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Government by Injunction

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A THESIS.

GOVERNMENT by INJUNCTION.

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Henry Merton Merrihew,
C.U., C.L., '98.
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We denounce arbitrary interference by Federal authorities in local affairs as a violation of the constitution of the United States, and a crime against free institutions, and we especially object to government by injunction as a new and highly dangerous form of oppression by which federal judges, in contempt of the laws of the States and rights of citizens become at once legislators, judges and executioners."

Such was the language of the platform of the democratic party, adopted at Chicago, July 9, 1896. It gave to the world a new phrase, 'Government by Injunction'. As generally accepted and understood the expression applies particularly to the use of the injunction as a means of settling the labor troubles known as strikes and boycotts, the eruptions of the industrial world, caused by the eternal struggle between capital and labor.

We are told that once upon a time the plebeians of ancient Rome becoming dissatisfied with the oppressive conduct of the patricians, seceded in a body to the sacred mount, declaring that they would not remain a part of the body politic unless the patricians made certain concessions to them. At this juncture Menenius Agrippa addressed the plebeians as follows: "Once upon a time, the other members of the body conspired against the stomach; they declared they had all the work to do, while the stomach lay quietly in the middle of the body and enjoyed, without any labor, everything they brought it. So they all quit work, and determined to starve the stomach into submission. But soon they discovered, that, while they were starving the stomach,
they too, were being starved, and that the whole body was wasting away." The social aspect of the question presented by this little fable, we do not intend to discuss, but we will confine this thesis to a treatment of the subject from a purely legal standpoint.

We can describe the general opinion of the public on the question in no better manner than by the following language of Walter Murphy (1894 Utah Bar Ass'n.) He says:- "If by a poëtic license we should personify the ancient and honorable writ of injunction, and imagine it as lapsing into a state of unconsciousness so to speak, say half a century ago, and a's now waking up, like Rip Van Winkle after his twenty years of slumber, and scrutinizing its present condition as reflected in certain contemporary ideas of some vogue, it seems certain that it would be as much bewildered by some aspects of its present self as was Irving's legendary Dutchman. Unlike the latter, however, it would perceive in itself no trace of the rheumatics; but on the contrary would find itself endowed with divers athletic, not to say acrobatic capabilities of which, in its earlier age, it had not dreamed! If Mr. Murphy had carried the figure a little further he would have come nearer the true situation. It is related that "it was some time before he (Rip) could get into the regular track of gossip, or could comprehend be made the strange events that had taken place during his torpor! However, he finally "got on" and having resumed his old walks and habits; he soon found many of his former cronies, though all rather the worse for the
wear and tear of time; and preferred making friends among the rising generation, with whom he soon grew into great favor."

The whole legal controversy may be tersely stated in the words of Ashurst, J., in Pasley v. Freeman, 3 D. & E. P 63. He says, "Another argument which has been made use of is, that this is a new case, and that there is no precedent for such an action. Where cases are new in their principle there I admit that it is necessary to have recourse to legislative interposition in order to remedy the grievance: but where the case is only new in the instance, the only question is upon the application of a principle recognized in the law to such new case, it will be just as competent to courts of justice to apply the principle to any which may arise two centuries hence as it was two centuries ago: If it were not, we ought to blot out of our law books one fourth part of the cases that are to be found in them. Is Government by Injunction new in the principle or only in the instance? If new in the principle it is unjustifiable, if only new in the instance it is justifiable, as it is the function of the courts to apply established principles to the changing circumstances and conditions of human life."

The general objection is always interposed in these cases that "it is not one of the functions of a court of equity to prevent the commission of threatened crimes." It seems that in early times "the Lord Chancellor assumed jurisdiction in some cases upon the ground that the defendant's power was such that he could not or would not be punished by a court of law for committing
a court of law for committing a threatened offense? But this practice has long been obsolete. 1 Spence, 343-345, 684 et seq. (See The Mayor v. Jacques, 30 Ga. 506, 513.)

In Gee v. Pritchard, 2 Swanston, 402, 413, Lord Eldon said:

"The publication of a libel is a crime, and I have no jurisdiction to prevent the commission of a crime?" BUT WHILE THIS IS TRUE IT IS EQUALLY AS TRUE THAT THE MERE FACT THAT an act is criminal does not divest the jurisdiction of equity to prevent it by injunction, if it be also a violation of property rights, and the party aggrieved has no other adequate remedy for the prevention of the irreparable injury which will result from the failure or inability of a court of law to redress such right? Mobile v. Ry Co., 84 Ala., 115, 126. Peoples Gas Co. v. Tyner, 131 Ind. 277. Minke v. Hopeman, 87 Ill. 451. Crawford v. Tyrrell, 128 N. Y. 341. Shoe Co. v. Saxey, 131 Mo. 212. In the last case at page 220 the court says,"It will be observed that the defendants do not claim the right to do what the injunction forbids them doing; their learned counsel even quotes the statute to show that it is a crime to do so; but he contends that the constitution of the United States and the constitution of the State of Missouri guarantee them the right to commit crime with only this limitation, to wit: that they shall answer for the crime when committed, in a criminal court before a jury; and that to restrain them from committing crime is to rob them of their constitutional right of trial by jury."
"If that position be correct, then there can be no valid statute to prevent crime. But that position is contrary to all reason. The right of trial by jury does not arise until the party is accused of having already committed the crime. If you see a man advancing upon another with murderous demeanor and a deadly weapon, and you arrest him, disarm him, you have perhaps prevented an act which would have brought about a trial by jury, but can you be said to have deprived him of his constitutional right of trial by jury? The train of thought put in motion by the argument of the learned counsel for the plaintiff defendants on this point leads only to this end, to wit, that the constitution guarantees to every man the right to commit crime so that he may enjoy the inestimable right of trial by jury. When we say that a court of equity will never interfere by injunction to prevent the commission of a crime, we mean that it will not do so simply for the purpose of preventing a violation of a criminal law. But when the act complained of threatens an irreparable injury to property of an individual, a court of equity will interfere to prevent that injury, notwithstanding the act may also be a violation of a criminal law. In such case the court does not interfere to prevent the commission of a crime although that may incidentally result, but it exerts its force to protect the individuals property from destruction, and ignores entirely the criminal portion of the act!"

In Carlton. V. Rugg, 149 Mass. 550, 553, it is said, "The fallacy of the argument lies in part in disregarding the distinction between
the distinction between a proceeding to abate a nuisance, which looks only to the property, that in the use made of it constitutes a nuisance, and a proceeding to punish an offender for the crime of maintaining a nuisance. These two proceedings are entirely unlike. The latter is conducted under the provisions of the criminal law, and deals only with the person who has violated the law. The former is governed by the rules which relate to property, and its only connection with persons is through property in which they may be interested.
Labor troubles seem to divide naturally into two classes: strikes and boycotts. We will first deal with the use of the injunction in strike cases. The definitions of a strike range from "a cessation of work, as of workmen, in order to extort higher wages? (Worcester) to the elaborate tirade of Judge Jenkins in Farmer's &c. Co. v. Northern Pac. Ry. Co., 60 Fed. 803, pp. 818-822. He says, "It has well been said that the wit of man could not devise a legal strike, because compulsion is the leading idea of it. A strike is essentially a conspiracy to extort by violence; the means employed to effect the end not only the cessation of labor by the conspirators, but the necessary prevention of labor by those willing to assume their places, and, as a last resort, and in many instances an essential element of success, the disabling and destruction of the property of the master; and so, by intimidation and by the compulsion of force, to accomplish the end designed. I know of no peaceable strike. I think no strike was ever heard of that was or could be successful unaccompanied by intimidation and violence." Of the ideal strike . . . the only criticism to be indulged is that it is ideal, and never existed in fact! Notwithstanding Judge Jenkins it is well settled "that strikes are not necessarily illegal Arthur V. Oakes, 63 Fed. 310, 327. Master Stevedore's Ass'n. v. Walsh, 2 Daily, 527. "We are not prepared" said Judge Harlan in Arthur V. Oakes, "in the absence of evidence, to hold, as matter of law, that a combination among employes, having for its object their orderly withdrawal in large num-
bers, or in a body from the service of their employers, on account simply of a reduction in their wages, is not a strike, within the meaning of the word as commonly used. Such a withdrawal although amounting to a strike, is not, as we have already said, either illegal or criminal.

The illegality or illegality of a strike "must depend on the means by which it is enforced, and on its objects."

This brings us to the first question. Suppose a strike to be illegal, can the body of men be enjoined from striking? In Farmer's &c. Co. v. Ry. Co., supra, the employes of the railroad were enjoined "from (1) combining and conspiring to quit, with or without notice, the service of said receivers, with the object and intent of crippling the property in their custody, or embarrass the operation of said railroad, and (2) from so quitting the service of the said receivers, with the intent of crippling the property, or prevent or hinder the operation of said railroad."

On the second point the court said, "None will dispute the general proposition of the right of every one to choose his employer, and to determine the times and conditions of service, or his right to abandon such service,- to use the expression of Judge Pardee in Re Higgins, (27 Fed., 443)"- 'peaceably and decently'-but it does not follow that one has the absolute right to abandon a service which he has undertaken, without regard to time and conditions. It is absurd to say that one may do as he will without respect to the rights of others. Liberty and license must not be con-
founded. Liberty is not the exercise of unbridled will, but consists in freedom of action, having due regard to the rights of others. There would seem to exist in some minds a lamentable misapprehension of the terms 'liberty' and 'right.' It would seem by some to be supposed that in this land one has the constitutional right to do as one may please and that any restraint upon the will is an infringement upon freedom of action. Rights are not absolute, but are relative. Rights grow out of duty and are limited by duty. One has not the right arbitrarily to quit service without regard to the necessities of that service. His right of abandonment is limited by the assumption of that service, and the conditions and exigencies attaching thereto. . . . It cannot be conceded that an individual has the legal right to abandon service whenever he may please. His right to leave is dependant upon duty, and his duty is dictated and measured by the exigency of the occasion. . . . It is said that to restrain them from so doing is abridgment of liberty and infringement of constitutional right. I do not so apprehend the law. I freely concede the right of the individual to abandon service at a proper time, and in a decent manner; but I do not concede their right to abandon such service suddenly and without reasonable notice.

On appeal (Arthur V. Oakes) the injunction was modified by striking out the second clause, Judge Harlan saying, "The vital question remains whether a court of equity will under any circumstances, by injunction, prevent one individual from quitting the service of another? . . . The rule..."
we think, is without exception that equity will not compel the actual, affirmative performance by an employe of merely personal services, any more than it will compel an employer to retain in his personal service one who, no matter for what cause, is not acceptable to him for service of that character. The right of an employe engaged to perform personal service to quit that service rests upon the same basis as the right of his employer to discharge him from personal service. If the quitting in the one case or the discharging in the other is in violation of the contract between the parties, the one injured by the breach has his action for damages; and a court of equity, indirectly or negatively, by means of an injunction, restraining the violation of the contract, compel the affirmative performance from day to day or the affirmative acceptance of merely personal services. Relief of that character has always been regarded as impracticable. Toledo &c. Ry. Co. V. Penn. Co., 54 Fed., 740 Taft? J.? and authorities cited; Fry, ppec. Perf. (3d Am. Ed.) secs. 87-81, and authorities cited. . . . The fact that employes of railroads may quit under circumstances that would show bad faith upon their part, or a reckless disregard of their contracts or of the convenience and interests of the public, does not justify a departure from the general rule that equity will not compel the actual, affirmative performance of merely personal services, or (which is the same thing) require employes, against their will, to remain in the personal service of their employer.
It is now settled that employes have a right to quit "whenever they may see fit to do so, and no one can prevent them." Shoe Co. v. Saxey, supra. Cook v. Dolan, 6 dist. (Pa.) 324. U. S. v. Debs, 64 Fed. p. 763.

But it has been held that "so long as they (employes) remain in the employment of the complainant company" the court will compel them "to perform all their regular and accustomed duties," where "such refusal (to perform duties) subjects and will continue to subject the complainant to a multiplicity of suits and to great and irreparable damage." So. Cal. Ry. Co. v. Rutherford, 62 Fed. 796. See (dicta) Chicago &c. Ry. Co. v. Burlington &c. Ry. Co., 34 Fed., 481, 483. In Re Lennon, 54 Fed. 746; 150 U. S. 393; 14 Fed. 320; 166 U. S. 548. "But since the company has the power of discharge, equity would not interfere by injunction, except in a clear case of special necessity." (34 Fed)

On the first proposition of the portion of the injunction quoted from Farmer's &c. Co v. V. Ry. Co., Judge Harlan, in Arthur v. Oakes, said: "But different considerations must control with respect to the words in the same paragraph of the writs of injunction, 'and from combining and conspiring to quit, with or without notice, the service of said receivers, with the object and intent of crippling the property in their custody, or embarrassing the operation of said railroad';... We have said that if employes were unwilling to remain in the service of the receivers for the compensation prescribed for them by the railroad schedules, it was the right of each one of that account to withdraw from such service. It was equally their right without refer-
ence to the effect upon the property or upon the operation of the road, to confer with each other upon the subject of the proposed reduction in wages, and withdraw in a body from the services of the receivers because of the proposed change. Indeed, their right, as a body of employes affected by the proposed reduction of wages, to demand given rates of compensation as a condition of their remaining in the service, was as absolute and perfect as was the right of the receivers representing the aggregation of persons, creditors and stockholders, interested in the trust property, and the general public, to fix the rates they were willing to pay their respective employes. But that is a very different matter from a combination and conspiracy among employes, with the object and intent, not simply of quitting the service of the receivers because of the reduction of wages, but of crippling the property in their hands, and embarrassing the operation of the road. When the order for the original injunction was applied for it was represented—and the interveners admit by their motion that it was correctly represented—that unless the restraining power of the court was exerted the dissatisfied employes, and others co-operating with them, would physically disable and render unfit for use the cars and other property of the receivers, and by force, threats and intimidation used against employes remaining in their service, and against those desiring to take the place of those quitting, would prevent the receivers from operating the road in their custody, and and from discharging the duties which they owed on behalf of
the corporation to the parties interested, in the trust property, to the government and to the public.

"The general inhibition against combinations and conspiracies formed with the object and intent of crippling the property and embarrassing the operation of the railroad must be construed as referring only to acts of violence, intimidation and wrong of the same nature or class as those specifically described in the previous clauses (of) the writ. We do not interpret the words last above quoted as embracing the case of the employees who, being dissatisfied with the proposed reduction of wages, merely withdraw on that account singly or by concerted action, from the service of the receivers, using neither force, threats, persecution, nor intimidation towards employees who do not join them, nor any device to molest, hinder, alarm, or interfere with others who take or desire to take their places..."

"It seems entirely clear, upon authority, that any combination or conspiracy upon the part of these employees would be illegal, which has for its object to cripple the property in the hands of the receivers, and to embarrass the operation of the railroads under their management, either by disabling or rendering unfit for use engines, cars, or other property in their hands, or by interfering with their possession, or by actually obstructing their control and management of the property, or by using force, intimidation, threats, or other wrongful methods against the receivers or their agents, or against employees remaining in their service, or by using like methods to cause employees to quit or prevent or deter
others from entering the service in place of those leaving it. Combinations of that character disturb the peace of society, and are mischievous in the extreme. They imperil the interests of the public, which may rightfully demand that the free course of trade shall not be unreasonably obstructed. They endanger the personal security and the personal liberty of individuals who, in the exercise of their inalienable privilege of choosing the terms upon which they shall labor, enter or attempt to enter the service of those against whom combinations are specially aimed. And as acts of the character referred to would have defeated a proper administration of the trust estate, and inflicted irreparable injury upon it, as well as prejudiced the rights of the public, the circuit properly framed its injunction so as to restrain all such acts as are specifically mentioned, as well as combinations and conspiracies having the object and intent of physically injuring the property, or actually interfering with the regular, continuous operation of the railroad by the receivers.


In U. S. V. Debs, 64 Fed., 724, 763, Judge Woods, commenting on Arthur V. Oakes, said, "Neither expressly nor by implication does the opinion there delivered lend the remotest sanction to the proposition asserted by one of the counsel for the defendants, that in free America every man has a right to abandon his position either for a good or a bad reason; and that another, for a good or a bad reason,
may advise or persuade him to do so. Manifestly this is not true. . . . The right of men to strike peaceably, and the right to advise a peaceable strike, which the law does not assume to be impossible, is not questioned. But if men enter into a conspiracy to do an unlawful thing, and, in order to accomplish their purpose, advise workmen to go upon a strike, knowing that violence and wrong will be the probable outcome, neither in law nor in morals can they escape responsibility.

If employes cannot be restrained from striking what is the province of equity in case of a strike? The rule is well stated in Cook V. Dolan? "A court of equity has no jurisdiction over the question which caused the strike. . . . It cannot stop the conflict; it can only see that the conflict which is being waged, is confined within what are recognized as lawful limits. It were better there were no strikes, and still better that there were no just cause for them. But the courts can neither stop the strikes nor enforce the demands of the strikers. We can only say to the parties to the controversy, thus far and no further can you go without violating the rights of the public or the personal rights of individuals." What are lawful limits we will now discuss.

It seems to be conceded that strikers "have a right to use fair persuasion to induce others to join them in their quitting or refrain from taking their places." Shoe Co. V. Saxey. Ry. Co. V. Wenger, 17 Wk. L. Bull.? 306. Rogers V. Evarts, 17 N. Y. suppl. 964.
But strikers have no right to stop new workmen, against their will, while on their way to work, for the purpose of arguing with them. O'Neil v. Behanna, 182 Pa. St. 236. "It is further urged, says Justice Mitchell, "that the strikers through their committees only exercised ("insisted on" is the phrase their counsel use in court) their right to talk to the new men, to persuade them not to go to work. There was no such right. These men were there presumably under contract with the plaintiff, and certainly in search of work if not yet actually under pay. They were not at leisure, and their time, whether their own or their employers, could not lawfully be taken up and their progress interrupted with by these or any other outsiders on any pretense or under any claim of right, to argue or persuade them to break their contracts. Even, therefore, if the arguments and persuasions had been confined to lawful means, they were exerted at an improper time, and were an interference with the plaintiff's rights which made the perpetrators liable for any damage the plaintiff suffered in consequence!"

"But when fair persuasion is exhausted they have no right to resort to force or threats of violence." "The law will protect their freedom and their rights, but it will not permit them to destroy the freedom and rights of others. The same law which guarantees the defendants in their right to quit the employment of the plaintiffs at their own will and pleasure also guarantees the other employee the right to remain at their will and pleasure!" Shoe Co. v. Saxey.
The earliest case I have been able to find is Muller V. Grantz. (See, appendix.) In this case an ex parte order was granted by Judge Donohue restraining the defendant from using both "persuasions and threats" against employees and those who wished to become employees of the plaintiff. On motion to continue the injunction, Judge Barrett modified the order by directing that it "be confined to intimidations."

The next case is Brusche V. The Furniture Maker's Union, 18 Chicago Legal News, 306. I quote the following from the opinion of Judge Collins, "The bill then alleges that complainant refused to comply with these demands, and in consequence of such refusal, have attempted and are now attempting in an unlawful manner to rule or ruin his business, and to prevent other workmen from being employed by him; that the defendants threaten to blow up complainant's factory with dynamite; that they stand on the side walk of his factory and on the side walks leading there to it, continuously occupying it and making threats against him and his business; that they prevent by force workmen who were employed and those who desire employment from entering his factory; that they have placed a guard over his factory and over the streets leading to it, and that said streets are patrolled constantly by the defendants and others by their procurement for the unlawful purpose of intimidating complainant's workmen and thus preventing them from entering his factory, and such workmen are subjected to personal violence and insult by the defendants while going to and coming from their work at
complainant's factory, and that the defendants threaten if their demands are not complied with they will continue the same system of annoyance and will continue to destroy complainant's factory and all the stock and machinery therein! . . . "An injunction was issued to restrain the defendants from committing the acts complained of"

In McCandless v. O'Brien, 21 Pitts. L. J., 435, the court said, "It must still be understood that plaintiff's are here entitled to an injunction . . . because they (defendants) have undertaken by words and acts, by their numbers, their manner, and their movements, not to persuade workmen to look at the matter of working for plaintiffs as they view it, and of their own free will cease; but to practically compel them by annoyance and intimidation to leave plaintiffs employ or refuse employment". It is now well settled, following the doctrine of these early cases, that an injunction will be granted restraining strikers from using force, threats, intimidations and coercion against other persons who remain in the employment of the complainant or who seek employment from him. Davis v. Zimmermen, 91 Hun, 489. Coeur D'Alene &c. v. Miner's Union, 51 Fed.? 260. Murdock v. Walker, 152 Pa. St.? 595. Wick China Co. v. Brown, 164 Pa. St., 449. Murray, 80 Fed., 811. But where no force, violence, intimidation or coercion is intended against such workmen an injunction will be refused. Johnson Harvester Co. v. Meinhardt, 9 Ab. N. C., 393, aff'd. 24 Hun, 489. Rogers, 17 N. Y. Suppl.? 261, aff'd., sub. nom., Reynolds v. Everett, 67 Hun, 294, and 144 N. Y.? 189.
In Murdock v. Walker, an injunction was granted restraining defendants "from gathering at and about plaintiffs place of business, and from following the workmen employed by plaintiffs, or who may hereafter be so employed, to and from their work, and gathering at and about the boarding places of said workmen, and from any and all manner of threats, intimidations, opprobrius epithets, ridicule and annoyance to and against said workman or any of them for or on account of their working for plaintiffs." (See, also, China Co. v. Brown and Cook v. Dolan.)

In Veglehan v. Guntner, 167 Mass., 927 the injunction included "social pressure" used in connection with threats and intimidation, intimidation and persuasion to break existing contracts. (See quotation from Cote v. Murphy, 159 Pa. St., 426, on p. 94.)

In Sweeny v. Torrence, 1 Dist. (Pa.) 622, the injunction was refused because "all the acts complained of that are distinct and particular occurred or were committed long since. . . . It seems that on behalf of these plaintiffs this court is not asked to stop or prohibit the commission or consumation of any present or threatening action by the defendants, but to anticipate and prohibit by its injunction some action that may possibly be taken in the future. When such action is taken it will be time to interfere."

In Mayer v. Journeymen Stonecutters' Ass'n., 47 N. J. Eq., 519, an injunction was denied because "nothing has been proved in this case to warrant a finding that the defendants have done or threatened ought that is not legalized by this
act of the legislature. (Act of 1883, Rev. Sup. p. 774, sec. 30.) . . . They have agreed not to work with any but members of their association, and not to work for any employer who insists on their doing so, by withdrawing from his employment. So long as they confine themselves to peaceable means to affect these ends, they are within the letter and spirit of the law, and not subject to the interference of the courts.

But what constitutes force, threats and intimidation? In McCandless v. O'Brien the court said, "It still sufficiently appears that the defendants . . . were not satisfied with such means as left such workmen to choose freely between working and refraining from work, but undertook to so act as to make it unpleasant and apparently to some degree unsafe for them to continue in plaintiff's employment, and to embarrass them by preventing them from obtaining suitable lodging or boarding places, and thus force those who were desirous of working to quit plaintiff's employ." In O'Neil v. Behanna it is said, "The strikers and their counsel seem to think that the former could do anything to attain their ends, short of actual, physical violence. This is a most serious mistake. The 'arguments' and 'persuasions' and 'appeals' of a hostile and demonstrative mob have a potency over men of ordinary nerve which far exceeds the limits of lawfulness. The display of force though none is actually used is intimidation, and as much unlawful as violence itself." In Mackall v. Ratchford, 82 Fed., 41,42, the court said, "It seems from the evidence that but few of
the miners employed at the Montana mines had joined the strikers. All efforts to induce them to do so had apparently failed. At this juncture a company of marching strikers, mostly from Monongah, went into camp about one mile from the Montana mines. During Monday, Tuesday and Wednesday, this company, under command of its officers, with music and banners, marched and countermarched along the county road running through the property of the Montana Coal & Coke Company. This marching was very early in the morning and in the afternoon, at times when the miners of said company, were either going to or coming from their work. The marching was from the camp down to the mine opening, then back to the village where the miners lived, thence again past the mine opening, and so on, 'to and fro', during certain hours of the morning and afternoon. . . . A body of men, over 200 strong, marching in the early hours of the morning, before daylight, halting in front of the mine opening, and taking position on each side of the public highway for a distance of at least a quarter of a mile, at the exact places where the miners were in the habit of crossing that highway for the purpose of going from their homes to their work, is at least unusual, and in the state of excitement usually attending such occasions, neither an aid to fair argument, now conducive to the state of mind that makes willing converts to the cause thus championed. That the marching did intimidate quite a number of the miners is clear, if the evidence offered is to be believed; and the court finds it uncontradicted and entitled to credence.
The court is also forced to conclude, from the facts and
circumstance detailed by the witnesses, from the object the
marching men had in view, and from the locality where they
marched, and its topography, that the intention of the march-
ing strikers was to interfere with the operation of the
Montana mines,—with the miners engaged in working said mines,
to intimidate them, and thereby induce them to abandon their
work, and then secure their co-operation in closing the
mines. The marching men seemed to think that they could
go and come on and over the county road as they pleased, be-
cause it was a public highway. But this was a mistake.
The miners working at Montana had the same right to use the
public road as the strikers had, and it was not open and
free to their use when it was occupied by over 200 men
stationed along it at intervals of three or five feet,—
men who, if not open enemies, were not bosom friends. That
some miners passed through this line is shown. That six
others feared to do so is plain. That the marching col-
umn intended to interfere with the work at the mines would
be foolish to deny. In Cook v. Dolan the defendants
"with the permission of Joseph Arnold established a "camp on
his farm within one-half mile of the plaintiff's pit mouth." Of the conduct of the campers, the court says: "Did the defendants and those who were acting with them cross the
line which divides a lawful and an unlawful assembly and
the line which divides legitimate persuasion and unlawful
coercion in the manner in which they conducted their camp?
We think they *** did. . . . It certainly cannot be claimed that calling a working miner a 'scab', a 'blackleg', a 'black sheep', a 'blackleg s- b-', and threatening him if he did not come out now that armed men would be sent for, and threatening that personal violence, 'knocking off his ears,' would be resorted to if he went to work, is legitimate persuasion. Such language is clearly intended to coerce a and not persuade. . . . Three or four hundred men marching under the plaintiff's tramway and close to their pit-mouth and miners' houses, all armed with a walking stick singing 'We'll hang blacklegs on a sour apple tree?' in view of the opprobrious epithets to which we have referred, and a frequent repetition of this marching, was evidently calculated, if not intended, to impress fear on those miners who desired and were working, rather than to conciliate and win them to the strikers' way of thinking. And more than that it was a trespass on the plaintiffs' land, which had been forbidden. For the last ten days the little village or cluster of miners' houses near the pit-mouth of the plaintiffs' mine has been patrolled by every night, and at almost all hours of the night, by squads consisting of from ten to fifteen men. And miners who desired to work and who went to work before daylight were intercepted by these squads; and the men composing these squads during the night talked in front of and near miners' houses, using language which showed a decided hostility on their part to those miners who worked and whose families lived in these houses. Such a course of conduct on the part of campers has the features of the conduct of a military camp in a
time of war, and is suggestive of a campaign of force and not legitimate persuasion. Such conduct could not help inspiring fear on the part of those acting in opposition to the wishes of the strikers, and the testimony shows that it has done so, and that some of the plaintiffs' miners have been forced to quit by the fear thus inspired.

In Rogers v. Evarts, Judge Smith said: "There may be cases, however, where persuasion and entreaty are not lawful instruments to effect the purpose 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."

In People v. Kostka, 4 N. Y. Cr. R., 434, Justice Barrett says: 'The mere fact that no violence was used in the streets is not conclusive. It is for you (the jury) 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 these circulars was an attitude of intimidation, either to the passer-by or to the woman inside, considering all the circumstances, then all who participated in it, directly or indirectly, are within the meaning of that word 'intimidation', as used in the conspiracy act.'

It stands conceded by defendants counsel that the strikers have not the right to assemble in front of a factory in such numbers as to constitute intimidation. Picketing may be done in such numbers as to constitute intimidation. Jeering and shouting at employees may constitute intimidation. Persuasion or entreaty may
be so persistent as to constitute intimidation. Wherever the strikers assume towards the employees an attitude of menace, then persuasion and entreaty; with words however smooth, may constitute intimidation, which will render those who use them liable to the penalties of both the civil and criminal law. It may be impossible to lay down a general rule as to what surrounding circumstances will characterize persuasion and entreaty as intimidation. Each case must probably depend on its own surroundings. But where the evidence presents such a case as to convince the court that the employees are being induced to leave the employer by operating upon their fears rather than upon their judgment or their sympathy, the court will be quick to lend its strong arm to its protection. Rights guaranteed by law will be enforced by the courts, whether invoked by employer or employee.

In U. S. V. Kane, 23 Fed., 748, the present Mr. justice Brewer illustrated the proposition by this figure: "Supposing Mr. W. had two men employed, and that he finds that in the management of his little farm he is not making enough so that he can afford to employ two laborers, and he says to one of them: 'I will have to get along without your services, and I will do with the services of the other?' and the one leaves. That is all right. Supposing the one who leaves goes to the one who has not left and says to him: 'Now, look here; leave with me,' giving whatever reasons he sees fit, whatever reasons he can adduce, and the other one says, 'Well I will leave?' and he leaves because
his co-laborer has persuaded him to leave; that is all right. Mr. Wheeler has nothing to say; he may think that the reasons that the one that is leaving has given to the one that he would like to have stay are frivolous, not such as ought to induce him to leave, but that is those gentlemen's business. If the one whom he would like to have stay is inclined to go because his friend has urged, has persuaded him, has induced him to leave, Mr. W. cannot say anything. That is the right of both these men,—the one to make suggestions, give reasons, and the other to listen to them, and act upon them.

"But supposing—and I will take the illustration I partially suggested yesterday—supposing one is discharged and the other wants to stay, is satisfied with the employment, and the one that leaves goes around to a number of friends and gathers them, and they come around, a large body of them, as I suggested yesterday, a party with revolvers and muskets and the one that leaves comes to the one that wants to stay and says to him, 'Now, my friends are here, you had better leave: I request you to leave;' the man looks at the party that is standing there; there is nothing but a simple request:—that is so far as the language which is used; there is no threat; but it is a request backed by a demonstration of force, a demonstration intended to intimidate, calculated to intimidate, and the man says: 'Well I would like to stay, I am willing to work here, yet there are too many men here, there is too much of a demonstration; I am afraid to stay.' Now, the common sense of every man tells
him that this is not a mere request,- tells him that while the language used may be very polite and be merely in the form of a request, yet it is accompanied with that backing of force intended as a demonstration and calculated to make an impression; and that the man leaves really because he is intimidated.

"If I take another illustration, I will make it even more plain. Supposing half a dozen men stop a coach, with revolvers in their hands, and one man asks the passengers politely to step out and pass over their valuables; and supposing those men should be put on trial before any court for robbery, would not you despise a judge who would say,—'why there was no violence; there were no threats; there was simply a request to these passengers to hand over their valuables, and they handed them over; it was simply a request and a loan of their valuables! Would not the common sense of every man say that that request, no matter how politely it was expressed, was a request backed by a demonstration of force that was really intimidation, and made the offense robbery? Would not you expect any judge to say that? Would not you despise any one who would say otherwise?"

In Allen V. Flood Lord Hershell said, "In another passage in his opinion the learned judge (Hawkins) says that there is no authority for the proposition that to render threats, menaces, intimidation or coercion available as elements in a cause of action, they must be of such a character as to create fear of personal violence. I quite
agree with this. The threat of violence to property is equally a threat in the eye of the law."

It will thus be seen that intimidation "is the effect of such things, said or done, or threat made, as reasonably put one in fear, and control his freedom of action, or thus compel one to act out the will of another instead of his own will. Parker v. Bricklayer's Union, 21 Wk. L. B. 223.

The grounds for equitable interference in these cases have been variously stated but it is generally said to be founded on the irreparable nature of the injury, the prevention of a multiplicity of suits, the restraining a nuisance, and the protection of property. In Brusche v. Furniture Makers Union it was said, "It is contended that such acts of defendants as are properly alleged constitute offenses punishable as crimes, and that a court of equity will not enjoin the commission of a crime, and that the civil remedy by an action for damages is full, adequate and complete. On the other hand the complainant contends that although the defendants are liable to indictment yet their action and threatened movements are such an invasion of property rights as require the preventive process of injunction, and that without such process a continuing and irreparable injury will be wrought, for which there is no adequate remedy at law. The latter contention seems to be well founded. In a bill like this presenting a case of manifest merit and great wrong to the complainant, the court will not search for technicalities or fine spun theories upon which to support a refusal of relief but will follow the well settled
rules which are well stated in the case of Parker v. Winnipegsee Co., 2 Black, 454, where the court says: 'A court of equity will interfere where the injury by the wrongful act of the adverse party will be irreparable, as where the loss of health, the loss of trade, the destruction of the means of subsistence, or the ruin of property must ensue.

... It will also give its aid to prevent oppressive and interminable litigation or a multiplicity of suits; or where the injury is of such a nature that it cannot be adequately compensated by damages at law, or is such as from its continuance or permanent mischief must occasion a constantly recurring grievance, which cannot be prevented otherwise than by injunction.

In McCandless v. O'Brien the court said that defendants were "guilty of acts which constitute a nuisance." Speaking of its power to restrain a nuisance the court said, "Even if the expression 'rights of individuals', in the act of 1836, means only 'rights of property which can be handled and technically trespassed upon. The court has jurisdiction to enjoin a continuing trespass, but its jurisdiction is not limited to such cases. Without touching the property of plaintiffs, defendants may commit acts which constitute a nuisance and infringe upon rights of property. The principle which in such cases justify and require the interference of a court of equity, are closely allied to if not identical with, those applicable to trespass. In trespass there is a direct infringement of one's right of property-in nuisance it is consequential. In either case equity
will afford relief by injunction, if the injury be such as
is not susceptible of adequate pecuniary compensation in
damages, or one the continuance of which would be a constant
ly recurring grievance."

In Blindell v. Hagan, 54 Fed., 40, the court says,
"Where there is a large combination of persons to interfere
with a party's business by violence, the equitable jurisdic-
tion, if maintainable at all, is maintainable on either
of two grounds,- the nature of the injury, including the dif-
culty of establishing in a suit at law the amount of ac-
tual damage suffered, or the prevention of a multiplicity
of suits. The jurisdiction for these reasons, was main-
tained in the following cases: Emack v. Kick, 34 Fed., 47/
Casey v. Typographical Union, 45 Fed., 135, 144. , Gilbert
V. Mickle, 4 Sandf., Ch., 381? (marg. P. 357.) Sherry V.
Perkins, 147 Mass., 212!"
Picketing.

Picketing by strikers is placing a patrol of men at or near the place of business of the complainant to watch such place for the purpose of ascertaining the man of the employes, and customers, in order that the strikers may persuade them to cease working for or trading with the complainant. Is picketing unlawful? In Perkins v. Rogg 28 Wk. L. Bull., 32, 35, Smith J., said, "The system of sending a committee to the neighborhood of a factory, as was done in this case, is one that has frequently been adopted before in case of strikes, and may be legal or illegal according as it is an interference or not, with the right of labor as I have defined it! The definition is as follows, "The right which the striking workmen claims for himself, and to which he is justly entitled, viz. to whom he pleases and to ask for his work such wages as he shall deem proper, is also a right which he must accord to every other workman in the community; and while the law permits him to endeavor, by reasonable argument, and persuasion, to induce another to adopt his views and to cease work and to join him in his demand for higher wages; yet he has no right by threats, intimidation or molestation, or by any form of coercion or compulsion to interfere with the exercise of the free will of a fellow workman. Such interference is an invasion of the right of free labor, for which the striking workman is himself contending!"

In Veglehan v. Guntner a patrol of two men was maintained in front of the plaintiff's factory from half past six in
the morning till half past five in the afternoon. "The number of men was greater at times, and at times showed some little disposition to stop the plaintiff's door." "The patrol was maintained as one of the means of carrying out the defendants' plan, and it was used in combination with social pressure, threats of personal injury or unlawful harm, and persuasion to break existing contracts. It was thus one means of intimidation indirectly to the plaintiff and directly to persons actually employed, or seeking to be employed, by the plaintiff, and of rendering such employment intolerable to such persons. Such an act is an unlawful interference with the rights both of employer and of employed. "No one can lawfully interfere by force or intimidation to prevent employers or persons employed or wishing to be employed from the exercise of these rights. . . . Intimidation is not limited to threats of violence or of physical injury to person or property. It has a broader signification, and there may also be a moral intimidation which is illegal. Patrolling or picketing, under the circumstances stated in the report, has elements of intimidation like those which were found to exist in Sherry v. Perkins, 147 Mass., 212. See Rogers v. Evarts, 17 N. Y. Supp., 264 and same case on appeal in 67 Hun, 294, at p. 299. Reg. v. Druitt 10 Cox Cr. Cases, 592, 601. Reg. v. Sheppard, 11 Cox Cr. Cases, 325, 327. Reg. v. Hilbert, 13 Cox Cr. Cases, 82. For an interesting case on picketing and the effect of the later English Statutes see, Lyons v. Wilkins, 1896, 1 CH., 61.
Circul ar s.

It is generally and correctly stated that equity has no jurisdiction to restrain a libel. Kid v. Morry, 26 Fed., 773 and cases cited. But the fact still remains that equity has granted injunctions restraining the distributions of circulars, posters, &c. in many cases. If they were not restrained as being libelous, why was relief granted? The earliest case bearing on the subject is Gilbert v. Mickle, In this case the complainant was an auctioneer, lawfully entitled to do and doing business in New York City. The defendant (mayor of the city),—"complaints having been repeatedly made to him against the establishment of the complainant, as being a mock auctioneer"—ordered a man stationed in front of complainant's place of business bearing "a b a i n e r with this strange device—"Strangers, Beware of Mock auctioneers! The Vice-Chancellor said, "It is clear to my mind, that the obstruction of the complainant's lawful business, as detailed in the bill, constitutes a nuisance against which equity, under ordinary circumstances, is bound to relieve. In this instance, on the case made on the bill, although the defendant did not interfere with the complainant's trade and occupation as an auctioneer, by blocking up the street and sidewalk in front of his store, with teams or carts, so as to impede the free ingress and egress of merchants and others who might desire to attend his sales; he interrupted and destroyed the complainant's business more effectually, by keeping a man posted before the door of the latter, with the
placard in staring capitals, 'Strangers, Beware of Mock Auctioneers! It may be that the placard was a libel, which, unless justified, would subject the defendant to corresponding punishment, both by way of damages and by indictment, but it was none the less a private nuisance, injuriously and summarily affecting the property and lawful pursuits of the complainant, and as such, it was falls within the clearly established, and I may justly add, beneficent jurisdiction of the court of Chancery. And I am sure, no one will feel the slightest apprehension of an undue or dangerous exercise of the process of chancery, if they are pushed no farther that to prevent one individual, whether he be high in station or a private citizen, from trampling upon his neighbor's rights, and utterly destroying his neighbor's trade and business, without authority of law, by means of an offensive and false placard or standing advertisement, kept before his store or office. The most zealous stickler for the bill of rights in our expiring constitution, will not distrust the preservation of liberty of speech and of the press, from the suspension and punishment of such an outrage. The injunction was dissolved on other grounds.

The next case and the first one to apply the injunction to labor troubles, is Springhead Spinning Co. v. Riley, L. R., 6 Eq., 551. This case was heard on a demurrer to the bill. The employes of complainant were out on a strike and the defendants posted notices in the vicinity of complainant's place of business that read as follows:— "Wanted all well wishers of the Operative Cotton Spinners, &c., Association not to trouble or cause any annoyance to the
Springhead Spinning Company, Lees, by knocking at the door of their office until the dispute between them and the self-actor minders is finally terminated. By special order: "Carrodus, 22, Greaves Street, Oldham!" The bill alleged that "the said placards and advertisements were part of a scheme of the defendants, whereby they, by threats and intimidation, prevented persons from hiring themselves to, or accepting work from, the plaintiffs, and there were divers persons in, and in the neighborhood of Springhead, and elsewhere, who, by reason of such notices and the liabilities under which they would place them in regard to the association, were intimidated and prevented from hiring themselves to the plaintiffs. Sir R. Mallins, V. C., granted an injunction and in the course of his opinion said "In the present case? the acts complained of are illegal and criminal by the Act of Geo. 4, and it is admitted by the demurrers that they were designedly done as a part of a scheme by threats and intimidation, to prevent persons from accepting work from the plaintiffs, and as a consequence, to destroy the value of the plaintiffs' property. It is, in my opinion, within the jurisdiction of this court to prevent such or any other mode of destroying property, and the demurrers must therefore be overruled.

"In coming to this conclusion I desire to be understood as deciding simply upon what appears upon this bill and these demurrers!"

It is often said that this case and Dixon v. Holden, L. R., 7 Eq., 488, were overruled by Prudential Assurance Co. v. Knott, L. R., 10 Ch. App., 142, but an examination of
that case shows that it does not go to that extent but simply criticizes some of the dicta in Dixon v. Holden. In Dixon v. Holden the defendants were enjoined from publishing a statement that the complainant was a secret partner of a bankrupt firm and that he had concealed this fact for the purpose of defrauding creditors. The statement was false. The Vice-Chancellor wasn't content with confining himself to the case at bar but said, "The business of a merchant is about the most valuable kind of property he can well have. Here it is the source of his fortune, and therefore to be injured in his business is to be injured in his property. But I go further and say, if it had only injured his reputation, it is within the jurisdiction of this court to stop the publication of a libel of this description, which goes to destroy his property or his reputation, which is his property, and, if possible, more valuable than other property. In this case I go on general principle, and I am fortified by authority. General principle is in favor of it, but authority is not wanting and further on the Vice-Chancellor says, "In the decision I arrive at, I beg to be understood as laying down, that this court has jurisdiction to prevent the publication of any letter, advertisement, or other document which, if permitted to go on, would have the effect of destroying the property of another person, whether that consists of tangible or intangible property, whether it consists of money or reputation." It is this dicta that the court takes exception to in Assurance Co. v. Knott. The only mention of the Spinning Co. case
is that it was "decided by the Vice-Chancellor himself, upon which of course the learned judge must be taken to have expressed the same opinion as he expressed in the case of Dixon v. Holden." However, no such dicta can be found in the Spinning Co. case and it was decided solely upon the grounds that the demurrers admitted that there were "threats and intimidations!"

In the Assurance Co. case, Lord Cairns, L. C. said, "It is clearly settled that the court of chancery has no jurisdiction to restrain a publication merely because it is a libel. There are publications which the Court of Chancery will restrain, and those publications, as to which there is a foundation for the jurisdiction of a Court of Chancery to restrain them, will not be restrained the less because they happen also to be libellous. But apart from the suggestion that the publication here is a libel, I do not observe in the bill any statement or foundation for the jurisdiction of the court to restrain. I repeat, If the observations are not libellous, they are lawful; and ought not to be restrained; if they are libellous, it is only because they are libellous that the court of Chancery is asked to restrain them? After citing authorities showing that a mere libel will not be restrained, he says, :- "The only shadow of authority the other way is in the case of Dixon v. Holden, decided by Vice-Chancellor Mallin's in the year 1868. I say nothing about the decision in that particular case, and I do not mean to say that the decision is not capable of being maintained" He then quotes the dicta
already quoted and criticizes the same. The case of Routh v. Webster, 10 Beaven, 561, upon which "Dixon v. Holden was professed to be decided?" was then discussed and stated "to have been quite rightly decided." As the facts and principle involved were very similar to Dixon v. Holden, it can be readily seen that the court was not quarrelling with the actual decision in that case but with the dicta quoted.

Vice-Chancellor Mallins delivered two other opinions holding the same principle as the Spinning Co. case. Rollins v. Hinks, L. R., 13 Eq., 355, and Axmann v. Lund, L. R., 18 Eq., 330. In both cases the defendant issued circulars stating that he would bring suit against any person who bought certain articles from the complainant, claiming that these articles were an infringement of his patent. The circulars were not issued bona fide to protect his rights, but for the purpose of "intimidating the public and thereby totally destroying the trade of the plaintiff." See Croft v. Richardson, 59 How. Pr., 356.

In Sherry v. Perkins the defendants were restrained from carrying a banner in the street in front of complainant's place of business having the following inscription, "Lasters on a strike and lasters are requested to keep away from P. P. Sherry's until the present trouble is settled. Per order L. P. U." The court said, "The case finds that the defendants entered , with others, into a scheme, by threats and intimidation, to prevent persons in the employment of the plaintiff continuing in such employment, and to prevent others from entering into such employ-
ment. /... The act of displaying banners with devices as a means of threats and intimidation to prevent persons from entering into or continuing in the employment of the plaintiffs, was injurious to the plaintiffs, and was illegal at common law and by statute. . . . We think that the plaintiffs are not restricted to their remedy by an action at law, but are entitled to relief by injunction. The acts and the injury were continuous.

In Emack v. Kane a patentee of a "noiseless slate" issued circulars under conditions similar to those mentioned in the English cases, and an injunction was granted. Blodgett, J., said, "It may not be libellous for the owner of a patent to charge that an article made by another manufacturer infringes his patent: and notice of an alleged infringement, may, if given in good faith, be a considerate and kind act on the part of the owner of the patent; but the gravamen of this case is the attempted intimidation by defendants of complainant's customers by threatening them with suits which defendants did not intend to prosecute, and this feature was not involved in Kidd v. Houry. I cannot believe that a man is remediless against persistent and continued attacks upon his business, and property rights in his business, such as have been perpetrated by these defendants against the complainant, as shown by the proof in this case. It shocks my sense of justice to say that a court of equity cannot restrain systematic and methodical outrages like this, by one man upon another's property right rights. If a court of equity cannot restrain an attack
like this upon a man's business, then the party is certainly
termed, because an action at law in most cases would do
no good and ruin would be accomplished before an adjudica-
tion would be reached. ... "The effect of the circulars sent by the defendant,
Kane, certainly must have been to intimidate dealers from
buying of complainant, or dealing in slates of his manufac-
ture, because of the alleged infringement of the Goodrich
patent. No busines—s man wants to incur the dangers of a
law suit for the profits he may make as a jobber in handling
goods charged to be an infringement of another man's patent.
The inclination of most business men is to avoid litigation
and to forego even certain profits, if threatened with a
law suit which would be embarrassing and vexatious, and
might mulct them in damages far beyond their profits; and
hence such persons, although having full faith in a man's
integrity, and in the merits of his goods, would naturally
avoid dealing with him for fear of possibly becoming in-
volved in the threatened litigation."

See School Furniture Co. v. School Furniture Co, 92

I think it is clearly settled that "when the acts
complained of consist of such mis-representations of a bus-
iness that they tend to its injury, and damage to its pro-
prietor, the offense is simply a libel" and the courts will
not grant an injunction; but "on the contrary, when the at-
tempt to injure consists of acts or words which will operate
to intimidate and prevent the customers of a party from
dealing with or laborers from working for him, the courts will interfere by injunction. Coeur D'Alen &c. v. Miners Union, 51 Fed., 267.

The principle is also recognized in three English cases decided in 1891. Salmon v. Cotes, 91 L. T., 353; Peto v. Apperley, id., 362, 386; and Haille v. Lillingstone. The first was decided by Judge Collins; the last two by Judge Jeune. The judges didn't disagree on the principle, but did disagree as to what would constitute intimidation. See criticism on the cases at p. 393 of the same volume.

In Richter Bros. v. Tailors' Union, 24 Wk. L. Bull., 189, 192, the injunction was refused because, "the petition absolutely fails to show any act that was done pursuant to the conspiracy, excepting the composing and circulation and posting of the circulars. No workman was deterred by the circulars or posters, or by the threats of the defendants, from engaging in work for or from continuing in the employment of the plaintiff. No customer failed or refused to patronize the plaintiff on either of these grounds. None of these facts are shown in the petition. No facts or facts, constituting a nuisance in law, or an interference with, or destruction of, the plaintiff's business, or profits, are set out in the petition. Its 'glittering generalities', its conclusions of fact and law, cannot be accepted as ultimate facts!"

In Sinsheimer v. Garment workers, 77 Hun, 215, reversing, 5 Misc., 448, the injunction was dissolved because (1) there was "no proof of any act of violence upon the part
of the defendants, or of any injury to property, or of any threats or intimidation; because (2) the publication of the circulars had been discontinued some time before the injunction was granted, and (3) because the complainants did not come into equity with clean hands.
Trespass.

As already seen, strikers may use fair persuasion to induce employees to join them, but can the strikers trespass upon the property of the complainant for this purpose? In Ry. Co. v. Wenger, 17 Wk. L. Bull., 306, it was held that they could not. In this case the court said: "From these facts, it is clear to my mind that these men, when they went there under the circumstances under which they went there, were clearly trespassers, and that it was altogether and essentially unlawful to go there, even, seeking to compel or urge or invite other men to abandon their employment, and to thereby obstruct the business... It is a trespass. It is a wrong, and when I say this I do not mean to question the right of these men off the premises, by reasonable and peacable means, that it is for their benefit and advantage, to go elsewhere or to cease their employment. I do not question that right. I do not find it necessary in this case to question the right. But what I do hold To be a correct proposition is that while out of the employment of this company, in this case as in other cases that may arise, the parties so ceasing employment have no right to go upon the premises and, by force or by violence or by threats or by intimidation or by request, ask other men to join them, or in any way interfere with or interrupt the progress of the business that is then being sought to be carried on. I do not believe there can be any difference of opinion among reasonable men on this subject, and I think these troubles arise, in large measure, out of a mis-
taken notion as to what the rights of men are"

In Longshore Printing Co. v. Howell, 26 Ore., 537, it was alleged that "the executive committee . . . without leave or license, and without lawful business, entered the premises of the plaintiff and ordered all union men to quit."

"If this was a willful aggression upon plaintiff's rights, it would constitute trespass, for which an action would lie sounding in damages. The injunction was refused because "no intimidation is specifically alleged or shown, unless it can be inferred that by a refusal to quit, the members of the union would subject themselves to the charge of insubordination to the order, and it does not appear that there was sufficient odium attached to this to put the members in fear, or that compliance with the order and resolution was induced thereby." Nothing was said on the question of trespass, but as it was a single act, already committed, and its repetition was not threatened, it would not seem to be a proper case for an injunction. See quotation from Mackall v. Ratchford on P/ 44.

of the Montana Coal & Coke Co. for the purpose of interfering with the employes of said company, either by intimidation, or by the holding of either private or public assemblages upon said property, or in any way molesting, interfering with, or intimidating the employes of that company so as to induce them to abandon their work in the said mines.

In Ry. Co. v. Wenger, the defendants were restrained, "from in any manner whatever molesting or interfering with any engine, tender, car, switch, coupling, engine-house, depot, water-tank or property, appurtenance or freight upon said premises."

It is also held that where a large body of strikers march up and down the highway in the vicinity of complainants' place of business so as to interfere with and obstruct his business, it is a trespass and violates an injunction against trespass. Cook v. Dolan. Mackall v. Ratchford. In Cook v. Dolan the court said, "it was a trespass upon the plaintiff's land, which had been forbidden. The highways can undoubtedly be used by large bodies of men for parades within reasonable limits; but a parade which is confined within reasonable limits to a limited piece of a public road before a pit-mouth and under a tram-way, and which is repeated two or three times a day for ten days or two weeks, loses the characteristic of a legitimate parade, and when directed against the interests of the owner of the land over which the road passed, becomes a trespass. We hold, therefore, that these marches are in violation of the injunction, in that they . . . (2) were a trespass on their (plaintiffs') property at or near the pit-mouth of their

The grounds for restraining a trespass are well stated in Richter Bros. v. Tailors Union, where it is said, "The trespass if a single act, must be irreparable, the injury threatened or done must be of such a character, that the property injured cannot be restored to its former condition, or that compensation cannot be afforded by damages. If the trespass is continuous in its character, though not destructive, irreparable, then a court of equity entertains jurisdiction, because by an action at law the plaintiff cannot recover damages which constitute a complete and certain relief." 3 Pom. Eq. J., sec. 1357."
Paying Money &c.

In Rogers v. Evarts it was held that "the offer by defendants of money to pay expenses of the employe is lawful. The assistance given to those needing it is lawful, even if offered as an inducement for the employe to leave. It is only a just provision to those who have surrendered their wages, perhaps from sympathy for defendants. The posting of names of those who contribute to funds sought and lawfully used for sustaining the strike, and of those who refuse to contribute, is lawful as long as the strikers keep within the law. If, however, their purpose be an unlawful one, and not for an advance of wages, or if they seek to accomplish a lawful end by lawful means, then they are guilty of illegal conspiracy, and the posting of the names of the contributors and non-contributors is a part of such conspiracy and unlawful!"

The converse of this proposition is held in the English cases of Warburton v/ Huddersfield Industrial Society, 1892, 1 Q. B., 817; and Farrer v. Close, L. R., 4 Q. B., 602. However these case seem to be governed by the construction put on the English Statutes and the by-laws of the associations concerned. It would seem that on principle the New York case is correct. The strikers have certainly kept "within the law! The offer of money is surely not a threat or intimidation, but rather a species of 'peaceable' or 'moral' persuasion."
In the case Bros. v. Evans, 18 Pitts. L. J., 399, it is said; "In popular *acceptation* it (boycott) is an organized effort to exclude a person from business relations with others by persuasion, intimidation and other acts which tend to violence and thereby coerce him through fear of resulting injury, to submit to dictation in the management of his affairs." It will be noticed that the above definition assumes that a boycott is in its essence unlawful, but there are many cases holding the contrary and it would not seem to be necessarily true. A much better definition is the one given by Judge Taft in Toledo &c. Co. v. Penn. Co., 54 Fed. 730. He says, "As usually understood, a boycott is a combination of many to cause a loss to one person by coercing others, against their will, to withdraw from him their beneficial business intercourse, through threats that, unless those others do, the many will cause similar harm to them." By 'coercion' Judge Taft evidently means the 'moral persuasion' caused by a fear of loosing the profits of their business and not the use of unlawful force or acts, for he says, "Ordinarily, when such a combination of persons does not use violence, actual or threatened, to accomplish their purpose, it is difficult to point out with clearness the illegal means or ends which makes the combination an unlawful conspiracy; for it is generally lawful for the combiners to withdraw their intercourse and its benefits from any person,"
and to announce their intention of doing so, and it is equally lawful for the others, on their own motion, to do that which the combiners seek to compel them to do!

Thus, we see that a boycott is an organized effort to destroy the business of a certain person and it may be either lawful or unlawful. It is very difficult to point out just where the line falls between a lawful and an unlawful boycott, on account of the contradictions to be found in the cases.

I take it to be a sound proposition of law that a man cannot recover in an action against another, unless he has been injured; and that a man cannot be injured unless he has a legal right and this legal right has been infringed and he has suffered damage thereby. Rogers v. Rajendro Dutt, 13 Moo. P. C., 209, 241. Larson v. Ohase, 47 Minn., 307. In a boycott is any legal right of the person boycotted invaded? It is simply an attempt to prevent him from entering into business relations with others, to prevent him from making future contracts, in other words, to interfere with his right to gain a livelihood. Supposing a combination of men, for the purpose of ruining A, persuade all wholesalers to refrain from dealing with A, using no unlawful means, does A have an action? In the solution of that problem, I assume that if the combination have the right to so persuade the wholesalers then A cannot recover, for "an act lawful in itself is not converted into an unlawful act so as to make the doer of the act liable to a civil action" But have they the right? They have unless they have interfered with some right of A's. With what right of A's have
they interfered? Simply the right which every man has "to pursue his trade or calling without molestation or obstruction, and any who by any act, though it be not otherwise unlawful, molests, or obstructs him is guilty of a wrong unless he can show lawful justification of excuse for so doing." Unless this is a correct proposition of law I fail to see how the boycott cases can be sustained.

'Instead of commencing with the first case I will start with one of the latest. In the late English case of Allen v. Flood, 1898, A. C., 1, the plaintiffs, members of one trade union, were employed in making repairs on a ship. The defendant was a delegate of another trade union, some of the members of which were employed on the same ship. Defendant informed the employers that unless the plaintiffs were discharged all the ironworkers (his union men) would quit work saying that the plaintiffs had been doing ironwork in another ward. The plaintiffs were discharged and bring this action for damages. The plaintiffs were employed by the day but would have been retained but for this interference. The case was fully considered and the House of Lords finally decided that the action would not lie. I do not now quarrel with the result of Allen v. Flood but I do quarrel with the ratio decision of the Lords. They decided that (1) the proposition I have stated was not sound law and (2) that as no unlawful means were used to procure plaintiffs discharge the action would not lie.

Let us examine the authorities bearing on the first proposition and see what result is obtained. In Comyn's
Digest (Action on the Case, A,) it is said, "In all cases where a man has a temporal loss, or damage by the wrong of another, he may have an action upon the case, to be repaired in damages." In Viner's Abridgement (Actions on the Case, n. c. 3,) it is said, "If those that are coming to my market are disturbed, or beat, per quod, I lose my toll, an action upon the case lies". And again, (same title, 21,) "If a man menaces my tenants at will, of life and members, per quod they depart from their tenures, an action upon the case lies against him". In Turner v. Sterling, 2 Vent., 25, Wylde, J., said (approving 41 Edw. III, 24, B,) "If I have an horse or beast market, and a toll for sale, and one hinder the beasts from coming hither, non constat whether they should be sold, yet for the possibility of that and of the loss of the toll thereon, an action lies". In the Abbe of Dunesham case, 29 Edw. III, 18, b, the Abbe by grace of the King was entitled to hold a fair at Stow, and the defendants with "force and arms" disturbed "certain persons coming to the aforesaid fair," whereby the Abbe "lost his toll and the profits of the fair, to the damage," &c. This was held actionable. In Keeble v. Hickeringill, 11 East 574; s. c. Holt 12, 17, 19; 3 salk 9; 11 Modern 74, 130, the defendant maliciously fired a gun near the plaintiff's decoy and drove the wild-fowl away. Holt, C. J., said that there was a good cause of action. In the course of his opinion he said, "This is his (plaintiff) trade; and he that hinders another in his trade or livelihood is liable to an action for so hindering him". And again, "Where a violent or
malicious act is done to a man's occupation, profession, or way of getting a livelihood; there an action lies in all cases. But if a man doth him damage by using the same employment; as if Mr. Hickeringill had set up another decoy on his own ground near the plaintiff, and that had spoiled the custom of the plaintiff, no action would lie, because he had as much liberty to make and use a decoy as the plaintiff. This is like the case of 11 H. IV, 47. One schoolmaster set up a new school to the damage of an ancient school, and thereby the scholars are allured from the old school to come to his new. (The action was held not to lie) But suppose Mr. Hickeringill should lie in the way with his guns, and fright the boys from going to school, and their parents would not let them go thither; sure that schoolmaster might have an action for the loss of his scholars.

A man hath a market, to which he hath toll for horses sold; a man is bringing his horses to market to sell; a stranger hinders and obstructs him from going thither; an action lies because it imports damage. Action upon the case lies against one that shall by threats fright away his tenants at will. Carrington v. Taylor is an extreme case. Here the defendant was shooting fowl for his own benefit where he had a lawful right to shoot. He frightened the ducks away from the plaintiff's decoy and was held liable for so doing. This case can hardly be supported. In Tarleton v. M'Cawley, Peake 8. P., 270, the plaintiff's vessel was lying off the coast of Africa at Calabar where he was trading with the natives. The defendant,"well knowing the premises, but contriving and maliciously intend-
ing to hinder and deter the natives from trading" with the plaintiff, "with force and arms, fired . . . a certain cannon loaded with gunpowder and shot at the said canoe, and killed one of the natives on board the same. Whereby the natives of the said coast were deterred and hindered from trading with " &c. and plaintiffs lost their trade. Lord Kenyon held that the action would lie. In Ibotson v. Peat, 3 H. 6 C., 643, the plaintiff had enticed and allured certain grouse from the lands of the Duke of Rutland by placing on his own land "near to the lands of the said Duke, quantities of corn and other substances on which grouse feed, and was then and there about to shoot the said grouse, wherefore the defendant, as the servant of the said Duke, and by his command, in order to prevent the plaintiff from shooting" &c. "fired, exploded, and projected, and caused to be fired, exploded and projected, certain offensive, injurious, noxious, terrifying and dangerous rockets, fireworks, missiles, projectiles and combustibles, and made and caused to be made divers loud, jarring, annoying and disturbing noises close to and over the said lands of the plaintiff" Thereby the grouse and other game "were scared frightened and driven away from the said land of the plaintiff" The judges were unanimously of the opinion that this was actionable. In Garrett v. Taylor, Cro. Jac., 567, s. c., 2 Rolle,163, the plaintiff was the owner of a stone quarry, and the defendant, "to discredit and deprive him of the commodity of the said mine, imposed so many and so great threats upon his workmen, and all came's disturbed, threat-
ening to mayhem and vex them with suits if they bought any stones of them; whereupon they all desisted from buying and the others from working &c. Held, "The threatening to mayhem, and suits, whereby they durst not work or buy, is a great damage to the plaintiff, and his loosing the benefit of his quarries a good cause of action." In Guntner v. Astor, 4 J. B. Moore, 12, "The defendants clandestinely sent for his (plaintiff) workmen, and having caused them to be intoxicated, induced them to leave him and come to them—by which the plaintiff was nearly if not absolutely ruined." A new trial was moved for on the ground (inter alia) "that as the men worked by the piece, each of them was justified in leaving the plaintiff when he had completed the work he had in hand." The motion was denied.

In Bennett v. Allcott, 2 D. & E., 166, 'the defendant seduced the daughter to the plaintiff, she being over twenty-one. There was no existing contract of service between the father and daughter. The plaintiff was allowed to recover. In Evans v. Walton L.R., 2 C. P., 615, the defendant enticed away the plaintiff daughter who was nineteen years of age. The defendant did not debauch her, and there was no contract of service. In this case the action for seduction would not lie. The Plaintiff recovered. In Levet's case, Cro. Eliz., 289, the plaintiff was an inn-holder in D. and "The defendant spake these words, 'Thy house is infected with the pox; and thy wife was laid of the pox." Held, "Actionable for it is a discredit to the plaintiff and guests would not resort
thither" in Riding v. Smith, 1 Ex. Div., 91, the defendant stated that the plaintiff's wife, who assisted plaintiff in conducting his business, had been guilty of adultery, whereby plaintiff lost trade and customers.

It will be noticed that in all these cases except Keeble v. Hickeringill, Carrington v. Taylor, Ibotson v. Peat, and the last two the act which the defendant procured the third party to desist from doing, was not one which the plaintiff could have compelled the third party to perform. It was simply one which would probably have been done if the defendant had not interfered. In other words the plaintiff's right to do business without molestation has been interfered with and he has been allowed to recover. There are no other grounds on which the action can be based.

In many of the cases means that were in se unlawful were used to accomplish the desired end. In Allen V/ Flood, it is sought to distinguish them on this ground. (p. 66, 104, 135, &c.) The Lords would have us believe that if A stands in front of B's store and (without using any unlawful means) persuades customers not to enter and trade with B, then B has no action; But if A stands there with a club and prevents customers from entering, B has an action, simply because in one case the means used are in se lawful and in the other unlawful. I can readily understand how the customers in the second case could have an action for assault and in the first case they could not, but I cannot see why B has an action in one case and not in the other for the reasons given by the House of Lords. What right has
been interfered with in the second case that was not interfered with in the first? Has the use of unlawful force by A against the customers created a new right in B? I apprehend not. He either has or he has not a right, and if he has the right it has been infringed in both cases; if he hasn't any right, there can be no action in either case. If it were said that he had a right but we will allow any interference with that right which isn't brought about by the use of unlawful means, then we would have a understandable proposition; but to deny the right and allow an action where unlawful means are used and simply for that reason is nothing if it is not incomprehensible. But that is practically what the majority of the Lords say in Allen v. Flood. Lord Herschell says, (p. 137)

"Speaking generally, I believe these actions would equally have been maintainable if a similar wrongful act had caused damage to, or had affected the legal rights of, a person wholly unconnected with trade." I quite agree with Lord Herschell that an action would lie where the wrongful act had "affected the legal rights" of another, but I can't see how the action would lie where the wrongful act had simply "caused damage", unless that damage had been suffered through the invasion of a legal right. If A does a wrongful act, does every one who suffers damage thereby have an action? I think not. It is generally conceded that a man has no property right in percolating underground waters. If A digs a well on his land for the purpose of cutting off B's supply, B has no action, for no right of his has been interfered with and the personal spite of A makes no difference. But suppose X, using no unlawful
means, maliciously induces A to dig the well, does B have an action? I should say no, for no right of his has been interfered with. Go one step further, A refuses to dig the well, and sets his gun, and says to A, "Dig or you are a dead man." A digs and B's water supply is cut off, does B have an action? He has suffered damage through the wrongful act of X against A, but what right of his has been interfered with? Has he been deprived of anything he had a legal right to? The answer clearly is, no. A man cannot suffer legal damage unless a right of his has been interfered with. A certainly has his action for assault and the damage to his freehold, but where B comes in is more than I can fathom. The same illustrations could be applied to the building of a high fence for the purpose of cutting off B's light and air. In England B would have an action because there a man has a right to his light and air, but in this country he would not for he hasn't any such right. And yet they tell us that in Garrett v. Taylor and Tarleton v. McGawley the plaintiff was allowed to recover because he had suffered damage through the wrongful act of the defendant. I should say that he was allowed to recover because "a right" of his had been infringed, and there was no legal excuse for the infringement. That right was the right to gain a livelihood. A man cannot suffer legal damage from any act (wrongful or not) of another, unless that act has interfered with some right of his to his detriment. Larson v. Chase, 47 Minn., 307/ Hannam v. Mockett, 2 B & C., 934.
The key note of the situation is struck in Silver State Council v. Rhodes, 7 Colo. App., 211, where the court says, "The plaintiff is a corporation, and to entitle it to relief it must appear that its corporate rights are threatened with some injury of a kind which may be made the subject of an action, and for which courts have the power to afford redress. The complaint is that the defendants have banded together and conspired to 'exterminate' the plaintiff; and that they propose to accomplish their purpose by compelling its members to leave it. Of course, when its members have all withdrawn, it will be extinct. We need not discuss the character of the means to be employed for its disintegration. Whether they are legal or illegal, they cannot be made the subject of an action in favor of the plaintiff. It has no property in its members, and in losing them it sustains no damage which the law recognizes as damage. It cannot compel its members to remain with it, and if they are violently driven out of it,—if they are forced to relinquish their membership against their will,—the grievance is theirs and not the plaintiff's. Or if, for the purpose of forcing their withdrawal, others by means of 'boycotts' or 'strikes', are made to suffer, the latter must fight their own battles. The law does not make the plaintiff their champion. The disorganization and resulting extinction of the plaintiff would doubtless be a calamity; but it is one which the law is powerless to avert! It isn't necessary to agree with the court in
holding that the plaintiff "has no property in its members", but assuming that it has none, then whether the means used to obtain their withdrawal be legal or illegal can certainly make no difference so far as plaintiff's right to recover is concerned. If, therefore, the word 'unlawful' is most unfortunate and it is as liable to cause as much trouble as the word 'malicious', it cannot be accurately defined. If it had been confined to acts which were in themselves criminal or which would give rise to an action in tort entirely unconnected with this subject we would have something definite, but it isn't so confined. Indeed it isn't even confined to overt acts but includes threats to do acts and the gathering of large hostile crowds &c. It is quite well settled that the threat to harass one with groundless suits will be enjoined, even under circumstances where an action for malicious prosecution would not lie. Opprobrious epithets also fall within the proscribed class. Either of these offenses could be committed under circumstances where they would be neither criminal or tortious, but every well regulated mind will instinctively say that they are not decent methods of persuasion, and that no court should stamp them as 'lawful'. Social ostracism seems to have fallen under the ban in Véglehan v. Guntner. This is an entirely different thing from those mentioned and one which may be the subject of grave doubt. (It certainly was in that case.) It is not so easy to see why this should be called unlawful. It would seem to stand on an equal footing with a refusal to have business intercourse. It is both decent and proper
However there can be no accurate definition given of the word 'unlawful' as used in this connection. One can only guess at whether a certain thing is or is not a nuisance by looking up the decided cases, so it is with 'unlawful' means.

In the cases of Keeble v. Hickeringill, Carrington v. Taylor, and Ibotson v. Paat, we have a different combination of circumstances. In these cases the defendant had driven away game from the plaintiff's land by firing guns on his own adjoining land. It is attempted to distinguish these cases on the ground that the acts constituted a nuisance. (p. 27, 133, 174), and Lord Herschell lays down this astounding proposition of law, (133) "The case may be supported, and the observation of Lord Holt, which has been quoted, explained by the circumstance that if the defendant merely fired on his own land in the ordinary use of it, his neighbor could make no complaint, whilst, if he was not firing for any legitimate purpose, connected with the ordinary use of the land, he might be held to commit a nuisance. In this view of it Keeble v. Hickeringill has, of course, no bearing on the present case! I say this proposition is astounding because it makes the act a nuisance "if he was not firing for any legitimate purpose, connected with the ordinary use of the land" and not a nuisance if he "merely fired on his own land in the ordinary use of it! It strikes me that there are many cases in which the lawful use of property has been declared a nuisance on account of the surrounding circumstances. Wood says, (p.10) "It is merely a question of rights. The motives of the parties have no connection with the inquiry, or bearing upon
the result. An act, however malicious, however wrongful in its intent, or however serious in its consequences, may be so far within the scope of the parties right as not to be a nuisance or produce an actionable injury; while upon the other hand a party who devotes his premises to a use that is strictly lawful in itself, that is fruitful of great benefits to the community, that adds materially to its wealth and enhances its commercial importance and prosperity, and whose motives are good, and intentions laudable even, may find that by reason of the violation of the rights of those in the vicinity of his works, from results that are incident to his business, and that cannot be so far corrected as to prevent the injury complained of, his works are declared a nuisance, his business stopped, and himself involved in financial ruin! But according to Lord Herschell, if I start a blacksmith's shop in a resident community and by lighting my fires, and smoking every one out of the place, without shoeing any horses, I am guilty of maintaining a nuisance; but if I do shoe horses, then I am not guilty of maintaining one. This is queer law. If in Keeble v. Nickeringill the defendant's act was a sufficient disturbance of the plaintiff's property right in one case to constitute a nuisance, why wasn't it in the other? Does a gun make more noise when it is fired at random into the atmosphere than when fired at a bird? But it is evident from the language of C. J. Holt that he did not deal with the case as one of nuisance for he says, (11 Modern, 24, 75) "Suppose the defendant had shot in his own ground, if he had
occasion to shoot, it would have been one thing, but to shoot on purpose to damage the plaintiff is another thing, and a wrong. . . . It must be taken as found upon the record, but it is found to be done maliciously, and so it appeared upon the evidence. But supposing it were a nuisance, does Keeble have an action if no right of his has been infringed? And what right of his has been infringed in this case? Isn't it the same right from either point of view? It seems to me that it is and that the attempted distinction is unsound.

In Levet's case and Riding v. Smith, the defendant spoke slanderous words of the plaintiff's wife whereby the plaintiff lost customers &c. Ordinarily a man has no action for slander spoken of his wife, why did he have it in this case? Because his customers did not care to come in contact with his wife, and as she assisted him in his shop, he thus lost their trade. In the last case Kelly, C. B., said, "It appears to me that if a man states of another, who is a trader earning his livelihood by dealing in articles of trade, anything, be it what it may, the natural consequence of uttering which would be to injure his trade and prevent persons resorting to the place of business; and it so leads to loss of trade, it is actionable."

What bearing has Lumley v. Gye, 6 E. & B., 218, on this question? Many of the judges in Allen v. Flood thought that the case could be supported only on the ground that it is an interference with a man's trade or right to gain a livelihood. (34, 50, 60.) Cave, J. says, (34) "It is
anomalous, because in no other instance in the English law that I am aware of does a right ex contractu give rise to a right in rem. In no other case that I know of can two persons by agreement between themselves create an obligation binding on all the rest of the world. It seems to me that the case can be sustained on either ground. I can see no good reason for saying that a man has a right to interfere with a right of another simply because that right arises out of a contract. I don't think any man has any right to interfere with another's right unless he can show some legal justification or excuse.

But "it is said that the company were acting within their legal rights in discharging plaintiffs". "So they were but does that affect the question of the responsibility of the persons who caused them so to act by the means he used? Clearly not. In Garrett v. Taylor the were not obliged to buy any stones; in Tarleton v. M'Gawley the natives were not bound to trade with the plaintiff; nor in the Abbe of Deneshan case were the persons bound to come to his fair. "The question is, what was the cause of their exercising their legal right? The question isn't was any legal right of the third party injured by the defendant or was any legal right of the plaintiff injured by the third party, but it is, was any legal right of the plaintiff injured by the act of the defendant.

It seems to me that the result of these cases is that "a malicious (without legal justification or excuse) act done to a man's way of getting a livelihood is actionable."
Lord Halsbury made but one mistake when he said, "I am encouraged, however by the consideration, that the adverse views appear to me to overrule the views of most distinguished judges, going back now for certainly 200 years, and that up to the period when this case reached your Lordships House there was a unanimous consensus of opinion. Instead of saying 200 years he should have said from the time of the Abbe of Denesham's case, over five hundred years.

This position is clearly sustained by the remarks of L. J. Bowen in the Mogul case. (See Lord Halsbury in Allen v. Flood, p. 76, as to their being dicta.) And on appeal (1892, A. C., 25.) the law as laid down by Sir John Holt was expressly approved by Lord Field and referred to by Lord Bramwell. It is also supported by Temperton v. Russell, 1993, 1 Q. B., 715.

Several of the Lords reserved their opinion as to the result of the case if there had been a combination instead of one. But it is difficult to see how a combination of men could injure a right which no one has any more than a person could injure it. From whatever direction you approach the case one is confronted with the same proposition - Is there a right?
American cases.

In this country, "life, liberty and property? are
protected by the constitution of the United States, and by
the constitutions of the various States. Under this clause
"the right to do business" has been held to be property and
protected from legislative acts tending to abridge its free
155 Mass., 117. Braceville Coal Co., v. People, 147 Ill.,
66. Ritchie v. People, 155 Ill., 98. Low v. Rees Printing
Co., 41 Neb., 127. In Braceville Coal Co. v. People, the
court said, "Property in its broader sense, is not the
physical thing which may be the subject of ownership, but
is the right of dominion, possession and power of disposi-
tion which may be acquired over it, and the right of property
preserved by the constitution, is the right not only to
possess and enjoy it, but also to acquire it in any lawful
mode, or by following any lawful industrial pursuit which
the citizen, in the exercise of the liberty guaranteed,
may choose to adopt. Labor is the primary foundation of
all wealth. The property which each one has in his own
laber is the common heritage, and, as an incident to the
right to acquire other property, the liberty to enter into
contracts by which labor may be employed in such way as the
laborer shall deem most beneficial, and of others to employ
such labor is necessarily included in the constitutional
guaranty. In the Froster case, 141 Ill., 171, we said:
'The privilege of contracting is both a liberty and a prop-
erity right, and if A is denied the right to contract and
acquire property in the manner which he has heretofore enjoyed under the law, and which B, C & D are still allowed by the law to enjoy, it is clear that he is deprived of both liberty and property to the extent that he is thus denied the right to contract. It may be safely stated as a general rule in this country 'that the business of a person, if lawfully conducted, is a property right' Nashville & C. Ry. Co. v. McConnell, 82 Fed., 65, 80/ Slaughter House Cases, 16 Wall., 36, 116. State v. Stewart, 59 Vt., 273, 289. Carew v. Rutherford, 106 Mass., 1. Barr v. Trade Council, 53 N. J. Eq., 101, 112. Shoe Co. v. Saxey, 131 Mo., 223. Holden v. Hardy, 18 U. S. Sup. Ct. Rep., 283. People v. Barrondess, 61 Hun, 271, rev's'd, 131 N. Y., 649, (the court adopting the dissenting opinion of Judge Daniels in the General Term.) In this case Judge Daniels said: 'A loss resulting from the suspension or interruption of the business would necessarily be an injury to property. . . . Business is property, as much so as the articles themselves which are included in its transactions.' The question is how far have the courts recognized this property right in the boycott cases?

I think it may be safely stated that wherever the doctrine of Lumley v. Sye has been passed upon in this country it has been approved, except in Cal., Mo. and Ky. Boyson v. Thorn, 98 Cal., 578. Chambers v. Baldwin, 91 Ky., 121. Boulier v. Macauley, 91 Ky., 235. Sand & Gravel Co. v. Commission Co., 138 Mo., 439.

Of the cases that deal with the other phases of the
subject Walker V. Cronin, 107 Mass., 555, is an early and well considered case. The plaintiff was a manufacturer of shoes. The first count of the declaration alleged that the defendant "unlawfully and without justifiable cause molest, obstruct and hinder the plaintiffs, from carrying on said business, with the unlawful purpose of preventing the plaintiffs from carrying on their said business, and willfully persuaded and induced a large number of persons, (1) who were in the employment of the plaintiffs . . . and (2) others who were about to enter the employment of the plaintiffs! It will be noticed that in one case the employees were not bound to remain and in the other they were not bound to become employees. Wells, J., said:—"This sets forth sufficiently (1) intentional and wilful acts (2) calculated to cause damage to the plaintiff in their lawful business, (3) done with the unlawful purpose to cause such damage and loss, without right or justifiable cause on the part of the defendant, (which constitutes malice,) and (4) actual damage and loss resulting. "Every one has the right to enjoy the fruits and advantages of his own enterprise, industry, skill and credit. He has no right to be protected against competition; but he has a right to be free from malicious and wanton interference, disturbance or annoyance. If disturbance or loss comes as a result of competition, or the exercise of like rights by others, it is damnum absque injuria, unless some superior right by contract or otherwise is interfered with. But if it comes from the merely wanton or malicious act of others, without
the justification of competition or the service of any interest or lawful purpose, it then stands upon a different footing, and falls within the principle of the authorities first referred to.

The second and third counts alleged that defendant induced certain workmen to break existing contracts &c. The opinion ends thus, "Upon careful consideration of the authorities, as well as the principles involved, we are of opinion that a legal cause of action is sufficiently stated in each of the three counts of the declaration." The case contains an elaborate review of the English authorities and the cases where force &c. were used are cited to sustain the principle involved.

In Hughes v. McDonough, 43 N. J. L., 459, the plaintiff was a blacksmith. The defendant, "maliciously intending to injure the plaintiff in his trade" loosened a shoe which plaintiff had recently put on the mare of one Van Ripper and also drove a nail in the mare's hoof, intending to "thus deprive the plaintiff of the patronage of the said Van Ripper." It was held actionable. Beasley, C. J., said, "The act had a two-fold injurious aspect: it was calculated to injure both Van Ripper and the plaintiff; and as each was directly damaged, I can perceive no reason why each could not repair his losses by an action!"

In Van Horn v. Van Horn, 52 N. J. L., 284, s. c., 56 N. J. L. 314, the defendants "by means of corrupt, fraudulent and deceitful representations and statements as
to the personal and business character and standing of the plaintiff" induced the firm from which she bought to refuse to sell to her and to recall goods already sent her. "If the consignors refuse to send the goods to her, it does not appear that she would have any remedy against them. They could send or recall them at pleasure. The complaint here is, that the goods in the plaintiff's possession were recalled, and her advantageous arrangement for credit with the consignors ended, by the fraudulent and malicious act of the defendant. . . . The difference between this action and slander, is well stated in Riding v. Smith, 1 L. R. Ex. D., 91, where a slander against the wife was charged as having injured the husband's business. Her name was stricken from the record, as a joint plaintiff, and the action was allowed to proceed by the husband, as a trader, carrying on business, founded on an act done by the defendant which led to loss of trade and custom by the plaintiff. It was maintainable on the ground that the injury to the plaintiff's business was the natural consequence of the words spoken, which would prevent persons resorting to the plaintiff's shop." See also, Delz v. Winifree, 80 Tex., 400. Jackson v. Stanfield, 137 Ind., 592. Barr v. Essex Trades Council, 53 N. J. Eq., 101. Veglehan v. Guntner, 167 Mass. 92. Olive v. Van Patten, 7 Tex. Civ. App., 630.

Let us examine the American cases where the facts are similar to Allen v. Flood, i.e., X gets A to break a contract with B, the contract being one terminable at the will of neither party. The earliest case is Salter v. Howard, 43 Ga., 601. In this case the defendant enticed away
certain laborers from the plaintiff. The court said, "The fact that these servants were under employment by H. (Pl'ff) and in performance of such agreement, were upon his place at work, constituted as to third parties, such a relationship of master and servant as protected them from being interfered with or enticed to leave his plantation. We do not hold that it is necessary to sustain this action, that there must be a written contract, or that any third party can take advantage of formal defects in one if written. If under employment the servants are at work, any person intruding upon the rights of the master by enticing them away, is liable in an action of damages, and we therefore concur with the court in refusing a new trial sought upon this ground. In the next case, Noice v. Brown, 39 N. J. L., 569, the second count was for enticing away a servant at will. It was said, "It is well settled that a person knowing the premises, entices another to break an existing contract of service, is liable to an action for the damages which ensue to the employer. Whether an action will lie where there is no binding contract to continue in service is, perhaps, not so clear, but I think it may be maintained both upon reason and authority, where it is merely a subsisting service at will. Where the service is merely at will, all the liabilities and rights existing between master and servant attach to the relation. . . . In such service like a tenancy at will, the relation must be ended in some way, before the rights of the master can be lost." By the unwarrantable interference of a third party, the employer
is deprived of what he otherwise might have retained?"

In Chipley v. Atkinson, 23 Fla., 206, is a well-considered case and is on all fours with Allen v. Flood, for in this case it was the employer who was induced to break a contract at will and discharge the plaintiff. It was held actionable, the court saying, "From the authorities referred to in the last preceding paragraph, and upon principle, it is apparent that neither the fact that the term of service interrupted is not for a fixed period nor the fact that there is not a right of action against the person who is induced or influenced to terminate the service or to refuse to perform his agreement, is of itself not a bar to an action against the third person maliciously and wantonly procuring the termination of or a refusal to perform the agreement. It is the legal right of the party to such agreement to terminate it or refuse to perform it, and in so doing he violates no right of the other party to it, but so long as the former is willing and ready to perform it, it is not the legal right, but is a wrong on the part of a third party to maliciously and wantonly procure the former to terminate or refuse to perform it. Such wanton and malicious interference for the mere purpose of injuring another is not the exercise of a legal right. Such other person who is in employment by which he is earning a living or otherwise enjoying the fruits and advantages of his industry or enterprise or skill, has a right to pursue such employment undisturbed by mere malicious or wanton interference or annoyance. Every one has a perfect right to protect
or advance his business if in doing so he infringes no superior legal right of another.

This statement of the law is quoted with approval in Lucke v. Cutter's & Trimmer's Assembly, 77 Md., 396, and Perkins v. Pendleton, 90 Me., 166, two cases involving the same principle. See, Old Dominion Steamship Co. v. McKenna, 30 Fed., 48, and Lally v. Cantwell 30 Mo. App., 524. I have been able to find no American case involving facts similar to Allen v. Flood where the principle has been denied.

What is the result of all these cases? Let us return for a moment to our old friend Unlawful! I think we can now give a more accurate definition of the word. Why is an act unlawful? Why has A no right to assault or imprison B? Does it depend on the intrinsic nature of the act or does it depend on the fact that some right of B's has been invaded? I think it depends on the latter, in the one case his right of personal liberty has been interfered with and in the other that of personal security. Isn't, therefore, an unlawful act one that invades the right of another and for which there is no legal justification or excuse?

Some one may say that one would be liable for nearly all of his acts, but this is not so. We all know that many acts prima facie unlawful may be justified and then what was unlawful becomes lawful. One can justify an assault, a libel and nearly every tort. It strikes me that the courts have lost a great deal of valuable time in discussing unlawful means, that might have been saved if they had looked to see if any legal right of the plaintiff had been invaded and
then inquired whether there was any excuse for that invasion. I wonder what criterion of unlawful acts the courts used in the first case of assault and imprisonment &c. If they had argued according to the modern method how could it ever have been determined that these acts were unlawful. What means had they for determining that the acts were unlawful? It strikes me that these courts must have at least felt, if they did not say, that some right of the plaintiff had been invaded and therefore the acts were unlawful. I imagine that our ancient lawyers would have been somewhat mystified by the modern idea of an unlawful act. Suppose the first case for false imprisonment had been one where the defendant, knowing that the plaintiff was in his (def't) house, had locked the doors and barred the windows and the gone away and left the plaintiff to get'out as best he might. Now the astute lawyer for the defense says, "Your honor, my client has done nothing he hadn't a legal right to do, he had a right to lock up his own house and bar the windows if he saw fit"; and his honor remarks, "Why that is so, the plaintiff here has no right, for the defendant has done nothing that he couldn't legally do? Isn't that a remarkable proposition? But this is the modern method of getting at an unlawful act. It is certainly wonderful.

As I understand the situation, it is practically this: A man has a right to gain a livelihood, therefore any interference with that right is unlawful, unless some excuse or justification is shown. The whole trouble lies in looking
at the cause and not at the effect. If the effect is an injury to a right, then there is an action, whether the cause be primarily lawful or unlawful, unless some excuse or justification can be shown.

A very interesting question presents itself here, i.e., where does the burden of proof lie? In the ordinary action of tort (assault, libel, &c.) the plaintiff need only prove the wrong and the defendant must prove the justification. In the case of a nuisance the burden is on the plaintiff to prove the nuisance. Wood on Nuisances, 2 Ed., 982. The rule governing the burden of proof in contributory negligence furnishes another example where the plaintiff must go further than proving the simple wrong, he must at least prove the absence of some of the grounds of justification. In other words one might say that in some torts the courts will presume that the act wasn't justified and the burden is on the defendant to prove that it was; while in others, at least some of the grounds of justification do exist and the burden is on the plaintiff to prove their absence. In which class does the action for a wrong done to the right to gain a livelihood fall? The question presented itself to me so late that I have been unable to make a careful study of the cases on this point and therefore I only suggest it.
GROUND OF JUSTIFICATION AND EXCUSE.

In the preceding pages I haven't attempted to show nor did I intend to indicate any of the times when an interference with the right to gain a livelihood would be justified. I did not analyze the cases for that purpose. I simply analyzed them for the purpose of proving that there was such a right and for no other. We must now consider what the law will say is 'a lawful justification and excuse' for meddling with another's right to gain a livelihood. It is apparent that if all men have a right to gain a livelihood, that frequently, when two or more persons are legitimately exercising this right, they will clash and each must give way to the other in some degree. Thus we can see that there will be certain injuries which the law must necessarily excuse.

Before entering upon the discussion we should notice the general principles governing the question. A boycott is a combination and a civil action in relation thereto, is an action on the case in the nature of conspiracy. There is no action for the mere combination or conspiracy, but something must be done resulting in damage to the plaintiff. Enc. of Pl. & Pr., 739, n. 3. The allegation of conspiracy is mere surplusage, acting merely as a matter of aggravation. Id. Further "a conspiracy cannot be made the subject of a civil action, although damage result, unless something is done which without the conspiracy would give a right of action. In other words an act which if done by one
alone constitutes no ground of action cannot be made the ground of such action by alleging it to have been done by and through a conspiracy of several; that 'the true test as to whether such action will lie is whether or not the act accomplished after the conspiracy has been formed is itself actionable,' Delz v. Winifree. Bohn Mfg. Co. v. Hollis. Boston V. Simmons. Kimball v. Harmon. Macauley v. Tierney. The only use of the allegation of conspiracy is that it is important to prove it in order to get judgment against all the defendants, but if the plaintiff can only show that one of the defendants was concerned in the act he may still have judgment against him. Enc. of Pl. & Pr. 7A 739, n. 5.

In the Oxley Stave Co. case the court says: "We are not able to concede, however, that it is always the case that what one person may do without rendering himself liable to an action many persons may enter into a combination to do. It has been held in several well considered cases that the law will sometimes take cognizance of acts done by a combination which would not give rise to a cause of action if committed by a single individual, since there is a power in numbers, acting in concert, to inflict injury, which does not reside in persons acting separately." "Steamship Co. v. McGregor, 1892 App. Cas., 24, 25; id., 23 Q. B. D., 598, 616: Arthur v. Oakes, 11 C. C. A., 209, 63 Fed., 310, 321; and State v. Glidden, 55 Conn., 46" are cited as the 'well-considered cases' supporting this statement. So far as the first case is concerned it is simply necessary to state that no one was held liable for anything in that case. Judge Thay-
er evidently refers to the dicta of Bowen, L.J., at p. 516 of the report of the case in 23 Q. B. D. The discussion referred to in Arthur v. Oakes begins on p. 321 and ends on p. 324 with the paragraph already quoted on p. beginning, "it seems entirely clear"- The case does not sustain the proposition stated by Judge Thayer. State v. Glidden is more difficult to explain on account of the report. The defendants demurred to the indictment. The demurrer was overruled and the defendants tried and convicted. "The evidence, which was given in full in the findings, is omitted", in the report. An examination of the indictment shows that acts were charged that were clearly sufficient and others that were insufficient to constitute an offense. It is impossible to tell what was proven. But there are statement in the opinion which sustain the contention of Judge Thayer. (p.74.) However I think the decision really went on the grounds that it was a combination to do a lawful act by unlawful means. (p. 75 - 78.)

The use of the word 'malicious' in this connection has caused a great deal of trouble but its proper application is well explained by Bowen, L.J., in the Mogul case. He says, "Now, intentionally to do that which is calculated in the ordinary course of events to damage, and which does, in fact, damage another in that others person, ex property or trade, is actionable if done without just cause or excuse. Such intentional action when done without just cause or excuse is what the law calls 'malicious' wrong. (See Bromage v. Prosser, 4 B. & C , 247; Capital & Counties Bank v. Henty, per Lord Blackburn.)" Of course the courts
might say, we will allow all acts to be justified except those that are prompted by personal malice or spite, but they haven't drawn the line there. See, Mooer's V. Bricklayers Union? 23 Wk. L. Bull., 48.

Keeping these principles in mind we can proceed with our investigation.

The boundaries of legal justification and excuse in these cases have not as yet been clearly defined. The simplest case is this; one person wishing to harm X, refuses to have any business relations with him. Does X have an action? The answer is clearly, No. "A person has an absolute right to refuse to have business relations with any person whomsoever, whether the refusal is based upon reason or the result of whim, caprice, prejudice, or malice" Delz v. Winifree. Carew v. Rutherford. This must necessarily be so, otherwise there would be no personal freedom. If one person may refuse to deal with X, it follows that several may combine together and refuse. This is the case of the Bohn Mfg. Co.'v. Hollis. In this case retailers in lumber agreed not to buy of any wholesaler who sold to others than regular dealers. The plaintiff (a wholesaler) violated this provision and the retailers refused to buy of him. It was held, and properly, that there was no action. In this case "it will be observed that defendants were not proposing to send notices to any one but members of the association."

Brewster v. Miller, 41 S. W., 301, a late Kentucky case, supports the same proposition. In this case the un-
dertakers of Louisville agreed to refuse their services to any one who had failed to pay a bill for former services. It was held that the plaintiff, who had fallen under this ban, had no cause of action. The court said, "One has the right to decline to enter into a business undertaking with anyone. The law does not impose such an obligation upon any one. This being true, any number of persons can enter into an agreement by which they can decline to assume business relations with or to enter into any contract with one or more persons. If Brewster was indebted to Miller's Sons, then they had the right to decline to give him any opportunity to increase his indebtedness or refuse to furnish material for the burial of his wife, unless he paid the claim which Miller's Sons asserted against him. As those who are members of the Funeral Director's Association, for a good reason, or for no reason, had the right to decline to render services or furnish material, and, if they saw proper, to decline to render services because Miller's Sons asserted a claim against Brewster, their refusal creates no legal liability against them. It is immaterial, so far as Brewster is concerned, as to what reasons may have influenced them to decline employment, or to refuse to furnish the burial material which he desired. Miller's Sons might have asserted a claim against Brewster which had foundation in neither morals or law, yet if the members of the association, other than Miller's Sons chose to be influenced by it, and to decline the employment &c., Brewster has no cause of action against them!"
(See Schulten v. Brewing Co., 96 Ky., 224.)

Curran v. Galen, 2 misc., 553, s.c. 152 N.Y., 33, is a peculiar case. It seems that the Ale Brewer's Association of Rochester had agreed with defendants that all its employees "shall be members of the Brewery Workingmen's Local Assembly, 1796, Knights of Labor, and that no employe should work for a longer period than four weeks without becoming a member." Plaintiff, not being a member, was discharged. He brought an action against the members of the labor union who set up this agreement as a defense. The special Term sustained a demurrer to the answer and the Court of Appeals affirmed the decision. There is no allegation that the contract was not perfectly voluntary on the part of the Brewer's Association. So far as appears from the report of the case it would seem that it should be controlled by the principle of the Bohn case. The court seems to rest its decision on the ground that the contract was in restraint of trade, therefore void and no defense to the action. In a 'Per Curiam' opinion the court said, "Public policy and the interests of society favor the utmost freedom in the citizen to pursue his lawful trade or calling, and if the purpose of an organization or combination of workingmen be to hamper, or to restrict that freedom, and, through contracts or arrangements with employers, to coerce other workingmen to become members of the organization and to come under its rules and conditions, under the penalty of the loss of their position, and of deprivation of employment, then that purpose seems clearly unlaw-
ful and militates against the spirit of our government and
the nature of our institutions. The effectuation of such
a purpose would conflict with that principle of public poli-
cy which prohibits monopolies and exclusive privileges. It
would tend to deprive the public of the services of men in
useful employments and capacities. In this view of the
case all the parties to the illegal combination would be
liable, the Brewer's Association as well as the Labor Union.
But as I understand the law a contract in restraint of trade
is simply unenforceable between the parties and a third per-
son who suffers thereby has no cause of action simply be-
cause the contract is in restraint of trade. "No case can
be found in which it was ever held that, at common law, a
contract or agreement in general restraint of trade was ac-
tionable at the instance of third parties, or would constitu-
tute the foundation for such an action. The courts some-
times call such contracts 'unlawful' or 'illegal' but in
every instance it will be found that these terms were used
in the sense, merely, of 'void' or 'unenforceable' as be-
tween the parties; the law considering the disadvantages
so imposed upon the contract a sufficient protection to the
public. Mogul Steamship Co. v. McGregor, 23 Q. B. D., 596;
case. See, also, Continental Ins. Co./, G. Underwriters,
Fed., 271, 279. This is the first exception.

The second case may be illustrated as follows:-
suppose that in the Bohn case the wholesalers had refused to
sell to a non-regular dealer, because of this rule of the retailers, would this non-regular dealer have had an action against the retailers? Let us notice carefully the relation between the parties to this combination. We have three; 1st. the party threatening, 2nd. the party threatened, and 3rd. the party intended to be injured. It is clear that under the first exception, the 3rd party could not have an action against the second, nor the second against the first. The question is, can the 3rd party have an action against the 1st? and if so, when? It must be observed that in the first case, where a combination refuses to deal with X, that X is really the third party? for each one of the combination must have used some effort to obtain the consent of the others to join the combination. Consequently we must first notice what means may be used in forming this combination. If only honest and peaceable persuasion and argument are used to obtain the consent to join this combination, then there is no action. Cote v. Murphy, 159 Pa. St., 420; Bohn Mfg. Co. v. Hollis; and U. S. v. Kane, 23 Fed., 748, see quotation of p. 66. But suppose a man refuse to be influenced by honest and peaceable persuasion and argument, can you go any further or use other means to obtain his consent? Of course this gives us the same state of affairs as was just suggested in the modification to the Bohn case, or the three party arrangement. There are two situations that may exist which seem to control this case. First, there may be competition between the first and third parties, and second, there may be no
competition between them.

What do we mean by competition? Webster defines it as "the act of seeking, or endeavoring to gain, what another is endeavoring to gain at the same time." There may be competition in trade, between rival traders. Jackson v. Stabfield, 137 Ind., 592. There may be competition in labor between labor, between rival laborers. Allen v. Flood. And lastly, there may be competition between capital and labor. Veglehan v. Guntner, 167 Mass., 92. It is competition, pure and simple, in each case, and if "all men are created equal", the laborer and the trader are entitled to the same protection in their competition and no greater restraints should be imposed on the one than on the other.

of a trade union threatened to withdraw from the employment of any person who dealt with plaintiff. In Chipley v. Atkinson, the defendant threatened that he would not build a side track for the second party if he retained plaintiff in his employment. (He wasn't bound to build the track.) In Int. Nat. Ry. Co. v. Greenwood, the defendant threatened to discharge employes if they dealt with plaintiff. In Connell v. Stalker, the plaintiff was treasurer of a labor union and refused to give up certain books on an illegal demand made by the union. The union men who were employed with him, threatened to quit if plaintiff remained and he was discharged. In none of these cases, except possibly Temperton v. Russell, was there any pretence of competition between the first and third parties, and it is clear that the act threatened was not in itself unlawful, but it was held that there was an action. I think that it may be said that in the cases where there is no competition nothing more than argument and persuasion can be used to influence the second party. There are several cases which were heard on demurrer but they help us none as to the facts. Walker v. Cronin. Dannerburg v. Ashley. Perkins v. Pendleton. Delz v. Winifree. In the last case the allegation is "that without justifiable cause and unlawfully, and with the malicious intent to molest, obstruct, hinder and prevent the plaintiff from carrying on his business" &c. The court says "Plaintiffs' petition goes further than to charge that each of the defendants refused to sell to him. It charges that they not only did that, but that they induced..."
ed a third person to refuse to sell to him." It does not appear what means were used to induce the third person but if the word 'induced' only includes arguments and persuasions then I think the case wrong under the rule governing the first exception. It cannot be otherwise for in this very case there were several defendants and some one of them must have 'induced' the others - the agreement could hardly have been spontaneous - and surely the court does not mean to say that any one of the defendants would be liable for 'inducing' some other defendant. It seems to me that this construction of the case reduces it to an absurdity.

We now come to the cases where there is competition between the first and third party. Of course the general rule is that "if disturbance or loss comes as a result of competition of the exercise of like rights by others, it is damnum absque injuria, unless some superior right by contract or otherwise is interfered with." Walker v. Cronin. "The reason is that free competition is worth more to society than it costs, and that on this ground the infliction of the damage is privileged." The principle is found in the schoolmaster's case, 11 H. IV, 47, and also in the Miller's case, 22 H. VI. 14. (See Vinier's Abr., Actions on the Case, N. c., 11, 12, 13, 14, & 15.) The rule is admirably stated in Macauley v. Tierney, 33 Atl., where the court says, "It is doubtless true, speaking generally, that no one, has a right intentionally to do an act with the intent to injure another in his business. Injury,
however, in its legal sense, means damage resulting from a violation of a legal right. It is this violation of a legal right which renders the act wrongful in the eye of the law, and makes it actionable. If, therefore, there is a legal excuse for the act, it is not wrongful, even though damage may result from its performance. The cause and excuse for the sending of the notices, it is evident, was a selfish desire on the part of the members of the association to rid themselves of the competition of those not members, with a view to increasing the profits of their own business. The question then resolves itself into this: Was the desire to free themselves from competition, a sufficient excuse, in legal contemplation, for the sending of the notices? We think the question must receive an affirmative answer. Competition, it has been said, is the life of trade. Every act done by a trader for the purpose of diverting trade from a rival, and attracting it to himself, is an act intentionally done, and, in so far, as it is successful, to the injury of the rival in his business, since to that extent it lessens his gains and profits. To hold such an act illegal and wrongful would be to stifle competition. Trade should be free and unrestricted; and hence every trader is left to conduct his business in his own way, and cannot be held accountable to a rival who suffers a loss of profit by anything he may do, so long as the methods he employs are not of the class of which fraud, misrepresentation, coercion, obstruction, or molestation of the rival or his servants or workmen, and the procurement
of a breach of contractual relations, are instances. The courts have generally recognized the rule but differ in the application of it to the particular case in hand. It is on this ground that Allen v. Flood may be sustained. Lord Shand puts his judgment squarely upon this ground, he says, "the case was one of competition in labor, which, in my opinion, is in all essentials analogous to competition in trade, and to which the same principles must apply. ... Although it is no doubt true that the plaintiffs were entitled to pursue their trade as workmen 'without hindrance', their right to do so was qualified by an equal right, and indeed the same right, on the part of the other workmen. The hindrance must not be of an unlawful character. It must not be by an unlawful action. Amongst the rights of all workmen is the right of competition. In like manner and to the same extent as a workman has a right to pursue his work or labor without hindrance, a trader has a right to trade without hindrance. That right is subject to the right of others to trade also, and to subject him to competition which is in itself lawful, and which cannot be complained of where no unlawful means have been employed. The matter has been settled in so far as competition in trade is concerned by the judgment of this House in the Mogul Steamship Co's case. I can see no reason for saying that a different principle should apply to competition in labor. In the course of such competition, and with a view to secure an advantage to himself, I can find no reason, for saying that a workman is not within
his' rights in resolving that he will decline to work in the same employment with certain other persons, and in intimating that resolution to his employer? (See remarks of Hawkins, J., p. 23; Cave, J., p. 37, and Lord Herschell, pp. 119, 140-141.)

However it is evident there must be a limit to allowable competition. The courts are not at all agreed as to just where this limit is. Of course it may be stated that honest peaceable persuasion and argument may be used by A to get others to deal with him and that he may offer better terms than any one else. (Mogul case.) It is also settled that if "fraud, misrepresentation, intimidation, coercion, obstruction, molestation or other unlawful means" are used then the privilege is destroyed. (Macauley v. Tierney/Robinson v. Land Ass'n.)

But what is the result between these two extremes? This is the debatable ground in this class of cases. In Jackson v. Stanfield, "The retail Lumber Dealer's Ass'n." agreed not to patronize any wholesaler who sold to consumers and brokers. The retailers were held liable in an action by a broker to whom a wholesaler had refused to sell on account of this rule of the retailers. This case seems to go principally on the same ground as Curran v. Galen, (ante, p. 80) and that there were 'threats and intimidations'. In Olive v. Van Patten the facts were
similar to those of the last case. The decision seems to go squarely on the ground of interference. The court says, "Plaintiffs had the right to sell at wholesale or retail, or both, to the retail dealer and to the actual consumer, and defendants had the same right, as well as the right to solicit and secure trade from plaintiff's customers by underselling them. This would be legitimate. They could do this, and would not be responsible for the injurious consequences to the plaintiff's business; but they could not, without some legal purpose directly serving their own business, maliciously induce third persons not to trade with plaintiffs and so injure them!" In Hopkins v. Oxley Stave Co., the employes of plaintiff, who were members of the defendant labor union, became dissatisfied because of the introduction of labor saving machinery, which resulted in the discharge of many and threatened a cut in the wages of the rest, and struck. The defendants notified the packers of meat that if they used any of the machine made barrels &c. made by Plaintiff, that defendants' labor union and other labor unions would refuse to buy their goods. The defendants were held liable because "those who were engaged in the conspiracy intended to excite the fears of all persons who were engaged in making barrels, or who handled commodities packed in barrels, that, if they did not obey the orders of the associated labor organizations, they would incur the active hostility of those associations, suffer a great financial loss, and possibly run the risk of sustaining some personal injury!" Barr v. Trades Council, in-
volves the same state of facts except that it was a printing office instead of a coopering plant. In regard to competition the court said, (p. 124) "I see no similarity in the business of the parties. That of the complainant is the publisher of a newspaper. Members of the typographical union and stereotypers' and pressmen's union are skilled workmen, whose services might be employed in such business, but they are not carrying on any enterprise in competition with that of the complainant." If this isn't competition between capital and labor, what is?—The employer seeking to introduce new conditions that will affect the wages of the working men, and the employes resisting. Would the court have us believe that there can be no competition between capital and labor. That there can be competition only between traders or between laborers. According to this theory the Brewer's Ass'n. should have been held liable in Curran v. Gale and the Labor Union not liable, for the plaintiff and the labor union were both engaged in the same enterprise (seeking for work) and the Brewer's Ass'n and the plaintiff were not (one owned the brewery and the other worked in it.) I am very much afraid that I don't know just what competition means. Does it necessarily follow that persons must be engaged in the same 'enterprise' that there may be competition? But if this proposition is true, are not the parties to this controversy engaged in the same enterprise'? One is seeking to maintain his wages and hours of labor by resisting the use of labor saving machinery and the other to reduce wages and hours of labor by
using this machinery. Isn't this competition? However, the decision seems to go on the ground that "there can be no reasonable dispute that the whole proceeding or boycott in this controversy is to force Mr. Barr, by fear of loss of business, to conduct that business, not according to his own judgment, but in accordance with the determination of the typographical union, and, so far as he is concerned, it is an attempt to intimidate and coerce." In Lucke v. Cutters & Trimmers, the defendants (tailors) were members of a labor union. The defendant was a tailor and not a member of the union. The defendants secured his discharge by threatening to withdraw their patronage from the employed. The court seems to have held that there was no competition in this case for it is said "the testimony in this case assigns no other motive, (to procure plaintiffs discharge) and there is not the slightest intimation from any source that there is any." Yet it appears that there were "many union men out of employment." In Steamship Co. v. McKenna, there was a strike of longshoremen and defendants, officers of the labor union, "endeavored to stop all dealing of other persons with the plaintiff, by sending threatening notices or messages to its various customers and patrons ... designed to intimidate them from having any dealing with it, through threats of loss and expense in case they dealt with plaintiff. ... and various persons were deterred from dealing with the plaintiff in consequence of such intimidations." The court says they did this
"without any legal justification, . . . a mere dispute about wages, the merits of which are not stated, not being any legal justification" If a dispute about wages between employer and employe isn't competition and a legal justification then I am unable to imagine what may be.

These are the case apparently holding that more than argument and persuasion cannot be used in cases of competition. A great deal was said in the cases about 'threats and intimidations', 'but in law as well as mathematics, it simplifies things very much to reduce them to their lowest terms', and when th-is is done we find that the only threat was to refrain from having business intercourse with those who dealt with plaintiff.

Let us look at the cases on the other side of the question. In the Mogul case the defendants, besides offering lower rates, "refused to accept cargoes from shippers except upon the terms that the shippers should not ship any cargoes by the plaintiff's steamers" they also prevented persons who were acting as their agents from acting as the agent of the plaintiff. But the acts were held within justifiable competition. In Gauthier v. Perrault, 6 Que. (Q. B.) 65, the defendants, members of a trade union, threatened to strike if plaintiff was not discharged. Plaintiff was a member of another union. They did quit and when plaintiff was discharged they resumed work. The court held that the case was governed by the Mogul case, saying, "Certaines remarques des Lords du conseil privé"
peuvent s'appliquer à la présente cause. Ansi Lord Halsbury remarque que la compétition, dans le but de chasser un rival, est chose permise dans le commerce. In Clemmitt v. Watson, 14 Ind. App., 38, the facts were the same as the last case. A judgment in favor of the plaintiff was reversed because the various charges of the court "do not require the existence of malice, threats, intimidation or violence. Under these instructions nothing more is necessary than a mere agreement among themselves to quit if appellee (plaintiff) was retained and a quitting upon the employers refusal to désabarge." In Cont. Ins. Co. v. Underwriters, the defendant board of underwriters entered into a combination to regulate insurance rates &c. and agreed to have no intercourse with non-members nor to employ any agent who represented a non-member, and threatened the assureds of plaintiff (a non-member) "with a boycott in case they continue their patronage of plaintiff." Judge McKenna held that this did not exceed the bounds of allowable competition. In Meehan v. Tierney the National Ass'n of Master Plumbers agreed to withdraw their patronage from any dealer selling supplies to others than master plumbers. This was held to be allowable competition. (See quotation p. 85.) Cote v. Murphy and Buchanan v. Keer grew out of the same trouble. In these cases the employs of the various trade unions, "demanded an eight hour day, with no reduction in wages" The employers refused to grant this demand and the employes struck. The defendants, certain of the employers, agreed not to furnish material to any one who granted the
The plaintiff granted the request and the defendants refused to supply him with any material and wrote to a dealer who sold to plaintiff, that "it would be to his advantage to discontinue" supplying plaintiff with material. This dealer therefore refused to supply plaintiff with any more material. It was held that there was no cause of action. The court in Cote v. Murphy saying, "The combination of the employers then, was not to interfere with the price of labor as determined by the common law theory, but to defend themselves against a demand made altogether regardless of the price, as regulated by the supply, . . . Nor does the fact that the appellee was not a workman or a member of any of the unions of workmen, put him in any better attitude than if he were. He undertook for his own profit to aid the cause of the workmen; his right so to do was unquestionable. But, if the employers by a lawful combination could limit his ability so to do, they did not make themselves answerable in damages to him for the consequences of a lawful act! In discussing threats &c., the court said, "The threats referred to, although they are usually termed threats, were not so in a legal sense. To have said they would inflict bodily harm on other dealers, or vilify them in the newspapers, or bring on them social ostracism, or similar declarations, these the law would have deemed threats, for they may deter a man of ordinary courage from the prosecution of his business in a way which accords with his own notions; but to say, and even that is
inferential from the correspondence, that if they continued to sell to plaintiff, the members of the association would not buy from them, is not a threat. It does not interfere with the dealers free choice; it may have prompted him to a somewhat sordid calculation; he may have considered which custom was most profitable, and have acted accordingly but this was not such coercion and threats as constituted the acts of the combination unlawful. This case is on all fours with Barr v. Essex Trades Council and the Stave Co. case except that in this case the threat was made by the employer and not by the employe.

In Robinson v. Pine Land Ass'n the plaintiff and defendant owned stores, both selling the same kind of goods. Defendant threatened to discharge his employes if they traded with plaintiff. This conduct was held not actionable. "If the defendant could so control its employes as to prevent their dealing with plaintiff, or so control their wages as to divert them from the channels of plaintiff's business in favor of its own, we know of no rule making it actionable."

In Sinsheimer v. Garment Workers, a dispute arose between plaintiff and defendant "caused by the fact that the plaintiff has discriminated against the members of this voluntary ass'n (ðà'ff) in the employment of labor necessary to carry on its business. . . . While this dispute continued, the defendants sent circulars to the plaintiff's customers, which were clearly intended as a threat to such customers, that, in case such customers continued to do business with the plaintiff, the defendants would notify
other trade unions to withhold their business from any firm that continued to sell the plaintiff's goods, and the evidence shows that, in consequence of such circulars, purchases of goods from plaintiff, were cancelled by their customers, and statements were made by other customers that, unless plaintiff settled his dispute with the defendants, future business would be discontinued. In the General Term, Van Brunt, P. J., said "I fail to see that there is any infringement of any provision of law in the issuance of such a circular." The judgment was reversed and the injunction dissolved.

In Bowen v. Matheson the defendants, keepers of seamen's boarding houses, combined to control the business of the shipping masters of Boston, by (among other things) using "our best endeavors to prevent our boarders shipping in any vessel where any of the crew are shipped from boarding houses that are not in good standing." Plaintiff was a non-member, and defendants notified "the public that they had laid him on the shelf, and notified his customers and friends that he could ship XXX seamen for them" &c. A demurrer to the declaration was sustained. The court said, "If their effect is to destroy the business of shipping masters who are not members of the association, it is such a result as in the competition of business often follows from a course of proceeding that the law permits. . . . As the declaration sets forth no illegal acts on the part of the defendants, the demurrer must be sustained!"
Snow v. Wheeler was an action to recover money from defendants who held it as trustee of the trade union which plaintiff represents. The defense was that the object of the union was illegal and therefore the plaintiff could not recover. The union was formed "for the purpose of protecting themselves against the 'encroachments' of their employers, and to agree in furtherance of such object not to teach others their trade unless by consent of the society." The court said, "It is insisted that the agreements thus established between the members of the order are in unlawful restraint of trade, and therefore illegal, as against public policy. But in the opinion of the court the point is not well taken. In the relations existing between labor and capital, the attempt by co-operation on the one side to increase wages by diminishing competition, or on the other to increase the profits due to capital, is within certain limits lawful and proper. It ceases to be so when unlawful coercion is employed to control the freedom of the individual in disposing of his labor or capital."


It seems to me that this is the true ground of the decision in Keeble v. Hickeringill. There is certainly nothing unlawful in firing guns into the air, but it is a 'violent' and not a 'peaceable' interference with a man's right to gain a livelihood in a case where there was no competition. It is for this reason that Keeble v. Hickeringill is right and Carrington v. Taylor is wrong. (Hawkins
Which of these rules just discussed is the soundest I do not undertake to decide but in solving the proposition it would be well to notice the law governing strikes. We can now see the general principles that underlie that subject. One man or a body of men can agree not to work for another and the employer can have no action. This clearly comes under the first exception. Generally the reason for their so doing was some disagreement about wages or some matter connected with the work. This was competition between capital and labor. The courts have certainly held that the strikers must only stop at the use of unlawful (?) means in inducing laborers not to enter the employment of the plaintiffs. It seems to me that the general principles of both strikes and boycotts are the same.

In a discussion of the Oxley Stave Co. case (56 Alb. L. J., 390.) it was said, "The gist of a boycott, however, is to draw utterly disinterested outsiders into a controversy, for the sake of compelling a recalcitrant employer to yield, through making life generally miserable or the transaction of any business impossible. There could, of course, be no limit in principle to the extension of the circumference of the boycott circle. A dispute between an employer and its employees in one small locality might be made to cripple or demoralize business in remote places, and among persons who had no knowledge of what the original difficulty was about, and had never heard of the original parties? In other words, we are to believe that
competition between capital and labor is unreasonable because it affects "disinterested outsiders" and is therefore unlawful. We may have competition between capitalists or between laborers, but competition between capitalist and laborer, never. In the Mogul case Lord Bowen, made a few remarks that are very pertinent to the issue raised by this criticism. "We were told," he said, "that competition ceases to be the lawful exercise of trade, and so to be a lawful excuse for what will harm another, if carried to a length which is not fair or reasonable. The offering of reduced rates by the defendants in the present case is said to have been 'unfair'. This seems to assume that, apart from fraud, intimidation, molestation or obstruction, of some other personal right in rem or personam, there is some natural standard of 'fairness' or 'unreasonableness' (to be determined by the internal consciousness of the judges and juries) beyond which competition ought not in law to go. There seems to be no authority, and I think, with submission, that there is no sufficient reason for such a proposition. It would impose a novel fetter upon trade. The defendants we are told by the plaintiffs' counsel, might lawfully lower rates provided they did not lower them beyond a 'fair freight', whatever that may mean. But where is it established that there is any such restriction upon commerce? And what is to be the definition of a 'fair freight'? It is said that it ought to be a normal rate of freight, such as is reasonably remunerative to the ship owner. But over
what period of time is the average of this reasonable remunerativeness to be calculated? All commercial men with capital are acquainted with the ordinary expedient of sowing one year a crop of apparently unfruitful prices, in order by driving competition away, to reap a fuller harvest of profit the future; and until the present argument at the bar it may be doubted whether shipowners or merchants were ever deemed to be bound by law to conform to some imaginary 'normal' standard of freight or prices, or that law courts had a right to say to them in respect of their competitive tariffs, "Thus far shalt thou go and no further'. To attempt to limit English competition in this way would probably be as hopeless an endeavor as the experiment of King Canute. But on ordinary principles of law no such fetter on freedom of trade can in my opinion be warranted. A man is bound not to use his property so as to infringe upon another's rights. Sic utere tuo ut alienum non laudas. If engaged in actions which may involve danger to others, he ought, speaking generally, 'to take reasonable care to avoid endangering them. But there is surely no doctrine of law which compels him to use his property in a way that judges and juries may consider reasonable. See Chasemore v. Richards, 7 H. L. C., 349. If there is no such fetter upon the use of property known to the English law, why should there be any such a fetter upon a trade?" The question may also well be asked, "Why is such a fetter placed upon competition between capital and labor?"
there is competition how can you stop its being carried to
the 'bitter end' in one case and not in the other? Are all
men 'created equal'? It seems to depend altogether on who
you happen to be competing with.

In the cases cited on legal justification and excuse, I
don't mean to say that the decision has always gone on
the grounds I have indicated as matters which will or will
not excuse; I simply mean to say that I think that a careful
analysis of the facts of each case will bear out the propo-
positions I have stated.

There is another class of cases where several Amer-
ican authorities have allowed the interference to be justi-
fied. A & B enter a contract terminable at the will of
either party. A intending to injure X threatens to
break the contract if B has any business relations with X.
Does A have an action against A if B refuses to deal with him?
It is held that he has none in Heywood v. Tillson, Payne v.
Ry. Co., and Raycroft v. Tayntor. They say that defendant
is only doing what he had a legal right to do and therefore
cannot be held liable. So it is lawful for A to build a
slaughter house on his own land, if it happen that his land
is so situated that the property rights of no one else are
injured; and that is peculiarly the question in this case.
Not was any right of B's injured but was any right of X's
invaded? His right to gain a livelihood is certainly
invaded, now will the law excuse the act under the circum-
stances?

In Ry. Co. v. Greenwood the defendant threatened
to discharge its employes if they patronized the plaintiff's hotel. "The appellant (def't.) contends that the petition fails to state a cause of action; because (second) under the facts alleged, appellant had the right 'to prohibit its employes or servants from attending any place of resort, such as a saloon and boarding house combined, under penalty of being discharged', and therefore did no wrong to appellee. The court said, "Were the acts the doing of which appellant declared to its servants should be the cause of their discharge, such as would justify the action which was threatened? . . . The employes, presumably, had the right to eat and drink where they choose, so long as they violated no contract with their employer and performed their service well, and the malicious use of such moral coercion upon them by the appellant as this petition alleges, for the purpose of injuring appellee, was wrongful, and made appellant liable for such damages as was thereby inflicted. Appellee did not have the right to intentionally induce others to abstain from patronizing appellee, except for a legitimate purpose. . . According to the allegations, it did, by threats, of unlawful discharge, cause their servants to withdraw their patronage, with intent to injure appellee. This was not the exercise of a legal right, as contended and the second proposition of the appellee cannot be sustained". See also the dissenting opinion of Judge Freeman, in Payne v. Ry. Co. where he says, "The rule I have maintained is in strict accord with a maxim of the law, so well founded in
reason as to need no argument or authority to support it, that is, that a man must so use his own as not to do an injury to others. That this means he shall so enjoy his legal rights as not to do a wrong to the legal rights of another, I freely concede. But here is a use of a legal right to discharge employes, for the direct purpose and with no other, and for no other reason except to prevent their trading with a party legitimately entitled by his location and the character of his business to such trade. Here is the use of a legal right, to deprive the other of that which is his legal right, to-wit, the property he has in the good will of his business. ... for a party who has the power, to use that power, to destroy or injure the value of this property, in the exercise of a right, not for any reason of advantage to himself, but solely to injure another, ought not to be permitted by an enlightened system of jurisprudence in this country?

The fallacy of the position maintained by these cases is clearly pointed out in the portion of the opinion of Chipley v. Atkinson quoted with approval in Raycroft v. Tayntor. It is as follows, "Where one does an act which is legal in itself, and which violates no right of another person, it is true that the fact that the act is done from malice or other bad motive toward another, does not give the latter a right of action against the former. Though there be loss or damage resulting to the other from the act and the doer was prompted to it solely by malice, yet if the
act be legal and violates no legal right of the other person
there is no right of action. It must be admitted that in
these cases the act is prima facie lawful but if we have
tried to prove one thing more than another in this thesis,
it is, that these acts do violate a legal right of the
other person, i.e., the right to gain a livelihood.

The true rule governing these cases is the one governing competition as heretofore discussed. See, Robin-
son v. Land Ass'n, ante p. 95; Gauthier v. Perrault, ante
p. 97; and Clemmitt v. Watson, ante P. 94. Heywood v.
Tillson may also be justified on another ground. Post p. 106.
Graham v. Ry. Co., is governed by the provisions of the La.
code, but supports the proposition contended for.

The grounds of justification and excuse pointed out are the ones that seem to be quite well settled by the au-
thoritées. However some of the cases seem to indicate others. In Heywood v. Tillson, the plaintiff had been in-
terfering with defendants business and was practically seeking to ruin it, and defendant, not wishing to have his em-
ployes influenced by the plaintiff, threatened to discharge any employe who occupied plaintiff's house. At page 231 the
court says, "The defendant was doing a large business,
having five or six hundred men in his employ. It was of
the utmost importance to his success that his employes should be of good habits, friendly to his enterprise and interested in his prosperity." Protection of business is the grounds on which this case should be sustained, rather than those.
already indicated. For example the employer may re-
quire that his employes be 'emperate, or, as in this case
that the employe shall not associate with one whose inter-
est are inimical to those of the employer. It seem clear
that these acts should be justified.

In Van Horn v. Van Horn, another ground of justifi-
cation is pointed out by the court. It is said, "As to
the question of privilege, the trial court charged the jury
that a man has a right to inquire of his neighbor into the
circumstances of a person to whom he is giving credit, and
that person may on such occasions communicate freely, and
unless his communication be of facts which he does not hon-
estly believe or the communication be such as was made not
for the honest purpose of conveying the information to the
inquirer, but such as in the judgment of the jury, under
the evidence, shows that the defendant took advantage of
that privilege to gratify a malicious purpose, no action
will lie'. This is a correct statement of the law".

There may be other grounds of excuse which the courts
will find it necessary to allow when they are presented to
them for adjudication, but I have noticed no others in the
cases as I have read them.

In the foregoing discussion we have only intended to
discuss the law where there was no existing obligation be-
tween the second and third party, in other words an inter-
ference with the right to enter into future relations. Is
the law the same where there is an existing obligation which
is interfered with? I think not. In many of the cases
touching this question unlawful means were clearly used? but where no unlawful means were used do the grounds of justification rest on competition? From an examination of the facts of the following cases there seems to have been no competition, and no unlawful means were used, but the defendant was held liable. Forbes v. Morse, 69 Vt., 220; Morgan v. Andrews, 107 Mich., 33; and Jones v. Stanley, 76 N. C., 355. The facts of the following cases clearly show that there was competition, and that defendant used no unlawful means, still the defendant was held liable. Rixby v. Dunlop, 56 N. F., 456; Parker v. Bricklayers Union, 91 Wk. L. Bull., 223, 226; Daniel V. Swearengen, 6 S. C., 297; and Exchange Tel. Co. v. Gregory &c., 1896, 1 Q. B., 147.

Nor should the law be the same. To begin with there exists something which everyone may strive to get by honest competition, but after one person has succeeded in capturing this thing and reducing it to possession (one might say) for a definite period, by means of a contract, then no one has a right to disturb that possession simply because he wants the same thing. He has had his day and has lost. Let him be content.

Many of the courts say there is no distinction between time contracts and mere contract at will, but with one exception (Salter v. Howard, 43 Ga., 601,) a careful analysis of the facts will show that the true rule is that laid down by Lord Shand in Allen v. Flood, namely, competition. (The cases involving these facts have been discussed, supra, with others touching the principle of competition.) And
why should the rule be different? In this case the possession is not obtained for a definite time but only for the time being and every one should be allowed to compete for its future possession.

Briefly stated I would summarize the law on this question as follows: (1) One person or a combination of persons may refuse to have any business with X and he has no cause of action; (2) Peaceable argument may always be used to get third parties to join this combination; (3) If the third parties refuse to yield to argument, then the bringing of any pressure to bear on them, makes the party so doing liable where there is no competition; (4) Where there is competition and the third party refuses to yield to argument, then any further means which stop short of unlawful acts may be used to compel them to refrain from dealing with X. When I use the word 'unlawful' in this connection I give it its modern meaning.

I here end my discussion of this vexed question. It has sometimes been hard for me to tell just where I was at (perhaps others will experience the same difficulty when reading this thesis) But my final conclusions are stated and I rest in peace.
We have now come to the point where it is possible to enquire when equity will intervene in boycotts. Of course in those cases where the act is allowed to be justified an injunction will necessarily be refused. Mogul case. Bohn Mfg. Co. v. Hollis. Cote v. Murphy. Cont. Ins. Co. v. Underwriters. But where it is held that the act is unjustifiable, will equity intervene? The jurisdiction of equity to protect property is undoubtedly. Emperor of Austria v. Day, 3 D. F. & J., 317; Atty-Gen. v. Gas Co., 3 D. M. & G., 304; and Springhead Spinning Co. v. Riley. The property which is sought to be protected in these cases is not visible or tangible but invisible and intangible. The question naturally presents itself, will equity lend its aid to the protection of such property or will it confine its sphere of protection to corporeal property. In Brace Bros. v. Evans, 18 Pitts. L. J., (N. S.) 399, the court said, "But it is claimed that the plaintiff's right to conduct their business is personal, and that equity will not interfere for the protection of mere personal rights, but only to preserve rights of property.

"The language of our own Act of Assembly would seem to include every possible right of individuals, but it must be construed in reference to the recognized power of courts of chancery, and also with reference to the clause of our own constitution which provides that 'the right of trial by jury shall be as heretofore, and the right thereof remain inviolate'. The courts have heretofore been careful not
to extend their equitable powers so as to infringe upon the right of trial by jury further than is necessary for the preservation of other rights equally sacred. . . .

"It is difficult to see why the rights of life and liberty (which include the right to provide a living for oneself and family by any lawful means), and the right of acquiring property, should not be protected as fully as the less important right of possessing property. It cannot be that the strong arm of chancery can be successfully invoked to preserve the accumulations of the rich, and is powerless to protect the capital of the poor, his brain and muscle and power and will to work when and as he pleases. This is, in a legal sense, property; it belongs to each man exclusively, and with the mass of the community it is their all. It is entitled to the protection of the law, and none is more interested in the assertion of this power than the defendants as representatives of organized labor. . . .

"The protection of trade-marks, literary work and good will, cannot be justified upon any theory other than that a man has a right of property in the labor of his hands and brains. It is therefore clear that the plaintiff being in the lawful exercise of a lawful right, should be permitted to conduct their business as heretofore, without molestation from anyone. This statement of the law is certainly correct. The courts have never refused to protect property because it was incorporeal. In Emp. of Austria v. Day the defendants were enjoined from issuing and
circulating spurious bank notes in Austria. The court said "That the effect of this introduction will be to disturb the circulation of the kingdom cannot in my opinion be doubted, and what will be the effect of that disturbance? Surely to endanger, to prejudice, and to deteriorate the value of the existing circulating medium, and thus to affect directly all the holders of Austrian bank notes, and indirectly, if not directly, all the holders of property in the State.

... I agree that the jurisdiction of this court in a case of this nature rests upon injury to property, actual or prospective, and that this court has no jurisdiction to prevent the commission of acts which are merely criminal or merely illegal, and do not affect any rights of property, but I think there are here rights of property quite sufficient to found the jurisdiction of this court.

We have seen the same property protected in the strike cases. The jurisdiction of equity cannot be successfully attacked on this ground. The jurisdiction of equity being to protect property, "Equity will interfere by injunction to prevent (1) an injury which threatens irreparable damage, or (2) a continuing injury where the legal remedy therefor may involve a multiplicity of suits. This jurisdiction is established and unquestionable. In practice, the criterion of its application is the inadequacy of the legal remedy depending on whether (1) the injury done or threatened is of such a nature that when accomplished, the property cannot be restored to its original condition, or cannot be

In Long shore Printing v. Howell, the court recognized the rule but refused to apply it to the case, saying "The showing of plaintiff is clearly insufficient to bring itself within the rule thus explicitly stated by the learned Judge, (Baldwin J., in Bonaparte v. Ry. Co., 1 Baldw. 205). The plaintiff may have its action at law against defendants for some of the acts complained of, and defendants or some of them may have by their conduct subjected themselves to a criminal prosecution under the statute, and the plaintiff may have been much annoyed, and at times seriously harrassed by defendants; yet one thing is clear, there is no such persistent, aggressive and virulent boycott now in progress, nor was there at the time of the commencement of this suit, as to justify the court in saying that plaintiff's business and property is being, or is about to be irreparably injured. We do not say that an injunction is an improper or unavailable remedy to stay the destructive and pronicious ravages of a boycott, but that in this particular case plaintiff has not brought itself within the rules of that
particular jurisdiction of equity! This case is certainly an extreme one and would not be generally followed. Nor should it be, for it is evident that where the parties go beyond their legal rights, the injury to another's right to gain a livelihood is in its very nature irreparable and should be enjoined.
"A blacklist is defined to be 'a list of persons special marked out for' avoidance, antagonism or enmity on the part of those who prepare the list or those among whom it is intended to circulate; as where a trades union blacklists workmen who refuse to conform to its rules, etc. It is sometimes used by strikers against citizens to deter them from continuing dealing with the party or parties struck against, but it is most usually resorted to by combined employers, who exchange lists of their employes who go on strikes with the agreement that none of them will employ the workmen whose names are on the list." Cogley on Strikes, 293. It will be seen that this is only one method of conducting a boycott and should therefore be governed by the same rules. Blacklisting was held to be unlawful in Mattison v. Ry Co., 2 Wisi Prius (O.) 276, where the facts would seem to bring the case directly within the principle of the Bohn Mfg. Co. case. In two cases in the U. S. C. C. it has been held that there was no action under facts similar to the last case. McDonald v. Ill. Cent. Ry. Co., and the Ketcham case, unreported, See 57 Alb. L. J., 115.

In Worthington against Waring, 157 Mass., 421, on a similar state of facts an injunction was refused apparently on statutory grounds.

In Trollope v. Trades Federation, 72 L. T. R. (N.S.), 342, an injunction was granted in favor of an employer against a labor union, restraining them from publishing a black-
list of certain employes of his. The court distinguishes the principle case from Jenkinson v. Neild, 8 T. L. R., 540, which was an action for damages. These are all the cases I have been able to find on this subject. None of them are at all satisfactory so far as they attempt to state the law governing the question.
A few peculiar phases are added to the law of boycotts by the Interstate Commerce Act. Paragraph 2 of sec. 3 reads as follows, "Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic, between their respective lines, and for the receiving, forwarding, and delivering of passengers, and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines." Under the provisions of this act one Ry. Co. was enjoined from refusing to receive interstate freight from another Ry. Co. in Chicago &c. Ry. Co. v. Burlington &c. Ry. Co., 34 Fed., 381. The engineers on the plaintiff's line had gone out on a strike and the engineers on defendant's road threatened to strike also if any freight was accepted from the plaintiff road. Judge Love said, "Now the question is, what shall be obeyed,—the law of the land, of the order of the chiefs of the locomotive engineers? Shall a railway company refuse obedience to the express provisions of the statutory law because some of its employes threaten to quit its service, and thus stop the running of its trains? Shall the court presume that they will carry out such threats, and deny relief to the complainant upon that presumption? No
temporary inconveniences to the defendant company, or the public whom it serves are, in my judgment, for one moment to be compared with the fatal consequences which must issue from a precedent by which it would be established that a Ry. Co. may, in violation of the law of the land, refuse to receive and haul the cars of a connecting line, at the command of any irresponsible persons, or from its own belief and apprehension, that its employes will leave its service, and stop the operation of its lines. Such an excuse as this is wholly inadmissible, and it must be set aside.

Toledo &c Co. v. Penn. Co., 54 Fed., 730, presents a different phase of the question. In this case an injunction was granted against the defendant under circumstances similar to those of the preceding case. Then a supplemental bill was filed making P. M. Arthur, the chief executive of the B. of L. & E., a defendant, and asking for an injunction restraining him "from issuing, promulgating, or continuing in force any rule or order of said brotherhood, which shall require or command any employe of any of defendant railway companies herein to refuse to handle and deliver any cars or freight in course of transportation from one state to another to the complainant, or from refusing to receive and handle cars of such freight which have been hauled over complainant's road; and also from in any way, directly or indirectly, endeavoring to persuade any of the employes of the defendant railway companies whose lines connect with the road of the complainant, not to extend to said
company the same facilities for interchange of interstate traffic as are extended by said company to other railway companies. The rule referred to was rule No. 12, of the B. of L. E., which reads as follows:—"Twelfth, That hereafter, when an issue has been sustained by the grand chief, and carried into effect by the B. of L.E., it shall be recognized as a violation of obligation for a member of the Brotherhood of Locomotive Engineers Association who may be employed on a railroad running in connection with or adjacent to said road, to handle the property belonging to said railroad or system in any way that may benefit said company in which the B. of L.E. is at issue until the grievance or issue of whatever nature or kind has been amicably settled.

In restraining Arthur from ordering the enforcement of this rule, the court said, "It will be convenient, in discussing the question whether any relief can properly be given to complainant against Arthur, to consider rule 12 and the acts done, or to be done, in pursuance thereof. First, in the light of the criminal law; second, with reference to their character as civil wrongs; and, third, with reference to the remedies which a court of equity may afford against them."

"1. The complainant and defendant companies are common carriers, subject to the provisions of the interstate commerce act, and the business exchanged between them is averred by the bill to be nearly all interstate freight. The second paragraph of the third section of the act pro-
vides that:- (See ante p. 115.)

In view of the foregoing section it needs no argument to demonstrate that one common carrier is expressly required by the interstate commerce act to freely interchange interstate freight with another when their lines connect.

Section 10 of the act, as amended, (25 Stat. at Large p. 855.) provides that:-

Any common carrier subject to the provisions of this act, or when such common carrier is a corporation, any director thereof, or any receiver, trustee or lessee, agent, or person acting for or employed by such corporation, who alone or with any other corporation, company, person or party, shall willfully omit or fail to do any act, matter, or thing in this respect required to be done, or shall cause or willfully suffer or permit any act, matter or thing, so directed or required by this act to be done, not to be done, or shall aid or abet such omission or failure, shall be deemed guilty of a misdemeanor.

By the foregoing sections, a common carrier which is not a corporation is made liable criminally for violations of the interstate commerce law. But when the carrier is a corporation and violates the law, not the corporation, but its officers, agents and persons acting for or employed by it who willfully do the wrongful work, are made liable.

In Re Peasley, 44 Fed., 271. The corporation is made civilly liable under sections 8. As every locomotive engineer
of the defendant companies is a person employed by a common carrier corporation subject to the provisions of the inter-state law, he is guilty of the offense described, and subject to the penalty imposed by section 10, if he, while acting as engineer, for his corporation, refuses to handle interstate freight for the complainant, and thereby, in his discharge of a function of the company, willfully omits to do an act required by the law to be done; and it is immaterial whether what he does or fails to do in violation of the statute is with or without the orders of his principal. U. S. v. Tozer, 37 Fed., 635.

Arthur and all the members of the brotherhood engaged in enforcing rule 12, and in thereby aiding and abetting every such engineer to violate the section, are equally guilty with him as principal, U. S. v. Spyder, 14 Fed., 554; and they are thereby also guilty of conspiring to commit an offense against the United States and subject to the penalties of section 5440, Rev. St., U. S. v. Stevens, 44 Fed., 132.

But suppose that this view of section 10 is erroneous and that the words, 'person acting for or employed by such corporation', refer only to its managing officers or agent, the enforcement of rule 12, with its evident purpose, would still be a violation of law; for even then it is quite clear that any one, though not an officer or agent, successfully aiding, abetting, or procuring such officer or agent to violate the section, would be punishable under it as
principle. . . .

Section 5040, Rev. St., provides that - 'If two or more persons conspire . . . to commit any offense against the United States, . . . and one or more parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable'. . .

All persons combining to carry out rule 12 of the brotherhood against the complainant company, if any one of them does an act in furtherance of the combination, are punishable under the foregoing section. This is true, because as already shown, the object of the conspiracy is to induce, procure and compel the managing officer of the defendant companies to refuse equal facilities to the complainant company for the interchange of interstate freight, which, as we have seen, is an offense against the United States by virtue of section 10, above quoted. For Arthur to send word to the committee chairmen to direct the men to refuse to handle interstate freight of complainant, and to notify the managing officers of the defendant companies with the intention of procuring them to do so, all in execution of rule 12, is an act in furtherance of the conspiracy to procure the managing officers of the defendant companies to commit a crime, and subjects him and all conspiring with him to the penalties of section 5440, Rev. St. Again, for the men, in furtherance of rule 12, either to refuse to handle interstate freight or to threaten to quit, or actually to quit, in order to procure or induce the officers
of the defendant companies to violate the provisions of the interstate commerce law, would constitute acts in furtherance of the conspiracy, and would render them also liable to the penalties of the same section.

In the case at bar, although malice is certainly present, the illegality of the combination does not consist alone in that, for both the means taken by the combination and its object are direct violations of both the civil and the criminal law as embodied in a positive statute. Surely it cannot be doubted that such a combination is within the definition of an unlawful conspiracy, recognized and adopted by the Supreme Court of the United States. U. S. v. Pettibone, 148 U. S., 197, to wit, 'A combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means'.

2. We now come to the character of rule 12, and its enforcement as a civil wrong to complainant. Lord Justice Fry said in the case of the Steamship Co. v. McGregor, 23 Q. B. D., 596, 624; 'I cannot doubt that whenever persons enter into an indictable conspiracy, and that agreement is carried into execution by the conspirators by means of an unlawful act or acts which produce private injury to some person, that person has a cause of action against the conspirators'.

Under the principle above stated, Arthur and all the members of the brotherhood engaged in causing ___ loss
to the complainant are liable for any actual loss inflicted in pursuance of their conspiracy. The gist of any such action must be not in the combination or conspiracy, but in the actual loss occasioned thereby.

3. Having thus shown that Arthur and all the members of the brotherhood with him, conspiring by enforcing rule 12 to injure complainant, will be liable in damages to complainant for any loss they may thereby occasion, the question remains, can equity afford any relief by preliminary injunction against the defendant companies and against the engineers, under the averment of the bill that the defendant companies threaten to refuse to interchange freight with complainant because of the refusal of their engineers to handle it.

As against the defendant companies the complainant clearly is, therefore, "entitled to a preliminary mandatory injunction to compel them pending the hearing, to discharge the duties imposed by the interstate law, and to exchange with complainant interstate freight. (Follows last case.)

If a preliminary mandatory injunction may issue against the defendant companies to prevent irreparable injury, it may certainly issue against their officers, agents, employees, and servants.

Nor is the mandatory injunction against the engineers an enforced specific performance of personal service. It is only an order restraining them, if they assume to do the work of the defendant companies, from doing it in a way
which will violate not only the rights of the complainant but also the order of the court made against their employers to preserve those rights.

They may avoid obedience to the injunction, by actually ceasing to be employees of the company.

We finally reach the question whether Arthur can be enjoined from ordering the engineers to carry out rule 12. That he intends to enforce the rule, if not enjoined, is not denied. If, as we have seen, the injury intended is of such a character that the court may issue its mandatory injunction against the engineers to prevent them from inflicting it, Arthur may certainly be restrained by prohibitory injunction from ordering them to inflict it.
Let us next consider the Act of Congress of July 2, 1890, commonly known as the Anti-Trust law, in its relation to strikes and boycotts. The sections of the act which affect the questions under discussion are the 1st, 4th, and 6th. They 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. Every person who shall make any contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

Section 4. "The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, to institute proceedings in equity to prevent and restrain such violations. Such proceeding may be by way of petition setting forth the case and praying that such violations be enjoined or otherwise prohibited. When the parties complained of shall have
been duly notified of such petition the court shall proceed as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

Section 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceeding as those provided by law for the forfeiture, seizure and condemnation of property imported into this country contrary to law.

It must first be noticed that the act creates no right in equity in favor of a private person or persons. Sec. 4, and Blindell v. Hagan, 54 Fed., 40; aff'd 56 id. 696. In this case Judge Billings said, 'The injunction has been asked for, first, under the act of 1890, (26 St. p. 209.) Known as 'An act to protect trade and commerce against unlawful restraints and monopolies'. This acts makes all combinations in restraint of trade or commerce unlawful, and punishes them by fine or imprisonment, and authorizes suits at law for triple damages for its violation, but it gives no new right to bring a suit in equity, and a careful study of the act has brought me to the conclusion that suits in equity or injunction suits by any other than the government
of the United States are not authorized by it."

In U. S. v. workingmen's Amalgamated Council, Judge Billings held that the act applied to combinations of workingmen as well as combinations of capitalists and granted an injunction. (See U. S. v. Alger.) The bill "averts that a disagreement between the warehousemen and their employees and the principle draymen and their subordinates had adopted by all the organizations named in the bill, until by this vast combination of men and of organizations, it was threatened that, unless there was an acquiescence in the demands of the subordinate workmen and draymen, all the men in all the defendant organizations would leave work, and would allow no work in any department of business; that violence was threatened and used in support of this demand; and that this demand included the interstate and foreign commerce which flowed through the city of New Orleans? (Aff'd in 57 Fed. 85.)"

In Waterhouse v. Comer, Judge Speer said that the rule of the B. of L. E. which was considered in the Toledo Ac.iry. case would, if enforced, violate the act.

In U. S. v. Elliott, Judge Thayer held that "a combination whose professed object is to arrest the operation to railroads whose lines extend from a great city into adjoining states, until such roads accede to certain demands made upon them, whether such demands are in themselves reasonable or unreasonable, just or unjust, is certainly an unlawful conspiracy in restraint of commerce among the states" and within the statute. An injunction was granted re-
straining the defendants "from doing the acts threatened, in pursuance of the alleged agreement? These acts were "that the several defendants have combined and conspired to induce persons in the employ of the said railway companies to leave the service of their respective companies, and to prevent them from securing other operatives." In the same case reported in 64 Fed., 27, the demurrer to the bill was overruled by Judge Phillips.

In Thomas v. Cincinnati &c. Ry. co., one Phelan was punished for contempt for violating an injunction and the act of Congress in question "as cited to sustain the jurisdiction of the court in committing said Phelan. The Circuit Court also relied on the statute in U. S. v. Debs but the Supreme Court placed its decision on other grounds. The nice question to be solved in the cases arising under this statute, is, does the statute apply to lawful as well as unlawful restraints and does it apply to restraints where the object is not primarily directed against interstate commerce? In all of the cases except U. S. v. Elliott unlawful means were clearly used. In this case the use of no unlawful means were charged but it was alleged "that it is the purpose and object of the defendants who are engaged in the aforesaid conspiracy to secure to themselves the entire control of interstate commerce"? &c. U. S. v. Freight Ass'n, 166 U. S., 240, is a very interesting case on this point. It wasn't a strike case but some of the principles laid down are worthy of notice. It was held
that it wasn't necessary to prove an intent to restrain interstate commerce, but if such restraint is the necessary effect of the agreement that is sufficient and further that (in this case) the agreement "though legal when made, became illegal on the passage of the act of July 2, 1890?"
The act is certainly very broad and no one can tell how far the courts will go in construing its provisions. See, U. S. v. Coal Dealers' Ass'n of Cal., 85 Fed., 252; and U. S. v. Addystone Pipe & Steel Co., 85 Wed. 271.
"OMNIBUS" INJUNCTIONS.

A great deal has been written and said about 'omnibus injunctions, i.e., one restraining all the world from doing a certain act. It seems to me that there is a great misconception of the law governing this question. In the Debs case an injunction was granted "whereby the defendants, and all persons combining and conspiring with them, and all persons whomsoever, were commanded and enjoined" &C. It is claimed that the form of this injunction is unwarranted by the practice of courts of equity. It is undoubtedly true that an injunction is never granted against persons who are not parties to the suit. Iveson v. Harris. Fellows v. Fellows. Schalk v. Schmidt. State v. Anderson. But "the order will, if necessary, be extended to his (def't's) servants, workmen, and agents, and it is of course to insert these words" Toledo &c. Ry. Co. v. Penn Co., 54 Fed., 730, 742, and authorities cited. It also seems to be settled that one not named in the injunction order may be committed for contempt if he knowingly 'assist or abets' the person enjoined. Seward v. Paterson, 1897, 1 Ch., 545; (citing Wellesley v. Earl of Mornington,; Lewes v. Morgan; and Avery v. Andrews.) State v. Andrews; and Wimpy v. Phinizy. It may seem paradoxical that one can be committed for contempt when he could not be enjoined; The difficulty is clearly explained in Wellesley v. Mornington. An injunction was granted restraining the defendant from cutting timber but it did not by its terms include his servants or agents. It
was moved to commit one Batty, an agent of the defendant, "for a breach of the injunction". The Master of the Rolls said, "You do not ask to commit him for the contempt, but for the breach of an injunction by which he is not enjoined. I think the objection fatal to this form of notice of motion; but I by no means think, that because Batty is not enjoined in his character of servant and agent, he cannot be punished for knowingly aiding and assisting lord Mornington in doing that which this court expressly prohibited."

The plaintiff then moved "to commit him for the contempt, in being party and privy to, and in aiding and assisting the breach of the injunction, which restrained the defendant, the Earl of Mornington from cutting timber" &c. Batty at the time knowing that these acts were forbidden. The Master of the Rolls now said: "By the forbearance of the plaintiff, I am spared the painful necessity of making an order. If the matter had been pressed, I should have found it my duty to commit Mr. Batty for his contempt in intermeddling with these matters."

In Seward v. Paterson, plaintiff leased certain premises to the defendant. The defendant covenanted not to "do or suffer anything noisy, noisome, offensive or inconvenient to the lessor" &c. The defendant, his under-tenants, agents and servants were enjoined from violating this covenant. It was alleged that the defendant disobeyed this order, by holding boxing matches, upon the premises, and that one Shepard and Murray had assisted him. They were all com-
mitted for contempt by Judge North, who said, (after quoting from Wellesley v. Mornington with approval.) "In the present case Murray was not a party to the action, and upon that ground his counsel argued that he could not be committed for contempt. That does not follow. An injunction to restrain a man, his servants and agents, from doing any act, is a common recognized form, and the injunction can be enforced against servants and agents although they are not parties to the action. Murray's counsel failed to explain why servants and agents should be liable to be committed, though they are not parties to the action; while other persons who had done exactly the same things could not be committed because they were not parties to the action. In my opinion that is not the law; any one who deliberately assists another in committing a breach of an injunction can be punished for his contempt of court in so doing equally with a servant or agent of the person enjoined. I think the words 'servants and agents' are inserted by way of warning to such persons, not as describing a particular class of persons, but generally as describing assistants of the person who is restrained." Murray appealed. On the appeal Lindley, L. J. said, "Now, let us consider what jurisdiction the court has to make an order against Murray. There is no injunction against him - he is no more bound by the injunction granted against Paterson than any other member of the public. He is bound, like other members of the public, not to interfere with, and not to obstruct, the course of justice, and the case, if any, made against him, must be this - not
that he has technically infringed the injunction, which was not granted against him in any sense of the word, but that he has been aiding and abetting others to set the court at defiance, and deliberately treating the order of the court as unworthy of notice. If he has so conducted himself, it is perfectly idle to say that there is no jurisdiction to attach him for contempt, as distinguished from a breach of an injunction!

This I apprehend to be the true scope of the injunction in the Debs case. If agents and servants and persons who assist or abet the violation of an injunction, can be punished for contempt, whether they be parties to the suit or named in the injunction order, isn't it better to insert these words 'by way of warning' so there may be notice? The question was not involved in the Debs case, and in Re Lennon the contemnor was clearly a servant assisting and abetting. The only case where the question seems to have been discussed is U. S. v. Alger, 62 Fed., 824. In this case Judge Baker says, "I think that in this proceeding the court (Judge Woods, as Judge of the circuit court) had jurisdiction to issue this writ. ... Now, in this case, the information, I think, lacks considerable of having the certainty and precision that is essential. ... It does not allege,—and that is the most serious thing, to my mind,—that either by his words or his acts he was engaged in aiding the common object with other members of the American Railway Union. If what this man did was not done to give aid or comfort or encouragement to the object of arresting
the mails, if it was an independent crime the man was committing, if he wanted to commit arson or robbery, without having any connection with these men that were engaged in the interruption of commerce, then he would not be within the terms of the restraining order. This seems to be a correct exposition of the real meaning and effect of the so-called 'omnibus injunction' granted in the Debs case. No broader interpretation of it would be sustained by the authorities.
It will be unnecessary to state the facts of this case as they are still fresh in the minds of all. The important question is, was the action justified? It can scarcely be doubted that if the injunction had been asked for by the different railroads concerned that it would have been granted on the various grounds pointed out. But the injunction was sought and obtained by the United States and it is necessary to notice the grounds on which it was based. The injunction commanded the defendants, "and all persons combining and conspiring with them, and all other persons whomsoever, absolutely to desist and refrain from in any manner interfering with, hindering, obstructing or stopping any of the business of any of the following named railroads, (naming roads) as common carriers of passengers and freight between or among the States of the United States, and from in any way or manner interfering with, hindering, obstructing or stopping any mail trains, express trains or other trains, whether passenger, engaged in interstate commerce, or carrying passengers or freight between or among the States; and from in any manner interfering with, hindering, obstructing or stopping any engines, cars or rolling stock of any of said companies engaged in interstate commerce, or in connection with the carriage of passengers or freight between or among the States; and from in any manner interfering with, injuring or destroying any of the property
of any of said railroads engaged in or for the purpose of, or in connection with, interstate commerce or the carriage of the mails of the United States or the transportation of passengers or freight between or among the states; and from entering upon the grounds or premises of any of said railroads for the purpose of interfering with, hindering, obstructing or stopping any of said mail trains, passenger or freight trains engaged in interstate commerce, or in the transportation of passengers or freight between or among the States, or for the purpose of interfering with, injuring or destroying any of said property so engaged in or used in connection with interstate commerce or the transportation of passengers or property between or among the states; and from injuring or destroying any part of the tracks, roadbed, or road or permanent structures of said railroads; and from injuring, destroying or in any way interfering with any of the signals or switches of said railroads; and from displacing or extinguishing any of the signals of any of said railroads, and from spiking, locking or in any manner fastening any of the switches of any of said railroads, and from uncoupling or in any way hampering or obstructing the control by any of said railroads of any of the cars, engines, or parts of trains of any of said railroads engaged in interstate commerce or in the transportation of passengers or freight between or among the states; or engaged in carrying any of the mails of the United States; and from compelling or inducing or attempting to compel or induce, by threats,
intimidation, persuasion, force or violence, any of the em-
ployees of any of said railroads, in connection with the inter-
state business or commerce of such railroads or the carriage
of the United States mails by such railroads, or the trans-
portation of passengers or property between or among the
states; and from compelling or inducing or attempting to com-
pel or induce by threats, intimidation, force, or violence
any of the employees of any of said railroad who are employed by
such railroads, and engaged in its service of interstate
commerce or in the operation of any of its trains carrying
the mail of the United States, or doing interstate business,
or in the transportation of passengers and freight between
and among the States, to leave the service of the said
railroads; and from preventing person whatever, by threats,
intimidation, force or violence from entering the service
of any of said railroads and doing the work thereof, in the
carrying of the mails of the United States, or the transpor-
tation of passengers and freight between or among the States;
and from doing any act whatever in furtherance of any con-
spiracy or combination to restrain either of said railroad com-
panies or receivers in the free and unhindered control
and handling of interstate commerce over the lines of said
railroads and of the transportation of persons and freight be-
tween and among the states; and from ordering, directing,
aiding, assisting, or abetting in any manner whatever,
any person or persons to commit any or either of the acts
"The scope and purpose of the bill was only to restrain forcible obstructions of the highways along which interstate commerce travels and the mails are carried. And the facts set forth at length are only those which tended to show that the defendants were engaged in such obstructions."

"An examination of the order shows that it consists of two parts, though they are not separated. The first portion enumerates the particular things which the defendants may not do, and those things are all in themselves unlawful and injurious. But among them the persuading of employees to quit the services of the railroads is not included; the only use of the word 'persuade' is in the clause forbidding the defendants to induce employees in the service of said railroads to refuse to perform their duties as employees of said railroads engaged in interstate commerce, or the carriage of the United States mails. It does not forbid them to use persuasion to induce employees to quit the service.

"The second portion of the order, embracing the last two clauses, forbids the doing of any act - even though it be lawful in itself - in furtherance of any conspiracy, or combination to restrain either of the railroads from freely controlling and handling interstate commerce, and also forbids the ordering, directing, aiding or abetting any person to commit any or either of the acts aforesaid."

The decision was based on the grounds (1) protection
of the mails; (2) protection of interstate commerce, and (3) to
prevent a public nuisance. It is clear from the au-
thorities that the United States has a property right in the
m mails and this right should be protected from irreparable
injury. The duty to govern interstate commerce is given by
the constitution and the jurisdiction of equity under the
interstate commerce act and the anti-trust law would seem to
be undoubted. However the court did not rest its juris-
diction on the statutes but on the ground "that the govern-
ment of the United States is one having jurisdiction over
every foot of soil within its territory, and acting directly
upon each citizen; that while it is a government of enumer-
ated 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 mail;
that the power thus conferred upon the national government
are not dormant, but have been assumed and put into prac-
tical exercise by the legislation of Congress; that in the
exercise of those powers it is competent for the nation to
remove all obstructions upon highways, natural or artificial
to the passage of interstate commerce or the carrying of the
m ends."

On the third ground the court proceeded upon the theory
that interstate railways are highways and that the obstruc-
tion of the highway was a public nuisance and could be en-
joined. "A public nuisance is a violation of a public
right, either by a direct encroachment upon public rights
or property, or by doing some act which tends to a common injury, or by omitting to do some act which the common good requires and which it is the duty of a person to do, and the omission to do which results injuriously to the public. Wood on Nuisances (2 Ed.) 29. At page 259, he says, "Any unreasonable obstruction of a highway is a public nuisance." Applying these rules to the facts of the case it is evident that there was a sufficient obstruction of a public highway to constitute a nuisance.

Was the Debs case justified? It would seem to have been clearly justified by the authorities. If the acts of the defendants in that case had not been restrained it seems that nothing could be the result but disorder and anarchy. If our government is so weak, if it has not the power to restrain such acts, it is certainly a weakness that must prove fatal to its stability. A government that and thus protect its granted powers cannot restrain and stop such acts of lawlessness" is certainly in danger of anarchy and the legitimate prey of the socialist.
CONCLUSION.

There can be little added by way of conclusion. I have carefully examined the cases bearing on the question and my conclusion have been stated at various places in this thesis. When I began studying the question I supposed from the popular clamor raised against it, that the Debs case was the first and only one where an injunction had been used in these troubles. But I find that the State courts have been thus settling these controversies—(in this State from 1875.) If confined within proper limits, and applied to all with an impartial hand, it is certainly a beneficient use of judicial authority; but if the courts continue to apply it in cases like the Oxley Stave Co. case and Barr v. Essex Trades Council and refuse to apply it in cases like the Continental Ins. Co. and the Mogul case, then it comes far from being a proper use and is certainly a judicial discrimination against the masses in favor of the classes. Properly used it is not only justifiable, but it is a good thing for the public benefit.

Pomeroy says, "that the common law theory of not interfering with persons until they shall have actually committed a wrong, is fundamentally erroneous; and that a remedy which prevents a threatened wrong is in its essential nature better than a remedy which permits the wrong to be done, and attempts to pay for it by pecuniary damages which a jury may assess. The ideal remedy in an perfect system of administering justice would be that which abso-
lately precludes the commission of a wrong, not that which awards punishment or satisfaction for a wrong after it is committed. It seems to that Pomeroy is right whenever such a preventive remedy is practicable, and it certainly is in these cases.

Finis.
APPENDIX.

The earliest American case I have been able to find where the injunction was used in labor troubles is Muller v. Grantz. It is unreported and is simply mentioned in Vol. 2, Cent. L. J., 308. I wrote to the attorneys in the case and received the following replies:

New York, February 17, 98

H. M. Merrihew, Esq.,
Cook Place, Ithaca, N. Y.

My Dear Sir:

In answer to your note of the 16th, I beg to say that according to my best recollection, no opinion was written by Judge Barrett in the case you refer to. It was an application by Mr. Mueller, who was a manufacturer of clothing, to restrain his workmen who were on a strike, from interfering with other employes: I appeared for the defendant and opposed the motion. Judge Barrett denied the application for an injunction on the spot, and therefore wrote no opinion, expressing his views orally. From my recollection, I can give no further information, and as the papers have all been stowed away among the dead wood of the office, it would take a long time to resurrect them.

Regretting that I cannot give you fuller information?
I remain,

Yours truly,

A. J. Dittenhoeffer.

New York, Feb. 17th, 1898.

H. M. Merrihew, Esq.,

1 Cook Place, Ithaca, N. Y.

Dear Sir:-

Yours of the 16th inst. at hand and contents noted. I enclose a copy of my register in the case referred to. All the papers are on file in the office of the Clerk of the Supreme Court.

It was an attempt to put down a strike in equity, upon the theory that such a combination was unlawful as a combination in restraint of trade, and there was no remedy at law. It was successful then because the trade unions had not invoked the aid of politics to help them, and they were not so adroit then with boycotts and relied more upon threats and intimidation.

Inter (politica) silent leges.

Yours respectfully,

William Hildreth Field.

Mr. Field’s Register.

Supreme Court. Action for Relief, Injunction.

Dam. $5000.

Augustus F. Müller,

against

Henry Grantz, William Grantz, Eckhardt Schade, George Debes, John Leipple, Christoph Landahl, Frank Rezae, Frederick W. Pich, Franz Adamek, John Scheick,

1875.

Mch. 31 Complaint sworn to by plaintiff.
Apr. 2d Filed undertaking on injunction and obtained order of injunction. Donohue J.
  " 3 Served summons and complaint on John Grede and William Wolff also affts. on injunction and order of injunction on same at 441 Sixth St. and order of injunction on William Hector and George Debes on 14th St. near Broadway, Service George Gordon.
  " 8 Filed affidavits and summons and complaint in Co. Clks. office.
  " 14 Filed note of issue.
  " 20 "Recd. notice of appearance of all defendants. Runbull & Englehardt, 320 Broadway.
  " 2b Case on Cal. at Chambers No. 108 set down for Friday for argument.
  " 21 Consented that all defendants have ten days from date within which to serve their answers.
May 1st. Gave defts. 10th days further time to answer.
Apr. 23 Argued motion, decision reserved.
May 5, Order of injunction modified & limited to threats &c.
  " 5 Recd. notice of Runkell & Englehardt removal to Tribune Building Rooms 45 to 48.
  " 7 Proposed orders submitted by both sides for settlement
  " 10 Order as submitted by Plff settled.
  " 11 Recd. copy answer. Admr.
  " 12 Served copy of injunction on Atty. ETC.
  " 24 Served notice of trial on attys. for June 1871 admr.
  " 27 Recd. cross " " " " " " " " " " " " " ".
  " 29 Filed note of issue. Pd $3.00
June 11 On Cal. Marked off Term.
July 13 Obtained order to show cause why Frederick W. Pich should not be committed for contempt returnable the 19th of July, 1875? Opening of the Court.
  " 13 Served Frederick W. Pich on 14th between University PL & B'way with order to show cause and affts. Etc.
  " 19 Motion for contempt adjd. to July 22 at 12 M.
  " 22 " " " " " " " July 29 2 2
  " 29 " " " " " " " August 5th at 12 M.
Aug. 5 " " " " " " " " " LO " " " " " " " ".
  " 10 Motion argued. Order of reference entered and Sinclair appointed Referee to take evidence. Interrogatories to be served within twenty days.
  " 12 Served copy order on atty. Admr.
Aug. 30 Time to serve and file interrogatories extended to Sept. 9, 1875 by consent.
Sept. 8th, Time to serve and file interrogatories extended 20 days or to Sept. 28, 1875 by consent.
" 28 Consented that the time be extended 110 days in addition to file interrogatories.
1876 Jan. 5 Case on Calendar, marked off term.
1877 Jan. 5 " " " "

I then wrote to Mr. Field asking if he would have one of his clerks make me copies of the injunction order and opinion.
I received the following reply from Mr. Trabold:

New York, Feby. 24th, 1898.

Mr. H. Merton Merrihew?

1 Cook Place, Ithaca, N Y.

Dear Sir:-

Hereewith I enclose you a copy of the order in the case of Muller against Grantz as per your request in your Letter to Mr. Field. As there has been no opinion filed in this case a copy cannot be obtained.

I also enclose you my bill for $1.00.

Yours &c.,

Henry Trabold.

Order of Judge Donohue.

N. Y. Supreme Court.

-------------------------------X

Augustus F. Muller

against

Henry Grantz, William Grabtz and others.

-------------------------------X

On reading the complaint in this action duly verified, also
the affidavits of Augustus F. Muller, David Reis, Ludwig Meffrt, and Charles Croissant, it is ordered that the defendants (naming them) and their and each of their attorneys, counsellors, agents, assistants and associates and each and every of them under the penalties by law prescribed and each and every of them do absolutely desist and refrain from interfering with the employment of workmen by Augustus F. Muller by stopping workmen at and about the entrance of the place of business of the plaintiff No. 42 East 14th Street, and inducing them to persuasions and threats not to enter his employment or otherwise, and from interfering with his workmen in returning to their respective homes with materials to be made up, by following them on the way, on inducing them by persuasions and threats to return material received by them without making up the same or by payments of money causing such workmen to deliver the material to them to return the same or otherwise, and from interfering with his workmen at their at their respective homes by calling on them and inducing them by persuasions and threats to return the material received by them without making up the same or by payments of money causing such workmen to deliver the material to them, to return the same or by causing others to call upon them to accomplish such results, and from interfering with his workmen in returning to his place of business, No. 42 East 14th Street, and in being re-employed by him Augustus F. Muller, by stopping such workmen on the way or inducing them by persuasions and threats to return to their work and refuse to be re-employed or otherwise and from interfering with the business of Augustus F. Muller in any manner or form whatever.
IT IS FURTHER ORDERED that the defendants show cause before this Court at a Special Term thereof, to be held at Chambers thereof on the third day of April, at 12 o'clock noon, or as soon thereafter as counsel can be heard, why this order should not be continued in force until the further order of the Court in the premises; and for such other and further relief as may be just.

April, 2nd, 1875.

Charles Donoghue,

J. S. C.

Final Order.

At a Special Term of the Supreme Court held at the Chambers thereof at the County Court House in the City of New York on the 10th day of May, 1875.

Present,

Hon. George C. Barrett, Justice.

On reading and filing the complaint herein and the affidavits of the plaintiff, David Reis, Ludwig Meffert and Charles Croissant and the injunction order granted herein on the 2nd day of April, 1875, and the order to show cause why the same should not be continued on the part of the plaintiff, and the answer and affidavits of all the defendants, and after hearing William Hildreth Field of Counsel for plaintiff in favor of said motion, and A. J. Dittenhoeffer and C. A. Runkle in opposition,

ORDERED that the injunction must be confined to intimida-
tions and that the defendants (naming them) and their and each of their attorneys, counsellors, agents, assistants, and associates and each and every of them under the penalties of law prescribed, do absolutely desist and refrain from acts of intimidations towards workmen seeking employment from Augustus F. Muller to induce them not to enter his employment, and from any acts of intimidations towards workmen in his employ to induce them not to perform the services agreed to be performed by them respectively or not to continue in such employ, or not to be re-employed by Augustus F. Muller, and from causing others to use or employ any acts of intimidations to accomplish the same ends until the order further of the Court.

Enter,

G. C. B.

There is one other strike case (Moorhead V. Krause) of which I have been able to obtain no record or report. The case is mentioned in Murdock V. Walker, 152 Pa. St., 595.

I have found but one boycott case mentioned that isn't reported. It is mentioned in 14 N. J. L. J. 162, where it is stated that a full report of the case was printed in the Sacramento Bee of Nov. 20, 1890. I tried to get a copy of that issue but was unable to do so. The following letters give the only history of the case I have been able to obtain and also explain my inability to get copies of the report.

Sacramento, Cal. March 2/98.

Mr. H. M. Merrihue,

1 Cook Place, Ithaca, N.Y.

Dear Sir: 
Referring to your favor of Feby. 7th, asking if we could supply copies of the issue of Nov. 20th, 1890, of THE BEE containing a full report of THE BEE boycott case, and the now celebrated decision of Judge Armstrong. We have been unable to obtain any copy of this date for you. You will not find it in the California reports, since it was a decision by Judge Armstrong of the Superior Court of this County, which would undoubtedly have been affirmed, but the strikers refused to permit it to go to the Supreme Court. The title of the case was C. K. McClatchy et al vs G. W. McKay et al.

A typewritten copy of the matter might be made for your use, but the expense perhaps would be too large, under the circumstances.

Briefly, the occasion of the suit was the fact that the united trade unions of the City had organized a boycott against THE BEE because it refused to reinstate a certain discharged employee, discharged for incompetency, and they were threatening trades people that, if they did not withdraw their advertisements from THE BEE, and the subscribers that if they did not cease to subscribe for it, that they would be punished by loss of trade, and in other ways. Our suit was in the nature of an injunction against 150 or 200 named leaders of the various trade unions in this City, who were prominent in the boycott proceedings. The injunction was obtained against the leaders were fined for contempt of Court, Judge Armstrong rendering the decision referred.

Respectfully yours,

Janes McClatchy & Co.
Sacramento, Cal. Mar. 8, 1898.

Mr. H. M. Merrihew,

#1 Cook Place, Ithaca, N.Y.

Dear Sir:—You cannot get a copy of a Bee that you mention. The only way that you would be able to get that is by having a copy of the decision made.

Yours very truly,

Philip S. Driver.

Sacramento, Cal. March 15/98.

Mr. H. M. Merrihew,

Ithaca, N.Y.

Dear Sir:

I have your favor of March 9th, addressed to James McClatchy & Co., in reference to a copy of the Armstrong decision which has been referred to me for answer. The decision is a long one, and being bound in book form, as the file of papers is, it will be very difficult for one to copy. I will do the work, compare copy and make two carbons, if you desire, for $10. Of course I am only estimating about how much work there is to do, and if it should fall short of my estimate, I will rebate you accordingly. If you desire the work done at that figure, and wire, as you suggested in your letter, address me personally, as by so doing it will save some time.

Jessie Davis?
Stenographer, THE BEE.

In 1 Ry & CORP. L. J.$112, it is stated that an application for an injunction was made by one McPadden against the Compagnie Generale Translantique, I have been able to find no other record of the case.
BIBLIOGRAPHY.

Are Strikes Preventable by Judicial Action,  
J. S. Erwin, 17 Cr. L. Mag., 1.


" . . . . . . . . 24 Cent. L. J., 289.

" . . . . C. A. Dickson, "37 Cent. L. J., 156.


" . . . . . . . . 35 Alb. L. J., 224.

". Wm. M. Rockel, 1 National law Rev., 149.

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Boycotts by Employers, 34 Wk./L. Bull., 264.

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" . . . . . . . . 14 N. J. L. J., 161.

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35 " " 628.
26 Am. L. Reg., 423.

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" and Boycotts,
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" " " as Indictable Conspiracies at Common Law.
31 Journal of Juris., 140.

Strikes and Boycotts in Their Legal Aspect,
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<td>164 Pa. St., 449</td>
<td>18, 19</td>
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<td>Wimpy v. Phinizy</td>
<td>68 Ga., 188</td>
<td>129.</td>
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<td>Wood on Nuisances, (2 Ed.)</td>
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<td>60, 139</td>
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