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The American Law of Strikes and Boycotts

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THE AMERICAN LAW OF STRIKES AND BOYCOTTS

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CORNELL UNIVERSITY -- SCHOOL OF LAW

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INTRODUCTION.

Strikes and boycotts have recently demanded much of the attention of the public and the courts. The object aimed at in the following pages is to determine and set forth, as completely as is possible within reasonable limits, the American law pertaining to them. The English law will be referred to only in so far as it is necessary to a determination and understanding of the law in the United States.

In England, labor has been for centuries regulated by statutes, and much of the law embodied in them has been held inapplicable to the conditions existing in this country. Scarcely any important cases involving strikes or boycotts came before the English courts prior to the independence of the colonies. The early American decisions had scarcely any English decisions to guide them; and the later decisions have proceeded along the lines marked out in the early American cases, with scarcely any reference to the English decisions and in almost entire independence of them. The influ-
ence of the English cases (excepting the early case of Rex v. The Tailors of Cambridge) has therefore been very slight in this country, and we can afford to ignore them, as the courts have done.

Although the subject is old, text writers have given it little attention. The law applicable to strikes and boycotts must be sought mainly in the cases. These are comparatively few considering the frequency of strikes, and are often so hidden away and obscured as not to be easily discovered. Some recent cases in the United States Courts are of especial interest.

It is as conspiracies that strikes and boycotts have come under cognizance of the law, and as such we shall proceed to treat them. We shall consider them (1) as conspiracies at common law and (2) as conspiracies under the statutes. With their political and economic aspects we are not here concerned. We shall consider them purely in their legal aspects, as employed by combinations and associations of workingmen. In doing this we shall examine all the leading American cases in both state and federal courts. To trace something of the origin and growth of the law pertaining to strikes
and boycotts; to show to what extent they are permitted, and at what point prohibited, by the American law; and to point out the remedies, legal and equitable, furnished against them, is the object of this thesis.
CHAPTER I.

STRIKES AS CONSPIRACIES.

Section 1. Definition.

A strike is defined in Black's Law Dictionary to be "The act of a party of workmen employed by the same master in stopping work all together at a preconcerted time and refusing to continue until higher wages or shorter time or some other concession has been granted to them by their employer." The definition given by Judge Allen in the New York Court of Appeals (Railroad Co. v Bawns, 58 N. Y. 582) and adopted by Mr. Anderson in his Law Dictionary is: "A combination among laborers, those employed by others, to compel an increase of wages, a change in the hours of labor, some change in the manner and mode of conducting the business of the principal, or to enforce some particular policy in the character or number of the men employed, or the like."

Bouvier defines it as "A combined effort of workmen to obtain higher wages or other concessions from their employers by stopping work at a preconcerted time."
Judge Ray in his "Contractual Limitations" says "A strike is properly defined as 'A simultaneous cessation of work on the part of workingmen' and its legality or illegality must depend upon the means by which it is enforced and on its objects."

The definition of the term recognized by the labor organizations of the country, and proffered to the court by the defendants in the notable case of Farmer's Loan and Trust Co. v Northern Pacific R. R. Co., 60 Federal at page 820, was this: "A strike is a concerted cessation of, or refusal to, work until or unless certain conditions which obtain or are incident to the terms of the employment are changed. The employe declines to longer work knowing full well that the employer may immediately employ another to fill his place, also knowing that he may or may not be reemployed or returned to service. The employer has the option of acceding to the demand and returning the old employes to service, of employing new men, or of forcing conditions under which the old men are glad to return to service under the old conditions."

This view of strikes is indeed a rosy one. Judge Jenkins rejects this definition as "misleading and pretentious". He declares that this would be the ideal strike, but one
which never existed in fact; that the strike of history has never been free from coercion, turbulence and riot. He says, "a more exact definition is; a combined effort among workmen to compel the master to the concession of a certain demand, by preventing the conduct of his business until compliance with this demand. The cessation of work is but one, and the least effective of the means to the end; the intimidation of others from engaging in the service, the interference with and the disabling and the destruction of property, and resort to actual force and violence, when requisite to the accomplishment of the end, being the other, and more effective means employed.

It is idle to talk of a peaceable strike; none such ever occurred. x x x A strike without violence would equal the representation of the tragedy of Hamlet with the part of Hamlet omitted."

This view is perhaps too extreme and will not be borne out by the facts.

The perception and memory of the learned judge must have been obscured by visions of Haymarket, Homestead and Pulman. The disorders which accompanied strikes on these occasions filled his imagination and he was unable or un-
willing to look beyond them. A large crowd of dissatisfied men out of employment will often breed turbulence whether it is designed or not. Disorderly strikes have been all too frequent. But it is not true that strikes are invariably or necessarily accompanied by violence or disorder. At least one peaceable strike has come within the personal observation of the present writer. In the City of Ithaca, with its two thousand college students, merchant tailoring is an important branch of trade. In the spring of 1893 the journeyman tailors struck in a body for an advance in wages. There was no threat, no violence, no disorder, no demonstration beyond a peaceable parade by the striking journeymen. In a few days the strike was ended by the employers' acceding to the demands of the workmen.

The great cigar maker's strike at Binghamton in 1890 was peaceable, so was that of the dissatisfied tailors' associations, of New York, just ended as I write these lines in this year of grace, 1895; and so have been many others which a little reflection will recall.

The reason why the peaceful strikes seem so few is because they never attract much public attention; while the strike which has any accompaniments of disorder
like the friendly contests and boyish frolics of college students, are heralded abroad with great exaggeration and lurid coloring in the public press.

However much the several definitions may differ in particulars, they are agreed in the chief essentials, that a strike is (1) the simultaneous quitting of work, (2) by several employes of the same employer, (3) with preconcerted agreement, and, (4) with intent to coerce the employer.

**Boycott Distinguished.** The boycott is a frequent though not an essential accompaniment of a strike. Many strikes partake somewhat of the nature of a boycott; yet the two are distinct. The latter is not essentially a labor trouble, but is the effect of any conspiracy to injure or ruin the business of another, by preventing others from entering into his employment or from patronizing him in his business, without lawful excuse.

**Lockout Distinguished.** A lockout differs from a strike in that it is usually the act of the employer in forcing his employes to cease labor by closing his works and locking the doors against them. The Century Dictionary defines it as "a refusal on the part of an employer to furnish work to his employes in a body, intend-
ed as a means of coercion." The supplement to Webster's Dictionary says "Lockout is a suspension of work on the part of employers, corresponding to a strike on the part of the employes." However, a virtual lockout may be, and is, enacted by employes when they assemble about the works or picket them in such a manner as to prevent those who wish to do so from continuing in the employment.
Section 2. Early English Statutes.

The first English statutes intended specially for the regulation of labor were the "Statutes of Laborers" (23 and 25 Edw. III.), enacted in 1349 and 1350. They were the foundation of the system which oppressed the community for several centuries. They grew out of the distress which followed the great plague which had created a great scarcity of laborers and a consequent demand for increased wages. These statutes required all workmen to present themselves with their tools, in open market, and then to work at fixed wages for whoever should demand their services. Twice a year they were obliged to take an oath to serve faithfully. Artificers who absented themselves from their work were to be branded with a hot iron on the forehead with the letter F denoting the falsity of which they had been guilty in violating their oath to serve according to the statute. No man or woman was permitted at the end of his service to depart out of the hundred, rape or wapentake, to serve or dwell elsewhere, unless he brought letters patent under the king's seal. Persons harboring for
more than one night a wanderer without such letters, were punishable by a fine.

During two hundred years these statutes were confirmed, amended and extended in various ways. The statute 3 Hen. VI. C. I. (1424) made any attempt to neutralize or defeat the provisions of these acts, penal offenses. The more general statute of 273 Edw. VI. C. 15, passed in 1548, forbade all conspiracies and covenants of laborers not to work below certain wages, and made them punishable by severe penalties. Close upon this came the very important statute of 5 Eliz. C. 4 (1562) which revised and consolidated a greater part of the earlier legislation. This statute fixed the hours of labor,— for one-half the year from five in the morning till eight in the evening, and the other half of the year from twilight to twilight,— for various trades and gave justices power to fix the rate of wages.

Piloring, imprisonment, branding and ear splitting were the humane penalties prescribed by these benign old statutes for the laborer who violated them.

Mr. Sampson said of these early statutes, (1 Yates Select Cases III):"These and other stupid acts of oppression are of the same family, so connected in kind that
they hang together like a tapeworm. You can not take one but you must pull all with you."

No other general and permanent act like that of 5 Eliz. was passed until the Combination Laws, 40 Geo. 3 C. 60, in 1800. They declared combinations to raise wages or to alter the hours of labor to be illegal and punishable by imprisonment for two months at hard labor. The same penalty was imposed for interfering with any person in the conduct of his business and in the employment of his workmen and servants. Arbitration for labor disputes is also provided for.

More liberal and progressive views of the rights of working men and of the relations between employer and employed resulted in the passage in 1825 of the more liberal act of 6 Geo. VI. C. 129, designed to supersede all previous legislation. The modern English doctrine of the rights of labor and labor organizations may be said to date from this act. The complete emancipation of the English laborer is finally proclaimed by the act of 38 and 39 Victoria, C. 36, passed in 1875, which specifically guarantees to labor organizations the right to combine to do any act in furtherance of their interests, which would not be unlawful if done by an
individual.

For our purposes these statutes are important only as showing the legal status of the laborer during this early period, the effect they were able and likely to have had in obscuring, creating, or modifying the common law, as applied to combinations of laborers.
Section 3. Strikes as Criminal Conspiracies.

Criminal Conspiracies. Strikes, then, have always been the result of an agreement, combination, or conspiracy. It is as conspiracies that they concern us here. The term conspiracy does not give any absolute warrant of their illegality. As Judge Ray has said above, their legality or illegality must depend upon their objects and on the means by which they are enforced. It is said the intent of the strikers is always to "coerce" the employer. But coercion in its broad sense is not always unlawful. A man may be forced or coerced to do a good and lawful act, by peaceful and lawful means.

It is only when the conspiracies of the strikers become criminal that they fall within the prohibition of the law.

What, then, is a criminal conspiracy? Lord Denman's famous antithesis in Jones' case, (1832), (4 B and Ad. star page 345.) defines a criminal conspiracy as A combination to do an unlawful act, or a lawful act by unlawful means. This definition has been adopted sometimes with slight modifications, in most subsequent cases.
Judge Shaw has succeeded in defining the offense more fully in *Com. v. Hunt* (4 Met. at page 123.)

He says: "We are of opinion that as a general description, though perhaps not a precise and accurate definition, a conspiracy must be a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful, by criminal or unlawful means."

It has usually been only when strikes have disclosed the nature and characteristics of a criminal conspiracy that they have come under the cognizance of a court of law. There is no doubt that where strikers cause unlawful injury to person or property they would be liable in a civil action for damages. However the impecuniosity of the strikers and the lack of financial responsibility in the labor organizations have rendered these actions usually fruitless and consequently few. Considering the frequency of strikes there are comparatively very few adjudicated cases of any kind, on that subject. They have usually been settled by failure and abandonment of the strike, by concessions on the part of the employer,
or by such suffering on the part of the strikers and
such loss on the part of the employer, as to bring the
parties to a mutual compromise.

Occasionally disorder and violence have been so
prevalent, and business has been so obstructed by the
strikers, that the public authorities have been obliged
to interfere, and the courts have been appealed to for
injunctions, or by prosecutions for Criminal Conspiracy.

Section 4. Were they Criminal at Common Law?

Whether a mere combination to raise wages was a
criminal conspiracy at Common Law has been a much contro-
verted question. The question has its origin in the
first reported case involving a strike that of

Rex v The Journeymen Tailors of Cambridge, 8 Modern 10.

This case arose in England in 1721, and grew out of
an indictment against several journeymen tailors of
Cambridge for conspiring together to raise their wages by
quitting their employment. They were convicted of a
criminal conspiracy, and a motion was made for arrest of
judgement on several errors in the record.

The court conceded that it was no offense for
employers to quit work, but held that a confederation, or
combination to raise wages by quitting work simultaneously was a conspiracy, and as such punishable.

The court said: "The indictment sets forth that the defendants refused to work under the wages they demanded; but although these might be more than is directed by the statute, yet it is not for the refusing to work, but for conspiring, that they are indicted, and a conspiracy of any kind is illegal although the matter about which they conspired might have been lawful for them or any of them to do, if they had not conspired to do it." The court further held that the indictment need not plead the statute, "because it is a conspiracy which is an offense at Common Law."

In holding a conspiracy of any kind to be an offense at Common Law the court relied on the somewhat mysterious and much disputed case of the Tubwomen v The Brewers of London, which is thought to be reported as King v Starling in 1 Siderfin 174, and 1 Kebles 650. This case, however, proves to have been an indictment against the brewers of London for a conspiracy to stop brewing a small beer, thus detracting greatly from the king's revenue, and depauperating the farmers of the excise.
It had nothing to do with strikes or wages.

The doctrine of *Rex v Journeymen Tailors of Cambridge*, as well as the authority of the volume (8 Modern 10) in which the case is reported have been vigorously assailed by writers and jurists both in England and the United States.

Stephens in his "History of the Criminal Law of England", (Vol. III p. 209) says: "No case has ever been cited in which any person was, for having combined with others for the raising of wages, convicted of a conspiracy at Common Law before the year 1825. There is indeed one case, that of the Journeymen Tailors of Cambridge, 8 Mod. 10, which may perhaps be an authority the other way but this appears doubtful."

Judge Daly, in the case of *Master Stavedore's Association v Walsh* (2 Daly, N. Y.) commenting on the case of Journeymen Tailors of Cambridge says: "It is not, nor has it ever been a rule of the Common Law that any mutual agreement among journeymen for the purpose of raising their wages, is an indictable offense, or that they are guilty of a conspiracy if, by preconcert and agreement they refuse to work unless they receive an advance of
wages." He treats the report of the case as altogether unreliable.

Wright in his "Law of Criminal Conspiracies and Agreements," page 42, (1873) says of the declaration of the court as to conspiracies in the case of Tailors of Cambridge: "This general expression was in no way necessary for the decision; it is not supported by its reference; and it amounts to the proposition, which is negatived by every previous and subsequent authority, that combination is per se criminal, independently of its purposes. Moreover that the report is untrustworthy appears from the fact that the reporter makes the arguments as to the case at Cambridge turn on 7 Geo. 1 C. 13, which did not apply to Cambridge but only to the metropolis."

After carefully reviewing the English statutes, cases, precedents and text books from 1200 to 1825, Mr. Wright says: "The result of the whole appears to be that there is not sufficient authority for concluding that before the close of the 18th century there was supposed to be any rule of Common Law that combinations for controlling masters or workmen were criminal, except
where the combination was for some purpose punishable under a statute expressly directed against such combination. If such a rule is established by the cases decided since the passing in 1825 of the act 6 Geo. 4, C 129, which have been above considered, this would seem to be a modern instance of the growth of a crime at Common Law by reflection from statutes, and of its survival after the repeal of those statutes, somewhat in the same manner in which combinations for certain kinds of frauds continued to be criminal after those frauds had ceased to be punishable apart from combination."

This view seems altogether reasonable and warranted by the facts.

Mr. Wright does not attempt to claim that it was not criminal at Common Law to conspire to do an unlawful act. There is neither any reason nor any reliable authority for holding that it was a wrongful or unlawful act to ask an increase of wages at common law and independent of early statutory restrictions. His conclusions do not seem to be inconsistent with the assertion of 1 Hawkins' Pleas of the Crown C 27, S. 2 (a book of great authority) that "all conspiracies whatever, wrongfully to prejudice a third person are highly criminal
at Common Law." (The italics are ours.)

For further discussion of the early Common Law doctrine see: Wright's "Criminal Conspiracies and Agreements"; Stephen's History of the Criminal Law of England, Vol. III; Arguments of Sampson and Emmet in the case of the Cordwainers of New York City, Yates Select cases Ill; Com. v. Hunt, 4 Met. 711; Master Stevedore's Association v. Walsh (Daly 5); Cogley on "Strikes and Lockouts" (1894).

Notwithstanding all the adverse criticism this doctrine was expressly or impliedly approved and adopted in many English cases.

(Rex v. Hammond and Webb 2 esp. 719; Rex v. Salter 5 Esp. 125; Rex v. Bikerdike, 1 Moody and Robinson 179; Rex v. Eccles, 1 Leach 274; Rex v. Ferguson, 2 Starkie, 431; Rex v. Bunn 12 Cox. C. C. 316; Rex v. Dewitt, 10 Cox C. C. 592; Rex v. Mawbey, 6 Term Rep. 619.)

It was the early rule in the United States; but owing to the different circumstances, and the greater freedom of labor in this country, the doctrine was soon limited and softened in its application.

The American cases which are based upon the common law doctrine, we shall now proceed to consider.
Section 5. Early American Cases, at Common Law.

Boot and Shoe Makers of Philadelphia. The earliest reported case in America is the trial of the Boot and Shoe Makers of Philadelphia, in the Mayor's Court of that City in 1806, Recorder Levy presiding. The report of the case was published in form of a pamphlet which has become very scarce, and I am indebted to Carson's "Law of Criminal Conspiracies and Agreements" for facts of this case and the Pittsburg Cordwainer's case below.

The indictment contained three counts. The first charged the defendants, who were journeymen cordwainers, with having conspired to raise the usual wages paid them and others in their art by refusing to work for such rates, and by demanding in future an advanced rate in accordance with a specified schedule of work and wages. The second count charged them with having agreed, by menaces, threats and other unlawful means, to prevent others in their art from working except at the rate of wages fixed by them. The third count charged that they had conspired to form a club or combination, and had adopted rules and by-laws binding themselves and others not to work for any master
who should employ any workman who had broken any of the rules, and that they would by threats, intimidation, and otherwise prevent any other workman or journeyman from working for such master. After setting forth overt acts, the indictment concluded to the damage of the masters, to the citizens of the commonwealth generally, and to the great damage and prejudice of other journeymen in the art of cordwaining, to the evil example of others, and against the peace and dignity of the commonwealth.

The Recorder in his charge to the jury, after remarking on the natural effect of supply and demand on the price of labor, and the hardships which the conduct of the defendants brought to the community, and to the more indigent defendants themselves, and on the conduct of the strikers in forcing others to join their society, said:

"What is the case now before us? A combination of workmen to raise their wages may be considered in a twofold point of view; one is to benefit themselves, and the other is to injure those who do not join their society. The rule of law condemns both. Hawkins, the greatest authority in the criminal law says that a combination to maintain another, in carrying out a particular object, whether true or false, is criminal. The
authority cited from 8 Mod. Rep. does not rest merely upon the reputation of that book. It is adopted by Blackstone, and is laid down as law by Lord Mansfield in 1793, that an act innocent in an individual, is rendered criminal by a confederacy to effect it.

"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 for each to refuse to do so; for if each stands alone, each may withdraw from his determination when he pleases. In the turnout last fall, if each member of the body had stood alone, fettered by no promises to the rest, many of them might have changed their opinion as to the wages and gone to work; but it has been given to you in evidence that they were bound down by their agreements, and pledged by mutual engagements to persist in it, however contrary to their own judgment. The continuance in improper conduct may therefore well be attributed to the combination." The defendants were convicted.

People v. Melvin. In 1809, the first case in New York State, involving the question of a strike, came before the Mayor's Court of New York City, in the form of an indictment of several journeymen cordwainers of
New York City. The case is reported as People v. Melvin in 2 Wheeler's Cr. Cases, 262. The indictment charged a conspiracy of the journeymen cordwainers, with the features of an unlawful club, rules and by-laws, for the purpose of raising wages; a refusal to work, or to let others work; threats and a conspiracy to prejudice and impoverish, by indirect means, master shoe-makers, to compel other workmen to follow their rules, or, in case they had broken the rules, to prevent their obtaining employment in their art.

A motion to quash the indictment was made on the ground that the combination charged had never been held to be criminal at common law, even in England; and that such indictments were had in England by virtue of the rigid statutes of laborers, which were not in force in the United States. The motion was ably argued before the Mayor by such brilliant counsel as Griffin and Emmet for the people, and Messrs Sampson and Colden for the defendants. (See the witty and learned argument of Sampson given in full in Yates Select Cases, 111. It is well worth perusal.) However, the Mayor died before rendering his decision on the motion; and, as the counsel did not wish to undergo the labor of a re-argument before his
successor, the motion was waived, and the defendants went to trial and were convicted. In passing sentence, the mayor said the object of the conviction was rather to admonish than to punish, advised them to alter and modify their rules and their conduct so as not to incur the future penalties of the law. Each was fined a dollar with costs.

The mayor charged the jury that it was sufficient to constitute the crime of conspiracy if there had been a combination either to do an unlawful act, or a lawful act, by unlawful means. He pointed out that the means employed by the defendants had been arbitrary, coercive and unlawful, but he expressly abstained from deciding whether an agreement not to work, except for certain wages, would amount to the offense of conspiracy, without any unlawful means being taken to enforce it.

**Pittsburg Cordwainers' Case.** At the trial of the Pittsburg Cordwainers, at the borough of Pittsburg, in 1815, Judge Roberts endorses the language of Chitty that "All confederacies wrongfully to prejudice another are misdemeanors at common law, whether the intention is to injure his person, his property or his character." In his charge to the jury he indicated that the indictment
was not to be considered as a controversy between workmen and their employers, and he laid down several propositions which are still sound law in the United States. He said: "It is a prosecution to preserve the public peace and to protect your fellow citizens in the quiet enjoyment of their property and the uninterrupted pursuit of their lawful business. With the regulation of wages you have nothing to do. It has been truly said that every one has the right to affix whatever price he pleases to his labor. It is not for demanding high prices that these men are indicted, but for employing unlawful means to extort those prices; for using means prejudicial to the community..." A conspiracy to compel an employer to have only a certain description of persons is indictable. It is a subversion of the liberty of the citizen. It has a direct tendency to restrain trade and create a monopoly. A conspiracy to restrain a man from freely exercising his trade or profession in a particular place is indictable."

Commonwealth v. Carlisle. Com. v. Carlisle, Brightly's Reports (Pa.) 36, which arose in 1821, is the next authority. It is a leading case on the law of conspiracy, being the first to be decided in a court of last
resort in this country, and being illuminated by the well-
considered opinion of the able Judge Gibson. It does
not, however, directly involve the question of strikes,
employers instead of workmen being the defendants. It is
therefore in point here only as indicating the general
law as to combinations to regulate wages. The case was
brought before the Supreme Court of Pennsylvania on writ
of habeas corpus. It appeared that the relators were
master shoemakers and that they had agreed with each other
not to employ any journeyman who would not consent to
work for reduced wages; but it also appeared that the
object went no farther than to re-establish certain rates
which had prevailed some months before, and from which
there was reason to believe the employers had been com-
pelled to depart by a combination of the workingmen.

A motion to discharge was argued on the ground that
a combination to regulate wages is no offense by the com-
mon law of Pennsylvania. It was held that a combination
is criminal when it has a necessary tendency to prejudice
the public, or to oppress individuals, by unjustly sub-
jecting them to the power of the confederates. Judge
Gibson said: "In no book of authority has the
precise point before me been decided. Rex. v. The Tai-
lors of Cambridge is found in a book (SMod. 10,) which can claim nothing beyond the intrinsic evidence of reason and good sense apparent in the cases it contains." He reviews the preceding American cases given above, showing their inapplicability to the case at bar. He continues, "There are, indeed, a variety of British precedents of indictments of journeymen for combining to raise their wages, and precedents rank next to decisions as evidence of the law; but it has been thought sound policy in England to put this class of the community under such severe restrictions, by statutes that were never extended to this country, that we ought to pause before we accept their law of conspiracy, as respects artisans, which may be said to have, in some measure, indirectly received its form from the pressure of positive enactment, and which therefore may be entirely unfitted to the condition and habits of the same class here."

He reviews briefly the history and nature of the crime of conspiracy; argues that a combination merely as such is not illegal, and that the motive for combining or the nature of the object to be attained, as a result of the lawful act, is the discriminative circumstance. He says: "Where the act is lawful for the individual,
it can be the subject of conspiracy, when done in concert, only where the object is to benefit the conspirators to the prejudice of the public or the oppression of individuals, and where such prejudice and oppression is the necessary consequence of the combination." Several illustrations are given and the judge concludes: "I take it, then, a combination is criminal, wherever the act to be done has a necessary tendency to prejudice the public or to oppress individuals, by unjustly subjecting them to the power of the confederates, and giving effect to the purposes of the latter whether of extortion or mischief. According to this view of the law a combination of employers to depress the wages of journeymen below what they should be if there were no recurrence to artificial means by either side, is criminal."

**Twenty-four Journeymen Tailors' Case.** The doctrines laid down by Judge Gibson in Com V. Carlisle, were reviewed with approval in the famous trial of the Twenty-four Journeymen Tailors in the Mayor's Court of Philadelphia, in 1827. The pamphlet in which the case was published has become very scarce, and I am indebted to Mr. Carson's addenda to "Wright on Conspiracy" for an abstract of the case.
The indictment charged the journeymen tailors with:

1. Conspiracy to raise their wages, and promote their own interests, and to lessen the profits and injure the interests of their employers, the master tailors.

2. Conspiracy to compel employers to reinstate certain persons whom they had discharged for demanding higher wages than the masters alleged they had agreed to pay.

3. Conspiracy to injure, embarrass and obstruct the masters in their lawful business.

4. A general conspiracy to injure and oppress certain journeymen tailors and master workmen who were not parties to the original agreement, or of the general combination. The means adopted were: (1) Desisting from work. (2) Assembling in the streets, obstructing workmen in the employ of the masters, using threats and promises to induce them to leave it, pursuing one, assaulting another, and sending a threatening letter to a third.

The Recorder, Hon. Joseph Reed, in an able charge to the jury, points out the two points of view in which the offense of conspiracy may be considered; the one, where there is a combination to do an act unlawful in
itself, to the injury of an individual, or of the public; the other, where the act done, or the object of it was not unlawful, but unlawful means were used to accomplish it. He explained that the term injury, as applied to an individual must be taken with some qualification, and not be considered as meaning such an injury to the pecuniary interests of another as might arise from the successful competition of others in the same occupation, or from other obvious and natural causes. The recorder refused to accept the English decisions, rejected as vague and unsatisfactory the language of Judge Roberts in the Pittsburg case, "that when divers persons confederate by indirect means to prejudice a third person, it is a conspiracy," and expressly adopted the law as stated in Com. v. Carlisle, supra, with the explanation that he could not suppose Judge Gibson to have intended "by artificial means" to include an agreement among the parties not to work for less wages than they had agreed to accept. But he says: "If there was an agreement among the journeymen to operate on other parties, on innocent third parties, not privy to the original contract, disclaiming its fancied benefits and unwilling to incur its perils, such an agreement would no doubt be criminal, especially
if carried into execution." After reviewing the overt acts, he states that if there was a difference of opinion as to the construction of the contract between journeymen and employers, and the parties to it had refused, the one to work, or the other to employ, "I am not prepared to say that an agreement to that effect in either, provided it did not extend beyond themselves would be illegal."

The case is summed up in the following words:

"These young men have an undoubted right, by agreement among themselves, to regulate their own conduct, to ask as much as they please for their services, to continue or to leave the services of any employer, as reason, inclination, or caprice should dictate; but the moment they interfere with the rights and privileges of others, equally valuable and sacred, as those, which, in this prosecution, these defendants so jealously contend for, they (their acts) are criminal, and if the means employed be combination, they become conspirators."

People v. Trequier. In the case of People v. Trequier and others, (1 Wheeler's Cr. C., 142) tried in City Hall, New York, 1823, the defendants, who were journeymen hatters, were convicted on an indictment for conspiracy to compel their employer to discharge a workman
who had worked for wages below those sought to be established by the combination. It appeared that the master hatmakers, the employers, had entered into an agreement to "knock down wages", and in order to oppose this reduction the defendants and others had formed a society and agreed not to work under a certain price. To sustain this price, they refused to work for their employer unless he should discharge another workman, the prosecutor, who had not conformed to the rules of the society.

In reply to the claims of the defendants that their society was necessary to counteract the force of the association of the employers, the court said: "One conspiracy cannot justify another. However objectionable the conduct of the master hatters may be, it is certain that it furnishes no excuse to the defendants."

This doctrine is somewhat at variance with the view expressed by Judge Gibson in Com. v. Carlisle, supra, that "if the accused can show that the object was not to give an undue value to labor, but to foil their antagonists in an attempt to assign to it, by surreptitious means, a value which it could not otherwise have, they will make out a good defense."
A distinguishing feature of the cases thus far reviewed is that they involve coercive measures against those who were strangers to the combination. It was insisted that not only the masters against whom the strike was declared, but also the workmen who were not members of the association, should submit to the regulations of the confederates. These cases are uniform in holding that combinations thus to interfere with the rights and liberty of others and to coerce them into obedience, are unlawful conspiracies under the common law.

A second and distinct class of cases takes a more liberal view on the questions of combinations. They uphold the legality of associations to maintain or advance wages by rules binding on the members of the association and not designed to coerce third parties.

*Commonwealth v. Hunt.* A leading illustration of this class is Com. v. Hunt (4 Metcalf, 111), tried before the Supreme Court of Massachusetts in 1842. The case is not important on account of the point actually decided, for the decision turned mainly on the defects of the indictment in omitting to charge sufficiently as to the unlawful means employed. It is chiefly valuable
for the progressive views expressed by the learned Chief Justice Shaw, in his elaborate opinion as to the right of workmen to associate and combine for certain (lawful) purposes.

The defendants in Com. v. Hunt were journeymen shoemakers and were tried on an indictment for forming themselves into a society, and agreeing not to work for any person who should employ any journeyman or other person not a member of that society, after notice given him to discharge such workman.

After reviewing the English common and statutory law of conspiracies and the cases in which it had been enforced, and pointing out the limited application of that law to similar cases in this country, Judge Shaw said: "The manifest intent of this association is to induce all those engaged in the same occupation to become members of it. Such a purpose is not unlawful. It would give them a power which might be exerted for useful and honorable purposes, or for dangerous and pernicious ones. Such an association might have been used to furnish each other assistance in times of poverty, sickness and distress; or to raise their intellectual, moral and social conditions, or to make improvement in their
art or for other lawful purpose. Or the association may be designed for purposes of oppression and injustice. But in order to charge all those who become members of an association with the guilt of a criminal conspiracy it must be averred and proved that the actual if not the avowed, object of the association was criminal."

The learned judge goes on to enunciate and illustrate the right of workmen to work, for whom they please, and, further, to agree together to exercise their acknowledged rights in such a manner as best to subserve their own interests. But he continues. "We do not understand from the court in this indictment that the agreement was that the defendants would refuse to work for an employer, to whom they were bound by contract for a certain time, in violation of that contract; nor that they would insist that an employer should discharge a workman engaged by contract for a certain time, in violation of that contract. . . . . If a large number of men engaged for a certain time should combine together to violate their contract and quit their employment together it would present a very different question."

The defendants were acquitted on the ground that the indictment did not sufficiently charge that force, in-
timidation or other unlawful means had been employed to carry out the objects of what was held to be a lawful combination.

To the same effect is—Master Stevedore's Association v. Walsh, (2 Daly 5), a New York case given below. See also State v. Donaldson, below.
Section 6. Later Cases under the Common Law.

The preceding cases may be said to have defined and established the common law in New York, Massachusetts, and Pennsylvania, as applicable to combinations and conspiracies to raise wages or to alter the conditions of labor. The decisions in later cases in these states were usually determined by statutes defining and regulating conspiracies. Later cases define and apply the Common Law in other states.

State v. Donaldson: The common law in New Jersey is laid down in State v. Donaldson, (3 Vroom, 151), 1867. The case was decided the same year as Master Stevedore's Association v. Walsh, below, and the nature of the association was practically the same as in that case; but the element of coercion of third parties seems to have influenced the decision. Here it was held to be an indictable conspiracy for several employes to combine and notify their employer, that unless he discharged certain other workman, they would quit his employment in a body.

There were at the time this case arose, statutes in New Jersey, similar to those in New York, forbidding any combination in restraint of trade and commerce; but the
court thought that the injury to trade in this case was too remote to warrant an indictment under the statute, and grounded its decision on the common law of conspiracy which it held not to have been abrogated by the statute.

In concluding his opinion, Judge Besely said of Com. v. Hunt supra, that he concurred entirely, as well with the principles laid down in the opinion as with the result obtained; but he distinguished that case on the ground that the object of the club, against which the court refused to sustain the indictment in that case, was to establish a general rule for the regulation of its members; while the object of the combination now before the court was to occasion a particular result which was mischievous, and by means which were oppressive.

State v. Stewart : State v. Stewart et al (59 Vt. 273) is the leading recent case decided on the principles of the common law of conspiracies as applicable to strikes. It came before the Supreme Court of Vermont in 1887 on a motion to quash an indictment against the defendants for conspiracy to hinder and prevent the Ryegate Granite Works from employing certain granite cutters, and for
hindering certain laborers from working for the said corporation. The means alleged were threats, intimidation and violence, which were unlawful under the statute.

It was held that such a combination was a conspiracy at common law. And further that the subject matter of the offense being the same in this country as in England; namely, an interference with the property rights of third persons, and a restraint upon the lawful prosecutions of their industries as well as an unlawful control over the free use and employment by workmen of their own personal skill and labor, at such times, for such prices and for such persons as they please, and that the common law of England is "applicable to our local situation and circumstances" in this regard and was therefore the common law of Vermont.

The court said: "The principle upon which the cases, English and American proceed, is, that every man has a right to employ his talents, industry and capital as he pleases, free from the dictation of others; and if two or more persons combine to coerce his choice in this behalf, it is a criminal conspiracy. The labor and skill of the workman, be it of high or low degree, the
plant of the manufacturer, the equipment of the farmer, the investments of commerce, are all in equal sense property. If men by overt acts of violence destroy either, they are guilty of crime. The anathemas of a secret organization of men combined for the purpose of controlling the industry of others by a species of intimidation that works upon the mind rather than the body, are quite as dangerous, and generally altogether more effective, than acts of actual violence. And while such conspiracies may give the individual directly affected by them a private right of action for damages, they at the same time lay a basis for indictment on the ground that the state itself is directly concerned in the promotion of all legitimate industries and the development of all its resources, and owes the duty of protection to its citizens engaged in the exercise of their callings. The good order, peace and prosperity of the state are directly involved in the question."

Cases at Common Law. For further discussion and application of the common law in America see:
State v Buchanan 5 Hor. and J. (Md.) 317; 9 Am. Dec. 534;
Com. v Haines, 15 Phila. (Pa.) 356;
Com. v. Curren, 3 Pitts. (Pa) 143;
State v. Dyer, 128 Mass. 70;
Walker v. Cronin, 107 Mass. 555;
Johnston Harvester Co. v. Meinhardt, 9 Abb. N. Cas. (N. Y.) 393; 24 Hun 489;
State v. Wilson, 30 Conn. 507;
Alderman v. People, 4 Mich. 414;
People v. Petheram, 64 Mich. 252;
Collins v. Hayte, 50 Ill. 337 also 50 Ill. 353;
Spies v. People 122 Ill. 1; 3 Am. St. Rep. 320.
People v. Fisher, 14 Wend. 9;
Master Stevedore's Ass. v. Walsh, 2 Daly (N. Y.) 5;
Chapter II.

STRIKES AS CONSPIRACIES UNDER STATUTES.

Section I. State Statutes Affecting Strikes.

No state in the United States has any statute prohibiting strikes, as such. Many of them, however, have statutes defining unlawful conspiracies prohibiting certain conspiracies to interfere with the rights, liberty or property of others; or to injure trade or business.

Many of the states have statutes prohibiting the use of force, threats or intimidation by either employers or employees.

It is usually by the use of these unlawful means that the strikers have brought their actions within the purview of the statutes.

The New York statutes define what combinations are criminal conspiracies and abrogate the common law.

Section 168, subc. 5 & 6 of the New York Penal Code, provides that if two or more persons conspire either (1) To prevent another from exercising any lawful trade or calling, or doing any lawful act, by force, threats, intimidation, or by interfering or threatening to interfere
with tools, implements or property belonging to, or used by another; or (2) To commit any act injurious to the public health, to public morals or to trade or commerce, each of them is guilty of a misdemeanor. But Section 170, subc. 2, protects labor organizations by providing, "That the orderly and peaceable assembling or co-operation of persons employed in any calling, trade or handicraft, for the purpose of obtaining an advance in the rate of wages or compensation, or if maintaining such rate, is not a conspiracy.

Section 2. Cases Under State Statutes.

People v. Fisher: The first important case to arise on an indictment under the statutes in New York state was that of People v. Fisher, (14 Wendell, 9), tried in the Supreme Court in 1835.

The defendants were journeymen shoemakers at Geneva, N. Y. They entered into an agreement and combination, (1) That if any journeyman shoemaker, whether a member of the society or not should make boots for a compensation below an established rate, he should pay a penalty of $1.00, for the use of the association; and (2) that if any master shoemaker employed any such journeyman who had violated their rules, they would quit his employment. One Pennoyer broke the rules of the society by making boots for a master named Lum for less than the established rate, and refused to pay the penalty. He afterwards entered the employ of Lum, and the defendants, in pursuance of their agreement, quit his employment. C. J. Savage in an elaborate opinion, held such an association to be a violation of the revised statutes
making it a **misdemeanor to conspire to do an act injurious to trade, or commerce.** He said that the legislature had defined conspiracy, and abrogated the common law on the subject. "The conspiracy in this case was not to *commit an offense* within the meaning of the statute; the raising of wages is no offense; the conspiracy is the offense, if any has been committed. x x x The man who owns an article of trade or commerce is not obliged to sell it for any particular price, nor is the mechanic obliged by law to work for any particular price. He may say that he will not make coarse boots for less than $1.00 per pair, but he has no right to say that no other mechanic shall make them for less. The cloth merchant may say that he will not sell his goods for less than so much per yard but he has no right to say that any other merchant shall not sell for less price. If one individual does not possess such a right over the conduct of another, no number of individuals can possess such a right. All combinations, therefore, to effect such an object, are injurious, not only to the individual oppressed but also to the public at large.

In the present case an industrious man was driven out of employment by the unlawful measures pursued by
the defendants, and an injury done to the community by diminishing the quantity of productive labor, and of internal trade."

**Master Stevedores' Association v. Walsh**: The next important New York case is, *Master Stevedore's Association v. Walsh*, (2 Daly 5), 1867. This was an action brought by the association against one of its own members for the recovery of a penalty which the by-laws provided should be forfeited to the society by any member who should work for less wages than the rates agreed upon by the society. The court held that such an association was not an unlawful combination to commit an act injurious to trade or commerce within the meaning of Rev. Stat. 1691 (Penal Code Sec. 163); that such a by-law was not unlawful as made in restraint of trade; and that the society having a right to make such by-law, had a right to attach to its violation a penalty, which was collectible in an action at law.

Judge Daly in his opinion distinguishes this from former cases, especially, *People v. Fisher supra.*, where by-laws were sought to be enforced against those who had not voluntarily submitted to them. He severely criticizes the length to which C. J. Savage went in his
opinion, denying, and making a strong argument to disprove, that it had ever been a rule of the Common Law that it was criminal per se for workmen to agree together for the purpose of raising their wages, or that they are guilty of a criminal conspiracy if by preconcert and arrangement they refuse to work unless they receive an advance in wages. He indorses the language of Judge Gibson in _Cam. v. Carlisle_ supra, and adopts the broad proposition laid down in _Com. v. Hunt_, supra, that men are free to work for whom they please, or not to work if they prefer; and that it is not criminal for them to agree together to exercise this right in such a manner as to subserve their own best interests.

The court concludes: "It is otherwise, however, when associations are formed to intimidate employers or to coerce other journeymen; and it matters little what are the measures adopted, if the object of them is to interfere with the rights or to coerce the free action of others. x x x It may be laid down as the result of this examination that it is lawful for any number of journeymen or of master workmen to agree, on the one part that they will not work below certain rates, or on
the other part that they will not pay above certain prices; but that any association or combination for the purpose of compelling journeymen or employers to conform to any rule, regulation or agreement, fixing the rate of wages, to which they are not parties, by the imposition of penalties, by agreeing to quit the service of any employer who employs a journeyman below certain rates, unless the journeyman pays the penalty imposed by the combination, or by threats, menaces, intimidation, violence or other unlawful means, is a conspiracy for which the parties entering into it may be indicted."

**People v. Van Nostrand et al:** (see Carson's "Law of Criminal Conspiracies") was a case which arose in 1867 under the same Revised Statute as **People v. Fisher**. The defendants were convicted on an indictment for combining, and striking in order to compel their employer to discharge an apprentice in the bricklayer and masons trade who was not a member of their society. The defendants were held to have violated the statute forbidding a combination to do an act injurious to trade or commerce.

In a civil action against several members of the
defendants' society, the father of the boy forced out of employment, recovered damages for loss of wages.

People v. Smith: The preceding cases arose under Sec. 168 of the Penal Code before the passage in 1870 of Section 170, authorizing co-operation to raise wages.

In People ex rel Gill v Smith, (10 N. Y. St. Rep. 730), which came before the court of Oyer and Terminer in New York City on writs of habeas corpus and certiorari, it was held criminal under Sec. 168 of the Penal Code for a committee of the Knights of Labor to demand the discharge of employes because they would not join the society, where the demand was made with a threat to strike in case of non-compliance.

The Court held that Sec. 168, subs. 5 & 6 of the Penal Code are limited by Sec. 170 only to the extent of legalizing a peaceable and orderly strike when resorted to in good faith for the authorized purposes. Section 170 does not authorize a combination of individuals to compel by means condemned in Section 168, all workingmen to join the co-operative forces or to punish those who are supposed to be inimical thereto.

Judge Barrett said that where there is no relation, direct, or indirect, between wages and strikes, the com-
bination which brings the latter about for unlawful purposes is a criminal conspiracy. The strike then involves the "diminishing of productive labor" which is "an injury to the community and an act injurious to trade."

Rogers v. Evarts, (17 N. Y. Sup. 264.), decided in 1891 in the Supreme Court of New York, may be said to lay down the law pertaining to strikes as it exists to-day in this state. The case came before the court on an application by Rogers and other cigar manufacturers of Binghamton for an injunction to restrain the defendants, members of the executive committee of the striking cigar-makers, from advising, aiding and encouraging others to leave the plaintiffs' employment.

It was held lawful for the general committee of the strikers to appoint certain persons, denominated "pickets", to watch the factories, ascertain who were working there and to approach both those who had remained at work, and those who had taken the place of the strikers, and to endeavor to persuade them by arguments to leave their employment in order to promote their mutual interests and make the strike effective. It was held lawful also for the "pickets," as an additional induce-
ment, to offer to indemnify those whom they approached for any losses they should incur in leaving the employment.

It was held lawful for the strikers to post in their public meeting place the names of the merchants who refused to contribute, upon solicitation, as well as those who contributed, to the legitimate expenses of the strikers.

There being no evidence of intimidation in the efforts and arguments of the defendants to effect what was held to be a lawful purpose; i.e. the raising of their wages, the injunction was refused.

Judge Walter Lloyd Smith in his able and lucid opinion, repudiates the common law doctrine, held in England and some American states, of the liability of a third party for inducing, by persuasion and entreaty a servant to quit the employment of his employer. He says: (After citing several authorities upholding the doctrine) "But this doctrine although never overruled has never, to my knowledge, been explicitly upheld in this state.

I am not satisfied with the reason of the rule. x x x x It is at least a matter of grave doubt whether
such right of action will ever be sustained in this state."

The judge points out that the combination of the strikers to advance their wages is protected by Section 170 of the Penal Code. But he says, "If the means employed envolves trespass on any of the plaintiffs' legal rights, then the co-operation ceases to be orderly and the section of the Code becomes in-opera-
tive." He approves the doctrine of Walker v. Cronin,
107 Mass. 564, and Mogul Steamship Co. v. McGregor, 23 Q. B. Div. 598, which justifies a man in using all reasonable and lawful means in the promotion of his own business or interests, even though it result in the injury or ruin of his rival, and exempts him from all liability for any damages which another may suffer as a result of such lawful competition. The language of Judge Barrett in People v. Kostka below, is also quoted and approved.

The court continues: "The tendency of modern thought and of judicial decision is to the enlargement of the right of combination, whether of capital or of labor. All restriction has not been removed; but I am not willing to hold that the combination which appears
in this case, in itself and apart from the methods used, is within the condemnation of the law as it is interpreted by our courts. Irrespective of any statute, I think the law now permits workmen, at least, within a limited territory, to combine together and to seek any legitimate advantage in their trade. The increase of wages is such an advantage.

The right to combine, involves of necessity, the right to persuade all co-laborers to join in the combination. This is but a corollary of the right of combination. x x x x x

There may be cases, however, where persuasion and entreaty are not lawful instruments to effect the purposes of a strike. Even persuasion and entreaty may be used in such a manner, with such persistency, and with such environments as to constitute intimidation. Their use then becomes a violation of law. x x x x

Whenever the strikers assume toward the employes an attitude of menace, then persuasion and entreaty with words, however smooth, may constitute intimidation which will render those who use them liable to both the civil and criminal law."
Section 3. Strikes and Boycotts under the Laws of the United States.

It is only within the last few years that the United States Courts have been called upon to interpret and apply the law to conspiracies involving strikes and boycotts. Under the laws of the United States no conspiracies are criminal unless expressly declared so by statute. The federal courts differ from the English courts and the courts of most of the states in that they consider no conspiracy criminal, however unlawful its purpose, until some overt act has been done to carry out the purpose of the conspiracy.

The cases involving labor troubles, strikes and boycotts, have been brought into the United States courts on two grounds: (1) contempt of court in interfering with a receiver operating a railroad under orders of the court, and (2) violations of the United States statutes forbidding any interference with the transportation of the mails, and any contract, combination or conspiracy in restraint of trade and commerce between the states or with foreign nations. The federal courts have been progressive in their interpretation of the statutes and fearless in the application of the law as thus interpret-
ed. They have left little room for doubt that they will use their whole power when appealed to for the enforcement of the law and the protection of life and property. Their firm and decisive attitude has done much to bring labor organizations and strike leaders to their calm senses and a knowledge of the rights of others, and it must be potent in preventing hasty or reckless outbreaks of labor in the future.

United States Statutes. The laws of the United States pertaining to the carriage of the mails which are material to the present discussion, are as follows:

Section 3995 of the Revised Statutes originally enacted March 3, 1825, reads:

"Any person who shall knowingly and wilfully obstruct and retard the passage of the mail, or any carriage, horse, driver or carrier carrying the same, shall, for every such offense, be punishable by a fine of not more than one hundred dollars."

Section 3964 Rev. Stat. declares that "All railroads or parts of railroads which are now or hereafter may be in operation" are established post roads. Section 3, Act of March 3, 1879, provides that the Postmaster General shall, in all cases, decide on what trains and in what
manner the mails shall be carried.

Section 4000 of the Revised Statutes provides that "Every railway company carrying the mails shall carry on any train which may run over its road, and without extra charge therefor, all mailable matter directed to be carried thereon, and the person in charge of the same".

The other United States Statutes involved in the discussion of strikes and boycotts is the act of July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies," (26 St. p. 209, c. 647). The sections in question are as follows:

"Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal.

Section 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the trade or commerce among the several states or with foreign nations, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the
The interpretation of these laws by the courts and their application to strikes and boycotts can be best presented by a review of the leading cases arising under them.

Section 4. Cases under United States Statutes.

The first case of importance is the United States v. Patterson, et al, 55 Fed. 605, which came before the Circuit Court for the district of Massachusetts, on Feb. 28, 1893. It arose on a demurrer to an indictment, against Patterson and others, under the act of July 2, 1890. Judge Putnam decided that the words "trade" and "commerce" as used in the act are synonymous, and he interprets the statute as applying duly to combinations and conspiracies which aim to restrain trade between the states by engrossing, monopolizing or grasping the market. He expressly guards against the broader interpretation given to the statute later in U. S. v. Working-men's Amalgamated Council of New Orleans, (94 Fed.Rep. 994) ; U. S. v. Debs (64 Fed. 763) ; and U. S. v. Cassidy, (67 Fed. 698.) His language is as follows:

"Careless or inapt construction of the statute as bear-
ing on this case, while it may seem to create but a small divergence here, will, if followed out logically, extend into very large fields; because 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, or by every method of interference by way of violence or 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."

United States v. Workingmen's Amalgamated Council of New Orleans;

Within a month after the decision of Judge Putnam in U. S. v. Patterson supra a directly contrary interpretation was given to the act of July 2, 1890, by Judge Billings, sitting in the circuit court for the Eastern District of Louisiana, in United States v. Workingmen's Amalgamated Council of New Orleans, 54 Fed. 994. The cause was submitted on an application for an injunction to restrain the combined labor unions of New
Orleans from obstructing and restraining interstate commerce. The facts in the case in brief were: A difference had sprung up between the warehousemen and their employes and the principal draymen and their subordinates, as to wages, hours and men to be employed. In order to compel compliance on the part of the employers with the demands of the employed, all the union men, under the direction of the recognized officers of their various labor associations, decided to discontinue business. One part of their business was the transporting of goods which were being conveyed from state to state, and to and from foreign countries. In some branches of business an effort was made to replace the union men by other workmen. This was resisted by vast throngs of union men assembling in the streets, and in some instances by violence, so that as the result of the intended acts of the strikers, not a bale of the goods constituting the commerce of the country could be moved. The mayor was obliged to call upon the citizens to assist the police in suppressing disorder; and finally the governor called out the militia to protect life and property from the lawlessness of the strikers.

In reply to the contention of the defendants that
the case did not fall within the purview of the statute, which prohibited monopolies and combinations of capitalists, and not of laborers, said: "I think that the congressional debates show that the statute had its origin in the evils of massed capital; but, when the congress came to formulating the prohibition the subject had so broadened in the minds of the legislators, that the source of the evil was not regarded as material, and the evil in its entirety is dealt with. They made the interdiction include combinations of labor as well as of capital; in fact all combinations in restraint of commerce without regard to the character of the persons who entered into them." After examining other claims of the defendants and reviewing the facts as stated above, the court continued: "The question simply is, do these facts establish a case within the statute? It seems to me this question is tantamount to the question, could there be a case within the statute? It is conceded that the labor organizations were at the outset lawful. But, when lawful forces are put into unlawful channels,—i.e. when lawful associations adopt and further unlawful purposes and do unlawful acts,—the associations themselves become unlawful. The evil, as well as the unlawfulness, of the act of the defendants, consists in this;
that until certain demands of theirs were complied with, they endeavored to prevent, and did prevent everybody from moving the commerce of the country."

The court adopts the definition of C. J. Savage in People v. Fisher, supra as to the meaning of "restraint of trade", and concludes: "It is the successful effort of the combination of the defendants to intimidate and overawe others who were at work in conducting or carrying on the commerce of the country, in which the court finds their error and their violation of the statute. One of the intended results of their combined action was the forced stagnation of all the commerce which flowed through New Orleans. x x x x x For these reasons I think the injunction should issue."

The Pulman Strike. The great railroad strike of 1894, with its wide-spread effects, brought home to the public the great and pressing importance of the labor question and it gave rise to some striking examples of the use of injunction by the Federal courts, as a remedy against the strike and boycott. It grew out of a dis- agreement between the Pulman Palace Car Company of Pulman, Ill., and their large force of employes as to the rate of wages. On May 11, 1894, the employes of the Pulman
Company left the company's employ because of its refusal to restore wages which had been reduced during the preceding year, and the works were then closed. In June, 1894, the American Railway Union, an organization composed of railroad employes below a certain rank, boasting a membership of 250,000, and strongly established throughout the West, was in convention at Chicago. The convention took the grievances of the Pulman employes under consideration, and out of sympathy for what they held to be the wrongs of the workmen, they voted on June 21st to declare a boycott of the Pulman cars on all roads centering in Chicago, and wherever the union was organized, unless the differences at Pulman were settled within five days. The officers of the Railway Union were authorized to announce the boycott and to order and direct a strike if necessary to enforce it. The Pulman Company having ignored the demands of the Railway Union, on June 26, President Eugene V. Debs issued orders to the members of the union to refuse to handle Pulman cars on all the roads. Most of these roads were bound by contract to haul the cars of the Pulman Company, and therefore insisted upon their employes handling them. When many workmen were being discharged for their refusal to do their duty,
the A. R. U., through its officers, ordered all its members on the hostile roads to go out on strike until the Pulman trouble should be settled and the discharged men reinstated.

Nearly all the roads entering Chicago and extending to the Pacific coast were thus tied up. Passengers were left wherever the train was abandoned, the mails were delayed, transportation was obstructed, and trade and commerce over a vast extent of territory were paralyzed for many days.

The strikers congregated in mobs at the railroad yards and resorted to insults, and violence, to force others to leave their employment and to prevent new men from entering the employment which they had abandoned. Trains were side-tracked, engines "killed"; the tracks were completely blockaded; cattle were left to die in the yards, and hundreds of cars were overturned on the tracks, and with their contents, given to the flames.

The police force was unable to suppress disorder and protect property. The federal courts were appealed to by the Railroad Companies, and on July 2, they issued an injunction order under the act of July 2, 1890, enjoining President Debs, Vice-President Howard, Secretary Keliher,
Director Rogers and all others from interfering with the United States mails, or restraining interstate commerce.

The strike leaders ignored the injunction by word and act; and it was only after the Federal troops had been called in and several lives had been sacrificed, that law and order were restored. Debs, Howard, Keliher and others were arrested on warrant of attachment for contempt, and on Dec. 14, 1894 were brought before Judge Woods, in the Circuit Court for the Northern District of Illinois.

United States v. Debs, et al, (64 Fed. 724). The court, while arguing strongly and at length that the conspiracy charged against the defendants to hinder and interrupt interstate commerce and the carriage of the mails upon the railroads centering in Chicago, by the means and in the manner indicated, was such a public nuisance as to warrant the Federal courts in restraining it by the remedy of injunction, still expressly refrained from establishing a precedent by resting its decision on that ground.

Instead, the injunction was sustained on the grounds upon which it was granted under the act of July 2, 1890.
The court held, against the vigorous contentions of the defendants, that that act, declaring it illegal and a misdemeanor to enter into any contract, combination in the form of trust, or otherwise, or conspiracy, in restraint of trade and commerce among the several states, or with foreign nations, was intended to apply to combinations and conspiracies of workingmen as well as contracts and combinations of capital; and that the act expressly authorized the equitable remedy of injunction by United States courts for its enforcements.

The defendants were adjudged guilty of contempt in persisting in their conduct and disobeying the injunction and were accordingly sentenced to one year's imprisonment. Thus, through the elastic powers of a court of equity, the ambitious and arrogant President Debs and his colleagues, who assumed to dictate to the employers of labor, who connived at disorder which they pretended to discourage, and who threatened to bring capital to its knees and to paralyze the commerce of the country, were brought to pay the penalty of their ambition and rashness in a prison cell.
In re Debs. The case of United States v Debs supra was carried before the United States Supreme Court on a petition for a writ of Habeas Corpus. (In re Debs 158 U. S. 564. Decided May 27, 1895.) The writ was refused on the ground that "the circuit court having full jurisdiction in the premises, its findings as to the act of disobedience are not open to review on habeas corpus in this or any other court." In an elaborate and able opinion by Justice Brewer, the Supreme Court sustained the authority and action of the circuit court in granting an injunction against the obstruction of the mails and interstate commerce and in punishing for contempt, those who disobeyed the order.

In summing up his conclusions the court said: "We hold that the government of the United States is one having jurisdiction of every part of soil within its territory, and acting directly on each citizen; that while it is a government of enumerated powers, it has within the limits of those powers all the attributes of sovereignty, that to it is committed power over interstate commerce and the transmission of the mails; that the powers thus conferred upon the national government are
not dormant, but have been assumed and put into practical exercise by the legislation of Congress; that in the exercise of those powers it is competent for the government to remove all obstruction on highways, natural or artificial, to the passage of interstate commerce or the carrying of the mails; that while it may be competent for the government (through the executive branch and in the use of the entire executive power of the nation) to forcibly remove all such obstructions, it is equally within its competency to appeal to the civil courts for an inquiry and determination as to the existence and character of any alleged obstructions, and if such are found to exist, or threaten to occur, to invoke the powers of those courts to remove or restrain such obstructions; that the jurisdiction of the courts to interfere in such matters by injunction is one recognized from ancient times and by indubitable authority; that under the complaint made, the circuit court had power to issue its process of injunction, that it having been issued and served on these defendants, the Circuit Court had power to inquire whether its orders had been disobeyed, and when it found that they had been, then to
to punish by fine or imprisonment, . . disobedience . . .
by any party . . . or other person to any lawful writ,
order, rule, decree or command, and enter the order of
punishment complained of."

The court expressly refrained from examining the act
of July 2, 1890, upon which the Circuit Court relied
mainly to sustain its injunction, explaining that while
they did not dissent from the conclusions of the lower
court as to the scope of that act, they preferred to rest
their judgment on the broader grounds discussed in the
opinion.

Thomas v. Railway Co. Thomas v. Railway Co., in
re Phelan (62 Fed. 803) was another important case grow-
ing out of the Pullman boycott and strike of 1894. It
came before the Circuit Court for the southern district
of Ohio on July 13, 1894, some months earlier than the
case of United States v. Debs supra, at Chicago. In the
suit of Thomas v. Cincinnati, New Orleans and Texas
Pacific Railway Company, Samuel M. Felton was appoint-
ed receiver. This case now arose on a petition filed
by this receiver for the commitment of F. W. Phelan
for contempt and for an injunction against him, for inter-
ferring with the operation of the receiver's road.

The testimony showed that Phelan the contemnor came to Cincinnati on June 24th, under orders of President Debs of the A.R. U., to take charge of the contemplated Pulman boycott on the roads entering that city. He made numerous speeches before meetings of the employes of the railroads, including those of the receiver, advising and inciting them to go out on strike, and to prevent all others from taking their places, by persuasion, if possible, by clubbing if necessary. He organized a city committee of working men to assist him in conducting the strike. Most of the railroads entering Cincinnati were tied up, mails were delayed, freight traffic was practically stopped, interstate commerce interrupted and restrained, and the receiver of the Cincinnati Southern, the petitioner, was put to great trouble and expense to secure and maintain armed protection for his employes. The learned Judge Taft, in an elaborate opinion, granted the petition on the ground that any wilful attempt, with knowledge that a railroad is in the hands of a court, to prevent the receiver thereof appointed by the court from complying with the order of the court in running the road, which is unlawful, and which, as between private individuals would give a right of action
for damages, is a contempt of the order of the court.

The judge pointed out that it was lawful for the employees of the receiver, as well as any other employees to organize and act together, for the promotion of their own interest; to quit the employment of the receiver if they wished, or for Phelan to advise and induce them to quit the employment, so long as their acts were peaceful and in pursuance of a lawful purpose. But he held that maliciously inciting the employees of all the Cincinnati roads to leave their employment, not on account of any grievance of their own, but in the furtherance of an unlawful conspiracy, was an unlawful wrong, for which Phelan was liable to the employers for damages, and for which, as far as his acts affected the road of the receiver, he was in contempt of court.

The combination of Debs, Phelan and the directors of the A.R.U. was held to be unlawful on the grounds, (1) that it sought to compel the railroad companies to break their contracts with Pulman, (2) that it was a boycott to inflict pecuniary injury on Pulman, and on the roads that refused to break their contracts with him, (3) that it interfered with the mails, and (4) that it paralyzed interstate commerce.
Phelan was sentenced to six months in jail for his contempt.

*United States v. Cassidy* (67 Fed. 698.) was another great case which grew out of the big Pulman strike.

It was a trial in the United States Circuit Court for the northern district of California on an indictment against Cassidy, Mayne and others, under Rev. St. Section 5440 and the act of July 2, 1890 for conspiracy to commit offenses against the United States, namely the offense of obstructing the mails of the United States, and the offense of combining and conspiring to restrain trade and commerce between the states and with foreign countries. The charge delivered by Judge Morrow in this case is believed to be the longest ever delivered in a criminal case in this country, and only exceeded in any case by the charge of Lord Chief Justice Cockburn in the Tichborne Case. The trial occupied five months, from Nov. 12, 1894 to April 6, 1895. While only two of the defendants were tried, the case was treated as a test case both by the government and by the strikers, and it involved as a practical result the disposition of some 132 cases.
The judge said that although the statute against obstructing the mails was passed before the establishment of railroads and its phraseology conformed to the conditions of that time, yet it protects alike the transportation of the mail by the "limited express", as it does the carriage by the old fashioned stage coach.

He continues: "Recurring to section 3995 of the Revised Statutes, and you will observe that the statute applies to those persons who knowingly and willfully obstruct and retard the passage of the mails, or the carrier carrying the same; that is to say to those who know that the acts performed, however innocent they may otherwise be, will have the effect of obstructing and retarding the passage of the mail, and they perform the acts with the intention that such shall be the operation." (Citing United States v. Kirby, 7 Wall, 485). He approves the language of Thomas v. Railway Co. (62 Fed. 822), that it would be no defense under this statute that the obstruction was effected by merely quitting employment, where the motive for quitting was to retard the mails and had nothing to do with the terms of employment.

"The statute also applies to persons who, having in view the accomplishment of other purposes, perform unlaw-
ful acts which have the effect of obstructing and retard-
ing the passage of the mails. In such case, an intent
to obstruct and retard the mails will be imputed to the
authors of the unlawful act, although the attainment of
other ends may have been their primary object." (Citing
United States v Kirby, 7 Wall 485)

In regard to the second offense charged in the in-
dictment under the act of July 2, 1890, against conspir-
acies in restraint of trade and commerce, the court re-
jected the language of Judge Putnam in United States v.
Patterson, (55 Fed. 605), that the term "trade" and
"commerce" as used in the statute are synonymous, charged
that the word "commerce" as used in that act and in the
constitution, of the United States, has a broader meaning
than the word "trade", and that commerce among the states
consists of intercourse and traffic between their citizens
and includes the transportation of persons and property
as well as the purchase, sale and exchange of commodities.
"Pulman cars, in use upon the roads, are instrumentalities
of commerce, and while the primary object of the statute
was doubtless to prevent the destruction of legitimate and
healthy competition in interstate commerce, by engrossing
and monopolizing the markets for the commodities, yet its provisions, are broad enough to reach a combination or conspiracy that will interrupt the transportation of such commodities and persons from one state to another.

While acknowledging the rights of employes of railway companies to organize for mutual benefit and protection and for the purpose of securing the highest wages and the best conditions they can command, the court declared it unlawful for them to combine and quit work for the purpose of compelling their employer to withdraw from his relations with a third party, for the purpose of injuring that third party, (following Thomas v. Railway Co, 62 Fed. 817.)

After reviewing the voluminous testimony as to the conduct of the strikers, and examining the leading federal court decisions in analogous cases, the court announces as law, the proposition that a strike, or a preconcerted quitting of work, by a combination of railway employes, is in itself unlawful, if the concerted action is knowingly and willingly directed by the parties to it for the purpose of obstructing and retarding the passage of the mails, or in restraint of trade or
commerce among the states.

**NOTE.** The jury, after deliberating four days and nights failed to agree and were discharged. On the final ballot, 10 jurymen voted for conviction and two for acquittal, upon the count for conspiracy to retard the mails, and eight for conviction and four for acquittal, on the count for conspiracy to obstruct and interfere with interstate commerce.
Black's Law Dictionary defines the boycott to be "A conspiracy formed and intended directly or indirectly to prevent the carrying on of any lawful business, or to injure the business of anyone by wrongfully preventing those who would be customers from buying anything from, or employing the representatives of said business, by threats, intimidation or other forcible means."

Anderson's Law Dictionary says it is "A combination between persons to suspend or discontinue dealings or patronage with another person or persons because of a refusal to comply with a request of him or them. The purpose is to constrain acquiescence or to force submission on the part of the individual, who, by non-compliance with the demand, has rendered himself obnoxious to the immediate parties, and, perhaps to their personal and fraternal associates."
Origin of the term: The real meaning of the term may be gathered somewhat from the circumstances of its origin.

These circumstances are narrated by Mr. Justin H. McCarthy, the Irish parliamentarian and writer, in his book entitled, "England under Gladstone" as follows:

"The strike was supported by a form of action, or rather inaction, which soon became historical. Captain Boycott was an Englishman, an agent of Lord Earne, and a farmer of Lough Mask, in the wild and beautiful district of Connemara. In his capacity as agent he had served notices upon Lord Earne's tenants, and the tenants suddenly retaliated in the most unexpected way by, in the language of schools and society, sending Captain Boycott to Coventry in a very thorough manner. The population of the region for miles around resolved not to have anything to do with him, and, as far as they could prevent it, not to allow any one else to have anything to do with him. His life appeared to be in danger; he had to claim police protection. His servants fled from him as servants flee from their masters in some plague stricken Italian city. The awful sentence of excommunication could hardly have rendered him more helplessly
alone for a time; no one would work for him; no one would supply him with food. He and his wife had to work in their own fields themselves, in most unpleasant imitation of the Theocritian shepherds and shepherdesses, and play out their grim eclogue in their deserted fields, with the shadows of armed constabulary ever at their heels. The Orangemen of the north heard of Captain Boycott and his sufferings, and the way in which he was holding his ground, and they organized assistance and sent him down armed laborers from Ulster. To prevent civil war, the authorities had to send a force of soldiers and police to Lough Mask, and Captain Boycott's harvests were brought in, and his potatoes dug, by the armed Ulster laborers, guarded always by the little army."

In *Casey v. Cincinnati Typographical Union* below, it is said that the boycott is itself a threat. The court in the Connecticut case of *State v. Glidden* (55 Conn. 46) said that the term in its original meaning "signifies violence if not murder." In the notable Virginia case (*Crump v. The Commonwealth*, 84 Va. 927,) the court said: "The essential idea of boycotting, whether in Ireland or the United States, is a confederation whose intent is
to injure another by preventing any and all persons from doing business with him, through fear of incurring the displeasure, persecution and vengeance of the conspirators."

The incidents described by Mr. Mc Carthy occurred in the year 1882. While the name is of recent origin the offense is as old as English law reports, and it was a punishable conspiracy at Common Law. Nor has the conspiracy for that purpose been confined to workingmen.

The acts of the brewers in the case of King v. Stirling (Tubwomen v. Brewers of London) supra, constituted a boycott. The purpose of their conspiracy was to ruin the farmers of the excise by pauperizing them, rendering them unable to pay the king's revenue and turning the hostility of the poor people of London into mob violence against them.

In Mogul Steamship Co., v. McGregor (15 Q. B. Div. 476; 23 Q. B. Div. 598) the conspiracy of the defendants, a Steamship Co., was to drive the plaintiff out of the carrying trade by means of the boycott.

They sent circulars to the patrons of the plaintiff engaged in the tea trade in China, notifying them that if they continued to ship by the plaintiff's line, the
defendants would deny them the benefits of any future dealings with them. The effect was to ruin the business of the plaintiff, but the defendants were excused on the ground that their acts were in the legitimate pursuit and furtherance of their own business, and not malicious or designed primarily to injure the plaintiff. Plaintiffs' injury and loss was held to be the result of legitimate competition. However Lord Coleridge wrote a strong dissenting opinion.

Other competing business enterprises have resorted to the boycott.

The boycott then, was not primarily nor essentially a feature of labor troubles, nor confined in its use to workingmen. Most strikes embrace some of the characteristics of the boycott, for when men have gone out on strike, it is to their interest to prevent the employers' conducting his business without them. However it has often of late years been the concomitant of nearly all important strikes, and it is in that relation, and often on account of the threats and intimidation by which it was sought to be enforced that it has come most frequently under the cognizance of the courts.

A review of the leading American cases involving it
will best explain its legal status in this country.

Section 2  Cases on Boycotts.

People v. Wilzig: The case of People v. Wilzig, (4 N. Y. Crim. Reports, 403), Tried at Oyer and Terminer in New York City in June 1886, was a trial of the defendants on an indictment for extortion by a wrongful use of force or fear, under Sections 552, 553, Penal Code. The extortion charged was to pay the expenses of a boycott against the prosecutor, and was extorted by a threat to continue the boycott perpetually in case of non-compliance with the demands of the defendants.

The facts in brief were as follows:--

The complainant, Geo. Theiss, was the owner and manager of a large building in East Fourteenth Street, New York City, used as a concert hall and restaurant. He had an orchestra of thirteen pieces, and employed a large number of waiters, bartenders and other various attachés. His son was his head bartender, and the leader of his orchestra was a man whom he had known for ten years and who had been associated with him in business. The accumulations of a lifetime, almost $300,000, were invested in this establishment.
The defendants, Paul Wilzig of Waiters' Union, No. 3; Max Dannhauser and Hans Holdorf, of the Carl Sahm Club; Strop and Rosenberg of Bartenders' Union, No. 1; O'Leary of the Knights of Labor and Beddles, of the Central Labor Union, came to Mr. Theiss' place and informed him that he should discharge his waiters, orchestra, and bartenders and employ only help belonging to their respective clubs and unions, and at wages fixed by these unions. Mr. Theiss replied that he did not feel like discharging his son, his brother-in-law, and other faithful and satisfactory servants; but since they did not belong to the unions, the defendants insisted that he should discharge them.

Finally, they informed Theiss that if he did not comply with their demands within twenty-four hours, a boycott would be placed upon his business. At the end of the twenty-four hours, Mr. Theiss not having complied with the demands of the defendants, the boycott was ordered on.

He found a body of men walking up and down before his place of business, wearing old hats pasted over with libelous circulars headed "boycott," announcing to the public that Theiss was a foe of organized labor,
calling on all people to abstain from visiting his place, and charging him with being an obscure man. The circu-
lar was signed by the boycott committee of the Central Labor Union. The circulars were borne on the backs of the procession. A large crowd assembled to witness this strange proceeding, and made it difficult and dangerous for people to visit this place of amusement. Men under the direction of the defendants went inside and posted the libelous circulars on the tables, in the closets, and on the frescoed walls. An attempt was made to paste a circular on the back of Theiss' son while crossing the street. The iron and glass roof of the building was raised. They brought in an infernal machine and set fire to it, creating such a stinch that business had to be suspended for four hours.

Thus the boycott was continued every afternoon and evening for fifteen days, the fifty or more men who were engaged in it being refreshed or relieved, as need be, under the directions of the defendants. Then they went to Mr. Shultz, of whom Theiss purchased his mineral waters, and demanded of him that he should sell Theiss no more goods under penalty of himself being boycotted. He yielded and refused to supply Mr. Theiss with mineral
water.

The defendants then demanded of Mr. Ehret, of whom Mr. Theiss bought his beer, the staple of his trade, that he should furnish Mr. Theiss no more beer. They informed him that if he did continue to supply beer to Mr. Theiss they would boycott his beer by the Knights of Labor throughout the United States. Moved by this threat, Mr. Ehret brought Mr. Theiss, and a representative of each class of his employes to his brewery where they met the defendants and heard their demand. Mr. Theiss labored long to protect his seventy-five faithful employes. But Mr. Ehret, fearing the boycott of his beer, labored with Mr. Theiss, and after holding out eight hours, he yielded to the demands of the defendants, and agreed to discharge his old help and employ only members of the organizations which the boycott leaders represented, and at their scale of wages. The defendants then demanded that Mr. Theiss should pay them $1000.00 as the expenses of the boycott. When he protested against this exaction, they threatened him that if he did not pay at once the Knights of Labor would order a perpetual boycott so that he could not carry on business anywhere in the civilized world. Under these
threats he yielded and paid the $1000.00 in a check which the defendants had cashed and divided the proceeds among themselves.

Justice Barrett, in his charge to the jury, said:

"Let us see what workingmen trying to better their condition may lawfully do, and what they may not lawfully do. The law is tender of their rights. x x x

Now it has been legislatively decreed that the orderly and peacable assembling or co-operation of persons employed in any calling, trade or handicraft, for the purpose of obtaining an advance in the rate of wages and compensation, or of maintaining such rate, is not a conspiracy. (Penal Code 170). This is what laboring men may lawfully do. What they may not do is to combine together to prevent other people from working at prices to suit themselves."

After conceding the right of laboring men to go around peaceably among their friends and persuade them to withdraw their patronage from the man who injures them or refuses to do them justice, he says: "It is one thing for a man or men to go about and talk to their friends, but it is quite another thing for fifty or sixty or one hundred men to band together not for the purpose
of individual persuasion, but to bring the power of combination to bear in an unlawful way to injure the employer's business. Now, the law says that that may not be done if the persons so engaged use force, threats or intimidation. Let us see what is meant by this word intimidation. The defendants' counsel seem to have the idea that if a body of men, however large, operating in the manner suggested only avoids acts of physical violence, they are within the law, and that the employers business may be ruined with impunity so long as no blow is struck, nor actual threat by word of mouth uttered. This is an error. The men who walk up and down in front of a man's shop may be guilty of intimidation, though they never raise a finger or utter a word. Their attitude nevertheless may be that of menace. They may intimidate by their numbers, their methods, their placards, their circulars and their devices."

The jury brought in verdicts of guilty, and the defendants were sentenced to hard labor in States Prison for periods varying from a year and six months to three years and eight months.
People v. Kostka (4 N. Y. Crin. Rep.), 429, was tried in the same court and before the same judge as People v. Wilzig supra. It came before the court in July 1886, only one week later than the Wilzig case.

It differed from the latter case in that it was a trial of the defendants on an indictment under Sec. 168, Subd. 5 of the Penal Code, for interfering with the peaceable pursuit of the prosecutor's business by boycotting, picketing, etc., while the main issue in the Wilzig case was that of extortion to which the boycott had been preliminary and auxiliary. The facts of the case in brief are as follows:--

The prosecutor, one Josephine Landgraff, carried on the baker business in a small way in the City of New York. The defendants, who were in her employ, becoming dissatisfied with the rate of wages, or because some proscribed person was employed, or for some other cause, which the witnesses, being foreigners, did not seem able or willing to make clear, left the employment, and attempted to injure the employer's business by assembling, sometimes to the number of fifteen before her shop and distributing printed circulars declaring a boycott, setting forth the grievances of the boycotters and calling
on the widow's customers to withhold their trade. There was also evidence that one of the defendants threatened the life of one of Mrs. Landgraff's faithful employes, and that some of them spat in the faces of some of her bakers, and indulged in other acts of violence.

Judge Barrett in his charge to the jury after laying down the law as in the case of People v. Wilzig supra, as to the extent to which workmen could legally go in the promotion of their interests, said in regard to intimidation:

"The mere fact that no violence was actually used in the street is not conclusive. It is for you to say whether the attitude of these men was threatening. Nor is it necessary that there should have been a direct threat. If you believe that the attitude actually presented by the distributors of those circulars was an attitude of intimidation, either to the passers-by, or to the woman inside (Mrs. Landgraff), considering all the circumstances, then all who participated in it directly or indirectly, are within the meaning of that word as used in the conspiracy act.

x x x x x x x x x x x
If the conspiracy here be established and the effect of the overt acts was to intimidate and by such intimidation to warn off Mrs. Landgraff's customers and the general public which might otherwise patronize her, and to intimidate her, then such of the defendants as so conspired and participated in the overt acts are guilty."

Most of the defendants were indicted and sentenced for periods varying from ten to thirty days.

_Crump v. The Commonwealth, (84 Va. 927)_ is a leading case on "boycott" which was brought before the Supreme Court of Appeals of Virginia in 1888.

It came up on error in an indictment against Crump for conspiring with others to boycott the business of Baughman Bros.

The evidence of the case shows that while Baughman Bros. were engaged in their business as stationers and printers, the plaintiff in error and other members of the Richmond Typographical Union, No. 90, a branch of the Knights of Labor, conspired to compel Baughman Bros. to make their office a "Union Office" and to employ only printers belonging to the said union. Upon the refusal of Baughman Bros. to comply with this demand the Union decided to boycott the firm, as they had threatened
to do, and they sent circulars to a great many of the customers of the firm informing them that they had, "with the aid of the Knights of Labor and all the trades organizations in this city (Richmond) boycotted the establishment of Messrs. Baughman Bros."; and formally notifying the said customers that the names of all persons who should persist in trading, patronizing, or dealing with Baughman Bros., after being duly notified of the boycott, would be published weekly in the Labor Herald as a "black list," and that they, in turn would be boycotted until they agreed to withdraw their patronage from Baughman Bros. The threat was carried out. For months Baughman Bros., their employes and customers were mercilessly hounded by publication after publication in the Labor Herald, (the organ of the boycotters), whereby it was attempted to excite public feeling against them, and to prevent the employes of the "rat" firm from obtaining even board and shelter. The names of customers and patrons of the firm, including boarding houses, public schools and railroads and steamboat companies, were published under the standing head of "black list." Space will not permit quotations from these "incendiary" publications.
After reviewing these facts the court concluded its opinion by saying: "It was proved that the conspirators declared their set purpose and persistent effort to "crush" Baughman Bros.--thereby causing them to lose from one hundred and fifty to two hundred customers and $10,000 net profits. 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 combinations of irresponsible cabals or cliques, there will be an end of government, and of society itself. Freedom--individual and associated,--is the boasted policy and peculium of our country: but it is liberty regulated by law; and the motto of the law is; 'Sic utere tuo, ut alienum non leadas'."

Casey v. Cincinnati Typographical Union (45 Fed. 135) came before the United States Circuit Court in 1890, on an application by the plaintiff, proprietor and publisher of the Commonwealth, a weekly paper published at Covington, Ky., for an injunction restraining the boycott which the defendants had declared against him for refusing to "unionize" his office, i.e. employ only union men at union prices. The purpose of the boycott was
to destroy the circulation of the newspaper and its value as an advertising medium. It was conducted by circulating handbills and publishing notices in the Union Bulletin of Cincinnati calling upon workingmen and all friends of organized labor to withdraw their patronage from Mr. Casey's business, and by sending circulars to merchants requesting them to withdraw their subscriptions and advertisements from the Commonwealth as a condition of retaining the good will and patronage of organized labor.

The temporary injunction was granted restraining both the boycott and the publication of the notices and circulars, although there had been no violence and no threats to do anything unlawful.

Old Dominion Steamship Co., v. McKenna, et al. (30 Fed. 48), 1887, it was held that where the defendants, styling themselves the "Executive Board of the Ocean Association of the Longshoremen's Union, for the purpose of obtaining such a rate of wages as they demanded, declared a boycott of the plaintiff's business, and attempted to prevent the plaintiff from carrying on its business as a common carrier, and endeavored to stop all dealings of other persons with the plaintiff, by sending
threatening notices to its various customers and patrons designed to intimidate them and deter them from having any dealings with the plaintiff; such acts were not only illegal, rendering the defendants liable in damages, but also misdemeanors at common law as well as by Sec. 168 of the Penal Code of New York State.

Brace Bros., v. Evans (3 R. and Corp. Law J. 561) grew out of an attempt of the Knights of Labor to force the plaintiffs, managers of a steam laundry at Wilkinsburg, Pa., to reinstate certain employees whom they had discharged. After their refusal to comply, circulars were issued alleging abusive treatment of the employees by the plaintiffs and asking all persons to cease patronizing them. Some of the circulars were printed in large letters "Boycott Brace Bros." Their customers were sought out and asked not to patronize them. Men followed plaintiff's wagons in buggies, having banners attached to the harnesses on either side, bearing the admonition "Boycott Brace Bros." When the plaintiff's agents refused to cease to represent them, they were themselves boycotted. Noisy crowds assembled around their doors distributing circulars, until the police were obliged to interfere. The agents of plaintiffs were
finally obliged to decline to represent them. Many of their customers withdrew their patronage and the loss to their business from boycott was $600.00 per week.

A preliminary injunction was granted restraining the conduct of the boycotters.

*State v. Glidden* : The leading case of *State v. Glidden et al* (55 Conn. 47.), came before the Supreme Court of Connecticut, in 1887, on an appeal from error of the superior court on conviction of the defendant for unlawful conspiracy. A new trial was refused. The defendants, members of a typographical union, had notified the Carrington Publishing Co. of New Haven, publishers of the Journal and Courrier newspaper, to discharge their employees and to hire the defendants and their associates of the union instead. They had threatened them that, upon non-compliance with the request, they would boycott their business by inducing subscribers, advertisers and others to withdraw their patronage. They also warned the company that the union was affiliated with other unions and associations of the city, all of whom would unite in boycotting the company if they did not yield to the defendants' demand. There was testimony that the defendants endeavored to induce
and compel others to withdraw their patronage from the company, and that Glidden had distributed circulars, printed in large letters: "A word to the wise is sufficient; boycott the Journal and Courrier". The defendants had also declared that the Carrington Company would have to pay the expenses of the boycott. The court held that these acts fell within the prohibition of the statute of 1878 which provides that "Every person who shall threaten or use any means to intimidate any person, to compel such person against his will, to do or abstain from doing any acts which such person had a legal right to do, or shall persistently follow such persons in a disorderly manner, or injure or threaten to injure his property with intent to intimidate him, shall upon conviction be liable to a fine not exceeding $100., or imprisonment in the county jail for six months."

The court said, inter alia; "Defendants' purpose was to deprive the publishing company of its liberty to carry on its own business in its own way, although in doing so it interfered with no right of the defendants. The motive was to gain an advantage unjustly and at the expense of others and therefore it was legally corrupt. As a means of accomplishing the purpose the parties in-
tended to harm the publishing company and therefore it was malicious." The court, after quoting Mr. McCarthy's explanation of the origin of the term "boycott" as given above, said that the word signified violence, if not murder, and that there would be no doubt of the criminal intent if the word was used in its original sense. The court added, however, that it preferred to believe that the word was used in a modified sense and with a milder meaning, and that if thus used it might not have been criminal.

In another Connecticut case, Com. v. Opdyke and Wallace, (10 N. Y. St. Bar Ass. 158.), the court found the defendants, superintendents of two railroads, guilty of the common law offence of conspiracy for entering into a mutual agreement to use all their influence to prevent any person objectionable to either defendant, from obtaining employment with either railroad company.

Com. v. O'Keef, (10 N. Y. St. Bar Ass. 160.): This was a late Massachusetts case which arose on an indictment against O'Keef and other members of the Knights of Labor for conspiracy to boycott Harrington & Co., leather manufacturers, by compelling or inducing one Emery, through his employees, not to purchase any leather of
Harrington & Co. not manufactured by the work of Knights of Labor. Chief Justice Brigham, in his charge to the jury, after defining the equal rights of workmen to control their own labor and of manufacturers to conduct their own business as they please, says: "Such being the respective rights of laborers, employers and manufacturers, any interference of either with the stated rights of the other, by fraudulent or forcible means, that is to say, means that were physically controlling and coercive, or morally controlling and coercive, by reason of a personal or official influence which the persons using that influence knew that they could use upon the persons to whom they intended to apply that influence, so that it would have the force and effect of coercion and compulsion, in whatever form of words that compulsion should be expressed, would be unlawful and criminal; and if two or more persons combined to use such means they would be guilty of a criminal conspiracy.

The state of Minnesota has taken a more lenient attitude toward strikes and boycotts than any of the other states. In the recent case of Bohn Mfg. Co. v. Hollis, (54 Minn. 223), the court said that any man
(unless under contract obligation, or unless his employment charges him with some public duty) has a right to refuse to work for or to deal with any man or class of men, as he sees fit; and this right, which one man may exercise singly any number may agree to exercise jointly.

The Pulman Boycott: The Pulman Boycott (see U.S. v. Debs supra.) surpassed all previous efforts of labor organizations in the vastness of its proportions. It brought the conspiracy of boycotting squarely before the United States Courts, and gave them a chance to brand it unmistakably with their disapproval, and condemnation. In Thomas v. Railway Co. supra., the views of the Federal courts in regard to the boycott features of the great Pulman strike are well expressed by Judge Taft. He said: "The combination was unlawful without respect to the contract feature. It was a boycott. The employees of the railway companies had no grievance against their employers. Handling and hauling Pulman cars did not render their service any more burdensome. They had no complaint against the use of Pulman cars, as cars. They came into no natural relation with Pulman in hand-
ling the cars. He paid them no wages. He did not regulate their hours or in any way determine their services. Simply to injure him in his business, they were incited and encouraged to compel the railway companies to withdraw custom from him by threats of quitting their service, and by actually quitting their service. They inflicted a loss upon the companies that was very great, and it was unlawful because it was without lawful excuse.

All the employes had a 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 a third person, when the relation thus sought to be broken had no effect whatever on the character or reward of their service. It is the motive for quitting and the end sought thereby that makes the injury inflicted unlawful, and the combination by which it is effected an unlawful conspiracy. The distinction between an ordinary lawful and peaceable strike entered upon to obtain concessions in the terms of the strikers employment and a boycott is no fanciful one, or one which needs the power of fine distinction to
determine which is which. Every laboring man recognizes the one or the other as quickly as the lawyer or the judge. The combination under discussion was a boycott.

Boycotts though unaccompanied by violence or intimidation have been pronounced unlawful in every state of the United States where the question has arisen, unless it be Minnesota; and they are held to be unlawful in England."

The cases which have come before the federal courts have been serious and the language of the decisions is correspondingly strong. It will be noted that all boycotts which have come under the cognizance of the courts have been accompanied by intimidation, either physical or moral, and their condemnation by the courts has been grounded mainly on these unlawful means of enforcement. It may be impossible for a boycott to be enforced without the use of intimidation or threats of some kind or degree. But the courts of New York, Connecticut and Massachusetts have intimated, and the court of Minnesota has plainly asserted, that if a boycott should be declared by workingmen against their employer to obtain some just concession, and should be conducted by persuasion and other peaceable means, without intimidation, physical or moral, such boycott would not be unlawful.
Statutes: The boycott has been, as yet, the subject of but little expressed legislation, though there is pressing need that the offence be clearly defined. The following states, however, declare it a criminal offence either by specific reference to it or by statutes against threats and intimidation: Colorado, Illinois, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Texas, Vermont and Wisconsin.
Chapter IV.

REMEDIES.

Section 1. Civil Remedies.

At Law: There is no civil remedy either at law or in equity against a workman who quits his employment or a master who discharges his workman, unless this is done in violation of a contract existing between the parties. If there is a contract for labor and employment existing between the parties, each is liable to the other in a civil action for any damages resulting from a violation of that contract. (Anson on Contracts, etc.)

In England it was laid down in the noted case of Lumley v. Guy (2 F. & B. (Q. B.),) that an action for damages would lie for enticing away a servant or inducing a workman to break his contract of employment. This doctrine has been followed in many subsequent English cases and may be said to be the law in England. The doctrine has been much questioned in this country and much narrowed in its application.

The cases in most of the states are now agreed that no action will lie for inducing the breach of a contract

Where the losses of the employer are incidental to the lawful acts of the strikers it is _damnum absque injuria_ and the strikers are not answerable. When, however, the strike is in the nature of a boycott and designed primarily to injure the employer or third parties, then the strikers are answerable in damages.

In Equity: Of late years equity has been much appealed to for the remedy of injunction against strikes and boycotts. The injunction has been granted wherever the strikes were being conducted unlawfully and the injuries resulting therefrom were continuous, and such as could not be compensated in a civil action for damages.

Writs of injunction were refused to the petitioners in Harvester Co., v. Meinhardt supra. and Rogers v. Evarts supra. on the ground that no intimidation or violence accompanied the strikes to render them unlawful. Injunctions were granted restraining boycotts in Brace Bros., v. Evans; Casey v. Cincinnati Typographical Union;
and Moore v Bricklayers' Union; reviewed above.

In United States v. Workingmens' Amalgamated Association it was held that an injunction would lie against the strikers who by violence and intimidation were forcing a discontinuance of business, including the transportation of goods from state to state.

In the United States v. Debs supra., an injunction was granted against the Pullman strikers enjoining the officers and members of the American Railway Union and all other persons from interfering with the carriage of the mails or obstructing and restraining interstate commerce. This action of the Circuit Court was approved by the United States Supreme Court in the case of In re Debs supra.

In Toledo, A. A. & N. M. Ry. Co., v. Penn. Co., et al. (54 Fed. 746), in Circuit Court for N.D. of Ohio, March 29, 1893., it is decided that where a labor organization has declared a boycott against a railroad, and connecting roads are therefore refusing or seem about to refuse, to afford equal facilities to the boycotted road, in violation of section 3, of the interstate commerce act, they may be compelled to do so by mandatory injunction, since the case is urgent, the rights of the
parties free from reasonable doubt, and the duty sought to be enforced is imposed by law. Such mandatory injunction is binding on all the officers and employes of the respondent railroad, having proper notice thereof, whether they be made parties or not. And an engineer, who, while still remaining in the employ of the respondent company, refuses to attach to his train a car of the respondent company as commanded by the injunction, is guilty of contempt of court, and punishable accordingly.

In this same case, (54 Fed., 730,) the court held that a combination to induce and procure the officers of a common carrier corporation, subject to the interstate commerce act, and its locomotive engineers, to refuse to receive, handle and haul interstate freight from another like common carrier in order to injure the latter is a conspiracy to commit a misdemeanor under the interstate commerce act, and criminal. Here the court granted a preliminary injunction against Mr. Arthur, Chief of the Brotherhood of Locomotive Engineers, to restrain him from giving any order or signal for carrying out the unlawful objects of the conspiracy, and held that the court may issue a mandatory injunction compelling him to rescind such unlawful
order already issued, especially where the necessary effect of the order or signal is to induce flagrant violations of an injunction previously issued by the court.

A Court of Equity will enjoin any attempt of strikers to interfere with the management of a road in control of a receiver acting under order of the court, and will punish as contempt any such interferance, (Thomas v. Railway Co., supra; Toledo A. A. & N. M. Ry. Co., v. Penn., Co., supra; Union Trust Co., v. Atchison T. & S. F. Ry. Co. 64 Fed. 724).

The equitable remedy of injunction received an extreme application in the case of Farmer's Loan and Fruit Co., v. Northern Pacific Railway Co., (60 Fed. 803). Here the United States Circuit Court sustained an injunction restraining the employes of a receiver operating a railroad, under order of the court, from going out on a proposed strike against a proposed reduction of wages. It was also held that the court may grant an injunction against the executive heads of the various labor organizations of railroad employes restraining them from ordering a strike of the employes
of a receiver. The court justified the injunctions on the alleged grounds that the proposed strike was designed to cripple and embarrass the operation of the road by the officer of the court, and that strikes were always accompanied by disorder and violence and were necessarily unlawful.

The extreme use of the injunction in this case has no precedent. It has received much adverse criticism by the legal profession; and it remains yet to be seen whether other courts will follow this decision, and carry the propositions here laid down to their logical conclusions. The decision is a bold one, and presses hard upon the boundary line which separates the powers of the courts from the cherished rights and liberties of individuals.

Section 2. Penal Remedies.

Whenever the conspiracy of the strikers or boycotters is declared criminal by the common law, or by state or by United States statutes, or wherever threats, intimidation, force or violence have been resorted to to further the purposes of the conspiracy, the conspirators are all punishable by indictment, and by fine or imprisonment. (See all the cases reviewed above.)
CONCLUSIONS.

As a result of this examination of the leading American cases, involving strikes, we conclude that in America the workingman, of whatever rank, has complete liberty in the disposition of his labor. All state statutes and courts recognize the rights of the laborer to work for whom, and for what wages, he pleases, or to refuse to work, as he pleases. Workmen may form associations for all beneficent and lawful purposes. They may lawfully meet together to consult for the promotion of their own interests. They may enter into agreements and combinations for the advancement or preservation of their wages, or for the reduction of the hours of labor, or for altering by peaceable and lawful means any of the conditions of their employment. They may enforce upon the members of the association by fine or expulsion any of the lawful rules adopted by the society, and to which the member has given a voluntary assent.

If not bound by contract, they may agree together and quit work in a body when they please, without incurring either civil or criminal liability, if their purpose in quitting is to promote their own legitimate interests,
as the reduction of hours or the advancement of wages.

It is otherwise, however, if the purpose of the combination and quitting is to violate a contract, or a statute, to force employers to discharge other workmen or to break their mutual contracts with third parties.

The laws both state and federal condemn all conspiracies intended primarily to boycott or injure third parties. They condemn the use of intimidation by these conspiracies for any purpose.

Having the right to combine for the promotion of their interests, or to quit their employment, they have a right to use all peaceable arguments and persuasion to induce others to join their society, or to quit their employment, or to refrain from entering the employment which the strikers have abandoned. They may pay the expenses or losses of other workmen as an inducement to them to leave their employment and join the strike. All this they may lawfully do, as Judge Barrett says:

"Persuasion, argument, entreaty are legitimate methods.

But all attempts of combinations of workingmen to compel the employer to alter the conduct of his trade or business or to dictate the number or character of his employes; to compel him to discharge some men or to
to employ others; or to compel any workman outside the combination to leave his employment, or to prevent his working for whom or for what wages he pleases, or otherwise interfering with him in the enjoyment of his personal liberty, if these ends are sought to be accomplish by threats, coercion, intimidation or violence, are illegal, and the combination is a criminal conspiracy. Such combinations are wrongful as interferences with personal liberty and as restraints of trade and commerce.

A combination of workingmen which has for its purpose or for its necessary result to interfere with the carriage of the mail or to control or restrain interstate commerce, is held by the United States Courts to be a criminal conspiracy. And any attempt by workingmen to interfere, by the use of intimidation or force, with the operation of a railroad by a receiver under orders of a federal court, is held to be a contempt of court.

The intimidation here condemned by the courts need not consist of actual threats or violence but may arise from an attitude of menace, which has the effect of either physical or moral coercion. No boycott, free from such intimidation has come before the courts, but the decisions in New York and some other states intimate
that a boycott for a lawful purpose, and not accompanied by such intimidation would not be unlawful.

An action will lie against the members of the conspiracy for all damages resulting directly from an unlawful strike or boycott. If the conspiracy is criminal, either in its purpose or its means of enforcement, its members are punishable by indictment. Courts of equity will use all their power to restrain unlawful strikes and boycotts by injunction. They will punish as contempt any wilful disobedience of their orders.