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Recent Decisions

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in making the experiments, and what he accomplishes by the experiments belongs to the employer." [12]

However, the mere fact that an inventor has been hired to do research work does not automatically render all inventions he may make during the term of his employment the property of the employer. In a case in which two technicians were engaged in research and testing in a government laboratory, it was held that they were under no obligation to assign their inventions to the United States, since their inventions were independent of their work and voluntarily assumed, even though the inventions were perfected in their employer's laboratory.[13]

John M. Anderton.

RECENT DECISIONS

LABOR LAW.—*United States v. United Mine Workers of America* . . . U. S. . . . , 67 S. Ct. 677, 91 L. Ed. (Adv. Ops.) 595 (1947) — On certiorari, modified in part and as modified affirmed, adjudications of contempt by the United States District Court for the District of Columbia pursuant to which a fine of $3,500,000 was imposed on defendant union and a fine of $10,000 was imposed on defendant Lewis its president. For argument five cases were consolidated; *United States v. United Mine Workers of America, United States v. Lewis, United Mine Workers of America v. United States, Lewis v. United States, United Mine Workers of America, et al. v. United States.*

As is usual in a contempt case, the chronology of the facts is of the first importance. On the authority of Executive Order 9728,11 F. R. 5593, by which the President directed the Secretary of Interior to take possession of, and operate, the coal mines and to negotiate with the defendants regarding terms and conditions of employment, the United States was operating the nation's coal mines in October 1946. The purpose of this procedure was to assure an adequate fuel supply during the period of reconversion of the economy from its war-time situation, since under private management industrial labor disputes were interrupting the mining. An agreement was reached between Secretary of Interior Krug and defendants regarding wages, conditions *et cetera.* On 21 October, 1946, Lewis sent a letter to the Secretary of Interior which asserted that a provision of an earlier agreement providing for a termination of contract, upon due notice, was carried over into the then current agreement. This the Coal Mines Administrator, acting for the Department of Interior, denied. The importance of the controversy lay in the union's rule that where there was no contract there should be no work. Lewis gave the notice required by the agreement in dispute and a fruitless conference ensued. On 15 November Lewis notified the Secretary that "Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option terminates said Krug-Lewis agreement as of 12 o'clock P. M. Midnight, Wednesday, November 20, 1946." Copies

12 United States v. Houghton, 23 F. (2d) 386, cert. den. 277 U. S. 592, 48 S. Ct. 528, 72 L. Ed. 1004 (1928).

13 United States v. Dubilier Condenser Corp., 289 U. S. 178, 53 S. Ct. 554, 77 L. Ed. 1114, 85 A. L. R. 1488 (1933).

of this message circulated among union members. The government thereupon filed a complaint for a determination of the issue, under the Declaratory Judgment Act, and for a temporary restraining order. The court, without notice to the defendants, issued a decree restraining the continuance in effect of the aforementioned notice and prohibiting encouraging of the cessation of work. Defendants taking no action a work stoppage ensued. After hearing a rule was issued to show cause why the defendants should not be punished for contempt, if by the return day the contempt was not purged. Still the defendants took no action. On the return day defendants denied the jurisdiction of the court to issue the restraining order and the rule to show cause. At the trial on the contempt defendants attacked the validity of the court's actions as violative of the Norris-LaGuardia Act, and Sec. 20 of the Clayton Act, which allegedly removed the court's jurisdiction to issue injunctions in such a case, and on other grounds. Defendants' motion to discharge and vacate the rule to show cause was overruled, the court holding the Acts inapplicable. Upon waiving an advisory jury and pleading not guilty, defendants, Lewis and United Mine Workers, were found guilty of both criminal and civil contempt for which they were fined $10,000 and $3,500,000 respectively. The judgments were stayed pending appeal. Certiorari was speedily granted on petition of the defendants, 330 U. S. . . . , 67 S. Ct. 359.

Better than any other feature of this case, its expeditious determination indicates the urgency of the issues involved and the importance of the decision reached. The halt in the production of bituminous coal had swiftly eliminated the red corpuscles from the life blood of the nation. Basic industries and the chief mode of transportation rely almost exclusively on coal. These either curtailed operations or slowed to a leukemian stagger. It was apparent that there was no legal formula to solve the problem. The legislature had provided nothing for the executive to execute in such a situation. At this phase argument began before the Supreme Court of the United States. The Court handed down its decision on March 6, 1947.

Three major rulings were necessary on the facts. Did the Norris-LaGuardia Act and the War Labor Disputes Act effect a legal barrier to the injunction issued, on these facts? Was disobedience by the defendants contempt of court, on these facts? Were the fines proper, on these facts? While interrelated, these questions, and their answers, were not interdependent. Other issues were involved, but they are of lesser moment involving neither new law nor new application of old law.

The Court, with nine jurists sitting, held that the Norris-LaGuardia Act and the War Labor Disputes Act did not affect the equity jurisdiction of the lower court. There were four dissents to this ruling.

Mr. Chief Justice Vinson delivered the opinion of the Court, with Mr. Justice Reed and Mr. Justice Burton concurring in whole. By way of narrowing the issue it was pointed out that if the Norris-LaGuardia Act did not apply, neither, necessarily, would the less explicit Clayton Act. It was the opinion of the Court that the Norris-LaGuardia Act was not violated by the injunction because this Act merely prohibited the injunction in cases involving "an employer and employees." The United States was thought not to be in the same position as a private employer. Had this been the case of a private employer, the Court acknowledged "the characteristics of the present case would be such as to bring it within that class . . . ." Thus it was agreed a "labor dispute" existed. It is well at this juncture to note the specific pertinent provisions of this famous anti-injunction statute. It restricts the use and issuance of injunctions in a labor dispute. Sec. 13 (c): "The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." And in Sec.

13 (a), "A case shall be held . . ." to be appropriate, when among other things, it is "(I) between one or more employers or associations of employers and one or more employees or associations of employees." In the opinion of the Court such was not here the case. From this point of origin the jurists noted the rule that a "statute which in general terms divests pre-existing rights or privileges will not be applied to the sovereign without express words to that effect." This rule, well established in America in both federal, *United States v. Green,* 4 Mas. 427 (1827), *United States v. Hoar,* 2 Mas. 311 (1821), and state, *Com. v. Johnson,* 6 Pa. St. 136 (1847), decisions, is derived from a similar English rule concerning the king, *Magdalen College* case, 11 Coke 74 (1615), *King v. Allen,* 15 East. 333 (1812). "It may be considered as settled that so much of the royal prerogatives as belonged to the King in his capacity of *parens patriae,* as universal trustee, enters as much into our political state as it does into the principles of the British Constitution," *Dollar Savings Bank v. United States,* 19 Wall (U. S.) 227, 239 (1873). The influence of the Civil Law, introduced by Abbot Theobald, upon the common law, is apparent in this rule. The opinion points out, also, that the Act sought, in its declaration of public policy, to enable the worker "to exercise actual liberty of contract and to protect his freedom of labor," concluding that the government was not affected thereby. "Persons" must be involved on both sides. Although the Act does not define "persons," the term, it was pointed out, does not ordinarily include the sovereign and thus the government and its employees are in a class apart and unaffected by the statute. Thus negatively, it was found, there was no application of the legislation. Positively, it does not apply where, and the Court cited *United States v. American Federation of Musicians,* 318 U. S. 741, 87 L. Ed. 1120, 63 S. Ct. 665 (1943), the claim is that a refusal to work is alleged to violate the Sherman Anti-Trust Act. Other sustaining citations might have been added. *Milk Wagon Drivers Union v. Lake Valley Farm Products,* 311 U. S. 91, 61 S. Ct. 122 (1940), *Donnelly Garment Co. v. International Ladies Garment Workers Union* (D. C.), 205 F. Sup. 767 (1937), *Grace Co. v. Williams,* 20 F. Sup. 263 (1937). Having disposed of the Norris-LaGuardia Act, Mr. Chief Justice Vinson turned to the contention that the War Labor Disputes Act, 50 U. S. C. A. Appendix, Secs. 1501-1511, restricted any pre-existing right of the courts to issue injunctions in connection with labor disputes in plants seized by the Government. This Act provided for Executive power to ". . . take immediate possession . . .", (Sec. 3), and provided that in such a case ". . . it shall be unlawful for any person (I) to . . . interfere . . . with the operation . . ." of said plant. Sec. 6(a). The Act neither positively nor negatively mentions injunctions. The Court argued that in providing criminal penalties *et cetera,* to facilitate the production in seized industries the Congress did not eliminate the use of injunctions relevant to those who, for purposes of this case, were governmental employees. This holding was substantiated by a recitation of the government's rights, such as to negotiate concerning, and fix, wages. The Krug-Lewis agreement, the first issue *in quo,* was, it was noted, one between the government and the union and no other. Therefore, Mr. Chief Justice Vinson concluded, the Government was exercising a sovereign function in operating the mines and these statutes had no application, the relationship being that of governmental employer and employee. The jurisdiction of the district court to issue the injunction was held undisturbed, the intent of Congress being so construed.

Mr. Justice Black and Mr. Justice Douglas concurred in the opinion that neither the Norris-LaGuardia Act nor the War Labor Disputes Act relieved the federal judiciaries' jurisdiction to issue the injunction, but dissented from the opinion on other matters. The two jurists agreed that ". . . the miners became government employees when the government took over the mines." The government was operating the mines for its own account as a matter of law under the statute, they pointed out. Sec. 9 of the Selective Service Act, 54 Stats. 892, c 720, 50 U. S. C. Appx. Sec. 390, 11 F. C. A., title 50, Appx. 5 Sec. 9. The govern-

ment's position is, by analogy, with *United States v. Petty Motor Co.*, 327 U. S. 372, 90 L. Ed. 729, 66 S. Ct. 596 (1946), similar to a leasehold interest in property as a "taking." The power of control left in the managers was dismissed as a mere delegation for convenience by the government. The jurists held that Congress did not intend to bar the injunctions sought here, when the dispute was between the government and its employees.

Mr. Justice Frankfurter dissented as to the non-appliance of the Norris-LaGuardia Act but concurred in the opinion of the Court on other matters and in the judgment. The Norris-LaGuardia Act, he points out, "deprived the federal courts of jurisdiction to issue injunctions in labor disputes except under conditions not here relevant" thus the question was not as to the applicability of the rule that the government is excluded from the operation of statutes, unless specifically included. The question, the jurist reasoned, was rather whether a "labor dispute" existed. The before-mentioned definition of that term was thought to include such controversies as those disputed under the Krug-Lewis agreement. The anti-injunction act, Mr. Justice Frankfurter wrote, ought not to be confined by the ". . . artificial canon of construction . . ." excluding the Government from its operation because ". . . This canon, like other generalities about statutory construction, is not a rule of law." Under the majority rule, it was observed, the government could pray for, and the courts could grant injunctions whenever the public interest was at stake, an eventuality possible of occurrence regardless of who operated the mines. This, he noted, despite the fact that it was precisely to bar such injunctions, where it was claimed the public interest was involved, that the legislation *in quo* became law. For the sake of the observer of short memory, apparently, the opinion recalls by name the *Debs,* the *Hayes* and the *Railway Shopmen's* injunctions. In the case of *In Re Eugene Debs* (C. C.) 67 F. 724, 5 Inters. Com. Rep. 163, 158 U. S. 564, 39 L. Ed. 1092, 15 S. Ct. 900 (1895) the defendants petitioned for a writ of *habeas corpus* after imprisonment for contempt in disobeying an injunction commanding them to refrain from obstructing trains in interstate commerce. The petition was denied. The Federal Supreme Court held that the collateral attack would fail because the lower federal court had equity jurisdiction to aid in the powers and duties of the general government. The *Hayes* case, unreported, D. Ind. 1919, was of similar rule. In *United States v. Railway Employees' Dept. A. F. L.* (D. C.) 283 F. 479, 286 F. 228, 290 F. 978 (1923), interference with interstate commerce by a strike on the railroads was permanently enjoined. Mr. Justice Frankfurter's explanation of the compelling necessity for the Norris-LaGuardia Act might well have included more instances. 22 Notre Dame Lawyer 200, 203. It was found in 1932 that "Injunctions are often applied for and issued for the moral effect that such injunctions will have in disheartening and discouraging employees, rather than because of any real necessity to protect property," Sen. Rep. No. 163, 72d Cong. 1st Sess. (1932) 21. Students of the problem concluded that "Judicial error is too costly to either side of a labor dispute to permit perfunctory determination of the crucial issues," Frankfurter and Greene, *The Labor Injunction* (1930) 201. Testifying before the House Committee on the Judiciary, before the Act was passed President Green of the American Federation of Labor declared that 700 such orders were rendered by federal courts in 1927. U. S. Daily, 16 February 1928, p. 2. It would, however, be fallacious to assume that there had been a complete indifference by the judiciary to the legitimate interests involved. In 1911 the Federal Supreme Court recognized "There is no more important concern than to safeguard the freedom of labor upon which alone can enduring prosperity be based." *Bailey v. Alabama,* 219 U. S. 219, 55 L. Ed. 191 (1911). However, recognition of this fundamental sociological principle was not sufficiently widespread. The now famous Norris-LaGuardia Act effectively supplemented the well-conceived but misconstrued Clayton Act. It was with these powerful arguments for sustaining the Act that Mr.

Justice Frankfurter concluded, that there was no justification for excluding the government from its application.

Mr. Justice Jackson was of the opinion that the Norris-LaGuardia Act relieved the courts of jurisdiction to issue an injunction in such a case, but concurred on other issues.

Mr. Justice Murphy dissented from the majority opinion with regard to the non-applicability of the Norris-LaGuardia Act and on all other matters. He pointed out that the pressing necessities of the case cannot convert the "judicial process into a weapon for misapplying statutes." He recalled how "Time and again strikes were broken merely by the issuance of a temporary restraining order purporting to maintain the *status quo*. Because of the highly fluid character of labor disputes, the delay involved in testing an order of that nature often resulted in neutralizing the rights of employees to strike and picket." A situation, he maintained, such as here obtains was precisely the factual situation regarding which Congress barred the equity power of the federal judiciary. "To this clearly enunciated policy of making 'government by injunction' illegal Congress has made no exception," the jurist observed. The principle established, the opinion concluded, could be used as a pretext for the breaking of the strike by the government merely by seizing a plant under emergency powers and praying a restraining order "on the specious theory that the Government was acting in relation to its own employees."

Mr. Justice Rutledge dissented from the majority opinion with regard to the non-applicability of the Norris-LaGuardia Act and on all other matters. The jurist reasoned that since no man or group is above the law, including the government, the Act in question being unambiguous, the injunction could not be directed, validly, at the defendants. The War Labor Disputes Act, it was argued, confirms the Norris-LaGuardia Act and itself excludes such action. The legislative history of the Act, as explained by Mr. Justice Frankfurter, was thought to make the prohibition adopted in 1932 clearly applicable. A construing of the War Labor Disputes Act so as to imply the privilege of injunctive relief was rejected since such "would have been tantamount to repeal of the Norris-LaGuardia Act for the duration of the emergency powers . . . ." Mr. Justice Rutledge clearly considered the majority decision an act of judicial legislation, the effect of the pressing exigencies of this *"cause célèbre."* As such he could not subscribe to the ruling.

These then are the opinions of the nine jurists of highest federal rank on whether the federal legislature meant to exclude the government-operated facilities when it removed the jurisdiction of equity to issue injunctions on these facts. Five answered "yes," four answered "no." The majority found, and it is therefore presently law, that a federal court has jurisdiction to issue a mandate prohibiting and, or, halting a strike in any undertaking operated by the federal government. This was the major premise of the Court's decision.

The Court, with nine jurists sitting, held that disobedience of the injunction was punishable as contempt of court, as held. There were two dissents to this proposition.

Delivering the opinion of the Court, in which, as aforementioned, Mr. Justice Burton and Mr. Justice Reed concurred entirely, Mr. Chief Justice Vinson noted that since the government's complaint urged the inapplicability of the Norris-LaGuardia Act to the facts, the power of the district court to grant the relief prayed depended upon the resolution of this jurisdictional question. It follows in the opinion of the Court, that the district court had jural power to issue the restraining order to maintain the *status quo* pending determination of its jurisdiction. Defendants' ignoring of the order effected the work stoppage. The opinion cited *United States v. Shipp*, 203 U. S. 563, 51 L. Ed. 319, 27 S. Ct. 165,

8 Ann. Cas. 265 (1906) as denying the "right" to ignore the injunction in such a situation. That case was based on the contempt of court of county executive authorities who, despite a mandate that ". . . all proceedings against the appellant be stayed, . . ." carried out a conspiracy with other outlaws to seize and murder a convicted rapist whose petition for a writ of *habeas corpus* was pending. The question was whether such acts constituted contempt, and Mr. Justice Holmes said, "We are of opinion that they do." That jurist acknowledged that if the jurisdiction was lacking so was the right to hold for contempt. Mr. Justice Holmes noted *Re Sawyer,* 124 U. S. 200, 31 L. Ed. 402, 8 S. Ct. 482 (1888) wherein an order of a court in a matter outside its jurisdiction was declared not merely voidable but a nullity; *Ex Parte Fisk,* 113 U. S. 713, 28 L. Ed. 1117, 5 S. Ct. 724 (1885) wherein Mr. Justice Miller ruled that a court "without authority to make orders . . ." was ". . . equally without authority to enforce these orders by process of contempt" *Ex Parte Rouland,* 104 U. S. 604, 24 L. Ed. 861 (1882), wherein it was held that "If the command of the writ was in excess of jurisdiction, so necessarily were the proceedings in contempt for disobeying it." But in this case, Mr. Chief Justice Vinson believed, the appellate (Supreme) court alone could decide the jurisdiction. He quoted *Gompers v. Bucks Stove & Range Co.,* 221 U. S. 418, 450, 55 L. Ed. 797, 809, 31 S. Ct. 492, 34 L. R. A. (N. S.) 874 (1911), a case reviewing the disobedience to an injunction prohibiting a boycott by a labor union called as a result of a dispute involving hours, wherein the Court stated, "If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent and what the Constitution now fittingly calls the 'judicial power of the United States' would be a mere mockery." The opinion by Mr. Chief Justice Vinson then proceeded to the present and gave citations upholding the rule that "an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly proceedings." Among the authorities for this statement was *Howat v. Kansas,* 258 U. S. 181, 66 L. Ed. 550, 42 S. Ct. 277 (1922), wherein it was held that a duly issued injunction must be obeyed however erroneous the action of the court may be. The defendants, the present opinion maintained, "in making their private determination of the law, acted at their peril. Their disobedience is punishable as criminal contempt." Then the Court proceeded even further and declared that "Violations of an order are punishable as criminal contempt even though the order is set aside on appeal . . ." The authority given is *Worden v. Searls,* 121 U. S. 14, 30 L. Ed. 853, 7 S. Ct. 814 (1887) in which case an order of preliminary injunction was reversed and the contempt fine for its disobedience remitted only because it was wrongly ascertained. Dictum has been to the effect that "A conviction for criminal contempt may indeed survive the reversal of the decree disobeyed." But all in all the authorities subscribing to such a rule are few. The Chief Justice concluded that since for coercive and punitive effect, civil and criminal contempt, respectively, may be found, the same acts here justify the court in its decision that both classifications are here present.

Mr. Justice Jackson joined in the majority opinion with regard to the contempt conviction but, as seen, he differed on another matter.

Mr. Justice Frankfurter concurred in the judgment and in the opinion of the majority with regard to the contempt judgment although, as noted, he differed on other matters. He observed that "The historic phrase 'a government of laws and not of men' epitomizes the distinguishing character of our political society." Therefore, the reasoning continues, the necessity of preservation of the maxim that no one can be judge of his own case, "no matter how exalted the public office or how righteous his private" motive. In application to these disobediences of the jural mandate these principles make the jurist's condemnation of the defendants' acts apparent. The opinion quoted Dean Pound, *The Future of Law* (1937),

47 Yale L. J. I., 13, that "Civilization involves subjection of force to reason, and the agency of this subjection is law." To implement this agency, the Justice explains, the judiciary was established. Although he disagrees with the decision concerning the Norris-LaGuardia Act nonetheless, the jurist argues, "to suggest that the right to determine so complicated and novel an issue could not be brought within the cognizance of this Court, is to deny the place of the judiciary in our scheme of government." The power to punish for contempt flows from the power to issue orders aimed at giving the court adequate time for consideration and decision, the opinion concludes. The affirmance of the contempt conviction, according to Mr. Justice Frankfurter, should be based on vindication of the process of law.

Mr. Justice Black and Mr. Justice Douglas concurred in that portion of the majority opinion concerning the convictions of contempt as well as in that portion relevant to the non-applicability of the Norris-LaGuardia Act but dissented as regards other matters. These jurists merely noted that from their opinion that the lower court had jurisdiction to issue an injunction, it follows that the disobedience of the defendants was contempt and its punishment a necessary incident. "Without such coercive powers," it was pointed out "courts could not settle the cases and controversies brought before them." It was for this reason that the contempt powers came into existence, the opinion maintained. In support *Cook v. United States*, 267 U. S. 517, 534-537, 69 L. Ed. 767, 772-773, 45 S. Ct. 390 (1924) is cited, and legislative recognition of the power is found in Rev. Stat. Sec. 725, 28 U. S. C. A. Sec. 385, 8 S. C. A. title 28, Sec. 385, by name.

Mr. Justice Murphy dissented from the majority opinion with regard to the affirmance of the conviction for contempt and on all other counts. As a contrary result must flow from a contrary premise in the immediately preceding opinion, so from the premises that the court lacked jurisdiction upon the facts involved flows the conclusion that "no man can be held for contempt thereof . . . ." Mr. Justice Murphy agrees that the individual affected cannot, as a rule, judge the validity of court orders. He observes, however, that in the instant case Congress had "flatly forbidden the issuance of all restraining orders." The opinion of the majority regarding the analogy of the aforementioned *Shipp* Case is not pertinent, the jurist contended, since the court order involved there was one within the recognized power of the tribunal and had not been specifically prohibited by Congress, as here. On all the facts the opinion did not agree with the conviction for contempt.

Mr. Justice Rutledge dissented from the majority opinion with regard to the affirmance of the conviction for contempt and on all other findings. His disagreement on this point was based primarily on his dissent to the view of the majority concerning the anti-injunction statute. The derivative finding was that the *Shipp* case, aforementioned, "has no valid application" to this factual situation. This jurist expressed an apprehension that "The force of such a rule," as that determined by the majority "making the party act on pain of certain punishment regardless of the validity of the order violated or the court's jurisdiction to enter it as determined finally upon review, would be not only to compel submission. It would be also in practical effect for many cases to terminate the litigation, foreclosing the substantive rights involved without any possibility for their effective appellate review and determination." The position of the union unable to disobey even a grossly unfair injunction is observed, as described by Frankfurter and Greene, *The Labor Injunction* (1930) 200-201, where it is noted that "The preliminary proceedings make the issue of final relief a practical nullity . . . the suspension of strike activities, even temporarily, may defeat the strike for practical purposes and freedom its resumption, even if the injunction is later lifted." This particular work on the subject is the leading social and legal history of the reign of the injunction. Much of the important and persuasive argu-

mentation cited, *Ex Parte Fisk;* 75 Cong. Rec. 5489; *People ex rel. Sandnes v. Kings County,* 299 N. Y. S. 9, 16, 164 Misc. 355 (1937), is given in the before noticed opinion by Mr. Justice Frankfurter. A review here is needless. Under the possible consequences of the present holding, Mr. Justice Rutledge felt, ". . . the liberties of our people would be placed largely at the mercy of invalid orders issued without power given by the Constitution and in contravention of power constitutionally withheld by Congress." Therefore, the dissent concluded, the conviction for contempt ought not to be upheld.

These then are the opinions of the nine jurists of highest federal rank on whether the defendants were properly convicted as being in contempt of court. Seven answered "yes," two answered "no." The majority found, and it is therefore presently law, that disobedience of the equitable orders, regardless of whether or not they were valid, was contempt of court. This was the minor premise of the Court's decision.

The Court, with nine jurists sitting, held that the fine of $3,500,000 against defendant union was, on the facts and law, excessive but that the fine of $10,000 against defendant Lewis was correct. There was no dissent to modification of the first fine but there were four dissents to the correctness of either.

Mr. Chief Justice Vinson delivered the opinion of the Court with Mr. Justice Reed and Mr. Justice Burton concurring *in toto.* It was recalled that since a criminal contempt sentence is of a punitive nature, to vindicate the court's authority, *Gompers v. Bucks Stove & Range Co., supra,* the "necessity of terminating the defendants' defiance as required by the public interest" is a proper consideration. The disobedience, it was argued, "was the germ center of an economic paralysis which was rapidly extending itself from the bituminous coal mines into practically every other major industry of the United States." The Court considered the probable effectiveness of a fine in coercing obedience as a legitimate factor. Contempt warrants the fine, the Court reasoned. However, it was found that the unconditional fine of $3,500,000 against the union was unwarranted and excessive on the facts. Basing their action primarily on the element of coercion in such a fine, the jurists reduced the union's fine to $700,000, the $2,800,000 balance being conditional upon "defendant's failure to purge itself within a reasonable time." The fine of $10,000 against Lewis was considered warranted in view of his deliberate criminal contempt of the court. The modified affirmance of the fines *in quo* was made. Mr. Chief Justice Vinson wrote, because "Their (defendants') conduct showed a total lack of respect for the judicial process." By way of dictum the opinion noted that while each has his private interests to be legitimately advanced, all such are best protected by preservation of our political system and "the overriding loyalty of all is to our country and to the institutions under which a particular interest may be pursued."

Mr. Justice Jackson joined in the majority opinion with regard to the fines but, as has been seen, differed on another matter.

Mr. Justice Frankfurter concurred in the opinion of the majority with regard to the conditionally modified fines and in the judgment, but dissented, as has been seen, on other matters. He predicates his stand upon the necessity of vindicating the flaunted process of law.

Mr. Justice Douglas and Mr. Justice Black dissented from the opinion of the majority with regard to making $700,000 of the fine against the defendant union and the $10,000 fine against the defendant Lewis absolute but concurred, as has been seen, on other matters. They believed "We should modify the District Court's decrees by making the entire amount of the fines payable conditionally." The opinion expressed agreement with the majority modification of the larger fine, since coercion was its purpose but took exception to the unconditional phase of the fines as punishment for criminal contempt, since "the least possible power

adequate" is the norm. *Anderson v. Dunn,* 6 Wheat (U. S.) 204, 231, 5 L. Ed. 242, 249, (1821); *Re Micheal,* 326 U. S. 224, 227, 90 L. Ed. 39, 32, 66 S. Ct. 78 (1946). These cases of contempt punishment support the rule enunciated. Intent and motive, *Cooke v. United States,* 267 U. S. 517, 538, 69 L. Ed. 767, 774, 45 S. Ct. 390 (1924), of the contemner are relevant, the opinion maintains, and the defendants acted on the advice of counsel. "Many lawyers," it was pointed out, "would have so advised them." On these grounds the jurists disagreed with the majority.

Mr. Justice Murphy dissented from the opinion of the Court as to the imposition of any fines. The position that the injunction issuing without jurisdiction there was no contempt of court dispenses with the possibility of a fine.

Mr. Justice Rutledge also dissented from the opinion of the Court as to the imposition of the fines. His argument was that there being criminal and civil contempt there ought to have been allocation of the two fines in specific sums. It was noted that the War Labor Disputes Act, authorizes a maximum fine of $5,000 as criminal punishment for the act in question. Such lump sums in fines, at the court's discretion, are thought to be foreign to our system, and, the jurist maintains, "to the extent we allow this will we have adopted the continental tradition of the civilians and rejected our own." Under the Constitution all civil and criminal proceedings and fines must be kept separated, Mr. Justice Rutledge concluded. Therefore he refused subscription to the fine as held.

These then are the opinions of the nine jurists of highest federal rank on whether the fine imposed was correct as modified. Five answered "yes," four answered "no." The majority found and it is therefore presently law, that fines of these proportions, on these facts, assessed under these circumstances, are as modified, valid. This was the conclusion from the premises that the defendants disobeyed an injunction and that they were thus in contempt of court. Therefore the judgment of the lower court, as modified, was affirmed.

Despite the outcries of the special interest representatives who stand to directly gain or lose by this decision, it is neither providential nor catastrophic. However, the case does have legal and social significance as an indication of things to come from the monumental problem of labor-industry-government relationships. In this instance, the work stoppage was of such nature and proportion as to be intolerable. On the one hand, indefinite continuation of the strike would have brought a national economic collapse; while, on the other hand, no government can morally deprive the worker of his ultimate bargaining weapon: the basic right to strike. Perhaps the best solution to the problem lies in strengthening the bargaining hand of those who labor in essential industries and public utilities, and thus eliminating, in many instances, the necessity for a resort to strike. On such a basis, a commensurate abstinence by the laborer from his use of the right to strike would be logical, expectable and profitable. Legislative restrictions upon exercise of the right to strike, can be justified morally only if there is compensation for the consequent injury to the laborer's bargaining position. Any such preventive statute must be moulded in view of certain facts which are philosophical truths, and, in the United States, legal dogma. Prime among these is that the right to life necessarily implies the right to the opportunity for reasonable security. Neither the industrialist nor labor can be deprived of this minimum. It must be recognized that the laborer and the industrialist can gain such security only as the result of collective bargaining based on a realization by each that the other has fundamental rights as a rational being. Where such mutually profitable bargaining is impossible, the government must act according to the mandate of the founders of our political system, that government is to protect the rights of all only through protecting the rights of each, as a guide and a goal.

John E. Cosgrove.

LABOR LAW.—*Packard Motor Car Co. v. National Labor Relations Board*, ...U. S....., 67 S. Ct. 789, ...L. Ed..... (1947). A foreman is not automatically deprived of the right to collective bargaining to which employees are entitled under the National Labor Relations Act because he has joined the ranks of front line management. The Act's definition of "employer" does not include foremen.

This case involves a petition by the NLRB to enforce an order issued against the Packard Motor Car Co., wherein the foreman's League for Education and Assistance and another intervened. To review a judgment decreeing enforcement of the order, 157 F. (2d) 80 (C. C. A. 6th, 1946), the Packard Co. brings certiorari.

Since 1937 the 32,000 workmen employed by the Company have been represented by the United Auto Workers of America affiliated with the CIO. These employees are supervised by approximately 1,100 employees of foreman rank; this latter group consists of about 125 "general foremen," 643 "foremen," 273 "assistant foremen", and 65 "special assignment men." Their function is that of corresponding supervisory personnel in industry generally. They are at different levels in the plant's hierarchy. but collectively they carry the responsibility of maintaining the quality and quantity of production, subject to overall supervision of the management. They can initiate recommendations for promotion, demotion, and discipline, but the hiring and discharging of employees is done by the public relations department.

These foremen determined to organize as a unit of the Foreman's Association of America, an unaffiliated organization which represents supervisory employees only. The Board decided that these various supervisory employees constitute a unit appropriate for the purpose of collective bargaining within the meaning of sec. 9(b) of the Act, and the Foreman's Association was certified as the bargaining representative, 61 N. L. R. B. 26 (1946). The Company refused to bargain with the union, charging that the foremen were not employees entitled to the advantages of the Act. After a hearing on a charge of unfair labor practice, the Board issued a cease and desist order. The Company's challenge to the validity of the order engendered these proceedings.

The Court, by Mr. Justice Jackson, maintained that the determination of what unit is appropriate for bargaining involves a large measure of discretion, and that the decision of the Board, if not final, is rarely to be disturbed. This measure of discretion is expressly allowed the Board by the Act, N. L. R. A. § 9(b), 29 U. S. C. A. No. 159(b) (1935). The Court ruled that under sec. 10(e), the Supreme Court's power of review is circumscribed if the findings of the Board as to facts are supported by evidence, and that therefor the Court has power only to determine if substantial evidence exists to support the Board, or if its order has overstepped the law.

As thus viewed, the question presented in the case was quite simple: Are supervisory personnel "employees" under the National Labor Relations Act so as to be entitled to the benefits accruing to employees under the Act? The majority of the Court felt that the purpose of the provision in the Act including in the term "employer" any person acting in the interests of an employer, directly, or indirectly, N. L. R. A. § 2(2), 29 U. S. C. A. § 152(2) (1935), is to render employers responsible in labor practices for acts of any persons performed in their interests. Congress was creating a new class of wrongful acts, to be known as unfair labor practices, and to assure adaption by the courts of the maxim *respondeat superior* this provision was inserted.

Under this view, that provision could not be construed to deny the organizational privilege to foremen because they acted in the interests of their employer. The opinion states that the point that these foremen are employees both in the most technical sense at common law as well as in the ordinary acceptance of the

term "is too obvious to be labored." Granted that the foreman must faithfully serve his employer in maintaining a production schedule, nevertheless in his relation to his employer and with reference to his own wages and conditions of labor, he is an "employee", and should be entitled to the benefits of the Act. Furthermore, the Act provides "The term 'employee' shall include any employee . . . ," and, said the Court, it is for Congress, and not for the Supreme Court, to create exceptions or qualifications at odds with its plain terms.

The Court found that clearly there was substantial evidence to support the Board's decision that foremen constitute an appropriate unit for the purposes of bargaining.

The four justices dissenting, Douglas, the Chief Justice, Burton and Frankfurter, took the view that the term "employee" read in opposition to "employer" as it is in the Act, could not include supervisory personnel. Other related legislation, Railway Labor Act, 44 Stat. 577, 45 U. S. C. A. § 151 (1926); Merchant Marine Act, 52 Stat. 953, 46 U. S. C. A. § 1101 *et seq.* (1936), has defined "employee" to include "subordinate official," and silence on the part of Congress in the legislation at hand was interpreted as legislating against the activities of foremen, not on behalf of it.

The decision in this case is particularly important because it will close a long record of vacillation of the Board. The Board had held that supervisory employees may organize. *Union Collieries Co.*, 41 N. L. R. B. 96, 44 N. L. R. B. 165 (1942). But then it held that there was no appropriate bargaining unit for such organization. *Maryland Drydock Co.*, 49 N. L. R. B. 733 (1943). This removed one of the means to the group's objective, by denying it the support of the Act. Here, the Board concluded that an organization of supervisory personnel is entitled to the Act's protection.

It is important to note that throughout this period of indecision the Board at no time held that the supervisors could not organize. The question has been solely whether the organization was entitled to recognition as a bargaining unit so that an employer would be liable for unfair labor practice if he refused to bargain. This adjudication should settle the question, and in so doing, promote stability and harmony in the Board's decisions.

The contention presented in the dissent that a union of vice presidents would have to be recognized as a collective bargaining agency seems to be an attempt to read into the decision more than is determined there. The majority opinion points out that there are obvious and relevant differences between the foremen of this company and corporate officers elected by the board of directors.

The decision of the lower court was cited with much favor in *American Steel Foundries v. NLRB,* 158 F. (2d) 896 (C. C. A. 7th, 1946). That case, now in the Supreme Court, involved very similar questions arising when two supervisory employees were discharged for participation in a foremen's union. That court adopted *in toto* the reasoning and decision of the lower court in this case. This would appear to illustrate an eagerness on the part of the courts to effect a settlement of the problem presented in such cases, and an accord to settling them in the manner done here.

B. M. Apker.

PROTECTION OF PERSONAL RIGHTS BY INJUNCTION.—*Kenyon et al. v. City of Chicopee et al.*, ...Mass....., 70 N. E. (2d) 241 (1946).—The principle that equity will protect only property rights is a sweeping generalization which, when strictly construed, occasionally leaves the injured party without an adequate remedy at

law. The nature of this case illustrates what is meant by a cumbersome legal remedy, adequate in theory, impractical in fact.

An appeal was brought by the plaintiffs from a final decree dismissing their bill for an injunction after the defendants' demurrers had been sustained. The plaintiffs, members of "Jehovah's Witnesses," had made arrangements for a series of public lectures to be delivered in the city. In order to invite attendance they advertised the lectures by distributing leaflets to passers-by on the sidewalks of Chicopee. While in the act of advertising, two of the plaintiffs were arrested on grounds that their acts violated a city ordinance. They were detained in jail until bail could be arranged. Then they were tried, found guilty, and fined. Subsequently other members of the group were arrested. On each occasion plaintiffs suffered the same inconvenience. Future arrests were threatened.

The city ordinance provided that no person "shall . . . distribute or cause to be distributed or thrown, any handbills, circulars, pamphlets, advertisements or other papers, except newspapers . . . ."

Plaintiffs prayed for an injunction restraining defendants, including the city and several of its officers, from depriving them of "their right of freedom to worship Almighty God, freedom of speech, of press and of assembly."

The Supreme Judicial Court did not hesitate to declare the ordinance unconstitutional in so far as it forbade the distribution in public places of advertisements of religious meetings. Constitutional guarantees of liberty under the Fourteenth Amendment had been ruled on so many times in the past that it was reasonable to assume, as did the plaintiffs, that the arrests were part of a conspiracy among the defendants. It is noteworthy, too, that the United States Supreme Court ruled as recently as 1943 that a municipal ordinance forbidding the distribution of handbills on city streets violates the constitutional safeguard of freedom of the press and, in the case of handbills containing an invitation to participate in a religious activity, the constitutional guarantee of religious freedom. *Jamison v. State of Texas,* 318 U. S. 413, 63 S. Ct. 669, 87 L. Ed. 869 (1943). Most surprising, however, is the evidence of indifference by the municipal legislative body to a similar case decided within the same jurisdiction. *Commonwealth v. Anderson,* 308 Mass. 370, 32 N. E. (2d) 684 (1941); cf. *Commonwealth v. Pascone,* 308 Mass. 591, 33 N. E. (2d) 522 (1941). In the case against Anderson it was held that members of "Jehovah's Witnesses" could display placards in Boston without a license to do so.

Whether a person is to suffer the inconvenience and expense of litigation even after the issue has been well settled by the courts, or whether equity courts will safeguard the rights of the individual against the utter disregard for the law by public officials, is the question which faced the court in the present case. Of course, the question specificially involved equity jurisdiction over personal rights.

Two of the defendants based their demurrers on the failure of the plaintiffs to allege that a property right was being jeopardized. To reach a decision concerning this defense, the court felt that a brief review of equity jurisdiction was required.

It is believed that the rule that equity will not protect personal interests is the result of Lord Eldon's dictum in *Gee v. Pritchard,* 2 Swans. 402, 36 Eng. Rep. 670 (1818). In that case it was said that literary property might be protected in equity. However, this privilege did not extend to instances of libel of the person for neither was a property right involved nor was it the function of equity to "exercise a power of preventive justice." *Brandreth v. Lance,* 8 Paige Ch., N. Y. 24, 34 Am. Dec. 368 (1839). Similarly, "The court has no jurisdiction . . . to enforce the performance of a moral duty, except so far as the same is concerned with rights to property, ..." *Chappell v. Stewart,* 82 Md. 323, 33 A. 542, 37 L. R. A. 783, 51 Am. St. Rep. 476 (1896).

However, the court pointed out that the protection of property rights included the prevention of unlawful interference with one's right to carry on business. The publication of false statements in order to induce customers to discontinue their patronage of the plaintiff is illustrative of this rule. *Lawrence Trust Co. v. Sun-American Pub. Co.,* 245 Mass. 262, 139 N. E. 655 (1923). The damage caused to property rights is sufficient reason for equity to take jurisdiction. *Menard v. Houle,* 298 Mass. 546, 11 N. E. (2d) 436 (1937). Furthermore, the right of a workingman to obtain employment has been held to be a proper cause for equitable safeguards. *Cornellier v. Haverhill Shoe Manufacturers' Assoc.,* 221 Mass. 554, 109 N. E. 643, L. R. A. 1916 C, 218 (1915). In a strict sense the right to work is probably not a property right. Certainly, it is with greater facility that we argue that there is a property right in private letters. Equity has on numerous occasions upheld this interest. *Baker v. Libbie,* 210 Mass. 599, 97 N. E. 109, 37 L. R. A. (N. S.) 944, Ann. Cas. 1912 D, 551 (1912), and cases cited.

The review of the authorities which held that a property right, no matter how insignificant it might be, was indispensable before equity would intervene did not convince the court in the instant case. Justice Qua said: "We believe the true rule to be that equity will protect personal rights by injunction upon the same conditions upon which it will protect property rights by injunction."

Equity, of course, will not act if there is an adequate legal remedy. In the settlement of this problem the justices were certain that the bringing of successive actions for malicious prosecution or false arrests would be a great hardship to the plaintiffs. Then, too, it would not be difficult for the court to enforce its decree. A fundamental right, that of freedom of religion, had been violated by municipal officers who had acted under a clearly unconstitutional ordinance. An injunction against further molestation of the plaintiffs would create no problem of enforcement of the decree. Again the justices noted how ineffective legal remedies would be. Cases were cited which upheld the protection of property rights in equity when law courts could give but imperfect assistance. These were found to be comparable with the present case. For example, a plaintiff whose name was omitted from what purported to be a complete list of those engaged in a certain type of business suffered irreparable and immeasurable damage. Equity intervened. *Davis v. New England Ry. Pub. Co.,* 203 Mass. 470, 89 N. E. 565, 25 L. R. A. (N. S.) 1024, 133 Am. St. Rep. 318 (1909). In brief, a bill in equity will lie to restrain public officers from inflicting damages to business or other property of a person under color of a statute or ordinance which is unconstitutional or otherwise void. *Mueller v. Commissioner of Public Health,* 307 Mass. 270, 30 N. E. (2d) 217 (1940).

It was held, therefore, that it was not necessary for the plaintiffs to allege or prove that a property right was involved. The demurrers of two of the defendants were then overruled.

The remaining defendants, including the city, demurred for the additional reason that there was want of equity in the case. The question of an adequate legal remedy was readily disposed of in support of the plaintiffs. Aside from this defense, the municipal officers argued that equity will not interpose to prevent prosecution in the criminal courts.

Although the court conceded that this is ordinarily true, the justices pointed out that a chancery court will restrain prosecutions for crime where the protection of rights which equity recognizes and protects is dependent on equitable relief. *N. Y., N. H. and H. R. R. v. Deister,* 253 Mass. 178, 148 N. E. 590 (1925); cf. *Commonwealth v. Stratton Finance Co.,* 310 Mass. 469, 38 N. E. (2d) 640 (1941).

Therefore, the interlocutory decrees sustaining the demurrers were reversed as was the final decree.

Many courts have suggested that there is no reason why property rights alone may give jurisdiction to courts of equity. The modification of the rule had been