THE SUNSET CLUB

1894-95

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SEVENTY-FIFTH MEETING.

OCTOBER 25, 1894.

TWO HUNDRED AND FIFTY-NINE PRESENT.

SUBJECT:

STRIKES AND INJUNCTIONS.

Chairman: HON. JOHN BARTON PAYNE.

ADDRESSES BY:

MR. HENRY D. LLOYD. HON. LLOYD W. BOWERS.

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Mr. Miles M. Dawson, Mr. C. S. Darrow,
Mr. A. W. Wright, Mr. Willis J. Abbott,
Mr. Joseph B. Mann.

SEVENTY-FIFTH MEETING,

Held at the Grand Pacific Hotel, Thursday, October 25, 1894.
Two Hundred and Fifty-Nine Present.

STRIKES AND INJUNCTIONS.

MR. ARTHUR W. UNDERWOOD, in announcing his resignation of the office of secretary, said:

Gentlemen of the Club: I am here to-night to perform several agreeable duties. One is to announce my promotion from the position of secretary to that of an ordinary member of this club, one who is at liberty to find fault with the speakers, the chairman, the dinner—and the secretary, if he wishes. The second duty I have to discharge is to express, as best I may, my hearty thanks to all the members of this club for their readiness to lend their aid on all occasions, thus giving invaluable assistance in every undertaking of the executive committee and of the secretary. The name of the Sunset Club will always be to me the synonym for good fellowship. I shall ask nothing better for my successor than that he may receive at your hands the same sympathy, the same active assistance that I have received. Finally, it is my duty, and very great pleasure, to present to you the man who, during the coming year, will bring before you wise, witty, distinguished, learned and eloquent men to discuss all sorts of timely topics; who will spare no pains to entertain, amuse and instruct you; will remember all your names, will see that everyone has the best seat and gets the readiest recognition from the chairman. I introduce to you our new secretary, MR. PHILIP S. POST, JR.

THE SECRETARY: It is customary upon assuming an office to announce a policy. Your secretary has but one policy and one aim, and that is to maintain for the Sunset Club that high standard which his predecessors, Catlin, McCormick, Errant and Underwood, have estab-

lished. If he does that, the club must of necessity continue to prosper, and become more and more a potent and distinct factor in the intellectual, social and political life of Chicago. Mr. Catlin, in whose absence we are orphans to-night, once said that "secretaries, like children, should be seen and not heard." I shall obey this paternal injunction by at once proceeding to my pleasant duty of introducing as chairman of the evening, JUDGE JOHN BARTON PAYNE, of the Superior Court of Cook County.

MR. EDGAR A. BANCROFT: I desire to make a motion at this point. A year ago Mr. Underwood became the secretary of this club, and during that year, as we all know, he has performed the duties of the office with singular efficiency and success. In the selection of subjects and speakers he has conducted the club through all the dangerous matters that were foremost in public thought from "Cranks" to the question of "What shall we do with our unemployed." He has made the meetings, by his attention to the details of which the members are ordinarily ignorant, interesting and well attended, and the presence of so many here to-night attests the club's vitality and success. It is a remarkable fact that, entering upon its sixth year, the Sunset Club starts with greater vigor and better promise than ever before, while the Twilight Club, in New York, more or less languishes, and its followers in St. Louis and St. Paul have ceased to exist. I therefore move you, Mr. Chairman, that the cordial thanks of the club be extended to our retiring secretary, Mr. Underwood, and the executive committee be authorized to make such appropriate recognition of his services as they shall deem fit.

MR. D. M. LORD: It is with pleasure I rise to second the motion that has already been made. Mr. Underwood has worked in season and out of season, and while I do not wish to disparage any previous secretary, none has been more successful in giving us entertainments of which we are proud. When I asked him why he wanted to leave, thinking he had done so well, he says, "If you had spent most of the time in a cab when you were a newly married man, I think you would be glad to get out." Now, I think that is true. I, for one, am anxious he should have a little chance to get acquainted with that newly married wife, so I am very glad that he has concluded to step out—sorry—very sorry for our sakes, but glad for his. I rise to second this motion, and I know the Sunsetters so well that I am sure every one will be glad to vote for it.

Motion carried unanimously.

STRIKES AND INJUNCTIONS.

THE CHAIRMAN: Gentlemen of the Sunset Club: We start off auspiciously in this our sixth year. I am not surprised that the Sunset Club is a success. It is typical of our American institutions. Every man here has the right to say what he pleases, to think what he pleases,

and to do what he pleases - provided he does right. That is the theory of our government. The chairman of the Sunset Club meetings is not expected to make a speech. The club is bound to be successful for that reason. My first duty, and I proceed to that at once, is to introduce to you MR. HENRY D. LLOYD, who is to discuss the question of "Strikes and Injunctions." Now that does not necessarily mean that Mr. Lloyd is going to tell you all about strikes, and all about injunctions; but he is expected to apply the one to the other. I think we have had some strikes—at least one strike—and the presence of Judge Woods reminds me of the fact that at least one injunction has been invoked, so that we may most opportunely discuss the question of strikes and injunctions as related to each other.

MR. HENRY D. LLOYD: To prove that injunctions to prevent strikes are legal does not prove that they are right. Nor does it touch the quick of the question. We who are lawyers, and even more those of us who are judges, would be the first to admit that, philosophically and practically, law and right are not the same. It has been prettily said that the common law is the perfection of common sense. It was common sense in the days of Sir Mathew Hale that certain kinds of old women, wrinkled of face, furrowed of brow, especially those who went about with dogs by their sides, were possessed of the devil, had power to raise the dead and bewitch the living. In the common law, as the perfection of this common sense, that great and good man and judge found his warrant for putting harmless and wretched old women to death. The law is full of fictions, but whatever the superstitions of more orthodox days may have been, the idea would no longer be held by any one, least of all by the learned tenants of the bench, that our judges are acqueducts connected with some celestial watershed of infinite and infallible justice, which they pipe to every citizen according to his needs. There is no question which the courts, give them time enough, will not decide in two ways, opposite and irreconcilable, for that which is yesterday thought to be common sense, to-day finds to be nonsense, and the courts speak for their day. "The highest virtue," says Emerson, "is always against the law." "No pretense can be so ridiculous," says Burke, "as that the laws were designed as a protection for the poor and weak against the oppression of the rich and powerful." The real science of the matter, the hope of the world, the justification of democracy, is that the laws of the legislature, the law of the courts, and the common sense of the people are

slowly, age by age, creating that justice which mankind has vainly imagined some upper power would create for it. There is a higher fountain of Right than courts or Congress; it has its inexhaustible springs in that reservoir from which have flowed all the truths of the people—that fountain is the people themselves.

The law of injunctions to prevent strikes rests for the moment, as far as federal law is concerned, as stated by Justice Harlan in his recent decision. There is no federal law for an injunction to forbid a man or a body of men from quitting the service of an employer. Such an injunction "would be an invasion of natural liberty." This decision was a victory for workingmen, so far as it shortened the tether of the judge below who had issued such an injunction—an "invasion of the natural liberty." Nothing could be so significant of our times as that such a decision should be necessary—nothing so clearly delineates the desperate straits into which the common people of this country have been brought, as that this decision should have been hailed with joy as an act of judicial deliverance. Ten short years ago such a question could not have arisen.

In 1882 the freight handlers of New York struck against a reduction of their pay from 20 cents to 17 cents an hour. The railroad officials locked out and shut down the business of the metropolis rather than pay the men this wage, scanty enough. Trade was paralyzed, trucks stood in the streets by thousands for days waiting to be unloaded. The railroad officials sat serene in their office for the men to starve, and for the public to become so infuriated as to tolerate this injustice to the men, or any other iniquity, provided the Goddess of Getting-On were allowed to get on again. But public opinion was not as "advanced" then as it has since become. It was so clear that the price asked by the men was fair, and that the railroads were manufacturing general distress to goad the people into forgetfulness of the rights of the men, that public opinion forced the authorities of the state to act. The attorney-general of New York, reinforced with able counsel supplied by one of the most influential organizations of the city—the Chamber of Commerce—applied to the courts for a mandamus to compel the corporations to operate their roads, even though they had to pay this living wage. The judge to whom this application was made refused it. He was the same who afterwards fined members of the oil trust $250 for conspiracy to blow up a competitor's refinery, full of workingmen. But the highest court unanimously reversed him and decided that the mandamus should have been granted. But by this time the men had been defeated, the strike was lost and the railroads had won all they played for—won it by the timely and indispensable help of a judge's bad law, the injustice of justice.

So the Northern Pacific defeated its men last winter with the help of a judge, "the perfection of whose common sense" flowed into "an invasion of natural liberty," as had been judicially declared by Judge Harlan. This injustice of the judges was the

reinforcement that saved the battle for the corporations, in New York, and the Northwest. In a question of buying and selling of labor, the government intervened in the person of its judges, and commanded the seller, under penalty of imprisonment, or if need be, of encounter with all the military forces of the nation, to sell his labor instantly, to sell it to one buyer alone, and to sell it at that buyer's price. "The jingling of the guinea heals the hurt that honor feels." The railroad owners saved millions of money that would have had to be paid to the workingmen. They could afford their men whatever satisfaction could be got out of the decision, irreparably too late, that the means of life for their wives and children and their rights have been taken away from them by those whom they have made the guardians of their rights. The law tells us it has a remedy for every wrong; what remedy has the law for the wrong the law has done these men? Ten years ago, as in New York, it was a mandamus against the road that was applied for; now it is an injunction against the men. Then, attorney-generals moved for the public; now for the corporations. The public virtue that energised this action of the authorities in New York in defense of the public seems to be dead, or gone on a journey into a far land. A cyclone of passion against the men tears its way, when a strike threatens, through newspapers, counting rooms, parlors, the heads and hearts of those who control the influential utterances and acts of society, and greets with cheers, prayers of thanksgiving, and hymns of praise the batteries that come rumbling into the city to deal out "God's whistling messengers of peace." This is the sign of the times.

Power is always progressive—for power. The men who own our highways are using them to transport into their own possession whatever else they see that they like. "In Arizona," said one of its business men, "when the Pacific road has a shipment of freight for one of us, it asks, 'How much is the man worth?' and it charges him that amount for the freight." The men who have their hands on the highways of a people are in a position of as much vantage as he who has a grip on his neighbor's wind-pipe. The public will pay anything for its breath. Give us your property, give us your streets, give your common council, your legislature, your attorney-generals, your army and navy. Give us the power to say to which citizens in each industry the right to live and to be monopolist shall be given. Browbeat, enjoin, if necessary shoot our switchmen and trainmen into submission to lower and lower wages. This power to open and shut our highways, is the screw its owners can turn until the frantic public will do any bidding. The railroads have till lately been content with resisting government; now, conscious of powers matured, they take a higher ground, and make the city hall, and Springfield, and Washington, the main offices of their train dispatchers. The use of injunctions to break strikes is one of the most advanced manifestations of this railroad aggression.

But that is not the quick of the question. The injunctions against strikes began with the railroads but are now used in other

industries. It is no longer confined to inter-state commerce; state judges are applying it to inter-state matters. In the case of a clothing makers' strike, a New York judge recently forbade "all persons" from assembling or loitering in the vicinity of the employer's store, or from patrolling or picketing the street, or from using printed notices or publications to interfere with his business, or even from "enticing" "anyone" from his employment. If correctly reported in the press, an injunction issued against the head of the Knights of Labor last winter by a federal judge forbade him from "speaking any word" that would help the strike. We have had a dry year, but it has rained injunctions all over the United States.

The course of the judiciary in this matter is an illustration of the dangers of a progressive use of power, peculiar to the United States, and of which we have had ample warning. The power of the American judiciary to reverse the action of a co-ordinate branch of the government is a power which Jefferson long ago told his countrymen would make the supreme court the master of America. The courts of Great Britain New Zealand, Australia, France, the other democracies, have no such sovereignty to over-rule other departments of the government, and the expressed will of the people. Pushed forward thus, by the resistless gravitation of resistless power, into inevitable supremacy, the United States courts have been aggrandizing themselves in other ways, in none more noticeably than this very matter of injunctions. That eminent jurist, the Hon. Lyman Trumbull, has recently startled the whole nation into attention by his words on this subject.

De Tocqueville tells us that "he who punishes infractions of the law is therefore the real master of society." One of the greatest institutions of democracy is the jury, designed to make the people the only masters of the people, and to prevent star chamber judges and the Charles the Seconds, whose behests they obey, from becoming the masters of society. Federal judges are beginning to claim the right to create new crimes without debate, legislation, or even notice, by proclamations called injunctions, and to punish without trial by jury those who disobey. A deeper eclipse than all these is settling on the temples of justice! When we see railway counsel pass at one step from the legal department of their corporations to the bench, and listen to the cynical avowals of captains of industry that they contribute to the campaign funds of both parties for "protection," our heart dies within us. For we know ourselves to be face to face with the masters of our masters, the lords of our lords.

But even this is not the quick of this question. Greater than the aggressions of the railroads, greater than the aggressions of the judiciary, stands forth as our central fact, that we have begun to drive our workingmen to their work. Our society on its industrial side lives by force. Our leaders have lost the power to lead, and have begun to drive. We have stopped whipping our wives, we have most of us stopped whipping our children, but we whip our workmen to their tasks with the scourge

of starvation, and are now adding to this the brute force of our armaments. The discontent of the people, says Burke, is never unprovoked. Millions of the people are discontented, and pour into the streets. We offer no remedy. Shorter hours? Higher wages? Work for the workless? The living wage? Abolition of monopoly? The right to work? Recognition of the right to union? All of these requests for relief, most moderate, conservative, mere palliations, we evade. We have against every one some reason that suits us. It is not convenient, by and by, we have another engagement, or, Yes; if you can get an international agreement. We offer no remedy, but we draw up our lines of soldiers opposite the lines of the people, and wait for the rioters who will give us the right to shoot, and our judges force the poor back to work by orders which later we acknowledge are "invasions of natural liberty." We live with each other in government by the glorious principle of "consent." "The consent of the governed" is the golden rule applied to political life. But in industrial life we think to live by force. This is mere midsummer madness, midwinter madness, all the year round madness. Industry by force, government by consent cannot co-exist. A people cannot permanently endure, half slave, half free. No people, no society is stronger than its weakest link. If they associate with each other at any point on terms of compulsion, the general level of the whole society will sink to that point. We are proving this in our experience. We have allowed the people, as consumers, to become the victims in the market of the force of those who have the power to withhold the necessaries of life owned as monopolized private property; we have allowed the people, as laborers, to be forced into hated tasks, at prices they are not willing to accept, by those who have the power to withhold employment. Now we wake as into a nightmare to find that this market force must be succeeded by the more brutal—though not so deadly—force of armed men, using their bayonets as punctuation points to help the people read the judicial bulletins of industry under compulsion. The use of the force of the army is the legitimate successor of the use of the use of the force of starvation. Put to one side all consideration of the unjust injunctions; admit that injunctions are legal to prevent workingmen from improperly quitting their work; recognize that law and order must be upheld. The main question still confronts you. Why is this legal force necessary to keep men at work?

I never yet met any one who in private conversation would not admit that the people are enduring great wrongs; no one who would deny that some remedy must be found. Do not dream that the discontent can be dealt with by repressing its manifestations. You do not cure but kill the small-pox patient when you drive in the eruption. All the broken granites and marbles from Nineveh to Rome are the gravestones of the civilizations that tried to settle the discontent of the people in that way, and to live in peace by force. "By love serve one another" is as good political economy as politics or religion. It is the only good political economy. First Coxey, then Debs; next who, what? This discontent of

the people is more righteous than the spirit which would repress it without remedying the causes. Monopoly has made the army necessary. The more armies you have the more armies you will need, and the more monopoly you will get. There is only one way in which the American public in the nineteenth century of christian civilization, and the 118th year of the declaration of the Equal Rights of Man can save its legal or moral right to be served by even one worker, no matter how humble. That sole way is to render equal service for service, and to make it so pleasant and profitable, so safe in love and justice to serve, that all hands and hearts will flow freely into deeds of reciprocal brotherliness. A nation that has to send Gatling guns and bayonets, parks of artillery and major generals to drive men to serve each other, and has to use force through the medium of injunctions, however legal they may be, is a nation whose social units have already been driven apart by unpunished injustice. To reunite them by force is impossible; that attempt has often been made, but never successfully. Pharaoh tried it, it did not hurt the Hebrews, and it spoiled the Egyptians. We are not moving backward, but forward. Humanity is about to take the greatest step up in its history. It is about to crown and consummate the freedoms it has won for man as worshipper and citizen by a still more glorious freedom for him as laborer. The unprecedented sympathy which stirs today for the poor, our unhappiness at the discovery that wé are getting the services of our fellows by force; the universal confession that the burdens and benefits of society are not rightly divided—these are the whispers of a new conscience which is soon to be realized in the daily lives of mankind. Even we may live to reach that new height in the ascent of man and look back upon the days of industry by starvation, by injunctions, riot-drills, with as much amazement and joy of deliverance as the people of the South feel for the day, only yesterday, of industry by slave pens and bloodhounds, and the fear of servile insurrection, with as much exultation in the ever rising destiny of the people as the republicans of France look back to the government by "coup d'etat" and street massacre, which men still young have seen make way for government by consent.

THE CHAIRMAN: To all citizens of the world America holds the lamp of freedom. The last speaker suggests that the light has gone out. There comes to us, as a part of our present Chicago life, from the splendid prairies of Minnesota, the Hon. Lloyd W. Bowers, who will say whether that is so.

MR. BOWERS: Since I have learned here to-night that the Sunset Club permits to itself neither institutions nor laws, I have come to believe that I am exceedingly audacious in coming here as the advocate of any law; and my timidity under these circumstances is somewhat increased by the fact that I had promised myself the pleasure, in appearing before the Sunset Club and away from the courts, of stating the law to be about as I want it, and then going on to prove its excellence.

In the dilemma, however, that confronts me, before an institutionless club, and a court here at hand, I think that my only solace will be the strength of my subject, and that I honestly believe to be, gentlemen, strong in itself.

I do not think that there would be so many doubts as to the strength of the position which I take if the subject were less new to laymen, and I think I may add, without offense to my own profession, less new to lawyers. Few men not concerned with law understand just what has been ordered in the injunctions of recent granting, and just what has not been ordered; and few lawyers, I know, understand those things. It will be, therefore, my chief office, in a brief way, and without technicalities, to make a summary of what injunction law now is, as I understand it. Let me say at the outset that that law is not very new, but if it were new, gentlemen, would that be aught against it? Is there any law that was not once new? Was there ever any improvement, any advance in the progress of our race, that was not once new? The law is more omniverous than the West, even allowing the West to be as omniverous as Mr. Reed has charged it to be; because, when a new thing comes into the world, it is the business of law to lay hold of it, not with the strong hand of oppression, but with the gentle and beneficial hand of regulation. I need not cite to a club like this instances of new and great growths in the law. I have in my acquaintance a friend, who happens to be one of this audience, who is a prominent insurance man. Now, insurance is not of great age in business or in the law, and yet the branch of law that relates to this great branch of business is very comprehensive. Strikes are new. A strike is a modern invention; and let me say right here that I am not before this club for the purpose of condemning strikes. On the contrary, I believe that a strike not infrequently has a right cause. But strikes, if not necessarily evil, sometimes are, I think, unfair; sometimes certainly are unlawful. And the injunction which has come to be applied in the circumstances of a strike is never directed against the mere fact of striking, unless that strike be in its very nature unlawful, and unlawful for reasons which you and I, as men of fairness, must appreciate as making it unlawful. For the injunction is directed against those accompaniments of a strike which are not inherent in a strike, but which in time of strong public excitement and contention over momentous issues will, in the frailty of human nature, not unusually accompany a strike.

What is the law as I understand it? In the first place, as my eloquent adversary has himself declared, the injunction cannot be used for the purpose of compelling a man to remain at his work. That is not new law, either. It has lately been declared by the Honorable Justice of the Supreme Court who presides judicially over federal affairs in this great region of country; but as long ago as the decision of that other admirable judge, Judge Taft, in the case of the Ann Arbor road against the Pennsylvania road, it was expressly held that injunctions could not be given to restrain men from quitting their work. And I am very glad, gentle-

men, that the law began that way in the federal court. I think that much of the commotion over injunctions has grown out of an unfortunate misuse of language in the Northern Pacific case. But Judge Jenkins himself declared that it was not his purpose to enjoin the mere act of quitting the service, unless that quitting was accompanied with an evil intent.

It is apparent, therefore, at the outset that the injunction is no Egyptian whip, and with that misconception removed our way is reasonably easy. An injunction may be given for about these four things: First, to forbid interference with or destruction of property; second, to forbid interference by force or intimidation with men who remain at their places in the course of a strike; third, to forbid interference by force or intimidation with men who wish to go to work, and whom other individuals, and usually only individuals, though they may be numerous, desire to prevent from entering that service. Now is there anything in those three to excite any great alarm? Is there anything there that establishes new law? And let me say right here that an injunction does not, as some men who view this subject from the standpoint of candidates for the United States Senate seem to think, make anything unlawful that was not unlawful before. The office of an injunction, as all courts have held, is simply to forbid what is unlawful, not because of the injunction, but because of the pre-existing and usually ancient law. The fourth purpose for which an injunction is now granted is to forbid the incitement by others than strikers of strikes which, if consummated, would in their very nature be unlawful.

In the Ann Arbor case the facts were these: The engineers of the Ann Arbor company struck. Thereupon Mr. Arthur, the head of the Brotherhood of Locomotive Engineers, sought to enforce a rule of that Brotherhood which required the engineers on the Pennsylvania road, which connected with the Ann Arbor road, to themselves refuse to handle cars that were delivered to the Pennsylvania company by the Ann Arbor company. It was held by Judge Taft that an injunction could not be given against the men on the Pennsylvania road from quitting the service of that road; but, he said, the limited scope of the injunction must be merely against the incitement by Mr. Arthur of a strike on the Pennsylvania road, for the purpose, mind you—and here is the central feature of this matter—for the purpose, not of furthering a cause of their own, but of bringing indirect and remote pressure through the employers of those men, the Pennsylvania company, upon the Ann Arbor company, in order to coerce the Ann Arbor company to yield to the demands of its men.

That is the only kind of strike, so far as I know, that has been declared unlawful by the courts. That kind of a strike is the boycott strike, and if a boycott strike may be permitted in one decree, it may be permitted in a hundred decrees. Who is safe from a boycott strike? Where will the peace and good order of a community be if you and I, in our ordinary, peaceful and decent daily avocations may be struck at

in this way, not because we have done some wrong, not because our employes are suffering injustice, but because we are to be made the suffering instruments for reaching some men away down in Maine or off in California? This Ann Arbor case illustrates the prudent caution of the courts, which has always been an eminent trait of the Anglo-Saxon judges. The strike of last summer also well shows the difference in the character of strikes, for involved in it was almost every kind of strike. To begin with was the strike against the Pullman company. So far as I know there was not at the outset, in that strike a single element of illegality. So far as I know the men had every right to quit the service of the Pullman company. But the matter did not rest there. Next came the boycott strike. The railroads have to-night been considered as the principal instruments in the suppression of anything of this sort. But the railroads were not in that strike of last summer at their own desire. Nor were they in that strike because they were even claimed to have done anything wrong. But at the expense, not only of a great amount of property to the railroads, but of a tremendously greater amount of property to the country, and at the expense, more importantly, of the peace, security and good order of the United States, it was sought by striking at the railroads to make the railroads strike at Pullman. I can say further, from a certain personal knowledge of that strike, that it did not stop even there. The men who remained in the employ of the railroads were themselves often boycotted. The matter went so far that the grocers and butchers and others who were selling goods to the men remaining in the employ of the railroads were assailed by efforts to coerce them into refusing to sell goods to these employes of the railroad. I speak of this to show how endless a boycott in its very nature must be.

Now, those are the sole purposes, as I understand it, for which injunctions will be granted. And let me repeat, for it is all-important in this discussion, that an injunction makes not one single thing illegal, but merely commands that a thing which upon independent grounds is illegal shall not be done. And, gentlemen, what is all the law but in that sense itself an injunction, for the law in all its fields and for all its purposes, enjoins all of us from doing what the law declares to be illegal.

Mr. Chairman, why is it that resort has been had to injunctions in strikes? It is because no other remedy can reach the circumstances. Strikes are a new thing, just as injunctions in strikes are a new thing. The strike is an extensive, organized effort. You cannot deal with it by actions for damages. You would have to sue hundreds or thousands. Many of the men would prove to be without means to respond to the judgments. You could not estimate the damages to an individual or to the country, nor could you estimate the share of that damage chargeable to individual action. How is it with criminal proceedings? Let me say again that for any act that the injunction has been granted to restrain, the same courts which grant the injunctions have asserted, again and again, that criminal proceedings would lie. But will criminal proceedings serve you in such an emergency? You cannot indict thous-

ands of men. Your courts would be blocked, and no other business of a more remedial nature could be entertained. Further than that, your criminal proceedings would begin six months after the wrong had been done; but an injunction is strictly preventive. It is simply a proclamation that a particular thing is unlawful, and that it must not be done. Is that a bad thing? If the injunction were not issued a man who committed the wrong, commonly not knowing the law, would have been guilty of a criminal act without knowing it, and some day would be pounced upon for an offense of which he had not known the character; and therefore, most beneficially, the court makes public proclamation that such thing must not be done because it is unlawful and incompatible with the peace and safety of society. Another good feature of this public proclamation is that good citizens, almost without exception, listen to it, and the good citizens who listen to it, gentlemen, I am happy to say, are quite as often the men who work as the men who have money. I believe most thoroughly that the man who labors daily for wages has just as much at heart the well being of society and of this country of ours as anybody else within its limits.

There is nothing strange about this injunction. It rests upon principles as old as the law. It is merely a new application because there is a new thing to apply it to. It compels no man to labor who does not want to labor. It simply preserves property, forbids intimidation, and restrains these ramifying boycotts which if allowed to exist would send the whole country into a reign of terror.

The Debs case last summer did involve just one new feature—namely, that the government of the United States was the plaintiff in that action. Until a certain statute was passed by congress in 1890, known as the Sherman law, or the anti-trust law, or the anti-combination law, the government could not bring suit for an injunction unless its own property interests were involved, or unless some public nuisance was threatened; but the Sherman law declared that no combination in the form of a conspiracy, trust, or otherwise in restraint of trade and commerce, should be lawful; and then it imposed a penalty, and further in express terms permitted an injunction at the instance of the government. But that Sherman law declared nothing illegal which on common law grounds would not have been declared equally illegal. The only innovation in that enactment was that it permitted the remedy of injunction at the instance of the state. Is there anything harmful in that? For I am here not to conceal any aspect of this injunction question, not to appear before you as an advocate and partisan of one side, but to put before you honestly the law of this subject as I understand it. I say there is nothing in the world so calculated to disturb society as the existence of violence, and intimidation, and boycotting, such as sometimes, and not uncommonly, accompany strikes, and it is against such things as are in themselves unlawful that the injunction alone can be directed.

GENERAL DISCUSSION.

THE CHAIRMAN: The subject is now open for general discussion, or, as an old friend of mine, a justice of the peace, once said, for "miskallaneous debate."

MR. MILES M. DAWSON: I wish to make one point not referred to by either of the preceding speakers. As I understand it, all our forms of government, and all our laws, came into existence because of the necessity of finding some way to adjust private difficulties other than that of fighting those quarrels out. Originally quarrels were all fought out, and the men most successful in fighting them out, and who were not always on the right side of the quarrel, became kings and lords. After a time it became very inconvenient for the kings and lords who were fighting among themselves to have their retainers' quarrels fought out among themselves; consequently it became the law that all differences between subordinates should be referred to the lord for adjudication. Until that time there was no such thing as justice in private quarrels, unless—a very unusual thing—both parties to the quarrel were willing to submit it to arbitration, a thing which, as we have seen, rarely occurs, except when the parties are so evenly matched that each is afraid the other will lick him. All sorts of private quarrels were referred in that manner. They were referred to the lord because he did not want his sovereign interests disturbed. Now, it so happened that quarrels between workmen and their employers were not so referred. This happened because workmen were not considered to have any rights. The only time when the nation or the sovereign takes any interest whatever in quarrels between workmen and their employers—which, according to the ancient laws, were not employers and employes, but masters and servants, which is the only title recognized to-day in common law—was when the employes, the servants, rose in insurrection against the injustice of the master; and that is practically the common law upon this question, and is the reason why such private quarrels did not come before the court for decision.

An injunction is for the prevention of a wrong. But suppose there were no laws whatever requiring us to submit differences between individuals in regard to business transactions to the court, and that all differences of that sort should be fought out. Suppose, in consequence of this, some gentleman being denied access to the court should proceed to fight out his claim with another, and in cousequence of that there should be a disturbance of the peace. Naturally an injunction might lie, because the disturbance would be a disturbance of the peace of the sovereign; but would it be right to have such an injunction issue at such a time? Should not the law recognize the equity behind that man's claim, and refuse to step in and, with a club over his head, say, "You shall not take your rights." Yet I assume that is the precise condition to-day in regard to labor legislation. We refuse to recognize the rights of the parties; we refuse to set up a court to which we can compel them

to submit their quarrel; we say that they must fight it out; but when the fight begins to turn against one of the parties the courts are called in to take sides with the party which is getting the worst of the fight, on the ground that it disturbs the public peace.

It seems to me that the proper thing to do is to make injunctions unnecessary by doing what the American Railway Union called upon the people to do; and the only thing they called upon them to do in their last appeal to the public, was to so arrange matters that disputes between employers and employes should be referred to courts and juries, to the juries of the courts of the common people, for their adjudication.

MR. C. S. DARROW: For one who had so much to do with the injunctions of last summer as had my able friend Mr. Bowers, it seems to me that his memory is shockingly short. He has informed this club that it has never been claimed that an injunction will lie except where someone attempts to forcibly interfere with the men who are employed, or with others who seek employment. He has perhaps forgotten that the papers prepared by him and his associates, the counsel of the railroad companies of the West, asked for an injunction against *persuading* men to abandon their positions, or *persuading* people not to enter the employ of the railroad companies; and that word "persuade" in the bill and the injunction stands to-day, and was canceled by the court who granted this injunction, but nevertheless was asked for by the attorneys who represented the railroad companies.

So it was sought by the people who desired to use the federal courts for purposes never dreamed of until recent years, that an injunction should be issued so broad in its terms that no person could advise or persuade another to leave the employment of a railroad company, or not to enter the employment of a railroad company.

It seems also that the gentleman is not familiar with the injunction granted by Judge Jenkins, and happily overruled by Justice Harlan—and in these days it is a strange commentary upon existing conditions that republican supreme judges are teaching our democratic judges fundamental lessons in the principles of personal liberty. That injunction by Judge Jenkins did absolutely enjoin men from quitting the service of a railway company, and Judge Jenkins, in an opinion which is unparalleled, I believe, in judicial utterances or any other utterances, said there could be no such thing as a lawful strike; that the history of the world demonstrated that every strike was unlawful, and that, therefore, an injunction would lie against any strike whatever; and Judge Jenkins did issue an injunction preventing men from stopping work, and that injunction, so framed, was set aside by one of the judges of the Supreme Court of the United States.

Men very readily forget some of the constitutional liberties which they once thought they enjoyed. Amongst those constitutional liberties, a constitutional liberty most jealously guarded was the right of trial by jury. The gentleman says that an injunction simply prohibits

that which heretofore was unlawful. Yes, but injunctions were never meant to provide for the punishment of unlawful acts. By the constitution of the United States, and by the constitution of the several states, no man can be punished for an unlawful act except after he has been found guilty by a jury of his peers. The purpose of these injunctions is plain. They are purely for the purpose of bringing men to trial before a court and depriving them of trial before a jury drawn from the body of the people. And men, under the stress of a sudden emergency, as they call it, see fit to close their eyes to a fundamental principle embodied in the constitution and considered for centuries to have been the safeguard of human freedom.

Reference has been made to the anti-trust law. It is admitted here that but for the anti-trust law the government of the United States could not have interfered. Let me remind you, gentlemen, that the anti-trust law was under discussion for six months in the Senate of the United States, introduced by one of the greatest men in the Senate, Mr. Sherman. It was a law which provided against combinations in restraint of trade or commerce, and during all that long period of discussion not one word was said which in any way suggested that that law was intended to be or could be applicable to strikes of workingmen. Whenever the question arose it was expressly disclaimed that this law by any stretch of the imagination or human ingenuity could be applied to workingmen, but that it was meant to be applied to these great trusts and pools and corporations that have become the menace of our country in these latter days. And let it be remarked that yesterday the first battle was fought in the Supreme Court of the United States over the interpretation of that act, under a prosecution brought against the sugar trust, against whom this act clearly applied, and the attorney-general of the United States, who so kindly lent his services at the request of the railroad companies, to aid them in defeating the strike, was absent from the court, and sent the solicitor-general in his place to argue that question against the sugar trust. The law that was never intended or dreamed of as applying to workingmen, but was expressly intended by the language of Senator Sherman, and by the language of all who discussed that act, that act expressly intended for the service of the workingmen as against these combinations, these conspiracies with whom they sometimes struggled, using almost the exact words of Senator Sherman—this law was applied by the attorney-general of the United States against the men whom it was meant to protect, and in favor of those against whom every provision of the act was directed.

MR. A. W. WRIGHT: A strike is either lawful or it is unlawful. There can be no intermediate ground. There are strikes of but one kind. "Peaceable strikes" have been spoken of. There would be as much sense in talking about a quiet insurrection as there is in denominating any strike as peaceable. There is no such thing, and there can be no

such thing, Force is necessary, and is implied in every act pertaining to a strike. Without force a strike would be as spiritless and purposeless as would be the Christian religion with hell left out. Without force the laws of the state are ineffective. Without force injunctions of courts are inoperative. Without force strikes are meaningless. It is said that men have a right to strike. I deny it. There is, and can be no such thing as a lawful strike. Men have a right to quit work singly, or collectively, as individuals, or in combinations known as "labor unions," but quitting work is not a strike, and no one ever heard of a strike where the men simply quit and left the scene entirely, going quietly to their homes, and staying there until matters of difference were settled by agreement, or by their places being filled by others. Actions of that kind by organized bodies of men will have to be characterized in the future. They are as yet unnamed because they are unknown. When a strike is inaugurated, the very act itself is an open declaration on the part of those entering into it that they will not only quit work, but that no one shall be permitted to take the places left vacant, therefore the business must stop. Now, in the name of all that is reasonable, how can a declaration of that kind be made effective without the use of force? It is too idle to talk about—a lawful strike—a peaceable strike. As well say lawful theft, peaceable hell. This being true, no strike can be lawful, and being unlawful, they must be criminal, and those who participate in them must be criminals. Is the injunction a proper remedy for the correction of infractions of law of a criminal character? If it is, our criminal jurisprudence must be reconstituted. Until recently, nothing of the kind was ever attempted by any court, and if it is to become the practice that acts of a criminal nature are to be reached by the use of the injunction, we are to have very shortly an administration of criminal justice limited only by the will and discretion of judges. Now, suppose that the discrimination of the judges should become so keenly acute by long practice at legal hair-splitting that they would rule that our street railways were engaged in inter-state commerce because they sometimes carried passengers to trains on railroads whose lines extend beyond the confines of the state. Then suppose those judges, by the same process of reasoning, should go a short step further, and say that the humble expressman, who carries occasionally a trunk to the depot, was also engaged in inter-state traffic. This sort of thing could be continued indefinitely, until there was as wide a divergence in the reasoning of the learned judges as there is difference between the beginning and the ending of the story of the house that Jack built, and the co-ordination of the reasoning would be as easy to follow as are the succeeding divergences of the story. And where would judicial jurisdiction find limitations?

The laws of the state do not prevent infractions of the same. Back of the law is the entire physical power of the state. Injunctions are not stronger than the law. Violators of the law cannot be restrained by the decrees of courts. It may be a contempt of court to violate a writ of

injunction, but violation of law is a contempt of organized society, of which courts are but a part. Scenes of disorder are the logical outcome of strikes; according to the numbers engaged therein, and the accompanying violence, they must be denominated riots or insurrections. Courts should have nothing whatever to do with the suppression of disorders of this kind, nor can they do anything in that direction without encroachment upon the political power of the executive. A strike existed here in Chicago; an injunction was sued out by the United States against the strikers, and all the world besides. Did it stop the strike? Troops were called out in aid of the process. Did they aid it? People were shot down. Did disorder cease? Where was that injunction, and what was it doing during the strife and turmoil of those eventful days? Now, is it not a fact that military force could have been as easily invoked in aid of the enforcement of legal process in the regular way, and could not as good results have been attained as was gained by this exercise of extraordinary powers on the part of a court of equity?

Judge Woods is reported to have said, "It is unnecessary to issue an injunction to prevent interference with the United States mails, as such interference is itself a crime, for which the guilty party can be arrested and indicted. It is more necessary to issue a restraining order to prevent interference with inter-state commerce." Is the process of arrest and indictment any more swift for violation of of laws which relate to United States mails, than it is for violating those relating to inter-state commerce? And is inter-state commerce so much more entitled to protection by the state that the powers of our courts are to be unusually exercised, and employed to give it a protection that may be denied to other property? Is inter-state commerce more sacred than anything else? "The process of arrest and indictment is slow," said the learned judge. This is the identical reason that would be given by Judge Lynch in extenuation of unlawful acts of unthinking mobs. The unauthorized court of Judge Lynch takes unto itself the execution of summary justice. Afterward Judge Lynch says in excuse for its acts, a great crime had been committed; severe punishment was merited; we could not wait; the process of law is slow. Let us have an administration of even and exact justice by our lawfully constituted courts along right lines, or let us have undiscriminating Judge Lynch with one man as good as another. Powers of government are without limit. It matters not whether those powers are vested in one, in a few, in the many, or in the most. Governmental authority is absolute. It is better that absolute power should be exercised by the majority; therefore all administrative agents whatsoever should be selected by the people by election. All mistakes will then be of the people, to be by them corrected at will.

MR. WILLIS J. ABBOTT: Sometimes when we are all but convinced by an apparently perfectly logical argument, we find that the result is so absolutely at variance with those principles which appeal to us more

directly than logical processes, that we are moved to go back and see wherein the process of reasoning has been at fault. The gentleman at my right, who has argued so ably for the protection of American workingmen through the agencies of injunctions and Gatling guns, has failed to tell us what will happen after we have succeeded in establishing this principle for which he argued. But I am fortunate in having secured a high authority to explain exactly the point at which we shall end. When the strike occurred we had an attorney-general who acted under the anti-trust law, although before he was attorney-general he, as an ordinary, or extraordinary, corporation lawyer in Boston, filed at least two briefs in which he asserted that the law was altogether unconstitutional; but he is now entrusted with its enforcement. This attorney-general, himself not altogether without affiliation with railroads in the past, appointed an attorney of very high standing in Chicago to represent the United States in association with the district attorney, and the case was argued. I find in an afternoon paper to-day the result which this legal gentleman says will come from the general application of injunctions to cases involving railroad men and their employers. The paper in which it appeared, by the way, is now, and was at the time of the strike, very strongly opposed to what is called "Debism." "I do not believe there will ever be another big railroad strike in this country," Mr. Walker continued, "Debs led his followers into a trap that had never before been set for them. They had not considered that they could be prevented by a writ of injunction from stopping any department of the government's work."

Just in passing, it may be worth while to inquire who started the practice, and how long the United States government has been joining railroad attorneys in setting traps for anybody. But this very frank opinion of the attorney in the case shows that the end obtained by the injunction is not so much the protection of the public interest, or forwarding United States mails or inter-state commerce with more smoothness, but it is going to put an end to railroad strikes. It would be interesting to know what the men who work for the railroads on salary are going to do. They cannot strike, they are told; they are employed by corporations, and we have a very old and a very trite saying that corporations have no souls—although I think they are going to get them, for they have our property, and our salaries, and our livelihoods, and I don't see why they should not get our souls, sooner or later; but if these men cannot strike what are they going to do? Are they going to rely, with childlike trust, upon the paternal benevolence, upon the directors, the presidents, the general managers and the distant stockholders of the railroad companies? Are they going to sit back and say, "The United States government will not let us strike. We must depend altogether on fair treatment from the men who own us, and from the managers who have no other interest than to earn enough money over and above the expense of keeping up construction companies and equipment companies to pay a certain dividend to the stockholders."

What are the workmen going to do when there shall be no more strikes? I cannot answer the question. I just offer it is a problem which possibly may be solved by wiser heads in this club than mine.

It occurs to me, too, that it is an interesting thing to ask whether this question of injunctions against strikes has sprung altogether from the relations of the railroads to the people. It is founded on the plausible argument that courts are called upon to protect the people who travel over the roads, the people who ship over the roads, and the people who send letters and parcels over the roads. It seems to me if the government is going in to that extent, if the government is going to protect those citizens against the possible interference by other citizens who have a matter of dispute with the railroad, that the only logical conclusion is for the government to take hold of the railroads altogether, hold them and manage them for all the people; and then we shall have no more strikes and no more injunctions. A great many gentlemen will ask how the government is going to get the railroads. Possibly we might get some light on that subject by studying how the present owners of the railroads succeeded in getting them themselves.

MR. JOSEPH B. MANN: I never quite believe that the world is going to hell in a hand basket until my friend Darrow gets on his feet, and then I become satisfied that everything is wrong and nothing as it should be. People talk as if injunctions were something just discovered during the last summer, in this land of the free and home of the brave, where every man has the right to do as he pleases and so has every other fellow—but an injunction is not a new remedy. Injunctions began because of the recognition of the fact that an ounce of prevention was worth a pound of cure. The injunction is founded on the idea that there is no adequate remedy at law. It will not do to complain because remedies are not provided by the law. You make the laws, the lawyers do not—if they did, you would have a deuce of a time, I tell you. But the injunction, the prohibitory writ of the court of chancery, comes into play under various circumstances, but one of the fundamental ideas governing it is that there is no adequate remedy at law, or sometimes, to prevent a multiplicity of suits. You can bet your bottom dollar lawyers never originated that proposition.

Now look at a strike. My friend over here, for whose judgment I have a great deal of respect, says there is no such thing as a peaceable strike, and he is right—that is, he is not only Wright by name, but he is right absolutely. Here is a combination of men. It does not help us to say they are poor men, that they earn their bread by the sweat of their brow, instead of the sweat of their jaw like some others of us; they get together and they conspire to interfere with the operation of great concerns, and it does not help us to call that concern a corporation. It is the same thing as though you and I were engaged in the enterprise. They conspire to prevent the carrying on of this work. Let them go on and afterwards sue them for dam-

ages, and what do you get? You have heard of "suing a beggar and getting a louse." That is what you will get. The prohibitory writ of injunction comes in and says you shall not stop this great work. If you do, you are subject to the penalty for contempt of court. Let me tell you, contempt of court means something; it is not contempt of the judge, because if that were so we might all be guilty of it. Contempt of court is not disrespect for the man who occupies the bench. Contempt of court means the triumph of the law of the land. And let me say that when you do succeed in getting the idea into the minds of the American people that Judge Jenkins, or Judge Woods or Judge anybody else is not an honest man, but that he is really controlled by corporative influences, or by any other unlawful influences, you have stricken down one of the cardinal supports of our government. Because it is the judicial in the legislative and the executive upon which this government rests. When one of them falls they all fall. I don't care if a justice court or any other court issues its writ, until some higher authority declares that writ to be invalid it must be obeyed, and the whole force of the government must be behind it to execute it. If we do not have that, then we shall have nothing in this country.

MR. BOWERS: I shall add very little to what I said before. I think the essential features of the case rest in the propositions that I have already advanced, that an injunction is not new; that an injunction rests upon ancient principles; that it is granted in the case of strikes only to prohibit acts which, independently of the injunction, are unlawful, and that it is absolutely the only remedy which will prevent the unlawful acts that sometimes, not necessarily but naturally, accompany strikes.

It is further to be added that the remedy by injunction is quite in accordance with the evolutionary process of the law. If we study the matter of remedy under the law, we see that clearly. When the Anglo-Saxons—or, to go even further back, when the ancient Israelites had their code—it was an eye for an eye, and a tooth for a tooth. That was revenge. When the Anglo-Saxons had their mulct system, the man who murdered another satisfied any man who was injured thereby by paying the appointed price. That was compensation only. The law, until recent times, had gone only one step further, namely to the doctrine that the man who has done an unlawful act and paid the party injured has not placated the state, but the state will punish him, not for the sake of revenge but for the sake of example, and so of preventing further offenses. The ordinary criminal remedy, however, is merely indirect prevention. The injunction remedy is the next stage, and by its very nature is manifestly an advance, for it is not punishment, it is not compensation, it is not revenge, it is direct prevention, and an ounce of prevention, as the last speaker said, is worth a great deal more than a pound of cure. Nor is this thing merely in the interest of society. Is it the desire of society alone that strikes shall be kept, through the agency of injunc-

tions, free from the unfortunate accompaniments of violence and intimidation and destruction of property? Not so. It seems to me that no man has a greater interest in the injunction remedy, which alone will forbid these evil accompaniments, than the striker himself, if his cause be just; for how can the cause of labor, which so often is righteous, be more injured than by being commonly and publicly associated with the idea that it employs as means to its ends these illegal and destructive methods? I submit to you that the man who really has the welfare of the workman at heart, and who really believes in strikes, should be the man to welcome the remedy that forbids violence and intimidation, the destruction of property, and all the other things that bring a strike into public odium; and therefore I submit that not only should society approve the recent adjudications of the courts, but the workmen and the workmen's leaders should also say: "This is good."

Adjourned.

PHILIP S. POST, JR.,
Secretary.