each of which is illegal:

To injure another in his trade, business or property.

To restrain or block the avenues of trade or commerce.

To induce another to break his contract.

Others admit that the ultimate object of the boycott, that of improving the condition of labor, might be a legal one, but declare that its immediate object is that

of injury, and that the law can take cognizance only of this immediate object. Still other judges in this group pronounce the boycott illegal, not merely on the ground of injury, but because such injury is accompanied by malice or is without justifiable cause.

The second general class of judges emphasizes the illegal means employed—threats, coercion, intimidation, violence, extortion, misrepresentation—and proclaims the boycott's illegality because of the employment of one or more of these means. The question of whether a suppression of boycotts interferes with freedom of speech and of the press has brought forward special arguments. Let us analyze more closely the reasoning of the court.

The Law of Combination

Ignoring the charge that boycotting constitutes a nuisance, we will find that the early courts were prone to argue that all combinations formed to injure the business or property of another, to obstruct or interfere with another in the conduct of his lawful trade or employment, to induce another to break his contracts, or to block the avenues of trade and commerce, had *an unlawful end in view,* and should, therefore, be condemned as conspiracies. The judges admitted that each man individually had a right to refuse to deal with another, but contended that *an agreement with others* so to refuse introduced an illegal element. In justifying this contention they argued that a combination of two or more greatly increased the power for evil and often rendered the members of the combination subject to the arbitrary and malicious action of the majority thereof. Judge Harlan thus states the distinction:

"It is one thing for a single individual or for several individuals, each acting on his own responsibility and

not in coöperation with others, to form the purpose of inflicting actual injury upon the property or rights of others. It is quite a different thing in the eye of the law for many persons to combine or conspire together with the intent not simply of asserting their rights or of accomplishing lawful ends by peaceable methods, but of employing their united energies to injure others or the public. An intent on the part of a single person to injure the rights of others or of the public is not in itself a wrong of which the law will take cognizance unless some injurious act be done in execution of the lawful intent. But *a combination of two or more persons* with such intent, and under circumstances that *give them, when so combined, a power to do an injury they would not possess as individuals* acting singly has always been recognized as in itself wrongful and illegal."[1]

Ex-President Taft, then Judge Taft, argued in a like vein:

"*A combination may make oppressive or dangerous* that which, if proceeding from a single person, would be otherwise, and the very fact of the combination *may show that the object is simply to do harm,* and not to exercise one's own justifiable rights."[2]

Judge Carpenter, the first judge of a court of last resort declaring a boycott in America illegal, contended that separately men were powerless, but combined, formidable.

The supposed surrender of the discretion of each individual to the direction of the combination is thought by Vice-Chancellor Green to be the chief evil of combination. He declared:

"The whole strength of which (the combination) lies in the fact that each individual has surrendered

[1] Arthur v. Oakes, U. S. Circ. Ct. of Ap., 1894, 63 Fed. 310, 321, 322. Italics are the author's.

[2] Moores v. Bricklayers, Ohio, 1890. Italics are the author's.

his own discretion and will to the direction of the accredited representatives of all the organizations. He no longer uses his own judgment, but by entering the combination agrees to be bound by its decree. A member asserts his independence of judgment and action at risk of all association with fellow members. They will not eat, drink, live or work in his company. Branded by the peculiarly offensive epithets adopted, he must exist ostracised, socially and industrially, so far as his former associations are concerned."[1]

Malicious and arbitrary actions are more likely to be found in combinations, contends Judge Robb in the Buck's stove case:

"The loss of trade of a single individual ordinarily affects a given dealer very little. Being discriminating, the purchasing public, if left free to exercise its own judgment, will not act arbitrarily or maliciously, but will be controlled by natural considerations. But a powerful combination to boycott immediately deflects the natural course of trade, and ruin follows in its wake because of the unlawful design of the conspirators to coerce or destroy the object of their displeasure. In other words, it is the conspiracy, and not the natural causes, which is responsible for the result. From time immemorial the law has frowned upon combinations formed for the purpose of doing harm."[2]

"A grain of gunpowder is harmless," observed Lord Brampton, in Quinn v. Leathem (1901), an English case, "but a pound may be highly destructive."

In attempting in a somewhat scientific manner to describe the difference between the acts of the combination and of the individual, Mr. Justice Gibson, nearly a century ago, said:

"There is between the different parts of the body politic reciprocity of action on each other, which, like the action of antagonistic muscles in the natural body,

[1] Barr v. Essex, Conn., 1894, 30 Atl. 881, 889.
[2] A. F. of L. v. Buck's Stove & Range Co., Ct. of Ap., D. of C., 1909, 33 App. Cases, D. of C. 83, 107.

not only prescribes to each other its appropriate state and condition, but regulates the motion of the whole. The efforts of an individual to disturb this equilibrium can never be perceptible, nor carry the operation of his interest on that or any other individual, beyond the limits of fair competition. But the increase of power of combination means, being in geometrical proportion to the numbers concerned, an association may be able to give an impulse not only oppressive to individuals but mischievous to the public at large; and it is the employment of an instrument so powerful and dangerous that gives criminality to an act which would be perfectly innocent, at least, in a legal view, when done by an individual."[1]

The Boycott and Illegal Ends

Injury to the property or business of another, interference with the lawful conduct of business and the free employment of one's capital and labor power, and undue restraint of trade are among the so-called illegal ends of a combination which have warranted the condemning of boycotts. These ends are condemned by some judges only when malice or coercive measures accompany them.

"If it (the boycott) means, as some high in the confidence of the trade unions assert, absolute ruin to the business of the person boycotted unless he yields," states Judge Carpenter in the first of the boycott cases, "then it is criminal."[2]

"All the authorities hold that a combination to injure or destroy the trade or business of another by threatening to produce injury to the trade, business or occupation of those who have business relations with him is an unlawful conspiracy," is the principle laid down in a recent Missouri case.[3]

[1] Commonwealth v. Carlisle, Pa., 1821.
[2] State v. Glidden, Conn., 1887, 8 Atl. 890, 897.
[3] Lohse Patent Door Co. v. Fuella, Mo., 1909, 114 S. W. 997, 1003.

Whether or not the business or the good will of one can reasonably be called a property right, and consequently whether the concerted agreement to discontinue such business relations and to induce others so to do may be considered an injury to such right, has been the bone of contention in a number of cases. Judge Wright in the Buck's Stove case contends that it is such a right.[1]

"A business, be it mercantile, manufacturing or other, which has, for a long time, been successfully operated and developed, possesses a greater value than a like business newly launched, although the latter be exactly equivalent in respect to stock, equipment, money and all other physical possessions; the basis of the excess in value of the one over the other is termed the 'good will'; it is the advantage which exists in established trade relations with not only habitual customers, but with the trading public generally; the advantage of an established public repute for punctuality in dealing, or superior excellence in goods or product; finally, in last analysis, a good will, when it exists, is one's return for the expenditure of time, money, energy and effort in development; it is a thing of value in the sense that it is a subject of bargain and sale; oftentimes of a value that exceeds that of all physical assets taken together; in that it may possess exchange value, it may be 'property'; when it does possess 'exchange' value, property it is; and the combination for the purpose of destroying it is for an 'unlawful act', whether you call the combination a 'labor union' or a 'trust.' "

Judge Gould also took this position and cited numerous cases to prove "that business is property within the meaning of the law."[2]

[1] Buck's Stove & Range Co. v. A. F. of L., Sup. Ct., D. of C., 1908.

[2] *Ibid.*, 1907, 70 Al. L. J. 8, 10, 11.

The law also condemns, as illegal objects, the interference with and restraining of trade or business and of the power to dispose of one's capital and labor power as one wishes. Many judges have pronounced this object illegal if carried out by individuals as well as combinations. In some courts the element of coercion, and, in others, that of malice, must be present to render the acts illegal.

"No person or combination of persons can legally, by direct or indirect means, *obstruct or interfere with another in the conduct of his lawful business,*" declares an Illinois court.[1]

Judge Robb in the Buck's Stove case[2] quotes with approval the views of Chief Justice Fuller regarding the illegality of a *combination in restraint of trade.*

"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 there is no doubt (to quote from the well-known work of Chief Justice Earle on Trade Unions) at common law every person has individually, and the public has collectively, a right to require that the course of trade should be kept free from unreasonable obstruction."

The right to employ one's talents without interference is jeopardized by the boycott, according to some decisions. Thus a Vermont Court argues:

"The principle upon which the cases, English and American, proceed is that every man has the right to employ his talents, industry and capital as he pleases, free from dictation of others, and if two or more per-

[1] Purington v. Hinchliff, Ill., 1905. Italics are the author's.
[2] A. F. of L. v. Buck's Stove & Range Co., Ct. of Ap., D. of C., 1909.

sons combine to coerce his choice in this behalf it is a criminal conspiracy." [1]

"Every person," says the Michigan Court (Beck v. Railway), "has a right under the law as between himself and his fellow subjects to dispose of his own labor or his own capital according to his own will. It follows that every other person is subject to the correlative duty arising therefrom, and prohibited from any obstruction to the fullest exercise of this right which can be made compatible with the exercise of similar rights by others."

Of the same tenor are the decisions of the courts in Connecticut (State v. Glidden), Illinois (London Guarantee Co. v. Horn), Indiana (Jackson v. Stanfield), New Jersey (State v. Donaldson), Maryland (Lucke v. Clothing Cutters), Massachusetts (Carew v. Rutherford), and others.

Inasmuch as the strike had been declared legal, even though it resulted in injury to the business or property of another, and interfered with the free course of commerce, the many judges soon found that it would be necessary to modify their declarations of illegality in respect to combinations to injure the property of another. They, therefore, sought to distinguish between *combinations whose immediate purpose was to injure the business of another, placing boycotts in this category, and those whose immediate object was that of bettering the conditions of labor,* although the incidental result of the latter might be injury. Strikes were placed in this class. Boycotts and other combinations whose immediate intent was said to be that of injury were condemned in spite of the fact that their ultimate purpose or motive was to benefit labor, while strikes were pronounced legal.

Judge Gould of the Supreme Court, District of Co-

[1] State v. Stewart, Vt., 1887, 9 Atl. 559, 568.

lumbia, thus refers to this distinction in the Buck's Stove case (1907):

"Defendants claim the motive of wishing to benefit their condition affords such legal justification; but this motive is too remote compared with their immediate motive, which is to show that punishment and disaster necessarily follow a defiance of their claims. As quoted with approval by the Supreme Court of Pennsylvania, in Purvis v. Brotherhood: 'True, the defendants contend and testify that their purpose was to benefit their own members. This, doubtless, in a sense, is true, but the benefits sought were the remote purpose, which was to be secured through the more immediate purpose of coercing the plaintiffs into complying with their demands, or otherwise injuring them in their business, and *the court cannot, in this proceeding, look beyond the immediate purpose to the remote results.*' Such is the doctrine laid down in Eddy on Combinations, and quoted with approval in the case of Erdman v. Mitchell, 56 Atl., 327, as follows: 'The benefit of the members of the combination is so remote, as compared to the direct and immediate injury inflicted upon the non-union workmen (in this case non-union mill owners) that the law does not look beyond the immediate loss and damage to the innocent parties to the remote benefit that might result to the union."[1]

An Illinois Court follows the same line of reasoning:

"The law allows laborers to combine for the purpose of obtaining lawful benefits to themselves, but it gives no sanction to combinations either of employers or employed which have for their immediate purpose the injury of another." [2]

The same argument was suggested in State v. Glidden and in numerous other cases. In making this dis-

[1] Buck's Stove, etc., v. A. F. of L., 1907.
[2] Barnes v. Typographical Union, Ill., 1908, 83 N. E. 940, 945.

tinction between the immediate and the ultimate object, some have named the immediate object the "intent" and the remote, the "motive." Mr. Jeremiah Smith thus declares:

"Intent is used to denote the immediate object aimed at by the doer of the act, the immediate result desired by the actor. Motive is used, not to signify the object or the result immediately aimed at, but the cause for entertaining that desire, the feeling that makes the actor desire to attain that result. . . . The defendant frequently intends immediate harm to the plaintiff, but generally as a means of attaining the end of benefiting himself. In 99 labor cases out of 100, the defendant's motive (or, in other words, his ultimate intent) is to promote his own advantage. A man may kill a king in order to benefit people. The intention is to kill the king, the motive, to benefit. A defendant denies intent to harm plaintiff when he really means only to deny a bad motive for the intent. Defendant means that he did not do harm as an end in itself, but merely as a means to some further end legitimately desired."[1]

The Boycott and the Doctrine of Malice

Later many of the courts contended that no combination employing lawful means could be considered illegal, unless it contained the element of malice, *or unless it was formed without justifiable cause.* After an examination of the facts of the case, the judges generally concluded that malice could be found in connection with the use of the boycott, or that there was no legal justification for its employment.

The essential elements of malice in most instances are not clearly set forth. In fact the judges are in hopeless disagreement as to what constitutes malice. Some argue that there must be *a sole intent to injure;*

[1] *Harvard Law Review,* v. 20, pp. 451, 453.

others, that there *must be no pecuniary advantage to the boycotters.* Some are of the opinion that malice is shown *if the benefit derived is at the expense of the boycotted,* while *intent to wrong without justifiable cause* is the essential factor with others. Still another group argue *that no legal malice is possible without an unlawful act.* Following are some of the explanations:

"If the persuasion be used for the indirect purpose of injuring the plaintiff or of benefiting the defendant at the expense of the plaintiff, it is a malicious act."[1] (Bowen v. Hall, an English case), quoted with approval by Barnes v. Typog. Union (Ill., 1908).

"Practically it is better to remember the old definition that malice in its legal sense *means an unlawful act, done intentionally without just cause or excuse.*"[2]

"When we speak in this connection of an act done with a malicious motive it does not necessarily imply that the defendants were actuated in their proceedings by spite or malice against the complainant, Mr. Barr, in the sense that their motive was to injure him personally, but *that they desired to injure him in his business in order to force him not to do what he had a perfect right to do.*"[3]

"It is said that in each case (where malice is an element) the *basis of the action is the doing of an act which the law already regards as illegal,* but that the doer of the act is protected from its usual consequence in the event that he was actuated by an honest desire to perform a public or private duty." Allen v. Flood (English, 1898).

Boycotts, time without number, have been condemned on the ground that in their operation that vague, indefinable something known as malice was a

[1] 83 N. E. 940, 944.

[2] Foster v. Retail Clerks' Association, N. Y., 78 N. Y. Supp. 865, 866, 1902, and Joyce v. Gt. No. R'way, Minn., 1907. Italics are the author's.

[3] Barr v. Essex, N. J., 1894, 30 Atl. 881, 887. Italics are the author's.

prominent feature. Definitions that really define, however, are, for the most part, absent.

Most recently, judges in a number of states, concluding that the word "malice" introduced too uncertain a factor on which to base their decision, approved "justifiable cause" as the true criterion. What constitutes justifiable cause? This expression is used by some judges as indicative of the lack of maliciousness. Others, however, take a broader view. Generally it resolves itself into the question as to whether the possible gain to the promoter will reasonably compensate for the possible injury inflicted..

"In many cases," asserts Judge Hammond, "the lawfulness of an act which causes damage to another may depend upon whether an act is for justifiable cause; and this justification may be found sometimes *in the circumstances under which it is done,* irrespective of the motive, *sometimes in the motive alone,* and *sometimes in the circumstances and motive combined.*"[1]

Judge Hammond decided in this case, which involved the right to threaten a strike should certain workers refuse to join the union, that justifiable cause did not exist, and that the necessity that the plaintiff join the union was not so great, nor was "the relation to the rights of the defendants as compared with the rights of the plaintiffs to be free from molestation such as to bring the acts of the defendants under the shelter of the principle of trade competition." Mr. E. W. Huffcut clearly explains the position of compensating advantage held by some:

"There is presumptively a privilege to employ any lawful means in social or industrial relations . . . and the general and common privilege to employ these can be overcome only by showing that they are employed for an *unjustifiable end,* that is, an *end which inten-*

[1] Plant v. Woods, Mass., 1900, 57 N. E. 1011, 1014.

tionally inflicts a damage upon a particular individual without a corresponding and compensating advantage to the one who inflicts it, or to those whom he represents. . . . The question of justification resolves itself into this—*do the desire and expectancy of accomplishing this particular end warrant the interference with the contracts or business of one who stands in the way of the accomplishment?* If that end be only the gratification of feeling, whether of ill will or good will, it is not of such substantial character which justifies inflicting pecuniary loss upon another. To gratify a feeling of malice toward the plaintiff will hardly be thought a justification for inducing third parties not to deal with him. To gratify a feeling of sympathy or good will toward X will hardly justify inducing third persons not to deal with the plaintiff unless there be some special relation between X and the defendant which warrants the defendant in acting for X. Even the remote advantage the defendant might derive as one of a large class, from the success of X in the competitive struggle with the plaintiff, would not be sufficient."[1]

The elements which are essential to justify injury are clearly stated by Mr. Jeremiah Smith:[2]

1. There must be a conflict of interest between plaintiff and defendant as to the subject matter in regard to which the damage is done, or at least *there must be a legitimate interest of defendant* to be directly served as to that subject matter.

2. The damaging *act must be reasonably calculated to advance substantially the interests of the defendants.*

3. *The damage resulting* to the plaintiff or to the general public (including the employer) *must not be excessive in proportion to the benefit to the defendant.* In other words, there must be a reasonable proportion

[1] *Harvard Law Review,* v. 18, p. 439.
[2] *Ibid.,* v. 20, p. 361.

between the benefit to the defendant and the damage to the plaintiff or to the public.

4. Even where the propositions one, two and three are made out, the justification must be confined to those cases where defendant uses only his own conduct as a lever, and therewith operates directly upon the possible employer or customer of the plaintiff. Defendant can never justify his right to work or not to work (or any other right) as a temporal inducement to influence an outsider or fourth person, to exert pressure upon the possible employer or customer of the plaintiff.

A number of the decisions in the Massachusetts cases are based on this doctrine.

"The crucial question is whether there is justifiable cause for the act," runs the decision in Martell v. White (Massachusetts, 1904). "If the injury be inflicted without justifiable cause or excuse, then it is actionable."

Justice Holmes contended in Vegelahn v. Guntner (Mass., 1896) that, "unless defendant prove some ground of excuse or justification," a combination to injure the business of another would be illegal. That such justification is a sufficient legal excuse is the belief expressed in the Parkinson case (California, 1908).

While the consideration of justifiable cause is a great advance over the early reasonings in boycott cases, some jurists have advanced still further, and have expressly based their decisions on what they consider to be the *social advantage.* Justice Holmes, for instance, contends that "the true grounds of decisions *are considerations of policy and of social advantage,* and it is vain to suppose that solutions can be attained merely by logic and the general propositions of law which nobody disputes." The part which public

policy should play in the determination of legal questions is stated by Judge Andrews:

"It is a truism that there are many acts directly injuring the property of another, yet which do not give rise to a cause of action. The phrase, *damnum absque injuria,* was invented to meet such cases. A may make such erections upon his land as he chooses, notwithstanding the consequent injury to his neighbor. B may by fierce and continuous competition ruin a business rival. C may advise his friend to patronize one physician rather than another. Of course all these matters have their limits. If A goes too far he may create a nuisance. If B's competition is too strenuous, he may be guilty of fraud. If C says too much, he may become liable for slander. In the last analysis this freedom to commit injury and the bounds imposed upon it *are regulated by what has been thought to be public policy.* The injury itself is never good, but to suffer it may entail less injury than to attempt to check it by legal means."[1]

Boycotts and Illegal Means

Still other courts prefer to look for the element of illegality in the *means employed by the boycotters.* If, to effect their purpose of injuring others, the combination used coercion, intimidation, force, violence, misrepresentation or fraud, or induced others to break their contracts, it is looked upon as illegal. Many a judicial controversy has been fought over the question as to what really constitutes coercive measures, threats, and other illegal means. Some judges have contended that any threat, direct or indirect, of loss of business, made against a third party, in order to induce such party to cease business relations with another, is coercive and intimidating in its nature and

[1] Foster v. Retail Clerks' etc., N. Y., 1902, 78 N. Y. Supp. 860, 864. Italics are the author's.

therefore illegal, if it forces a man against his will to grant the conditions demanded. Others have averred that the same reasoning which is applied to ordinary business dealings should also obtain in the discussion of labor combinations; and that, in the competitive struggle of the business world, parties are daily compelled to grant financial concessions through threats of which it is impossible for the law to take cognizance.

To declare a boycott illegal because a threat is made to boycott another if he continues to trade with the boycotted firm is, furthermore, vicious reasoning in a circle. Some judges, therefore, argue that unless the means used are such as will be considered illegal if used by one individual, such as the application of physical violence, the use of fraud, the inducing of another to break his contract, the combination should be permitted.

If we analyze the attitude of the judges as to what constitutes coercive measures, we will find that, generally speaking, proof of physical violence is not necessary.

"The clear weight of authority undoubtedly is that a man may be intimidated into doing or refraining from doing, by fear of loss of business, property or reputation, as well as by dread of loss of life, or injury to health or limb, and that *the extent of this fear need not be abject, but only such as to overcome his judgment, or induce him to do or not to do that which otherwise he would have done or left undone,*" declared Vice Chancellor Green.[1]

The Massachusetts,[2] Pennsylvania, and other courts take a similar view. Actual threats are not necessary,[3] in the view of some. Judge Andrews declares on this point:

[1] Barr v. Essex, N. J., 1891, 30 Atl. 881, 889.
[2] Plant v. Woods, Mass., 1900.
[3] Purvis v. United Brotherhood, Pa., 1906.

"It should be remembered . . . that to constitute intimidation it is not necessary that there should be any direct threat, still less any actual act of violence. *It is enough that the mere attitude assumed by the defendants is intimidating.* And this may be shown by all the circumstances in the case, by the methods of the defendants, their circulars, their numbers, their devices."[1]

That the imposition of fines on members of the labor organizations who refuse to boycott third parties constitutes coercion is held by some of the courts in Vermont,[2] Indiana,[3] and elsewhere.

Not only the actual coercive or intimidating measures, but threats to adopt such measures, are considered as illegal means by the majority of the judges, and "threats" also cover a multitude of deeds. The Cyclopædia of Law and Procedure concludes, citing Boutwell case:

"It is clear that every one has a right to withdraw patronage when he pleases, but equally clear that *he has no right to employ threats* or intimidation to divert the patronage of another."[4]

A Michigan Court thus summarizes:

"The boycott condemned by law is not alone that accompanied by violence and threats of violence, *but that where the means used are threatening in their nature,* and intended and naturally tend to overcome by fear of loss of property the will of others, and compel them to do things they would not otherwise do."[5]

The word "to boycott" itself is a threat, according to some.

[1] Foster v. Retail Clerks', etc., N. Y., 1902, 78 N. Y. Supp. 860, 863. Italics are the author's.
[2] Boutwell v. Marr, Vt., 1899.
[3] Jackson v. Stanfield, Ind., 1893.
[4] Italics are the author's.
[5] Beck v. Teamsters' Union, Mich., 1898, 77 N. W. 13, 24. Italics are the author's.

"The use of the word 'boycott' is in itself a threat," wrote the judge in an early Pennsylvania case (Brace v. Evans, Pa., 1888). "In popular acceptation it is an organized effort to exclude a person from business relations with others by persuasion, intimidation and other acts which tend to violence, and thereby coerce him, through fear of resulting injury, to submit to dictation in the management of his affairs."[1]

Threats will often be read into language which in form is mere persuasion. The kind of threat it is necessary to make in order to render the act illegal is not stated in many of the decisions. Some contend that the threat must be to do an unlawful act. A Tennessee Court concludes:

"In law a threat is a declaration of an intention or determination to injure another *by the commission of some unlawful act.* . . . If the act intended to be done is not unlawful, then the declaration is not a threat in law, and the effect thereof is not intimidation in a legal sense."[2]

Many of the courts, indeed, have shown great skill in reading into mere requests this illegal deed of threatening. In Plant v. Woods, for instance (Mass., 1900), the workers on a strike visited the employers of other union men to inquire whether the former would use their good services in having the men reinstated. During the conversation, the workers were asked whether it would mean trouble, if the request was not granted, and the men replied that it might. This was a threat, in the eyes of the court.

Violence, of course, is considered an illegal means.

"The labor and skill of the workmen; the equipment of the farmer; the investment of commerce are all, in equal sense, commerce. If men, by overt acts of violence, destroy either, they are guilty of crime."[3]

[1] 5 Pa. Co. Ct. 163, 171. Italics are the author's.
[2] Payne v. R. R., Tenn., 1884, 49 Am. Rep. 666, 674.
[3] State v. Stewart, Vt., 1887.

Freedom of Speech and Press

Boycotters have often contended that to prevent them from publishing notices of the boycotts, and otherwise announcing them in print, is an infringement of the freedom of the press, granted by the Constitution. The courts, however, have for the most part held that when such publication is one of the means employed in carrying out an illegal purpose—that of boycotting—the free-speech argument is without merit. It is also contended that no right is absolute, and that, when its unbridled exercise infringes on the equal rights of others, and deprives them of such rights as that of acquiring, possessing and protecting property, the law can and should interfere.

In granting the injunction against Mr. Gompers, Judge Gould examined the contention of the defendants that, if plaintiff had any redress for such publication, it was for action for the libel, and that equity will not enjoin a libel. He added:

"All this would have merit if the act of the defendants in making such publication stood alone, unconnected with other conduct both preceding and following it. But it is not an isolated fact; according to the allegations of the bill and the supporting affidavits, *it is an act in a conspiracy to destroy plaintiff's business,* an act which has a definite meaning and instruction to those associated with defendants and an act which is the basis of conduct on the part of defendant's associates which unlawfully interferes with plaintiff's right of freedom to trade with those whom he pleases. The argument of counsel is fully answered by the language of Mr. Justice Holmes in the case of Aikens v. Wisconsin, 195 U. S. 194: 'No conduct has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or omissions may be made a step in a criminal plot, and, if it is a step in a

plot, neither its innocence nor the Constitution is sufficient to prevent the punishment of the plot by law.' "[1]

The same general principle, though not so stringent an application thereof, was held by Judge Robb of the Court of Appeals, in affirming a portion of the injunction.[2]

"While the right of free speech is guaranteed to all citizens by the Constitution," holds a California judge (Jordahl v. Hayda, Cal., 1905), "there is also guaranteed to them by the same Constitution the right 'of acquiring, possessing and protecting property and obtaining safety and happiness' (see Art. 1, Sec. 1); . . . and it is a maxim of jurisprudence prescribed by the statute law of this State that one must use his rights so as not to infringe upon the rights of another (Civil Code, Sec. 3514)."

"It would be strange indeed," wrote Judge Taft, "if that right (to assemble and free speech) could be used to sustain the carrying out of such an unlawful and criminal conspiracy as we have seen this to be. . . . If the obstruction to the operation of the road by the receiver was unlawful and malicious, it is not less contemptible because the instrument which he used to effect it was his tongue rather than his hand."[3]

[1] Buck's Stove & Range Co. v. A. F. of L., Sup. Ct., D. of C., 1907, 70 Al. L. J. 8, 10. Italics are the author's.

[2] A. F. of L. v. Buck's Stove & Range Co., Ct. of Ap., D. of C., 1909. Italics are the author's.

[3] Thomas v. Cinn., N. O. & T. P. Ry. Co., U. S. Circ. Ct., Ohio, 1894, 62 Fed. 803, 822.

CHAPTER XIII

JUDICIAL ARGUMENT FOR LEGALITY OF THE BOYCOTT

That the judicial reasoning just described, whereby secondary boycotts and at least a portion of the so-called compound boycotts have been pronounced illegal, is based upon an antiquated doctrine of conspiracy which even the English courts, its originators, have long since abandoned, and that it is poor law and worse logic is the claim of the insurgent wearers of the ermine, of students of law and of social science, who have voiced their protest against the outlawing of this weapon. These critics contend that the right of one person to deal or not to deal with another is incontrovertible, and that the same should be true of a combination. They claim that the best legal and economic reasoning dictates that the same doctrine should be applied to a labor combination as to an individual, and that the danger of such combination is not necessarily greater than the action of a single individual.

They assert that the ends proclaimed to be illegal, those of injury of business, etc., are for the most part employed without interference by very large numbers of combinations in the business world; that the distinction sometimes made between combinations whose immediate results and those whose ultimate results are beneficial cannot be applied in this case with any show of logic; that the doctrine of malice should be eliminated as meaningless, confusing, unreasonable; that a biased use is here made of the doctrine of justifi-

able cause; and finally that the introduction of the elements of threat, coercion and intimidation presents, in very many instances, a splendid example of "reasoning in a circle," and unjustly discriminates against the worker in his struggles. The logic by which the use of the injunction against free speech and press is justified is also declared dangerous from a broader social standpoint.

Law of Combination

Many contending for the legality of boycotts argue that one individual has the right to refuse to have dealings with another, for any reason or for no reason, and that that which it is legal for one individual to do it is also legal for two or more individuals to combine to do. Judge Holloway, in the well-known decision of Lindsay and Co. v. The Montana Federation of Labor (1908), thus declares:

"There can be found running through our legal literature many remarkable statements that an act perfectly lawful when done by one person becomes, by some sort of legerdemain, criminal when done by two or more persons acting in concert, and this upon the theory that the concerted action amounts to a conspiracy. But with this doctrine we do not agree. *If an individual is clothed with a right when acting alone, he does not lose such right merely by acting with others, each of whom is clothed with the same right.* If the act done is lawful, the combination of several persons to commit it does not render it unlawful. In other words, the mere combination of action is not an element which gives character to the act. It is the illegality of the purpose to be accomplished, or the legal means used in furtherance of the purpose, which makes the act illegal. (18 Ency. Law (2d Ed.), 82; Bohn Mfg. Co. v. Hollis). 'A conspiracy is a combination of two or more persons by some concerted action to

accomplish a purpose not in itself criminal or unlawful, by criminal or unlawful means' (Anderson's Law Dictionary, 234). . . . Chief Justice Parker, in speaking for the Court of Appeals in National Protective Association v. Cumming, said: 'Whatever one man may do alone he may do in combination with others, provided they have no unlawful object in view. Mere numbers do not ordinarily affect the quality of the act.' "[1]

A Texas decision (Delz v. Winfree, 1891) is of similar import:

"An act which if done by one alone constitutes no ground of action cannot be made the ground of such action by alleging it to have been done by and through a conspiracy of several. The true test as to whether such action will lie is whether or not the act accomplished after the conspiracy has been formed is itself actionable." [2]

"Whatever one man may do," an Indiana decision reads, "all men may do, and what all may do singly they may do in concert if the sole purpose of the combination is to advance the proper interests of the members, and it is conducted in a lawful manner."[3]

The decision of Macauley v. Tierney (Rhode Island, 1895) is of the same tenor. The opposite view, many jurists argue, is illogical.

It is stated that a combination is more dangerous than is a unit, and therefore should be regarded differently by the law under modern economic conditions. A single individual, however, may well be more powerful than any combination. Mr. Robt. L. McWilliams thus puts it:

"Some other courts have held that the mere act of combining constituted 'illegal means,' probably on the

[1] 96 Pac. 127, 130. Italics are the author's.
[2] 16 S. W. 111.
[3] Karges Furniture Co. v. Amalgamated W. U. L., Ind., 1905, 75 N. E. 877, 880.

grounds stated in the old criminal cases that the combination was the 'gist of the conspiracy.' It is certainly true that the commission of acts by a combination of persons may change their character to the extent of making them more offensive and harder to resist. But it is also true that *under modern economic conditions one person may, because of his situation, be able to inflict far more loss on his competitors or on the public than any number of persons combined for that purpose.* In neither case the legal coercion or intimidation is necessarily present. Hence there is no justification for holding that the presence of combination, *ipso facto,* changes the character of what would without the existence of the combination be unquestionably lawful acts, and makes them unlawful."[1]

Even though the acts are more effective when done in combination, Justice Jenks of the New York Appellate Division sees no reason for their changed character. He declares:

"Mere numbers do not ordinarily affect the quality of the act. . . . A's attitude may be trivial as to B, when that of a combination might enforce B's concessions, but this affords no legal reason against such a combination. It is not in the breast of the court to stamp as illegal a combination for the betterment of the interest of the members thereof or of some of them, and which, without incidental violation or intimidation, severs all business dealings with an outsider until it may secure it. If this be illegal, where can we draw the line so as to countenance associations to secure united and therefore effective action to right what seems wrong, or to correct what seems an abuse, or to mark disapproval of some policy in everyday affairs of our social life?"[2]

[1] *American Law Review,* v. 41, p. 337. Italics are the author's. Chief Justice Shepard, of Ct. of Appeals, D. of C., in Buck's Stove Case, takes a similar position.

[2] Mills v. U. S. Printing Co., N. Y., 1904, 99 App. Div. 606, 610.

In fact the necessity of such combinations is admitted by enlightened judges. Justice Holmes, now of the United States Supreme Court, succinctly argued:

"It is plain . . . that free competition means combination and that the organization of the world now going on so fast means an ever-increasing might and scope of combination. . . . One of the eternal conflicts out of which life is made up is that between the effort of every man to get the most he can for his services, and that of society, disguised under the name of capital, to get his services for the least possible return. Combination upon the one hand is potent and powerful. Combination on the other is the necessary and desirable counterpart if the battle is to be carried on in a fair and equal manner."[1]

Many are also realizing that a unit of capital may be far more powerful than a unit of labor—a million-dollar corporation, than the labor power of one man. When a law places different rules on the action of the individual and that of the combination, it puts labor at a great disadvantage in its battles with capital.

To the suggestion made by some judges that combination ought to be regarded in a different light from individual endeavor, because it leads to a restriction of individual liberty, it may be said that the laborer can only win some degree of independence through such combination, and that his dependence on others is far greater when, as an unorganized worker, he tries to obtain better conditions than when he strives for such conditions with a strong organization to support his demands. Furthermore, such a ruling interferes with his liberty to contract.

"If . . . the law forbids X, Y and Z to combine for a purpose which they each might lawfully pursue if acting without concert, then the contracting power of

[1] Vegelahn v. Guntner, Mass., 1896, 44 N. E. 1077, 1081.

X, Y and Z, or, in other words, their liberty of action, suffers a serious curtailment," observes Professor A. V. Dicey.[1]

Mr. Jeremiah Smith is of a like opinion.

"It is answered 'any one may exercise choice as to whom he may sell his goods, but he cannot enter into a contract whereby he binds himself not to sell, for in such an instance he barters away his right of choice, and destroys the very right he claims the privilege of exercising. After entering upon such an agreement he is no longer a free agent.' . . .

" 'It is an argument that would be pertinent against the organization of society into government. . . . The will of the individual must consent to yield to the will of the majority, or no organization, either of society into government, capital into combination, or labor into coalition, can ever be effected. The individual must yield in order that he may receive the greater benefit.' "[2]

To condemn boycotts on the ground that they are conspiracies is furthermore to take as a fundamental element that which is merely incidental. The boycott is not necessarily the result of a combination, and when initiated by a combination it is carried on by individuals. Mr. E. P. Cheyney thus argues:

"The propriety should be called into question of choosing the comparatively unessential element of the boycott, the combination which initiates it, as the especially criminal element. Combination initiates the coercion, but cannot consummate it. It is therefore a matter of fair question whether the boycott has been properly treated as a conspiracy, and this irrespective of the question of its criminality."[3]

[1] Dicey, *Law and P. O.*, p. 155.
[2] *Harvard Law Review*, v. 20, p. 347, quoting J. Ellison in Ford Heim Brewing Co. v. Belinder, 97 Mo. App. 64, 69.
[3] E. P. Cheyney, *Pol. Sc. Qtrly.*, v. 4, p. 276.

Finally, it is contended that those who declare that combination brings into play an illegal element not found in individual action are superimposing on our present economic structure the old doctrine of conspiracy which has done yeoman service in suppressing all combinations of labor; that England, from which the common law doctrine of conspiracy was taken bodily, has long since thrown this doctrine onto the scrap heap, as unsuited to the present day, and that this country should follow in its wake, if it is to keep abreast of the times.

"This proposition, that it is unlawful for men to do collectively what they may do, without wrong, individually, was enunciated more than a century and a half ago, when all manner of association and coöperation among men offensive to the king or not in the interest of despotic power or of the ruling classes or not approved by the judges were declared by the courts to be criminal conspiracy," affirmed Judge Caldwell.[1]

The origin of this doctrine and the caution with which it should be used are described by counsel in an early Connecticut case:

"No branch of the law has gone through so many transformations as that relating to conspiracy. In its present form it had its origin and the impulse to its growth in the Star Chamber (see *Poulterer's Case,* 9 Co. Rep. 55)—a court which legislated as well as judged, and which, as Lord Clarendon says in his history of the Great Rebellion, 'held for honorable that which pleased, and for just that which profited.' He adds that the foundations of right were never more in danger of being destroyed. At first used to bring popular leaders to the block, the law of conspiracy has in later times been invoked to suppress combinations among workmen to better their condition. Many of the most eminent judges in the country have looked

[1] Oxley Stave Co. v. Hopkins, 1897, 83 Fed. 912, 930.

upon it with disapproval, and expressed determination to restrict rather than extend it."[1]

Mr. Allen P. Hallett indicates the manner in which this doctrine was used in the past to pronounce illegal almost every form of labor activity:[2]

"It was upon this general ground (that of illegal conspiracy) that labor combinations were once adjudged to be criminal. It was held that the liberty of a man's mind and will to say how he should employ his time, his talents and industry, for whom he should work, or whom he should employ, was as much the subject of the law's protection as that of his body, and that any combination formed for the purpose of coercing this liberty of mind and freedom was criminal, because formed for the accomplishment of an unlawful purpose."

Thus in England, in numerous decisions, combinations to raise wages were pronounced illegal on the ground of conspiracy. Said Judge Grose in Rex v. Mawley (6 T. R. 636):

"In many cases an agreement to do a certain thing has been considered as a subject of an indictment for a conspiracy, though the same act, if done separately by each individual without any agreement among themselves, would not have been illegal. As the case of journeymen conspiring to raise their wages: each may insist on raising his wages if he can, but if several meet for the same purpose it is illegal, and the parties may be indicted for conspiracy."

Oftentimes the same arguments of the coercive effect of a combination, both upon the outsider and the members, were employed in the past in declaring strikes and other combinations illegal.

[1] Quoted in State v. Glidden, Conn., 1887, 55 Conn., 46, 60.
[2] Hallett, *American Encyclopedia*, v. 18, p. 82.

"What is the case now before us?" asks Recorder Levy in the Philadelphia Cordwainer's Case of 1806. . . . "A combination of workmen to raise their wages may be considered in a twofold point of view; one is to benefit themselves . . . the other is to injure those who do not join their society. The rule of law condemns both. If the rule be clear, we are bound to conform to it, even though we do not comprehend the principle upon which it is founded. . . . . Hawkins, the greatest authority on the criminal law, has laid it down that a combination to maintain one another, carrying a particular object, whether true or false, is criminal. . . . One man determines not to work under a certain price, and it may be individually the opinion of all. In such a case it would be lawful in each to refuse to do so, for, if each stands alone, either may retract from his determination when he pleases. In the turnout of last fall if each man of the body had stood alone, fettered by no promise to the rest, many of them might have changed their opinion as to the price of wages and gone to work; but it has been given to you in evidence that they were bound down by their agreement, and pledged by mutual engagements to persist in it, however contrary to their own judgment. The continuance of improper conduct may . . . be attributed to the combination." The jury, after hearing the charge, brought in the verdict: "We find defendants guilty of a combination to raise their wages." Defendants were fined eight dollars with costs.[1]

Such combinations to raise wages were also declared illegal on the ground that they would produce baneful results, that they interfered with the freedom of contract of employers and were against public policy. Said Recorder Levy again:

"Is there any man who can calculate (if this is tolerated) at what price he may safely contract to de-

[1] *Doc. Hist. Am. Indus. Soc.*, v. 3, pp. 233, 234.

liver articles for which he may receive orders, if he is to be regulated by the journeymen in an arbitrary jump from one price to another? It renders it impossible for a man making a contract for a large quantity of such goods to know whether he shall lose or gain by it. If he makes a large contract for goods to-day, for delivery at 3, 6 or 9 months hence, can he calculate what the prices will be then if the journeymen in the intermediate time are permitted to meet and raise their prices, according to their caprice or pleasure? Can he fix the price of his commodity for a future day? It is impossible that any man can carry on commerce in this way. . . . What, then, is the operation of this kind of conduct upon the commerce of the city? It exposes it to inconvenience, if not to ruin, therefore it is against public welfare."[1]

In view of the origin and history of the law of conspiracy, and the many combinations, formerly condemned, now found to be for the general welfare, one is loath to accept this law as an infallible guide in determining the legality or illegality of organized effort.

Injury of Business

The boycott has been condemned on the ground that it is a combination to injure the business or property of another. Many deny, on the other hand, that the mere concerted refusal to have business dealings with another violates a property right or injures another in his property, in the legal acceptance of the term. Thus Judge Holloway, in the case of Lindsay and Co., again says:

"*Certainly it cannot be said that Lindsay & Co. had a property right in the trade of any particular person.* In this country patronage depends upon good will, and we do not think that it will be contended by any

[1] *Ibid.*, p. 229.

one that it was wrongful or unlawful, or violated any rights of the plaintiff company, for any particular individual in Billings to withdraw his patronage from Lindsay & Co. or from any other concern that might be doing business with that company, and that, too, without regard to his reason for doing so." [1]

After stating that the same rule, in his opinion, should hold true of combinations, Judge Holloway continues:

"It may be true that, generally speaking, no one has the right intentionally to do an act for the purpose of injuring another's business; but *injury, however, in its legal significance, means damage resulting from the violation of a legal right,* and it is a violation of a legal right which renders an act wrongful in the eye of the law, and makes it actionable. If, then, these defendants and their associates did not violate any legal right of the plaintiff in withdrawing their patronage from the company, or in agreeing to withdraw their patronage from any one who might patronize Lindsay & Co., they cannot be enjoined from continuing the boycott in force, so long as the means employed to make the boycott effective are not illegal."

Professor George Gorham Groat [2] is emphatic in his belief that no business or property right is interfered with, nor is any loss occasioned for which the one refusing the relation can be held responsible, when one or more abstains from buying from or selling to another.

"That they refrain from the relation cannot be interpreted as a loss to the other party to the relation. It is true that such relations are entered into for mutual gain. If one desires the relation for his gain and the other refrains because he does not see it to his interest to assume the relation, it does not mean that there is a

[1] Italics are the author's.
[2] Groat's *Attitude of American Courts in Labor Disputes,* p. 113.

loss. It is true that an opportunity for gain cannot be taken advantage of, but that is not a loss. One cannot be said to have suffered a loss of a thousand dollars because he has never found a thousand dollars.

"But further, so long as buying and selling are two views of the same act, an act of voluntary business relation, and so long as the relation must be one of mutual agreement, it is difficult to see where the property right enters in. One's business is of course his property. So in a sense may one's labor be called his property. When one offers for sale, and another refuses to buy, there is simply a refusal to exchange property for property. When one points out to another, or to many others, that it is to his interest not to buy, there is again simply the refusal to exchange. When many meet and decide together or agree not to buy, there is a concerted refusal to exchange. To interpret this as a malicious destruction of one's business, which is property, and even to interpret it as an infringement of a property right, is a manifestation for solicitude for one form of property (a business) at the expense of another form (labor) that is not easy to justify. A man who goes into business assumes the risk of failure together with the chances of success. If failure comes, it is his risk, so long as it comes from the refusal of others to buy, and is his loss, but it is not a loss for which those who refuse to be purchasers can be held responsible."

Professor Groat believes that the doctrine of combination and motive should not make any difference in the conclusion reached. Nor, it is averred, should the boycott be counted among the illegal acts only because it results in restraint of trade, or interferes with the freedom of others to conduct their business or employ their talents as they see fit, as this is contrary to legal precedents.

"No case can be found," writes Judge Mitchell, "in which it was ever held that at common law a con-

tract or agreement in general restraint of trade was actionable at the instance of third parties, or could constitute the foundation for such an action. The courts sometimes call such contracts 'unlawful' or 'illegal,' but in every instance it will be found that these terms were used in the sense merely of 'void' or unenforceable as between the parties; the law considering the disadvantage so imposed upon the contract as a sufficient protection to the public."[1]

Doctrine of Immediate and Ultimate Results

The theory of immediate and ultimate results has generally been used by judges in justifying their approval of strikes while at the same time condemning boycotts. They have contended that the immediate object of the strike is to better the conditions of labor; that of boycott to injure the business of another.

If we face the facts as they are, say the advocates of the boycott, we will fail to find this distinction. Both strikes and boycotts immediately injure the business of the employer; strikes, by depriving the employer of his labor force; boycotts by depriving him of his market. The ultimate object of each form of activity is that of improving the lot of the worker. It is doubtless true that in the secondary boycott somewhat more indirect methods to induce others to aid in limiting the employer's market are employed than are found in some strikes. When picketing is brought into play, however, and third parties are induced to abstain from offering their labor power to the employer, the methods of the strike and the boycott show a marked similarity. When strikers bring to their aid the sympathetic strike, all distinctions between the boycott and strike on the ground of immediate and ultimate effects are found to be without merit.

[1] Bohn Mfg. Co. v. Hollis, Minn., 1893, 55 N. W. 1119, 1121.

Granting that this distinction really existed in fact, many judges have contended that the law should not take cognizance of the difference, and that unions should be able to use in their preparations the same means which they use in their final contests, in order to perform their function effectively. Justice Holmes thus states:

"The immediate object and motive (in this case) was to strengthen the defendants' society as a preliminary and means to enable it to make a better fight on questions of wages or other matters of clashing interests. I differ from my brethren, in thinking that the threats were as lawful for this preliminary purpose as for the final one to which strengthening the union was a means. I think that unity of organization is necessary to make the contest of labor effectual, and that societies of laborers may employ in their preparations the means which they might use in the final contest."[1]

Doctrine of Malice

Boycotts are often condemned in law on the ground of their alleged malicious character. They are declared to be organized attempts to injure the business of another maliciously. Advocates of the boycott, on the other hand, contend that the causes giving rise to boycotts are very similar to those of strikes, and that no more actual malice is shown in the organization of the one than of the other. The truth of this contention is conclusively proved in the reports of the boycotts waged in New York State during the eighties and nineties. Others contend that if the doctrine of malice were applied to the competitive struggle on the business field in the same manner as it has been applied to boycotts in labor disputes, a large part of the activity

[1] Plant v. Woods, Mass., 1900, 57 N. E. 1011, 1016.

of modern business would be considered actionable. If it is not legally malicious and therefore actionable for business rivals to attempt to divert trade from their competitors, in order to secure larger profits, even though their efforts cause a loss to others, it should not be actionable for trade unionists so to do, in order to obtain more wholesome working conditions. Nor should the fact that the rivalry is between two classes in society deprive the actions of their competitive character. The injury which one organization on the business field causes to another, in its quest for a larger market, and its non-actionable character, are thus cogently expressed by a West Virginia judge:

"In these days of sharp, ruinous competition some punishment is inevitable. The dead are found strewn all along the highways of business and commerce. Has it not always been so? Will it always be so? The evolution of the future must answer. What its evolution will be in this regard we do not yet know, but we do know that thus far the law of the survival of the fittest has been inexorable. Human intellect, human laws, cannot prevent these disasters. The dead and wounded have no right of action from the working of this imperious law. This is a free country. Liberty must exist. It is for all. This is a land of equality, so far as the law goes, though some men do, in lust of gain, get the advantage. Who can help it?"[1]

Circuit Judge Caldwell thus vividly contrasted the legal attitude toward business and that toward labor combinations:

"Corporations and trusts and other combinations of individuals and aggregations of capital extend themselves right and left through the entire community, boycott and inflict irreparable damage upon and crush out all small dealers and producers, stifling competition, establishing monopoly, reducing the wages of

[1] West Virginia Transportation Co. v. Standard Oil, W. Va., 1901.

labor, raising the price of food on every man's table, and of clothes on his back and of the house that shelters him, and inflicting on the wage earners the pains and penalties of the lockout and the blacklist and denying to them the right of association and combined action by refusing employment to those who are members of labor organizations, and all these things are justifiable as a legitimate result of the evolution of industry resulting from new social and economic conditions and of the right of every man to carry on his business as he sees fit, and of lawful competition."[1]

No injury to business of another inflicted by lawful means and for the advantage of the one causing the injury can, according to Justice Holmes, be considered malicious or actionable. He states:

"The policy of allowing free competition justifies the intentional infliction of temporal damages, including the damage of interfering with a man's business by some means, when the damage is done, not for its own sake, but as an instrument in reaching the end of victory in the battle of trade. The only debatable ground is the nature of the means by which such damage may be inflicted. It may be done by the refusal or withdrawal of various pecuniary advantages, which, apart from this consequence, are within the defendant's lawful control. *It may be done by the withdrawal or threat to withdraw such advantages from third persons who have a right to deal or not to deal with the plaintiff as a means of inducing them not to deal with him either as customers or servants. . . . I have seen the suggestion made that the conflict between employers and employed is not competition. Certainly the policy is not limited to struggles between persons of the same class competing for the same end. It applies to all conflicts of temporal interests.*"[2]

[1] Oxley Stave Co. v. Hopkins, 1897, 83 Fed. 912, 932.
[2] Vegelahn v. Guntner, Mass., 1890. Italics are the author's.

Justice Holmes' contention that the same principle should apply in the competitive struggle between classes as in that between business rivals, is affirmed by Mr. Jeremiah Smith. He declares:

"In a controversy between employer and workmen in respect to wages, hours, etc., both parties have the rights of business competitors in the broad sense. There is a conflict of temporal interests between buyers and sellers of labor; in general, 'whatever one party gains, the other loses.' "[1]

The similarity of the two forms of competition is also pointed out in a North Carolina case.[2]

"A carpenter or joiner has, by his apprenticeship, study and experience, acquired skill and knowledge in his trade. His capital consists in his physical strength and his intellect, trained and directed by his skill and experience. It is the use of this which, in a sense, he offers for sale. In what respect, for the purpose of securing the prices for his labor on the best terms, do his rights differ from the man who has cotton for sale, the product of his capital—land and labor—or the man who has money to invest in mercantile or manufacturing enterprise? Each of them enters into the field of competition. Each finds that organization with others engaged in the same field of labor or investment will secure better results and fairer treatment from those with whom he deals."

Judge Caldwell in the Oxley Stave case takes a similar position.

Mr. Jeremiah Smith insists on the application of the same principles to both business and labor struggles:

"If the issue of bad motive can be thus raised in labor conflicts, it must also be allowed in cases of or-

[1] *Harvard Law Review,* v. 20, pp. 357, 358. Italics are the author's.

[2] State v. Van Pelt, No. Car., 1904, 49 S. E. 177, 184.

dinary trade competition, a very wide field. We think that the rarely occurring punishment of a personal enemy, who has masked his hostility under the guise of competition, would not offset the harm caused honest competitors by their being compelled to litigate the question of the fairness of their motives whenever assailed by a disappointed rival."[1]

In the waging of labor disputes, he avers, there are so many mixed motives involved—the motives of one boycotter being markedly different from those of his fellow—that it is exceedingly dangerous to labor to have the legality of their actions tested on the ground of malicious or legitimate motives. Mr. Darling writes:

"Least of all should the law, in cases of mixed motives, allow an issue as to which was the dominant motive. In the struggle between labor and capital, each striving for the advantage, as in the struggle between capital and capital, passions are engendered that doubtless lead contestants at times to think more of injuring their opponents than of benefiting themselves, but the legality of their conduct must surely be tested by general considerations, arising from the relations of the parties, and like matters, and not by the quality of the motives in any particular instance. In a contest involving strikes and boycotts, one man, who is of lower instincts, may act principally from motives of revenge; another, who is high minded, from a desire to elevate himself and his fellow workmen."[2]

It is again maintained that this doctrine leads to speculations by juries regarding internal standards of conduct which end in great injustice. Lord MacNaughten thus states, in Allen v. Flood:

"Against spite and malice the best safeguards are to be found in self interest and public opinion. Much

[1] *Harvard Law Review,* v. 20, p. 454. Italics are the author's.
[2] *Am. Law Reg.,* v. 43 N. S., p. 116.

more harm than good would be done by encouraging or permitting inquiries into motives, when the immediate act alleged to have caused the loss for which redress is sought is in itself innocent or neutral in character, and one which anybody may do or leave undone without fear of legal consequences. *Such an inquisition would, I think, be intolerable, to say nothing of the probability of injustice being done by juries in a class of cases in which there would be ample room for speculation and wide scope for prejudice.*"[1]

Mr. Justice Holmes declares it "a dangerous principle to leave his liability to be determined by a jury upon the question of his malice or want of malice, except in those cases where the words spoken were false,"[2] while Mr. Darling is of the belief that the consideration of motives leads to "uncertainty and would make the same act under the same circumstances legal in one person and illegal in another."[3]

That the natural consequence of the consideration of motive is a discrimination against labor unions, because of the failure of the court to see the justification of certain forms of labor union activities, is the belief of Mr. G. R. Askwith, one of the most prominent of the English attorneys. Mr. Askwith stated that within his memory there was not one case in which, upon the grounds of advance of the interest of labor, the men had won.[4] Sidney Webb at the same inquiry maintained that the judges had never admitted, as far as he knew, that the maintenance of a standard rate of wages was a valid object of public policy, although this had long since been admitted by the world of political economy. He averred that the judges were for the

[1] Allen v. Flood, 67 L. J. Q. B. 119, 199.
[2] Vegelahn v. Guntner, Mass., 1890.
[3] *American Law Register*, v. 43, p. 115.
[4] Report of minutes of evidence taken before Royal Commission, p. 42.

most part still expounding the political economy of the eighteenth century.

In discussing the English law of conspiracy before 1906, under which boycotting had been condemned on account of the presence of so-called malicious motives, Sir Godfrey Lushington of the Royal Commission vividly portrayed the unfavorable position of the worker. He declared:

"*That by this law workmen engaged in a trade dispute are placed at a special disadvantage cannot be doubted.* It is only necessary to realize the course of an action of conspiracy to injure brought against workmen for their conduct with reference to a strike. . . . A strike, being an industrial war, there are present of necessity all the elements of conspiracy to injure, viz.: harm, intention to do harm, combination to do harm. For justification the defendants have nothing to offer but the plea of self interest. To rebut this . . . the plaintiff alleges bad motive. This, too, can never be wanting. For every strike, every act of every strike, is necessarily a hostile operation, the employees have always the object to force the employer to change his mode of business—just as the employer's object is to force upon the workmen terms of their employment—and this is regarded by the law as an evil motive.

"Then the question is put to the jury: 'Did the defendants act from the motive to do harm to others or from the motive to benefit themselves? Or did they act more from the one motive than the other?' A question as difficult to answer as would be a question concerning a soldier who, after taking aim, fired off his rifle in time of battle, whether his predominant motive was to help his country or to hurt his enemy. But the jury have to answer and this answer can hardly fail to be unfavorable. Not to speak of their probably not including in their number any workingman, nor to impute to them the common bias of assuming all strikers to be disturbers of industry and insurgents against lawful authority, nor to suppose that in matters of political economy they

are prejudiced in favor of the theory of individualism and opposed to that of collective action, the jury will have presented to them the picture of strikers angry and excited, and of the loss and distress which are the visible and immediate consequences of a strike and have been intentionally caused by the strikers; and when the question is thus put to them it would be strange indeed if they did not attribute the intentional acts of the strikers rather to a desire to inflict these evils than to the hope of advantages to be obtained if the strike is successful—advantages unseen, remote, and a matter of indifference to the jury. The truth, nevertheless, trade unionists would urge, is the contrary.

"In a strike, as in trade competition, there may be, in most cases there probably is, ill feeling on both sides, at all events after the strike has gone on for some time, *but no strike was ever either commenced or maintained out of spite to master or man, any more than a lockout was ever declared by employers to spite the employed.* . . . Moreover, in every organized trade a strike is simply a matter of policy for the trade union."[1]

The utter lack of agreement as to the meaning of malice, and the confusion to which the use of such a word inevitably leads, are put forward as still another reason why it should not be considered in deciding on the legality or illegality of boycotts. The many meanings of the word are thus instanced by Professor J. B. Ames:

"Malice as used in the books means sometimes malevolence, sometimes absence of excuse, and sometimes absence of motive for the public good. If so 'slippery' a word, to borrow Lord Bowen's adjective, were eliminated from legal arguments and opinions, only good would result."[2] Sir Frederick Pollock calls

[1] Report of Royal Commission on Trade Disputes, etc., p. 88.
[2] *Harvard Law Review*, v. 18, p. 422.

it "that perplexed and perplexing word."[1] "It seldom has any meaning except a misleading one," affirmed Sir James Fitzjames Stephen, in Allen v. Flood.

Dr. Bishop wrote of "wilfully" and "maliciously":

"Their appropriate place is in criminal pleading. In discussions of the law itself they are sometimes necessarily employed; but their *principal uses are found to be to overcloud and bewilder the mind of the reader, and to convey away from the writer's mind ideas too misty for distinct utterance.*"[2]

The *London Times,* expressing the lay conception, spoke of malice as "that word which means so much and so little, and the learning about which is half the stock in trade of an English lawyer."[3]

"Sometimes, indeed, I rather doubt whether I quite understand that unhappy expression myself," admitted Lord MacNaughten in Allen v. Flood. Sir William Markly declared that the refusal to consider this "phantom," "malice at law," would save endless confusion.[4]

Many affirm that this confusion in the word itself leads to a confusion in the whole law of civil liability, and to injurious results. The unwisdom of allowing the consideration of this principle was vigorously enunciated by Mr. Arthur Cohen, in his memorandum before the Royal Commission of Great Britain:

"To introduce such a fundamental principle (the theory that intentionally to cause damage to another person in the absence of reasonable cause is an actionable tort) would be in the highest degree unwise and inexpedient, inasmuch as it would make the whole law of torts vague and uncertain, until a great quantity of

[1] 14 *Law Quarterly Review,* p. 132.
[2] I Bishop *Criminal Law,* Section 261. Italics are the author's.
[3] *London Times* Editorial, July 27, 1895.
[4] *Elements of Law,* 5 Ed., Sec. 687; Cooley, *Torts,* 2 Ed., p. 692.

new judge-made law had determined in what cases there are and in what cases there are not reasonable cause and justification."[1]

In fact, it is stated, the use of the word is entirely unnecessary and futile. Mr. Krauthoff again states:

"The scope of these definitions, when closely analyzed, is that 'malice consists in doing a wrongful act to the damage of another.' And, self-evidently, that word is wholly unnecessary to explain that thought."[2]

In the discussion of the civil remedy for boycotts, much controversy has occurred in American courts as to whether malice or motive is in truth an element that can be considered in an action for damages. Many jurisdictions have answered that question in the negative. Even though it can be proved that unionists combine maliciously to injure the trade of another, there can be no legal redress, they affirm. The inconsistency of making motive an element in civil liability is thus stated by Mr. John H. Wigmore:

"There is no more persistent and yet unfounded notion than that motive, I do not say intention, can become the turning point of civil liability, no notion more fitted to reverse legal relations and to make chaos out of definite principles."[3]

Mr. Darling is of the opinion that, "generally speaking, malice does not give a cause of action, except by legislation, and in the few instances of defamation, etc., which has a special explanation."[4]

That malice, at least "in its popular sense, namely, as meaning hatred, ill will, or other morally bad motive, can no more transform an otherwise lawful act into a wrong than the best of motives can justify the in-

[1] Report of Royal Com., etc., p. 30.
[2] Krauthoff, Am. Bar Assoc., Proceedings of, 1898, p. 350.
[3] *American Law Rev.*, v. 21, p. 520.
[4] *American Law Register*, v. 43, p. 115.

vasion of another's right" is the belief of Mr. L. C. Krauthoff.[1] Judge Mitchell of Minnesota is of like opinion:

"If the act be lawful,—one which the party has a legal right to do,—the *fact that he may be actuated by an improper motive does not render it unlawful.* As said in one case, 'the exercise by one man of a legal right cannot be a legal wrong to another,' or, as expressed in another case, '*malicious motives make a bad cause worse, but they cannot make that wrong which in its own essence is lawful.*' "[2] Many are the American and English decisions almost identical in wording.

The word was invented in legal procedure, according to Mr. L. C. Krauthoff, as a result of the recognition of the errors underlying the notions of mediæval days, that the civil remedy was available only for such torts as involved the elements or essence of criminal acts, and, at the other extreme, that the law gave a remedy for every act causing loss to another. An intermediate ground was naturally sought for.

"Conservatism prompted the tendency to adopt a portion of each of two theories," he declared, "at least in spirit; and it is believed that in this way an expression has crept into the reports, precedents and treatises which has done more to confuse and obscure legal principles than perhaps all other verbiage combined—the word 'malice' and its derivatives."[3]

In the few instances in which malice is used in tort proceedings, it is employed in a different manner from its use in conspiracies in labor disputes. In most other instances malice does not render a legal act illegal, but operates only in those cases where the act is, without the element of malice, considered a wrongful one. It

[1] Krauthoff, *op. cit.*, p. 339.
[2] Bohn Mfg. Co. v. Hollis, Minn., 1893, 55 N. W. 1119, 1121.
[3] Krauthoff, *op. cit.*, p. 338.

deals with external, not internal, standards of conduct. Mr. Krauthoff declares on this point:

"The measure of damage apart, there is no phase of the law of torts in which malice, in the sense of an active intention to harm, is an essential ingredient. The only intent, so called, which enters into a cause of action for tort is that which the law attaches to and deduces from the doing of an act in question—the external standard. . . . '*A wrongful act done intentionally and without justifiable cause or excuse has no reference to a mental state or to a motive which impelled the action,* but merely defines the illegal inference from the unlawful act done."[1]

In tort the doctrine is used in malicious prosecution and in privileged communications in libel. *In both these cases, before one can be convicted, there must be proof of a wrongful act.* They relate to a liability for false statements, and the question arises as to what degree of fault is necessary to create liability therefor.

In slander of title, another case in which malice is supposed to operate, the action is said to be a species of deceit in which scienter, a sense of knowledge but not of motive, is in issue. Special damage must here be shown. According to Krauthoff, the action for enticing a servant from his master originated when the status of the servant was akin to property, and when the accepted rule was that "every master has, by his contract, purchased for a valid consideration the services of his domestics." (Based on Statutes 23, Edw. III.) *Persuasion here can only be actionable where illegal means are used. In this action malice means nothing more than notice,* according to Judge Crompton (Lumley v. Gye, 2 E. and B., 216).[2] Many,

[1] Krauthoff, *op. cit.,* p. 343.

[2] For fuller discussion of meaning of malice in various actions, see *ibid.,* pp. 345-349.

therefore, argue that malice should not be considered in boycott cases. Already an exceedingly large number of judges have come to the conclusion that it should not be considered an element in tort, and many, indeed, that it should not be applied in criminal or equitable procedure involving the boycott or general conspiracy cases. The word is not understood. Its use leads to confusion of thought, to uncertainty as to the rights of individuals, to too great power on the part of judge and jury, and to a discrimination against labor in its struggles. If it can be considered only in cases where a wrong has been committed, its use is unnecessary.

It is considered an element in but few torts, and not in the sense that it is used in boycott cases. The doctrine, furthermore, is not employed in the same manner in cases of trade competition. If it were, a very large proportion of the business of the country would constantly be interfered with by the law of conspiracy.

To the argument that boycotts are waged without justifiable cause and are against public policy, the defender of the boycott declares that that contention can only be proved by a close examination of the conditions of labor, the relation of its condition to the well being of society, the weapons at labor's command, the effectiveness of the boycott in obtaining better conditions, the weapons used by the employing class necessitating the use of the boycott, and many other problems connected with social and economic progress. This examination, he contends, has not been made by the judiciary. If made impartially it is his belief that boycotting would prove to be a justifiable activity.

Doctrine of Interest

In many instances where the doctrine of malice or of justifiable cause has been applied by the courts in

cases of boycotting and blacklisting by business men, it has been decided that these boycotts did not contain the element of malice, or were justified because the defendant had a legitimate interest to uphold. Their interest in increasing their business or in obtaining good help was sufficient to eliminate all questions of malice. Not so, however, when boycotts in labor disputes were concerned. Where, asked the courts, could be found the interest which the striker or unionist had to safeguard by means of his boycotting campaign? Because the contract relation between the striker and employer had ceased they failed to recognize that the men still had a considerable interest in the conduct of the firm. Referring especially to labor boycotts, Mr. Darling explains:[1]

"Supposing a case of inducing is made, that is, supposing the defendants ask to have the plaintiffs discharged, the defendants, if they are fellow workmen with the plaintiffs, or represent fellow workmen, are acting within their rights, because they have an interest in who shall be their fellows; their safety, comfort, convenience and personal pleasure are concerned."

The same is true with attempts on the part of workers to induce others to cease to patronize their former employers. The boycotters cannot be placed in the same category with the outside public who have no interest to subserve. The success of their struggle will mean better hours, wages and other conditions for large numbers of them. The same is the case, though perhaps to a less extent, with other members of organized labor who assist in the boycotting. In the modern complex industrial world it is becoming more and more true that the interest of one worker is the interest of all, and the outcome of one struggle may vitally affect the conditions of employment in other lines which seem to be but remotely related.

[1] *Am. Law Register,* v. 43, p. 95.

The argument that the workers have no such interest is on a par with that formerly so prevalent among employers—"I am going to run *my* business as I see fit, and will brook no dictation from *my* hands."

Doctrine of Free Speech and Press

That the right of free speech and free press is denied when unionists are enjoined from stating their stories to the public and asking for its support is the firm belief of many well-known jurists. These claim that if a wrong has been done to the employers through the issuance of false statements the latter can call into play the law of libel. They contend that the possibility of not being able to recover damages in a suit at law does not warrant the injunctive process, as such a holding would prejudice the poor man. One of the most vigorous arguments against the use of the injunction to prevent the publication of a boycott, on the ground that such use would seriously interfere with the right of free speech and free press appears in the well-known Missouri case, as follows:

"The security of individual rights . . . cannot be too frequently declared, nor in too many forms of words," writes Judge Sherwood, quoting Cooley, "nor is it possible to guard too vigilantly against the encroachment of power, nor to watch with too lively a suspicion the propensity of persons in authority to break through the cobweb chains of paper constitutions." (2 Story, Const., Sec. 1938.)

"Wherever the authority of injunction begins, there the right of free speech, free writing or free publication ends. No halfway house stands on the highway between absolute prevention and absolute freedom. . . . Nor does it . . . change the complexion of this case by reason of its being alleged . . . that the defendants and each of them are without means. . . The Constitution is no respecter of persons. The impecuni-

ous man 'who hath not where to lay his head' has as good right to free speech, etc., as the wealthiest man in the community. . . . In short, the exercise of the right of free speech, etc., is as free from outside interference or restriction as if no civil recovery could be had or punishment inflicted because of its unwarranted exercise. . . .

"If these defendants are not permitted to tell the story of their wrongs, or, if you please, their supposed wrongs, by word of mouth or with pen or print, and to endeavor to persuade others to aid them by all peaceable means in securing redress of such wrongs, what becomes of free speech, and what of personal liberty?[1] The fact that in exercising that freedom they thereby do plaintiff an actionable injury does not go a hair toward a diminution of their right of free speech, etc., for the exercise of which, if resulting in such injury, the Constitution makes them expressly responsible. But such responsibility is utterly incompatible with authority in a court of equity to prevent such responsibility from occurring."

Judge Sherwood mentioned the existence of the Bill of Rights in Missouri, and quoted Judge Cooley as declaring that while these provisions continued in force "they are to remain absolute and unchangeable rules of action and decision . . . and all laws contrary thereto are void."

Judge Garoutte of California takes the position that free speech is unlimited, and cannot be enjoined on the mere ground that it might injure another.

"The right of the citizen to freely speak, write and publish his sentiments is unlimited, but he is responsible at the hands of the law for an abuse of that right. He shall have no censor over him to whom he must apply for permission to speak, write or publish. . . . It is patent that this right to speak, write and publish cannot

[1] Marx & Haas v. Watson, Missouri, 1902, 67 S. W. 391, 394, 395, 396. Italics are the author's.

be abused until it is exercised, and before it is exercised there can be no responsibility. The purpose of this provision of the Constitution was the abolishment of the censorship, and for the court to act as censor is directly violative of that purpose."[1]

Referring to Story's *Equity of Jurisprudence,* Sec. 948a, he continues:

"But the utmost extent to which courts of equity have gone, in restraining any publication by injunction, has been upon the principle of protecting the rights of property in the books or letters sought to be published. They have never assumed, at least since the destruction of the Court of Star Chamber, to restrain any publication which purports to be literary work upon the mere ground that it is of a libelous character and tends to the degrading or injuring of the reputation or business of the plaintiff who seeks relief against such publication."

"The right of free speech," states Darling, "implies the right to influence persons as to how they shall exercise their legal rights. . . . When one has the right to choose one of two courses, another has the right to address him, to argue the matter and to request him to choose one course rather than the other. . . . The law does not put a ban on the communication of ideas between responsible human beings."[2]

Referring to the clause in the constitution of the State of Montana: "No law shall be passed impairing the freedom of speech; every person shall be free to speak, write or publish whatever he will on any subject, being responsible for all abuse of that liberty," Judge Holloway, in the Lindsay case (1908), declares that "the individual citizen cannot be prevented from speaking, writing or publishing whatever he will on any subject." He maintains that the insolvency of the

[1] Daily v. Supreme Court, Calif., 1896, 44 Pac. 458, 459.
[2] *American Law Register,* v. 43, N. S., pp. 107, 108.

defendants made no difference in the carrying out of these constitutional provisions, and concludes:

"To declare that a court may say that an individual shall not publish a particular item is to say that the court may determine in advance just what the citizen may or may not speak or write upon a given subject—is, in fact, to say that such court is a censor of speech as well as the press."

Chief Justice Shepard quotes with approval Justice Fenner of Louisiana in his belief that the press, under the reactionary decisions given by some courts, "might be completely muzzled, and its just influence upon the public opinion completely paralyzed."[1]

Threats and Coercion

Boycotts have frequently been condemned by the courts on the ground that such illegal means as threats, intimidation and coercion were employed in their conduct. In many cases, it is avowed, the reasoning of these judges often indicates an argument in a circle, and involves the wrong application of the word "threat," an application that cannot be found in trade competition or in other classes of cases.

The following argument against a compound boycott is often heard: "A compound boycott is illegal because it involves a threat, and to threaten another is to use illegal means." If one asks what is the nature of the threat involved in this boycott, the reply is: "It is a threat to boycott a third person, unless he ceases dealings with (or boycotts) the boycotted firm." Thus an attempt is made to declare the illegality of a boycott on the ground that it involves a threat to boycott.

However, to threaten to do a thing is not unlawful unless the threat is to do an illegal act. There is

[1] 33 App. Cases, D. of C., 130, 132.

nothing illegal, for instance, in threatening not to purchase a box of candy.

"Threats and intimidation," declared a Tennessee judge, "must be taken in their legal sense. In law a threat is a declaration of an intention or determination to injure another by the commission of some unlawful act, and an intimidation is the act of making one timid or fearful by such declaration. *If the act intended to be done is not unlawful, then the declaration is not a threat in law, and the effect thereof is not intimidation in a legal sense.*"[1]

"As a general rule, even if subject to some exceptions," declared Judge Holmes,[2] "what you may do in a certain event you may threaten to do—that is, give warning of your intent to do in that event, and thus allow the other person the chance of avoiding the consequences."

Thus Judge Alton B. Parker, in the same vein, declares that, "when a man proposes to do that which he has a legal right to do, there is no law which prevents him from telling another, who will be affected by his act, of his intention."

It thus appears that there is no threat in a legal sense unless there is an expressed intention to do an unlawful act. The only threat implied in the secondary boycott against a third party is a threat to boycott. If one begins with the assumption that "to boycott" is illegal, then a threat to boycott is a threat to do an illegal act, and is also illegal. If, on the other hand, one assumes that "to boycott" is legal, then a threat to boycott is an expressed intention to do a legal act, and is legal. It is only possible, therefore, to reach the conclusion that a boycott, involving a threat to boycott a third party, is illegal if one begins with the as-

[1] Payne v. Railroad Co., Tenn., 1884, 49 Am. Rep. 666, 674. Italics are the author's.

[2] Vegelahn v. Guntner, Mass., 1896, 44 N. E. 1077, 1081.

sumption that to boycott is illegal, and, if one argues from that premise, why is it necessary to introduce the doctrine of threats? The whole reasoning is in a circle.

Mr. Gompers thus sums up the legal contention:

"It was said . . . 'The word in itself implies a threat.' Granted, but what kind of a threat? A threat to boycott. To say that boycotting is criminal because the word boycott implies a threat to boycott is truly extraordinary reasoning. . . . It is an attempt at proving a less doubtful proposition by assuming a more doubtful one to be indisputably true." [1]

"When, for 'conspiracy,' we substitute 'agreement,' and for 'threats,' 'a notice,' the whole fabric of the plaintiff's case falls to the ground," declared Judge Caldwell.[2]

The doctrine of coercion and intimidation in boycott disputes, in many instances, depends on the foregoing reasoning as to what constitutes threats. To force a dealer to cease relations with the boycotted firm through threats constitutes coercion and intimidation, it is claimed. However, if the threat is one to do a lawful thing, it cannot result in coercion as applied in law. "A man may threaten to do that which the law says he may do, provided that . . . his motive is to help himself," declares a New York judge.[3]

The coercion generally used simply gives a merchant a choice as to whether he desires to continue his dealings with the boycotted firm, thus losing the custom of unionists and their friends, or whether he prefers to cease his profitable relations with the firm and retain a certain patronage. Every day merchants are forced to just such choices by their competitors. When-

[1] Industrial Commission Report, v. 7, p. 636.
[2] Oxley Stave Co. v. Hopkins, 1897, 83 Fed. 912, 924.
[3] Park & Sons Co. v. National Drug Assoc., N. Y., 1903, 175 N. Y. 1, 20.

ever a competitor lowers his prices, the merchant must either do likewise, thus losing a certain profit on his sales, or continue his former prices and lose a part of his patronage. Yet the lowering of prices is not considered a coercive measure. The man has to choose between two evils, but his choice is left free.

In justifying a trade boycott and denying the existence of coercion, a Minnesota judge declares:

"If it (plaintiff company) valued the trade of the members of the association higher than that of the non-dealers at the same points, it would probably conclude to pay (the commission exacted by the association); otherwise not. . . . By the provision of the by-laws, if they (the members of the association) traded with the plaintiff, they were liable to be expelled, but this simply meant to cease to be members. It was wholly a matter of their own free choice, which they preferred."[1]

In view of the inadequate and illogical application of the doctrines of combination, of illegal object, of immediate and ultimate results, of malice, of justifiable cause and of threats and coercion to the boycott, claim the advocates of this weapon, the secondary, and that form of the compound boycott not involving violence, should be held legal by the courts of the land.

[1] *American Law Register,* v. 43, p. 96.

CHAPTER XIV

ATTITUDE OF COURTS TOWARD BOYCOTTING AND REMEDIES APPLIED

Attitude of Our Courts Toward Boycotting

In spite of the many reasons urged for the legalization of the boycott, it must be confessed that at the present time the great weight of authority both in federal and state courts has been against the secondary and compound boycott.

If we first consider the decisions in the federal courts, we will find the boycott opposed at practically every point. Twice has the question been brought before the Supreme Court of the United States. In both of these cases, however, United States statutes have been involved, and the court has decided nothing as to the application of the common law doctrine of conspiracy applied by the state courts to this problem. In the recent Danbury Hatters' decision, made in 1908, it was held that boycotting, if interstate in its nature, could be reached by the Sherman Anti-Trust Law. Prior to this decision came the Debs case of 1895, in which the boycotting indulged in during the Pullman strike was declared to have been in violation of the Interstate Commerce Law and to have interfered with the United States mails. While the contempt case connected with the boycott of the Buck's Stove Company also came before this tribunal, the question decided was largely a technical one as to whether the boycotted

company or the state could bring a suit for contempt. The court, however, took occasion to state that, in its belief, the restraining of publications, etc., whereby a boycott was unlawfully continued, did not constitute an abridgment of liberty of speech or of the press. In the last named case, the Supreme Court of the District of Columbia and the Court of Appeals of that district had already decided that the "We Don't Patronize" list could be enjoined, as well as other forms of secondary and compound boycotting.

The states in which some of the boycotts considered by the federal courts have originated are: California, Georgia, Illinois, Indiana, Louisiana, Missouri, New York, South Dakota and Wisconsin. Prior to the railroad boycott cases of 1893 to 1895, one federal court held that the Sherman law was applicable and one that it was inapplicable to boycotting. A typographical union of Ohio was also condemned for using this weapon. The railroad boycotts of the nineties have already been described. In the last few years, excepting the Buck's Stove and Hatters' cases, the courts have given chief attention to the labor boycotts in the building trades. In one instance the courts have gone so far as to hold that it was lawful for unionists to persuade fellow unionists in other factories to refuse to work, if their employer continued to manufacture goods for the boycotted firm.

On the other hand, the United States Supreme Court has delivered an opinion in the Adair case which many unionists claim has virtually legalized the blacklist. Forms of trade boycotts have also been pronounced legal in South Dakota and Alabama, though illegal in some of the other jurisdictions.

While there is not such general agreement regarding the illegality of the boycott in the state courts, and while several recent decisions have gone a long way toward legalizing it, the vast majority of state courts

have, up to the present time, vigorously condemned it.

As nearly as can be ascertained at the present writing, the highest courts have flatly decided against boycotting of various kinds in some fourteen states. In three states, California, Montana and New York, the secondary boycott has been pronounced legal. In the first two named, that form of the compound boycott involving threats to boycott a third party, if he continues to deal with the boycotted firm, is also considered legal.

In some twenty-five states of the union the courts of last appeal have not as yet passed upon the legality of boycotts in labor disputes. In four of these, however, there are statutes specifically condemning boycotts, and in six others the decisions on trade boycotts, blacklists, etc., indicate that, if malice, threats or lack of legitimate interest are shown in the conduct of the boycott, the use of this weapon will probably be pronounced illegal. One of the lower courts in another of these states has decided against boycotting, so that *it might be stated with some degree of accuracy that some twenty-five states have definitely disapproved of the use of this device.*

In two of the twenty-five states, Rhode Island and Maine, the liberality of the courts regarding trade boycotts would indicate that, if the same line of reasoning was applied, the legality of boycotts in labor disputes would be affirmed. The lower court in still another state, Oklahoma, has permitted a secondary boycott. *Perhaps a total of five or six states can therefore be classed as favoring the employment of the secondary or mild forms of the compound boycott.*

More specifically, the twelve states in which the courts have flatly decided against secondary or compound boycotts of various kinds are: Connecticut, Massachusetts and Vermont in New England; Maryland, New Jersey and Pennsylvania in the Middle At-

lantic States; Virginia in the South, and Illinois, Michigan, Minnesota, Missouri and Washington in the West. Those where labor boycotts only have been condemned are Louisiana and Wisconsin. In most of the states cited threats were proved, although threats to deprive third parties of patronage should they not accede to the demands are sufficient to spell out illegality. Persuasion, providing malice can be worked out, might be sufficient in some of the states to secure the condemnation of this weapon, among them New Jersey, Illinois and Washington.

The secondary boycotts have been pronounced legal in New York, Montana and California. The most noteworthy of the cases in point were Lindsay and Company v. Montana Federation of Labor (Montana, 1908), Parkinson and Company v. Building Trades Council (California, 1908), Pierce v. Stablemen's Union (California, 1909), National Protective Association v. Cummings (New York, 1902), and Mills v. United States Printing Company (New York, Appellate Division, 1904). These are described elsewhere.

The courts in Montana, Missouri and California have held that circulars advertising the boycott cannot be enjoined. A lower court in Ohio has decided likewise. In New York there is considerable liberality about sending circulars. In Maryland and Pennsylvania, if boycott circulars state only the truth concerning the labor struggle, their publication will not be enjoined, nor will it be in Minnesota if no threats are expressed or implied. Such publication cannot be the cause of a criminal prosecution in North Carolina. In Oregon irreparable injury must be proved before an injunction is issued against the publication of circulars or against the unfair list. In Illinois and Minnesota unfair lists have been enjoined. In Arkansas a labor boycott, if unofficial, is not considered illegal. As previously stated, laws in Maryland and

California have made it possible to boycott by peaceful means, without being subject to criminal prosecution.

On the other hand, the courts of last resort in the following states have not passed upon the legality of boycotts in labor disputes: New Hampshire, Maine and Rhode Island in New England; Delaware in the Middle Atlantic States; Iowa, Indiana, Kansas, Nebraska and Ohio of the North Central group: Alabama, Florida, Kentucky, Mississippi, Oklahoma, South Carolina, Tennessee, Texas and West Virginia in the South Central States, and Arizona, Colorado, Idaho, New Mexico, North Dakota, South Dakota, Utah and Wyoming in the West.

The lower courts in Ohio have pronounced various forms illegal, however; while in Oklahoma and Colorado they are credited with having declared certain forms legal. In Indiana these lower courts have pronounced a labor boycott legal when not attended by threats.

Among the aforementioned states where the highest courts have not directly decided on the legality of boycotts as applied to labor disputes, it might be gathered from other decisions that the New Hampshire, South Carolina and West Virginia courts would declare them illegal, should they be considered to contain the element of malice; Kentucky, if threats could be shown; Tennessee and Texas, should the court decide that the boycotters had no legitimate interest to protect; and Mississippi, if either malice or threats was evidenced. In Maine and Rhode Island, where trade boycotts have been favorably treated, certain forms might be considered legal.

The state and federal courts have applied criminal, civil and equitable remedies to boycotting.[1]

[1] The courts have shown a somewhat more favorable attitude toward trade boycotts than toward boycotts in labor disputes. Trade boycotts which have possessed some elements of coercion have been declared legal by the highest courts of Rhode Island, Pennsylvania,

Legal Remedies

Boycotters may be prosecuted by the state in the criminal courts; they may be sued by the party injured in civil courts; they may be enjoined by the courts of equity from continuing their boycotting activities.

In criminal procedure boycotters are arrested, charged with violating those statutes which prohibit criminal conspiracy and other crimes. On conviction they are subject to imprisonment or fine.

In the application of the civil remedy, individually or as a union, they are sued in a civil court for damages resulting to the business of plaintiff. The common law principles chiefly are applied in these cases. Actions giving rise to such cases are known as torts.

Boycotters are also subject to the equitable remedy of injunction. The plaintiff, in this case, is required to show that the injunction is necessary in order to prevent an irreparable or unascertainable loss; and that there is no adequate remedy at law—that the resort to the law court would necessitate a multiplicity of suits or would not lead to a recovery of damages on account of the irresponsible character of defendants. If the injunction is not obeyed, contempt proceedings can be resorted to.

Recently the boycott has been brought under the provisions of the Sherman Anti-Trust law. If found

Tennessee, Maine and West Virginia. In about fifteen states they have been pronounced illegal. A number of the lower courts have also declared their legality. In Pennsylvania and Minnesota, where trade boycotts have received the approval of the courts, boycotts by laborers have been frowned upon. Courts in Massachusetts, New Jersey, Illinois, Indiana, Texas and Kentucky have also refused to declare certain forms of blacklists illegal. In Illinois, of the aforementioned states, a lower court has, however, pronounced blacklisting illegal.

Inasmuch as the facts in the cases involving boycotts in labor disputes and in the trade boycott and blacklisting cases are so widely different, however, it is difficult to draw any broad generalizations regarding the application of legal principles to these groups.

guilty, under this act, the defendants are liable for treble the amount of damages. An interference with interstate commerce must be shown in this case.

It may again be noted, in conclusion, that the great majority of courts, federal and state, deciding on boycott cases, have expressed their disapproval of the use of the secondary and compound boycott, although a few courts have proclaimed the practice a legitimate one. In those states where the courts have pronounced boycotts illegal, the boycotter may be subject to a suit for damages, to a criminal prosecution or to an injunction order.

CHAPTER XV

STATUS OF BOYCOTTS ABROAD

The English Law of Conspiracy

The recent history of the changes in the English law of conspiracy is most enlightening. It indicates how confusing a guide in labor disputes is the common law doctrine of conspiracy, and how greatly it favors employer over employee.

For many generations the law of conspiracy had been a serious impediment to the workers in their battle to organize. After much agitation a long step forward was taken in 1875, when a law of criminal conspiracy was passed in which it was declared that "an agreement or combination of two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy if such act, committed by one person, would not be punishable as a crime."

The act then proceeded to state definitely what deeds were illegal, all others not named in a labor dispute being permissible.

The section (Section 7) imposing limits to trade union activity reads:

Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority,

(1) Uses violence to or intimidates such other person or his wife or children, or injures his property; or

(2) Persistently follows such other person about from place to place; or

(3) Hides any tools, clothes or other property owned or used by such other person, or deprives him or hinders him in the use thereof; or

(4) Watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or

(5) Follows such other person with two or more other persons in a disorderly manner in or through any street or road,

shall be liable to the same punishment provided by the other sections.

As a result of this legislation trade unionists were free to act within wide limits without being subject to criminal action. However, the act did not relieve unionists from civil liability. A number of cases dealing with such liability in civil cases were decided in the nineties.

Of those involving a trade boycott, the earliest was the Mogul case (1891).[1] Here a group of shipowners, in an endeavor to monopolize the carrying trade between Hankow and the European ports, offered a rebate of 5% to all shippers who would ship only through them, and threatened to dismiss shipping agents who had anything to do with competing shipowners. In some instances this threat was carried out. Plaintiffs, competing shipowners, as a result, were seriously injured. An action was brought against the boycotters, but was dismissed by the House of Lords. The court, maintaining that no legal right had been interfered with, concluded:

"If no legal right has been interfered with, and no legal injury inflicted, it is vain to say that a thing might

[1] 23 Q. B. O. 614, 1892.

have been done by an individual, but cannot be done by a combination of persons."

A few years after, in 1898, another example of a legalized trade boycott rose into prominence in connection with the Scottish Coöperative Wholesale Society.[1] In this case the trading society induced salesmen not to supply the wholesale company, threatening to withdraw the Society's custom if they had any relations with the stores. The court held that the object, that of preventing the plaintiffs from purchasing from a rival trading society, was legal, and that legal means were used.

Soon after the beginning of the present century, in 1902, an employer's blacklist was pronounced legal.[2] Here, a secretary of a local trade union who ceased working for one member of a master builders' association and obtained employment with another member, was discharged through the efforts of the federation. The court held that there was no evidence of any act done with the intention of injuring the worker. The King's Bench affirmed the decision.

While these decisions, favorable to capital, were being handed down, others of a far different character, involving laborers, were being enunciated. In 1893, for instance, in the now famous case of Temperton v. Russell,[3] a boycott by trade unionists was pronounced illegal. Here certain workmen advised three trade union societies to refuse to work for a certain builder named Brentano, because he bought supplies from the plaintiff. Hearing of this order and fearing a strike, Brentano withdrew his future custom. The unionists were held liable for damages. This is prob-

[1] Scottish Coöperative Wholesale Society v. Glasgow Flesher's Trade Defence Ass'n and others.
[2] Bulcock v. St. Anne's Master Builders' Federation and others, 19 Times L. R., 27.
[3] 1 Q. B., 715.

ably the first case on record in England of the successful outcome of a civil suit for a conspiracy to injure.

In Allen v. Flood, however, the courts adopted a more liberal attitude toward combinations of workmen. Certain trade unionists in this case objected to the employment of Messrs. Flood & Taylor on the wood work of a vessel, on the ground that they had previously been employed on the iron work of a ship, and that such dual employment was contrary to trade union rules. Allen, a delegate of the unions, was sent for by the objectors, and urged the firm to discharge the two men. The firm granted the request, whereupon Allen was sued. The jury brought in a verdict of guilty. The Court of Appeals affirmed the verdict, but the House of Lords reversed it, and decided that Allen had violated no legal right of the shipwrights, and that it was immaterial whether or not the motives were malicious.

This remarkable decision, however, was soon followed by another in the case of Quinn v. Leathem,[1] which greatly modified, if it did not actually reverse, the shipwright case. This case originated in Belfast, Ireland, where the Journeymen Butchers' Association of that city, in an endeavor to unionize the meat shops of the land, called a master butcher in the north of Ireland to their meeting to have him explain why he employed two non-unionists. The butcher offered to pay a fine and have the men admitted to the trade union, but the union refused so to admit until a twelve months' period had expired. The butcher declined to discharge the men and a boycott followed. Some of the judges, in deciding against the defendants, took the ground that motive was material in combinations, though, according to Allen v. Flood, this was not the case when individuals only were concerned. They

[1] Appeal Cases for 1901, p. 495.

also maintained that a right of the plaintiffs had been infringed. The two decisions introduced a legal situation full of contradiction. Numerous other decisions on boycotts adverse to the workers were also reported.[1]

The policy which had been pursued in civil cases, therefore, of leaving the interpretation of the law of conspiracy solely to the judiciary led to endless confusion and to a discrimination against the laborer. Regarding this confusion, Sir Godfrey Lushington of the Royal Commission declared:

"The indefiniteness of the law of conspiracy to injure prevents it from being a practical guide of conduct to workmen as to what they may do in times of strike and what they must avoid. The mere fact that two make a conspiracy is enough in the case of unwritten law to produce confusion, where unspecified acts, lawful for individuals, are to be made unlawful when done in combination. But the law itself is unintelligible to workmen. The defendants in Quinn v. Leathem, after judgment had been given against them, must presumably have been at a loss to understand which in particular of the acts done by them it was that, though not unlawful for individuals, was condemned as unlawful to be done in combination, or in what respect their strike differed from an ordinary strike against individual non-unionists. They could only know that, reviewing their conduct as a whole, the House of Lords had pronounced their combination to be an oppressive combination, a conspiracy to injure.

"The perplexity as to the scope of the law is not confined to workmen. *I believe that it is no exaggeration to say that a lawyer is unable to advise a trade*

[1] Carr v. National Amalgamated Society of House and Ship Painters and Decorators, tried at Manchester Assizes, July 21 and 22, 1903 (account in *Labour Gazette*, August, 1903, p. 215); Trollope and Brothers v. The London Building Trades Federation and others, 1895 (72 Law Times New Series, p. 342); Huttley v. Simmons, 1898; Boots v. Grundy, 1900 (82 Law Times, 769).

union with any confidence on elementary points connected with a strike and with public order."[1]

Mr. R. B. Haldane adds:

"For myself, I should be very sorry to be called on to tell a trade union secretary how he could conduct a strike lawfully. The only safe answer I could give would be that, having regard to the divergent opinions of the judges, I did not know."[2]

The discrimination against the trade unionists which appears from a perusal of the various decisions is well brought out by Mr. Haldane.

"By the constitution of a trade union a number of workmen agree to follow the decisions of the managing committee, just as the combination of steamship companies did, and their purpose, just as was the case with the steamship companies, is the furtherance of their own interests. To this end they delegated the power of guiding their actions to the committee and the secretary, but *while the shipping companies may say to the port agents and small steamship companies: 'You shall not earn your livelihood, for we will not work with those who deal with you,' a trade union secretary apparently may not say so. It seems that the distinction between these two lay not in legal principle, but in the different complexion which the facts wear for the persons regarding them.*"[3]

Mr. Askwith also declared that the various decisions, commencing with the Mogul case, seemed to have given rise on many sides to the view that the law is "much more to the advantage of the employers than it can possibly be to that of the workmen, and that, in fact, it puts the workman in a position of having

[1] Quoted from Mass. Report of Bureau of Labor Statistics, 1907, p. 149, and Report of Royal Com., etc., p. 89.
[2] R. B. Haldane, *Contemporary Review*, v. 83, pp. 368, 369.
[3] *Ibid.*, p. 368. Italics are the author's.

continually to be coming to the law courts for the purpose of finding out what justification, according to the legal dicta, will enable him to escape from civil liability as a conspiracy, and from damages in paying for that civil liability." Sir Godfrey Lushington of the Royal Commission also expressed the same belief.[1]

It was with these criticisms of the law in mind that, in September, 1902, the Trade Union Congress demanded "that legislation be enacted which shall clearly define the law of conspiracy so that what is legal for one man to do shall not be either a criminal offense or an act wrongful if done by many in combination." In a letter submitted to the members of Parliament by the Trade Union Congress Parliamentary Committee, on May 5, 1903, the unionists declared:

"Acts when done by one person are legal, when done by a combination with others are actionable at common law as a conspiracy. . . . We respectfully desire on behalf of trade unions that under the Conspiracy Act the same rights shall be extended to actions done by persons in combination as to acts done by single persons."[2]

Partly as a result of this agitation, as well as that arising from the Taff Vale decision, a Commission on Trades Disputes and Combinations was appointed by King Edward on June 6, 1903, composed of The Right Honorable Andrew Graham Murray, Secretary for Scotland, Sir William Thomas Lewis, the recognized English authority on trade unions, Sir Godfrey Lushington, Mr. Arthur Cohen, and Lord Dunedin, three well-known jurists, and Mr. Sidney Webb. On January 16, 1906, it made its report. In its hearings some fifty representatives of employers testified, besides fifteen miscellaneous witnesses. Because of a resolu-

[1] Royal Commission, etc., p. 88.

[2] Report of minutes of evidence taken before Royal Commission, p. 13, question 138.

tion of the General Congress of Trade Unions, no trade unionist testified before this body. The committee did not have a single trade unionist among its members, most of the appointees being lawyers. In view of its membership and witnesses, a report prejudiced on labor's side would not have been expected.

In January, 1906, the commission made a number of recommendations tending toward the legalizing of peaceful boycotts. They were among others:

(Section 2) To declare *strikes from whatever motive, or for whatever purposes*[1] (including sympathetic or secondary strikes), apart from crime or breach of contract, *legal,* and to make the act of 1875 to extend to sympathetic or secondary strikes. (Thus strikes in furtherance of a boycott would be legal.)

(Section 4) To declare that an individual shall not be liable for doing an act not in itself an actionable tort only on the ground that it is an interference with another person's trade, business or employment.

(Section 9) To enact to the effect that *an agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute shall not be the ground of a civil action, unless the agreement or combination is indictable as a conspiracy,* notwithstanding the terms of the Conspiracy and Protection of Property Act, 1875.

These recommendations, coming, as they did, during the general elections, were sent in too late to have great weight in shaping the legislation of that year. The presence of the large number of Laborites in Parliament as a result of these elections, however, not only assured the passage of legislation as liberal from the standpoint of labor as had been recommended by the Commission, but, in some instances, as in the liability of the unions to be sued, of a much more advanced character.

[1] Italics are the author's.

The Trades Disputes Act, following the report of the commission, became a law December 21, 1906. It contained five sections. The recommendation of the Commission in Section 9, practically declaring the legality of a boycott, was embodied in the Trades Disputes Act, although in different phrasing, as follows:

"An *act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.*"

This section was to follow the first paragraph of Section 3 of the Conspiracy law of 1875. The law also provided that

"An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment, or that it is an interference with the trade, business or employment of some other person, or with the right of some other person to dispose of his capital or of his labor as he wills." In this, Parliament went further than the committee's recommendation.

It also declared that no suit for damages against a trade union or its members, for an injury committed in behalf of the union, shall be entertained by a court. The position of the commission was much more conservative on this last point. Subsection 4 of Section 7 of the 1875 Conspiracy Act was virtually repealed by the enactment of the following:

"It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where the person resides or works or

carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working."

While there is no mention here of the boycott, it is clearly seen that a trade union shall not be held civilly liable for any boycott prosecuted by them, and that a boycott, so long as it does not involve the doing of certain specially proscribed acts, is actionable neither civilly nor criminally. The question of the lack of reasonable cause, of maliciousness, of the remoteness of the benefit, of the coercive power contained in threats to injure the business of another, does not enter into the problem.[1]

The boycott, as it exists in America, however, has never made itself felt in England to any great extent. "The usual British boycott," wrote John Burnett in 1891,[2] "aims only at preventing the employer from obtaining other men, or from getting his work done at other places, but we are almost entirely strangers to that form of trade interdict which aims at compelling the surrender or ruin of an obstinate employer by stopping the sale of his goods."

Mr. Burnett speaks of the attempts of the London Bakers and the London Boot and Shoe Makers to boycott in the American style a few years prior, which boycotts were attended with no great success.

Mr. Gompers claims that the Trades Disputes Act has not had the effect of legalizing the boycott,[3] and cites an instance where it was considered actionable for an agent of a musicians' union to issue handbills asking the public to patronize a theater competing against one, the employees of which were on strike. The

[1] For a thorough discussion of the English situation, see Seager, *The Legal Status of Trade Unions in the United Kingdom, etc.*, Pol. Sc. Qtrly., v. 22, No. 4.

[2] John Burnett, *Economic Journal*, v. 1, pp. 172 *et seq.*

[3] Gompers, *Labor in England and America*, p. 31.

court, however, took the ground that the strike was over when the circularizing occurred, inasmuch as the manager had by that time procured other musicians to take the places of the strikers.

Germany

While the law of 1869 in Germany imposed penalties upon those who "coerced others by violence, threat and interdiction, or otherwise,"[1] a form of boycotting, involving the persuading of the general public to cease their dealings with a third party, and the threatening of fellow members of a labor union, has been declared by the German Imperial Court not actionable in damages.[2] The decision on this question was rendered July 12, 1906. As the court is divided into a number of senates, it does not follow that the decision would meet with the approval of each group of judges.

A dispute arose in March, 1904, between master bakers and their employees, in which the employees demanded that they be paid additional cash instead of food and lodging, and asked for a minimum wage. A strike followed, and the leaders, through the Social Democratic papers and pamphlets, gave an exposition of the workers' claims, and asked that those residing near the seat of trouble patronize those bakers who yielded, publishing a list of fair dealers. The labor federation resolved to boycott the recalcitrant employers, and issued a manifesto to organized labor, urging them to take part in the boycott, and threatening to have the members called to account should they refuse.

The master bakers thereupon brought an action to restrain the future publication of the boycott, and to secure damages based on Trade Code No. 153, which forbids the use of coercion in joining a combination,

[1] Law of June 21, 1869, Art. 153.

[2] Freund, *Journal of Political Economy*, v. 14, pp. 573, 574; *Deutsche Juristenzeitung*, September 15, 1906.

and Civil Code No. 823, 6. The court refused the request of the plaintiffs. It said in part:

"It is true that the imperial court has held repeatedly that a going concern is property, the injury for which may give rise to an action for damages. But not every action of another that causes damages is an unlawful injury, especially not an action which is merely an exercise of general and of economic liberty. Among lawful acts must be counted the formation of labor unions for the purpose of obtaining better conditions of work and of payment, and measures taken by such unions and their friends and adherents for this purpose are not illegal simply because they injure existing concerns. The only question is whether the measure taken in the present case goes beyond what is lawful in the wage and labor struggle. *The boycott of tradespeople by labor unions is not unlawful per se.* Boycotting and strikes alike are weapons, the former seeking to curtail the sale of goods, the latter seeking to hinder their production. One is neither more nor less permissible than the other. Both find their counterpart in the weapons used by employers—the strike in the lockout, the boycott in the blacklist.

"The law prohibits the use of menace and coercion for the purpose of procuring and retaining adherents in the wage conflict, and it also protects the adversary against undue measures taken to force him to grant new terms of employment.

"But by the threat that organized workmen not joining in the boycott would be called to account, it must be assumed that it was only meant that they would be expelled from their union in accordance with its by-laws. *Such a threat is not unlawful, since the right to hold out certain coercive measures rests upon a special relation.*

"If the measure threatened is not punishable, the threat is not punishable. Neither in their purposes nor in the measures they used did the defendants violate the general rules of fair and proper conduct. It does not

matter whether their demands were justifiable or not. It is sufficient that they regarded them as justifiable. In their publicity they avoided personal recriminations, and in the main confined themselves to a request for aid by giving preference in dealing to concerns acceding to the workmen's demands.

"*Nor does it offend against the law of fair conduct to apply for aid to others not immediately concerned in the struggle.* In similar manner there have been requests to avoid department stores in order to favor small concerns or to give preference to Christian tradesmen. Through such means, the removal of real or alleged evils is frequently sought. The publication of circulars of this kind cannot be regarded as violating the rules of fair dealing."[1]

The nation-wide boycotts against beer have been among the most conspicuous in Germany during the past few years.

Other Countries

According to Grover G. Huebner,[2] the laws on the statute books of some of the more important countries of Europe in 1906 were as follows:

Austria: The law of April 7, 1870, Art. 3, penalizes violence, threats, and the forcing of others to enter combinations, or to retire from such combinations. There are no special laws against boycotts.

Belgium: The law of May 31, 1866, modified the law of conspiracy, but the law of May 30, 1892, levies severe penalties against intimidation, mob rule and the breaking of tools. There is no special statute against boycotts.

France: The Penal Code of France suspends the common law and regulates strikes and the use of intimidation, threats, violence and similar acts. There

[1] Italics are the author's.
[2] Huebner, *Boycotting*, pp. 9-10.

is no statute especially applicable to boycotts. If a strike is begun maliciously to injure the employer rather than to benefit the strikers, it calls for damages. Cass, 9 June, 1896, Mounier C. Renaud. Interference with employment by threats is prohibited. Cass. Ap., Caen., Oct. 21, 1897.

Holland: The law of April 11, 1903, reinforces the penalties against violence and threats which were already provided for in the common law. There is no specific law against boycotts.

Italy: Penal Code, Art. 155, etc. Similar to the French law.

We see, therefore, that in none of these countries is there any specific law against boycotting, although in all of them there are statutes against intimidation which would probably be interpreted as applying to certain forms of boycotts.

It is seen that in England there has been a growing liberality in the law of conspiracy, and that, by the statute of 1906, the boycott is virtually legalized, as is the boycott in Germany. In other countries of Europe the status of the law is less definite, although their statutes against intimidation would probably be used in many instances against the employment of this device.

CHAPTER XVI

EFFORTS TO LEGALIZE BOYCOTTS AND TENDENCIES TOWARD LEGALIZATION

Many have been the endeavors to legalize boycotts in the United States by the introduction of anti-conspiracy and anti-injunction bills, by amendments to the Sherman Anti-Trust law and by means of exempting clauses in the Sundry Civil bills. Contempt bills have also been aimed at the preventing of judicial abuse in boycott cases.

One of the first efforts to pass pro-boycott legislation was made in 1902 and 1903 through the introduction of the Hoar-Grosvenor Anti-Injunction and Anti-Conspiracy bills. The Pearre Anti-Injunction bill of 1908, the Wilson Anti-Injunction bill and proposed amendment to the Sherman law in 1911, the Bartlett Anti-Injunction bill of 1912, the Bartlett and Stanley Contempt bills of 1913, the Clayton Anti-Injunction and Contempt bills of 1912 and 1913, and the Sundry Civil bills of the last few years are among the most important of those thus far introduced.

The Wilson bills, introduced by Secretary of Labor W. B. Wilson of Pennsylvania, had the solid support of the American Federation of Labor, and represented, perhaps as few other bills did, the attitude of that organization.

The anti-injunction and anti-conspiracy bills introduced by Mr. Wilson, then chairman of the Labor Committee of the House, June 2, 1911, prohibited

the courts of the United States from issuing injunctions unless necessary to prevent an irreparable injury to property, and provided that the so-called rights of patronage and of employing others should not be construed into property rights. It also stipulated, following the legislation of England, that no act be considered a conspiracy or a civil or criminal offense, unless unlawful if done by a single individual. By its provisions secondary and certain forms of compound boycotts would be legalized.

The amendment to the Sherman Anti-Trust law, introduced the same day by Mr. Wilson, provided that this law should not be made to apply to any organizations not for profit or without capital stock.

The Wilson Anti-Injunction Bill, H. R., 11,032, 62nd Congress, was as follows:

"A bill to regulate the issuance of restraining orders and procedure thereon, and to limit the meaning of 'conspiracy' in certain cases.

"Be it enacted by the House of Representatives of the United States of America in Congress assembled,

"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 employee, or between employers and employees, or between employees, or between persons employed and persons seeking employment, or 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 and property right must be particularly described in the application, which must be in writing and sworn to by the applicant or by his, her, or its agent or attorney. *And for the purposes of this act no right to continue the relation of employer and employee, or to assume or create such relation with any particular person or per-*

sons, or at all, or patronage or good will in business, or buying or selling commodities, of any particular kind or at any particular place, or at all, shall be construed, held, considered, or treated as property or as constituting a property right.

"Sec. 2. That in cases arising in the courts of the United States or coming before said courts, or before any judge or judges thereof, *no agreement between two or more persons* concerning the terms or conditions of employment, or the assumption or creation or termination of relation between employer and employee, or concerning any act or thing to be done or not to be done with reference to or involving or growing out of a labor dispute, *shall constitute a conspiracy or other civil or criminal offense, or be punished or prosecuted, or damages recovered upon as such, unless the act or thing agreed to be done or not to be done would be unlawful if done by a single individual; nor shall the entering into or the carrying out of any such agreement be restrained or enjoined* [1] unless such act or thing agreed to be done would be subject to be restrained or enjoined under the provisions, limitation, and definitions contained in the first section of this Act.

"Sec. 3. That all Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed."

The amendment to the Sherman Act proposed by Mr. Wilson, H. R. 11033, 62d Congress, read:

"A bill to more clearly define the Act of July 2, 1890, entitled 'An Act to protect trade and commerce against any unlawful restraints and monopolies.'

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, *That nothing in the act of July 2, 1890, entitled, 'An Act to protect trade and commerce against any unlawful restraints and monopolies,' is intended, nor shall any provision thereof hereafter be enforced, so as to apply to organizations or associations not for profit and without capital stock,* nor to the

[1] Italics are the author's.

members of such organizations or associations as such, except where such organization or association not for profit and without capital stock, or the members of such organizations or associations, shall become directors or managers of corporations which are organized for profit and which have capital stock.[1]

"Sec. 2. That nothing in said Act of July 2, 1890, is intended, nor shall any provision thereof hereafter be enforced, so as to apply to any arrangements, agreements, or combinations among persons engaged in agriculture or horticulture made with a view of enhancing the price of their own agricultural or horticultural products when sold or offered for sale by themselves.

"Sec. 3. That all Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed."

The last vigorous efforts to obtain the passage of the anti-injunction and contempt bills were those made in 1912 by Congressman Clayton and his supporters. The Clayton Anti-Injunction Bill (H. R., 23,635), which prevented the use of the injunction against secondary boycotts and which had the approval of organized labor, was passed by the House on May 14, 1912, by an overwhelming vote of 244 ayes to 31 nays, and was referred by the Judiciary Committee of the Senate to a subcommittee of five, Senator Root, chairman, and there died, despite the protests of the A. F. of L. and others.

The Clayton Contempt bill (H. R., 22,591), providing for trial by jury for contempts occurring outside the court, passed the house on July 11, 1912, by a vote of 233 ayes to 18 nays, but died in the Senate Committee on Judiciary, without its having been referred to the subcommittee for a hearing.

In 1912 also the Bartlett Anti-Trust bill (H. R., 23,189), which was favorably reported by the House Committee on Labor, April 22, 1912, died on the

[1] Italics are the author's.

House calendar. The Bacon bill, S., 6,266, an identical bill in the Senate, was never reported out of committee.

In order to prevent the use of any appropriations made by Congress in prosecuting labor unions, amendments from time to time have been made to sundry civil bills. In 1909 Representative Hughes made such an amendment, but President Taft vetoed it. On February 20, 1913, Congressman Hammill offered the following amendment to that portion of the bill appropriating $300,000 for the enforcement of the Anti-Trust laws:

"Provided, however, that no part of this money shall be spent in the prosecution of any organization or individual for entering into any combination or agreement having in view the increasing of wages, shortening of hours or bettering the conditions of labor, or for any act done in furtherance thereof, not in itself unlawful."

Representative Roddenbery added to the amendment an exemption to farmers' associations.

"Provided, further, that no part of this appropriation shall be expended for the prosecution of producers of farm products or associations of farmers who cooperate or organize in the effort to obtain and maintain a fair and reasonable price for their products."

The amendments were passed by the House and the Senate, and were submitted, together with the many other provisions, to President Taft, March 4. Disapproving these exemptions, President Taft returned the bill to Congress. The House of Representatives thereupon passed the bill over his objections by a vote of 264 ayes to 48 nays. The hour of adjournment arrived in the Senate before action could be taken, and the measure thus died.

The same bill was repassed by the new Congress

which was called together in special session by President Wilson, and on June 23rd he signed it, at the same time expressing his disapproval of the practice of attaching riders to appropriation bills and his regret that he could not veto the riders without vetoing the whole bill. On the real point at issue he expressed no opinion.

Several other bills were also presented in the Spring of 1913, but with little likelihood of passage. Representative Henry introduced an amendment to the Sherman law, exempting labor unions and agricultural associations;[1] Representative Clayton, two Anti-Injunction bills,[2] and Representatives Stanley, Clayton and Bartlett, contempt bills,[3] all of which were referred to the committee on the Judiciary.

In affirming that there should be no law limiting combinations of labor, although certain forms of combinations of capital are prohibited, trade unionists argue that the existence of such a law places labor at a great disadvantage. One worker is regarded as a unit of labor. A combination of two or more workers constitutes a combination. Their activities, if they are found guilty of boycotting, may be declared in restraint of trade, under the provisions of the present Sherman Anti-Trust Law. A unit of capital, on the other hand, may be a million-dollar corporation, thousands of times as powerful as a unit of labor, or even as most combinations thereof. Yet no attempt has been made to reach such a corporation under the Sherman Law unless it has seemed likely to constitute more or less of a monopoly.

Unionists, therefore, state that, while the oft-repeated argument that the Sherman law treats capital and labor combinations alike seems most plausible,

[1] H. R. 2958, 63d Cong., 1st Ses.
[2] *Ibid.*, 4659, 5484, 63d Cong., 1st Ses.
[3] *Ibid.*, 5798, 5711, 4660, 1871, 63d Cong., 1st Ses.

the equal enforcement of the law is, in reality, far from equitable in its results.

Other reasons put forward for exempting labor from the provisions of the anti-trust law are that unions are organized not for profit, but for the mutual assistance of the laborers, and that labor is inseparably connected with a human being, while capital is inanimate.

Mr. Samuel Gompers thus differentiates the two forms of combinations:

"The labor union is not a trust. None of its achievements in behalf of its members—and society at large—can properly be confounded with the pernicious and selfish activities of the illegal trust. A trust, even at its best, is an organization of a few to monopolize the production and control the distribution of a material product of some kind. The voluntary association of the workers for mutual benefit and assistance is essentially different. Even if they seek to control the disposition of their labor power, it must be remembered that *the power to labor is not a material commodity.*

"There cannot be a trust in something that is not produced. The human power to produce is the antithesis of the material commodities which become the subject of trust control. . . .

"Our unions aim to improve the standard of life, to uproot ignorance, and foster education; to instil character, manhood and independent spirit among our people; to bring about a recognition of the interdependence of man upon his fellowman. We aim to establish a normal workday, to take the children from the family and workshop and give them the opportunity of the school, the home and the playground. In a word, our unions strive to lighten toil, educate our members, make their homes more cheerful, and in every way contribute an earnest effort toward making life the better worth living. To achieve these praiseworthy ends, we believe that all honorable and lawful means are both justifiable and commendable and should re-

ceive the sympathetic support of every right-thinking American."[1]

"What is labor?" asked Mr. Gompers again.[2] "Is it an inanimate thing? . . . Labor is the effort of a human breathing man and woman. You can take capital and transport it to the other end of the world. You cannot do that with labor. You cannot differentiate the labor of the man or the woman with the breathing, respiring body and heart and brain. . . . It is an abuse of the very essence of essential principles to place in the same category labor and capital. You can make regulations for capital and the owner of capital may leave. You may not deprive even him of his own personal liberty, though you make all the regulations you may as far as concerns capital; but you cannot make one regulation in so far as labor is concerned, in the ordinary acceptance of that term, without its affecting the laborer—his heart, his body, his brain."

Tendencies Toward Legalization

If we take a broad view of the evolution of the law of conspiracy, we are impelled to feel that that evolution will continue until many forms of the boycott are legalized. All strikes were at one time declared illegal. Now many states hold that laborers can strike for any and all reasons. One by one the arguments which were used against the legality of strikes—practically the same as those now employed against boycotts—have been discarded. Strikes were declared to be unlawful conspiracies. They injured the property of another, they coerced others against their will, they were malicious, their immediate effect was harmful.

The arguments no longer obtain. Even strikes for the maintenance of the closed shop, which in many instances involve the boycotting of non-union men, are

[1] *American Federationist,* November, 1907. Italics are the author's.

[2] *Ibid.,* May, 1908.

frequently held legal. That the same evolution is likely to occur in the case of the boycott seems logical.

England has legalized boycotting by statute. The German courts have recently taken an advanced position. Statutes in Maryland and California, following the English law, declare that it is not indictable for two or more to do that which it is lawful for one to do. The Montana, California and New York courts have decided in favor of the legality of secondary boycotts, while the former two states approve some forms of compound boycotts. State and national legislators are clamoring for their legality. Indications point to a considerable degree of success within the not distant future. If boycotts are legalized, however, such legalization will probably come largely through legislation, rather than through the judiciary.

PART III

BOYCOTTS IN THE LIGHT OF SOCIAL AND ECONOMIC CONDITIONS

CHAPTER XVII

SOCIAL AND ECONOMIC REASONS AGAINST THE BOYCOTT

In view of the manner in which boycotts have been used and abused by unionists in labor struggles, the question arises as to whether, from the larger social and economic viewpoint, they should be legalized, or whether more stringent efforts should be made toward their suppression.

Employers have, in the vast majority of cases, taken the latter view. They claim that boycotts, at least, the secondary and compound forms, are detrimental to the interests of the general public, since they frequently lead to mob violence and to the suppression of liberty of action; that they are unjust to the employing class, placing it at a disadvantage in its struggles with labor and rendering it a victim to the tyranny and extortion of union leaders; and, finally, that they are injurious to the workers themselves. Their employment alienates the sympathy of the public from the unionists' cause, diminishes the employment of many of their members, vitiates the unions with the disintegrating influences of corruption, diverts attention from saner and more effective methods of progress and maliciously interferes with the rights of the non-union worker.

Many employers and conservatives, however, confine their disapproval to denunciatory utterances. Thus

the *Brooklyn Daily Eagle* a short time ago[1] characterized this instrument as a "dragon, slimy and repulsive, which had, for more than a quarter of a century, been a vague terror to independent workers and to large employers, at all times, materializing now and then as a concrete foe, insidious, treacherous, often triumphant." The Grand Jury in the Theiss Case[2] described the particular kind of boycott before them as an accursed exotic, a "hydra-headed monster, dragging its loathsome length across the continent, sucking the very life blood from our trade and commerce, equally harmful to employees and employers." Another paper declared:

"As frequently applied it is one of the most heartless and brutal manifestations of private revenge recorded in history and is calculated to call forth the abhorrence and just reprehension of all men who respect law and love liberty."[3]

In citing his reasons for the prohibition of the boycott from the social viewpoint, a Virginia judge declared that he saw in the boycott the beginnings of anarchy. He said:

"The acts alleged and proved in this case are unlawful and incompatible with the prosperity, peace and civilization of the country, and, if they can be perpetrated with impunity by a combination of irresponsible cabals and cliques, *there will be an end of government and of society itself.*"[4]

The judge described the acts of the defendants as "constituting a reign of terror, which, if not checked and punished in the beginning by the law, will speedily

[1] May 16, 1910.
[2] Bureau of Statistics of Labor, New York, 1886, p. 747.
[3] American Bar Association, 1894, p. 307, quoting Mr. Charles C. Allen.
[4] Crump v. Commonwealth, Va., 1887. Italics are the author's.

and inevitably run into violence, anarchy and mob tyranny." Again he affirms that it is "oppressive to the individual, injurious to the prosperity of the community and subversive of the peace and good order of society."

While commending the direct boycott, Prof. John B. Clark believes that the indirect boycott is an unwarranted interference with freedom:[1]

"To refuse to buy anything whatsoever from a merchant because he keeps in his stock a prohibited article, and sells it to a different set of customers, is interfering, in an unwarranted way, with the freedom of a merchant and of the other customers."

Many cases may be cited where the boycott has been injurious to parties having nothing whatever to do with the original dispute. Retailers, under contract relations with the boycotted firm, have been ostracised financially because they failed to break their contracts; citizens have been boycotted because they purchased goods from stores whose owners rode in trolleys on which there was a strike; barbers, because they shaved strike-breakers. Competitors have frequently duped a trade union into boycotting a concern, and employers have been boycotted by one labor organization because they acceded to the demands of a rival. The number of such instances may be multiplied. Such activities, claim the opponents of the boycott, should not be tolerated.

The use of the boycott, it is argued, is unjust to the employing class, as it permits laborers to become virtually the dictators of industry. The presiding judge, in an early New Jersey boycott case, thus views the danger:

"Freedom of business action is at the foundation of all industrial and commercial enterprises. . . . If this

[1] Clark, *Essentials of Economic Theory*, p. 507.

privilege is denied them (the employers), if the management of the business is to be taken from the owner and assumed by, it may be, irresponsible strangers, then we will have come to a time when capital will seek other than industrial channels, when enterprise and development will be crippled, when interstate railroads, canals and means of transportation will become dependent on the paternalism of the national government, and the factory and workshop, subject to the uncertain chances of the coöperative system."[1]

The blacklist, which is to the employer what the boycott is to the laborer—the former being the concerted refusal to patronize labor, the latter, the concerted refusal to patronize the goods of the employer —has been pronounced illegal by the courts. Why should not the boycott, it is asked, also be considered illegal? To legalize a weapon of labor and to prohibit the use of the corresponding weapon of capital gives the former an undue advantage.

Many cases are recorded in which great injustice has been done the individual employers. Often, according to the claims of these employers, they have been boycotted for trivial causes. The alleged oppressive conditions have been greatly exaggerated in the labor press, and, as a result of these misrepresentations, the firms have lost thousands of dollars. They have often been compelled to pay extortion money to escape a threatened boycott.

It is also claimed that the use of the boycott is injurious to the unions themselves. Referring to the "compound" boycott, in which third persons are coerced into refusing business relations with the boycotted firm, the Industrial Commission makes this contention:[2]

[1] Barr v. Essex, N. J., 1891.
[2] Ind. Com. Rept., v. 19, p. 885.

"As a matter of fact, the cause of workers is undoubtedly injured much more than it is benefited by attempts to compel others against their will to help in their disputes. A large proportion of the community objects to such coercive measures, and will be more apt to take sides against the workers where they are resorted to."

The Commission, however, considers the boycott, where no coercion is used, legitimate.

In many instances the more indirect boycotts are likely to throw out of employment large numbers of the working class, including union men, thus proving a boomerang against labor. This occurs when a union employer is boycotted because he directly or indirectly deals with another who has incurred the animosity of organized labor.

It is claimed, furthermore, that the use of this weapon is detrimental to the interests of labor, because it concentrates the attention of labor on an inferior weapon, and keeps labor from endeavoring to solve its various problems by the employment of the union label, the label shop, political action, the trade agreement, the industrial form of organization, etc. After years of experience in boycotting, Mr. A. J. Portenar, following his description of the extensive movement against the Butterick firm, concludes:[1]

"I was very active in this matter, and from the experience then gained I have reached definite conclusions. We expended a large amount of money; how large I do not know. So far as money could compass our object, we were not niggardly. But money is but one of the essential factors a union needs in the conduct of an affair of this kind. *Far more than money, it must have the enthusiastic devotion of its members to the continuous, laborious and unpleasant work need-*

[1] Portenar, *Problems of Organized Labor,* p. 92. Italics are the author's.

ful to make the expenditure of money effective. This, with a few exceptions, I found it impossible to get. And even these few, in the course of time, finding themselves unsupported by the great majority, began to get lukewarm and at last ceased to labor in a field so vast and so deserted.

"There can be no doubt whatever that if the bulk of the membership had been as devoted as our self-sacrificing band of a few hundreds, who for nearly four years gave time and energy to the work, the results would have been tremendously greater. But, this apathy being so widespread among our membership, it can easily be imagined what sort of inertia we encountered when appealing to the membership of other unions and to the general public. It was not that we had no success. The Butterick Company is the best witness to the contrary. But it is scarcely believable how unremittingly we had to labor to save what we had done one day from becoming useless the next. And this fact eventually led to the abandonment of the boycott and the slow recovery by the Butterick Company of the ground lost.

"Therefore my opinion is that no boycott can completely and permanently accomplish the result sought, and very few will do nearly as much in that direction as the one here spoken of, which finally became a failure." Mr. Portenar, as formerly stated, proposed a "great coöperative society controlled and directed by international unions."

Mr. Herman Lee, secretary of the Anti-Boycott Association, claimed that the employment of the boycott in the building trades often leads to corruption and extortion. Mr. Lee cites an alleged instance in which a union foreman compelled a builder to pay him $2,000—the cost entailed in his tearing down non-union frames to doors and windows and putting union frames in their stead. He stated that the foreman disbursed $15 a day to himself and to each of the ten

men under him for this particular job. In some instances, Mr. Lee asserted, the union foremen or walking delegates threaten to boycott a firm on account of some alleged infringement of union rules, in order to exact a considerable bribe from the employer.

The policy of the building trades, be it said, is to enforce a boycott against any mill supplying non-union material, by threatening to strike, and actually striking against any builder who purchases such non-union goods. Such corruption, it is claimed, has an injurious reflex action against labor organizations.

It is also charged that the labor boycott which is directed against the employment of non-union men works great injustice to unorganized labor. Many non-unionists find it impossible to secure membership in certain trade unions, it is alleged, either on account of the high initiation fees, the arbitrary limitation of membership, or some personal discrimination. If the union begins a boycott against these men, and threatens to boycott those who employ them or who deal with the employers, the worker often finds that he is deprived of his means of livelihood, not only in one city, but in various parts of the country. No less is this a hardship to those who, for one reason or another, do not apply for membership in the union.

The opponents of the boycott therefore urge that in justice to the general public, to the employers, and to the workers themselves, its use in labor disputes be absolutely prohibited by law.

CHAPTER XVIII

SOCIAL AND ECONOMIC REASONS FOR LEGALIZING THE BOYCOTT

While, on the one hand, we hear those who bitterly denounce the boycott in its various forms, on the other, we discover just as enthusiastic supporters who favor the legalization of every form of boycott, primary, secondary and compound, except, perhaps, that form in which threats of actual violence are involved. The argument for the legalization of the boycott from a social and economic standpoint is based primarily upon the hypotheses that the well-being of society is intimately connected with the condition of the working class; that that condition at the present time is greatly in need of improvement; that such improvement depends to a very large extent upon the strength of labor's organizations; that that strength is contingent upon the weapons of defense and offense permitted to it; that the employing class is now in possession of certain powerful weapons denied to the laborer, and that justice demands that organized labor be placed in possession of such weapons as tend to place it on a more equal footing with the employing class, in its struggles for a larger part of the social product.

While acknowledging the possibilities of occasional abuse, the advocate of the boycott believes that the tendency to abuse it becomes less marked and that the good accomplished far outweighs the evil. He also points to the danger of the secret use of the boycott and to the injurious results which follow when a group

in society continues a practice in defiance of law. He declares that there is also the possibility that the worker will use more iniquitous weapons, should he be totally deprived of the use of the boycott. Finally he argues for the legalization of the boycott on the ground that its prohibition would deprive the workers of a fundamental human right.

Present Condition of Labor

The statement that the welfare of society is indissolubly connected with the welfare of the great mass of intellectual and manual producers is perhaps axiomatic in this day and generation. It is also freely admitted that the condition of the working class is in need of improvement, and that wages are far too small.

"It is reasonable to believe," declares Dr. Frank Streightoff, in his excellent treatise on 'The Distribution of Incomes in the United States' (pp. 139-140), "that in 1904 something over sixty per cent. of males at least sixteen years of age, employed in manufacturing, mining, trade, transportation, and a few other occupations associated with industrial life, were earning less than $626 per annum (about $12 a week); about thirty per cent. were receiving some $626, but under $1,044; and perhaps 10% enjoyed incomes of at least $1,000. If to these the agriculturists are added, sixty-five per cent. fall in the low-earnings group, twenty-seven in the medium, and eight in the higher."

Similar conclusions are reached by others. Prof. T. S. Adams calculated that, in 1900, 49.68 per cent. of the male adult workers in the large factory industries received less than $10 a week; 34.12 per cent., between $10 and $15; and only 16.2 per cent., $15 or more; that the median wage was about $10.05 a week,

and that the average yearly earnings were something like $480.[1] The wages of the women and children, of course, are smaller. In some occupations, such as the textile industry, the income is exceedingly low.

In the latter industry a recent report of the Commissioner of Labor declares that of the male operatives, 16 years and over, in the New England mills investigated:

"Thirteen and four-tenths per cent. earned less than $4 in the representative week, for which wages were taken, while 32% earned under $6, 54.3% under $8, and 71.8% under $10, leaving 28.2% earning $10 or more. Of the female operatives in this age group in the New England mills investigated, 13.2% earned under $4, 38% under $6.67, 4% under $8, and 86.4% under $10, leaving 13.6% earning $10 or more in the representative week.

"Of the male operatives 16 years of age and over in the Southern mills investigated, 26.6% earned less than $4.48, 4% under $6.75, 2% under $8, while 90.1% earned under $10, and of the female operatives, 32.6% earned under $4, 68% under $6.92, 5% under $8, while only 1.9% earned as much as $10." In all except the last group, the largest single group of workers earned between $6 and $8 a week.

The table thus shows that *nearly one-third of the men, and nearly two-fifths of the women, in the New England mills, and nearly one-half of the men and over two-thirds of the women in the Southern mills,* earn less than *$6 a week;* while over one-half of the men and over two-thirds of the women in New England—nearly three-fourths of the men and over nine-tenths of the women of the South—earn less than $8 a week, in this industry.[2]

[1] Adams and Sumner, *Labor Problems,* p. 156.
[2] Report on Condition of Women and Child Wage-earners in the United States, v. 1, pp. 310, 311.

A conservative New York[1] newspaper recently figured that, in New York, a family, consisting usually of a woman and 4 children, earns from $4.71 to $5.71 a week, making doll's clothing; from $2 to $3, picking nuts from shells; and from $3.30 to $4.25, in the preparation of artificial flowers.

In the face of the actual earnings of so large a part of the working class, we hear from Dr. Devine, Prof. Ryan, John Mitchell and others that $600 a year for a family is a minimum normal standard necessary to provide for the family the necessities of life. Prof. Albion W. Small places this amount at $1,000.[2] Mrs. Louise Bolard More concludes that in New York City the physical wants of a normal family cannot be properly supplied by an income of less than $800 a year.

Of conditions in New York, the Committee on Congestion of Population, in their report of April 3, 1910, contended that, while a few wage-earners were making enough to support their families in decency, $800 a year being taken as a minimum, *the average wage of 339,221 wage-earners in Manhattan and the Bronx, in 1905 was $543.17; of 104,995 in Brooklyn, $519.42.* The wage-earners in the former boroughs thus secured $257 less, and in the latter, $280 less than the necessary minimum.[3]

If we were to investigate the hours of employment, the sanitation of the factories, the condition of the safety appliances, the unsteadiness of employment, and the many other conditions surrounding the lives of the working class, we would find that they were equally unsatisfactory. That labor must be well organized if it is to improve its conditions adequately, in view of the big business combinations against which it is pitted, is

[1] *Brooklyn Daily Eagle,* March 24, 1912.
[2] *Charities and Commons,* v. 17, p. 300.
[3] *New York Times,* April 4, 1910.

now conceded by all economists. On this question the Industrial Commission concludes:

"It is quite well recognized that the growth of great aggregations of capital under the control of single groups of men, which is so prominent a feature of the economic development of recent years, necessitates a corresponding aggregation of workingmen into unions, which may be able also to act as units. It is readily perceived that a single workman, face to face with one of our great modern combinations, such as the United States Steel Corporation, is in a position of great weakness."[1]

It is also recognized that such organizations have materially assisted the workers in obtaining better conditions. Quoting again the Industrial Commission as, perhaps, the most authoritative of our public investigations, we learn:[2]

"An overwhelming preponderance of testimony before the Industrial Commission indicates that the organization of labor has resulted in a marked improvement of the economic conditions of the workers."

The commission then gives a large number of instances where wages have been raised on account of organization. In referring to the accomplishments of labor in reducing hours, the Commission affirms:[3]

"In the absence of legislation, the only effective means of securing a reduction of hours is through labor organization. This is, of course, the method by which the most significant and important reductions in recent years, in the United States, have been secured. . . . The general effort of the A. F. of L. to secure shorter hours, beginning in 1886, is believed to have reduced the day's labor of the working people of the United States by fully one hour."

[1] Final Report of the Industrial Commission, v. 19, p. 800.
[2] *Ibid.*, p. 802.
[3] *Ibid.*, p. 776.

A glance through the foregoing pages will readily indicate that the boycott in many trades, if used wisely, can be and frequently has been of much value in strengthening the unions in their contests. The frequent use of this weapon, the belief in its potency which is held by labor leaders and official investigators, as well as the bitter opposition which its use has aroused among the employing class, are indicative of its efficacy.

We will now glance at some of the advantages possessed, as well as some of the weapons used, by the employers in their contest against their employees.

The Wealth and Position of Employing Class

In the industrial struggle the workers are essentially at a disadvantage. They have no share in the ownership of the machines, but must have access to them if they wish to earn their daily bread. There are generally more men than there are jobs available, and this often leads to a fierce struggle. Labor, the most perishable of all commodities, is the only commodity which the worker has to offer. The worker is usually but a few weeks from destitution. He lacks the education in the art of bargaining which the employer has acquired, and he is far less acquainted with the condition of his employer's exchequer than the employer is with his employee's financial status.

When the worker strikes he finds that these handicaps weigh heavily. A cessation of work may seriously cut into the profits of the owner of the industry, but it rarely means actual physical privation for himself and his family. The opposite is true of the worker. In every strike he must face a bitter struggle, and often he and his family find themselves facing starvation and eviction. He is financially much weaker than his employer.

In summing up some of the advantages possessed by capital, the Industrial Commission declares:

"The control of the means of production gives power to dictate to the workingmen upon what terms he (the employer) shall make use of them. . . . The tendency toward unified control of capital and business has only intensified, without essentially changing, the disadvantage of the wage worker in his dealings with employers. . . . The competition for work is normally far sharper than the competition for workmen. . . . The commodity of labor is in the highest degree perishable. That which is not sold to-day disappears absolutely. . . . Considered merely as a bargainer, as an actual participant in the operations of the market, the workingman is almost always under grave disadvantages as compared with the employer. . . . But aside from all questions of mental dexterity and acquired skill, the workingman is at a disadvantage in that his economic weakness is well known to his employer. . . . The workingman cannot conceal his need of work, and cannot know how much his employer needs men."[1]

One needs only to watch the unequal contest which even such a strong organization as the American Federation of Labor has been waging during the last few years, merely to organize the workers in the steel industry, to realize the tremendous disadvantages under which labor is struggling.

Not only does capital possess these advantages, but it has at its disposal certain weapons which are used with terrific force against labor. Among these weapons may be mentioned the employers' organizations, blacklists, the "spy" system, the private detective agencies, and the strike-breaking bureaus. The employer, furthermore, often finds the molders of public opinion —press, lecture platform and pulpit—pliable instru-

[1] Final Report of the Industrial Commission, v. 19, pp. 800, 801.

ments in his hands, as well as many of the agencies of government, such as the police, constabulary, militia and courts. Let us first turn our attention to the power of the employers' organizations.

Employers' Organizations

To one who has not closely followed the growing organizations among the employers during the past few years, the formidable character of the various associations now in existence, and their political and strike-breaking activities, will be truly astonishing.

Of first importance is the National Association of Manufacturers, with splendidly equipped headquarters in New York City and St. Louis. This organization is said to have a membership of 225 manufacturers' organizations, embracing 4,000 individual members who employ more than 5,000,000 persons, and represent an approximate capital of $10,000,000,000. Five years ago the association reported a salaried staff of over fifty persons.

Since the convention of April, 1903, held at New Orleans, when, under David M. Parry's leadership, the association proclaimed its "unalterable antagonism to the closed shop," the labor problem has been one of the leading issues before it.[1] In 1905 it commenced its opposition to the eight-hour bill, and "to any and all anti-injunction bills of whatever kind."

At the 1907 convention a campaign was inaugurated for the raising of $500,000 annually for the next three years, to be spent for "educational purposes." "There can be little doubt that the main part of the association's education program was *to destroy the closed shop, to combat the sympathetic strike, to check the use of the union label, and to prevent the publication of the unfair list by trade union journals.*"[2]

[1] William M. Benney, *American Industries,* May 15, 1908.
[2] Kennedy, *Journal of Political Economy,* v. 16, p. 102.

Among the purposes for which this fund was to be used, according to Atherton Brownell in the official organ of the Association, were:[1] "To establish a federation of all of the associations of citizens, merchants and employers of labor, . . . to maintain a great council of this federation; . . . *to create labor bureaus, operate a labor clearing house, to aid members of congress and of the state legislatures against the attacks of organized labor.*" Literature, legal, educational and speakers' bureaus were also contemplated. How much of this proposed fund was actually raised is problematical. Mr. James A. Emery recently testified before a Senate committee that "none of them 'came over.' "[2]

The following year the members of the National Association of Manufacturers, either directly through this association or through the National Council for Industrial Defense, organized by the Association's officers for the purpose of influencing legislation, gave much attention to the blocking of labor bills. President Van Cleave of the Association, in his report before the 1908 convention, describes the work done in this line:

"Ten days ago in Washington, *within forty-eight hours we had over 10,000 telegrams and letters sent, a demonstration the like of which had never before been made, and which had an instantaneous effect.* . . . The result was that it seemed, up to last Saturday, that it would be impossible for any influence or power to break down that effect far enough to enact any labor legislation."[3]

A few months earlier he wrote, in commenting upon the defeat of a number of proposed labor bills:

[1] *American Industries,* September 15, 1907, p. 5.
[2] Maintenance of a Lobby to Influence Legislation, hearings 63d Cong., 1st Ses., p. 4296 (August 28, 1913).
[3] Proceedings of Convention, N. A. M., p. 107. Italics are the author's.

"Much of the credit for the defeat of these measures in the recent Congress (the anti-injunction law, etc.) belongs to the National Association of Manufacturers. . . . Members of the Association's committees, regular or special, appear before committees of Congress in support of or in opposition to measures which are to come up for action. Sometimes the Association is represented in this work by well-known lawyers or publicists. A similar course of procedure is followed by the Association in the legislatures."[1]

In 1907 a National Council for Industrial Defense was established to harmonize and federate the various national, state and local organizations, and within a year more than 130 of such employers' organizations were brought together, including practically all of the important bodies in every state. At present writing, it is said to contain no less than 250 organizations.[2] Of this body the late President Van Cleave said:

"In the number of members, in the capital which they control, and in the social, industrial and political influence which they exert, this is by far the largest and most powerful league of conservative and public-spirited citizens ever formed in any country of the world."[3]

The exact status of this organization is hard to determine. Some claim that, inasmuch as the charter of the National Association of Manufacturers did not permit it to solicit or disburse funds for political purposes, the National Council for Industrial Defense, an unincorporated body, was organized to assist in this work. Mr. J. Philip Bird, General Manager of the former Association and secretary-treasurer of the latter, stated that the officers of the National Council for Industrial Defense were selected by themselves from among the

[1] *American Industries,* September 15, 1907.
[2] Maintenance of a Lobby to Influence Legislation, *op. cit.,* p. 2736.
[3] *American Industries,* May, 1908, p. 27.

officers of the National Association of Manufacturers, and that the Council paid a salary of $1,000 a month to Mr. Emery, the chief lobbyist. He also admitted that this Council never held a general meeting during its six years of existence.[1]

Colonel M. Mulhall, for many years in the employ of this association as confidential man, alleged recently in statements in the *New York World,* and before the Senate Investigating Committee, that the National Association of Manufacturers, with the assistance of the National Council for Industrial Defense, was instrumental in defeating many Congressmen who favored labor legislation, including Representatives George E. Pearre, author of the Anti-Injunction Bill, W. B. Wilson, now Secretary of Labor, James Hughes of New Jersey [2] and others. The Association or the Council, directly or indirectly, at the same time assisted in financing the campaigns of Representatives Charles E. Littlefield of Maine, James E. Watson of Indiana, James T. McDermott of Illinois, a "friend of labor," John J. Jenkins of Wisconsin, sometime chairman of the Judiciary Committee of the House, Kittridge Haskins of Vermont, Harry M. Bannon of Ohio, and Representatives Coudry, Garner, Cole and others who had proved true to the business interests.

In the Littlefield campaign of 1906 alone, Colonel Mulhall declared, many thousands of dollars were spent in reaching the voters, a goodly sum being devoted to the purchase of whiskey.[3] During some of the campaigns, especially that of James E. Watson of Indiana, a number of labor leaders were paid a con-

[1] *New York World,* July 17, 1913; Maintenance of a Lobby to Influence Legislation; note: *op. cit.,* pp. 2737, 2738, 2742.

[2] In the Hughes' campaign the Colonel averred that he paid $1,800, sent by Mr. Cushing, secretary of the N. A. M., to labor men to turn over to the Republican headquarters some 75,000 circulars sent them by the A. F. of L. in behalf of Hughes, a Democrat; *op. cit.,* pp. 2487, 2488.

[3] *Ibid.,* pp. 2582 *et seq.*

siderable sum of money for their work in reaching labor. In some instances the voters were bought outright. Thousands of confidential communications were sent in each case to the business men of the community, urging that the Association's friends be indorsed. One of the letters sent by Colonel Mulhall to Congressman Haskins of Vermont, June 16, 1908, is illustrative of the methods:

"I had Mr. Schwedtman (assistant to the president of the Association) at the St. Louis office send you $300 yesterday by wire. In addition to this we have written to every man in your district, and I am told that we are given some very nice letters in return."

Colonel Mulhall urgently requested $3,000 for Congressman Jenkins in his campaign. Individually the Association's members raised a considerable sum of money.

In a further endeavor to win favorable legislation for the business interests, efforts were constantly made to control the Judiciary and Labor Committees of the House and the Senate.[1] Mr. Mulhall also claimed that the chief page of Congress, in charge of seventy-five pages, was employed at a salary of $50 a month to assist in the work. While certain statements of Colonel Mulhall were challenged before the Senate committee, the activities described above were in the main admitted.

That he had been sent at the expense of the association to help break numerous strikes, and that he had several times bribed labor leaders to spy on the labor unions and to bring the strikes to an end, were other of the allegations of the colonel. In describing his activities in 1905 and 1906, in crushing the strike of the printers in Philadelphia, Mr. Mulhall declares:

[1] *New York World,* June 29, 1913.

"My principal duties were to keep track of the union printers *through hired agents* furnished me by Cushing and others. *Through these agents we, in a large measure, got control of the Central Labor Union of Philadelphia and kept the other union not associated with the printers from contributing to the support of the strike.*"[1]

Mr. Mulhall declared that the machinists' strike in Cleveland in June of 1907 was settled "by using almost the identical tactics as far as money matters were concerned."[2] Again in the strike of 23,000 shoemakers of St. Louis, he declared that "all kinds of bribery were used," and that an official of the Manufacturers' Association placed in his hands "the sum of $3,000 as an inducement to be paid to the man who was heading the strike, if he would have it called off at a certain time." It required somewhat longer than the strike leader had anticipated to settle the strike, and the money was withdrawn. One of the letters submitted to Mr. Schwedtman showed that $293.50 had been promised to labor men for their services in returning to the shops and inducing others to do likewise.[3]

At Danbury, Connecticut, where he had been sent by the association, Mr. Mulhall claimed that he had been successful in getting into the good graces of one of the arbitrators, a Congregationalist minister, whom he had entertained lavishly in New York.

That wholesale bribery was used in the Portsmouth, Ohio, shoe workers' strike was also alleged. Mr. Mulhall pitted the A. F. of L. against the Knights of Labor; employed some of the leaders of the Knights of Labor by the week, and gave others from $25 to $100

[1] *New York World,* June 29, 1913. Italics are the author's. See also Maintenance of a Lobby to Influence Legislation, *op. cit.,* pp. 2522 *et seq.*

[2] *New York World,* June 29, 1913.

[3] *Ibid.,* July 2, 1902.

to settle.[1] He also asserted that an effort was made by an officer of the Association to bribe Samuel Gompers and to assure him a life position, if he betrayed organized labor.[2] That many of the political and strike-breaking manipulations of Colonel Mulhall had the approbation of at least some of the officers of the organization which he served was the contention of Louis Siebold, of the *New York World,* after reading the correspondence between Mr. Mulhall and the organization. Mr. Siebold declares:

"For each successful venture in the line of political chicanery, strike breaking and subterranean lobby work described by the reports and letters identified by Col. Mulhall, there were prompt recognition and praise for his services in the communications from high officials of the N. A. M. that followed."[3]

The Association's officers, however, claim that no such authorization was given for many of the acts cited. They, however, admitted the authenticity of practically all of the letters submitted by Colonel Mulhall, on which the foregoing allegations were chiefly based.[4]

The association also maintained an extensive publicity bureau known as the Century Syndicate.

With the growing strength of this general body of employers, the country has also witnessed the closer affiliation of the manufacturers in allied trades. The National Metal Trades' Association is one of the most active. This organization has been instrumental in forming a number of employment agencies which at times have had the virtual effect of blacklisting union mechanics. They are also well equipped to assist in the breaking of strikes.

The bureaus of this trade are established in a dozen

[1] *Ibid.*
[2] *Ibid.*, June 29, 1913.
[3] *Ibid.*, July 17, 1913.
[4] Maintenance of a Lobby to Influence Legislation, *op cit.*, p. 4300.

large cities.[1] In Chicago the local agency requires each applicant to give a complete record of himself, which is placed on a card index. His activities are thoroughly investigated, and, if he is found desirable from the standpoint of the Association, an effort is made to place him. "In this way," runs a most significant statement, *"employers find out who the disturbers are, and they are kept out of the shops."* Many of the firms have cards in their places of business bearing the sign: "Preference is given to people having cards from the Employers' Association Bureau."

The various metal trades' bureaus in different cities keep in close touch with each other, and have founded a Labor Bureau's Secretarial League. If an applicant gives a false statement the error can frequently be made known by communication with the bureau of another city. In describing the splendid strike-breaking possibilities of this bureau, Mr. Marcosson declares:

"If a strike is threatened, for instance, in the New York metal trades, Mr. Hunter (the secretary) can send telegrams to every labor bureau secretary, asking him to rush men to New York. In twenty-four hours hundreds of boiler makers would be on their way from Kansas City, St. Louis, Chicago, Cincinnati, Philadelphia and a dozen other places. These labor bureaus all have competent men at their disposal."

The Anti-Boycott Association, which has been fighting the labor unions tooth and nail, in various legal proceedings, such as the Buck's Stove & Range Co. case, the Danbury Hatters' case and the building trades cases, is also worthy of mention.

The actual part which the trade associations play in labor struggles is seen more clearly when we analyze the workings of the local bodies. In Chicago, an Em-

[1] I. F. Marcosson, in *World's Work,* December, 1905. Italics are the author's.

ployers' Association was formed in 1901, consisting of sub-associations of employers in the laundry, printing, building and other trades. Just prior to a demand of the workers in the laundry industry, the Laundry Owners' Association, one of the sub-associations of the general body, was informed by the latter body of the proposed demands of the employees of certain firms. Forewarned, the companies were ready with a blank refusal when the demands were made, and the employees, the day following the submission of these demands, found that they were not only locked out from their own concerns, but from every other laundry belonging to the association.

During the ensuing strike, the parent body sent checks to the Laundry Owners' Association when the funds ran low, and saw that the notes of the poorer members were carried by the banks.[1] This body also helped the firms to man their wagons, to secure police guards, to have their freight properly handled, and to carry through legal proceedings against the unions. It is needless to say the employers won the strike.

The Blacklist

Another weapon used by the employers against the workers is the blacklist, described in Chapter II. This weapon has frequently been called the employers' boycott, being, as it is, a concerted effort to deprive labor of a market for the only commodity the worker has to sell, his labor power. Although it is considered illegal, it can be used effectively with such great secrecy that unionists find it well-nigh impossible to obtain legal proof of its existence. The court decisions on the subject, furthermore, in a number of instances, have virtually legalized the use of at least some forms of blacklisting.

[1] *World's Work,* January, 1904.

"Spies" in Labor Unions

The past few years have also seen the creation of many auxiliary organizations formed to assist employers during or prior to labor disputes, by means of "spies," strike breakers, special guards and detectives.

Several organizations, formed primarily to supply manufacturers with workers who will ferret out the secrets of labor organizations and give the results of their findings to employers, have been brought to light in labor circles during the past few years.

The Corporations' Auxiliary Company of Cleveland, Ohio, was alleged by the labor world to be one of the most conspicuous suppliers of "spies" in 1903 and 1904. The following frank letter sent to manufacturers gives a fairly good idea of the workings of this organization:

"There is no question but that our system would be of great benefit to you, inasmuch as you employ the very class of men who are the cause of a great deal of annoyance and trouble to the employers, and who create all manner of disturbances in the running of a plant successfully. . . . *We can either furnish you a union or a non-union machinist, or a union or a non-union laborer or general utility man who can get into your factory and can work on the inside and be what we term the 'inside' man, and get and report all the information about what the men do and say in the plant, who are union men, who are the radical ones and the agitators in the shop, so that their work can be killed by dispensing with their services the minute you learn who they are; and which operatives can also become a member of the union, if necessary . . . and in this way furnish the client with all information and complete, detailed reports regarding the action and proceedings of the union.* . . . .

"We have another operative whom we term an *'outside man,'* who would not work in the shop or plant

of the client, if the shop is to be kept strictly non-union, but who would work at some other place and join the union and get all union information for the client and all information on the street of interest. *This man would also work his way up into an official position in the union for the purpose of assisting in breaking it up.* . . .

"Either one of these operatives we would furnish you at the rate of $150.00 per month and his railroad fare. . ., and out of the above sum of $150.00 are to be deducted all the wages which the operative earns while working in your interest."[1]

Lucius E. Whiton, secretary of the D. E. Whiton Machine Co. of New London, Connecticut, who had correspondence with this corporation in July of 1903, has published letters of similar import, and gives the result of an interview with one Mr. J. H. Smith, manager of the company at that time. According to Mr. Whiton, Mr. Smith declared that he had been in that business for the last seventeen years; that the Auxiliary Corporations Company, a $25,000 corporation organized in 1902, had a force of several hundred men, directed from Cleveland; that its men were delegates to most of the trade union state and national conventions *and in some instances national officers of these unions;* that its first business had been with big railroads and mines, but that latterly it had been connected with large corporations and street railways. In many instances the manufacturers of a town combined to secure the services of one of the agents.[2]

Just how the company's agent, called the operative, works on arriving at a town Mr. Smith is quoted as stating to Mr. A. W. Ricker[3] in the spacious office of the concern:

[1] Italics are the author's.

[2] From *Machine Politics and Organized Labor,* L. E. Whiton, 1903, published at New London, Conn.

[3] *Spies in Trade Unions,* p. 13.

"Our man will come to your factory and get acquainted. He will be a machinist, as most of our men belong to the machinists' union. If he finds little disposition to organize, he will not encourage organization, but will engineer things so as to keep organization out. If, however, there seems a disposition to organize he will become the leading spirit and pick out just the right men to join. Once the union is in the field its members can keep it from growing if they know how, and our man knows how. Meetings can be set far apart. A contract can at once be entered into with the employer, covering a long period, and made very easy in its terms. However, these tactics may not be good, and *the union spirit may be so strong that a big organization cannot be prevented. In this case our man turns extremely radical. He asks for unreasonable things and keeps the union embroiled in trouble. If a strike comes, he will be the loudest man in the bunch, and will counsel violence and get somebody in trouble. The result will be that the union will be broken up.*"

That this spy system was used extensively during the labor disturbances in Colorado was the claim of the Western Federation of Miners. The United States Labor Commission reports the case of one alleged spy:[1]

"One A. K. Crane, who assisted in the formation of the union at Colorado City, was expelled therefrom on the alleged ground that he was a detective employed by the managers to report to them the proceedings of the union and the names of the men who joined it. Afterward he was forced by members of the Federation and their sympathizers to leave Colorado City."

It was charged that Crane was employed by the manager of the United States Reduction and Refining Company, ostensibly as a smelterman, but in reality under the direction of a detectives' agency as a spy; that

[1] *Labor Disturbances in Colorado,* p. 112.

he joined the newly formed Mill and Smeltermen's Union, No. 125, and soon after, toward the end of 1905, was elected the union's secretary and given charge of the organization's books and papers. He supplied names of the members and officers to the firm, it was declared, and, as a result, in February, 1903, twenty-three union employees were forced to resign. His frequent communications over the telephone, presumably with the superintendent of the mill, proved his downfall. Union men became suspicious, examined his room, secured, they alleged, convicting evidence, and compelled him to leave town.[1] Numerous other instances are cited by the miners, including that of Harry Orchard.

In March, 1912, a prominent official of the Order of Railway Telegraphers accused the Pennsylvania Railroad of employing spies. He asserted that union officials are often bribed by serving in positions which prove sinecures, and that frequently they do effective work by organizing a dual union.[2]

In the Colorado strike, it was alleged that these "spies" were furnished by the Pinkerton Detective Agency. The agency, however, denied engaging in this work.[3]

The unions claim that a number of detective agencies have, as one of their functions, the employment of such spies as well as the breaking of strikes. The advertisements and letters of such bureaus seem to give credence to this belief. The following advertisement appearing in *American Industries,* the official organ of the National Association of Manufacturers, is suggestive:

"We break strikes—also handle labor troubles in all their phases. *We are prepared to place secret opera-*

[1] Friedman, *The Pinkerton Labor Spy* (Wilshire Pub. Co.), p. 37.
[2] *New York Call,* March 3, 1912.
[3] Friedman, *The Pinkerton Labor Spy.*

tives who are skilled mechanics in any shop, mill or factory, to discover whether organization is being done, material wasted or stolen, negligence on the part of employees, etc., etc. . . . *We guard property during strikes, employ non-union men to fill places of* strikers, fit up and maintain boarding houses for them, etc. Branches in all parts of the country; write us for references and terms. The Joy Detective Agency, Cleveland, Ohio, Incorporated."[1]

The letter quoted below, purporting to come from the Employers' Information Service, also speaks volumes concerning anti-union activities:

"Dear Sir: Are there any leaks in your plant? Of course—but you may not know it. And how are you going to find out? It is the small leaks, the loss of dollars here and there, which help to eat up the large profits. Our business is to find the leaks in your business, *and observe what it is not for the eyes and ears of the boss to see or hear.*

"We protect you against loss of time, labor or material, eliminate graft of any description, theft, and all irregularities that exist in both large and small concerns; *also prevent the efforts of labor union agitators and organizers from becoming effective, and disrupting strikes when necessary.*

"Our system of inspection and checking of employees must necessarily appeal to every business man who desires to secure the most efficient service from them, and to know whether they are honest, loyal, and work together as one without friction, finally obtaining profits."[2]

The letter also pledges to protect the firm against unfair competitors, guarantees secrecy and urges a

[1] *American Industries,* August 15, 1907. Italics are the author's.

[2] The address of the service was 301-305 Cuyahoga Building, Cleveland, Ohio. The letter is dated May 8, 1911, and marked "Personal and Confidential." A copy appeared in the *American Flint,* in June, 1911.

conference. It is signed by F. J. Heine, General Manager.

The following letter is said to have been recently mailed to manufacturers and employers generally by the William J. Burns detective agency, and suggests some interesting activities on the part of this well-known bureau.

"Secret service properly applied with the right men correctly placed can be made extremely profitable when conditions are studied and coöperation given. Such service is our specialty, and for that reason *we maintain practical men of all trades and occupations, both union and non-union.* In their daily reports they suggest improvements and new ideas; *also detail the agitating, dishonest,* non-producing and retarding conditions.

"Our operative, when engaged by you, is, to everyone but yourself, merely an employee in your establishment, and whatever he receives as wages is credited as part payment for his detective service. Daily typewritten reports are mailed to our clients. These operatives are continually under direct supervision of the management of this agency.

"Within the heart of your business is where we operate, down in the dark corners, and in out-of-the-way places that cannot be seen from your office or through your superintendent or foreman.

"If it is of interest to you to know to-day what occurred in your plant yesterday, and be in a position to correct these faults to-morrow, we would be pleased to take the matter up with you further, and respectfully ask an interview for one of our representatives.

"Yours very truly,
"The Wm. J. Burns National Detective Agency.
"R. A. Wilson, Manager."

The alleged activity of this detective bureau in the Cleveland Garment Makers' strike of 1911 has just been brought to public notice through the confession and conviction of Morris Lubin, sentenced by Judge

Vickery, June 23, 1913. According to Miss Gertrude Barnum, one of the leaders of the strike, Morris Lubin, a young man supposedly a garment worker of Cleveland, was hired by the cloak manufacturers of that city, through the William J. Burns agency, soon after the breaking out of the strike, at a salary of $10 a day, and was required to make daily reports to the manufacturers' association. He was a clever talker, was elected into the union, volunteered as a leader on the picket line, and, by means of his energy, versatility and daring, soon became the idol of some of the younger element. His position in the union secure, he began to urge the strikers to less peaceful action on the picket line, arguing that the strike was the beginning of the industrial revolution and that mild actions were totally ineffective. His leadership resulted in many deeds of violence which greatly discredited the union. Some of his activities are thus described by Miss Barnum:

"Lubin led secret raids upon the homes of the strike breakers. He plotted unsuccessfully to blow up the hotel occupied by the 'scabs.' . . . He looted and wrecked other places. He was lavish in distributing lead pipe, blackjack and even revolvers to the hot heads of the union who were committing the outrages unbeknown to the officers. As a grand climax of his program of violence and bloodshed, Lubin planned an attack on a train bringing strike breakers into town. . . . Revolvers were furnished from his home. . . . They (Lubin and his followers) opened fire with their guns, shooting into the air, but didn't do any damage." [1]

Finally a strike-breaker was slugged by Lubin and three strikers. The man afterward died. The violence reported in connection with the strike aroused public opinion against the strikers, who finally lost, Miss Barnum believes, as a result of these deeds. At

[1] *New York Globe,* July 16, 1913.

one time, in fact, the strikers were about to settle with a manufacturer when Lubin, Miss Barnum alleged, broke up the conference by throwing an ink bottle at the employer. On the trial for assaulting the strike-breaker, the "spy" broke down, confessed all, and was sentenced to six months' imprisonment.

The use of the spy system in connection with the Buck's Stove Co.[1] and the activities of the National Association of Manufacturers, have already been suggested. In the recent Paterson strike, a member of the strike committee admitted in court that he was employed by a detective agency to spy on the workers. It is difficult, because of the secrecy surrounding its employment, to tell just how extensively it operates, but, from the evidence available, we may conclude that the use made of it by unscrupulous employers is a considerable one.

Private Detectives

In order to protect their property, and at the same time intimidate the strikers, employers frequently hire armed guards, who are accused of many outrages in behalf of the bosses. In the recent West Virginia labor disturbances, much testimony was adduced indicating the manner in which such guards were employed by the mine companies to break strikes. Mr. Harold E. West of the *Baltimore Sun,* an eye witness to the controversies, thus describes the activities of these hired detectives:

"These mine guards are an institution all along the creek in the non-union sections of the State. They are as a rule supplied by the Baldwin-Felts Detective Agency of Roanoke and Bluefield. It is said the total number in the mining districts of West Virginia reaches well up to 2,500. . . . These Baldwin guards who are

[1] See *supra,* p. 138.

engaged by the mining companies to do their 'rough work' take the place of Pinkertons, who formerly were used for such work by the mining companies. Since the Homestead strike in the steel mills years ago, when the Pinkertons fired into the strikers and killed a number of them, this class of business has gradually drifted away from the Pinkertons and much of it is held by the Baldwin-Felts agency. . . . Before the State troops went into the region and took their rifles away from them, *the mine guards went about everywhere, gun in hand, searching trains, halting strangers, ejecting undesirables, turning miners out of their houses and doing whatever 'rough work' the companies felt they needed to have done. Stories of their brutalities are heard on every hand along the creeks.* Some are unquestionably exaggerated, but the truth of many can be proved and has been proved. . . . Whenever possible they are clothed with some semblance of the authority of the law, either by being sworn in as railroad detectives, as constables or deputy sheriffs. But for all that, a number have been indicted for offenses ranging from common assault to murder. . . . Yet rarely has any trouble resulted for the guards."[1]

The commission appointed in 1912 by Governor Glasscock, to investigate conditions, summarized the activities of the guards.

"From the cloud of witnesses and mass of testimony figuring in the hearings there emerges clearly and unmistakably the fact that these guards recklessly and flagrantly violated, in respect to the miners on Paint Creek and Cabin Creek, the rights guaranteed by natural justice and the Constitution to every citizen, howsoever lowly his condition and state. . . . Many crimes and outrages laid to their charge were found, upon careful sifting, to have no foundation in fact, *but the denial of the right of peaceable assembly and of*

[1] Harold E. West, *Civil War in the West Virginia Coal Mines,* Survey, April 5, 1913.

freedom of speech, many and grievous assaults on unarmed miners show that their main purpose was to overawe the miners and their adherents, and, if necessary, to beat and cudgel them into submission."[1]

Former Governor Dawson of West Virginia characterized them as *"vicious and dare-devil* men who seem to aim to add to their viciousness by bulldozing and terrorizing the people."[2]

Senator James E. Martine of New Jersey, on his return from the hearings of the West Virginia Investigating Committee in Charleston, June 20, 1913, verified the foregoing reports. He is quoted as saying:

"Quinn Morton (a mine operator) admitted on the stand that he had bought rifles for the guards and told them how to use them. . . . Women and children were maltreated by the operatives and their hired thugs. Men were killed and buried like dogs, and no arrests were made. . . .

"Then we heard the stories, not from one witness, but a hundred, of how *gatling guns were loaded upon flat cars and freight cars, and these trains were run at night through the mining villages where the strikers were with their families.* . . . Former Governor Glasscock told us there were sixteen of these machine guns sent into the district. *These trains would run up to a village, usually a single street along the railroad track, the mine guards would fire a couple of rifle shots from the cars to incite the* strikers to return the fire, and then the machine guns would be brought into action, and the train would move the length of the village at a snail's pace, spitting bullets at the rate of 250 a minute, perforating the tents and shacks, and mowing down and maiming and killing men and women and defenseless children."[3]

[1] Quoted by West, *ibid.*, p. 48. Italics are the author's.
[2] *Ibid.*, p. 49.
[3] Quoted, *New York Call*, June 21, 1913. Italics are the author's.

The descriptions of Mr. Michaelson in *Everybody's Magazine* are even more ghastly than the foregoing.[1]

It is undoubtedly true that this is a most unusual case of guard brutality, if the statement of events is an accurate one. Yet many other similar instances are recorded in big strikes, especially those in the basic industries—coal, steel, copper, lumber, etc.

It is doubtful if, even in West Virginia, this pernicious guard system will be continued.

An historic example of the lawless activities of detectives, operating with the business element in the community, is given in the Colorado strike of 1903 and 1904. Their deportation of "undesirables" from the strike district is thus picturesquely described in the report prepared under the direction of the Commissioner of Labor:[2]

"On the night of March 14, 1904, about 100 members of the Citizens' Alliance (an organization consisting of business men, mine owners, managers, etc.) held a meeting in Red Men's Hall, after which they armed themselves, searched the town, and took into custody about 60 union men and sympathizers. In some instances the doors of residences were forced open. The men who were captured were brought to a vacant store and about 1.30 o'clock in the morning were marched to the depot and loaded into two coaches. As the special train bearing them departed, a fusillade of shots was fired into the air by the mob. Among the leaders of the mob were Bulkeley Wells, manager of the Smuggler Union mine, and John Herron, manager of the Tom Boy mine. One of those deported was Stewart B. Forbes, secretary-treasurer of the Telluride Miners' Union. Another was Antone Matti, local agent for a brewery. Another was A. H. Floaten, the local leader of the Socialist Party and

[1] *Everybody's,* May, 1913. Also read hearings before U. S. Senate Com. on "Education and Labor," 63d Cong., 1st Ses., pursuant to S. Res. 37.

[2] *Labor Disturbances in Colorado,* p. 249.

manager of the People's Supply Company, the largest store in town. The door of his residence was broken open and he was found partly undressed, his wife having retired. A revolver was pointed at him, and he was wounded in the head by being struck with the butt of the weapon. He was marched from home without being allowed to put on his shoes or hat. Fifteen members of the mob accompanied the train to Ridgway, where the prisoners were ordered to get off, and further ordered never to return to Telluride."

Following the explosion at Victor, the manner in which officials were unceremoniously compelled to resign from office and the way in which property was destroyed by this lawless element are thus portrayed by the Commission:[1]

"A meeting of mine managers was held at the Military Club at the Army Building at Victor, and they decided upon drastic measures. A committee of mine owners left the club rooms, found Sheriff Robertson (a union sympathizer), and informed him that the mine owners desired to have a meeting with him. Robertson accompanied them, and when he was inside the club rooms his resignation as sheriff was demanded. *He refused to tender it, whereupon guns were produced, a coiled rope was dangled before him, and on the outside several shots were fired. He was told that unless he resigned the mob outside the building would be admitted, and he would be taken out and hanged.*" He then resigned. A new sheriff was appointed. "The newly appointed sheriff appointed his own undersheriff and about 100 deputies. . . . Squads of soldiers, deputy sheriffs and armed citizens scattered over the district and arrested union members. About 175 were captured and taken to the 'bull pens' at Victor, Independence and Goldfield. . . . All of the union stores were closed and many of the goods in the stores at Victor and Cripple Creek and all goods in the smaller

[1] Italics are the author's.

stores at Goldfield and Anaconda were taken or destroyed."

The report then records the arrest of the whole force of the union paper, the *Victor Record,* the forced resignation of many other civil officers in the Cripple Creek district who were in sympathy with the miners, the subsequent wrecking of the *Record* office,[1] the deportation of scores of miners,[2] the severe thugging of many of the well-known labor organizers, including James Mooney and W. R. Fairley, members of the National Executive Board of the Western Federation of Labor,[3] Chris. Evans, financial manager of District No. 15 during the strike, and personal representative in Colorado of President John Mitchell,[4] W. M. Wardjon, National Organizer of the United Mine Workers,[5] and others.

Private Detectives Armed with State Authority

The strikers declare that at times many officers of the peace, ostensibly employed by the state to preserve order, are actually hired by the employers, and faithfully serve them, though clothed in all the authority of the state. Such were the conditions in a recent coal strike in Westmoreland County, Pennsylvania, according to Mr. Richard L. Jones. He declared:

"The employers got the county sheriff to hire a lot of deputies to act as county policemen. They paid the sheriff $185,000. He charged the companies $5 a day for each deputy. He paid each deputy $3 a day. . . . For the coal companies, he hired a lot of husky thugs and decorated them with a club and gun and a police-

[1] *Labor Disturbances in Colorado,* p. 263.
[2] *Ibid.,* pp. 260, 288, 309.
[3] *Ibid.,* p. 342.
[4] *Ibid.,* p. 344.
[5] *Ibid.,* p. 354.

man's star. Miners thereafter were not allowed to gather in groups on any of the companies' grounds, and they were not allowed to walk in more than pairs and in closer file than ten feet apart."[1]

Charges of the employment of private detectives and of the indirect hiring of special deputies were also made in the 1912 fight of the Brotherhood of Timber Workers against the big lumber interests in Louisiana,[2] in the fight of the miners against the Utah Copper Company and its allies,[3] in the 1909 struggle of the steel workers in McKees Rocks,[4] West Virginia, Homestead, and in numerous other battles of labor. The conservative Industrial Commission thus admitted and condemned the employment of such detectives:

"The chief objection, aside from the doubt as to its technical legality, which is made to the practice sometimes resorted to by employers of hiring special police detectives, Pinkerton men, and other armed guards to protect their property in labor disputes, is that such hired officers are likely to be extreme in their measures. Being often from other localities or States, they have no understanding of the affairs at issue in the dispute, no sympathy for the workmen, and are therefore disposed to go as far as the law allows, or even further, in resisting the acts of the men. The reply made by employers is that local authorities are often improperly biased, and therefore unwilling or, perhaps, unable to enforce law effectively."[5]

While the practice of importing armed men for the protection of private property has been prohibited in a number of states, the employers will undoubtedly directly or indirectly employ such men in many future

[1] *Collier's Weekly,* April 1, 1911.
[2] The Southern Oligarchy, by Covington Hall, *Coming Nation;* August 24, 1912.
[3] *New York Call,* October 6, 1912.
[4] *International Socialist Review,* October, 1909.
[5] Final Report of Industrial Commission, v. 19, p. 899.

disputes, and these will probably serve in many instances to intimidate strikers in their efforts to raise their standard of living. It is of course true that many of the acts which have been enumerated were not committed entirely without provocation.

Organizations Supplying Strike Breakers

The importation of strike breakers in large quantities, in districts where the strike occurs, is also a common practice of the employing class. Numerous detective and strike-breaking agencies, such as the Farley agency, devote much of their time to rounding up the unemployed, and having them transported to the strike district. The various employers' organizations, as previously told, are often ready to assist in transporting men and women from one part of the country to another to take the places of the strikers.

Some place the beginning of the extensive practice of strike-breaking in the year 1891, when Jack Whitehead, a former union man, brought 40 negroes called the "40 thieves" from Birmington, Alabama, to break the strike of the Amalgamated Association against the Clinton steel mills near Pittsburgh. Whitehead, who also assisted in the Homestead strike of 1892, was supposed to have been given $10,000 for his successful efforts.[1]

Many avow that the persons transported to strike regions are often deceived into the belief that no strike exists and frequently are held against their will, after arriving on the scene of the disturbance. The Industrial Commission thus comments on this practice:[2]

"The importation of workingmen from foreign countries to take the place of strikers was quite a common practice. Considerable numbers of foreigners

[1] F. B. McQuiston, *Independent*, October 17, 1901.
[2] Final Report of Industrial Commission, v. 19, pp. 890, 891.

were brought to the coal mines in this way. The alien contract labor law has largely done away with this practice. In a large number of strikes, however, employers have sent agents to other States to collect bodies of men and to 'import' them. In some instances the men thus imported are of much lower skill and standard of living than the strikers. Evidence before the Industrial Commission shows that negro laborers have, in several instances, been brought from long distances for this purpose. This occurred in Pana and Virden, Ill., and in recent Colorado mining strikes. The opposition of the workingmen to the importation of lower classes of labor is so strong that it has at times resulted in physical violence. . . . It is doubtless true at times that such imported laborers are influenced by unduly glowing accounts of the conditions under which they will work, and are not always informed of the existence of the strike. In some cases it is the intention of the employer who hires men of this class to keep them only long enough to break the strike, and to permit the gradual employment of more competent hands, possibly of the strikers themselves."

That these methods are not wholly extinct at the present day may be concluded from the following paragraphs of Mr. Allan L. Benson:

"Men were told that they were wanted for work in California . . . that they were needed to build cities in West Virginia . . . that they were wanted to build railroads. Men were told almost everything except the truth. They were told they would be taken to and from their place of destination without expense to themselves . . . that they would be paid wages of exceptional richness and fatness. Once snared, they were imprisoned in rooms near railroad stations, marched under guard to the trains, locked in the cars, compelled to make trips requiring as many as thirty hours without eating, and at last dumped off at the mines in West Virginia and told to go to work. Some refused

and were forced to go to work at the point of the pistol. Some worked a few days and demanded their wages, only to be told that they still owed the company the difference between their earnings and their railway fare. . . . All of these statements have been made, most of them under oath."[1]

Senator Martine of New Jersey, on returning from West Virginia, confirmed most of these statements,[2] as did other writers.[3] The possibilities of strike-breaking residing in the various employers' organizations have already been dwelt upon. The letters of the various detective bureaus printed elsewhere suggest something of their strike-breaking activities.

It may be stated that the endeavor to bring large numbers of strike-breakers from various parts of the country to take the places of strikers has become a more extensive and a better organized business, within the past few years. It was common rumor in Boston, during a recent strike of the telephone operators, that large numbers of young women were imported from New York to Boston, and kept for some days in the hotels of the city, so as to force the operatives to agree to the employers' terms. During a recent waiters' strike in New York, many hundreds of workers were in turn imported from Boston to take the places of the striking men.

[1] *Metropolitan Magazine,* June, 1913. See also hearings before Senate Com., pursuant to S. Res. 37, p. 194 and elsewhere.
[2] Quoted, *New York Call,* July, 1913.
[3] See Mr. Michaelson's article in *Everybody's Magazine,* May, 1913.

CHAPTER XIX

SOCIAL AND ECONOMIC REASONS FOR LEGALIZING THE BOYCOTT—*Continued*

The Control of the Press

It is frequently possible for the employers to marshall against the strikers various organs of public opinion—the press, the lecture platform and the pulpit. The chief organ is the press. Through its columns, especially in the smaller towns, the employers can generally have their side of the labor question adequately represented, while the public frequently receives most unfair accounts of the reasons for the strike and the conduct of the strikers.

The reasons for this discrimination are manifold. The modern newspaper is run chiefly for dividends, as is the case with every other business. Its chief source of income is advertising. Mr. Will Irwin[1] calculates that the advertisers pay into the average metropolitan paper from $3.35 to $4 for every $1 brought in by subscribers and newsstand sales. In one New York paper, the ratio of income was $1 from sales to $9 from advertising. It is imperative that the heads of the newspapers take good care of their chief sources of supply. The advertisers know their advantage, and, in many instances, are not slow to utilize it. If a strike is being carried on against their concern, they can threaten to discontinue their "ad," should adverse criticism appear, and this the newspaper knows.

[1] Irwin, "The American Newspaper," *Collier's Weekly,* May 27, 1912.

Advertisers are often interested financially or otherwise in many other concerns not advertising. Their request to "go easy" on a story relating to such other concerns is often heeded.

The owners of the papers, as well, are frequently interested in other enterprises, and pressure may be brought to bear from them to "color a story" in the most acceptable way. The owner's associates and those of his family are likely to be among the more conservative of the population, and the desire for approbation among his friends often influences the manner in which the news of the paper is handled. A great newspaper is frequently in need of credit; the owner is often a large borrower. The working class does not directly extend credit or provide loans.

The publicity bureaus which are being established by so many of the large corporations and conservative interests furnish news in easy shape to print, and often accompany the news items with a request to charge the expense of the insertion to themselves. The employers are generally more accessible when news is desired, and accessibility is a great factor in these days of hourly editions. The reporters are constantly on the lookout for "good copy." Only the strange, the startling, is the best copy. If reporters can write a story of a riot or an unusual disturbance during a strike, it is sure to be published. If they are "space" men, they thrive on such disturbances. If they are paid a regular salary, they are fully as eager for the "display" which the good "story" wins. And the story helps to sell the papers. It often happens that strikers and their methods are utterly misrepresented because of this American standard of what constitutes news. The chief fear of the paper is the fear of a libel suit. The more impecunious the one libeled, the less the fear. The impecunious striker is not handled so carefully, therefore, as his well-to-do brother.

If a disturbance is actually followed by arrests, the reporter, in almost every instance, when the story is new, must needs be content with the report given by the police. The side of the arrested man is not generally obtainable at the time. These are among the causes which often prevent the daily newspapers from being an impartial agency through which the world may be informed of the rights of the worker. This condition frequently leads to the necessity on the part of the worker to issue circulars depicting conditions and urging customers to abstain from purchasing the goods of the "unfair" concern, as the only method by which he can present his side to the public. Of course, where labor and Socialist journals are issued, he has these papers as his mouthpieces. In large cities, where the labor movement is strong and there are many papers, he is often treated with fairness.

In commenting upon the attitude of the modern press, Dr. Walter E. Weyl[1] says:

"It is a matter of common knowledge, reinforced by much indirect evidence, that many journals will not print news adverse to local department stores. Rather the loss of a thousand subscriptions than the slightest animadversion upon these Atlases of city journalism. Public franchise corporations, banks, railroads and other great undertakings enjoy lesser, though still considerable, immunity. . . . Of greater importance is an influence which the plutocracy learns to exert upon the general tone of newspapers. . . . In a choice between approximately equal mediums of publicity a great advertiser often favors journals which more closely approximate his views. A trust pays directly or indirectly for the printing of news or comments valuable to it indirectly and to big business generally. It furnishes free copy, together with paid advertising. It subsidizes the furnishing of boiler plate matter to county papers. As the great journalistic enterprises

[1] Weyl, *The New Democracy*, p. 124.

grow, as the margin of loss on each copy is spread over a larger circulation, as the necessity for credit facilities increases, the plutocracy, through its control of a hierarchy of banks, sets its seal upon the policy of an increasing number of journals. The owner of a paper, usually a man of wealth and debts, is subject to financial pressure upon his newspaper and outside ventures, as well as to social and political pressure."

The willingness of the big interest to pay for news is illustrated by the following letter, received by the *Springfield Republican,* and published in their editorial columns of April 18, 1905. The letter was signed by J. Harvey White, for the Boston Elevated Railroad Company, during a fight for a franchise. It reads:

"Enclosed you will find copy for reading matter to be used in your paper Tuesday, April 18. *It is understood that this will be set as news matter in news type, with a head line at the top of the column and without advertising marks of any sort. First page position is* desired, unless your rules debar that position. Please *send your bill at the lowest net cash rates* to the undersigned at the above address."[1] The news item follows, predicting that the Boston gas contract is satisfactory to all concerned. Many of the other papers in Massachusetts printed the story.

A New York legislator and part owner of a newspaper, a few years ago, declared that a big public utility corporation had just begun to advertise extensively in the press of the state, including his own paper, in anticipation of the report of a legislative committee regarding the character of the corporation.

That pressure during strikes has often been exerted against those papers which lean on the side of the strikers, is alleged. The boycotting of Senator Pat-

[1] Italics are the author's.

terson's *Rocky Mountain News* by the Citizens' Alliance, because it favored the miners during the Colorado labor war, is an instance in point.

"Though one of the declared objects of the Citizens' Alliance was to discourage boycotts as well as strikes and lockouts," declared the United States Labor Commissions,[1] "the Citizens' Alliance of Denver, in the autumn of 1903, adopted the following resolution, which was openly printed:

"Resolved, that we, as a body, urge upon the Denver Advertisers' Association the importance of cooperating with us in this effort, and request such association to so place its advertising matter as to assist in upbuilding, instead of tearing down, business interests, to the end that a just and conservative policy may be adopted and advocated by the daily press."

Mr. J. C. Craig, state president of the Alliance, who was active in instituting the boycott, is quoted as saying at that time, "We don't propose to have any of our advertisers furnish ammunition to a paper that sympathizes with trade unions, like Senator Patterson's *Rocky Mountain News.*" According to Will Irwin,[2] this boycott would probably have meant bankruptcy had not Patterson gone into the market and snatched up some $40,000 of stock of one of the stores, which he afterward induced to advertise again in the news. The others followed.

A militia man's characterization of the fairness of the reports in the press, regarding the situation at Lawrence, is of interest:[3]

"We went to Lawrence during what was expected to be a critical week of the strike, during the week the newspapers reported riots and prospective riots. We saw nearly everything which happened and there was

[1] *Labor Disturbances in Colorado*, p. 266.
[2] "The American Newspaper," Will Irwin, *Collier's*, June 17, 1911.
[3] "A Militia Man's Experience," *The Survey*, April 6, 1912.

nothing of a serious nature. *Newspaper reports were absolutely false. One occurrence which was featured as a 'riot' in extras was the largest demonstration which occurred and was entirely peaceful.*[1] The north side of Essex Street was crowded with strikers who walked along in groups. The police decided that there were too many and turned the head of the procession up a side street. A few resisted this and were arrested."

That the control of the papers by the department stores leads at times to the total suppression of damaging news, even to the extent of ignoring the killing of a striker, is apparently borne out by the following instances cited by Prof. E. A. Ross:

"During the strike of the elevator men in the large stores the business agent of the elevator starters' union was beaten to death in an alley behind a certain emporium by a 'strong arm' man hired by that firm. The story, supported by affidavits, was given by a responsible lawyer to three newspaper men, each of whom accepted it as true, and promised to print it. The account never appeared.

"In another city the sales girls in the big shops had an exceedingly mean and oppressive contract, which, if generally known, would have made the firms odious to the public. A prominent social worker brought these contracts and evidence as to the bad conditions which had been established under them to every newspaper in the city. Not one would print a line on the subject.

"On the outbreak of a justifiable street car strike the newspapers were disposed to treat it in a sympathetic way. Suddenly they veered and became unanimously hostile to the strikers. Inquiry showed that the big merchants had threatened to withdraw their advertising unless the newspapers changed their attitude."[2]

[1] Italics are the author's.
[2] *Review of Reviews,* April, 1910.

On a paper in which the writer was employed for some time, an accident occurring in the store of a large advertiser would appear in print as happening in a "downtown" department store. No mention of a particular department store, adverse in its nature, was possible, unless the article first secured the special O. K. of the business manager.

Mr. Richard Lloyd Jones declared that the story of the struggle, in the strike of the miners of Westmoreland County, Pennsylvania, had been "as effectively suppressed in Pennsylvania's 'little Russia' as it ever could have been under the Czar's twin-headed black eagle. Not a daily newspaper in Westmoreland County has reported it."[1]

The Associated Press, the most powerful of the news agencies in this country, has often been accused of partiality. Among the communications recently presented by Senator Owen of Oklahoma, to the Senate, in his petition to investigate the conditions of the strikers in the Bethlehem Steel Works, was the following from the chairman and secretary of the strikers' committee:

"The Associated Press has refused to print practically everything relating to the strike. Either Mr. Schwab or Mr. Melville E. Stone can tell you the reason."[2]

In substantiating this charge, the strikers alleged that this agency refused to transmit over its wires the written charges made to President Taft by the strikers, in which it was stated that the Bethlehem company supplied the government with defective steel.[3] This agency, however, usually denies indignantly any unjust discrimination. Many charges are, in all probability, ill founded.

[1] "Pennsylvania's Russia," Jones, *Collier's,* April 1, 1911.
[2] Presented April 21, 1910. Italics are the author's.
[3] *New York Call,* April 22, 1910.

During the strike of the marble workers in New York in the fall of 1911, it was charged by the strikers that the *New York World* and *New York American* had refused, after the first few days, to carry their advertisement, in which they requested marble workers to stay away from the city.

Samuel Gompers recently thus summed up his conception of the press's present hostility to labor:

"With all means of collecting and disseminating information in the hands of the 'interests,' how can the workers get a square deal? The press, the telegraph, the telephone, the cable—all are under corporation control and are used against the workers in their struggle for industrial betterment."[1]

A prominent organizer of the New York typographical union declared to the writer, a short time ago, that practically all of the non-labor press in New York had, during a recent strike, refused to print anything about this strike, even as advertisements for which the regular charge was offered. A standard weekly recently lost an advertisement worth several thousand dollars a year, it is stated on good authority, for printing an article favorable to the workers, during the Lawrence strike.

Charges of a similar character, some well founded and others without sufficient basis, are heard constantly in labor circles, especially in connection with the recent West Virginia and Paterson strikes, where the authorities went so far as to confiscate issues of the labor press. In the later disturbance a labor editor, Alex. Scott, was arrested for criticizing the police administration.

This suppression of news is likely to be especially marked during the reign of martial law in a community,

[1] Hearings before Sub-committee on Judiciary, U. S. Senate, H. R. 23635, p. 15.

as a result of the press censorship which is frequently established. Such a censorship was observed during a part of the Colorado disturbances, when the commanding officer announced that no reports could be sent by such means as telegraph and telephone without his sanction.[1] "By Major Hill's order the office of *Il Lavatore Italiano* was seized, and a week's edition of the paper was confiscated. This edition contained a report of the proceedings of the recent district convention," etc.

The miners declared that the reports were doctored in very many instances, and there was probably much justification for this accusation.

While there are these tendencies toward ignoring or misrepresenting the worker, it must also be stated that in the final analysis a newspaper succeeds in proportion as it interests large numbers of the public in its columns, and that, if a paper has the reputation of being absolutely unfair, its circulation is likely to decrease, and, with this decrease, its value as an advertising medium becomes less. There are undoubtedly tendencies at work which make for fairness as well as for unfairness. At the present time, however, the anti-labor forces seem, in very many instances, to have the stronger pull.

Free Speech

In quite a number of cases, the workers have experienced difficulty in reaching their fellow workers and the public with oral messages. Frequently open-air speaking has been suppressed, while the strikers have been denied halls in which to air their grievances. The fight of the American Federation of Labor organizers at Vandergrift, Pa., is illustrative:

[1] *Labor Disturbances in Colorado,* pp. 199, 200, 350.

"The A. F. of L. organizer, A. E. Holder, and Robert Edwards, of the Amalgamated Association of Iron and Steel Workers, made persistent endeavors to obtain rooms or halls in which to hold meetings in Vandergrift, Pa., but were unsuccessful. Landlords and agents invariably used this reply: 'I should be glad to rent to you, but I do not dare.' One man, Mr. S. J. Poole, a painter and decorator, was willing to allow the use of a part of his storeroom, but was prevented by his landlord, who held him to the strict letter of the law on sub-tenants."[1]

The organizers furthermore declared that they were driven out of town by a mob controlled by the officers of the mills, and threatened with direful injuries should they refuse.

Less consideration than usual is likely to be paid to the right of free speech, as far as the worker is concerned, during a military regime. Mr. Owen R. Lovejoy, secretary of the National Child Labor Association, vividly describes the denial of such freedom during the Lawrence strike. After watching the running of a picket out of the mill section, "a poorly clad, shivering little man," by the militia, Mr. Lovejoy asked the soldiers what was the crime of which the man was guilty.

"Asking some one not to work, I suppose, or calling him a scab. He's a picket," was the response.

" 'But,' I ventured, 'asking a man not to work and calling him a scab are not the same, are they?'

" 'Get to hell out of here. I ain't got no time to chew the rag with you fellows,' the soldier said, with an ominous gesture that indicated that the resources of the great state of Massachusetts were backing him in quelling my riot.

"I asked another lad in uniform, 'Don't you allow

[1] Report of A. F. of L. on the Steel Trust, presented to the President of the U. S. (1910), p. 25.

any picketing if they are quiet and orderly and peaceable?'

"He appeared to think me feeble minded, as he sneeringly replied, 'Not a damned one, not if we see 'em.' "[1]

Mr. Lovejoy condemned the restriction placed on the strikers as a form of intimidation the effect of which was to "whip them into submission."

The fights for free speech in Little Falls, New York, when Mayor Lunn and Rev. Robert A. Bakeman were arrested in Clinton Park, while quoting Lincoln and the Bible, in Spokane, Washington,[2] in the brutal San Diego fight,[3] in New Castle, Pennsylvania,[4] in Paterson and West Virginia and in numerous other instances, may be mentioned.

These instances, it is true, are somewhat unusual, and, excepting in the mine and steel disputes, have of late been noted chiefly in connection with the strikes conducted by the I. W. W. This fact, however, by no means mitigates the evil.

The Pulpit

The church, another strong agent for the forming of public opinion, has often been accused of throwing its weight too much upon the side of the employers. Especially is this said to be true in towns which are completely dominated by one or two industrial interests. The same sort of influences which have too often surrounded the editors and the judges envelop the clergy. The church is directly supported, in most instances, by the well-to-do among the population. The salary of the minister is often directly dependent upon the contributions of the employers of

[1] "Right of Free Speech at Lawrence," *Survey*, March 9, 1912.
[2] *International Socialist Review*, December, 1909, February, 1910.
[3] *New York Call*, May 18, 1912.
[4] *Ibid.*, May 14, 1910.

labor, the largeness of these contributions depends upon their good will, and their good will is influenced tremendously by the kind of economic teachings which they hear expounded from the pulpit. Naturally during a strike it ill pleases the employer to have his policies denounced and the demands of the workers approved. The writer has spoken to more than one minister who has suffered much financially because of their too open advocacy of the workers.

The following, describing conditions in Pennsylvania among the steel mills, is illustrative:[1]

"September 16, 1909. The speaker at the Apollo labor meeting on this date was the Rev. C. Johnson, a free Methodist minister from Leechburg, who consented to address the meeting on the invitation of A. E. Holder, A. F. of L. organizer.

"September 17, 1909. The Rev. Johnson's relations in the Leechburg's mills and his church members in the Leechburg and Vandergrift mills were threatened with discharge if the pastor again dared to speak on the labor movement or attended meetings."

Again the social relations of the average minister are such as unconsciously to influence his opinions in favor of the privileged classes. It may be added, in justice to the clergy, however, that a growing number throughout the nation are leaning strongly toward the side of labor, and are expressing their labor sympathies more and more freely.

Governmental Forces and the Worker—The Police

Workers often find that not only the forces of public opinion, but also the governmental forces, including the police, constabulary, militia and courts, are frequently used against them in their struggles, in a most

[1] Statement and Evidence against the U. S. Steel Corporation by American Federation of Labor, p. 26.

unjust manner. The police of the city, aided often by special policemen, have many times been brought into the dispute, in order to browbeat the workers. Especially is this the case when the strikers are foreigners.

The menacing and intimidating attitude of the special police, many of whom were illegally brought into service, during the strike at Little Falls, N. Y., was recently depicted by John A. Fitch, associate editor of the *Survey,* in an open letter to Commissioner of Labor John Williams.

"I found large numbers of special policemen and deputy sheriffs patroling the streets in the neighborhood where the working people live. The regular police force of Little Falls consists of six officers. The number of such officers now patroling the streets is variously estimated at from six to ninety. They walk about in groups, carrying the clubs in their hands, and *their attitude toward strikers and strangers upon the city streets is constantly menacing and evidently designed to intimidate.* It is alleged that most of the special policemen and deputy sheriffs have been furnished by the Humphrey Detective Agency of Albany, and that a majority of such officers have been procured not only from outside of Herkimer County, but from points outside of the State of New York. This, if true, is in violation of section 1845 of the penal law."

Mr. Fitch tells about the arrest of one man against whom no charge had been made, and the refusal of the authorities to allow his lawyer to have any access to him. He continues:

". . . At noon of the day of arrest a policeman assaulted a workingman upon the street, striking him with his club. This workman was not a striker. He at once appealed to the city authorities to issue a warrant for the arrest of the policeman who struck him, but was able neither to procure a warrant nor redress of any kind. On the same evening a report, which I

have no reason to disbelieve, came to me to the effect that *two strike leaders and a boy were assaulted by special policemen who jumped upon them from a dark passage where they had been in waiting.* According to the report, all three were beaten by the policemen with their clubs."[1]

Undue police interference against the strikers has also been alleged in the fights against the Cleveland garment manufacturers,[2] the Great Southern Lumber Co.,[3] the silk mill owners of Paterson,[4] the mine owners of Colorado, the mill owners of Lawrence,[5] and a host of other employers.

On the other hand, when the strikers are of the same nationality as the police, and strike-breakers are of another nationality, the strikers often have a freer rein.

Certain excuses will undoubtedly be forthcoming for the conduct of the police in these conflicts. While the excuses may mitigate the offenses of the authorities, they can not, in the opinion of the author, exonerate them.

The State Constabulary

During the past few years there has been created in Pennsylvania what is known as the state constabulary. Workmen declare that this body was organized at the behest of the "coal barons," in order to assist in the breaking of strikes. The constabulary is a cross between the local police and the state militia. Its members are generally mounted on horseback and do duty throughout the state. They are to be found wherever there is an industrial conflict. Many are the testi-

[1] Italics are the author's.
[2] *International Socialist Review,* September, 1911.
[3] *Coming Nation,* November 23, 1912.
[4] *Survey,* April 19, 1913.
[5] *Ibid.,* December 7, 1912.

monies that they have done effective work for the employers.

The following almost unbelievable tale of assault and murder was told a few years ago by Mr. Hugh Kelley, chief of police of So. Bethlehem, Pa., before the United States Investigating Committee:[1]

"When the constabulary arrived here, February 26, 1910, neither the burgess nor myself, as chief of police, was informed of their arrival. They were in charge of the sheriff. . . . They started out on our streets, *beat down our people without any reason whatever, and they shot down an innocent man,* Joseph Zambo, who . . . was in the Majestic Hotel. One of the troopers rode up on the pavement at the hotel door and fired two shots into the barroom, shooting one man in the mouth and another (Zambo) through the head, who died that afternoon. . . . There was no disturbance of any kind at this hotel, which was the headquarters for those who were conducting the strike. . . . *Troopers went into the houses of people without warrant and searched the inmates and drove people from their doorsteps.* They beat an old man at least sixty years of age. Struck him with a riot stick, knocked him down, and left him in a very bad condition. This is only one of a dozen similar cases."

Michael Lynch, chief of police from March 15, 1910, submitted similar evidence. A number of miners who signed themselves "Citizens of Madison" sent a letter to State Representative James H. Maurer, February 22, 1911, in which, among other things, they charged the constabulary with ruthlessly destroying on April 1, 1910, the homes of some of the strikers. They averred:

"The coal companies got a lot of deputies into the field, loaded them up with rifles, revolvers and clubs,

[1] Abstract from U. S. Senate Document, No. 521, Quoted in *The Constabulary of Pennsylvania,* by Charles A. Maurer. Italics are the author's.

made them drunk, and set them loose on the people's houses, and they got orders to go ahead and do their worst. . . . They started by smashing the furniture out on the street, and God help the man or woman who protested against them."[1] Much more is recited of similar import.

Many advocates of the constabulary have, on the other hand, expressed the opinion that the timely action of this body has often prevented more serious trouble. While this is sometimes true, its anti-labor tendencies have been marked.

The Militia

In a few labor struggles militia men have proved the bugbear of the strikers. In many cases where they have appeared on the scene, it is charged that law and order was being maintained without them, and that the primary reason for urging their presence was to break the strike. The workmen, it is claimed, are rarely consulted before the troops are called out. A typical example is that of the Colorado strike of 1904:[2]

"The commission appointed by the governor arrived in Victor on the night of September 3, and held a conference in the Bank of Victor with Mayor F. D. French, Postmaster F. M. Reardon, and other leading citizens. On the same night the commission went to Cripple Creek, and held a session at the National Hotel, which was attended by Mayor W. L. Shockey, of Cripple Creek, Sheriff H. M. Robertson, by members of the Mine Owners' Association, and by members of the Citizens' Alliance, *but no representatives of the miners' union were examined by the commission.* Mayor Shockey refused to sign a telegraphic request

[1] *The Constabulary of Pennsylvania,* by Charles A. Maurer, p. 8.
[2] *Labor Disturbances in Colorado,* pp. 175-178. Italics are the author's.

for troops, on the ground that no violence had been committed within the limits of Cripple Creek, but he told the commissioners that he believed that 75% of the miners in the district were ready to return to work if they should be assured protection, and therefore he favored having troops."

The troops were thereupon ordered. The county commissioners of Teller County soon issued a statement alleging that there was no excuse for sending the militia, and asserting that in their belief the commission "was not sent for an honest purpose, but as a cloak, to cause the people of the state of Colorado to believe that the law officers of Teller County were unable to handle the strike situation."

The sheriff afterward testified that he told the commission that he "had the situation in hand, and that there was no occasion for the militia."

Even Attorney General N. C. Miller, who was in favor of the ordering of troops, when asked by the *Denver Republican* reporter if there was much disturbance in the district, is quoted as saying:

"Disturbance? I should say not. In fact it was the greatest exhibition of peace I ever saw. Everybody must have been 'under cover,' for the streets were as quiet as on Sunday in Denver. But this is not the point. There was likely to be trouble, from what we gathered from those summoned before us, and that is why the troops were sent."

Of Pullman, to which federal troops were sent, July 4, 1894, during the American Railway strike, the government commission states:[1]

"It is evidence, and uncontradicted, that no violence or destruction of property by strikers or sympathizers took place at Pullman, and that until July 3 no ex-

[1] Report Chicago Strike Commission, p. 38.

traordinary protection was had from the police or military against even anticipated disorder."

The same testimony is given in a number of other cases.

After the troops are finally landed on the scenes of the strike, their influence, labor leaders declare, is exerted in favor of the employing class. Even the militia at times realize the rôle they are playing. Of Lawrence, one of them writes:[1]

"There was too much of the feeling that we were fighting on the side of the mill owners. Our orders were to guard the mill and the mill property and to keep strikers who were known to us or were wearing badges from approaching within two streets of the mills. . . . *We were quartered at a mill, and were fighting on the side of the mill men to protect them from the violence of the enemy. We had excellent accommodations at the mill, and were constantly receiving favors from the mill men.*

"The orders to allow no parades or gatherings were rather indefinite and were interpreted to forbid two men from standing together on a street corner. . . . Had the strikers been better acquainted with their rights as American citizens, they would undoubtedly have struggled with us when we calmly overrode their rights on the theory that the strike was similar to a war. . . . I doubt whether any officer of the militia was particularly interested in protecting the strikers. *Nothing was said to us about their rights, and no suggestion was handed down that we should treat both sides fairly.*"

The statement of Owen R. Lovejoy, previously quoted, is of a like nature.

The denial of the right of trial by jury, the imprisonment of those who exercised the right of free speech and free press, the confiscation of labor papers,

[1] "A Militia Man's Experiences," *Survey*, April 6, 1912.

the withdrawal of the right of habeas corpus, and the subversion of other liberties were the concomitants of the sending in of the militia to West Virginia,[1] as well as to Colorado. The ruthless deportation of miners in the latter state was another result of the use of the armed forces of the government.[2]

The Courts

There is practically a unanimity of opinion in labor circles that the courts have, for the most part, been pitted against labor in its struggles. Labor injunctions, binding the workers hand and foot, have been issued, strikers have been fined and jailed on frivolous and fictitious charges, juries have been charged in a biased manner, and jurymen themselves often selected from the non-labor groups. These are some of the charges brought against the legal procedure of the present day, in times of labor troubles.

It is true that the judges, by the very nature of their profession, are inclined to the conservative side. They seek precedents, and many of the principles of law which they apply, following the doctrine of *stare decisis,* are principles enunciated years ago in England and America, before the beginning of the industrial revolution. Although England has discarded many of these principles long since, they are still applied by the courts in this country.

Many of the judges are under obligation to political bosses, who, in turn, represent financial interests perhaps more or less involved in the labor disturbance. Frequently judges have, before appointment,

[1] "Sweet Land of Liberty," Michaelson, *Everybody's Magazine,* May, 1913.

[2] *Labor Disturbances in Colorado.* See also *Conditions in the Paint Creek District, West Virginia.* Hearings before Com. on Education and Labor, U. S. Senate, 63d Cong., 1st Session, pursuant to S. Res. 37.

been attorneys for large corporate interests, or are desirous, after leaving the bench, of securing lucrative employment from such interests. Some judges are on the bench as a result of the influence of these interests.

Letters similar to the following, dated December 5, 1902, and addressed to Governor Wm. A. Stone of Pennsylvania, explain the reason for the appointment of some judges: [1]

"My Dear Governor: I am sure you will pardon any seeming presumption on my part in writing you on a subject in which both personally and on behalf of my company I am greatly interested. It is to urge the appointment, if at all consistent, of Judge Morrison, of McKean, to the Supreme Court bench, *vice* Mitchell, deceased. Judge Morrison's character for ability and integrity needs no words at my hands, aside from these great considerations, his familiarity with all that pertains to the great industries of oil and gas in the important relations they bear to the interests of the western part of the State make him especially desirable as a member of the court from that section.

"Hoping that it may prove possible for you to favorably consider Judge Morrison's appointment, I am, with very high regard,

"Sincerely yours,
"JNO. D. ARCHBOLD."

"HON. WM. A. STONE,
Harrisburg, Pa."

The social environment of the judge, like that of the preacher and the editor, also tends to make him more conscious of the rights of capital than of those of labor. The desire of support at the polls may, at times, however, have a counteracting influence.

The life of the judge, furthermore, is likely to be a busy one, at least during his hours in court. In the rush of business a typewritten injunction order pre-

[1] *Hearst's Magazine*, September, 1912.

pared in the office of a friendly fellow lawyer, attorney for a large business concern, is frequently signed without much reflection, even though its terms are sweeping, and though it might be the means of breaking the strike. The preparation of the Buck's Stove injunction order in the office of the plaintiff's attorneys has elsewhere been referred to. At times judges publicly admit such facts.

Judges Scott and Farmer in the Barnes case (Illinois, 1908), for instance, declared that the injunction writ was "usually drawn in the words of the solicitor for the complainant." "It is fair to the trial judge to say, however," asserted the judge in a Minnesota case (Gray v. The Building Trades Council, 1903), "that the order was drawn by plaintiff's attorney, as was usual in such cases."

The intimate relations between the employers and the judges, the district attorneys, etc., are often a matter of justifiable criticism. The following observation of John A. Fitch, who alleged that he discovered an employee of the National Erectors' Association in virtual charge of the entire correspondence of the union it was fighting, during the trial of the dynamiters, is in point:

"It must be remembered that the Erectors' Association has been active for years in another direction than that of apprehending criminals. It exists for the purpose of smashing a labor union. In the steel industry proper for men even to meet together means discharge. The structural trade has not swung that far toward domination by the employer . . . *But the impropriety of permitting an agent of the Erectors' Association to have access to the 60,000 or so letters, of which evidently the vast majority had to do with the legitimate activities of the union, since only a few hundred were used in the trial, ought to be obvious to any one.*"[1]

[1] *Survey*, v. 29, p. 616, February 1, 1913. Italics are the author's.

The employers' ability in most cases to hire the more astute attorneys, and the better and more authoritative presence of the employers in court, often place the employees at a distinct disadvantage in their attempt, during labor disputes, to obtain justice from courts.

With the forces of public opinion fighting the battles of the employers, with the press and pulpit too often muzzled, and the powers of government—the police, constabulary, militia, courts—used at the behest of the master class, the workers claim that they are often placed at a grave disadvantage, and should surely be equipped with effective weapons if they are to win against the forces of their adversaries.

Boycotting as a Fundamental Human Right

Still an additional argument which labor uses in its endeavor to legalize the boycott is that boycotting is a fundamental human right and that society suffers whenever a fundamental right is suppressed. A has the right to deal or to refuse to deal with B for any or for no reason. B has no property right in A's patronage, and therefore cannot be wronged when that patronage is withheld from him. If this is true, it is also true that A has a right to approach C and to persuade C to withhold his patronage from B, since B has no greater property right in the patronage of C than he has in that of A. A has also the right to cease dealing with C, if he continues his patronage with B, and he has likewise the right to state to C that he will cease dealings should he refuse to sever his relations with B—since a man has a right to threaten to do that which he has a right to do. From this follows the right to join with others in such threats. By this course of reasoning, the primary, the secondary, and that form of the compound boycott which involves a

threat to boycott are all declared fundamental rights.

Mr. Gompers thus states the case:[1]

"Just as men may strike for any reason, or without any reason at all, so may they suspend dealings with merchants or others for any reason or no reason at all. . . . You may threaten to take your custom away from them and assign any reason you choose. They are not entitled to your custom as a matter of moral or legal right, and you are at liberty to withdraw and transfer it at any time and for any conceivable reason. It follows beyond all question that you have a perfect right to threaten to withdraw your custom. The principle is the same whether you threaten one man or a hundred men, whether you are alone in threatening the withdrawal of your custom or a member of a vast combination of people acting together in the premises. . . .

"Men have a right to do business, but this is one half of the truth. The men with whom business is done have a right to withdraw and transfer their custom. This is the other half, which is always ignored in the anti-boycott arguments. . . . Labor has a right to suspend dealings with any and all who refuse to support what it considers its legitimate demands. . . . Workmen have a right to say that they will not patronize those who are unfriendly to them and those who support their adversaries. This is all that boycotting implies."

[1] Gompers, "The Boycott as a Legitimate Weapon," in paper written October, 1899.

CHAPTER XX

POSSIBLE RECOURSE OF LABOR IF PERMANENTLY DEPRIVED OF THE BOYCOTT

Another important element which should be considered by those opposing, as well as those bespeaking the legality of the boycott, is the possible weapons to which labor will resort, if permanently deprived by law of the opportunity to organize their purchasing power.

Many unionists declare that they will not be deprived of the use of this labor device, that, openly or secretly, they will employ it whenever it promises success. The negative boycott—expressed through the union label—is advocated as a substitute by some, political action presents the remedy to another group, while more radical tactics, such as sabotage and violence, as well as fundamental changes in the forms of trade organizations—industrial unionism and its accompanying principles—are urged by others. The attitude of the courts toward the boycott has undoubtedly turned greater attention to each of these substitutes. Concentration on some of these weapons is undoubtedly an auspicious sign for labor, while greater emphasis on other devices presents a warning which should be heeded. Are those who are opposing the boycotts, in their endeavor to suppress what to them seems one evil, giving an undue impetus to a greater evil?

Secret Practice

In some cases attempts to deprive labor of the boycott have brought forth a shout of defiance from the workers. "This fundamental right will not be snatched from out our grasp," many labor leaders declared after the decision in the Danbury Hatters' case and the injunctions in the Buck's Stove case. "We will singly and in combination exercise our God-given privilege of refusing to patronize 'unfair' goods." A well-known organizer of one of the international unions said a while ago to the writer:

"The law might prevent the most timid from exercising the boycott, but the more militant will go ahead, law or no law."

A secretary of another strong international union wrote:

"The question of what the unionists will resort to if deprived permanently of the right to boycott is difficult to answer, because free men will boycott in future as they have done in the past." "I don't think that labor can be deprived of the right to withhold its patronage from any firm," writes another.

Mr. John Mitchell is of the opinion that this weapon will still be used, though secretly and maliciously. He declared:

"If an attempt is made to render the boycott illegal, as has already been done, the result will really be that the boycott or the concerted refusal to purchase goods at a certain place will become secret, instead of open. The only safeguards against the occasional abuses of the boycott are openness and publicity, *and if the law forces the boycott to become irregular and secret, it will undoubtedly be used to serve the purpose of malice and spite,* and unscrupulous employers or manufactur-

ers will endeavor to use secretly this formidable weapon against their rivals and competitors. The endeavor should be to mitigate any possible evils without striking at the roots of a privilege of great importance and value to society."[1]

Mr. Gompers also pronounced it a fundamental right of which labor would not be deprived. The evil social effect of the presence on the statute books of unenforceable and, to great masses of the population, unjust laws, is widely acknowledged.

The Union Label and Trade Union Coöperatives

Some claim that ultimately the union label will prove an adequate substitute for the boycott. This is the belief of Mr. Thomas Tracy, secretary of the Label Trades Department, as well as of some eight of the secretaries of the international unions and some of the state secretaries.

The following are a few statements made to the author:

"The union label is gradually taking the place of the boycott. If union men were of the true union spirit, there would be a greater demand for the label, and this would be a better system than the boycott."

"When the union label comes into general use it will obviate the necessity of a boycott."

Others are of a different opinion. This is from a state secretary of the A. F. of L.:

"The union label cannot replace other lines of activity. Each would have its own effect."

"The union label, in my opinion, would prove a poor substitute." "It is not a substitute—it is an advertisement." "When compared to independent political action, the union label would prove a poor substitute."

[1] Mitchell, *Organized Labor*, pp. 288, 289.

Mr. Gompers also believes that each form of trade union activity has its own particular function to perform, and that no weapon can take the place of another of which labor has been deprived. It is doubtless true, nevertheless, that, since the unfavorable Buck's Stove and Danbury Hatters' decisions, much greater emphasis has been laid on the use of the label than heretofore. Yet it is extremely doubtful whether the admonition to trade unionists and their sympathizers to purchase only union goods will have such an immediate and vital effect on the sales of an unfair firm as will the admonition not to purchase the goods of the particular firm.

Another interesting substitute suggested to take the place of the boycott, though one which, as yet, has not obtained any large degree of trade union support, is a trade union coöperative society, by means of which the label may be properly utilized.[1] Trade unions only would be allowed to hold stock and the society would be governed by directors representing these unions. The establishment of the society would, according to its originator, lead to lower prices through the elimination of profits and the waste of the middlemen, and would also insure the purchase of goods made by union men. His plan would be preferable to boycotting and to the use of the union label, as at present, he declared, because union men could purchase union goods without "the physical weariness and vexation of spirit now attending the search for such articles," because the establishment of the society would infringe no law, would necessitate no large expenditure of money, would divert to the unions the profits now pouring into the coffers of the middlemen, would guarantee the trade of outsiders desirous of obtaining a

[1] The idea is an elaboration of the label shop, and is proposed by Mr. Portenar. Portenar, *Problems of Organized Labor,* pp. 97 *et seq.*

share of the profits, would make it possible to sell the best goods, on account of the extensiveness of the purchasing market, and would "bring men tumbling into the union fold," as their employers "must have union men to make things for this tremendous market."

Political Action

Deprived of the use of the boycott, many men have recently turned to political action, through which to secure legislation legalizing the boycott, as well as to reduce the hours of employment, to establish a minimum wage and in general to give the workers a more complete control of their industrial life. "Boycott at the Polls" has been a shibboleth on many a lip. The following jingle expresses the sentiment of many: [1]

"For the betterment of labor
Party lines should be erased;
On election day is when the
Open-shoppers should be chased.
Injunction judges who are wont
To place you on the coals
Will have their fangs extracted
When you boycott at the polls.

It's a simple proposition
And it takes but little time;
You need levy no assessment,
It needn't cost a single dime.
Cast away your heavy burdens
And obliterate the tolls
Which from you have been extracted—
Learn to boycott at the polls.

You can make the workday shorter
And increase the daily wage

[1] Thomas H. West, quoted in *International Woodcarver*, July, 1911.

For the army of producers
Who in honest toil engage.
From the greed of sweatshop herders
You can save unnumbered souls.
Real prosperity will be here
When you boycott at the polls."

The noteworthy character of the present tendency warrants a rapid survey of labor's position on this subject. For many years after the formation of the American Federation of Labor, warned by the unfortunate example of the Knights of Labor, this organization prohibited the discussion of politics in the unions. In 1895 a clause was placed in the constitution, to the effect that "party politics, whether they be Democratic, Republican, Socialist, Populist, Prohibitionist or any other, shall have no place in the conventions of the American Federation of Labor."

In 1896 it was voted that "no officer of the A. F. of L. shall be allowed to use his official position in the interest of either political party." Mr. Gompers stated, in defense of his position, in the 1896 convention, that his single purpose was "to try and steer our craft of trade unionism clear from the shoals and the rocks upon which so many of labor's previous efforts were wrecked."

Conditions, however, changed. The lobbyists of the Federation, without representation in Congress, found that they were, in many cases, powerless. Decisions of the various state and federal courts, upholding injunctions, declaring labor laws unconstitutional, came thick and fast. In 1906 the Federation decided to make a stand against the reëlection of Congressman Charles E. Littlefield of Maine. The congressman, after a hard fight, was reëlected by a small plurality of 1,000, his previous plurality being 5,419. He afterward resigned. The Federation was encouraged. In November, 1906, six union men were elected to

Congress. The courts continued their so-called reactionary work. On January 6, 1908, the clause of the Erdman Law of 1898, which was aimed to prevent discrimination against union members, was declared unconstitutional. On January 23, the Employers' Liability Law of 1906, making employers responsible for accidents to employees, regardless of carelessness, etc., suffered the same fate.

The next month, on February 3, 1908, came the famous Danbury Hatters' decision, in the boycott case against Loewe & Co., in which the Supreme Court declared that boycotting could be punished under the provisions of the Sherman Anti-Trust Law. A short time prior to these decisions, the Supreme Court of the District of Columbia issued the remarkable injunction in the Buck's Stove case (December 18, 1907). This was made permanent in March, and immediately thereafter contempt proceedings were brought against the officers of the American Federation. Then it was that the Federation began its political campaign in earnest, to abolish "government by injunction," to secure the repeal or amendment of the Sherman Anti-Trust Law, and other legislation. The new shibboleth was no longer "keep politics out of the union," but rather the following:

"We now call upon all the workers of our common country to *stand faithfully by our friends, oppose and defeat our enemies,* whether they be candidates for President, for Congress, or other offices, whether executive, legislative or judicial."

In the ensuing presidential campaign of 1908, on account of the more favorable anti-injunction plank, President Gompers and others decided to throw their weight nationally with the Democratic party, declaring it to be their belief "that the whole mass of workers of the country will respond in hearty sym-

pathy with the Democratic party in the coming campaign, as a result of its action in the labor plank of the platform." Column after column appeared in the *American Federationist* and other labor papers in support of this course, and, in the fall of 1908, some ten union card men were elected to the House of Representatives. In 1910 this number was increased to fifteen.[1]

That the deprivation of the boycott has been one of the causes of this trend, and that such political activity has but only just begun, is the opinion of many. A secretary of one of the international unions declared to the writer:

"These crushing court decisions, depriving labor of the right to boycott, simply mean that labor will itself administer government affairs. . . . To deprive labor altogether of the right to boycott scab goods will but hasten the day when political action is the only source of relief."

Another international secretary writes:

"To my mind, political action on the part of organized labor will come, and, as we are deprived of rights, each one will hasten the day of political action."

A third states:

"The fight against the boycott has resulted now in increasing the belief that the ballot, properly used, is the surest way to correct all ills."

Other replies from international secretaries in the same vein were:

"Personally I believe that concerted political action would be the only effective weapon at our command. I believe that 90% of the organized wage earners

[1] The awakening is, in some respects, similar to that in England following the adverse Taff Vale decision. In that country, however, labor turned to independent political action.

would support it." "Labor will enter politics, either to elect one of the political parties or become socialistic." "Political action is coming." "I believe that the only outcome of the organized labor movement is certain to be political action. It is the only road left open at the present time. . . . It is almost impossible to fight a vast corporation, for the reason that it is so strong financially." "Political power is the coming weapon. We will make our political master give us a bigger crumb, but we are going after the whole loaf. . . ." "If hampered in other lawful pursuits, it will force political action, even though it may endanger our form of government." "The worker will go into politics until he makes all laws and appointments, because this is the workingman's country, and he is going to control his own."

The declarations of a number of secretaries of state federations are:

"The other weapons act only as immediate weapons and relief. For solution, all labor will eventually resort to concerted political action." "The result of the failures of the boycott in various instances is helping the Socialist party here in Texas, so is the Hatters' decision; in fact, that party is gaining rapidly here in union labor circles. Political action is the next step." "Labor will resort to the ballot in the hands of an intelligent labor party." "The illegality of the boycott would hasten concerted political action."

Whether labor will continue to pursue the policy of rewarding its friends and punishing its enemies, or will form an independent political party, or join hands with the Socialist party, is a question which is evoking lively discussion. At the present time there is little talk of forming an independent labor party. The two contending proposals are the first and the third. There has been a marked tendency toward the

Socialist movement on the part of many members of the A. F. of L., though by no means the majority of the members, during the past few years.

"The local federations of the unions in many of our leading cities have declared for the party," writes Mr. Walling.[1] He asserts that, among the national organizations, the Western Federation of Miners, the Brewers, the Hat and Cap Makers, the Bakers, and a few others, numbering about a quarter of a million, have definitely indorsed Socialism, while the coal miners, numbering 300,000, have indorsed collective ownership, but not the Socialist party.

A few years ago Mr. John C. Kennedy declared[2] that collective ownership and operation had been officially indorsed by a number of the international unions, including the machinists, patternmakers, metal workers, boilermakers and iron shipbuilders, engineers, brewery workers, bakers and confectionery workers, textile workers, ladies' garment workers, boot and shoe workers, cloth, hat and cap makers, woodworkers, flint glass workers, amalgamated glass workers, carriage and wagon workers, and a number of the western unions, including the miners, totaling in membership over 330,000. He estimated that about one-third of the cigarmakers and large numbers of the printers and carpenters, switchmen, painters, bricklayers, etc., were Socialists, and named over a dozen labor papers which were definitely pledged to Socialism, and a number of others which tended strongly that way. The president of the International Machinists' Union, the vice-president of the United Mine Workers, and numerous other leaders are ardent advocates of industrial democracy.

The growth of Socialist sentiment among unionists

[1] Walling, *Socialism as It Is*, p. 351.

[2] "Socialistic Tendencies in American Trade Unions," *Journal of Political Economy*, v. 15, pp. 470 *et seq.*

is acknowledged freely by both supporters and opposers of the Socialist movement. "There is no denying the fact," declared Secretary of Labor Wilson, "that there is a great and growing tendency toward the Socialist party among the rank and file, although the A. F. of L. has officially held the policy of rewarding its friends and using the balance of power."

At the 1912 election the insurgents in the Federation cast 5,073 votes for Max Hayes for president of the body, against 11,974 votes for Samuel Gompers. The questions of Socialism, industrial unionism and Civic Federationism were involved in the election. But whether or not the tendency is toward Socialism, it surely is toward a greater participation in politics, due, in part, at least, to the anti-boycott decisions.

Sabotage and the I. W. W. Tactics

Another form of union activity which some laborers are resorting to, and which bids fair to gain in popularity as less radical measures are denied them, is sabotage. Some have defined this word as an "unfair day's work for an unfair day's pay," a necessary corollary of the trade union motto of a "fair day's work for a fair day's pay." It has also been defined as the "chloroforming of machinery." These definitions indicate two varieties of sabotage. When the workers are still employed, the first form mentioned operates to reduce the industrial output, with a view of cutting down the employer's profits. During a strike the second variety is brought into play, and consists chiefly in the temporary derangement of machinery so as more effectively to stop production. Misdirection of orders is also sometimes included in the definition of this word. Arturo Giovannitti has described sabotage as follows:[1]

[1] *Sabotage*, by Emile Pouget, with introduction by Arturo Giovannitti, pp. 13-14.

"Any conscious or wilful act on the part of one or more workers intended to slacken and reduce the output of production in the industrial field, or to restrict trade and reduce the profits in the commercial field, in order to secure from their employers better conditions or to enforce those promised or maintain those already prevailing, *when no other way of redress is open.*

"Any skilful operation on the machinery of production intended not to destroy it or permanently render it defective, but only to disable it temporarily and to put it out of running condition in order to make impossible the work of scabs and thus to secure the complete and real stoppage of work during a strike."

In emphasizing the necessity of employing this weapon, Giovannitti dwells on the fact that boycotts and other devices formerly resorted to are no longer permitted the worker. He says:

"Now that the bosses have succeeded in dealing an almost mortal blow[1] *to the boycott,* now that picket duty is practically outlawed, free speech throttled, free assemblage prohibited, and injunctions against labor are becoming epidemic—Sabotage, this dark, invincible, terrible Damocles' sword that hangs over the head of the master class, will replace all the confiscated weapons and ammunition of the army of the toilers. And it will win, for it is the most redoubtable of all, except the general strike. In vain may the bosses get an injunction against the strikers' funds—Sabotage will get a more powerful one against their machinery. In vain may they invoke old laws and make new ones against it—they will never discover it, never track it in its lair, never run it to the ground, for no laws will ever make a crime of the 'clumsiness and lack of skill' of a 'scab' who bungles his work or 'puts on the bum' a machine he 'does not know how to run.'

"There can be no injunction against it. No policeman's club. No rifle. No prison bars. It cannot be

[1] Italics are the author's.

starved into submission. It cannot be discharged. It cannot be blacklisted. It is present everywhere, and everywhere invisible, like the airship that soars high above the clouds in the dead of night, beyond the reach of the cannon and the searchlight, and drops the deadliest bombs into the enemy's own encampment."

The other militant tactics advocated by the Industrial Workers of the World, on the ground that milder forms of activity have proved ineffective, or are not allowed the worker, are the general strike, mass picketing, the misdirection of orders, the refusal to make or enforce time contracts, the violation of oppressive governmental orders, etc. Vincent St. John, the secretary of the organization, thus describes these tactics in part:[1]

"The organization does not allow any part to enter into time contracts with the employers. It aims, where strikes are used, to paralyze all branches of the industry involved, when the employers can least afford a cessation of work—during the busy season and when there are rush orders to be filled.

"The Industrial Workers of the World maintain that nothing will be conceded by the employers except that which we have power to take and hold by the strength of our organization. Therefore we seek no agreements with the employers.

"Failing to force concessions from the employers by the strike, work is resumed and 'sabotage' is used to force the employers to concede the demands of the workers.

"During the strikes the works are closely picketed, and every effort made to keep the employers from getting workers into the shops. All supplies are cut off from strike-bound shops. All shipments are refused or missent, delayed and lost if possible. Strike

[1] *The I. W. W.*, by Vincent St. John, p. 17. A fuller discussion of this subject is contained in Spargo's *Syndicalism. Industrial Unionism, and Sabotage,* Brooks' *American Syndicalism,* Tridon's *The New Unionism, etc.*

breakers are also isolated to the full extent of the power of the organization. Interference by the government is resented by open violation of the government's orders, going to jail *en masse,* causing expense to the tax payers—which are but another name for the employing class. In short, the I. W. W. advocates the use of militant 'direct action' tactics to the full extent of our power to make good."

It is also frequently charged that the violence recently uncovered in some unions—notably the Bridge and Structural Iron Workers—is, in part, due to the hounding of their union by court injunctions and proceedings, when their members indulged in the use of milder weapons than dynamiting.

It is seen, therefore, that the suppression of the boycott has already led, in some instances, to its secret use, and that it has given an impetus on the economic field to such milder activities as the negative boycott and coöperative efforts, as well as the more radical proposals of sabotage and the other tactics advocated by the I. W. W. It has also turned the attention of labor to the political field.

CHAPTER XXI

PROBABLE OUTCOME IF THE BOYCOTT IS LEGALIZED

What will be the outcome if the boycott is legalized? Will the use of this weapon be subject to serious abuse? Will such abuse, if any, increase or decrease with time? Finally, what will be the relative strength of the forces leading to its legitimate and to its wrongful employment? The answers to these questions are of vital importance to one wishing to form a correct opinion as to whether or not the evils arising from the boycott's employment, unrestricted by statute and common law, will counteract the possible good.

That there is some danger of abuse in this practice is admitted by many of the leaders of labor, though denied by others. Mr. Gompers is of the former group.

"Everything is subject to abuse," he said to the writer some time ago, "including the boycott. The vote is subject to abuse, and yet that is no reason why it should be taken away. The boycott is more and more being safeguarded from such abuse. But, even if the use of this weapon was attended by more abuse than good, I still would claim that the workers had the right to use it."

Mr. John Mitchell seconds this statement:

"The right to boycott, like the right to strike or lockout, the right to vote, the right to bear arms, the liberty of speech, or the right to devise one's property as one wills, is subject to misuse," he declared. "There

can be no personal liberty that does not, at some time or other, lead to abuse, and cause individual hardship."[1]

Most of the labor leaders interviewed, however, refused to acknowledge that they knew of any individual cases of abuse. Secretary of Labor W. P. Wilson averred that he had never yet come across any cases of misuse. He denied that the Danbury Hatters' boycott was an illustrative example of abuse, declaring that the strikers' object to obtain a closed shop and thereby maintain good labor conditions was legitimate. Other leaders maintained that but few, if any, instances of abuse were shown in the other great boycott case, against the Buck's Stove and Range Co., and that, for the most part, the retailers approached were treated most courteously by the unions. These retailers usually knew of the trouble nearly a year before they were seen, it was avowed. The causes tending to justify these boycotts have been dwelt upon elsewhere.

If the boycott should be legalized, it is undoubtedly true that there would be cases of abuse, and yet the experiences of the past few years have indicated that this abuse would probably grow less and less. The convention proceedings of the American Federation of Labor strongly support this assumption. Here a progressive tendency to put a stop to abuses and to surround the employment of the boycott with more effective safeguards is plainly shown. Complaints of extortion and violence which were concomitants of the early use of this weapon have appeared very infrequently during the past few years.

The leaders of the unions are constantly endeavoring to prevent the abuse of this weapon, both on grounds of morality and those of utility. Mr. John

[1] Mitchell, *Organized Labor*, p. 286.

Mitchell thus defines what he considers to be the best policy:[1]

"The same rules that apply to the strike should apply to a boycott, it should be enforced only when a real necessity exists and under conditions which will promote the welfare of the working classes and of society in general. The morality as well as the efficiency of the boycott can be secured only by limiting its application to important cases, and by preventing its abuse. . . . As a general rule, the further the boycott is removed from the original offender the less effective it becomes. It should be the aim of the union to seek and not to force the alliance of the public, and to render the boycott as direct and personal as possible. . . . Especial care . . . should be used in the laying of a secondary boycott. A boycott of this sort, that is extended and extended from a central point like the waves made by a pebble thrown into a still pond, becomes of so little force and arouses so much just antagonism that discredit is thrown upon the original boycott, which in itself may have been perfectly just and reasonable."

Mr. Gompers thinks that the legality of the boycott will not result to any great extent in the enlargement of its use, but rather in the diminution.

"In my opinion," he declared before the Industrial Commission,[2] "as these legal rights are recognized, . . . the less often will they be resorted to. But if they try to outlaw me for exercising that which I have a legal right to do, to exercise my function and duty, it seems that it's a man's nature then to be perverse and to say that that is the time that I am going to do it."

The unionists are generally of the opinion that this weapon should be applied only when "every other remedy has been employed without result."[3] "It is a

[1] Mitchell, *Labor Problems,* pp. 288, 290.
[2] Report of Industrial Commission, v. 7, p. 638.
[3] A. F. of L. Convention Proceedings, 1909, p. 282.

drastic remedy and should only be resorted to when gentler and milder means have failed," declared *The Boycotter* as early as 1885.

Nor do we notice the tyrannical use of the boycott in those states, such as Montana, California, New York, where boycotting has been pronounced legal in many of its forms. "I do not think there has been any trouble in regard to this matter in this state," wrote the Commission of Labor of Montana, June, 1913, referring to this weapon. In this state, as is known, a most advanced position has been taken. In England the 1906 legislation virtually legalized the boycott. J. Keir Hardie, one of the leaders of the Labor Party in Parliament, declared that no cases of abuse had come to his notice. He said in a letter to the writer:

"There has been no effect one way or the other arising from the Trades Dispute Act in regard to the boycott, that is to say, the Trades Unions have gone on since 1906 exactly as they have been doing before. If there had been any abuse of the powers conferred by the Act on Trades Unions the matter would have been sure to have been brought to the notice of Parliament, but the fact that even not one question has been put upon the subject affords strong proof that there have been no abuses."

For the diminution of these abuses we need not depend entirely upon the growing sense of justice on the part of the workers, but rather upon the selfish interest of the unionists. In fact, the main reason advanced in the conventions of the A. F. of L. against the indorsement of boycotts, without thorough investigation, was that their indiscriminate use would defeat the ends of unionists themselves.

Such a use often seriously injures the union men employed in lines of work dependent for their continuation upon the sale of the boycotted article.

The recognition of this fact led the 1898 convention to vote that a hearing be given to all such workers before the boycott was indorsed.[1] In case the injured body of unionists can prove that the employment of this weapon is unjustifiable, they can generally be depended upon to issue an effective protest. Thoughtless boycotting, furthermore, leads to ineffectiveness. So true is this that labor has more and more concentrated its efforts on a few cases where most glaring injustices on the part of the employers were evidenced, ignoring those cases where the rights of labor were less clear. Unionists have come to agree with the New York Commissioner of Labor that

"When the pretended leaders of the movement assume to apply the boycott indiscriminately, foolishly and maliciously, it will result in complete disaster to the movement itself," and that "the success of the boycott depends upon the question whether or not its advocates represent the opinions of a majority of our citizens and thus reflect public opinion."[2]

As the commissioner states, the boycott is more successful, generally speaking, if it can gain the good will of those outside of the organized labor movement, and to use it foolishly often alienates the sympathy and support of the outside group. In fact, it may happen, as in the case of Mrs. Gray's bakery in New York in the eighties, and as in the case of numerous firms on the "We Don't Patronize" list, that a boycott may bring greatly increased business to the firm attacked, if waged without what non-unionists consider justification.

Furthermore, with the growth of our industrial life, and the wide distribution of the products of our industries, in different parts of the United States, boy-

[1] See *supra*, p. 111.
[2] New York Report of Statistics of Labor, 1885, p. 352.

cotting, with its circularizing, sending of delegates, purchasing of novelties, etc., is becoming more and more expensive. On this account the trade unions are becoming ever more cautious about beginning a national campaign, and are realizing that they must have a cause which will bring to its standard enthusiastic support, and that they must wage their battle in a way that will not alienate large numbers of their fellows, if the results obtained are to justify the energy and money expended.

The workers are acknowledging also, with Mr. John Mitchell, that the more indirect the use of the boycott the less effective it is. It is thus to the interest of labor to limit boycotting to the more direct attacks, thus decreasing the amount of injury meted out to those far removed from the original dispute. The disappearance of the less direct forms also eliminates the objection frequently raised to boycotting that it interferes unduly with the liberty of third parties.

It may finally be stated that many of the abuses cited as following in the wake of the boycott may be reached by other laws. Threats of physical violence, fraud, misrepresentation, extortion, inducing others to break contracts under certain conditions, all are illegal, irrespective of the fact that they are connected with boycotting, and the legalization of the right to boycott would not legalize these methods. False statements issued in circulars would also be subject to the law of libel. Most of the corruption complained of, as well as the injustice to the workman, is alleged in connection with the enforcing of the principle of the closed shop, a subject with which this book deals only incidentally.[1]

[1] For fuller discussion of this objection, see Stockton, *The Closed Shop in American Trade Unions,* pp. 175 *et seq.* Dr. Stockton maintains that most of the injustice complained of by non-unionists is in evidence only when the union is a closed union, and that such unions are but rarely found, except in decaying trades.

Instead of opening wide the gates to greater brutality, in the conduct of the labor war, the legalization of the boycott is likely to reduce the number of strikes and to lead to a larger number of trade agreements. If the employer knows that the employees can cut off his sales, by the use of this weapon, he is more likely carefully to consider their demands. Mr. Gompers declared before the Industrial Commission that prior to placing the names of firms on the "We Don't Patronize" list, the A. F. of L. endeavored to settle grievances between firms and employees, and that, to avoid the proposed proscription, one-third of the firms settled. Many others have expressed their opinion to the writer that the fear of the boycott would undoubtedly lead, in many instances, to trade agreements.

It is thus believed that, if the boycott is legalized, abuse will continuously decrease. The fact that abuse leads to the injury of fellow unionists, to ineffectiveness in the use of this weapon, to the alienation of public sympathy, to the depletion of union funds—all make it to the advantage of union men to employ the boycott with the utmost care. That these facts are recognized has been proved many times. It is also recognized that many evils occasionally accompanying the abusive employment of the boycott may be reached in other ways.

In view of the effectiveness of the boycott in many trades, in strengthening the hands of labor, and thus, indirectly, in advancing social welfare; in view of the weapons which are constantly being brought into play against the laborer in his struggles, necessitating the use of weapons additional to the strike and the picketing; in view of some of the substitutes which may be resorted to if the boycott is not available; in view of the decreasing likelihood of any great abuse in the employment of the boycott, and the laws on the statute book which take due care of many of the perversions

complained of; and in view of the greater number of peaceful settlements which would probably result from its potential use, the writer is in favor of legalizing this weapon. By this he means that neither the injunction nor the civil nor criminal process should be employed against the primary or the secondary boycott, nor against that form of the compound boycott which involves only the threat to injure the business of another by the withdrawal of patronage or labor. He, of course, would not include in this exemption the threat of actual violence to person and property.

In advocating this legalization, he believes that there will probably be some abuses in the employment of the boycott, as there are in the exercise of every right; that at times the use of this weapon is less effective than that of others at the disposal of labor; but that such abuse and such occasional ineffectiveness do not constitute any sufficient argument for rendering the boycott illegal.

APPENDIX

APPENDIX

SUMMARY AND DIGEST OF DECISIONS IN BOYCOTT AND ALLIED CASES

Note:

Following is a list of boycott, blacklist and trade boycott decisions in the courts of last appeal and a few of the lower courts in the various states, as well as in the federal courts. A number of decisions relating to picketing and to the closed shop, involving as they do the same principles, have also been cited.

The reader is referred to Chapter III for an analysis of the various kinds of boycott. It may here be noted that persuasion only is used in the secondary boycotts, while the compound boycott is accompanied by threats or coercion, the threats, at times, however, being mere threats to boycott.

When a case is headed, "Secondary or Compound Boycott Involving Patronage," it signifies that third parties are here induced or coerced to withdraw their patronage or business dealings from the boycotted firm. When a case is headed, "Secondary or Compound Boycott Involving Workmen," it signifies that an attempt is here made to prevent employees or other workmen from seeking or continuing employment in the boycotted concern.

When the case is headed "Labor Boycott," it signifies that an attempt is made to boycott another workman for which action is brought by such workman. The nature of the Trade boycott and blacklist is explained in Chapter II. As a general rule, when the name of the state court is omitted, the decision is that of the court of last appeal in the state.

A number of abbreviations have been made, as follows: pl.

for plaintiff; def. for defendant; rev. for revised; st. for statutes; sec. for sections; gen. for general; chap. for chapter, etc.

NEW ENGLAND STATES

In Connecticut, Massachusetts and Vermont various forms of boycotting have been pronounced illegal, when accompanied by intimidation, moral or otherwise. No decisions bearing directly on boycotts in labor disputes have been given in the highest courts of New Hampshire, Maine and Rhode Island. Judging from the decision on the blacklist, New Hampshire would probably declare boycotts actionable, especially if malice was present. There is a possibility that boycotts in Maine and Rhode Island would be considered legal, if unaccompanied by recognized illegal means.

Connecticut

Statutes declare labor and employers' boycotts illegal, although the word is not used. Courts have pronounced both kinds illegal where intimidation is used. Threat of loss of business will constitute intimidation.

Statutes: Chap. 202, Sec. 1, Laws of 1909, act entitled, "Intimidation of Employees," amending Sec. 1296, Gen. St. 1902. Boycotts, when accompanied by intimidation, illegal (word "boycott" not used). Persons threatening, or using means calculated to intimidate any one to do or abstain from doing any legal act, or injuring or threatening to injure property with intent to intimidate, shall be fined max. of $100 or imprisoned max. of 6 mos.

State v. Glidden (1887). Criminal. Compound Boycott Involving Patronage. Extortion. Illegal. Boycott of newspaper concern to compel discharge of non-union men. Defs. in typographical union threatened subscribers with withdrawal of patronage if continued purchasing paper. It was also alleged that they demanded of pl. $500 to defray expenses, and distributed boycotting circulars. Acts held illegal under statute against intimidation and *prima facie* malicious. Pri-

mary object to injure property, though ultimate, good; also interference with liberty to carry on business in company's own way. Court conceded the right to request company to discharge workmen and employ others and to use all proper argument in support of request.

State v. Stockford (1904). Criminal action. Compound Boycott. Illegal. I. U. of New Haven and Car Drivers' Union, defs. Held such combination to ruin business illegal under common law and statutes; words or acts calculated to cause ordinary person to fear an injury to his person, business or property are equivalent to threats.

March v. Bricklayers and Plasterers' Union, etc. (1906). Compound Boycott Involving Employees. Extortion. Illegal. Threats made to union boss to withdraw labor because he secured supplies from pl., unless pl. paid to union $100. Pl. had sold supplies to unfair boss. Suit for recovery of fine successful.

Wyeman v. Deady (1906) Civil Action. Compound Labor Boycott. Illegal. Pl., a painter, sued defs., Painters' Union of Hartford and walking delegates, for securing their discharge through threats against employer. Pl. was awarded $423, in lieu of salary lost. Held malice need not be proved; gist of action not conspiracy, but injury; proof that union directed or approved actions would warrant exaction of punitive damages.

Maine

Labor boycotts involving intimidation, and general boycotts during disputes with public utility corporations, are forbidden by statutes (word "boycott" not used). No boycott cases in labor disputes have as yet been decided by highest court. Trade boycott held legal, though another, involving slander, illegal.

Statutes: Rev. St. 1903, Chap. 124, Sec. 9. Against intimidation of person to do or abstain from doing legal act in dispute between gas, telephone, telegraph, electric light, electric power or railroad and employees. Max. punishment, $300 or

3 mos. Chap. 127, Sec. 21. Against intimidation of employees while entering, continuing in, or leaving employment. Max. punishment, $500, or 2 yrs.

Heywood v. Tillson (1883). Civil Action. Boycott of Landlord by Employer. Legal. Def. threatened to discharge workmen renting house of pl. Held no contract relations interfered with; employer could employ whom he chose; threat to commit injury not actionable, malicious motive not making act illegal.

Davis v. Starrett (1903). Action for Slander. Illegal. Def. accused of slandering pl. by declaring that latter was the greatest rumseller in Warren, Me. In one count pl. charged he had been boycotted as a result of report. Held boycotting does not necessarily involve combination.

Massachusetts

Interference with employment through force, etc., prohibited by statute. Most of the boycott cases decided by courts dealt with the withdrawal or coercion of labor. Courts have granted injunctions against coercing employees to quit employment, and the use even of persuasion, if the strike is over. In one case, however, an injunction was denied on the ground that there was no presumption that defendant would, in the future, join in similar wrongful acts.

Courts have enjoined unfair lists, and declared actionable efforts to secure discharge of employees under contract. Trade boycott has been declared actionable and a certain form of blacklist, not enjoinable. Doctrine of justifiable cause has latterly been applied.

Statutes: Rev. Laws, 1902, Chap. 106, Sec. 11, entitled "Intimidation." Act makes illegal interference with a person's employment by force and intimidation.

Commonwealth v. Hunt (1842). Criminal Conspiracy. Involving Labor Boycott. Legal. Bootmakers combined and agreed not to work for any except those employing members of the club. They furthermore agreed to fine those who

would not join organization, and compelled employer to discharge an employee who would not pay the fine imposed. Court held legal; that persons may combine to adopt measures having a tendency to impoverish another, and such combination may yet be legal and meritorious.

Carew v. Rutherford (1870). To Recover Money. Extortion. Illegal. Journeymen Freestone Cutters threatened to induce workers to leave employment if pl. refused to pay to the association $500 for privilege of sending work to be done outside of the state. Held extortion and illegal. Court, however, pronounced primary boycott legal, declaring it no crime for a combination without any unlawful object to agree not to work for or deal with certain men or classes.

Walker v. Cronin (1871). Civil Action. Secondary Boycott Involving Patronage and Workmen. Illegal. Defs., among other things, induced manufacturer of shoes, who agreed to make shoes from material supplied, to send back material to pl. They induced breaking of contract, and employees to leave. Held combination maliciously to cause a loss to another is illegal; that inducement to leave employment is illegal, if there exists valid contract known to def.

Sherry v. Perkins (1888). For Injunction. Compound Boycott Involving Workmen. Illegal. Lasters, after strike disturbances, displayed banners reading, "Lasters are required to keep away from Sherry's." Held this was a continuing intimidation to workers, a private nuisance, and could be enjoined.

Worthington v. Waring (1892). For Injunction. Blacklist. Not Enjoinable. Owners of Narragansett Mills in Fall River placed strikers on blacklist, agreed not to employ those belonging to a trade union, and sent list to others. Held, as rights involved were not property but personal rights, no injunction would issue to enjoin continuing conspiracy not to employ complainants, although action for damages might be brought by each one separately.

Vegelahn v. Guntner (1896). For Injunction. Compound Boycott Involving Workmen. (Picketing.) Illegal. Two

persons in front of a business establishment with whom workers were on strike were charged with intimidating and constraining workers and prospective workers. Held, that injunction would issue as against combination to injure another by intimidation, acts not constituting lawful competition. Judge Holmes delivered a strong dissenting opinion, quoted elsewhere.

May v. Wood (1898). Civil Action. Induce Master to Discharge Servant. (Not in labor dispute.) Insufficient Averments. Held that when it is alleged that false and malicious statements were made to discharge servant, it is essential that these should be substantially set out in declaration. Judge Holmes, in dissenting opinion, declared combination illegal if injury was inflicted through malevolence, and without justifiable cause, even though only means was persuasion.

Plant v. Woods (1900). For Injunction. Secondary or Compound Labor Boycott. Illegal. Painters, in order to induce pls. to join their union rather than to remain in another organization, requested employer to discharge pls., and did not deny that trouble would follow in case of failure to do so. Held illegal to threaten interference to dispose of labor without justifiable cause. Judge Holmes, dissenting, stated the immediate object here—to strengthen workers' organization—was justifiable, and that it was lawful to combine to secure better conditions, although at the expense of others, and through boycott and strike.

Weston v. Barnicoat (1900). Civil Action. Trade Boycott. Illegal. Pl. declined to pay an alleged debt, whereupon his name was sent to association, which placed it on record, and began boycott. Case decided on technicalities. Defs. held responsible for action of association.

Martell v. White (1904). Civil Action. Trade Boycott. Illegal. Def. granite manufacturers of Quincy formed association, one of whose regulations was that any member dealing with non-member manufacturer should be subject to a fine of from $1 to $500. Held object unjustifiable and that the

imposition of fines constituted coercion, and prevented free competition.

Berry v. Donovan (1905). Civil Action. Secondary or Compound Labor Boycott. Illegal. Members of Shoemakers' Union of Haverhill demanded of employer to discharge non-union men. Held same as in Plant v. Woods, *supra.*

Picket v. Walsh (1906). Injunction. Involving Compound Labor Boycott. Illegal. Members of Bricklayers' and Stonemasons' Union employed by a contractor aiding in the construction of the Federal Building, Boston, struck against contractor to secure his influence in compelling owner of building to discharge jointer of mortar, and employ union men. Court held such jointer could obtain injunction restraining such strike, and preventing workers from refusing to work on other building, in pursuance of such purpose, such strike not being a justifiable interference with right of pls. to pursue calling as they saw fit, as action was not limited to strikes against persons with whom organization had trade dispute.

Reynolds v. Davis (1908). Strike Involving Unfair List. Illegal. Here Building Trades' Council declared strike. Held grievance was between employer and individual employees, and that it was illegal for an outside body not under contract to call strike, and thus that any acts in pursuance of said illegal strike, including putting of pl. on unfair list, were also illegal.

Willcutt & Sons Co. v. Bricklayers' Benevolent and Protective Union (1908). For Injunction. Compound Boycott Involving Workmen. Illegal. Bricklayers on strike at Fairhaven and Andover endeavored to prevent members of union from entering and continuing in pl.'s employment through fines and threats. Held means coercive, and injunction would issue. Judges Sheldon and Knowlton dissented.

M. Steinert & Sons Co. v. Tagan (1911). Secondary Boycott Involving Employees. Illegal. Teamsters drove through streets of Boston with wagon bearing placard announcing strike of piano and furniture movers four months after contest was apparently over. Held that while action would be legal during strike, in view of the Statute passed

1910, Chap. 445, imposing duty on employer to give information about a strike to prospective employees, such action, after strike, was malicious.

Davis v. N. E. Railway Co. (1909). For Injunction. Blacklist. (Not in labor dispute.) Illegal. Defs., publishers of a directory purporting to contain a full list of reputable express companies, refused to list pls. Held to be an intentional act of injury without justifiable excuse.

Aberthaw Construction Co. v. Cameron (1907). For Injunction. Compound Boycott Involving Workmen. Not Enjoinable. No injunction will be granted to prevent defs. from compelling discharge of non-union workmen through a violation of the contract, if pl., in performance of contract, chooses to employ non-union men. No presumption that def. will engage in similar wrongful acts in future, and, if he does so, must be pleaded and proved.

New Hampshire

Sweeping statute against boycotts (word "boycott" not used). No case in labor disputes decided on by highest court. Decision in case involving a form of blacklist would indicate that boycotts would be considered actionable if court concluded malice was shown.

Statutes: Pub. St. (1891), Chap. 266, Sec. 12. "Interference with Employment." Act makes it unlawful for any person to interfere in any way whatever to injure or damage another in property or lawful business. Max. punishment $500 or 1 yr. Covers boycott.

Bixby v. Dunlap (1876). Civil Action. Held illegal knowingly and wilfully to induce servant to break his contract.

Huskie v. Griffin (1909). Civil Action. Nature of Blacklist. Left to Jury. Former employer induced another to refuse to employ pl. Held any injury to a lawful business was *prima facie* actionable, but might be justified on ground that it was a lawful effort to promote one's own welfare, to

defeat which plea express malice or purpose to injure others and not to benefit oneself must be shown.

Rhode Island

Labor boycott accompanied by intimidation, and general boycotts accompanied by malice, illegal by statute (word "boycott" not used). No case of boycott in labor disputes decided by highest court. Application to labor disputes of principles laid down in trade boycott case would legalize latter boycotts, if so-called coercive measures were confined to notification of third party that loss would follow refusal to cease relations with boycotted firm.

Statute: Gen. Laws, 1896, Chap. 278, Sec. 8, "Intimidation of Employees." Intimidating employees, singly or by combination, from entering on or pursuing employment illegal. Max. punishment, $100 or 90 days. Chap. 279, Sec. 45, "Interference with Employment." Unlawful for any one, maliciously, wilfully, or mischievously, to injure or destroy property, or obstruct lawful business. Max. punishment, $20 or 3 mos.

Macauley v. Tierney (1895). For Injunction. Compound Trade Boycott. Legal. Master Plumbers' Ass'n of Providence, affiliated with national body, agreed not to purchase supplies from any wholesalers who sold to plumbers not members of association, and notified certain wholesalers, as well as members of the association, to that effect. Held sending of notices is no ground for injunction; that members' desire to free themselves from competition is a legal excuse for the sending of notices and that combination to do act which one person may lawfully do is legal, if no illegal means used, such as fraud, misrepresentation, intimidation, coercion, obstruction, molestation, or procuring violation of contract.

Vermont

Labor boycotts when accompanied by intimidation illegal by statute (word "boycott" not used). Labor boycotts, where

employees use intimidating measures, moral or otherwise, have been three times declared criminal. However, where employer used coercive measures against employee of employee, court held it was not actionable. Court also held trade union funds liable for acts of agents in boycott against employees and those dealing with them, as well as a trade boycott, where members of boycotting association were coerced by means of fines.

Statutes: Pub. St. 1906, Sec. 5868 and 5869, "Intimidation of Employees." Sec. 5868 makes it illegal to prevent employment by threatening violence. Max. punishment, $100 or 3 mos. Sec. 5869 makes illegal stopping by force, etc., one already at work. Max. punishment, $500 or 5 yrs. Covers boycotts by means of coercing employees.

State v. Stewart (1887). Criminal Conspiracy. Compound Labor Boycott. Illegal. Defs., granite cutters, charged with using threats to drive employees from positions, and with threatening to publish names as scabs. Held that acts deprived employees of the right to use their talents as they saw fit, and that threats working on the mind are as illegal as actual violence.

State v. Dyer (1894). Criminal Conspiracy. Compound Labor Boycott Illegal. Facts and decision similar to State v. Stewart. Defs., granite cutters of Montpelier and Barre; object of boycott to compel member to join union.

Boutwell *et al.* v. Marr *et al.* (1899). Civil Action. Trade Boycott. Illegal. Granite Manufacturers' Ass'n of New England, embracing 95 per cent. of granite manufacturers in that vicinity, refused to furnish granite to any firm not a member. Pl.'s business decreased from $1,000 to nothing a month. Held that when the concerted action to withdraw patronage is brought about by coercion, such as the imposition of fines, the combination will be considered illegal, and that acts legal when done by individuals are not always legal when in combination.

Patch Mfg. Co. v. Protection Lodge, etc. (1905). Civil Action. Compound Boycott Involving Employees and Patronage. Illegal. Machinists in Rutland, on strike, threatened to

boycott any one boarding or selling necessities to any servant employed by pl., and distributed circulars to machine shops. Jury awarded $25,000 damages. One of first instances where members of trade union were held liable in boycott case.

Raycroft v. Tainter (1896). Civil Action. Form of Blacklist. Legal. Employer of servant threatened servant with discharge if he did not discharge third person employed by servant against whom employer had a grudge. Held def. was exercising a legal right, and that malicious motive was immaterial.

State v. Duncan (1906). Criminal Conspiracy. Compound Labor Boycott. Held conspiracy to prevent persons by violence, etc., from engaging in a lawful business illegal at common law and under statutes. Decision chiefly on technicality.

THE MIDDLE ATLANTIC STATES

The highest court in Delaware has not passed on the question of boycotts in labor disputes. In Maryland, New Jersey and Pennsylvania, boycotts, accompanied by threats of loss of business or labor made against third parties, have been held illegal. In New Jersey, mere persuasion, when used to force another to conduct his business in a different way, had been held illegal. In Maryland and Pennsylvania, however, circulars publishing a truthful account of grievances have not been enjoined.

New York is the most liberal of this group of states, and the courts here consider a secondary boycott, unaccompanied by force, etc., legal; allow issuance of boycott circulars, even when loss of business by third parties is implied; and declare labor boycotts legal when enforced by strikes or threatened strikes, and when they do not result in the exclusion of the boycotted laborer from all positions in the community.

Delaware

No boycott decision noted in highest court. Statutes: Rev. Code, 1893, Chap. 127, Sec. 3, entitled "Interfering with

Employee." Act makes misdemeanor the interference with, molesting or obstructing any railroad employee in pursuance of a strike. Max. fine, $500 and 6 mos.

Maryland

Statute legalizes boycott when unattended by coercion or other illegal means. Court has declared illegal coercion of patrons by means of threats to withdraw customers, and has issued an injunction. It has, however, pronounced legal the issuance of circulars presenting the claims of the workers. A trade boycott, accompanied by threats, in inducing others to break a contract, was also held to be illegal, while in an early case, even threats to notify others of "unfairness" of shop, were pronounced actionable. An attempt at blacklisting, involving false statement, also illegal.

Statutes: Pub. Laws, 1903, Art. 27, Sec. 33, act entitled "Labor Combinations not Unlawful." Agreement to do act in furtherance of a trade dispute between employer and employee not indictable as conspiracy if such act, committed by one person, not punishable.

Lucke v. Clothing Cutters', etc., Assembly (1893). Civil Action. Labor Boycott. Illegal. Members of the Knights of Labor notified Baltimore clothing cutter that labor unions would be informed that shop was non-union if pl. was not discharged. This action held malicious interference with right of employment.

My Maryland Lodge No. 186, Intern'l Ass'n. Machinists, *et al.,* v. Adt. (1905). For injunction. Compound Boycott Involving Patronage. Illegal. Defs. struck for 10 per cent. increase in wages. They followed wagons of pl. to discover customers; threatened customers, boycotted beer and ice of those hiring pl., issued circulars, and caused dwindling of business from $18,000 to $3,500. A temporary injunction was issued by the lower court forbidding defs. from continuing these practices and from in any manner boycotting pl. or any one giving him work. Injunction upheld; and declara-

tion made that, while defs. had a right to present cause to the public in a peaceful way through the newspapers or circulars, they could not use coercion, and that acts were not lawful competition in trade.

Sumwalt Ice Co. v. Knickerbocker Ice Co. of Baltimore (1911). Civil Action. Compound. Trade Boycott. Illegal. Pl., dealer in ice, was threatened by def. with withdrawal of further supplies if he continued to supply third party with whom pl. had contract. Held actionable to employ illegal means to induce breach of contract.

Willner v. Silverman (1909). Civil Action. Blacklist. Illegal. Where employee of members of association of clothiers organized principally to discipline employees, circulated through the association a letter falsely reciting that cutter in the employ of member had been discharged because of his attempts to disorganize employment, and that the association should support member in this matter, and refuse cutter employment, the cutter, being damaged by letter, has a right of action against employer. A malicious interference by individual or by combination with the business or occupation of another, followed by damage, is actionable.

New Jersey

General application of the statutes is doubtful. The courts have repeatedly issued injunctions against compound boycotting of various kinds, against issuing appeals or circulars tending to interfere with the business of another, and even against merely persuading customers to withdraw their patronage, in order to force complainant to adopt a particular mode of doing business. They have also sustained actions for damages in cases of labor boycotts. On the other hand, the courts have refused to grant an injunction to protect pickets in their work, and have declared legal agreement of workers not to work for any person employing non-union men.

Statutes: Acts of 1903, Chap. 257, Sec. 63, entitled "Interference by Strikers." Prohibits interference with railroad

employees by strikers. Max. punishment, $500, and 1 yr. Chap. 235, Sec. 37, Gen. Conspiracy Act. Application Doubtful.

Mayer v. Stonecutters' Association (1890). For Injunction. Labor Boycott. Not Enjoinable. Members of union agreed not to work with any but members of union or for any employer who insisted on their doing so. Held legal, so long as peaceful means used.

Van Horn v. Van Horn (1890). Civil Action. Trade Boycott. Illegal. Pl., who owned millinery store, accused def. of endeavoring to ruin business by trying to induce wholesalers not to sell goods to him and stating that goods did not belong to him. Held malicious.

Barr v. Essex Trades Council (1894). For Injunction. Compound Boycott Involving Patronage. Illegal. Typographical Union members went on strike against the *Newark Times* because it started the use of plate matter. During strike they, in conjunction with the Trade Council of Essex County, issued circulars and booklets calling on laborers, public and advertisers to cease patronizing *Times*. As a result, several advertisers withdrew. Held that combination was malicious interference with freedom to carry on business; that intimidation was used toward advertisers and members of the unions, and that combination often changes the character of an act.

Frank v. Herold (1901). Injunction. Compound Boycott Involving Workmen. (Form of Picketing). Illegal. Union on strike, enjoined from intimidating and annoying others while picketing. Held unlawful for third parties to interfere with employees against latter's consent and to endeavor to induce them to quit by lawful means.

Jersey City Printing Co. v. Cassidy (1902). For Injunction. Compound Boycott Involving Workmen. (Involving Picketing.) Illegal. Similar to Frank v. Herold, *supra*. Also declared illegal to endeavor by coercion to get employees to break their contract; interference with freedom to employ and be employed.

Martin v. McFall (1903). For Injunction. Secondary Boycott Involving Patronage, and Workmen. Illegal. Members of Bakers' Union endeavored to compel employer to accede to their demands by persuading others not to deal with him, and by rendering it difficult or uncomfortable for willing workers to work. Held these acts unlawful, when used to compel complainant to adopt a particular mode of doing his business.

Atkins v. W. and A. Fletcher Co. (1903). For Injunction. Blacklist. Legal. Employers in the N. Y. Metal Trades' Ass'n refused to employ any person on strike against Fletcher Brothers. Pl. was thus unable to secure employment. Held combination of employers could refuse any kind or class of men; that, however, if pl. showed that defendants had deprived him of all opportunity of securing employment other than at Fletcher Brothers, and molested employees in getting a job, he would be entitled to an injunction.

Dressler v. Sellers (1904). Civil Action. Illegal. The boycotting of a firm on their failure to pay an arbitrary claim on them by a labor union is illegal.

Van Der Platt v. Undertakers' and Liverymen's Ass'n of Passaic (1905). For Injunction. Trade Boycott. Legal. Pl. charged he was refused undertaker's supplies by def. ass'n as a result of a provision in their by-laws. Defs. denied allegation. Held that one not showing any place of business cannot secure injunction restraining defs. from boycotting; that personal or property right must be shown.

Brennan v. United Hatters of No. Am., Local No. 17 (1906). Civil Action. Labor Boycott. Illegal. Def. organization took card away from pl. because he refused to pay $500 fine, and then caused discharge. Held that whoever intentionally, without justification, procures employer to discharge employee to damage of the latter, is liable for damages, although there is no binding contract.

Alfred W. Booth v. Burgess (1906). Injunction. Compound Boycott Involving Patronage. Illegal. Pl. was manufacturer of blinds and trim for building in Bayonne. Def.

and other union men struck for closed shop, and sought to induce boss carpenters to refuse to purchase from pl., declaring him unfair, and threatening to call employees off if they continued to purchase. Some bosses broke contracts and others ceased purchasing. Held that an injunction would lie, as actions of defs. interfered with the right to a free market, and that no surrender of liberty on part of employees on entering union could affect this right.

George Jonas Glass Co. v. Glass Bottle Blowers (1907). For Injunction. Secondary or Compound Boycott Involving Patronage. Illegal. Defs., who went on strike against pls., tried to induce Whittemore Brothers of Boston, manufacturers of shoe polish, to cease to patronize pl. Whittemore Brothers purchased some $35,000 worth of bottles from pl. during year. Circulars were sent to unions, and requests made that union delegates request merchants to cease their purchase of Whittemore's polish. Injunction issued, restraining defs. from persuading or inducing persons not to deal with pl. because it employs non-union workmen, or refuses to be unionized. Union dictation was condemned.

Ruddy v. U. Ass'n of Journeymen Plumbers, etc. (1910). Civil Action. Compound Labor Boycott. Illegal. Pl. charges that he was discharged by two employers in Newark because they were warned that members of the union would quit unless he was dismissed. Object of the workers was to induce pl. to join the union. Court held he could recover.

New York

Use of violence in boycott is made illegal by statute. The secondary boycott, where coercive measures are not resorted to, is declared legal by the courts. It is legal to publish circulars requesting third parties to cease to patronize boycotted concerns, and stating that they will lose the custom of the boycotters should they not accede to the request. It is legal to strike in order to force employers to discharge non-members of union, and to promote other forms of labor boycott, provid-

ing, however, that the union boycotting has not a monopoly of the labor field, and the boycotted workers will not be driven out of the locality on account of such boycott. The use of actual force, intimidation, etc., is illegal.

Statutes: St. 1901, Penal Law, Sec. 530, entitled "Coercion." Illegal for a person to compel another to do or to abstain from doing a legal act by the use of violence or the infliction of injury upon such person or member of his family or his property; also threats of such violence or injury. Penal Law, Sec. 580, Par. 5, entitled "Conspiracy." Misdemeanor for two or more to interfere with the exercising of a lawful trade, etc., by force, threats or intimidation. Sec. 171b, added to Penal Code by Chap. 349, Acts of 1903, entitled "Protection of Employees as members of the National Guard." Illegal to interfere with employment of any member of the National Guard.

Johnston Harvester Co. v. Meinhardt (1881). For Injunction. Secondary Boycott Involving Workmen. Legal. Defs. were charged with inducing employees to leave pl. by persuasion, personal appeals, the giving of traveling expenses, etc. Held that the laws of 1870, Chap. 19, having altered the common law rule, there was no ground for injunction.

Buffalo Lubricating Oil Co. (Limited) v. Chas. M. Everest (1883). Trade Boycott. Def. was charged with enticing skilled workmen from employment and of soliciting customers of pl. by letters and other means not to deal with the latter, and threatening lawsuits.

People v. Wilzig (1886). (Court of Oyer and Terminer.) Criminal Conspiracy. Compound Boycott Involving Patronage. Extortion. Illegal. Members of the Carl Sahm Musical Club and of the Waiters' and Bartenders' Unions boycotted complainant, owner of a large hotel on E. 14th St., Manhattan, for refusal to employ only members of their union and to concede certain other demands. They were charged, in conjunction with the Central Labor Union, with congregating around the doors of the hotel in large crowds; with distributing circulars and parading with placards on which pa-

trons were urged to boycott the hotel, as Theiss, the proprietor, was a foe of organized labor. It was further alleged that they pasted stickers on the tables, walls, etc., set fire to a machine containing a vile smelling mixture; appealed to one Shultz not to furnish complainant with mineral water; threatened Ehret, the brewer, with a boycott if he continued to furnish Theiss with beer, and, finally, that they extorted from the proprietor $1,000 to pay the cost of the boycott. Five were arrested and indicted on the charge of violating Secs. 552 and 553 of the Penal Code relating to extortion. Held that these acts, when accompanied by force, threats and intimidation, were illegal, and that intimidation may be spelled out, although unaccompanied by physical violence. The right of peaceful secondary boycott was, however, upheld. Defs. were sentenced to terms varying from 1 yr. 6 mos. to 2 yrs. 8 mos.

People v. Kostka (1886). (Court of Oyer and Terminer.) Criminal Conspiracy. Compound Boycott Involving Patronage. Illegal. During strike against Landgraff, a baker of Manhattan, for higher wages and a union shop, boycotting circulars were distributed by numbers of workers before the shop. It was alleged that boycotters threatened the life of one of the workers and delivered insulting remarks. Six of those indicted were sentenced to between 10 and 15 days. The court charged that the defs. should be held guilty if intimidation could be spelled into the acts, and that it was unlawful to conspire to prevent the exercise of a lawful calling by means of intimidation. The court reiterated its stand in the case of People v. Wilzig in favor of the legality of secondary boycotts.

Walsh v. Wright (1890). (App. Div.) Civil Action. Trade Boycott. Legal. Def. contracted with jobbers and dealers, whereby he agreed to give them one-half cent a pound on all purchases of Cow Brand Saleratus and Soda, provided the dealers would not sell Dwight's Cow Brand or any other brand for less than a certain amount. Held that agreement was not in violation of the act against restraints of trade (Sherman Law, July 2, 1890, or Chap. 716 of Laws of N. Y., 1893), and that there is nothing unlawful in agreeing not to

sell property that one owns or will acquire at less than a certain amount. It was not here alleged that such contracts were entered into with customers of pl., or that any had been induced to break existing contracts.

Ryan v. Burger and Hower Brewing Co. (1891). (Sup. Ct.) Civil Action. Trade Boycott Involving False Statements. Illegal. Def., member of Brewers' Ass'n, was charged with stating that pl. owed him money, and with threatening to hold other brewers liable if they sold to him, pl. having hired place in which debtor of def. formerly lived. As a result, pl. became insolvent. Held action would lie, and that the statements were false, slanderous and despotic. Affirmed in App. Div. without comment.

Dunlap's Cable News Co. v. Stone (1891). (Sup. Ct.) For Injunction. Trade Boycott. Legal. Press agency, in contracting with customers, made stipulation that they should not take news from other agencies. Pl., one of the press agencies, applied for an injunction. Court refused it, declaring that it would be time enough to think of relief if customers complained; and that this was an effort to restrain defendant from transacting business in his own way.

Rogers v. Evarts (1891). (Sup. Ct.) For Injunction. Secondary Boycott Involving Workmen. Also Involves Freedom of Press. Legal. Cigar makers struck for higher wages. *Binghamton Leader* published favorable accounts of strike, advising and encouraging workers to leave. Held that no injunction would be granted forbidding such publications, as one has the right to publish fair and impartial accounts, and that it is only when accounts of an unlawful conspiracy are so colored as to express approval and encouragement that the acts become illegal.

Sinsheimer v. Garment Workers (1894). (App. Div.) For Injunction. Secondary Boycott Involving Patronage. Legal. Defs., on strike against pls. for discriminating against union men, distributed circulars to customers, which stated their grievance and asked customers to discontinue trading

with them. Acts held legal, as unaccompanied by acts of violence, injury to property, threats or intimidation.

Reynolds v. Everett (1894). For Injunction. Secondary Boycott Involving Workmen. Legal. Pl., manufacturer of cigars, sought injunction to prevent strikers, on strike against a decrease of wages, to induce others to quit. Held that persuasion unconnected with intimidation, was legal, and that the injunction is issued only when it is clear that, unless granted, there would be irreparable injury and no remedy at law. Here the strike was over.

Davis v. Zimmerman (1895). (Sup. Ct.) For Injunction. Compound Boycott Involving Workmen. Illegal. Hat and cap manufacturer, whose employees, members of the Clothing, Hat and Cap Operators' Union, were on strike, applied for injunction to restrain these defs. from inducing employees to leave his service by force, threats and intimidation. Injunction granted as defs. were irresponsible, damages were unascertainable, and the civil remedy would entail a multitude of suits. Acts declared to constitute injury to property.

Curran v. Galen (1897). Civil Action. Compound Labor Boycott. Illegal. Ale Brewers' Ass'n of Rochester entered into agreement with the Brewery Workers' Ass'n to the effect that the manufacturers shall not employ any worker not a member of the association, or retain for more than four weeks any employee who refuses to join such union. Action was brought by pl., a non-union engineer, on the ground that such agreement took away his means of livelihood. Held defs. guilty of conspiracy to interfere with liberty of pl. to pursue lawful trade without interference, and to coerce him by agreements with employers to join the union, under penalty of loss of position. The combination was declared to be against public policy, which prohibits monopolies and exclusive privileges.

Davis v. United Portable Hoisting Engines (1898). (App. Div.) For Injunction. Labor Boycott. Legal. Defs., engineers, threatened to quit work if employer did not discharge

non-union engineer, hired temporarily. Held that no injunction would issue, as the defs. have a right to refuse to work with non-union men, as no contract relations were interfered with and as the purpose of the inducement was to procure employment for others.

Park & Sons Co. v. National Wholesale Drug Ass'n (1898). (App. Div.) For Injunction. Compound Trade Boycott. Illegal. Nat. Wholesale Drug Ass'n, organized 1891, induced their members to refuse to trade with those dealers not abiding by the association's rules regarding commissions, rebates, cartage, etc., in an effort to make it impossible for such dealers to carry on their business. Held that it was necessary to set out every step to establish the boycott, and that it was not irrelevant to set forth the various actions of defs. by way of characterizing the object for which the boycott had been organized. Also considered by Court of Appeals, 1903.

Coons v. Chrystie (1898). (Sup. Ct.) For Injunction. Secondary or Compound Boycott Involving Workmen. Illegal. Def., Christie, president of the Am. Plumbers' and Gas Fitters' Benevolent and Prot. Ass'n, entered premises of pl. and ordered a strike. Held that unions and walking delegates could be enjoined from causing workmen of another to abandon work, although there were no threats or acts of intimidation, and although the workmen had agreed not to accept employment from such unaffiliated persons as pl., also that fact that workmen left pl.'s employ makes inference irresistible that they were coerced by anticipation of some recognized penalty.

Matthews v. Shankland (1898). (Sup. Ct.) Compound Boycott Involving Patronage. Illegal. Typographical Union No. 9 struck against *Buffalo Express,* a daily newspaper, because of its refusal to unionize shop, pay certain scale of wages and abide by rules of union. The United Trades and Labor Council of Buffalo resolved that business men of Buffalo be notified that *Express* is a non-union shop and that members of other unions be instructed not to patronize any advertisers in paper. They informed advertisers that continued patronage meant loss of union custom. Other trades sent similar resolu-

tions to merchants. The beer peddlers imposed a $2 fine on those reading the *Express*. Held that acts threatened and intimidated patrons; declared legal, however, for labor organizations to refuse to patronize the *Express* and to refuse to give support to any patronizing the paper.

Tallman v. Gaillard (1899). (Sup. Ct.) For Injunction. Compound Labor Boycott. Legal. Defs., carpenters and joiners, were charged with threatening a general strike unless pl. was discharged. Held that no injunction would be issued as there was no allegation of persecution, and the means used were lawful.

Sun Printing and Publishing Co. v. Delaney (1900). (App. Div.) For Injunction. Compound Boycott Involving Patronage. Illegal. Defs., members of the Typographical Union on strike, endeavored to induce advertisers, through circulars, to cease advertising in *Sun* through fear of loss of business, and to persuade newsdealers to cease handling paper. Lower court granted sweeping injunction against giving publicity to their complaints, and from in any way interfering with property or property rights of the pl. App. Div. modified injunction, enjoining only those acts accompanied by threats, intimidation, etc.

People v. Chandler (1900). (App. Div.) Criminal Conspiracy. Legal. Def. had posted up circulars, "Boycott the *Sun*," and had been convicted by the Court of Special Sessions of violating Sec. 168, par. 5, of Penal Code, against conspiracy. Inasmuch as no agreement with the printer of the posters or anyone else was shown, def. was held not guilty.

People v. Radt (1900). (Ct. of Gen. Sess.) Criminal Conspiracy. Secondary Boycott Involving Patronage. Circulars Issued. Legal. Here two members of the bakers' union were appointed to take charge of boycott proceedings against complainant. Circulars were issued, urging union men and the public to purchase goods from others. Posters were also printed and distributed worded, "Scab Labor, Don't Patronize," and containing the name and address of pl. Held that, as there were no threats or intimidation and no interference

with the implements or property used by the employees of the complainant, defs. were not guilty of violating the conspiracy sec. of the code, Sec. 168, Sub. 5 (Sec. 580 of Penal Law).

Reynolds v. Plumbers' Material Protective Ass'n (1900). Civil Action. Trade Boycott. Legal. In by-laws of the def.'s association, it was provided that, unless a member of the association, indebted to another, settled or consented to arbitrate, the corporation might send a statement to the members that the debtor's name was taken from the books, and that the members would not then be permitted to sell to him except for cash before delivery. Held not illegal to combine for the protection of each other against irresponsible persons in the absence of evidence imputing a guilty motive, and that there was no coercion.

Tanenbaum v. N. Y. Fire Insurance Exchange (1900). (Sup. Ct.) For Injunction. Trade Boycott, Involving Unlicensed Brokers. Legal. Members of Ins. Ex. agreed to pay commissions only to those brokers licensed by Exchange. Held that Exchange cannot be enjoined by non-member from carrying out this agreement on the ground of conspiracy against unlicensed broker or in restraint of trade; that it must be shown that pl., by legal right, could insist that business be accepted by companies.

Beattie v. Callahan (1901). (App. Div.) For Injunction. Compound Boycott Involving Patronage and Workmen. Illegal. Defs., painters in N. Y. City, were charged with interfering with pl's. business by threats, force and fraud, and with preventing members of the def's. union from working for pl. Held these acts could be enjoined.

Collins v. American News Co. (1902). (App. Div.) For Injunction. Trade Boycott. Legal. Def. refused to sell papers to pl. newsdealer because he distributed circulars with his newspapers, advertising certain goods. Held no injunction would issue; that what one had a right to do, others could combine to do, and that there was nothing malicious in def's. action, but only a desire to protect itself.

Cohen v. United Garment Workers (1901). (Sup. Ct.)

For Injunction. Secondary or Compound Boycott Involving Patronage. Legal. Defs., Garment Workers of N. Y. City, on strike against pl., sent circulars to latter's customers, notifying them of the controversy and requesting that they cease dealing with him, threatening, in case of refusal, that they would lose the patronage of the combination. Held that, in the absence of threats or intimidation, these acts would not be restrained.

Herzog v. Fitzgerald (1902). (App. Div.) For Injunction. Compound Boycott Involving Workmen. Illegal. Here an injunction was granted *pendente lite,* restraining employees from conducting acts of violence and intimidation against persons still in pl.'s employ, where specific instances of threats were charged, and there was only a general denial.

Foster v. Retail Clerks' I. Prot. Ass'n (1902). (Sup. Ct.) For Injunction. Secondary Boycott Involving Patronage and Workmen. Legal. Retail clerks of Syracuse struck against pls. for reduction of hours of labor. They distributed circulars declaring that Foster, Hinman and Co. had been declared unfair by the Retail Clerks' Local Union and Trades Assembly; endeavored to persuade customers and union men to stay away from store and maintained pickets. Held no injunction would issue to prevent these acts. Motive and fact of combination considered immaterial. It would, however, be illegal for the defs. to enter premises of the pls. for any purpose except for *bona fide* purpose of trade, or to so act as to collect crowds or obstruct movement along the sidewalks at or in the neighborhood of the store.

Trapp v. Du Bois (1902). (App. Div.) Civil Action, Involving Trade Boycott. Legal. For failure to pay part of bill which pl. stated he didn't owe, he was placed on the cash-before-delivery list of Plumbers' Material Prot. Ass'n. Held malice must be shown before illegality would be declared.

National Protective Ass'n v. Cummings (1902). Civil Action. Compound Labor Boycott. Legal. Cummings and Nugent, walking delegates, threatened a general strike unless McQueed and others were discharged from employment on a

building, and members of the Enterprise and Progress Association were employed. Strike followed. Workmen brought action against union. Held that men have right to refuse to work for any reason, and that it is not illegal to threaten to do what one has a legal right to do; that bad motive does not make a legal act illegal, but that in this case the motive was a good one—that of helping the members of the union to gain employment and of protecting them against the negligence of fellow employees.

Rourke v. Elk Drug Co. (1902). (App. Div.) For Injunction. Compound Trade Boycott. Illegal. Def. drug association was charged with interfering with the pl.'s advertising, and preventing them through intimidation and libel from reaching customers. Held organization was formed in violation of the laws of 1899, which forbid restraining of competition (Chap. 690) and that any act in furtherance of such an unlawful conspiracy could be restrained.

Green v. Davies (1903). (App. Div.) Civil Action. Trade Boycott. (Fraud.) Illegal. Pl. charged that business competitors entered into combination to ruin him through sending circulars stating that he was insane and irresponsible. He declared he was damaged thereby to the extent of $20,000. Held illegal. App. Div. decided only on demurrer.

Master Horseshoers' Prot. Ass'n v. Quinlivan (1903). For Injunction. Compound Boycott Involving Workmen. Illegal. Defs. struck because they were not able to affix seals to manufactured goods, and endeavored to prevent others from taking their places. Court issued injunction restraining acts of physical violence.

W. P. Davis Machine Co. v. Robinson (1903). (Sup. Ct.) For Injunction. Secondary or Compound Boycott Involving Patronage and Workmen. Illegal. Machinists, on strike for a closed shop in Rochester, were charged with congregating around factory, shouting at and assaulting workers and threatening customers with loss of business if they traded with pls. Held virtually that any endeavor to entice away employees, when not for the purpose of obtaining an advance

in or of maintaining rate of wages, illegal. Injunction issued, enjoining the inducing of employees to leave employment through intimidation, etc., and from interfering in any manner with the business of pl.

Kellogg v. Sowerby (1904). (App. Div.) Civil Action. Trade Boycott Involving Discrimination in Railroad Rates. Illegal. Western Elevator Ass'n made agreement with railroads whereby latter would return to association one-half cent a bushel for every bushel of grain shipped by them and pl. Held pl. was discriminated against. Def. was characterized as an unlawful combination formed to deprive pl. of reasonable opportunity to operate profitably.

People v. McFarlin (1904). (County Ct.) Criminal Conspiracy. Compound Boycott Involving Patronage. Illegal. Carpenters' Union in Rochester, on strike, advertised the complainant's factory as unfair; posted unfair notices on materials, distributed placards, and threatened to boycott contractors who would not sign agreement not to purchase any material from unfair shops. Held that men had a right to strike and to influence others to withdraw their patronage, but that they had no right to coerce would-be customers not to purchase from complainant through fear of ruin; that agreement with contractors was in restraint of trade, condemned by Subdivision 6 of 168 of the Penal Code; that its legality would mean control of the entire business by defs. and that threats to promote hostility toward anyone who dares employ a non-union man was a conspiracy to prevent another from following his lawful occupation, and violative of Subdiv. 5 of Sec. 168, Penal Code.

Mills v. U. S. Printing Co. (1904). (App. Div.) For Injunction. Compound Boycott Involving Patronage. Illegal. (Secondary Boycott, however, Legal.) Sweeping injunction had been granted by lower court against picketing and boycotting by stereotypers and electrotypers on strike. Justice Jenks declared that a boycott was not necessarily illegal; that one had right to refuse to deal with another, and that a combination may do what one can so long as there is

no unlawful object in view; and that two or more may by persuasion and entreaty, bring others to their side. Although effect of the combination is to injure another, when the result sought is to protect the members of a combination or to enhance their welfare, the loss is but an incident of the act, the means whereby the ultimate end is gained. The use of violence, however, is illegal.

Jacobs v. Cohen (1905). Labor Boycott. Legal. Coat Tailors' Union made agreement with employers that during a certain period only union men should be employed. Held such agreement was not in violation of public policy; was not made to injure other workmen, was not oppressive as involving exclusion from the entire trade. Employees had a right to limit the class of their fellow workmen. Promissory note given by employers to guarantee enforcement of contract was declared valid.

Butterick Publishing Co. v. Union No. 6 (1906). (Sup. Ct.) If Secondary Boycott, Involving Patronage, Unless Malice Shown, Legal; If Compound Boycott, Illegal. Over 300 pressmen, feeders and compositors, belonging to the I. Printing Pressmen, and Assistants' Union, struck for an 8-hour day and closed shop against pl., and sent circulars throughout the United States requesting customers not to purchase pl.'s publications, or those printed by pl. for customers, and stating that they would advise their members and friends to withhold patronage from merchants and agents dealing in such publications. Pl. alleged that it received 135 letters canceling subscriptions, or asking for adjustment of differences. It also alleged it had to board some of its employees. Held that defs. were within their legal rights in publishing the circumstances of the strike, and requesting others to withhold patronage, but that if violence was shown, or if acts were committed with malevolent motives toward pl. rather than with benevolent motives toward def's. own interest, acts would lose their lawful character.

Locker v. American Tobacco Co. (1907). (App. Div.) Trade Boycott. Legal. Agent of def. refused to sell to pl.

Held no violation of State Statute (Laws of 1899, Chap. 690) to show that one def., controlling 9 per cent. of the trade, had appointed a sole selling agent who had refused to sell to pl., and that no unlawful monopoly was proved.

Kellogg v. Sowerby (1907). Civil Action. Trade Boycott. Legal, Where Motive Innocent. Elevator owners and railroads made agreement to discriminate against non-members, in order to regulate competition in grain business. The railroads testified they believed the pls. would come into combination when they contracted. Held that, inasmuch as railroads at that time did not mean to discriminate, there was no cause of action for conspiracy under Subd. 6 of Sec. 168 of Penal Code.

In Re McCormick (1909). (App. Div.) Compound Boycott Involving Workmen. Illegal. Typog. Union No. 6 was on strike against the Typothetæ of N. Y. City and attempted to prevent workers from securing employment. Held that this was unlawful if more than peaceful persuasion was used.

Schlang v. Ladies' Waist Makers' Union (1910). (Sup. Ct.) For Injunction. Compound Boycott Involving Patronage. Illegal. Defs. on strike against pls. threatened to call a strike in factories which sold goods to pl. Held that this action interfered with pl.'s right to purchase goods where he desired and is against spirit of government.

Schwarcz v. International Ladies' Garment Workers (1910). (Sup. Ct.) For Injunction. Compound Labor Boycott. Illegal. Strike was ordered by trade union to obtain closed shop. Held that purpose of the strike was to drive out non-union men working at that trade unless they joined union, that this was an illegal purpose and that every act in pursuance of strike, such as picketing, etc., was illegal. It distinguished the case from that of the Nat. Prot. Ass'n on ground of the illegal motive, and the wide combination to drive non-union men out of the trade of the community.

McCord v. Thompson Starrett Co. (1910). Compound Boycott Involving Workmen. Illegal. Employers, members of Bld. Trades Employers' Ass'n, issued an order that no men

not members of a certain union should be retained in the employ of any of their members unless they immediately joined. Held against public policy of the state for employers who control practically the whole trade of the community to compel workmen to join a particular union as a condition of membership, although it is lawful for an individual employer to agree with labor unions to employ its members only.

Albro J. Newton Co. v. Erickson (1911). (Sup. Ct.) For Injunction. Compound Boycott Involving Patronage. Illegal. Woodwork men on strike against pls. sent circulars to contractors stating that union men would not handle material not made under union conditions, and containing list of firms working under union agreement. They were charged with calling strikes against contractors, enforced by fines. Injunctions issued forbade publication of any letter, circular, etc., or any communication, written or oral, suggesting that labor troubles would follow use of materials and from directing person to stop work.

Louis Bossert and Sons v. U. Br. of Carpenters *et al.* (1912). (Sup. Ct.) Action for Contempt. Compound Boycott Involving Patronage. Legal. Walking delegate Rice, one of the defs., informed union men that they were working on non-union material, whereupon a number left. Held legal; no compulsion used, and no law to prevent Rice from giving information about non-union trim; even if members were threatened with fine, not illegal, because it was a peaceful strike for purpose of advancing interest of Brotherhood. Differs from Newton case on ground that purpose was to advance interest of labor.

Pennsylvania

There are no laws on statute books specifically condemning boycotts. Several injunctions, however, have been issued by the courts against boycotts in labor disputes in which third parties were coerced by threats of loss of labor or custom, and workmen threatened. A trade boycott, on the other hand,

where third parties were given to understand that they would lose trade should they supply the pl., was held legal. Mere persuasion not to patronize others, or publication of circulars giving a truthful account of trouble, was not declared illegal.

Statutes: Digest, 1895, Sec. 73. Act provides for legality of strikes, and continues by declaring that section shall not prevent the prosecution of a workman by any law other than that of conspiracy of any person who shall hinder a workman in his employment by threats, etc.

Brace Brothers v. Evans (1888). (County Court.) For Injunction. Compound Boycott Involving Patronage. Illegal. Female operatives, discharged from pl.'s laundry, near Wilkensburgh and refused reinstatement, issued circulars setting forth their side of the case, alleging abusive treatment and requesting patrons not to deal with pl. They called on public to boycott those who refused to resign; hired wagons to display boycott signs, distributed circulars before the shop, and threatened patrons. Held that in this case it was not necessary for them to decide whether or not the defs. might individually or collectively refuse to patronize pl. and advise their friends and such neighbors as they could reach not to do so, or that they might not distribute circulars giving truthful accounts of pl.'s trouble with his employees; that here defs. did not limit themselves to peaceful solicitations, but that their acts were in their nature threats and calculated to intimidate. Court defined the word boycott as being in itself a threat.

Murdock v. Walker (1893). For Injunction. Compound Boycott Involving Workmen. Illegal. Discharged union men, printers and pressmen were charged with gathering about the place of business and the homes of non-union workers, and of following non-union men around. Held the defs. had no right by force to prevent workmen from working on such terms as they may agree.

Cote v. Murphy (1894). Civil Action. Compound Trade Boycott. Legal. Members of the building trades in Pittsburgh went on strike for higher wages. The Allegheny Plan-

ing Mill Ass'n issued circular to the lumber trade asking dealers not to sell material into the section unless it be on order of legitimate dealer, and enclosed list on which the pl.'s name failed to appear, also wrote letter to firm supplying pl. that it would be to its advantage to discontinue sales. It was understood that no friend of the combination would deal with one selling to pl. Pl., thus discriminated against because he acceded to demand of workers, was unable to obtain material. Held that no action would lie, because association was not formed to lower wages of laborers, and methods adopted were not illegal. Threats to do a lawful act are not unlawful.

Buchanan v. Barnes (1894). Civil Action. Trade Boycott. Similar to Cote v. Murphy.

Buchanan v. Kerr (1894). Civil Action. Trade Boycott. Similar to Cote v. Murphy. Legal.

Wick China Co. v. Brown (1894). For Injunction. Compound Boycott Involving Workmen. (Partly Picketing.) Illegal. Defs., members of the Nat. Br. of Operating Potters, were charged with endeavoring to induce others to quit employment through threats, intimidation, opprobrious epithets; by gathering in crowds at places of business, at boarding houses, etc. Held illegal.

Oneil v. Behanna (1897). For Injunction. Compound Boycott Involving Workmen. Illegal. Defs. in strike against City Coal Works were charged with surrounding laborers, applying opprobrious epithets, and urging them in a hostile manner not to work. Held such a display of force constituted intimidation.

Erdman v. Mitchell (1903). For Injunction. Compound Labor Boycott. Illegal. Defs., Council of Allied Printing Trades of Philadelphia, threatened to strike unless employers discharged pls. who belonged to an incorporated organization known as the Plumbers' League of Philadelphia. Held combination to prevent others from obtaining work through threats of a strike illegal, interfering as it does with the indefeasible rights of labor to acquire property.

Purvis v. U. Br. of Carpenters and Joiners (1906). For

Injunction. Compound Boycott Involving Workmen. Illegal. Defs., on strike in Pittsburgh for a closed shop, threatened customers with strike if they purchased from pl. At a critical time men were taken off a job conducted by a contractor who continued to patronize pl., and thus contractor was induced to cease relations. Held that threats and coercion were used and that an act putting one in fear of loss of property may constitute coercion. Injunction forbade defs. to send circulars through mails which stated that carpenters would not handle materials from certain mills not complying with request of their union, or to request customers or prospective customers to have work done by firms making an agreement with the union, and, finally, to represent that customers would sustain a loss.

Arbour v. Trade Association (1910). (Super. Ct.) For Injunction. Trade Boycott. Had Power to Enjoin. Pittsburgh Produce Ass'n declared that, if any member of association had a claim against an outsider, others should not sell to the latter except for spot cash. Held that equity, under act of June 19, 1871, had power to enjoin trade association, as in the case of a corporation, from enforcing by-laws.

NORTH CENTRAL STATES

In Iowa, Kansas and Nebraska and Ohio no decisions on boycotts by the highest courts have been noted. While in Indiana the highest court has not passed upon a boycott case in a labor dispute, it has declared a primary boycott legal, and one of the lower courts has pronounced a labor boycott, where no threats are used, legal. Other decisions indicate that the court would probably hold a boycott illegal if coercive measures were definitely proved. Boycotts are definitely prohibited here by statute, as is also the case in Illinois.

In Illinois the boycott is illegal, even when persuasive measures only are employed, providing malice is present. In Michigan the courts have pronounced the boycott illegal. In Missouri and Minnesota, where third parties are coerced

through fear of loss of labor, the boycotts are also illegal. The unfair list has been passed upon in three states. In Illinois and Minnesota its publication was enjoined. In the former state a threat was said to be present; in the latter, the judges specifically stated that threats would have to be proved before an injunction would be issued. In Missouri an injunction against the publication of circulars in pursuance of a boycott was refused, although civil or criminal action was declared possible. The Illinois courts, by dicta, declared the primary boycott legal. In Wisconsin the labor boycott has been declared illegal by the highest court, and from other decisions, it seems probable that other boycotts, where coercion or malice was present, would be considered illegal. In Ohio, while the highest courts have not passed upon these labor weapons, the lower courts have, at times, pronounced boycotts illegal, if malice or threats were present. Injunctions, however, against the issuance of boycotting circulars have been denied.

Illinois

Statutes forbid boycotts where two or more distribute circulars, etc., and which interfere with business by intimidation, etc.

The courts have declared primary boycotts legal, and in an early trade boycott case of the Illinois Appeals they also pronounced a secondary boycott, where persuasive means only were used, legal. They have, however, declared illegal the issuance of an "unfair list," where an attempt was made to influence third parties to withdraw patronage by threats of loss of business, even where the threats had to be read into the act. They have pronounced strikes illegal, when called in furtherance of a boycott; also the mere persuasion of other workers—members of organized labor—to cease working on the material of the boycotted firm, where malice exists. Coercion of third parties by threats to withdraw labor has also come under the ban of the court. A trade boycott, where malice was present, and an attempt made to induce the breaking of

contracts, was likewise pronounced illegal. A blacklist, unaccompanied by the absolute refusal to furnish any clearance card, was decided to be legal. Both civil and equitable suits have been resorted to.

Statutes: Rev. St. 1905, Chap. 38, Sec. 46, entitled "Boycotting and Blacklisting." Act forbids combination to issue circulars to members of association or others, for the purpose of establishing a boycott, or to distribute written or printed notices with the malicious intent of injuring a person. Max. punishment, $2,000, or 5 yrs. Chap. 38, Sec. 158, on intimidation, forbids combination to deprive owner of use of property, and to interfere with employment by unlawful means. Max. fine, $500, or imprisonment of 6 mos. Sec. 159 prohibits unlawful interference by individual in employment of another. Max. fine, $200. Sec. 160 forbids entering premises of another with intent to do injury by unlawful means.

Ulery v. Chicago Live Stock Exchange (1894). (Ill. App.) Civil Action. Trade Boycott. Legal. Secretary of the Chicago Live Stock Exchange posted in the exchange a notice directing members not to employ J. D. Ulery, the pl., in the live stock commission business until he settled with another firm from which he was alleged to have purchased twenty head of cattle. Pl. lost his employment as a salesman, and was damaged, he alleged, to the extent of $50,000. Held that one or more persons may advise neighbors not to deal with a third party, and that they may even command when the command amounts only to earnest advice; therefore, no action.

London Guarantee, etc., Co. v. Horn (1902). (Ill. App.) Civil Action. Employer's Boycott. Form of Blacklist. Illegal. Employer discharged employee, who was injured, on being threatened by accident insurance company. Held insurance company responsible, and guilty of a malicious interference with the lawful business of another.

Doremus v. Hennessy (1898). Civil Action. Trade Boycott. Illegal. Laundrymen in Chicago combined to boycott woman who collected and distributed laundry, and, it was

alleged, endeavored to bribe those to whom she distributed it to keep back her work as long as possible, thus damaging her to the extent of $5,000. Held this action was malicious injury; illegal to induce others to break their contracts. Petition for rehearing was denied.

McDonald v. Illinois Central Railroad Co. (1900). Civil Action. Blacklist. Legal. Employee, who took part in the American Ry. strike of 1894, was unable to obtain work from any other railroad, and was damaged to the extent of $50,000. He charged he was unable to obtain a clearance card such as would enable him to secure employment, and alleged that railroad companies had agreed not to employ strikers without release and consent. Held that it was not here alleged that the railroad company had refused to give any clearance card, but only such clearance as would enable pl. to obtain work.

O'Brien v. People (1905). For Injunction. Compound Boycott Involving Workmen. Illegal. Strikers induced pl's. employees to leave, through threats and unlawful persuasion. Held illegal; as was also an attempt to secure closed shop through fear of strike illegal.

Purington v. Hinchliff (1905). Civil Action. Compound Boycott Involving Patronage. Trade Boycott. Illegal. Masons' and Builders' Ass'n, of Chicago, comprising about two-thirds of the master builders, agreed with the Brick Manufacturers' Ass'n, containing 95 per cent. of the manufacturers of brick in Cook County, that members of the former association secure a trade discount over and above that obtained by outsiders, and that they purchase bricks only from the Manufacturers' Ass'n. They also made an agreement with the Bricklayers' Union, which was said to contain 98 per cent. of members of this craft in Chicago, whereby the latter promised not to handle brick from any manufacturer not in the agreement. Pl. was the chief competitor of the Brick Manufacturers' Ass'n in Cook County, having a capacity of 15,000,000 bricks a year. The two associations and the unions employed delegates to visit pl.'s customers and to threaten them with the withdrawal of their labor, and with the imposition of fines,

should they continue to purchase from pl. This action rendered the pl.'s business worthless. Held that it was unlawful, directly or indirectly, to obstruct another in the lawful conduct of his business. A verdict of $222,000 was rendered.

Piano and Organ Workers' I. Union v. Piano and Organ Supply Co. (1906). (Ill. App.) For Injunction. Compound Boycott Involving Patronage. Illegal. The Piano, etc., Union, while on strike against pl., resolved that all men employed in factories using pl.'s supplies should refuse to work thereupon, and sent circulars to that effect to pl.'s customers, printing notice in official journal. Held that, while it is lawful to strike for any cause, it is unlawful to issue a strike order for the purpose of establishing a boycott on a person's goods, with intent to injure his business and thus to bring him to terms.

Hey v. Wilson (1908). For Injunction. Secondary or Compound Boycott Involving Patronage. Unfair List. Illegal. Members of Team Drivers' I. Union, on strike against pl. for higher wages, appointed, in conjunction with other labor unions, a committee to inform business men that pl. was on the unfair list. Members of the union ceased to patronize him, as did some of his customers. School board was requested not to use pl.'s auditorium, but this request was withdrawn. Held that, although no threats were used, they were implied, and that, if notices excite reasonable fear, it is immaterial whether or not there are direct threats; that the use of the words "unfair list" was an euphemism for boycott, and the action of the defs. an invasion of the right of another to dispose of his own labor according to his own will and was without justification. The legality of the primary boycott was, however, declared, and it was admitted that "individuals may agree among themselves that they will not trade or deal with a certain person, and may give notice to others that they have made such an agreement." Two judges dissented.

A. R. Barnes and Co. v. Chicago Typogr. Union No. 10 (1908). For Injunction. Secondary or Compound Boycott Involving Workmen. Illegal. Defs., on strike for an 8-hr.

day and closed shop, sent circulars to foremen of labor organizations in other establishments, directing them to endeavor to prevent workmen from working on goods from pl.'s shop. Held that employer, whose workmen have gone on strike, has an absolute right to fill their places with other workmen, and that any interference with this right, whether by threats or by *persuasion,* is a legal wrong, if accomplished by an act of malice. Here the immediate purpose was to injure another. The court reaffirmed the sweeping injunction of the lower court forbidding picketing and boycotting. Two judges dissented.

Mears Slayton Lumber Co. v. Dist. Council of Chicago of United Br. of Carpenters and Joiners of America. (1910.) (Ill. App.) For Injunction. Contempt. Compound Boycott Involving Patronage. Illegal. A strike was called against pl., a manufacturer of lumber, and, after injunction was issued, it was alleged that def. ordered strikes because material of pl. was used. Held that, although strikes were legal, a conspiracy to ruin the business of an employer by means of picketing, boycotts, etc., is unlawful, and subject to an injunction process.

Kemp v. Div. No. 241, etc. (1910). (Ill. App.) Civil Action. Compound Labor Boycott. Illegal. Employees of railroad threatened to strike unless those resigning from union were discharged. Held that, when there is no trade dispute between employer and employee over a matter of employment, a strike for the purpose of coercing employer to discharge employee and of coercing employee to join a union is an unlawful interference with rights of both, and illegal.

Indiana

Boycotts, whereby two or more agree to stop the sale of goods, are specifically condemned by statute. However, the courts have held a primary boycott legal, by dicta, where no threats were used. A labor boycott, unaccompanied by threats, was also declared legal by Indiana Appeals. A trade boycott,

where coercive means were employed against a third party, consisting in the imposition of fines, was pronounced illegal. Two boycotts, not connected with labor disputes, were pronounced legal where no threats of a reproachful nature were implied. A blacklist, where a worker was described as "labor agitator," was pronounced legal. The highest courts have not as yet passed on a boycott case against laborers in a labor dispute.

Statutes: Annotated St. of 1894, Rev. of 1901, Sec. 3312m, entitled "Boycotting." Any person who shall enter into an arrangement to prevent the sale of any article shall be guilty of conspiracy against trade. Max. punishment, $2,000 and 1 yr. The state may collect $50 a day for violation, and the injured party may collect damages and cost.

Jackson v. Stanfield (1894). Civil Action. Trade Boycott. Illegal. A boycott was instituted against a broker, a dealer in lumber, and, in the course of it, a wholesaler, an honorary member of the retail association of which def. was member, was fined for violating the rules in selling to pl. Court held a conspiracy to prevent the carrying on of a lawful business by preventing those who would be customers from buying anything, by threats and intimidation, was in restraint of trade, and that the imposition of penalties here constituted intimidation and coercion; further, that a primary boycott was legal where no threats were used.

Clemmitt v. Watson (1895). (Ind. App.) Civil Action. Labor Boycott. Legal. Workmen in coal mine agreed to stop work if fellow workman was not discharged. Court held legal; that each individually had right to quit, and that all could so quit if action was taken without threats, violence, etc.

Guethler v. Altman (1901). (Ind. App.) Civil Action. Boycott of Store by Teacher. Legal. Teacher persuaded pupils not to patronize a certain storekeeper by threats and otherwise, although nothing of a reproachful nature was implied. Held that the teacher was exercising her right, and the existence of malice did not make the action illegal.

Wabash Railroad Co. v. Young (1904). Civil Action.

Blacklist. Legal. Def., in response to a request, sent letters to other railroads, describing pl. as a labor agitator. Held that complaint did not describe or allege such malicious interference with the business of the appellee as to create a liability at common law.

Karges Furniture Co. v. Amal. Woodworkers' Local Union (1905). Strike. Legal. Dicta Holding Peaceful Boycott Legal. Held that one could persuade others to cease to patronize a third party, and what one may do singly all may do in concert.

Rowan v. Butler (1908). Civil Action. Secondary Boycott Involving Patronage. (Not in labor dispute.) Legal. Governor of a Soldiers' Home, as a result of an agreement with others, issued an order that the inmates cease their purchasing from pl.'s rest. Held that governor had the right to do this singly, and that his act was not unlawful because he agreed with others.

Iowa

Statute with application doubtful. No court decisions in highest court.

Statutes: Code, 1897, Sec. 5059. Act declares conspiracy, with fraudulent and malicious intent wrongfully to injure a person in his business, character or person, illegal. (Application doubtful.)

Funck v. Farmers' Elevator Co., of Gowrie (1909). Trade Boycott. Illegal. This was an action in mandamus to secure a transfer of stocks. Def. was an organization of farmers in Gowrie to buy and sell produce, lumber and coal. This association was boycotted by the regular dealers, who even established a system of espionage, and threatened dealers having anything to do with the corporation. One of agents of regular dealers bought stock, and sought to have it transferred. Farmers refused. Court held that he was not entitled to equitable aid and that conspiracy to injure one's trade or business, by preventing any one from doing business with him through fear

of incurring the displeasure, persecution or vengeance of the conspirator, is unlawful.

Kansas

Various acts against interfering with business by intimidation, etc. No decision noted in highest court.

Statutes: Gen. St. 1905, Sec. 2481. Act makes it unlawful for any person maliciously by any act or by intimidation to interfere or conspire to interfere with lawful business. (Application doubtful.) Gen. St. 1901, Sec. 2375, entitled "Intimidation," etc. Act makes it illegal wilfully and maliciously by any act or by intimidation to impede or obstruct the regular conduct of a business. Sec. 2376, entitled "Conspiracy." Act makes it illegal wilfully and maliciously to combine for such a purpose. Punishment, $20 to $200, or 20 to 90 days.

Michigan

Intimidation of employees is made illegal by statutes. Courts have declared boycotts illegal wherein threats are used against employees, and threats of loss of trade against patrons. A trade boycott was also declared illegal. Those cases connected with labor disputes involved injunction and contempt.

Statutes: Compiled laws of 1897, Sec. 11343, entitled "Intimidation of Employees." Act makes illegal interference of employees by threats, intimidation or otherwise, in their lawful employment. Punishment, $10 to $100, or 1 mo. to 1 yr., or both.

Beck *et al.* v. Railway Teamsters' Union *et al.* (1898). For Injunction. Compound Boycott Involving Patronage. Circulars Issued. Illegal. Defs. struck against pls., owners of Cereal Mills, for closed shop; issued circulars asking patrons to boycott pls.; threatened customers with boycott; collected around door of mill, and drove away truckmen. Held that use of threats which tend to overcome the will of others through fear of loss of property is illegal, and that when their

accomplishment will result in irreparable injury, an injunction will issue. A libel, when accompanied by threats, may also be enjoined.

U. S. Heater Co. v. Iron Moulders' Union of Am. (1902). For Injunction. Compound Boycott Involving Workmen. Illegal. Held that a labor organization could be enjoined from interfering with or intimidating pl. in his employment.

Enterprise Foundry Co. v. Iron Moulders' Union (1907). For Injunction. Secondary or Compound Boycott Involving Patronage and Workmen. Contempt. Illegal. This was a suit to restrain unionists from persuading or threatening one who furnished meals and supplies to non-union employees to break contracts, and from denouncing and intimidating employees. Injunction was granted. Def. was convicted of contempt for violating it.

Ideal Manufacturing Co. v. Ludwig (1907). For Injunction. Contempt. Compound Boycott Involving Patronage and Workmen. Illegal. Workers struck against pl. to obtain closed shop. Injunction was issued prohibiting workers from molesting patrons by distribution of circulars or otherwise, for the purpose of inducing them to cease patronage. President of union was declared by court to have violated the injunction.

Baldwin v. Escanaba Liquor Dealers' Ass'n (1911). For Injunction. Trade Boycott. Illegal. Def. tried to induce third parties to take advertising away from pl., a newspaper owner, and to withdraw printing. Held illegal. Contains definition of boycott.

Minnesota

Interference with employment by threats, etc., is declared illegal by statute. The court has decided that that form of boycott is illegal and subject to injunction in which third parties are threatened with withdrawal of labor should they continue business relations with others, where there are no contract or other relations between boycotters and such third party; that laborers can issue "unfair lists," and circularize

them among customers of the boycotted firm, provided, however, there is no threat involved. A trade boycott, on the other hand, in which members were coerced into refusing business relations with third parties by means of fines and expulsion, was declared legal on the ground that coercive measures could not be spelled out, and that malice could not be considered. The distinction made in the two cases was that in the trade boycott only the members of the association were told of the action of the pl., and not outsiders. The court has also held that representatives of unions cannot be enjoined from going on premises of boycotted firm, and ordering men to quit work, where owner of premises doesn't object. Trade boycotts which serve no legitimate interest, and blacklists, malicious in their nature, have also been pronounced actionable in damages.

Statutes: Rev. Laws, 1905, Sec. 1822, entitled "Interference." Act holds illegal interference with employment of one because he has taken part in a strike. (Applies chiefly to Blacklist.) Min. Punishment, $25, or 15 days. Sec. 4867, entitled "Conspiracy—Interference with Employment." Prohibits conspiracy of two or more to interfere with another in the exercise of his lawful trade, through force, threats, or intimidation. Sec. 5140, entitled "Coercion of Workingmen, Interference with Employment." Act declares a misdemeanor coercion of another through threats, force, and intimidation, to compel him to do or abstain from doing lawful act. Sec. 5168. St. against trusts and combinations may be so extended as to apply to trade boycotts.

Bohn Manufacturing Co. v. Hollis (1893). For Injunction. Primary or Compound. Trade Boycott. Legal. In 1890 one-half of the lumber dealers in Ia., Minn., Neb., and the Dakotas combined in an association known as the N. W. Lumbermen's Ass'n, with headquarters at St. Paul. The members agreed that if any of them sold lumber to a dealer not a member of the association, residing in a town where a member conducted business, he would have to pay a commission to such member within 30 days, amounting to 10 per cent. of his

sales. Pl., who sold lumber to outsiders, refused to pay commission, and sought an injunction. Injunction refused. Court declared that any man can refuse to deal with any class of men as he sees fit unless under contract obligation. That combination does not make such act illegal; that the provision in the ass'n's by-laws that any member dealing with pl. would be expelled, unless he paid commission prescribed, did not constitute intimidation; that an action in general restraint of trade could not be brought at the instance of third parties, and that motive does not make a legal act illegal.

Ertz v. Produce Exchange (1900). Civil Action. Trade Boycott. Illegal. Pl., a commission merchant in Minneapolis, claimed he was unable to deal in farm products as a result of agreement of members of the Produce Ex., and that he had been damaged to extent of $25,000. Held that those having no legitimate interests to protect may not lawfully injure business of another by maliciously inducing others not to deal with him; case distinguished from Bohn on the ground of legitimate interest.

Gray v. Building Trades Council *et al.* (1903). For Injunction. Compound Boycott Involving Patronage. Illegal. Unfair List. Legal, if No Threats. Pls. were electrical contractors in Minneapolis. Defs., on strike, threatened Minneapolis Industrial and Amusement Ass'n with withdrawal of union men working on the construction of booths, should they contract with pls., and made a similar threat to the proprietor of the Brunswick Hotel. Held that this was an interference with the property rights of others, and that when labor resorts to unlawful means to cause injury to others with whom it has no relation, contractual or otherwise, it will be restrained; that defs. used threats and intimidation, and that these are necessary elements of boycotts. Labor, however, cannot be restrained from merely notifying customers or prospective customers that certain firms are on unfair list because of their employment of non-union labor, unless such acts are intended as threat or intimidation. Nor can representatives of labor be enjoined from going on premises where firms on unfair list

are located, and ordering men to quit work, where owner of premises doesn't object.

Joyce v. Great Northern Railway Co. (1907). Civil Action. Blacklist. Illegal. Action against defendant for agreeing with other employer to prevent third person from securing employment. Pl. was injured by engine of def. and, on the regaining of pl.'s health, def. induced pl.'s employer, a depot company, to refuse employment unless he released them from liability. Held actionable as violative of Rev. Laws 1905, Sec. 5097, against blacklists; that defs. acted with malice and not with justification, the employment not having been denied because of incompetency.

Tuttle v. Buck (1909). Civil Action. Trade Boycott. Illegal. Def., a wealthy banker of Howard Lake, set up barber store for purpose of injuring pl., an established barber, and not for any gain to himself. Held illegal to start an opposition place of business for sole purpose of driving competitor out of business regardless of loss to himself, and with intention of withdrawing when other was driven out; that this is an application of force without legal justification, and that an act, lawful when actuated by one set of motives, may be unlawful when actuated by another set.

Missouri

Intimidation of employees is forbidden by statute. Courts have held that a boycott involving the coercion of customers by means of threats of strike, etc., can be enjoined, although the publication of such boycott might not be enjoined. Such publication, however, might be subject to criminal or civil suit. A labor boycott, involving threats of strike and extortion, has been held actionable in damages. A boycott, not in a labor dispute, where expelled member of an association was boycotted because of misconduct, and not because of non-membership, has been held legal.

Statutes: Rev. St. 1899, Sec. 2155, Act entitled "Intimidation of Employees—Interference with Employment." Act

makes illegal interference with employment by force, menace or threats of violence. Min. punishment three or six months, or $50 or $100, or both.

Hunt v. Simonds (1854). Civil Action. Trade Boycott. Legal. Insurance agents conspired to refuse to place insurance on pl.'s vessel. Held that it must be shown that acts which the def. agreed to do were illegal, in order to warrant recovery; that existence of malice did not make combination illegal.

Hamilton Brown Shoe Co. v. Saxey (1895). For Injunction. Compound Boycott Involving Workmen. Illegal. Attempt was made by def. to force employees to quit work and join the union strike. Held that when acts were accompanied by intimidation, etc., injunction would issue.

Marx & Haas Jeans Clothing Co. v. Watson *et al.* (1902). For Injunction. Secondary or Compound Boycott Involving Patronage. Not Enjoinable. Defs., garment workers of St. Louis, on strike against pls., manufacturers of jeans, clothing and pants, visited customers and endeavored to persuade them to cease dealing with pls., in some cases threatening them with loss of business unless they acceded to demands, but in no cases threatening physical violence. Pls. claimed that damage would amount to $10,000, unless injunction issued. Held injunction would not issue where there is no intimidation through fear of personal violence or of destruction of property, but only the mere abstaining from business relations and the persuading of others to do likewise; that issuance of an injunction would mean the denial of the right of free speech guaranteed by the constitution, and would prevent workmen from telling the story of their supposed wrongs. It added that the impecunious character of defs. constituted no argument for an injunction. A civil action, however, might lie.

Walsh v. Association of Master Plumbers (1902). (St. Louis App.) For Injunction. Trade Boycott. Illegal. Master Plumbers' Ass'n agreed with certain dealers and manufacturers that the latter should deal exclusively with members, and that members should boycott dealers who sold to non-members. Held that this agreement was illegal and void, and

could be restrained. It violated Rev. St. 1899, Ch. 143, Art. 2, Sec. 8979, declaring against the regulating of prices or control or limiting of trade; that it also contravened Sec. 8982 relative to pools.

Gladish v. Bridgeford (1905). (Kansas City App.) For Injunction. Trade Boycott. Legal. Members of an ass'n refused to have further dealings with another who was expelled from membership because he was found guilty of misconduct. Held that no injunction would issue, inasmuch as the pl. was boycotted because he was found guilty, and not because he was not a member.

Carter v. Oster (1908). (St. Louis App.) Civil Action. Labor Boycott. Illegal. Delegate of Ass'n of Steam and Hot Water Fitters of Am. notified employer of Carter, the pl., who worked in the Mo. Heating and Const. Co., to discharge pl., and fined the firm the sum of $200, the men quitting work until fine was paid. It was alleged that the union secured pl.'s discharge in other places, threatening strikes, and afterwards prevented him from conducting business on a commission basis. Held that the means used, threats of strikes and extortion, were illegal, malicious and oppressive.

Burke v. Fay (1908). (Ct. of App.) Civil Action. Coerce Employer to Discharge Non-Union Men by Fines. (Not generally considered boycott.) Unions imposed $200 fine on master plumber for breach of agreement to employ only union men. Held that he could recover such fine, and that imposition of it constituted coercion.

Lohse Patent Door Co. v. Fuelle *et al.* (1908). For Injunction. Compound Boycott Involving Patronage. Illegal. Defs., members of the U. Br. of Carpenters and Joiners, struck against pls., manufacturer of sashes, etc., for employing non-union men, and instituted boycott against pls. and against those purchasing material from them; followed pls.' wagons, issued circulars, and in some instances called strikes on pls.' patrons. They were charged with impairing business to the extent of $10,000. Held illegal as combination to injure trade of one,

by threatening to produce injury to those dealing with him, and having for their direct object injury of another.

Differs from Marx and Haas Case, as it enjoins the boycott itself, instead of the publication thereof.

Nebraska

No Statute Relating Thereto. No Decisions.

Ohio

Statute against restraint of trade has been held applicable. Thus far the court of last resort has not passed on the question of boycotts in labor disputes. Injunctions have issued from lower courts enjoining boycotters from using threats of loss of property against third parties, and even from persuading third parties to cease their patronage, if the object is malicious or unlawful, or if a trespass is involved. Injunctions have, however, been denied in the Superior Court against the issuance of boycotting circulars, although it has been intimated that these might be stopped through criminal or civil procedure. Compound boycotts have been subject to civil action. Coercing a third party to withdraw patronage through fear of loss of business has also been held criminal by a police court. Blacklists entailing an agreement to refuse a statement of employment have been declared legal by the Supreme Court, although a more general blacklist was previously pronounced illegal by one of the Courts of Common Pleas.

Statute: Act of April 19, 1898, in 930 L. 143. Act provides against combination to restrain trade.

N. Y. L. E. and W. R. Co. v. Wenger (1887). For Injunction. Compound Boycott Involving Workmen. (Trespass.) Illegal. Court issued injunction to prevent striking employees of railroad companies from going on premises for purpose of causing other employees, either by threats, intimidation, or request, to quit work, since such action would constitute a trespass for which the law affords no adequate remedy.

Parker v. Bricklayers' Union No. 1 (1889). (Common

Pleas.) Civil Action. Compound Boycott Involving Patronage and Workmen. Illegal. Held that members of trade unions were liable for damages caused by a general boycott declared against a contractor in which workmen were induced to quit time contracts and dealers in building materials were coerced into refusing to deal with contractor, and in which persons with whom contractor had contracts for work and material were induced to break them. Trade unions and its members were also held liable in damages for false circulars charging pl. with employing inferior scab labor in his business.

Richter v. Journeymen Tailors' Union (1890) (Lower Court). For Injunction. Libelous circulars. Not Enjoined. Defs., on strike, placed on walls, buildings, and bulletin boards in vicinity of pl.'s business posters stating that public should shun "scab" shop, and sent letters to the public, alleged to contain libelous statements. Held that court of equity had no jurisdiction to enjoin libel.

Moores & Co. v. Bricklayers' Union (1890). (Cinn. Super. Ct.) For Injunction. Compound Boycott Involving Patronage. Illegal. Unions struck against one Parker, a contractor, for refusing to pay fine of workman and to reinstate another. Def. Bricklayers' Union issued a circular threatening that its members would not work on material supplied by any one who continued to sell to Parker Brothers. Pl. disobeyed notice and was subjected to great loss. Parker Bros. had recovered damages and pl. had been awarded $2,250 damages. This award was affirmed by Judge Taft, and defs. were enjoined from refusing to work on pl.'s material wherever it was supplied them, when intention of such action was to force employers against their will to cease to purchase from pl. The immediate motive, that of injury, was malicious, as there was no relation between pl. and def. to justify such injury.

Mattison v. Lake Shore and Michigan Southern Ry. Co. (1895). (Ct. of Com. Pleas, Lucas Co.) Civil Action. Blacklist. Illegal. Railroad companies were charged with combining for purpose of preventing the employment by each other of discharged employees. Held companies were liable

to those who were prevented from procuring work, as the right of a man to seek employment in any honest work shall not be interfered with.

Riggs v. Waiters' Alliance Local No. 58 *et al.* (1898). (Cinn. Super. Ct.) For Injunction. Distribution of Libelous Circulars. Not Enjoinable. Waiters, on strike, displayed placards and distributed circulars in front of, and in the vicinity of, pl.'s premises, which stated that pl. was on the unfair list, and requested customers not to patronize him. Circulars were alleged to be libelous. Held that acts could not be enjoined on the ground that they were a nuisance, as the public highway was not obstructed, and that equity will not interfere by injunction to restrain publication or circularization of a libel. "Where the gist of the injury is purely personal, as, for instance, in cases of a libel, the fact that it may be injurious to property does not give the court jurisdiction." To restrain this libel would be to interfere with freedom of speech and liberty of the press. Abuse of this right may only be punished criminally or subject the offender to civil suit for damages.

State v. E. C. Jacobs (1899). (Police Court of Cleveland.) Criminal Conspiracy. Compound Boycott Involving Patronage. Illegal. Motorman def., on strike against Cleveland Electric Ry. Co., declared that Reynolds, who sold ice cream to the "scabs," would be boycotted if he continued, and also threatened Schindler, who supplied Reynolds with the ice cream, with a similar boycott, should he not cease dealings with Reynolds. Held that the act of April 19, 1898, in 930 L. 143, applied to boycotts, on the ground that they restrict trade by means of fear of injury to business or property.

The Dayton Manufacturing Co. v. Metal Polishers', etc., Union No. 5 (1901). (Ohio Com. Pleas.) For Injunction. Secondary or Compound Boycott Involving Working on Pl.'s Materials. Illegal. Dayton manufacturer in car trimmings, etc., employing 150 men, discharged 17 buffers. Union committees stated to other establishments that the latter's em-

ployees would not be permitted to work on any material supplied by pl., although they were afterwards allowed to place union men at work on this material. Held that equity will enjoin use of threats against patrons of pl., if those threats overcome their will through fear of loss of property, and that mere persuasion will also be enjoined, when its end is malicious or unlawful. It is legal, however, for organizations to present their cause to the public in a peaceful way and with no attempt at coercion.

N. Y. C. Street Railway Co. v. Schaffer (1902). Blacklist. Legal. Here held legal to agree not to employ persons who had been on strike, and to refuse to give discharged employees a statement of employment.

Wisconsin

Acts make illegal combination to injure business maliciously, or to interfere with employment by unlawful means. Highest courts have not passed on boycotting in labor disputes, excepting in one case of a labor boycott, where courts have held, *obiter dicta,* that interference with employees by force, etc., gives right of action. In the three trade boycotts cited, all were declared illegal on the ground of malice or monopoly. One of these was of a criminal nature. Courts have recognized malice and combination as elements in torts. The decision regarding the legality of boycotts would, in all probability, be an adverse one.

Statutes: Annotated St. of 1898, Sec. 4466a, entitled, "Combining to Injure Business," etc. Act makes illegal combination of two or more persons maliciously to injure another in his reputation or business, by any means, or maliciously to compel him against his will to perform or not to perform any lawful act. Max. punishment, $500, or 1 yr. Sec. 4466c, entitled "Interfering with Employment," makes illegal interference with employment by force, threats, or intimidation. Max. punishment, $100, or 6 mos., or both.

Gatzow v. Buening (1900). Civil Action. Trade Boy-

cott. Involving Element of Monopoly. Illegal. Liverymen's Ass'n prohibited members from doing business with any person who did not deal exclusively with members of the association, and from letting a hearse to a person for a funeral when the undertaker in charge patronized non-union men. Held an attempt to monopolize business and stifle competition, and illegal as against public policy.

Hawarden v. Youghiogheney (1901). Civil Action. Trade Boycott. Illegal. Retail dealer in coal charged wholesaler with refusing to sell him coal because he was not a member of a certain combination. The defs. owned practically all of the docks in that vicinity, near Duluth. Held illegal for a combination to refuse to sell goods to another with the purpose of injuring that other, and not to benefit themselves. It is legal for an individual to attract to himself another's customers with malicious motives, or for a combination thus to act to promote their own welfare.

The State *ex rel.* Durner v. Huegin (1901). Criminal Conspiracy. Trade Boycott. Illegal. Defs., owners of newspapers, agreed that, if advertisers paid to another newspaper, out of the combination, the increased rate charged, they would be compelled to pay such increased rates to defs. Held a conspiracy to inflict malicious injury upon another, and actionable; that malice and combination may make illegal otherwise legal acts, and that fact that ultimate object of the combination was beneficial was no defense.

Badger Brass Manufacturing Co. v. Daly (1909). Civil Action. Compound Boycott Involving Workmen. Illegal. Metal Polishers and Silver Workers' Union in Kenosha, on strike, interfered with other workmen, and destruction of trade was threatened. Held that, if a laborer is prevented by his fellows from working, it usually gives cause of action to laborer alone, and that an employer can sue only when his workmen are coerced or induced to break an existing contract, or where the laborers are prevented by conspiracy from accepting employment of employer, in which case there is an

actionable interference with right of employer to carry on his lawful business.

COURT DECISIONS ON BOYCOTTS IN SOUTH ATLANTIC AND SOUTH CENTRAL STATES

There have been no decisions on boycotts in any form, as far as can be learned, in courts of last appeal, in Alabama and Florida. There have been no adjudicated cases of boycott relating to labor disputes in highest courts in Kentucky, Mississippi, Oklahoma, South Carolina, Tennessee, Texas, or West Virginia.

From other decisions, it seems probable that the Kentucky courts would pronounce a boycott illegal if accompanied by threats of loss of business; the Mississippi courts, if coercion or malice was present; the South Carolina and West Virginia courts, if malice could be spelled out. It is reported that a lower court in Oklahoma has declared a secondary boycott legal. In Tennessee and Texas, if the judges could be convinced of the legitimate interest, on the part of the workers, to boycott, the use of this weapon would probably be permitted, although the attitude on the part of the judges is doubtful.

The issuance of an unfair list, which threatened third parties with loss of labor, was held not to constitute a crime in No. Carolina.

The Arkansas court pronounced legal refusal to work for one doing business with an employer of non-union men, where no "official boycott" was declared.

The Virginia court has held the boycott illegal when accompanied by threats of loss of business. A Louisiana court pronounced a labor boycott, accompanied by threats, illegal, and trade boycotts legal where a legitimate interest was to be protected.

Alabama

Sweeping statutes against boycotting by name and otherwise. No decisions in highest courts on this subject.

Statutes: Code, 1907, Sec. 6396, entitled "Boycotting," makes it illegal for any person to print or circulate any notice of boycott, unfair list, etc., or publish or declare that a boycott or ban exists, or is contemplated, against any person. Sec. 6397, entitled "Threats, etc.," makes illegal any intimidation to prevent a person from engaging in any lawful occupation. Sec. 6394, entitled "Conspiracy," makes illegal a conspiracy of two or more persons to prevent or interfere with the carrying on of a lawful business. Punishment, $50 to $500, or not to exceed 60 days.

Florida

Sweeping statutes against labor boycotts when accompanied by intimidation, etc. (Word "boycott" not used.)

Statutes: Gen. St. 1906, Sec. 3515, entitled "Conspiracy against Workingmen." Act makes illegal any combination of two or more for the purpose of preventing person from procuring or continuing work, or any threat of injury to firm unless person is discharged or not employed. Max. punishment, $500, or one year.

Chipley v. Atkinson (1887). Civil Action. Elements of Blacklist. Illegal. Def. induced employer to discharge employee. Court held actionable, and that the fact that employee had no rights against employer did not take away his rights against a third person.

Arkansas

There is no statute bearing directly on boycotts. Refusal to work on structure laid by non-union men, or handle material of non-unionists, has been held to be legal by court.

Statutes: Digest of 1904, Sec. 5030, as amended by Act 298 of Acts of 1905, entitled "Interfering with or Enticing

Employee." Act makes illegal enticing employee, who has contracted with another, to leave his employer. (Application doubtful.) Max. punishment, $100, and advances made by employer.

Meier v. Speer (1910). Civil Action. Compound Boycott Involving Patronage. Legal. (If no official action.) (Boycott paper illegal.) Stone masons refused to work on building whose superstructure was laid by non-union men, and bricklayers refused to handle material secured from non-union concern. There was no evidence of the declaration of any official boycott, or threats. Held legal, where these provisions are in rules of union. Intimidation and coercion were declared essential elements of boycotts. Court claimed that every man has a right to dispose of his labor as he chooses, as long as his action does not contravene any duty to the public or interfere with legal rights of others, and that appellants can lawfully do conjointly what they can do singly, each having like interests to promote.

Georgia

Labor boycotts, accompanied by intimidation, are illegal by statute (word "boycott" not used). Court has held that a labor boycott, accompanied by force, is illegal, as well as a trade boycott which involves such coercion as comes from threat of loss of business to third parties and malicious interference with contract relations. Employers' boycott, where false notice is given, is not approved. While no case decided by highest court, where attempt was made by workers to withdraw patronage, is observed, it seems likely that such would be condemned if it involved coercion of third parties through threats of loss of business.

Statutes: Penal Code, 1895, Secs. 119-126. A misdemeanor to hinder engagement of a person in a lawful business by threats, intimidation, violence, or other unlawful means. Secs. 1 to 4 of the Acts of 1901, p. 63, make it illegal for one to interfere with employee under contract relations with another.

Brown v. Jacobs Pharmacy Co. (1902). For Injunction. Trade Boycott. Illegal. Atlantic Retail Drug Ass'n, of which pl. was formerly a member, issued circulars stating that pl. was an aggressive cutter; required salesmen of wholesalers to agree not to sell goods to non-members, and stated to wholesalers that members would withdraw patronage unless such wholesalers refused to sell to pl. Held by court that combination was void and injunction would issue.

Willis v. Muscogee Mfg. Co. (1904). Blacklist. Illegal (if notice false). Def. and other companies agreed to notify each other whenever an employee left without cause and without giving 6 days' notice. Held that such an agreement was legal. Pl. alleged that he was discharged for refusing to change contract, and was afterwards refused employment because of false notification. Held it was error to grant nonsuit.

Employing Printers' Club v. Doctor Blosser Co. (1905). Civil Action. Compound Boycott Involving Workmen. Illegal. Employing printers, formed for illegal purpose of regulating prices, induced employees of pl., who refused to enter combination, to strike, by threatening to discontinue their agreement to abide longer by union regulations unless workers obeyed. Damage, $10,000. Held the combination constituted an unlawful conspiracy and malicious interference with contract relations.

Jones v. E. Van Winkle Gin and Machine Works (1908). Civil Action. Compound Boycott Involving Workmen. Illegal. Members of labor organization endeavored to prevent others by intimidation to work for pl. Held interference with business of another by force, etc., so as to prevent them from entering or remaining in employment, was illegal, although legal to persuade others not to take employment.

Kentucky

Boycott accompanied by coercion is declared illegal by statute (word "boycott" not used). No boycott case in which

workmen were the boycotters has been decided by the highest court. A primary boycott, not involved in labor dispute, has, however, been pronounced legal, while a trade boycott, in which threats of loss of business were evidenced, was found illegal. Employers' boycotts, involving false statements or coercion, were also declared illegal; interference, in which these elements were absent, legal. It is probable that threats of loss of business against third parties by employees would be considered illegal.

Statutes: St. 1903, Sec. 802, entitled "Hindering, etc., Transportation by Violence." Act makes unlawful interference with transportation or commerce by violence. Sec. 803, entitled "Coercion." Act makes unlawful hindering the free and lawful use of property of another by means of coercion. Punishment, $25 to $200, or 10 days to 6 mos., or both.

Brewster v. Miller's Sons (1897). Primary Boycott. (Not labor dispute.) Legal. Def. refused to take charge of pl.'s wife's funeral. Held with Cooley that one may refuse business relations with another for any reason whatsoever.

Hundley v. Louisville Railroad Co. (1898). Civil Action. Blacklist. Illegal. Pl. was discharged from def. railroad and was unable to secure employment on other railroads, inasmuch as def. had entered on the books a false reason for discharge, and had agreed with other railroads not to employ discharged employees. Held that this is an actionable wrong, but that pl. must show that he applied for employment and was discharged because of def's. act. A malicious interference with the right of a person to pursue his trade is actionable.

Baker v. Met. L. I. Co. (1901). Civil Action. Blacklist. Legal. Insurance agent was discharged from Metropolitan Co. at the request of the Sun Ins. Co., because of an agreement entered into between the Sun, Prudential and Metropolitan, whereby neither company would employ any former employee of any company within two years of discontinuance of employment. Held that pl. had no right of action where def. had right to terminate relation at any time; that there was no

falsehood or coercion used, and that pl. had the right to refuse business relation with any person for any reason.

Standard Oil Co. v. Doyle (1904). (Ct. of Apps.) Civil Action. Trade Boycott. Illegal. Def. threatened to ruin customers of oil merchant if they continued to deal in his oils. Illegal.

Louisiana

There is no act of a general nature, but one confined to seamen. Courts have held that labor and trade boycotts, when accompanied either by threats, etc., or malice, are illegal, but that trade boycotts, where third parties are coerced through fear of loss, are legal if the boycotters have a legitimate interest to uphold. When the boycott is conducted by one only, it is considered especially subject to favorable decision. It is doubtful that the courts would work out any justification for a boycott in a labor dispute in which third parties were threatened by workers with loss.

Rev. Laws, 1904, Sec. 944. Act, entitled "Intimidation of Seamen." Act makes illegal intimidating and preventing seamen from shipping on vessel, or unlawfully interfering with them.

Dickson v. Dickson (1881). Civil Action. Secondary or Compound Boycott Involving Workmen. Illegal. Held illegal to induce laborers to abandon work, by threats, persuasion or otherwise, when wantonly and maliciously done, on the ground that the laborers have a right to pursue their lawful calling without interference.

Graham v. St. Charles Street Railroad *et al.* (1895). Civil Action. Compound Trade Boycott. Illegal. Railroad foreman, in hiring and discharging employees, discriminated against those dealing in pl.'s grocery store. Held illegal for one to influence another to cause a loss to a third party if no legitimate right or interest of one's own is served thereby, although a person may himself refuse to deal with another for any purpose.

Webb v. Drake (1899). Civil Action. Compound Boy-

cott to Punish Tax Collector. Illegal. Merchants agreed to boycott any commercial traveler who stopped at pl.'s hotel for the purpose of punishing pl. for his conduct as tax assessor. Held, boycott was without justification and illegal.

Schneider v. Local Union No. 60 (1906). For Injunction and Damage. Boycott Own Member. Illegal. Member of a labor union, acting in a public capacity as member of the Board of Examiners of Plumbers, refused to appoint a fellow member recommended by the union as an inspector. He was fined and boycotted. Held that he was entitled to relief by injunction and to reinstatement in his union without paying his fine; that he also should have damages, inasmuch as the conduct of the pl. did not justify the injury committed.

Lewis v. Huie-Hodge Lumber Co. (1908). Civil Action. Compound Trade Boycott Involving Patronage. Legal. Lumber owner threatened to discharge employees who purchased supplies from def.'s store. Court, in holding this action legal, distinguished this from Webb v. Drake, on the ground that here employer acted singly; distinguished from Graham v. St. Charles Street Railway on ground that employer was not acting maliciously, but had a legitimate interest to uphold, and that men threatened were his own employees—factors not present in former case.

Mississippi

Boycotts, accompanied by intimidation, are illegal by statute (word "boycott" not mentioned). While there has been no decision by the highest court on boycotts in labor disputes, the principle has been laid down that a boycott is illegal when third parties are coerced to withdraw patronage on pain of injury, when the coercion is accompanied by malicious motives. It seems likely that a boycott in a labor dispute would be considered actionable.

Statutes: Code, 1906, Sec. 1084. Act entitled "Conspiracy against Workingmen." Illegal for combination to prevent another from exercising lawful trade, or doing any

other lawful act, by force, threats or intimidation. Punishment, $25 or more, or 1 to 6 mos., or both. Sec. 1146, entitled "Enticing Laborers," declares illegal wilful interference with contract relations between laborer and employer. Punishment, $25 to $100.

Wesley v. Native Lumber Co. (1910). Civil Action. Compound Trade Boycott. (Coercing Employees.) Illegal. Employer ordered employees not to patronize pl.'s store on pain of being discharged. Held that it is illegal to influence others to refuse to patronize a third party for the purpose of injuring his business; that act, and the accompanying malicious motive, make the act illegal.

North Carolina

There is no statute on the subject. The court has held that concerted coercion of third parties through fear of loss of employees does not constitute a criminal conspiracy when the means used is the publication of an unfair list.

Statutes: Laws, 1905, Sec. 3365, entitled "Interference with Employment." Illegal to entice away servants under contract. Max. punishment $100, or 6 mos.

State v. Van Pelt (1904). Criminal Conspiracy. Unfair List. (Connected with Secondary Boycott Involving Workmen.) Legal. Carpenters and joiners notified employer that he would not be considered in sympathy with organized labor unless he employed only union men, and discharged his non-union men, some of whom were under contract relations with him, and, on his refusal to accede to their demands, published a resolution in a newspaper that the employer was unfair, and that henceforth union men would refuse to work on material from his shop. Held that defs. had a right to publish a statement setting forth that they had done or intended to do acts which they had a legal right to do. Judges implied that an unfair list is not a boycott. They compared these actions of unionists with those of farmers, tradesmen, reformers, etc.

Holder v. Cannon Mfg. Co. (1904). Civil Action. Element of Blacklist. Illegal. Def. company caused discharge of pl., who was employed in the Gibson Man. Co. Held that one causing the discharge of another wilfully and maliciously was liable in damages to the injured party.

Oklahoma

Interfering with workmen by intimidation is declared by statute illegal. No cases have been decided by highest court. In one of the lower courts a case where boycott has been declared legal has been cited.

Statutes: St. of 1903, par. 2544, entitled "Intimidating Workingmen." Misdemeanor, interfering with employment of workman by force, threats, etc. Par. 2545, "Intimidating Employees." Act makes misdemeanor the preventing employer from hiring, or compelling employer to hire, another by force, etc., or the forcing or inducing of another to alter his mode of carrying on business.

Oklahoma Electric Planing Mill v. Chickasha Trades Council (1909). Secondary or Compound Boycott Involving Patronage. Legal. Union fined teamsters who patronized pl. Court held legal. Case reported in Am. Fed. Citation not given.

South Carolina

No statute applying directly to boycotts in labor disputes. There is no court decision on boycotts by the highest court. Employers' boycott—the blacklist—when accompanied by malice, is held actionable.

Statutes: Code, 1902, entitled "Enticing Employees." Makes illegal persuading employees under contract to leave service. Laws, 1902, No. 574, Sec. 5. A combination to boycott any person for dealing with one not a member of the combination is illegal. Applies to trade boycott only.

Rhodes v. Granby Cotton Mills (1910). Civil Action.

Blacklist. Illegal. Following a strike in Granby Cotton Mills, the owner sent a list of names of strikers to other owners, including thereon the name of the pl., who chanced not to be a striker. As a result, pl. was unable to obtain employment. Held blacklisting actionable in damages, and the keeping of name of pl. on list after knowledge of injury and of his not being a striker indicated malice.

Tennessee

No statutes directly bearing on boycotts. An employer's boycott accompanied by threat of injury to third party is legal, according to the court. Malice is not material. No case of boycott in labor dispute has been decided by highest court. It is possible that, following the principles laid down in other cases, such a boycott would be regarded as legal, unless the court took the view that boycotters had no legitimate interest to uphold.

Statutes: Code and Supplement, 1896 and 1904, Sec. 4337, entitled "Enticing of Employees." Act makes illegal enticing of employees under contract. Liable for damages sustained by employer.

Payne v. Western and Atlantic Ry. Co. (1884). Compound Trade Boycott. (Coercing Employee.) Legal. Railroad official announced that any one on Chattanooga payroll dealing with pl. would be discharged. Held, legal; that employer had right to discharge employee for any reason; that threats to do a legal act were not illegal, and that the existence of malice did not render the act illegal.

Texas

Statute prohibits boycotting when done by two or more, and also interference with employment.

Practically all of the boycotts decided have been trade boycotts. In these cases it was declared that the boycotter could persuade or threaten a third party with loss of employment, etc., provided he had a legitimate interest to protect. The

inducing or threatening of a third party, if done maliciously, and not for the protection of some legitimate interest, was pronounced illegal. Primary boycotts, by dicta, were declared legal. False statements, issued in pursuance of the boycott, constituted illegal means. A blacklist, where no wilful bad faith was evidenced nor intentionally false statements made, was declared legal. In deciding whether or not a boycott in labor disputes would be legal, the main consideration would undoubtedly be the question of legitimate interest and lack of malice. If the court followed the trend of opinion in other states, malice would probably be read into the act.

Statutes: Acts of 1903, Chap. 94, Sec. 3, entitled "Boycotting." Act prohibits agreement of two or more persons to boycott or threaten to refuse to buy from or sell to any other person, etc. Such agreement shall be void; its violation shall render the association liable for a fine of $50 a day, and may be punishable by imprisonment of from one to ten years. Rev. St. 1895, Art. 309, entitled "Interference with Employment." Act makes illegal an assembly whose purpose it is to interfere in any manner with employment of another. Max. punishment, $500. Art. 324, Act makes illegal engaging in a riot for the purpose of interfering in any manner with employment of another. Punishment, 6 mos. to 1 yr. Art. 600, Act makes illegal, interference by any person with employment of another by means of threatening words, acts of violence and intimidation. Punishment $25 to $500, or 1 to 6 mos.

Delz v. Winfree (1891). Civil Action. Trade Boycott. Illegal. Def. refused to sell pl. beeves, and induced at least three other persons to so refuse. Held that inducing of others to refuse to sell, without serving any purpose of one's own, but maliciously, is illegal; that a primary boycott, a refusal to have relations with another for any reason, is legal; that the inducement of others to refuse dealings, if such refusal serves some legitimate right, and violates no right of another, is legal, and that the mere fact of combination does not make legal act illegal.

Intern., etc., Railroad v. Greenwood (1893). (Tex. Civ.

App.) Trade Boycott. Illegal. Def. railroad company endeavored to induce employees to withdraw their patronage from pl. through threats of discharge. Pl. owned hotel frequented by railroad men, and def. declared that he feared litigation if patronage continued. Action held illegal; that, while defs. could make any condition of employment they desired with those entering employment, they could discharge employees only for reasonable causes, and must give evidence showing necessity for instructions before acts could be considered legal.

Olive v. Van Patten (1894). (Tex. Civ. App.) Trade Boycott. Illegal. Defs., the Lumber Dealers' Ass'n of Texas, issued circulars, asking others not to deal with pl. until he agreed to join the association. Pl.'s profit of $100,000 a year was greatly reduced. Held that such an attempt to ruin pl. as competitor could not be deemed a legitimate purpose, although defs. might be benefited thereby; that motive here was malicious.

Robison v. Texas Pine Land Co. (1897). (Tex. Civ. App.) Civil Action. Trade Boycott. Coercing Employees. Legal. Def., with log mills at Beaumont, threatened to discharge those employees dealing with pl., and stated that he would not pay the checks passing through pl.'s hands. Def. was selling same kind of goods as was pl. Held, that no action would lie; that if def. had no property interest of his own in so doing, but had acted wantonly in causing loss, the rule would be different; that injury to business here is the natural result of successful competition.

Brown v. Am. Freehold Land Mtg. Co. (1904). Civil Action. Trade Boycott. (False Statements.) Illegal. Def. was accused by pl. of ruining his business as a loan agent through issuing false statements to a bank, and thus making him unable to obtain loans. Court held pl. stated a good cause of action not because of bad motive, but of false statements, etc., but that a combination to destroy the business of another would not be illegal where the end was sought by no unlawful means, nor was it rendered actionable by

malice or wrongful motives, where the means used were lawful.

Wills v. Central Ice Co. (1905). (Tex. Civ. App.) Trade Boycott. Legal. Def. companies refused to sell ice to the pl. on the ground that they had a five years' contract with Wakefield, who bought all ice. Court held that a conspiracy cannot be made subject to a civil action unless something is done which, without the conspiracy, would give a right of action.

St. Louis Southwestern Ry. Co. of Texas v. Hixon (1911). Blacklist. Legal. Employee of railroad, a brakeman, was discharged for refusing to act as brakeman on train on which air brakes were out of order. The company, in furnishing information to other railroad companies as to the reason for his discharge, stated that he was discharged for insubordination. Chap. 67 of the laws of 1907 declares that an employer must furnish a true statement of his discharge to any one so requiring. Court reversed judgment of the Ct. of App., declaring that as the reason given here from the standpoint of the company was wholly true, and as there was no claim of wilful bad faith, no action would lie.

Virginia

Summary. No statute on subject. Court has declared boycott, involving coercion of workers and customers through fear of injury, a criminal conspiracy.

Crump v. Commonwealth (1888). Criminal Conspiracy. Compound Boycott Involving Patronage and Workmen. Illegal. Def. was an officer of the Typographical Union of Richmond, on strike for a closed shop against Baughman Brothers, printers. He, with other members of the union, threatened to break up business of patrons of Baughman; published their names on a "Blacklist" in *Labor World;* boycotted those boarding employees of Baughman, issued circulars denouncing customers, and caused a loss to complainant of $10,000 net profit. Held that the conspiracy was illegal, as

a wanton interference with the business of another in his relations with his employees.

West Virginia

Statute here prevents unlawful interference with employment of miners. There have been no decisions on boycotts in labor disputes by highest court. Trade boycotts, in pursuance of the right of competition, are, however, held legal, where illegal means are not used.

Statutes: Labor Laws, 1907, Chap. 78, Sec. 19, entitled "Interfering with Employment." Act makes illegal the interfering with employment of miners by force, threats, menaces or intimidation.

West Virginia Transportation Co. v. Standard Oil Co. (1901). Civil Action. Trade Boycott. Legal. Pl. was in business of transporting petroleum oils by pipe lines and tank cars, and storing oil. Def. company endeavored to divert customers from pl. in order to secure trade for itself. Held that such inducement was legal in the race for competition, there being no breaking of a contract, and that the existence of malice was immaterial; that, however, where the injury was not done under the right of competition, but maliciously, with intent to injure, loss ensuing, the injury would be actionable. No mention was made, in the charge, of names of customers who had been coerced.

WESTERN STATES

No decisions on boycotts in labor disputes have been made in the highest courts in Arizona, Colorado, Idaho, New Mexico, North Dakota, South Dakota, Utah or Wyoming.

In California and Montana secondary and some forms of the compound boycotts have been pronounced legal, and the publication of the unfair list and other circulars will not be enjoined. This is true even though third parties understand as a result of the circular that their continued patronage with

the boycotted firm will cause them loss of business. In California actual annoyance in the vicinity of the business of the boycotted firm, however, is not permitted. In Oregon an injunction will not issue, even though threats of loss of custom are made, unless absolute proof of irreparable injury can be submitted. In Washington the boycotters can be enjoined from maliciously inducing customers to cease dealing with a firm, and from persuading or coercing the public from purchasing, if, in so doing, the boycotters gather around the place of business.

Arizona

No statute and decisions noted.

California

Boycotts, unattended by force, are declared legal by statutes. The courts have held that it is legal to declare and give publicity to a boycott against an employer; to inform customers of its existence; to request that they cease patronizing the boycotted concern; to threaten a like boycott against those who refuse; to threaten a loss of the working force to those continuing to purchase, and to use other moral suasion.

It is illegal, on the other hand, as a result of the court's decisions, for the boycotters, in the vicinity of the boycotted establishments, to annoy and intimidate the boycotted firm in its business, or its customers or workmen. Injunctions will issue in these cases. Where boycotters are accused of violence, acts must definitely be specified. Libel will not be enjoined. This is one of the most liberal of states.

Statutes: Penal Code Appendix, 1906, Sec. 1, entitled "Labor Agreements, Not Conspiracy." Act provides that no agreement between two or more persons in furtherance of any trade dispute between employer and employee shall be deemed criminal, if such act, committed by one person, would not be punishable as a crime, nor shall such agreement be considered in restraint of trade, nor shall any injunction order

be issued. Force, violence or threats, however, are prohibited.

Daily v. Superior Court (1896). For Injunction. Publication of Libel. (Not connected with labor dispute.) Not Enjoinable. Def. was planning to present facts of a criminal suit on the stage, and pl. endeavored to prevent this by injunction. Held that right of a citizen to speak and write freely is unlimited, and that to restrain him from exercising this right would be to violate the provisions of the constitution.

Davitt v. American Bakers' Union (1899). For Injunction. Compound Boycott Involving Workmen. Also Libelous Circulars. Legal—under particular facts in case. Complaint charged in a general way that defs. attempted, by force, menace and threats, to intimidate workmen, and that they maliciously published false circulars, etc. Held that injunction would not be granted, and that the charge was too broad.

Jordahl v. Hayda (1905). (Cal. App.) For Injunction. Compound Boycott Involving Patronage and Workmen. Illegal. Members of Cooks' and Waiters' Alliance, Local 220, of Eureka, struck because employer failed to obtain union card. They congregated about the restaurant, distributed circulars, displayed "boycott" signs, and sought to keep customers and employees away from the place. The court issued an injunction forbidding any acts in the immediate vicinity of the pl.'s restaurant tending to hinder, impede or obstruct pl. in the transaction of his business, and from hindering, intimidating or annoying customers going to or coming from the restaurant, and from annoying or intimidating workmen. In upholding this injunction, the Ct. of App. declared that the right of free speech and press is no more important than the right of "acquiring, possessing and protecting property, and possessing and obtaining safety and happiness," guaranteed by the Constitution (Sec. 1, Art. 1), and that an unwarrantable interference with pl.'s business, and intimidation of the pl., will be prohibited.

Goldberg, Bowen and Co. v. Stablemen's Union, Local No. 8760 (1906). For Injunction. Compound Boycott Involving Patronage and Workmen. Illegal. Defs. in San Fran-

cisco struck, on account of a reduction in wages, against pls., who conducted three grocery and general household goods stores. They stationed pickets in front of stores bearing placards on which were written, "Unfair Firm; Reduced Wages 50 Cents a Day. Please Do Not Patronize." They were charged with intimidating customers and employees. The Sup. Ct. approved a modified injunction forbidding the harassing, interference with or obstruction of pls. in the conduct of their business, the threatening or intimidation of customers, and the carrying of placards with words similar to those indicated, if these acts were committed in front of or in the vicinity of the pls.' stores. It held, however, the injunction of the lower court too sweeping, which enjoined defs. from the mere expression of opinion, at any time or place, regarding pls.' business, but added that, if the section in the penal code forbade the court from enjoining such wrongful acts as were committed by defs., such section, to that extent, would be unconstitutional, because it violated pls.' constitutional right to acquire, possess and enjoy protection and property.

J. F. Parkinson & Co. v. Building Trades' Council of Santa Clara Co. *et al.* (1908). For Injunction. Compound Boycott Involving Patronage. (Circulars.) Legal. Defs. struck against proprietor of a lumber yard, plumbing and tinning shop, because of his employment of a non-union man, and sent circulars to pl.'s customers, stating that his shop was unfair, and that union men would not work for any contractors purchasing supplies from him. A number of customers ceased dealings, some canceling unfilled orders. Chief Justice Beatty held that an injunction should not be granted; that the purpose of the strike, to secure the employment only of union men, was lawful; as was also the ruling of the council that no union man should handle non-union goods; that fair dealing required that contractors be informed of the status of the pl., and that, therefore, the sending of notice was justifiable. Even if this act was without justification and malicious, there was no evidence that future notices were to be sent, he averred, and that in this case both purpose and

means were lawful. Judge Sloss declared that defs. had the right to cease to deal with one pursuing a course detrimental to them, and with one aiding by their patronage the offender's detrimental policies; that defs. had a legal right to refuse to enter into business relations with others, and that threats to exercise their legal right would not be considered unlawful; furthermore, that motive does not make a legal act illegal.

Pierce v. Stablemen's Union, Local 8760 *et al.* (1909). For Injunction. Compound Boycott Involving Patronage. Legal. Strike in attempt to unionize shop, against pl., who kept livery stable in San Francisco. Defs. instituted a boycott, threatening customers with loss of business if they continued to patronize pls. They also established a picket, and used menacing language. An injunction was issued. The court, in modifying it, stated that the strikers had the right by all legitimate means—by fair publication, and fair oral or written persuasion—to induce others interested in, or sympathetic with, their cause to withdraw their social intercourse and business patronage from the employer . . . to request another that he withdraw his patronage, and to use moral intimidation and coercion by threatening a like boycott against him if he refused so to do. He also contended that unionists on strike occupy no contractual relation to their former employer, and can employ no means not equally open to any other individual.

Colorado

Statute makes boycott illegal. No decision in the highest court. An early case before 1896 in a lower court has been cited as legal. A trade boycott has been pronounced legal, in which no coercion was used.

Statutes: Acts of 1905, Chap. 79, Sec. 2, entitled "Boycotting." Act declares unlawful the printing or circulating of any notice of boycott. Sec. 1, entitled "Picketing Unlawful," Act makes illegal loitering around the streets for the purpose of

influencing others not to trade with or work for any individual. Punishment, $10 to $250, or 60 days, or both.

DePear v. The Cooks' Union. For Injunction. Secondary or Compound Boycott Involving Patronage. Union carried placards in a parade around the city calling attention to the fact that pl. was an enemy of organized labor. Injunction was refused.

Master Builders' Assoc. v. Domascio (1901). (Col. App.) Civil Action and for Injunction. Trade Boycott. Legal. Builders' Ass'n of Denver notified architect that, if he received bid from pl., Association would refuse to bid. Court held legal, since no coercion or intimidation was suggested, and the architects were at liberty to receive bids of others who had not signed the notification.

Idaho

Statute: No court decisions. Penal Code, 1901, Sec. 4687, entitled "Conspiracy—Intimidation of Miners." Makes misdemeanor the association of persons to interfere, by force, etc., with miner at work in mine. (Application to boycotts extremely doubtful.)

Montana

No statute. Legal to issue a circular calling on others to cease to patronize third party, even though it is understood by such publication that the boycotters will cease to patronize those not withdrawing their custom from the boycotted firm. Doctrine of malice or of combination not accepted.

Lindsay and Co. v. Montana Federation of Labor *et al.* (1908). For Injunction. Secondary or Compound Boycott Involving Patronage. Legal. In October, 1907, Lindsay & Trades' Assembly of Helena, which action had been indorsed by the Montana Fed. of Labor. Circulars announcing that fact had been sent to the various labor organizations in the state, and, on Oct. 25, the Yellowstone Trades' and Labor Assembly declared Lindsay unfair, following action of the

Helena body, and referred the matter to a grievance committee. The following circular was thereafter issued by the union, and circulated among the public and business houses of Billings:

"All laboring men, and those in sympathy with organized labor are requested not to patronize Lindsay and Co., who are engaged in the wholesale fruit business, also distributors of cigars and vegetables of all kinds in Billings and vicinity, as they are unfair. We urge the retail merchants, laboring men and all who are in sympathy with organized labor to place themselves in position to patronize friendly wholesalers. We further desire to call attention to the fact that Lindsay and Co. are operating peddling wagons throughout the city, and we ask the people to guard against patronizing these wagons. We ask this for your own protection, and for the protection of organized labor."

Circulars were distributed broadcast throughout the city, and, as a result, the business of the company at Billings was practically paralyzed, and great financial loss followed. A sweeping injunction was issued by lower courts. This was dissolved by the Sup. Ct. In giving their decision the court declared that, judging from the facts in the case, it might fairly "be said to have been shown by the evidence that, upon the adoption of the resolution of October 25th, and, upon the intelligence of that action becoming general among union men there, it was understood among those men that they would not patronize Lindsay and Co. while the interdict was in force, and would not patronize any one who did patronize that company, and that they expected that all retailers and others in sympathy with their organizations would cease trading with the pl. company." Held that these acts constituted a boycott. However, Judge Holloway averred there was no unlawful act in withdrawing patronage from the company; that patronage depends on good will; that, as it was not unlawful for an individual to withdraw his patronage from Lindsay and Co., or from any other concern which might be doing business with that company, for any reason, it was not

for a combination; that the defendants cannot, therefore, be enjoined from boycotting, unless they use unlawful means; that the only means here used was the publication of the circular, and that a court of equity might not enjoin the publication of a circular of this character. If such publication was libelous, it could be reached only by civil or criminal process.

Nevada

Statute provides against combination for the injury of trade or commerce, but allows peaceful assembly for the purpose of raising wages. The one boycott case decided related to the I. W. W. organization. The court declared that boycotts, where attended by threats, intimidation and violence, were actionable in damages, and that union members could be held.

Statute: Compiled Laws, 1899, entitled "Labor Agreements Not Conspiracies." Act makes illegal conspiracy of two or more to commit acts injurious to trade or commerce, but provides that act shall not prohibit peaceable and orderly assembling for the purpose of securing an advance in the rate of wages or the maintenance of same. Max. punishment, 6 mos., or $1,000.

Branson v. Industrial Workers of the World (1908). Civil Action. Compound Boycott Involving Patronage. For facts, see *supra,* Ch. VII. Illegal. Courts held defs. guilty on ground that some of threats were attended with violence and intimidation, and that acts were not covered by Sec. 4751, inasmuch as they were not done in pursuance of desire to raise wages, nor were they peaceful.

New Mexico

No statute or legal decisions noted.

North Dakota

No decisions noted in highest courts.

Statutes: Constitution, Sec. 23, entitled "Interfering with

Employment." Illegal maliciously to interfere with employment of any citizen. Rev. Code, 1905, Sec. 8768, Art. 5, entitled "Conspiracy against Workingmen—Conspiring to Interfere with Trade, etc." Illegal to combine to interfere with one in his lawful trade or calling, or doing any other lawful act, by force, etc., or to interfere with tools or property. (Probably confined to workmen.) Secs. 9434 and 9435, entitled "Intimidation of Employers and Employees." Acts make it a misdemeanor to interfere with employees in their employment or with employers in the conduct of their business, by threats, force, intimidation, etc.

Oregon

Boycotts accompanied by intimidation, etc., illegal. (Word "boycott" not used.) Court has held that mere threats of boycotters to cease to patronize third party, or publication of boycott notices, will not call forth an injunction unless there is a likelihood of a great and lasting injury by an illegal act, but that such acts may be reached by civil or criminal processes. A trade boycott, where intimidation of third parties—employees—was purely moral, and where there was no element of monopoly, was declared legal.

Statutes: Ann. Code and St. 1902, Sec. 1971, entitled "Intimidation, etc., of Employers and Employees." Misdemeanor, any interference with employees in continuing or performing work, through force, threats, or intimidation, and the circulation of any false written or printed matter for purpose of securing employment or discharge of any one or the altering of a person's mode of carrying on his business. Punishment, 1 to 6 mos., or $10 to $200.

Longshore Printing Co. v. Howell (1894). For Injunction. Compound Boycott Involving Patronage. (Also Political Boycott.) Injunction Refused. Def., president of the Multnomah Typog. Union, ordered dismissal of messenger boy. Demand refused, def. called men out; union published in *Oregonian* a request that it be borne in mind that the pl.

company was a non-union office; its delegates visited patrons and threatened to cease dealings if they did not withdraw; they posted notices of the boycott, and threatened members of the city council with their displeasure at the polls if they gave the city printing to the pl., who was the lowest bidder. Two customers were shown to have withdrawn during several months. Held that these acts did not show likelihood of irreparable injury; that the court will not issue an injunction until it is satisfied that the case before it is a right about to be destroyed, or that a great and lasting injury is about to be done by an illegal act, and that the acts here were not so direct or positive, nor so persistently and wickedly repeated and maintained when taken in connection with accompanying incidents, as to warrant an injunction. It inferred, however, that a civil or criminal action could be brought.

Union Labor Hospital Ass'n v. Vance Redwood Lumber Co. (1911). Trade Boycott. Legal. Defs., employers of labor, as a result of agreement on a certain form of hospital relief, gave their employees tickets which would admit them to 4 hospitals of the city, excluding pl.'s. Held that no malicious intent to injure the pl.'s business was shown, and that, even if such malice existed, defs. exercised a legal right, and motive under these conditions was immaterial; that intimidation of employees was purely moral, and not illegal, and that no element of monopoly entered into case.

South Dakota

Statutes: No decision in highest court noted. Rev. Code, 1903, Sec. 757 and 758, entitled "Intimidation of Employers and Employees." Act makes it a misdemeanor to interfere by force, etc., with workers in their employment, and employers in the conduct of their business.

Utah

No decisions.

Statutes and Constitution: Constitution, Art. 12, Sec. 19,

entitled "Interference with Employment." The malicious interference by any person with the employment of any worker is declared a crime. Compiled laws, 1907, Sec. 1347 x, entitled "Interference with Employment." Act makes misdemeanor interference with employment of one engaged in labor. Sec. 4487 x 11, entitled "Interference with Employment—Intimidation." Act makes misdemeanor, threatening to destroy property, or to do bodily harm in order to prevent person from entering employment, etc.

Washington

Coercion of workingmen is forbidden by statutes. Courts have enjoined boycotts, in the course of which customers are induced maliciously to cease trading, and the public at large is persuaded by the boycotters, gathered around the establishment, not to patronize the concern. An employer's boycott is subject to civil action when he coerces another to discharge a workman.

Statutes: Acts of 1909, Chap. 249, Sec. 130, entitled "Conspiracy against Workingmen." Act declares illegal a conspiracy of two or more to prevent another from exercising any lawful calling or doing any other lawful act, by force, threats, or intimidation, or from interfering with his tools. No overt act need be proved. Chap. 249, Sec. 362, entitled "Coercion of Workmen," etc., makes illegal attempt to intimidate a person by force or threats, or to deprive him of his tools in order to induce him to do or abstain from doing a lawful act. Code 1902, Sec. 6518, prohibits intimidation in case of coal mines. (Application Doubtful.)

Jensen v. Waiters' Union (1905). For Injunction. Secondary or Compound Boycott Involving Patronage. Illegal. Waiters struck against proprietor of the Hotel Bismarck, Seattle, whose restaurant had a capacity of 550, and a daily patronage of 2,500 to 3,000 a day, on account of the employment of non-union waiters. Strikers congregated around the restaurant at noon, and attempted to persuade customers not

to enter, and by this means reduced the daily receipts $100 to $150 a day. Held that persons having no legitimate interest to protect could not ruin the business of another by maliciously inducing patrons and other persons not to deal with him, and by congregating about his place and there, by persuasion or force, preventing the public at large from entering his place of business. Defs., however, have the right to strike at any time, and to state publicly their grievances.

Jones v. Leslie (1910). Civil Action. Employer's Boycott. Illegal. Def., for whom pl. formerly worked in Seattle as teamster, notified his patron that if he allowed his teamster, for whom pl. was then employed, to continue pl.'s employment, he, the def., would withdraw his patronage. Held that this action interfered with the right of employment, which was the laboring man's property, and was actionable.

Wyoming

No statutes or legal decisions noted.

FEDERAL CASES

The federal courts have almost unanimously decided that secondary and compound boycotts in labor disputes are illegal. Judge Caldwell's dissenting opinion in the Oxley Stave Case of 1897 well-nigh stands by itself in its liberal character. One court has, however, affirmed the right of employees to strike or threaten to strike if their employer continued to work on material supplied by another firm against which a strike was being waged.

Most of the cases in the eighties and nineties, decided by the federal courts, dealt with boycotts on the transportation system. A number in recent years have involved workers in the building trades.

While boycotts have thus been considered illegal, labor men claim that blacklists have virtually been legalized by the decision in the Adair Case, in which that portion of the Erdman

law preventing employers from discharging employees, on account of their membership in labor unions, was declared unconstitutional. Some forms of trade boycotts were also declared legal.

Among the U. S. Statutes brought to bear against boycotting have been the Sherman Anti-Trust Law, the Interstate Commerce Law and the statute against conspiracy. The laws relating to the interference with the U. S. mails have also been brought into play.

For Federal Statutes on subject, see Chapter XI.

U. S. v. Kane (1885). U. S. Circ. Ct., D. of C. For Contempt. For Injunction. Intimidation of Workmen (On Roads of Receiver). Illegal. Def. was cited for contempt for interfering with railroads in the hands of the receiver. Employees can persuade others to leave employment, but if they resort to intimidation and violence, and thus prevent receiver from operating his road, they may be found guilty of contempt of court.

In re Wabash (1885) and In re Higgins, 1886, similar to above.

Francis v. Flinn (1886). (U. S. Sup. Ct.) For Injunction. Trade Boycott. (Libelous Circulars.) Not Enjoinable. Owner of a pilot boat in Mississippi charged that defs. endeavored to destroy his business by publications in the newspapers, suits and injunctions. Held that if the pl. was wrongly interfered with he could secure his redress at law, and, if publications were false, could prosecute for libel; that, if the court could interfere by means of an injunction in such cases, it would draw to itself the greater part of the litigation properly belonging to courts of law.

Old Dominion Steamship Co. v. McKenna (1887). (U. S. Circ. Ct., S. D., N. Y.) Civil Action. Compound Boycott Involving Patronage and Workmen. Defs., members of Longshoremen's Union, were accused of procuring workers to leave their employment in a body in order to compel an increase of wages given to Southern negroes and also of deterring merchants, through threats, from shipping over the boy-

cotted lines. An action was brought to recover $20,000 alleged damages. Held a misdemeanor, at common law as well as by Sec. 168 of Penal Code of N. Y., to combine to interfere by threats with freedom of employers to control their business.

Emack v. Kane (1888). (U. S. Circ. Ct., N. D., Ill.) For Injunction. Trade Boycott. Illegal. Defs. were charged with threatening to sue for infringement those persons dealing with pl.'s patented article. Held that, where these charges of infringement of patents were not made in good faith, but with intent to injure pl.'s business by intimidating customers, court of equity had jurisdiction. If slander or libel were purely personal, however, redress might properly be left to the courts of law, inasmuch as no falsehood could wholly destroy a man's reputation with those who knew him.

Callan v. Wilson (1888). (U. S. Sup. Ct.) Criminal Conspiracy. Compound Labor Boycott. Defs. Entitled to Trial by Jury. Musicians were accused of refusing to work for complainant, of persuading others to refuse to work, and of threatening firms with the withdrawal of patronage if they continued to employ musicians not members of the Knights of Labor Council. They were charged with conspiring to prevent another from pursuing his calling anywhere in the United States, and with boycotting, injuring, molesting, oppressing, intimidating and reducing him to want and beggary. Defs. had been convicted by a police court. The Supreme Court decided police court was without constructive power to try, convict and sentence, and that defs. were entitled to trial by jury in a conspiracy case.

Casey v. Cincinnati Typog. Union No. 3 (1891). (U. S. Circ. Ct., S. D., Ohio.) For Injunction. Compound Boycott Involving Patronage. (Circulars.) Illegal. Primary Boycott Legal. Defs. struck against the *Commonwealth,* newspaper of Covington, Ky., for refusal to unionize shop, and issued handbills and circulars to advertisers declaring that the failure on their part to withdraw their advertising would mean the loss of the support of organized labor. They urged newsdealers to cease to handle pl.'s paper, and organized labor

to cease to patronize advertisers. Two firms were induced to withdraw advertising, the loss being estimated at $150 a month. Defs. denied having visited pl.'s customers. Held that equity will enjoin publications in pursuance of a boycott, and that the acts of the def. were coercive in their nature and in restraint of trade. They declared, however, that the unions had the right to say that their members would not patronize complainant.

Cœur d'Alene Consolidated and Mining Co. v. Miners' Union of Wardner (1892). (U. S. Circ. Ct., D., Ida.) For Injunction. (Chiefly strike and picketing.)

U. S. v. Patterson (1893). (U. S. Circ. Ct., D., Mass.) (Sherman Anti-Trust Law.) Compound Trade Boycott. Not Prohibited by Law. Def. was indicted for violating the Sherman Anti-Trust Law by threatening prospective customers with actions for infringements of patents, by harassing and intimidating purchasers, inducing them to break contracts, etc. Held that this statute only makes illegal conspiracy to restrain trade by engrossing, monopolizing, or grasping the market; that the statute must be interpreted as a whole; that the second section is limited by its terms to monopoly, and evidently has as its basis the engrossing and control of the market; that the first section is evidently in *pari materia,* and so has the same basis, and that it is not sufficient, therefore, simply to allege a purpose to drive certain competitors out of the field by violence, intimidation, or otherwise.

"If the intention of the statute was that claimed by the United States, I think that the nature of the phraseology would have been 'to injure trade, to restrain trade,' declared the judge. We are now at the point where the paths separate. . . . If the proposition made by the United States is taken with its full force, the inevitable result will be that the federal courts will be compelled to apply this statute to all attempts to restrain commerce among the states, or commerce with foreign nations by strikes or boycotts, and by every method of interference by way of violence and intimidation. It is not to be presumed that Congress intended thus to extend the jurisdiction of the courts of the United States without

very clear language. Such language I do not find in the statute. Therefore I must conclude that there must be alleged in the indictment that there was a purpose to restrain trade as implied in the common law, expressing 'contract in restraint of trade' analogous to that of 'monopoly' in the second section."

Toledo, Ann Arbor and No. Michigan Ry. Co. v. Pennsylvania Co., Lake Shore and Michigan Southern Ry. (1893). (U. S. Circ. Ct., N. D., Ohio.) For Contempt. Injunction. (Involving Inters. Com. Law.) Compound Boycott Involving Patronage. Refusal to Receive Cars from or Deliver Cars to Boycotted Road. Illegal. Facts given in Chap. VI. Engineer refused to move trains until permitted by union leaders. Held that, "if one quits in good faith, absolutely and unconditionally, under such circumstances as are now under consideration, he is exercising a perfect right which cannot be denied him. But so long as he continues in the service, so long the power of the court to compel him to discharge all the duties of his position is unquestioned and will be exercised."

U. S. v. Workingmen's Amalg. Council (1893). (U. S. Circ. Ct., E. D., La.) For Injunction. (Involving Sherman Anti-Trust Law.) (First Application of Sherman Law to Labor Disputes.) Compound Boycott Involving Workmen. (Sympathetic Strike.) Illegal. In dispute between warehousemen and draymen and their employees, arising from refusal to employ only union men, the Amalgamated Council threatened to withdraw men in the subordinate unions until differences were adjusted, and succeeded in doing this, and in stagnating the commerce of the section. Held that the illegality consisted in the endeavor to prevent and the preventing of everybody from moving the commerce of the country; that congress, in passing the Sherman Law, meant to deal with the whole evil of combination in its entirety.

Toledo, Ann Arbor and No. Michigan R. R. v. Pennsylvania Co. *et al.* (1893). (U. S. Circ. Ct., N. D., Ohio, Judge Taft.) For Injunction. Facts stated in Chapter VI.

Judge Taft decided that the issuance of the boycott order

by Arthur was in violation of the Interstate Commerce Act, which provides (Par. 2, Sec. 3) that each road shall give equal facilities to every other connecting road, and declared (Sec. 10, as amended) that any corporation or its agent who disobeys this provision, or who shall abet such disobedience, shall be guilty of a misdemeanor and subject to a fine not exceeding $5,000.

He asserted that a locomotive engineer was an agent within the meaning of the act, and was guilty of violating its provisions if he refused to handle freight, etc., with or without the orders of his principal. He averred that defs. were also guilty of a conspiracy to commit an offense against the U. S., and subject to the penalty of Sec. 5440, Rev. St.

If Sec. 10 referred to managing agents, there would nevertheless be a violation of the law, Judge Taft contended, for any one, though not an officer or agent, succoring and abetting or procuring such officer or agent to violate the section, would be punishable under it as principal, and Arthur and others, if succeeding in procuring managing officers to refuse to handle the cars, were guilty. And, if one is found guilty, all conspiring with that one are also guilty.

The judge further held that the inducing of another to do an unlawful act by threat of withholding labor was unlawful and subject to the injunction.

Waterhouse v. Comer (1893). (U. S. Circ. Ct., W. D., Ga., S. D., Judge Emory Speer.) Compound Boycott Involving Patronage. (Involving Interstate Commerce Law and Sherman Law.) Illegal. During a strike on the Savannah, Americus and Montgomery R. R., an engineer of the Georgia R. R., in the hands of a receiver, refused to transport cars of the Savannah railroad and was discharged. The Br. of Locomotive Engineers applied to have the former contract of employment, with certain modifications, remain in force. Held that such a contract could be made, but the boycotting section (Sec. 12) would not stand, as it violated the Anti-Trust, the I. C. Law and the statute against conspiracy which

prevented the restraining of trade. The judge concluded his opinion with the following remarkable statement:

"In the presence of these statutes which we have cited, and in view of the intimate interchange of commodities between peoples of several states of the union, *it will be practically impossible hereafter for a body of men to combine to hinder or delay the work of transportation companies without becoming amenable to the provisions of these statutes.*"

Dueber Watch Case Mfg. Co. v. Howard Watch Co. (1893). (U. S. Circ. Ct., S. D., N. Y., Judge Coxe.) Trade Boycott. (Involving Sherman Law.) Legal. Def. stated to patrons of pl. that he would not sell his watches to any who bought from pl. Held that it was not in violation of the Sherman law to combine to agree not to sell to dealer who agrees to purchase goods of another designated trader in the same business.

Farmers' Loan, etc., Co. v. Northern Pacific R. R. Co. (1894). (U. S. Circ. Ct., E. D., Wis., Judge Jenkins.) For Injunction. Strike against Receiver's Railroad. Illegal.

U. S. v. Agler (1894). (U. S. Circ. Ct., Ind., Judge Baker.) For Contempt. Injunction. (Involving Sherman Law.) Injunction Binding against One Not Served. Def. was charged with contempt of court for disobeying an injunction. Held that Sherman law conferred jurisdiction over the courts to restrain violation of acts, and that an injunction was binding as against one not served with a subpœna or named when injunction was served on him as one of the unknown defs. named in bill. Here, however, charge lacked certainty, as it was not alleged that def. aided in A. R. U. strike.

In Re Grand Jury (1894). (U. S. Dist. Ct., S. W., Cal., Judge Ross.) Criminal Conspiracy. (Interference with U. S. Mails.) Refusal of Railroads to Run Separate Cars not Illegal. In Pullman strike (see Chap. VI) court declared that the railroads were not obliged to leave off cars, if same would not be moved by employees, and run the rest.

When the regular passenger trains are designated for carrying mail, the failure of the railroad to run others for that purpose is not a violation of the provision against the obstruction and interruption of mails.

In Re Grand Jury (1894). (Dist. Ct., N. D., Ill., Grosscup.) Criminal Conspiracy. Insurrection. (Involving Interst. Com. Law and U. S. Mails.) Instructions concerning U. S. mail and interference with interstate commerce similar to other cases. Any demand that others quit service, unless those demanding are clothed with lawful authority, is illegal, if it constitutes an injury to the U. S. mails or to interstate commerce. The judge also charged that, if the mails were wilfully obstructed, and attempted arrests were opposed in such a way as to constitute a general uprising, an insurrection was established.

In Re Grand Jury (1894). (U. S. Dist. Ct., N. D., Cal., Judge Morrow.) Criminal Conspiracy. (Involving Sherman Law and U. S. Mails.) Illegal. In Pullman strike (see Chap. VI).

Defs. charged with and declared guilty of interfering with U. S. mails, as they prevented passenger cars, ordinarily connected with mail cars, from running. Judge Drummond said:

"It is not practicable, as a general thing, for a railroad to transport a mail car by itself, because that would be attended by serious loss, so that, while nominally they (the defendants) permit the mail car to go, they really, by preventing the transit of other passenger cars, interfere with the transportation of the mails."

Ex Parte Lennon (1894). (U. S. Circ. Ct. App. 6 C.) Habeas Corpus. In Pullman strike James Lennon sought writ of habeas corpus and declared that he had not been served with the injunction writ. Held that it was not necessary that this writ should be served, but only that the def. had knowledge that it had been made.

U. S. v. Elliott *et al.* (1894). (U. S. Circ. Ct., E. D., Mo., Judge Phillips.) For Injunction. (Involving Sherman

Law.) In Pullman strike it was charged that defs. violated the Sherman law by interfering with operation of all railroads coming into St. Louis. A temporary injunction had been issued by Judge Thayer (62 Fed. 801). Ct. held that the Sherman Anti-Trust Act applied to prevent combinations by railroad employees to prevent all the railroads of a large city, engaged in carrying U. S. mails and interstate commerce, from carrying freight and passengers, etc.

Thomas v. Cinn., N. O., and Texas Pac. Ry. Co. (In re Phelan) (1894). (U. S. Circ. Ct., S. D., Ohio, Judge Taft.) For Contempt. Injunction. (Involving Conspiracy, Sherman Law, Interference with U. S. Mails, Breaking of Contracts.) In Pullman Strike Coercing Railroad Receiver to Withdraw Patronage from Pullman Company through Fear of Strike. Connected with Pullman Strike, see Chap. VI. Injunction had been issued against Phelan and others for boycotting, etc. The court held that Phelan was conspiring to do an unlawful act, and that, in disobeying the injunction, he was guilty of contempt. The combination sought to compel the railroad companies to break their contracts with Pullman. Judge Taft declared:

"All the employees had the right to quit their employment, but they had no right to combine to quit in order thereby to compel their employer to withdraw from a mutually profitable relation with third party for the purpose of injuring that third person when the relation thus sought to be broken had no effect whatever on the character or reward of their service."

He also characterized the boycott as malicious and as constituting a violation of the Sherman law and of the statute forbidding interference with U. S. mails. The doctrine of free speech, he averred, would not prevent the issuance of an injunction against continuing the boycott.

U. S. v. Debs (1894). (U. S. Circ. Ct., N. D., Ill., Judge Wood.) For Injunction. Contempt. Involving Sherman Law, Interference with U. S. mails and Interstate Commerce. Illegal. Facts given in Chapter VI. Held that

the Sherman law condemned all combinations if they be in restraint of trade and not merely trusts. Interference with transportation and travel by rail was also worked out.

In Re Debs (1895). (U. S. Sup. Ct., Justice Brewer.) Interference with Interstate Commerce and Transmission of the Mails. Illegal. Facts and opinion stated in Chap. VI.

Arthur v. Oakes (1894). (U. S. Circ. Ct. Apps.) For Injunction. Strike against Receiver. Violation of Contracts. Illegal. Charge was made that defs. procured others to quit service in violation of contracts. Held that combination to induce such leaving of service of receiver by the use of intimidation was illegal; that here the methods used should be described more specifically.

Dueber Watch Case Mfg. Co. v. E. Howard Watch and Clock Co. *et al.* (1895). (U. S. Circ. Ct. Apps., 2 C.) Civil Action. Trade Boycott. Legal. See Dueber, etc., *supra.* Held that it was not in violation of the Sherman Anti-Trust Law prohibiting monopoly for one to agree not to sell goods to firms purchasing of pl. in order to get pl. to join with def. in fixing arbitrary prices, as the combination did not include all manufacturers of watches, but, at the most, resulted in only partial restraint of an article not a prime necessity.

Continental Insurance Co. v. Bd. of Fire Underwriters of the Pacific *et al.* (1895). (U. S. Circ. Ct., N. D., Cal., Judge McKenna.) For Injunction. Trade Boycott. Illegal. One of agents of the associated companies stated that he had authority to cancel certain policies of outside companies, and to rewrite them at lower rates, when, in fact, he had no such authority, and he threatened to boycott the agents and customers of such outside companies unless they withdrew their patronage. Held that these acts were illegal and would be enjoined.

U. S. v. Cassidy (1895). (U. S. Dist. Ct., N. D., Cal., Judge Wm. W. Morrow.) Criminal Conspiracy. (Involving U. S. Mail and Restraint of Interstate Commerce.) Illegal. This was an indictment in Pullman strike against John

Cassidy and others under Rev. St. 5440 for a conspiracy to obstruct the mail of the United States, and a combination and conspiracy to restrain trade and commerce between the states of the union and with foreign countries. A number of acts of violence were also charged. It was said that this was the longest charge ever delivered in a criminal case in the country, and was only exceeded in any case by the charge of Lord Chief Justice Cockburn in the Tichborne Case. In the course of his charge the judge declared a strike unlawful, if used to boycott a third party or to obstruct mail or restrain trade. After 4 days and nights of deliberation the jury failed to agree, and defs. were discharged.

Blumenthal v. Shaw (1897). (U. S. Circ. Ct. Apps., 3 C., Del., Judge Acheson.) Blacklist. Illegal. Pl. was discharged from factory in Wilmington, Del., and, on going the rounds of factories, was refused employment on account of the request made by the def. Held action illegal.

Oxley Stave Co. v. Hopkins (1897). (U. S. Circ. Ct. Apps., 8 C.)

Compound Boycott Involving Patronage. Illegal. (Strong Dissenting Opinion.) Defs. struck against pls. for placing machine-made hoop barrels in their establishment, and requested the trade and unionists not to buy nor to purchase goods packed in these barrels. Held that this combination deprived one of right to run business as he thought best through threats and intimidation, and was unlawful. Judge Caldwell dissented, declaring that workers were within their rights to refuse to purchase certain goods and to induce others to do likewise, as long as peaceful means were employed; that the serving of notice that they would discontinue the purchase did not constitute a threat; that combination did not introduce an illegal element; that the fact that labor had no present complaint against its wages, etc., did not signify that its action was without proper motive, and that the use of the injunction against such a combination would deprive labor of employing the same methods of competition as are resorted to by capital. Finally, if the courts of equity assumed

the right to enjoin "defs. from withdrawing their patronage and support from pl., it is not perceived why it cannot, by mandate of injunction, make it obligatory upon the defs. to purchase the pl.'s barrels and their contents and persuade others to do the same. The invasion of the natural rights of personal liberty of the def. would be no greater in the one case than in the other."

Chiatovich v. Hanchett (1900). (U. S. Circ. Ct. of Apps., 9 C., Nev.) Trade Boycott. (Coercing Employees.) Illegal. Pl. charged def. with publishing a notice asking his employees to desist from trading with him, and of thus damaging him to the extent of $10,000. Held that this was a malicious interference with the business of another, and illegal; that, however, a primary boycott was legal. The court added that the motive was material when one violated the right of another.

U. S. v. Haggerty (1902). (U. S. Circ. Ct., W. Va.) For Injunction. Compound Boycott Involving Employees. (Chiefly Picketing.) Union men held meetings near homes of employees urging workers to strike. Held that such meetings intimidated employees, and that courts can restrain combination formed to induce contented employees to strike for purpose of inflicting injury on business.

Boyer *et al.* v. Western Union Telegraph Co. (1903). (U. S. Circ. Ct., E. D., Mo., Judge James H. Rogers.) Blacklist. Legal. Pl., a member of the Commercial Telegraphers' Union of Local Lodge No. 3, of St. Louis, alleged that he had been discharged by pl. because he was a member of the union, and had not been able to procure work elsewhere because of the possession by the def. of a book which gave the cause of pl.'s discharge, and because of the conveying of such information to other employers. Held that def. had the right to discharge pl. for any cause, and the mere keeping of a record of such discharge and the giving of such information to others was not an illegal act.

"In the absence of such contract relations, any employer may legally discharge his employee," insisted the court, "with or

without notice at any time. It is not unlawful, in the absence of contract relations to the contrary, to discharge them for that (for belonging to the union) or for any other reason, or for no reason at all. . . . Can a court of equity grant relief to a man who says for his cause of action that he belongs to a reputable organization, and that he has been discharged solely because he did belong to it; that his employer who discharged him keeps a book on which he placed his name, and has set opposite thereto the fact that he discharged him solely because he belonged to such an organization, and that he gives that information to other persons who refuse to employ him on that act?"

The court concluded that, in view of the honorable position occupied by the union to which pl. belonged, it was not unlawful to keep such a book or to notify others of its contents.

Seattle Brewing and Malt Co. v. Hansen (1905). (U. S. Circ. Ct., of Cal., N. D., Judge James H. Beatty.) For Injunction. Secondary Boycott Involving Patronage. (Circulars.) Illegal. Defs., on strike, issued a circular bearing "Organized Labor and Friends, Don't Drink Scab Beer." The circular named certain brands which were unfair, and used other signs, followed by admonition, "Guard your health by refusing to drink unfair beer." Held that these circulars "tended unfairly to obstruct the business of the complainant" and to intimidate timid people.

Aikens v. Wisconsin (1905). (U. S. Sup. Ct., Justice Holmes.) Criminal Conspiracy. Trade Boycott. Illegal. The Journal Company, a corporation in Milwaukee, raised advertising rates 25 per cent., and the managers of the other newspapers in the city combined, agreeing to charge a proportional increase to advertisers who paid to the *Journal* the increased rates. Defs. were convicted under Sec. 4466a of the Sts. of Wisconsin, which imposes imprisonment or fine on any "two or more persons who shall combine . . . for the purpose of wilfully and maliciously injuring another in his reputation, business, trade or profession, by any means whatsoever," etc. An attempt was made to have this law

declared unconstitutional on the ground that it was in conflict with the 14th amendment. Justice Holmes upheld the statute, declaring that the legislature had the privilege of preventing malicious injury of others. He interpreted "maliciously injuring" as "doing harm malevolently for the sake of the harm as an end in itself, and not merely as a means to some further end legitimately desired."

Loewe *et al.* v. California Fed. of Labor *et al.* (1905). (U. S. Circ. Ct., N. D., Cal.) For Injunction. Compound Boycott Involving Patronage. Facts similar to those related in Chap. IX, concerning the Danbury Hatters. Labor unions of California assisted the hatters and concentrated their boycott against Trieste and Co., of San Francisco, dealers in Loewe's hats. Held direct purpose was that of injury, and that combination was an unlawful interference with the business of another. A sweeping injunction was thereupon issued forbidding various forms of boycotting.

Huttig Sash and Door Co. v. Fuelle (1906). (U. S. Circ. Ct., Judge Trieber.) For Contempt. Injunction. Compound Boycott Involving Patronage. Illegal. Members of the Br. of Carpenters and Joiners, on strike, in an endeavor to induce contractors to purchase from union firms, issued a booklet containing names of firms and dealers working under an agreement with the District Council, and a notice that any material not constructed under strict union conditions would not be handled by members of that union. Judge Thayer in 1904 had enjoined the defs. from boycotting the complainant and from giving notice to any firm to decline to purchase materials of any sort from complainant under threats that if such purchases were made they would cause persons in the employ to quit work. They were also enjoined from inducing persons to decline employment, because the firm employing might have purchased material from complainant. Held defendants guilty of contempt.

Montgomery Ward and Co. v. So. Dakota Retail Merchants', Etc., Ass'n (1907). (U. S. Circ. Ct., So. Dak.) For Injunction. Trade Boycott. Legal. Retail Merchants'

Ass'n agreed not to purchase from wholesalers or jobbers who sold goods to catalog or mail order houses. Def., editor of a paper favoring the Retail Merchants, published several articles, including a letter from the secretary of the association, in which it was said that the secretary could not come to any other conclusion than that they (the wholesalers and jobbers selling to the catalog houses) prefer the business of the catalog houses to that of the retailers of the state. Held that this editor could not be enjoined, as he used but mere persuasion. It was also declared that the right to do business included the right to buy as well as to sell, and that the retail merchants had a right to agree not to purchase merchandise from wholesalers or jobbers who sold to catalog or mail order houses, and to inform those who sold.

Shine *et al.* v. Fox Brothers Mfg. Co. (1907). (U. S. Circ. Ct. of App., 8 D., Judge Wm. C. Hook.) For Injunction. Compound Boycott Involving Patronage. Illegal. This case was brought from the Circ. Ct. for the E. Dis. of Mo. An organizer of the Carpenters' and Joiners' Union was sent to St. Louis to assist in the organization of the trimmers. About 90 per cent. of the carpenters were organized. There were 23 open shops where trimming was done, employing about 1,000 employees, only four of whom were members of the union. These shops produced about 80 per cent. of the trimming used in the city. The organizer and delegate from the central organization visited pl. and urged him to place his shop under union regulations and to discharge those employees who refused to join the union. Upon pl.'s refusal, defs. had lists printed and adopted similar measures to those employed in the boycott against the Huttig Sash Co., *supra.* In some instances they called a strike on the firm purchasing of pl. They frequently forced contractors, through fear of cessation of work, to sign contracts stating that henceforth they would deal only with union concerns, and in one instance fined a contractor as well as union workmen on a building, the latter for refusing to quit work when directed by def., and placed on the "We Don't Patronize" list firms which

allowed non-union trim to be used in the construction of their buildings. Held that this was a similar case to that of Hopkins v. Oxley Stave Co., and directed that the order of the Circuit Court be affirmed.

Rocky Mountain Bell Telephone Co. v. Montana Federation of Labor (1907). (U. S. Circ. Ct., Mont., Judge Hunt.) For Injunction. Compound Boycott Involving Patronage. (Threatening Circulars.) Illegal. Employees, on strike against the company, distributed circulars stating that firm was "unfair," "legalized highwaymen," "scabs." Defs. exhorted people not to patronize, and voted to give patronage only to certain firms because others had refused to stop using complainant's telephones. They were quoted as saying: "We will win or put the corporation out of business." Held that acts of the defs. constituted intimidation and a threat to ruin the business of the pl. unless he yielded, and resulted in an unlawful conspiracy to interfere with and destroy lawful business of another; that the pl. was therefore entitled to an injunction to restrain the prosecution of the conspiracy by such methods.

Goldfield Consolidated Mines Co. v. Goldfield Miners' Union No. 220 (1908). (U. S. Circ. Ct., Nev.) Chiefly Picketing. Illegal (when intimidation). Held that workers can persuade men to quit employment, but cannot use threats or compel them to listen to arguments against their will.

U. S. v. Raish *et al.* (1908). (U. S. Dist. Ct., So. D., Ill., Judge Humphrey.) Criminal Action. Secondary Boycott Involving Patronage. Attempt to Defraud by Use of Post Office. Illegal. Pending enlargement of the plant of the complainant, the carpenters' union demanded that all of those working on the new building should be union men, and, on refusal of the company, imposed a fine of $500. The union representatives stated that that fine would be remitted if only members of the carpenters' union were employed on the job, otherwise the complainant would suffer a boycott. Letters were afterwards sent to complainant's customers asking them not to handle its product, and defs. were indicted for an

attempt to defraud by use of the post office, under Sec. 5480 of the federal statutes. The first count in the indictment declared that the defs., officers of the union, endeavored to induce the company to pay a fine under threat of a boycott, and that the scheme contemplated the use of the mail. The second and third counts charged that the defs. would, through use of the mails, cause a boycott to be put in force against the business of the Wahlfield Mfg. Co., and thus injure that company in its business. Held that the statute was violated if either of those counts was proved. Jury held defs. guilty.

Iron Molders v. Allis Chalmers Co. (1908). (U. S. Circ. Ct. App., 7 Circ., Wis., Judge Walker.) For Contempt. Injunction. Intimidating Workmen. Chiefly picketing, and violation of injunction preventing picketing, accompanied by an attempt to intimidate.

Adair v. U. S. (1908). (U. S. Sup. Ct.) Blacklist (so-called). Legal. O. B. Coppage, a locomotive fireman employed by the Louisville and Nashville R. R., was discharged by William Adair, a master mechanic in employ of this road, Oct. 15, 1906, because he was a member of the Br. of Locomotive Firemen. Adair was indicted, charged with violating the 10th Sec. of the Erdman law, an act passed by Congress June 1, 1898 (30 Stat. at L. 424, Chap. 370, U. S. Comp. Stat., 1901, p. 3205), which made it illegal "to threaten any employee with loss of employment," or to "discriminate against any employee because of his membership in such a labor corporation, association or organization." The lower court held that this section was constitutional (152 Fed. 737). The defendant was therefore found guilty and ordered to pay a fine of $100. The case was appealed to the U. S. Sup. Ct. Here the section was declared unconstitutional, the judgment was reversed, and the case dismissed.

The court held that the provisions against discrimination were repugnant to the fifth amendment of the constitution, which declared that no person shall be deprived of liberty or property without due process of law; that "such liberty and right embraced the right to make contracts for the purchase

of the labor of others, and equally the right to make contracts for the sale of one's own labor," so long as this right did not prove inconsistent with the public interests.

"It is not within the functions of government—at least in the absence of contract between the parties—to compel any person, in the course of his business and against his will, to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services for another. The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. . . . In all such particulars the employer and employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land."

Judge Harlan claimed that Congress could not pass such a law under the general power of regulating interstate commerce, "as there is no such connection between interstate commerce and membership in a labor organization." He also averred that, paramount as is the power of Congress to regulate interstate commerce, "it cannot be exerted in violation of any fundamental right secured by any other provisions of the Constitution."

Justice Holmes, in a dissenting opinion, claimed that the relation of labor unions to interstate commerce was at least as intimate a one as that of safety couplers and the liability of master to servant; that the provision was a very limited interference with freedom to contract, as it did not require the carriers to employ anyone or forbid them to refuse to employ anyone; that the application of the fifth amendment had been stretched to the extreme, in his opinion, and that the provision might very well have been passed by Congress as good public policy.

"Where there is, or generally is agreed to be, an important ground of public policy for restraint, the Constitution does not forbid it (the right to restrain freedom of contract),

whether this court agrees or disagrees with the policy pursued."

The justice averred that such a provision might be effective in preventing strikes, and fostering arbitration, and that, even though it resulted only in a closed shop, it would not be unwarranted for Congress to assume that the results would be for the social advantage.

Citizens' Light, Heat and Power Co. v. Montgomery Light and Water Power Co. (1909). (U. S. Circ. Ct., Ala.) Defs. were charged with persuading pl.'s customers to break their contracts, guaranteeing them against liability. Held at common law, a trader, to get other man's customers, could use any means not involving violation of the criminal laws or amounting to fraud, duress or intimidation, or the wrongful inducing of the breach of contract.

Iron Molders' Union v. Allis-Chalmers Co. (1909). (U. S. Circ. Ct. App., Judge Baker, Judge Grosscup concurring.) Case originally from Wisconsin. For Injunction. Coercing Patrons to Withdraw Patronage Through Fear of Strike. Legal. During course of strike, defs. procured iron molders in other foundries, who were also members of the Iron Molders' Union, to refuse to make the castings of the Chalmers Company. These molders notified their employers that, unless the latter cancelled his contracts with pls., they (the employees) would strike. Held that such action was legal. Judge Baker declared:

"If appellee had the right (and we think the right was perfect) to seek the aid of fellow foundrymen to the end that the necessary element of labor should enter into appellee's product, appellant had the reciprocal right of seeking the aid of fellow molders to prevent that end. To whatever extent employers may lawfully combine and coöperate to control the supply and conditions of work to be done, to the same extent should be recognized the right of workmen to combine and coöperate to control the supply and the conditions of the labor that is necessary to the doing of the work. In the fullest recognition of the equality and mutuality and their restrictions lies the peace of capital and labor, for so they, like nations with equally well

drilled and equipped armies and navies, will make and keep treaties of peace, in the fear of the cost and consequences of war."

Irving v. Joint District Council, U. Br. of Carpenters, etc. (1910). (U. S. Circ. Ct., So. D., N. Y., Judge Ward.) For Injunction. Compound Boycott Involving Patronage. Illegal. Carpenters and Joiners endeavored to compel Irving and Casson, who had a factory in Massachusetts for the production of fine woodwork, to run a closed shop. Letters were sent by the officers of the union to a number of present and prospective customers stating that the firm was unfair, and threatening to take off union workers from jobs for which pl. furnished some of the material. Held that these acts were illegal, and that defs. could not legally combine "for the purpose of calling out the workmen of other employers who have no grievances or to threaten owners, builders and architects that their contracts will be held up if they, or any of their subcontractors, use the complainant's trim." The court, therefore, affirmed the granting of the temporary injunction.

Grenada Lumber Co. v. Mississippi (1910). (U. S. Sup. Ct., Judge Burton.) Civil Action. (Sherman Law.) Trade Boycott. Illegal. An association, consisting of 77 retail dealers in lumber, sash, etc., doing business in La. and Miss., agreed not to purchase any material or supplies from manufacturers and wholesale dealers selling directly to consumers and from certain other specified concerns. Sup. Ct. of Miss. declared that this combination was condemned by Sec. 5002 of the Miss. Code, prohibiting, among other things, trusts and monopolies. Appeal was taken on the ground of the statute's unconstitutionality. U. S. Sup. Court held law constitutional; that the combination of the defs. prevented the enjoyment of freedom of contract, and that actions, harmless when done by one man, may involve a public wrong when done by many.

Kolley v. Robinson (1911). (U. S. Circ. Ct. App.) Compound Boycott Involving Workmen. Chiefly Picketing. Illegal. Held unlawful for workmen to induce those taking

their places to quit, by actual assaults or threats. (Originally from Missouri.)

BUCK'S STOVE CASE

Buck's Stove and Range Co. v. American Federation of Labor, *et al.* (Dec. 18, 1907.) (Sup. Ct., D. of C.) For Injunction. Compound Boycott Involving Patronage. ("We Don't Patronize" List.) Coerce Patrons to Withdraw Patronage from Boycotted Firm. Illegal. Facts in Chap. VIII. Held that actions of defs. constituted an illegal conspiracy, as they interfered, without justifiable cause, with freedom of pl. and customers to buy and sell; that the fact that the ultimate end in view was to benefit defs. did not work out justification, as the immediate motive was that of punishment and injury; that actions of combination might be illegal, although they would be legal if done by a single individual; that boycotting unlawfully interfered with property rights, as business was property within the meaning of the law. Nor could it be said that the right of freedom of the press was infringed by the injunction, since the publication was a step in a criminal plot. Sweeping Injunction issued by Judge Gould.

The Buck's Stove and Range Co. v. The A. F. of L. (Dec. 23, 1908). (Sup. Ct., D. of C.) For Contempt. Illegal. Justice Wright reviewed facts of the boycott, and concluded that defs. had been guilty of crime under the common law, inasmuch as they had brought about a breach of pl.'s existing contracts with others and deprived pl. of good will or property. They furthermore had been guilty of a crime defined by the Sherman Anti-Trust law, as they had restrained trade and commerce among the several states. The judge affirmed that Gompers, Mitchell and Morrison, the three defs., had, in advance, determined to violate the injunction, and had violated it. He took the same position on the question of interference with property rights and on the question of freedom of speech as did Judge Gould.

Finally, he contended that the injunction order was neither

void nor erroneous, as had been alleged, but that, admitting that the court had fallen into error, the "duty and necessity of obedience remained nevertheless the same."

Samuel Gompers, John Mitchell and Frank Morrison were sentenced to 12, 9, and 6 months, respectively.

The A. F. of L. v. The Buck's Stove and Range Co. (Mar. 11, 1909). (Ct. of App., D. of C.) For Injunction. Compound Boycott Involving Patronage. ("We Don't Patronize" List.) Illegal. (Injunction Affirmed in Modified Form.) Judge Robb declared the issuance of an injunction was proper. He took virtually the same position as did Judge Gould regarding the unlawfulness of combined action, the question of the right to enjoin free speech and press, and the illegality of the immediate object of def.'s combination, and declared that it placed an unreasonable obstruction in the course of trade. Physical coercion did not need to be proved to make acts illegal. The injunction issued by Judge Gould, however, in the opinion of Judge Robb, was too broad and was therefore modified.[1]

Gompers *et al.* v. Buck's Stove and Range Company (Nov. 2, 1909). (Ct. of Apps., D. of C.) For Contempt. Illegal. Judge Van Orsdel decided that the contempt was a criminal and not a civil one, and that, in the absence of a bill of exceptions, the court must "assume that the evidence was sufficient to establish the truth of each charge contained in the petition, of which the trial justices found the defendants guilty." The inquiry was therefore limited to one of law. The court refused to pass upon the question as to whether defs. could be considered guilty of contempt if they disobeyed only those portions of the injunction which the Court of Appeals had reversed, claiming that "the petition charges a direct violation of those provisions of the original decree which were on appeal affirmed and approved by the court."

Chief Justice Shepard dissented, observing that the contempt proceeding might be regarded as ancillary to the main suit,

[1] See Chap. VIII.

and that, therefore, the evidence might be considered. He contended that "upon the assumption that each and all of the defs. committed some acts in violation of the injunction, both as originally issued and as modified on appeal," the decree should be reversed and the case remanded for trial upon evidence confined to the real question involved.

It was his opinion, however, that the specific acts charged against Gompers and Morrison related wholly to declarations and publications which violated the preliminary injunction as issued, and that a decree rendered in excess of the power of the court—a power limited by express provision of the Constitution—(regarding freedom of speech and press), was absolutely void.

Samuel Gompers *et al.* v. Buck's Stove and Range Co. (May 15, 1911). (U. S. Sup. Ct.) For Contempt. Dismissed. Held that "this was a proceeding for civil contempt where the only remedial relief possible was a fine payable to the complainant," and that there "was therefore a departure—a variance between the procedure adopted and the punishment imposed, when, in answer to a prayer for remedial relief, in the equity cause, the court imposed punitive sentence appropriate only to a proceeding at law for criminal contempt." The court contended, in support of this position, that the case was entitled "Buck's Stove, etc., v. Samuel Gompers *et al.*," and not "United States v. Samuel Gompers *et al.*," and that the contempt proceedings were instituted, entitled, tried, and up to the moment of sentence treated as a part of the original cause in equity. It continued:

"The Buck's Stove and Range Company was not only the nominal but the actual party on the one side, with the defendants on the other. The Buck's Stove Co. acted throughout as complainant in charge of the litigation. As such, and through its counsel, acting in its name, it made consents, waivers, and stipulations only proper on the theory that it was proceeding in its own right in an equity cause, and not as a representative of the United States prosecuting a case of criminal contempt. It appears here also as the sole party in opposition to the defendants; and its counsel, in its name,

have filed briefs and made arguments in this court in favoring affirmance of the judgment of the court below."

The court held also that the complainant made each of the defendants a witness for the company, and as such each was required to testify against himself—a thing which would probably not have been suffered if the case had been regarded as one in criminal contempt. The petition prayed, furthermore, that "the petitioner may have such other and further relief as the nature of its case may require," not for punitive punishment. The court therefore reversed the judgment, "but without prejudice to the power and right of the Supreme Court of the D. of C. to punish, by a proper proceeding, contempt, if any, committed against it." In the early part of the decision Judge Lamar affirmed the position of the other judge regarding the power to restrain publications in pursuance of a boycott, disagreed, however, with the court below, in its claim that the judgment should be affirmed if there was one valid count, and declared that the judgment should be reversed if it should appear that the defs. had been sentenced on any count which did not constitute a disobedience of the injunction.

In Re Gompers *et al.* (June 24, 1912). (Sup. Ct., D. of C., Justice Wright.) Contempt. Illegal. Facts stated in Ch. VIII. Court rehearsed at length the original case and the alleged contempt; vigorously denounced defendants for the bold and unsubmissive attitude they assumed, declaring that the contempt committed by at least one of the defendants was "an open and bold deliberate attack upon the foundations of society and the law," and ended by doling out to them the original sentence.

In Re Gompers *et al.* (May 5, 1913). (Ct. of App., D. of C., Justice Van Orsdel.) Contempt. Illegal. Facts in Ch. VIII. Held that the lower court had the legal right to hold the defendants in contempt, but that the sentence was excessive, and that the Court of Appeals had the right to reduce such sentence. A reduction was therefore made, Gompers

being sentenced to thirty days in jail, and Mitchell and Morrison being fined $500 each, and in default of payment to be confined in jail until released. Justice Shepard again dissented. He claimed that the criminal contempt charged constituted an offense against the United States, and was therefore subject to the bar of the Statute of Limitations.

DANBURY HATTERS' CASE

Loewe v. Lawlor (Feb. 3, 1908). (U. S. Sup. Ct.) (Involving Sherman Anti-Trust Law.) Compound Boycott Involving Patronage. Illegal. Facts stated in Chapter IX. Held that boycott of hatters was combination in restraint of trade, and thus in violation of the Sherman Anti-Trust Law which prohibits "any combination whatsoever to secure action which essentially obstructs the free flow of commerce between the states, or restricts, in that regard, the liberty of the trader to engage in business." In reply to the argument that the acts of defendants did not affect interstate commerce, the court averred:

"If the purpose of the combination were, as alleged, to prevent any interstate transportation at all, the fact that the means operated at one end before physical transportation commenced and at the other end after physical transportation ended was immaterial."

"Nor can the act in question be held inapplicable because defendants were not themselves engaged in interstate commerce. The act made no distinction between classes. It provided that 'every' contract, combination, or conspiracy in restraint of trade was illegal. The records of Congress show that several efforts were made to exempt, by legislation, organizations of farmers and laborers from the operation of the act, and that all efforts failed, so that the act remained as we have it before us. . . ."

"The only inquiry is as to the sufficiency of the averments of fact. . . . It appears from the declaration that it is charged that defendants formed a combination to directly restrain pl.'s trade; that the trade to be restrained was

interstate; that certain means to attain such restraint were contrived to be used and employed to that end; that those means were so used and employed by the defendants, and that thereby they injured people's property and business. . . . We think a case within the statute was set up and that the demurrer should have been overruled."

Lawlor *et al.* v. Loewe *et al.* (May 8, 1911). (U. S. Circ. Ct. App., 2nd C.) Damages for Violation of Sherman Anti-Trust Law. Judgment Reversed. Defs., who were declared guilty of violating the Sherman Anti-Trust Law in the Circ. Ct. in Connecticut, appealed, chiefly on the ground that the action of the court was improper in taking from the jury the duty of determining the liability of the various defendants for the acts of the officers and agents of the union. Held that the trial judge was in error in taking the case from the jury that the mere fact that an individual was a member of and contributed money to the treasury of the United Hatters' Ass'n did not make him the principal of any and all agents who might be employed by the officers in carrying out the objects of the association, and responsible as principal if such agents used illegal means or caused illegal methods to be used in undertaking to carry out those objects.

"The clause of the constitution of the United Hatters, which provides that certain of the officers 'shall use all the means in their power to bring such shops (non-union) into the trade,' does not necessarily imply that these officers shall use other than lawful means to accomplish such object," declared the court. "Surely the fact that an individual joins an association having such a clause in its constitution cannot be taken as expressing assent by him to the perpetuation of arson and murder. Something more must be shown, as, for instance, that with the knowledge of the members unlawful means had been so frequently used with the express or tacit approval of the association, that its agents were warranted in assuming that they might use such lawful means in the future, that the association and its individual members would approve

or tolerate such use whenever the end sought to be obtained might be best obtained thereby."

While the court admitted that a mass of testimony had been given by the complainants tending to show agency, it stated that many of the defendants declared their ignorance of the boycott, and that it was the function of the jury to determine their credibility. It also declared that evidence of the payment of dues was not competent for showing ratification, and that certain hearsay evidence should be excluded. The judgment was therefore reversed, and the petition for a rehearing denied.

For later developments, see Chap. IX.

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