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Notes and Comments

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NOTES AND COMMENTS

Status of Labor Unions Under the Sherman Act

Until the enactment of the War Labor Disputes Act, commonly known as the Smith-Connolly Act,[1] partisans of labor were of the opinion that the use of peaceful coercive measures in labor disputes had obtained both governmental and judicial approval. That statute, the first anti-labor law in the past three presidential terms, passed over presidential veto, has placed tremendous obstacles in the path of such activities when directed against plants, mines or facilities in the possession of the United States.[2] While the act was primarily intended to prevent stoppage in war production,[3] the heated discussions and the critical situations which preceded its passage disclosed what disasterous effects could be produced on the national economy by the uncontrolled activities of labor unions. When hostilities cease and the statute is no longer operative, the government will most assuredly be confronted with the necessity of curbing union activities that might threaten a reconversion program. Of interest in that regard is the question as to what, if any, legal sanctions will be available or whether new legislation will be required.

Dicta by the United States Supreme Court in the cases of *Apex Hosiery Company* v. *Leader*[4] and *United States* v. *Hutcheson*[5] would seem to indicate that the rule in the Danbury Hatters' cases[6] is no longer law and that the provisions of the Sherman Act[7] do not apply to labor unions, but the court in those decisions never directly overruled the Danbury Hatters' cases nor declared that the Sherman Act could have no application to union activities. It would seem, there-

[1] 50 U. S. C. A. App. § 1501 et seq.

[2] Section 6(a) of the statute, 50 U. S. C. A. App. § 1506(a), reads: "Whenever any plant, mine, or facility is in the possession of the United States, it shall be unlawful for any person (1) to coerce, instigate, induce, conspire with, or encourage any person, to interfere, by lockout, strike, slow-down, or other interruption, with the operation of such plant, mine, or facility, or (2) to aid any such lockout, strike, slow-down, or other interruption interfering with the operation of such plant, mine, or facility by giving direction or guidance in the conduct of such interruption, or by providing funds for the conduct or direction thereof or for the payment of strike, unemployment, or other benefits to those participating therein. No individual shall be deemed to have violated the provisions of this section by reason only of his having ceased work or having refused to continue to work or to accept employment."

[3] Section 10 of the statute, 50 U. S. C. A. App. § 1510, declares that the statute shall cease to be effective at the end of six months following the termination of hostilities in the present war, as proclaimed by the President.

[4] 310 U. S. 469, 60 S. Ct. 982, 84 L. Ed. 1311, 128 A. L. R. 1044 (1940).

[5] 312 U. S. 219, 61 S. Ct. 463, 85 L. Ed. 788 (1941).

[6] Loewe v. Lawlor, 208 U. S. 274, 28 S. Ct. 301, 52 L. Ed. 488 (1908). See also 235 U. S. 522, 35 S. Ct. 170, 59 L. Ed. 341 (1915).

[7] 15 U. S. C. A. § 1 et seq.

fore, that the provisions of that statute might still be invoked, at least in some respects, to control certain union practices.

Adequate understanding of the relationship of the Sherman Act to labor unions can only be obtained from a study of the decisions of the United States Supreme Court starting with the Danbury Hatters' cases, although the decision in *In re Debs*[8] must not be overlooked even though it is earlier in point of time. While it is true that the last mentioned case dealt more nearly with governmental control over the mails rather than the Sherman Act, it is significant in any analysis of this question.

Basis for the dispute which gave rise to the decision in the Danbury Hatters' cases lay in the fact that the plaintiffs therein conducted non-union plants for the manufacture of hats which were shipped in interstate commerce. Defendants were members of a union which, by strikes and boycotts, strove to compel plaintiffs to unionize their shops. The suit was designed to recover damages under the Sherman Act on the theory that the union activities amounted to an unlawful restraint upon interstate commerce. It was alleged therein that the organization to which the defendants belonged was attempting to force all manufacturers into the organization so as to be able to control all labor and operations in the industry and that, at the time of suit, seventy out of the eighty-two manufacturers engaged in the production of fur hats had yielded to the pressure placed on them. Specific reliance was placed on that part of the statute which declared: "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 illegal."[9] In both decisions, that on the pleading question as well as after trial, it was held that the defendants were liable in damages.

When the case first reached the Supreme Court, Chief Justice Fuller said: ". . . the act prohibits any combination whatever to secure action which essentially obstructs the free flow of commerce between the states, or restricts, in that regard, the liberty of a trader to engage in business. The combination charged falls within the class of restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of trade except on conditions that the combination imposes."[10] After trial, Justice Holmes observed that "irrespective of compulsion or even agreement to observe its intimation, the circulation of a list of 'unfair dealers,' manifestly intended to put the ban upon those whose names appear therein, among an important body of possible customers, combined with a view to joint action and in anticipation of such reports, is within the prohibi-

[8] 158 U. S. 564, 15 S Ct. 900, 39 L. Ed. 1092 (1895).
[9] 26 Stat. at L. 209, 15 U. S. C. A. § 1.
[10] 208 U. S. 274 at 293, 28 S. Ct. 301, 52 L. Ed. 488 at 496.

tions of the Sherman act if it is intended to restrain and restrains commerce amongst the states."[11]

Although dictum therein declares that an actual restraint on interstate commerce would violate the statute, whether by direct action or by secondary boycott, no mention was made of the problem as to whether intent to accomplish that objective would suffice in the absence of an actual restraint or what the consequences would be if the interference was confined solely to the place of manufacture or point of shipment. Moreover, no general rule was laid down therein to determine when the conduct would "essentially obstruct the free flow of commerce" for although the acts complained of clearly constituted an attempt to dominate the industry concerned the court made no mention of domination of competitive markets as a standard for testing the essentiality of a restraint of trade.

Aroused by the decision in the Danbury Hatters' cases, partisans of labor clamored for remedial legislation. The Clayton Act, amended at their behest, declared: "The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor . . . organizations . . . or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws."[12]

The first case to require an interpretation of that provision was *Duplex Printing Press Company* v. *Deering*[13] wherein plaintiff, an open-shop manufacturer of printing presses sold throughout the country, sought an injunction against the defendants, members of a union, to restrain them from interfering with the sale of its products by means of a secondary boycott. The facts were essentially the same as in the Danbury Hatters' cases except that the secondary boycott was not as extensive being carried on only in New York State, principal center of the industry and plaintiff's main market for products manufactured in, and shipped from, Michigan. The two cases also differed in the relief sought, for the earlier case had demanded damages whereas injunctive relief was now being sought. It was argued that the Clayton Act had changed the law but this contention was decided in the negative and injunction was ordered by a divided court.[14] Justice Pitney, speaking for the majority, said with reference to the statute: "The section assumes the normal objects of a labor

[11] 235 U. S. 522 at 534, 35 S. Ct. 170, 59 L. Ed. 341 at 349.

[12] 38 Stat. at L. 731, 15 U. S. C. A. § 17.

[13] 254 U. S. 443, 41 S. Ct. 172, 65 L. Ed. 349 (1921).

[14] Justice Brandeis wrote a dissenting opinion concurred in by JJ. Holmes and Clarke.

organization to be legitimate, and declares that nothing in the Anti-trust Laws shall be construed to forbid the existence and operation of such organizations, or to forbid their members from *lawfully* carrying out their *legitimate* objects; and that such an organization shall not be held in itself—merely because of its existence and operation—to be an illegal combination or conspiracy in restraint of trade. But there is nothing in the section to exempt such an organization or its members from accountability where it or they depart from its normal and legitimate objects, and engage in an actual combination or conspiracy in restraint of trade. And by no fair or permissible construction can it be taken as authorizing any activity otherwise unlawful, or enabling a normally lawful organization to become a cloak for an illegal combination or conspiracy in restraint of trade, as defined by the Anti-trust Laws."[15]

Lawful conduct in labor disputes did not extend to secondary boycotting, hence such conduct was condemned when the court observed: "Congress had in mind particular industrial controversies, not a general class war . . . The extreme and harmful consequences of the construction adopted in the court below are not to be ignored . . . An ordinary controversy in a manufacturing establishment, said to concern the terms or conditions of employment there, has been held a sufficient occasion for imposing a general embargo upon the products of the establishment and a nation-wide blockade of the channels of interstate commerce against them, carried out by inciting sympathetic strikes and a secondary boycott against complainant's customers, to the great and incalculable damage of many innocent people far remote from any connection with or control over the original and actual dispute,—people constituting, indeed, the general public upon whom the cost must ultimately fall, and whose vital interest in unobstructed commerce constituted the prime and paramount concern of Congress in enacting the Anti-trust Laws, of which the section under consideration forms, after all, a part."[16]

Although he had written one of the opinions in the Danbury Hatters' cases, Justice Holmes joined in the dissenting opinion written by Justice Brandeis. The latter wrote to the effect that the intent of the Clayton Act was to recognize the right of industrial conflict within and beyond the narrow boundaries imposed by the majority.[17] He did not, however, attach constitutional or moral sanction to such latitude for he concluded his dissent by saying: "Because I have come to the conclusion that both the common law of a state and a

[15] 254 U. S. 443 at 469, 41 S. Ct. 172, 65 L. Ed. 349 at 358.

[16] 254 U. S. 443 at 472-7, 41 S. Ct. 172, 65 L. Ed. 349 at 359-61.

[17] See, for example, the statement: "But Congress did not restrict the provision to employers and workingmen *in their employ*. By including 'employers and employees' and 'persons employed and persons seeking employment,' it showed that it was not aiming merely at a legal relationship between a specific employer and his employees."—254 U. S. 443 at 487, 41 S. Ct. 172, 65 L. Ed. 349 at 365.

statute of the United States declare the right of indusrial combatants to push their struggle to the limits of the justificaion of self-interest, I do not wish to be understood as attaching any constitutional or moral sanction to that right. All rights are derived from the purposes of the society in which they exist; above all rights rises duty to the community. The conditions developed in industry may be such that those engaged in it cannot continue their struggle without danger to the community. But it is not for judges to determine whether such conditions exist, nor is it their function to set the limits of permissible contest, and to declare the duties which the new situation demands. This is the function of the legislature, which, while limiting individual and group rights of aggression and defense, may substitute processes of justice for the more primitive method of trial by combat."[18]

The Duplex case, like the Danbury Hatters' cases, involved clear and substantial interference with competitive markets, but while the intent in the Danbury Hatters' cases was to dominate the competitive market, that concerned in the Duplex case was primarily to unionize the plant with interference in the competitive market a subordinate and incidental matter. The court, however, made no distinction between the two situations over that fact so left it conjecturable if intention to foster monopoly was essential to a violation of the Sherman Act. That case also furnished no clarification as to the extent to which the restraint must proceed before it "essentially obstructs the free flow of commerce."

Questions thus left unanswered were taken for consideration when the Supreme Court entertained appeals in three significant cases, opinions in which were written by Chief Justice Taft. The first of them, that of *United Mine Workers of America* v. *Coronado Coal Company*,[19] involved a strike through which the union prevented the mining of coal by local activities such as illegal picketing, intimidation of workers and destruction of property. The interference prevented the mining of some five thousand tons of coal per week, for which the owners sought treble damages under the Sherman Act. The complaint therein was ordered dismissed when the court concluded that interference with interstate commerce must be intended as a direct and not merely an incidental consequence of the conduct and, as the quantity involved was minor when compared with a national production of from ten to fifteen million tons per week, no such interference could be found. That idea was expressed in the following words, to-wit: "Obstruction of coal mining, though it may prevent coal from going into interstate commerce, is not a restraint of that commerce unless the obstruction to mining is intended to restrain commerce in it, or has necessarily such a direct, material, and sub-

[18] 254 U. S. 443 at 488, 41 S. Ct. 172, 65 L. Ed. 349 at 366.
[19] 259 U. S. 344, 42 S. Ct. 570, 66 L. Ed. 975 (1922).

stantial effect to restrain it that the intent reasonably must be inferred."[20] While the court agreed that a secondary boycott was a restraint of trade within the meaning of the Sherman Act, still it held that not every interference with interstate commerce fell within its provisions and only those could be so treated when intention to interfere was found to exist or else where substantial interference had occurred.

Further treatment of the problem came in *United Leather Workers' International Union* v. *Herkert & Meisel Trunk Company,*[21] where the facts were very similar to the first Coronado case except that injunctive relief rather than damages was sought. The threatened damage was slight, totalling only about $3,000 and injunction was denied when the court said: "This review of the cases makes it clear that the mere reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture is ordinarily an indirect and remote obstruction to that commerce. It is only when the intent or necessary effect upon such commerce in the article is to enable those preventing the manufacture to monopolize the supply, control its price, or discriminate as between its would-be purchasers, that the unlawful interference with its manufacture can be said directly to burden interstate commerce."[22] While the doctrine of substantial interference may not have been in the mind of Congress when it enacted the statute, the court was obliged to limit the applicability of the statute as a practical matter to prevent every strike-bound firm which had done business in interstate commerce from seeking relief in the federal courts.[23]

Perhaps influenced by the dictum in the preceding case, the mine-owners in the Coronado situation amended their complaint and showed a stoppage of output amounting to five thousand tons of coal per day as well as an intent to drive nonunion coal off the market. This time they succeeded, for in *Coronado Coal Company* v. *United Mine Workers of America*[24] judgment in their favor was affirmed when the court said: "We think there was substantial evidence at the second trial in this case tending to show that the purpose of the destruction of the mines was to stop the production of nonunion coal and prevent its shipment to markets or other states than Arkansas, where it would by competition tend to reduce the price of the commodity and affect injuriously the maintenance of wages for union labor in competing mines . . ."[25]

[20] 259 U. S. 344 at 411, 42 S. Ct. 570, 66 L. Ed. 975 at 995.

[21] 265 U. S. 457, 44 S. Ct. 623, 68 L. Ed. 1104 (1924). McKenna, Van Devanter and Butler, JJ., dissented.

[22] 265 U. S. 457 at 471, 44 S. Ct. 623, 68 L. Ed. 1104 at 1109.

[23] See, for example, the dissenting opinion of Stone, Ch. J., in United Leather W. I. U. v. Herkert & Meisel Trunk Co., 284 F. 446 (1922), particularly p. 464-5.

[24] 268 U. S. 295, 45 S. Ct. 551, 69 L. Ed. 963 (1925).

[25] 268 U. S. 295 at 310, 45 S. Ct. 551, 69 L. Ed. 963 at 970.

While the second Coronado case laid down a rule as to the extent of restraint necessary where commodities in interstate commerce were involved, it made no ruling on the question as to what might be necessary where the restraint was imposed on labor itself. In fact, that question had never been raised prior thereto since in all the earlier cases the alleged violation of the Sherman Act had concerned commodities moving in interstate commerce. It required the case of *Bedford Cut Stone Company* v. *Journeymen Stone Cutters' Association of North America*[26] to bring up that aspect of the problem. There the plaintiff, a nonunion producer of quarried limestone shipped in interstate commerce, sought to enjoin the defendants from preventing laborers in other states from working on the stones so shipped. Interference by the union officials was directed against the work on so-called "unfair" stones in an effort to compel unionization of the plant as its product competed with artificial stones produced elsewhere in the country in unionized shops. Injunction was granted by the majority on the authority of the Duplex and the second Coronado cases, Justice Sutherland saying: "Whatever may be said as to the motives of the respondents or their general right to combine for the purpose of redressing alleged grievances of their fellow craftsmen or of protecting themselves or their organizations, the present combination deliberately adopted a course of conduct which directly and substantially curtailed, or threatened thus to curtail, the natural flow in interstate commerce of a very large proportion of the building limestone production of the entire country, to the gravely probable disadvantage of producers, purchasers and the public; and it must be held to be a combination in undue and unreasonable restraint of such commerce within the meaning of the Anti-trust Act as interpreted by this court."[27]

The concept that there was no distinction between commodities and labor where interstate commerce was concerned met with sharp disagreement on the part of Justice Brandeis. In a vigorous dissenting opinion, he stated: "The Sherman Law was held in United States v. United Shoe Machinery Co., 247 U. S. 32, 62 L. Ed. 968, 38 Sup. Ct. Rep. 473, to permit capitalists to combine in another corporation practically the whole shoe machinery industry of the country, necessarily giving it a position of dominance over shoe-manufacturing in America. It would, indeed, be strange if Congress had by the same act willed to deny to members of a small craft of workingmen the right to cooperate in simply refraining from work, when that course was the only means of self-protection against a combination of militant and powerful employers. I cannot believe that Congress did so."[28]

[26] 274 U. S. 37, 47 S. Ct. 522, 71 L. Ed. 916 (1927). Brandeis, J., wrote a dissenting opinion concurred in by Holmes, J.

[27] 274 U. S. 37 at 54, 47 S. Ct. 522, 71 L. Ed. 916 at 923.

[28] 274 U. S. 37 at 65, 47 S. Ct. 522, 71 L. Ed. 916 at 928.

Extremes to which the absurdity of the argument that restraint on labor is an interference with interstate commerce might be carried is well illustrated by the case of *Levering & Garrigues Company* v. *Morrin*.[29] The plaintiff there had imported fabricated steel and iron for use in building construction in New York. Defendants, attempting to unionize plaintiff's plant, prevented employees from working on the imported material. Injunction against such interference was sought on the theory that a violation of the antitrust laws had occurred, but relief was denied on the ground that the activity was purely local. In that regard, Justice Sutherland quoted with approval from *Industrial Association of San Francisco* v. *United States*[30] by saying: "The alleged conspiracy and the acts here complained of, spent their intended and direct force upon a local situation,—for building is as essentially local as mining, manufacturing or growing crops,—and if, by a resulting diminution of the commercial demand, interstate trade was curtailed either generally or in specific instances, that was a fortuitous consequence so remote and indirect as plainly to cause it to fall outside the reach of the Sherman Act."[31]

With the enactment of the Norris-LaGuardia Act,[32] dealing as it does with limitations on the power of federal courts to grant injunctions in labor disputes, and the subsequent enactment of the Wagner Act,[33] partisans of labor could well hope that the law laid down in the Danbury Hatters' cases and in the Duplex case had been nullified as it applied to them. Further support for that view was found in the decision in *Apex Hosiery Company* v. *Leader*[34] in which case plaintiff sought damages under the Sherman Act when defendants, attempting to unionize the plant, caused a sit-down strike therein and prevented shipment of merchandise valued at $800,000, the greater part of which was designed for interstate shipment. Judgment for plaintiff in the trial court was reversed on the ground that the statute did not extend to the point of penalizing a blockage of production and shipment of goods designed for interstate commerce.

Speaking on behalf of the majority, Justice Stone said: "While we must regard the question whether labor unions are to some extent and in some circumstances subject to the Act as settled in the affirmative, it is equally plain that this Court has never thought the Act to apply to all labor union activities affecting interstate commerce."[35] He also added: ". . . the Sherman Act was not enacted to police interstate transportation, or to afford a remedy for wrongs which are

[29] 289 U. S. 103, 53 S. Ct. 549, 77 L. Ed. 1062 (1933).
[30] 268 U. S. 64, 45 S. Ct. 403, 69 L. Ed. 849 (1925).
[31] 289 U. S. 103 at 108, 53 S. Ct. 549, 77 L. Ed. 1062 at 1066.
[32] 47 Stat. at L. 70, 29 U. S. C. A. § 101 et seq.
[33] 49 Stat. at L. 449, 29 U. S. C. A. § 151 et seq.
[34] 310 U. S. 469, 60 S. Ct. 982, 84 L. Ed. 1311 (1940). Hughes, Ch. J., wrote a dissenting opinion concurred in by McReynolds and Roberts, JJ.
[35] 310 U. S. 469 at 489, 60 S. Ct. 982, 84 L. Ed. 1311 at 1320.

actionable under state law, and result from combinations and conspiracies which fall short, both in their purpose and effect, of any form of market control of a commodity, such as to 'monopolize the supply, control its price, or discriminate between its would-be purchasers.' "[36]

Although the decision regarded the Danbury Hatters' cases, as well as the Duplex and Bedford cases, to be sound law and also reiterated the doctrine of the second Coronado case, it marked a definite advance for labor unions by deciding that interference by them at point of shipment as well as at place of manufacture did not come under the prohibition of the Sherman Act. Labor was also to receive some latitude in its activities for the "rule of reason" laid down in *Standard Oil Company* v. *United States*[37] required it. Said Justice Stone: "Strikes or agreements not to work, entered into by laborers to compel employers to yield to their demands, may restrict to some extent the power of employers who are parties to the dispute to compete in the market with those not subject to such demands. But under the doctrine applied to non-labor cases, the mere fact of such restrictions on competition does not in itself bring the parties to the agreement within the condemnation of the Sherman Act . . . Furthermore, successful union activity, as for example consummation of a wage agreement with employers, may have some influence on price competition by eliminating that part of such competition which is based on differences in labor standards. Since, in order to render a labor combination effective it must eliminate the competition from nonunion made goods . . . an elimination of price competition based on differences in labor standards is the objective of any national labor organization. But this effect on competition has not been considered to be the kind of curtailment of price competition prohibited by the Sherman Act."[38]

It remained for the decision in *United States* v. *Hutcheson*,[39] however, to completely eliminate the Duplex and Bedford cases from the labor scene. There the defendants, because of the unwillingness of a brewery to assist them in a jurisdictional dispute with another trade union growing out of a construction contract for a building for the brewery, brought a nation-wide boycott against the brewery's products even though it was not a party to the dispute. Criminal prosecution under the Sherman Act followed but a demurrer to the indictment was sustained when the court held that such statute had to be read together with the Clayton Act and the Norris-LaGuardia Act and, from such reading, the congressional intent was seen to be to effectively nullify the Duplex and Bedford cases.

[36] 310 U. S. 469 at 512, 60 S. Ct. 982, 84 L. Ed. 1311 at 1333.
[37] 221 U. S. 1, 31 S. Ct. 502, 55 L. Ed. 619 (1911).
[38] 310 U. S. 469 at 503, 60 S. Ct. 982, 84 L. Ed. 1311 at 1328.
[39] 312 U. S. 219, 61 S. Ct. 463, 85 L. Ed. 788 (1941). Roberts, J., wrote a dissenting opinion concurred in by Hughes, Ch. J.

In that regard Justice Frankfurter stated: "The Norris-LaGuardia Act removed the fetters upon trade union activities, which according to judicial construction § 20 of the Clayton Act had left untouched, by still further narrowing the circumstances under which the federal courts could grant injunctions in labor disputes. More especially, the Act explicitly formulated the 'public policy of the United States' in regard to the industrial conflict, and by its light established that the allowable area of union activity was not to be restricted, as it had been in the Duplex Printing Press Co. Case, to an immediate employer-employee relation. Therefore, whether trade union conduct constitutes a violation of the Sherman Law is to be determined only by reading the Sherman Law and § 20 of the Clayton Act and the Norris-LaGuardia Act as a harmonizing text of outlawry of labor conduct . . . Congress in the Norris-LaGuardia Act has expressed the public policy of the United States and defined its conception of a 'labor dispute' in terms that no longer leave room for doubt . . . Such a dispute § 13(c) provides, 'includes any controversy concerning terms or conditions of employment . . . regardless of whether or not the disputants stand in the proximate relation of employer and employee . . .' But to argue, as it was urged before us, that the Duplex Printing Press Co. Case still governs for purposes of a criminal prosecution is to say that that which on the equity side of the court is allowable conduct may in a criminal proceeding become the road to prison."[40]

The Hutcheson case expressly overruled the Duplex and Bedford cases and, as a consequence, has recognized that a secondary boycott cannot be enjoined. By not mentioning the Danbury Hatters' cases or the Coronado cases, the court has, however, left it conjecturable as to just how far labor unions will be permitted to go. It may have been the intention of the court, to be inferred from its silence thereon, that all such activities named in the Norris-LaGuardia Act be freed from injunctive restraint regardless of the effect on the market. The secondary boycott applied in the Hutcheson case, however, seems to have been sufficiently extensive to have fallen within the scope of the second Coronado case and hence would seem to warrant the imposition of damages under the Sherman Act. Denial of injunctive relief does not necessarily pre-suppose that there is no ground for the imposition of damages for, as a matter of fact, the contrary is often true. Justice Stone, in his concurring opinion therein, would seem to think differently for he said: "Such restraints, incident to such a strike, upon the interstate transportation of the products or supplies have been repeatedly held by this Court, without a dissenting voice, not to be within the reach of the Sherman Anti-Trust Act."[41]

If, as a result of the Hutcheson case, labor unions and their officials are to be free from injunctive restraints and immune from crimi-

[40] 312 U. S. 219 at 231 and 234, 61 S. Ct. 463, 85 L. Ed. 788 at 792 and 795.
[41] 312 U. S. 219 at 239, 61 S. Ct. 463, 85 L. Ed. 788 at 797.

nal prosecution under the Sherman Act regardless of the effect of their acts upon the interstate market, and if the sole penalty for such conduct is to be the mere imposition of damages, then Congress ought certainly to take steps to require labor unions to become responsible bodies. An excellent working model for any such legislation may be found in the British "Trade Disputes and Trade Unions Act of 1927."[42] Its provisions would bear careful study and the enactment of its main features would help fill a gap which will be created by the expiration of the War Labor Disputes Act.

M. S. MARKS

CIVIL PRACTICE ACT CASES

GARNISHMENT—PERSONS AND PROPERTY SUBJECT TO GARNISHMENT—WHETHER OR NOT CONTENTS OF SAFETY DEPOSIT BOXES MAY BE REACHED BY GARNISHMENT PROCEEDINGS—In the recent case of *Morris* v. *Beatty*,[1] after judgment against the principal debtor and return of execution unsatisfied, plaintiff commenced garnishment proceedings against a bank. The latter answered by stating that, at the time of service of summons upon it, it had a small balance in an account which it had set-off against a note owed to it by the principal debtor and that it had also rented a safe deposit box in its vaults to such judgment debtor although it claimed to have no control over the contents thereof. Before hearing on the answer was possible, an order in bankruptcy restrained the plaintiff from prosecuting his garnishment action. Subsequent thereto, the garnishee permitted the principal defendant to have access to the safety deposit box on several occasions. When the injunction order was eventually vacated, the plaintiff caused the garnishment proceeding to be set for hearing[2] but the trial court discharged the garnishee. On appeal, such decision was reversed by the Appellate Court for the First District on the ground that the safety deposit box and its contents were subject to garnishment as property in the hands of a bailee and the conduct of the garnishee in permitting the principal defendant to have access to the same placed upon it the burden of proving that none of the contents had been removed therefrom or else to suffer judgment for the amount of the plaintiff's claim.[3]

Although the principal question involved in the instant case has never been passed upon before in the reviewing courts of this state, the holding could be said to be foreshadowed by the decision in *National Safe Deposit Company* v. *Stead*,[4] which had held the provi-

[42] 17 Geo. V, c. 22.

[1] 323 Ill. App. 390, 55 N. E. (2d) 830 (1944).

[2] The garnishee had, in the meantime, moved for discharge on the ground that, by failure to traverse the answer, the same stood as admitted to be true. Such point was deemed waived, by reason of the fact that the garnishee had introduced evidence to sustain the answer, on the authority of Pink v. Chinskey, 303 Ill. App. 55, 24 N. E. (2d) 585 (1939), abst. opin.

[3] Framheim v. Miller, 241 Ill. App. 328 (1926), was distinguished on the ground that the attempt there had been to punish the garnishee for contempt for refusal to comply with an order to open a safety deposit box.

[4] 250 Ill. 584, 95 N. E. 973 (1911).