THE KANSAS COURT OF INDUSTRIAL RELATIONS

by

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PREFACE

The problem of an adjustment between labor and capital has been of prime importance for many years. The difficulties which have arisen have not only concerned the two parties involved but also the public. A strike such as was threatened by the railroad brotherhoods in 1916 (a result of which was the passing of the Adamson law) would be felt throughout the United States. It must not be concluded that all strikes were unjust and that laborers were unreasonable in their demands, for in many cases they were striving for what they rightfully earned.

The cost of living was rising before the World War and with its outbreak it increased rapidly. Wages did not keep pace with the rapid rise, and laborers tried by concerted action to obtain not only more pay but more desirable working conditions. Even more labor unrest followed the war. Many people turned against the working man and demands were made for legislation to control such matters. As a result of a coal strike in 1919, Kansas passed a law creating a court designed to settle industrial disputes.

Much has been written both for and against the Kansas Court of Industrial Relations. Henry J. Allen in his book, The Party of the Third Part, does much to praise the tribu-

nal but fails to bring out any weaknesses. Two years later, in 1922, John H. Bowers in The Kansas Court of Industrial Relations confirms the position taken by Allen but he, too, fails to point out any defects. Many articles have been written criticising the act. In this thesis an attempt has been made to study the inception, operation, and progress of the tribunal, along with the controversies which arose concerning it. The records of the institution have been the source of much information as have the reports of the state and the United States supreme courts.

I am greatly indebted to Dr. Fred A. Shannon for his many helpful suggestions and criticisms in the preparation of this thesis. Thanks are also due the librarians of Kansas State College Library and Carnegie Free Public Library, Manhattan, who have aided me in collecting the material. The information in this work has been gathered from the above mentioned institutions and the office library of Ira Snyder, an attorney of this city.

THE FORMATION OF THE COURT

In November, 1919, a nation-wide co l strike occurred. The coal miners of the United States were well organized, except in the lower Appalachian region, and when the order was given by the officials of the United Mine Workers of America the adequate production of coal ceased. The country was faced with the proposition of winter coming on in the midst of a shortage of fuel. The problem in Kansas was much the same as in other states that relied upon coal. In a short time schools were closed, industries shut down, stores decreased their hours, and there was suffering in homes and in hospitals because of lack of heat.[1]

The supreme court of Kansas was asked by the governor to turn over the mines of the state to a receiver. The petition was granted and the property of the mines was placed under the direction of the state with Governor Henry J. Allen in charge. This action was taken under the police powers of the state to protect the public health and safety.

The governor then spent a week holding public meetings. He urged the miners to go back to work under state supervision pending the settlement of the controversy which was

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1 Henry J. Allen, The Party of the Third Part (New York, 1931), p. 51.

then being carried on by miners' officials and operators at Washington. Assurance was given them that whatever benefits in the way of wage increase should finally be agreed upon at Washington would be paid to them from their resumption of work. Furthermore, if no agreement was arrived at in Washington by the first of January, the state would then take up the matter and an agreement would be reached. All benefits would date from the time they started work.[2]

By the end of the week it was apparent that the miners would not return before the matter was settled. So the governor issued a call for volunteers to mine coal. Within a few days several thousand Kansans had offered their services, and the state began operations.[3] A regiment of the Kansas National Guard was placed on duty at the mines. General Wood, of the regular army, sent six hundred troops to form an encampment there, but to take no part in the activities unless it became necessary to place the district under martial law. Fortunately there was no general disorder and the troops were not needed.[4]

In January, 1920, while the state was still operating the coal mines, Governor Allen called the legislature in special session, the purpose being to enact some legisla-

2 Ibid., pp. 51-52.
3 Ibid., pp. 53-54.
4 John H. Bowers, The Kansas Court of Industrial Relations (Chicago, 1923), p. 38.

tion that would remove the possibility of such strikes in the future.[5]

The bill, which later became the Industrial Court Act, was prepared in conference with the judiciary committee of both the house and senate before the legislature assembled.[6] In October, 1919, almost every detail of the measure had been concretely stated in a public discourse at a Rotary Club luncheon given at Topeka. With much care the bill was drawn up, using the Rotary speech as a foundation. After the formation of the first draft, it was presented to some of the prominent lawyers of the state for criticism. The original was changed but slightly and it was then placed before the two houses of the legislature.[7]

In the senate the bill was referred to the judiciary committee (composed of lawyers) which considered it for several days. Some minor changes were made, but none of the fundamental features was eliminated or materially altered. The house of representatives went into a committee of the

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5 It is intimated in Allen's book, The Party of the Third Part, although there is no direct statement to that effect, that the troops were asked for by Allen himself.

6 Allen, op. cit., p. 69. The conference included, beside the two judiciary committees, Governor Allen, William L. Huggins, and some prominent lawyers.

7 William L. Huggins, Labor and Democracy (New York, 1922), pp. 44-45. At the luncheon, Huggins gave the main talk which contained the germ of the bill. It was a result of the resolution adopted by the International Association of Rotary Clubs, to discuss in local meetings questions affecting the relations between employer and employee.

whole, invited in the senate, and held public discussions. Representatives of the employers, employees, and the general public were invited to participate.[8]

All the union-labor leaders announced that they would oppose the measure by order of their national organizations.[9] Frank P. Walsh, representing the railroad brotherhoods, was chosen leader of the opposition, and spent one entire day speaking against the passage of the bill. In his talk Walsh called attention to the great contributions that had been made to society by organized labor. All the progress made by the working man, he said--regarding better living conditions, more desirable social relationships, and more interest shown in the welfare of the community as a whole--had come largely as a result of the efforts of labor unions. He also stated that it was the one body in the United States that acted, not only in its own organization, but in its relations to the state and to the public as well, with the greatest amount of altruism. The passage of the measure meant the striking down, the destruction of all labor movements in Kansas. Walsh also expressed the opinion that in its essence the bill was unconstitutional; it was in conflict with the thirteenth amendment of the federal constitu-

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8 Ibid., pp. 45-46.
9 Allen, op. cit., p. 69.

tion, by imposing involuntary servitude upon the laborers in the specified industries.[10]

William L. Huggins and William Allen White were the principal speakers for the passage of the bill. Huggins stated that the object of the court was not to destroy labor unions nor force men to work but was to do away with the losses caused by strikes and economic warfare. It would foster the settling of difficulties by employer and employee outside the court.[11] White was much in favor of the measure. He said the object was not to throttle labor and capital in Kansas but to emancipate them from their own strangle hold upon each other, and to establish an equitable and living relation between them.[12]

The discussions and hearings on the bill lasted for several days. It was then voted on by the two houses and passed. Seven votes in the house and five in the senate were cast against its passage.[13] It became a law January 24, 1920, 17 days after it was introduced in the two houses.[14]

The government had provided, by law, the peaceful and

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10 Speech of Frank P. Walsh as cited in ibid., pp. 70-78.

11 Speech of William L. Huggins as cited in ibid., pp. 80-89.

12 Speech of William Allen White as cited in ibid., pp. 89-91.

13 The Kansas Court of Industrial Relations (Topeka, 1921), p. 8.

14 Laws of Kansas, Special Session, 1920 (Topeka, 1920), p. 47.

orderly adjudication of almost every human controversy except that pertaining to industrial disputes. It had been left to be solved by the parties involved, without regard for the public. The Kansas law favored arbitration, it encouraged the employer and employee to settle their difficulties privately, however, "the Kansas Court of Industrial Relations is emphatically not an arbitration tribunal and the entire act is based upon the principal of adjudication--not arbitration."[15]

It was intended by the act that neither organized labor nor capital should start a private war against the economic welfare of the public.[16] That was the most comprehensive attempt yet made to protect the public in cases of industrial disputes likely to affect its interests.[17] There had been some attempts at state arbitration, but no enactment so fundamental or drastic as that had ever before been adopted in the United States. "Almost everything will depend upon the way in which the three members of this Court of Industrial Relations apply the law as emergencies arise."[18]

The Public Utilities Commission was abolished by the

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15 Huggins, op. cit., pp. 13, 43-44.

16 "The Court of Industrial Relations," in Review of Reviews, Vol. 61 (March, 1920), p. 294. By war is meant the ceasing of production of essentials of life.

17 "Kansas Court of Industrial Relations," in Monthly Labor Review, Vol. 10 (March, 1920), p. 809.

18 "The Court of Industrial Relations," in Review of Reviews, Vol. 61 (March, 1920), p. 294.

statute,[19] the court taking over its activities. The following industries were declared affected with a public interested and subject to supervision by the state: (1) the manufacture of food products; (2) clothing and wearing apparel; (3) mining and production of fuel; (4) the transportation of food; and (5) public utilities and common carriers. It was declared that they must operate with reasonable continuity and efficiency. The employees were to receive a fair wage and have healthful working conditions.

The strike, lockout, boycott, picketing, and other forms of discrimination were declared unlawful. Authority was given to the court to adjust disputes, thereby making unnecessary the above actions. If trouble occurred and could not be righted, the industrial institution could take over and operate the industries concerned.

In addition to those powers, original investigations could be made, and all industrial controversies came under the control of the tribunal. Action was to be taken before a court of competent jurisdiction to compel obedience of the orders issued. Penalty clauses were inserted in the act, and means of enforcing them were stated.

The court was composed of three judges, appointed by the governor, by and with the consent of the senate. In ad-

19 Laws of Kansas, Special Session, 1920 (Topeka, 1920), p. 37.

dition provisions were made for clerks and whatever help would be necessary to carry on its activities. Annual reports were to be made. And finally, a clause was inserted stating that if any part of the act was found unconstitutional, the other provisions were to have the effect of an independent statute.[20]

In the 1921 session of the legislature certain changes were made in the law. A Public Utilities Commission was established, the intention being to recreate and re-establish the one existing prior to 1920. It took over all its former duties in addition to new ones imposed by the act.

The Industrial Welfare Commission and the Commissioner of Labor and Industry were abolished at that time. Their duties were conferred upon the industrial court.[21] No other changes were made until 1925.

CASES BEFORE THE COURT

The court was organized and began operations on February 2, 1920. Its first task was the reorganization and rebuilding of the Public Utilities Commission. New equipment and working quarters were needed. The maximum salaries were

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20 Ibid., pp. 34-47. The main controversial parts of the law are given in the appendix.

21 Laws of Kansas, 1921 (Topeka, 1921), pp. 340-341; 414-417.

too low to retain a competent accountant and other help. The whole commission needed reorganizing to make it efficient.[1]

There were 28 industrial cases before the tribunal during the first 11 months of its existence. Of this number 25 were filed by labor,[2] one by capital, and two were original investigations.[3] No attempt will be made to study all the cases brought before and decided by the court. Only a few representative ones will be analyzed. The disputes considered by the tribunal may be grouped under four general heads: (1) those relating to wages; (2) those relating to working conditions and hours of labor; (3) those to modify contracts; (4) those regarding limitation or cessation of production. In several instances the first and second classifications were connected. In addition to these headings one might be added called original investigations.[4]

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1 First Annual Report of the Court of Industrial Relations, State of Kansas (Topeka, 1921), p. 3. Future references to the reports of the court will be made as First Annual Report of Court, Second Annual ..., etc. Much of the time and energy of the court during the first year of its existence was spent dealing with public utilities. The matters were handled much the same as the commission had handled them. That phase of the court's activities will not be considered here; only industrial matters will be discussed.

2 The disputes submitted by labor were done so by individual employees, and not by the unions. Most unions refused to recognize the existence of the court. That was Howat's policy.

3 Ibid., p. 5.

4 Second Annual Report of Court, pp. 13-15.

The first case before the court was one relating to wages and hours of labor. The complainants were members of the Local Union No. 841 of the International Brotherhood of Electrical Workers, the respondent, the Topeka Edison Company. The employer had offered a 2½ cents per hour rise in wages which the workers refused. They insisted upon a 10 cents per hour rise and a basic eight hour day. It had been the practice to count the eight hours from the time the men actually began work until they quit. The time spent in getting tools and material in the morning and returning them at night was not considered.

During the trial an agreement was reached by the parties concerning the eight hour day. It was satisfactory to the court. The workmen were either to collect the tools and material needed and go to the place of work on their own time and return to warehouse, putting away tools and material on the time of the company or vice versa.

What was termed a fair minimum wage was established and ordered by the court. It was not that offered by the company, nor was it the amount asked by the workers. An increase of 7½ cents per hour was made. The basic eight hour day was established with time and one-half for overtime and double time for Sunday work. Those orders were to last for six months.[5]

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5 First Annual Report of Court, pp. 19-25.

The question that arises after reading the decision and orders is: what is a fair wage and how is it determined? The judges of the court in determining the matter considered the seven points used by the congress of the United States in railroad regulation: (1) The stipend paid for similar kinds of work in other industries; (2) the relation between the remuneration and the cost of living; (3) the hazards of the employment; (4) the training and skill required; (5) the degree of responsibility; (6) the character and regularity of the employment; and (7) inequalities of increases in pay or of treatment, the result of previous wage orders or adjustments.[6] To those seven points the court added one more, (8) the skill, industry, and fidelity of the individual employee.

A living wage was defined as "... a wage which enables the worker to supply himself and those absolutely dependent upon him with sufficient food to maintain life and health; with a shelter from the inclemencies of the weather; with sufficient clothing to preserve the body from the cold and to enable persons to mingle among their fellows in such ways as may be necessary in the preservation of life."[7] In the act creating the court was the clause that the worker must receive a fair return for his labor. So the proposition of

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6 as given in Ibid., pp. 22-23.
7 Ibid., p. 23.

what constituted such a return was before the court.

After considering the eight points enumerated above, the court defined a fair wage for skilled workers as "... a wage which will enable them by industry and economy not only to supply themselves with opportunities for intellectual advancement and reasonable recreation, but also to enable the parents working together to furnish to the children ample opportunities for intellectual and moral advancement, for education, and for an equal opportunity in the race of life. A fair wage will also allow the frugal man to provide reasonably for sickness and old age."[8] In that manner the court determined the amount to be paid in later cases coming before it.

There were several disputes similar to the one above brought before the court. In the majority of these an increase in pay was granted and the hours of labor established. In some a rise was denied and the existing standard continued. And in the case of Employees vs. The Topeka Railway Company, the wages of some were reduced and others increased.[9]

The Fort Scott Sorghum Syrup Company vs. Employees was the first case brought before the court by an employer, the

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8 First Annual Report of Court, p. 24.
9 Second Annual Report of Court, pp. 13-15.

object being the abrogation of its contract with the local union of the International Brotherhood of Firemen and Oilers. The company desired to shut down all but one boiler, and have the chief engineer and his assistant run it during the slack period.[10] About two hours daily would be required to take care of that work. The question involved the interpretation of the "closed shop" clause of the contract. It was maintained by the union that at least one fireman must be retained.[11]

Between 30 and 90 days in the fall the sorghum company ran at full capacity, crushing cane and refining juice. During this rush season about 100 men were employed, while only a very few were needed the remainder of the year. On July 15, 1920, a contract was entered into with the brotherhood, reaching a "closed shop" agreement whereby only union men would be used to fire boilers.[12]

After the rush season of 1920 the plant did only about four or five per cent the volume of business of an average year. Expenses as a result had to be reduced to a minimum. The last two firemen were discharged; the engineer and assistant engineer agreed to fire the boiler during their respective shifts. A protest was made by the union, citing

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10 The New York Times, December 29, 1920.
11 Ibid., February 10, 1921.
12 In the Court of Industrial Relations (Topeka, 1921), pp. 3-4.

the "one-man, one-job" feature of the contract. After due consideration was given by the court an order was issued stating the contract should be modified so one man could work at two or more jobs.[13] This instance involved no wage controversy, but in other cases pertaining to modification of contracts, both wages and working conditions were considered and orders given concerning them.[14]

The Joplin and Pittsburg Railway Company, an electrical interurban concern engaged in business as a common carrier, was a party to eight disputes brought before the court in 1920.[15] They were all brought by the employees, involving wages, hours of labor, and new contracts. Instead of acting in one group, separate cases were instituted by trackmen, foremen of trackmen, linemen, substation operators, and others.[16] Since the company operated in Missouri as well as in Kansas, the court was somewhat handicapped because of lack of jurisdiction outside the state. The car operators would be running between points in Kansas and Missouri, so there was the question as to how they should be handled. In some instances an increase in wages was granted and in others denied, but in all cases the order applied only to such

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13 Ibid., pp. 4-7.
14 Second Annual Report of Court, pp. 13-15.
15 First Annual Report of Court, pp. 17-18.
16 Ibid.

employees as were bona fide residents of Kansas and whose work was located wholly or principally within this state.[17]

In John S. Zinn et. al. vs. The Topeka Railway Company, permission was obtained to raise the fare in order to meet the increase in wages allowed. A fair return to capital was considered but a just remuneration to labor was placed before dividends to the investor. The company had to pay a fair wage whether or not it made a profit.[18]

The first original investigation conducted concerned the milling industry. Information was received, in an informal way, by the court, that the flour mills in Topeka were reducing their production. Those millers were cited to appear and show cause why they should cut down or cease production. This action was taken under the power to investigate matters affecting the production of food.[19]

Several sections of the law were involved in that case. Flour milling was an industry "affected with a public interest," and should operate with reasonable continuity. However, it was influenced by changes in seasons, market conditions, and causes inherent in the business, so it could ask the court to fix rules to govern its operation in order to secure the best results for the public welfare.[20]

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17 Ibid., p. 31.
18 Ibid., pp. 29, 48-52.
19 Ibid., pp. 66-67.
20 Ibid., pp. 66-68.

Conditions of milling industry of the entire state were investigated, and it was found that the mills were running at about 60 per cent capacity or between 12 and 15 hours daily. It was also found that no emergency existed, making it necessary for the mills to run full capacity. At the conclusion of the investigation, a committee of three was appointed to formulate rules and regulations for the milling industries and submit them.[21] The committee reported that a flour mill could not shut down except for an unavoidable reason without permission of the court; if the production is lowered to less than 75 per cent of regular capacity for more than 14 days, permission must be obtained. And the employees must be paid as if on duty, or other employment furnished them.[22] On the basis of those recommendations an order was issued; it was suspended, however, late in 1921.[23]

Production and distribution of coal in Kansas was the field for another original investigation. A very exhaustive research was made; the state attorney-general cooperated with the court in conducting the investigation. The purpose was not to issue orders controlling those activities, but to make public those facts so the people could more intelligently purchase their coal. It would also put a stop to

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21 Ibid., pp. 66-71.
22 The New York Times, February 26, 1921.
23 Second Annual Report of Court, p. 15.

profiteering. The main idea was to be of service to the people in general.[24] However, several conditions were uncovered which needed righting, so three orders were issued affecting working conditions, two of which were satisfactory, but the one concerning the "check-off" system was satisfactory to neither party.[25]

Growing out of the coal investigation was the first attempt made to test the constitutionality of the industrial court act. When the court was created it was given power to issue summons and subpoenas and compel the attendance of witnesses. To help in gathering the information, the district court of Crawford county issued a subpoena for Alexander Howat and other members of the district board of District Number 14 of the United Mine Workers of America. They refused to obey the order and were then tried in the district court for contempt. They were found guilty and sentenced to jail until such time as they would be willing to appear before the industrial court and testify as witnesses. Appeal was then made by them to the supreme court of Kansas.[26]

Howat denied the violation of any lawful order of district court, and also said the industrial court act was

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24 First Annual Report of Court, p. 6.

25 Ibid. The "check-off" system is the rule by which the employers check off from the miners' pay the monthly dues, the special assessment, and the fines imposed by the miners' unions.

26 Second Annual Report of Court, p. 8.

unconstitutional.[27] The supreme court in deciding that case said: "The legislature may create an administrative body and empower it to investigate conditions existing in the mining industry, make findings and reports, and establish rules with reference to the operation thereof designed, among other powers, to promote the health and safety of employees and the continuity of production, so long as the regulations are reasonable and not upon some special grounds obnoxious to constitutional provisions."[28] It stated further that the court had a legal existence because it was the successor of the Public Utilities Commission, if for no other reason. Also in a case of that order the rule was that a part of a statute, unobjectionable in itself, may be enforced, although another part is unconstitutional, if the void part was not the inducement for enactment of the rest. With that act the express declaration, disposed of all doubt of the intent, and the courts were required to give effect to all portions not violating the constitution.[29]

"The only question involved in the present proceeding is whether the defendants may be required to attend as witnesses before the court of industrial relations...." The court, despite its name, was an administrative body, not

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27 The State ex rel. vs. Howat et. al., 107 Kansas, 425
28 Ibid., p. 423.
29 Ibid., pp. 426, 428.

strictly a judicial tribunal, and was therefore incapable of enforcing its own processes. The act made proper provision for enforcing those processes by an appeal to a court of competent jurisdiction. After considering this case the judgment of the lower court was affirmed.[30]

About the same time as the charges were brought against Howat, Jerry Scott was charged by the state with violating the criminal provisions of the law. He had conspired with others to quit work and had engaged in what was known as the "outlaw" switchmen's strike in Kansas City, Kansas.[31] The district court sustained a motion, brought by Scott, to quash the information, on the ground the criminal provisions of the law were unconstitutional, because the title of the act was insufficient. The state constitution stipulated that "no bill shall contain more than one subject, which shall be clearly expressed in its title." The state appealed to the supreme court.[32] In deciding that case the court brought out that a "...statute is of course to be upheld unless it is clear that the constitution has been violated." It was found that the constitution had not been violated, so far as concerned that case, and the title of the act did include power to use such information as that in question. Conse-

30 Ibid., pp. 426, 429, 434.
31 Second Annual Report of Court, p. 9.
32 The State vs. Scott, 109 Kansas, 166.

quently the judgment of the lower court was reversed and the cause was remanded for further proceedings in accordance therewith. If Scott was then convicted, he could upon appeal raise any question presented by his motion to quash, other than the insufficiency of the title of the act.[33]

After the creation of the court, the constitution and by-laws of District Number 14 of the United Mine Workers of America were amended to impose a fine of $50 for each offense on any member, committee, or local officer who would be privy to referring a controversy to the court of industrial relations. The amendment also imposed a fine of $5,000 on any district officer who would be a party to the reference of any grievance to that court. Those amendments enabled Howat and his associates to impose their will upon the mine workers.[34] After that action was taken, Howat publicly announced that he proposed to fight the law, regardless of consequences, to the end that the force and effect of the statute might be nullified. The first step was to be the calling of a strike sometime early in April.[35] An injunction against Howat was obtained by the court of industrial relations to prevent the calling and putting into effect a strike in violation of the industrial act. On Sep-

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33 Ibid., pp. 167, 169.

34 The State ex rel. vs. Howat et. al., 109 Kansas, 379-380.

35 Ibid., p. 379.

tember 14, 1920, the injunction was made permanent.[36] In spite of the restraining order a walk out occurred.[37] The district court found Howat and other members of the district board of the union guilty of contempt. They were sentenced to one year in the county jail and directed to pay the costs of prosecution. The case was appealed to the state supreme court on questions of: (1) regularity of the contempt proceedings; (2) relating to the validity of the court under the constitution of Kansas; and (3) the constitution of the United States.[38] The supreme court pronounced only upon the first question, saying that if the injunction was erroneous, it was subject to correction by appeal. And disobedience to the order constituted contempt.[39] Even though the judgment of the district court was affirmed, it was stated that an injunction should not be used in disputes between employer and employee unless necessary to prevent irreparable injury to property or to property rights of the one making the application.[40]

The two cases above, in which Howat was a party, were taken to the supreme court of the United States on a writ of error. On a motion of the attorneys for the state and industrial court, they were consolidated, advanced, and

36 Second Annual Report of Court, p. 8.
37 Ibid.
38 The State ex rel. vs. Howat et. al., 109 Kansas,381.
39 Ibid., p. 384.
40 Ibid., pp. 384, 417.

assigned for a hearing at the same time.[41] The object of the appeal was to test the constitutionality of the law. But, as Chief Justice William Howard Taft said in the opinion, neither case was presented in such a way as to permit that court to pass upon the features of the act attacked by Howat. The writ of error was dismissed,[42] and the first attempts at overruling the tribunal had failed. The supreme court preferred in that case to act upon a technicality, rather than pronounce upon the validity of the law.

IMPORTANT CASES AND STRIKES

The first strike occurring in Kansas after the passage of the act was on January 26, 1920, when 400 miners failed to report for work. Governor Allen ordered an investigation and promised vigorous prosecution under the new law. He said it was all right if the miners wanted to quit and move out, but they must not interfere with those who desired to work.[1] The next day they returned to work, stating that "Blue Monday" was the reason for their absence. Richard J. Hopkins, the state attorney-general, said there was no conspiracy,[2] so nothing was done.

No strike of any consequence occurred in the mining industry until Howat was sent to jail for violation of the in-

41 Second Annual Report of Court, p. 8.
42 Howat et. al vs. State of Kansas, 258 U. S. 181-190.
1 The New York Times, January 27, 1920.
2 Ibid., January 28, 1920.

junction against him. When that was done the miners of Cherokee and Crawford counties left their work as a protest against the incarceration of their president. There was no dispute or misunderstanding between the miners and the employers.[3]

The international executive board of the United Mine Workers of America, which was against using force to overrule the act, instructed Howat and other district officials to order the miners to return to work. When they refused to do so the board suspended the district organization and set up a provisional governing board. Howat and his associates were expelled from membership in the union. Under the new management the miners were ordered to return to work. If they refused they were expelled from membership and their charters revoked. New unions were organized and within 60 days virtually normal resumption of mining was accomplished. About that time bands of women (the wives of the strikers) attacked the workers and the state was obliged to furnish help to the local authorities to adjust the matter.[4] The result of the whole thing was the production of coal without the state interfering.

A strike of national significance occurred in the fall of the year the court was created. On September 15, 1920,

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3 Second Annual Report of Court, p. 10.
4 Ibid., pp. 10-11.

the agreement between the Big Five Packers and their employees expired. The packing companies installed what was called a plant assembly representation. Under this system the employees were to elect representatives to meet with those appointed by the peckers, and determine working conditions and wages, the result being that the wages posted were a substantial reduction of the previous schedule. A strike vote was taken, in the plants of the Big Five Packers, by the Amalgamated Meat Cutters and Butchers Workmen of North America. It authorized the executive board to call a strike if the demands of the union were not met by the packers. The call was issued on December 1, becoming effective four days later.[5]

The strike was nation-wide; union officials reported that 41,000 workers were out. In some places there was violence,[6] in others conditions were peaceful. Upon notice of the action taken by the union, the attorney-general of Kansas brought an action in the industrial court setting forth the danger of such a happening to the public health and welfare. Certain officers of the local unions of the plants in Kansas City, Kansas, and superintendents of those institutions were summoned to appear before the court on December 3. The officers of the plants appeared, but only one of the union

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5 Ibid., p. 11.
6 The New York Times, December 6, 1921.

officials, so necessary action was taken to bring the latter before the court to testify.

Both parties stated that they had no dispute they wished to submit to the industrial court. They were then informed that in such a case it became the court's duty to see that the packing plants were operated with continuity and efficiency. "...in order that the food supply of the people of Kansas was not endangered, and to see that the livestock market was kept open for the protection of the livestock producers of Kansas and the southwest, and that the court proposed to see that this was done."[7]

Notice was given by the court to the mayor and chief of police of Kansas City, Kansas, to disperse the crowd gathered around the packing houses, or the national guard would be called to do so. After the mayor made a talk to the crowd telling them it was illegal to congregate around the plants, they then went on their way.[8] Several hundred new workers were hired and began operations. No picketing was attempted,[9] and within a few days normal production was again reached.[10] In that manner the strike (in Kansas) was quickly broken and the industrial court had been the means of keeping that industry operating continuously and efficiently.[11]

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7 Second Annual Report of Court, p. 11.
8 The New York Times, December 6, 1921.
9 Ibid., December 9, 1921.
10 Second Annual Report of Court, p. 11.
11 Ibid.

Conditions in the transportation industries were not very satisfactory to the workmen, following the war. A decision of the Federal Labor Board, regarding wages and hours of labor in the railroad industries, proved unsatisfactory. The Federated Railway Shop Crafts Union ordered their members to cease work until an acceptable agreement was reached. Such action was taken on July 1, 1922, all the systems in the United States being included in its scope. All the principal railroads in Kansas were engaged very largely in interstate commerce. The Federal Labor Board had jurisdiction over disputes concerning such common carriers so the Kansas industrial court could not act upon the merits of that strike. It was the duty of the tribunal merely to prevent any picketing, intimidation, or conspiracy to interrupt transportation.[12]

Governor Allen sent word to all mayors and county-attorneys in Kansas, stating that there was to be no picketing during the strike. They were also instructed to keep the streets clear, and were to see that all men who wanted to work were allowed to do so without molestation.[13] Allen traveled over the state continuously during that period,[14] watching for any serious trouble. In railroad towns many

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12 Third Annual Report of Court, p. 9.
13 The New York Times, July 2, 1922.
14 In his travels Allen did much to popularize W. Y. Morgan, whom he planned for his successor as governor.

people placed signs in their windows expressing sympathy with the action of the union men. On one occasion, Allen was in Emporia and noticed that in a window of his friend's house was a placard expressing commiseration for the men who refused to work. That friend was William Allen White.

When told that such a declaration of feeling was in violation of the anti-picket law, the people removed such indications. But with White it was different. He said that was only free speech and to make a person remove such a sign was taking away a right guaranteed by the constitution. Upon his refusal to comply with the governor's request, White was arrested,[15] but released on bond. Both men attended a Lotos club dinner in New York shortly thereafter. They were very courteous to each other but there seemed to be something that marred their former friendship. A few remarks were made by White about the railroad strike and about his arrest, but always with due respect for Governor Allen. The same was true of what the governor had to say.[16]

The case came up for trial three times and in each instance the state asked for a continuation. On December 7 a telegram was sent from the attorney-general's office to Royand Boynton, county attorney of Lyon county. It directed him to have an order of dismissal entered the next day when

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15 The New York Times, October 5, 1922.
16 Ibid., October 7, 1922.

the case came up for the fourth time.[17] Judge William C. Harris of the district court said the prosecution was commenced maliciously or recklessly without investigation of the facts to ascertain whether a prosecution was justified or not. In his estimation White had been wronged.

White had been very anxious to have a trial in order to test the industrial court act in that respect. When the action was dropped he blamed Judge James A. McDermott, a member of the court, for his humiliation, for Governor Allen had promised him the case would be tried but each time the action was blocked by McDermott. White said that he had been "Ku Kluxed" "by a court that did not have the guts to pull out their shirt tails and give a Ku Klux parade."[18]

There were many prosecutions and convictions for picketing, during the strike, though in some cases conviction was impossible. The court of industrial relations cooperated with the governor, attorney-general, and adjutant-general and trains were kept running very much as if there was no trouble.[19] Questionnaires were sent to the railroad officials and the answers tabulated. It was found that during the six months period from July, 1922, to January, 1923, a large amount of freight was hauled, in some instances exceeding any

17 Ibid., December 8, 1922.
18 Ibid., December 10, 1922.
19 Third Annual Report of Court, pp. 10-11.

previous six months period. The industrial court helped very much in breaking the severity of the strike and making for prompt recovery of the railroads after the first effects had passed.[20]

On January 26, 1921, an action was filed before the court concerning the packing industry in Topeka, a case in no way connected with the Kansas City packers' strike before mentioned. The motion was brought by W. E. May and others of the Local Union 176 (at Topeka) of the Amalgamated Meat Cutters and Butchers Workmen of North America, against the Charles Wolff Packing Company. The contract under which the men had been working expired January 1, 1921. On January 14 the workers were given notice of a reduction in pay averaging 10½ cents per hour, which became effective in two days. Wages and working hours were the principal points of dispute in that case. The union leaders stated that the company would not come to an agreement regarding either. A general denial was entered by the defendant.[21]

Seven consecutive days were spent by the court hearing and considering evidence. It was shown that the work was very strenuous and unhealthful. The evidence relating to the eight hour day was very conflicting. Some days, it was shown, it was necessary to run longer than eight hours in

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20 Ibid., pp. 9-22.

21 W. E. May et. al. vs. The Wolff Packing Company (Topeka, 1921), pp. 2-6.

order to clear the pens for the next day's business. The employer said if time and one-half was allowed for overtime the men would shirk so as to get the higher pay. The employees denied the accusation.

After considering the evidence the court stated that the eight hour day was to be observed, but made certain allowances to clear the pens. The open shop was to continue. Women were to receive the same pay as men for identical work. A wage schedule was made[22] which was higher than the packing company proposed to pay.

The defendants refused to obey the orders. The matter was then carried to the state supreme court with an appeal for a mandamus proceeding to compel the packing company to put into effect the ordered scale of wages and hours of labor.[23] The supreme court held that "the industrial court law is a remedial statute and should be liberally construed to promote its object." The liberal construction was that the statute gave the tribunal authority to prosecute actions of that character in its own name, the proper method being the bringing of a mandamus proceeding. Furthermore, an order issued by it took effect in the manner prescribed by law, and did not require the approval of the supreme court.[24] The contention of the packing company was that the indus-

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22 Ibid., pp. 3, 6-16.
23 Court of Industrial Relations vs. Wolff Packing Company, 109 Kansas, 630.
24 Ibid., pp. 632, 635.

trial act and the orders issued violated the fourteenth amendment. They deprived the defendant of liberty and property without due process of law and denied the equal protection of the law.[35] No decision was made upon that point. However, it was stated that the legislature had power to create the industrial court and that an emergency had arisen in that case, justifying it in taking cognizance of the complaint and investigating.[36]

In 1923 the packing company was again before the supreme court. The case was termed a continuation of the one mentioned above. In the decision it was stated that wages were a part of the cost of the finished product. The operators could not be compelled to sell their product at a loss. But that was no reason why they should not be forced, by law, to pay a "living wage." It was held that if they could not make ends meet, they could quit business.[37]

The evidence proved that the plant was operating at a loss but failed to show why. The company contended that in order to prevent a deficit the pay of laborers must be reduced. "In other words," the decision stated, "the defendant is trying to prevent loss in its business by putting the loss on its employees." That should never be done if employees are thereby compelled to work for less than a liv-

25 Ibid., pp. 635-636.
26 Ibid., pp. 636, 647.
27 Court of Industrial Relations vs. Wolff Packing Company, 111 Kansas, 501, 507.

ing wage. A peremptory unit of mandamus was issued to compel the packing company to put into effect the orders of the court of industrial relations.[28]

There was a dissenting opinion written by Rousseau A. Burch, in which Silas W. Porter concurred. It stated that "... the act creating the court of industrial relations belongs in the class of statutes beginning to be known in the field of constitutional law as emergency cases .... The legislature had in mind the coal strike of 1919 to 1920, and merely authorized intervention by the court of industrial relations to insure such efficiency and continuity in production of necessities of life as will save the people from annoyance and distress."[29] It was also stated that, until the controversy brought within reasonable contemplation a discomforting shortage in the supply of food, the court had no right to act.

The industrial tribunal believed that on a simple complaint it could regulate the defendant's business. "The order was not based upon any menace to the food supply of the state, and could not be, because it was not possible that suspension of operation of the defendant's plant could appreciably affect that supply .... I am unable to discover any-

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28 Ibid., pp. 508-509.
29 Ibid., p. 509.

thing approaching an emergency such as the statute contemplates,...."[30]

The packing company then appealed to the supreme court of the United States. The case was argued April 27, 1923. A review of the whole matter was made showing that the packing company had operated at a loss of $100,000 during 1920. Under the prescribed schedule of wages and hours, the loss would increase more than $400 a month. It was also shown that no emergency or danger to the public existed to justify the action taken. The chief executive of the company had testified that he could get without difficulty all the labor desired at the reduced rates offered. The industrial court refused to consider that point and it conceded that the company could not operate on the schedule of wages fixed, without a loss. But it relied upon the statement of the company president that he hoped for more prosperous times.[31]

Arguments as stated against the court were: (1) The statute did not operate alike upon employers and employees in the designated industries. (2) Wages paid by employers operating packing houses were not affected with a public interest, or subject to regulation by the state. (3) The

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30 Ibid., pp. 513-514.

31 Charles Wolff Packing Company vs. Court of Industrial Relations of the State of Kansas, 262 U. S., 524-526.

industrial court order contained provisions in excess of the constitutional power possessed by, or that could be conferred upon, any tribunal in this country by any act of legislation. (4) The order of the court was void because it increased the operating expense of the packing company against its will, notwithstanding that the income of the company was insufficient to pay the cost of raw materials and operating expense, including wages to employees affected by such order.

The arguments for the court were: (1) The business of the Wolff Packing Company was affected with a public interest. (2) An emergency existed, and the order made was constitutional and valid. (3) There was no evidence of economical management. (4) The packing company should have made a trial under the orders for 60 days. (5) A proper exercise of the public powers could not be defeated by a claim of confiscation. (6) Classification was proper, and, unless arbitrary, did not deny the equal protection of the law. (7) If the legislative action had a reasonable relation to the governmental authority to further public health, morals, safety, peace, convenience, and prosperity, the doctrine of freedom of contract could not make the act unconstitutional.[32]

On June 11, 1923, Chief Justice William Howard Taft

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32 Ibid., pp. 526-533.

delivered the opinion of the court. His statement included a good discussion of the industrial court in relation to the contract clause of the fourteenth amendment. The necessary postulate of the industrial act, he said, was that a state representing the people was so much interested in their peace, health, and comfort that it could compel those engaged in the manufacture of food and clothing, the production of fuel, whether owners or workers, to continue in their business and employment on terms fixed by the state if they could not agree. Under the interpretation of the state supreme court, the owner or employer could quit business if he showed that by continuing under the terms fixed the business would collapse, but that principle under the circumstances was generally illusory.

A laborer, if dissatisfied, was permitted to quit, but he could not combine with his fellows or induce them to quit. Those qualifications did not change the essence of the act. It curtailed the right of the employer and the employee to contract about his affairs. That freedom could not be restrained arbitrarily or unreasonably. The legislative authority to abridge could be justified only by exceptional circumstances. Even though the counsel for the state maintained the circumstances were exceptional, the court did not so judge them.

"The power of a legislature to compel continuity in a business can only arise where the obligation of continued service by the owner or its employee is direct, and is assumed when the business is entered upon..... We think the industrial act, in so far as it permits the fixing of wages in plaintiff in error's packing house, is in conflict with the fourteenth amendment, and deprives it of its property and liberty of contract without due process of law." The judgment of the lower court was reversed.[33]

Hours of labor were not pronounced upon by the supreme court, so that question remained to be adjudicated. The officials of the packing company went before the state supreme court to have its former decision modified in keeping with that of the United States supreme court. The industrial court obtained a writ of mandamus commanding the packing company to put the time and one-half rule into effect. The Kansas tribunal stated that the decision of the United States supreme court applied only to wages and did not forbid the fixing of hours of labor. Burch dissented in that case. W. W. Harvey dissenting in part said a proper interpretation of the supreme court's decision required the former Kansas decision to be reversed in its entirety.[34]

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33 Ibid., pp. 534-544.

34 The Court of Industrial Relations vs. The Charles Wolff Packing Company, 114 Kansas, 487-492.

Alexander Howat was not the only man trying to have the law set aside. In 1922, as has been stated, Howat and other union officials called a strike in Mine H of the George K. Mackie Fuel Company in order to force payment of a few dollars to one Mishmash, an employee. A man named August Dorchy was one of those officials and as a result of his action was sentenced to six months in the county jail and fined $500. He appealed to the state supreme court, contending that his arrest, trial, conviction, and sentence were in violation of the right guaranteed him by the federal constitution. The judges were controlled by the cases of Howat and the Wolff Packing Company, so the judgment of the lower court was affirmed.[35]

Dorchy, after the United States supreme court acted on the Wolff Packing Company case, obtained a writ of error and appealed to that court. His charge was that the section of the law prohibiting strikes was void in that it was a denial of the liberty granted by the fourteenth amendment.[36] Justice Louis D. Brandeis delivered the opinion, in which was stated that the section of the law relating to coal mining was unconstitutional.

Since the section relating to coal mining was void, the

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35 The State of Kansas appelle vs. Alexander Howat et. al. (August Dorchy, appellant), 112 Kansas, 235, 236. The United States supreme court had not yet decided the Wolff case.

36 Dorchy vs. Kansas, 264 U. S., 286, 287.

question arose as to whether or not other sections of the law were unconstitutional. The decision read: "a statute bad in part is not necessarily void in its entirety. Provisions within the legislative power may stand, if separable from the bad..... But a provision, inherently unobjectionable, cannot be deemed separable unless it appears both that, standing alone, legal effect can be given to it, and that the legislature intended the provision to stand, in case others included in the act and held bad should fall." In order that the state court might pass upon the question whether the section referred to, being an intimate part of the system of compulsory arbitration, held to be invalid, fell with it, the judgment was reversed.[37]

The decision was made in March, 1924, and in July of that year Dorchy was again before the state supreme court. His object was to have its former judgment and that of the district court set aside, by having it declared that the section of the act prohibiting strikes and the calling of such was inseparable from the void part of the law. The decision was that that particular section of the act was to be regarded as having the legal effect of an independent statute. The judgment of the lower court was reaffirmed.[38]

In that case both Burch and Harvey wrote dissenting

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37 Ibid., pp. 287-291.
38 The State vs. Howat et. al., 114 Kansas, 413-417.

opinions. Burch said that Allen, in his statement to the Kansas legislature, requested that they pass a bill by means of which strikes, lockouts, boycotts, and blacklists be made unnecessary. The act disclosed on its face that such was precisely the scheme of the legislation. The section saying that if any part was found invalid it should not invalidate other parts should be given a reasonable rather than a literal application. Harvey believed that, since the supreme court of the United States had ruled that the essential industries (as defined by the legislature) were not impressed with a public interest, and that since the court could not make or enforce orders upon employers concerning their relations with their employees, especially as regarded wages, it could not make orders for the employee. If the doctrines upon which the act was based and the parts relating to employers were invalid, it necessarily followed that the sections relating to employees were also invalid.[39]

Another case involving a strike went before the state supreme court, after the decision in the Wolff Packing Company controversy, which was not affected by that decision. During the railroad strike of July, 1922, 98 of the 234 men working in the Ottawa shops of the Atchison, Topeka, and Santa Fe Railroad remained on duty and continued to work.

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39 Ibid., pp. 417-420.

Most of the men were members of the Brotherhood of Railway Carmen, but when the orders came to cease work, they refused to take note of them. T. L. Personett, general chairman of the carmen's union of the Santa Fe system, went to Ottawa on July 4 to address the members of the local union. After the meeting, he met a certain Mr. Smith who was a member of that organization. Smith was asked why he continued to work, and the evidence in court showed that Personett tried to influence him to quit. No attempt was made to use force to gain that end.[40]

Personett was arrested, charged with violation of that provision of the law forbidding "picketing." He had a jury trial and was found guilty of that offense. The case was appealed to the state supreme court. The evidence as reviewed was not very clear that Personett did actually "picket and attempt to induce...and did...threaten and intimidate." Yet since the court found no error in the record, the judgment was affirmed.[41]

Harvey wrote the dissenting opinion, saying that in his judgment the evidence was not sufficient in the case to sustain the charge that the appellant committed the offense known as picketing. "I have not," he said, "reached the

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40 The State of Kansas vs. T. L. Personett, 114 Kansas, 681-685.

41 Ibid., pp. 481-487.

point where I feel willing to say that what a person has in mind constitutes a crime when it is not accompanied by any act or spoken word."[42]

After the United States supreme court decided against the industrial court in the Wolff Packing Company case, few actions were taken before it.[43] A study of the annual reports of the tribunal shows that after the first year the judges were not kept very busy adjudicating disputes. One of the most important that came before the court, which did not pertain to the industrial side, was the Topeka Laundry case, in which a minimum wage was set for women. Authority for that action was taken from a bill passed by the state legislature in 1915 saying that it was unlawful to employ women in any industry at wages not adequate for their maintenance, and for more hours than were consonant with their health and welfare.[44] Power was given to an industrial welfare commission to enforce the act, and in 1921 those duties were imposed upon the industrial court.

An investigation and hearing was held in 1922 to find if women were receiving adequate pay in various industries. An order was issued to the Topeka Packing Company and the

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42 Ibid., p. 688.

43 Fourth Annual Report of Court; Fifth Annual Report of Court, passim.

44 The Topeka Laundry Company vs. The Court of Industrial Relations, 119 Kansas, 12, 13.

Topeka Laundry Company, fixing a minimum wage for women. The district court declared for enforcement of the order. An appeal was made to the state supreme court in 1923, the case being argued before that body in December, 1924.[45] The decision was rendered in July, 1925.

The scale of wages set was higher than the companies had been paying. It required that adult women be paid $11 per week. The Topeka Laundry Company, in its action, contended that such an order contravened the fourteenth amendment as interpreted in the case of Adkins vs. Children's Hospital, which found a minimum wage law for women in the District of Columbia to be unconstitutional. The decision of the lower court was reversed. Nevertheless, the judges were much in sympathy with the orders and thought they were for the social and economic betterment of the people. The decision was controlled by the above mentioned precedent.[46]

Harvey wrote a dissenting opinion, in which he told of how the law had worked for 10 years and the good results obtained. He said the court should use its judgment as to the validity of the statute, rather than be controlled by a decision of another jurisdiction which at best was persuasive rather than authoritative.[47]

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45 Fifth Annual Report of Court, p. 20.
46 Topeka Laundry Company vs. The Court of Industrial Relations, 119 Kansas, 12-30.
47 Ibid., pp. 20-23.

POLITICAL OPPOSITION AND END OF COURT

Political opposition to the court began soon after its creation. The Kansas Federation of Labor had a special session in March, 1920, at which Governor Allen and his pet tribunal were denounced. At the meeting a resolution was adopted pledging labor and farmer votes to defeat in the coming election all in favor of retention of the law.[1] In the summer of the same year the Labor party adopted a resolution pledging moral and financial support to the United Mine Workers of Kansas in their refusal to recognize the act.[2]

In the general election of 1918, Henry J. Allen was chosen governor by a vote of nearly two to one.[3] He ran for re-election in 1920, winning in the primary election on the Republican ticket by a large vote. Jonathan M. Davis was the Democratic nominee.[4]

Allen conducted his campaign over the state and made many speeches in favor of the court, appealing to the miners and other voters for their support. Davis was not as outspoken against the law in that campaign as he was two years later. The final returns showed that Allen won by nearly

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1 The New York Times, March 24, 1920.
2 Ibid., July 14, 1920.
3 Twenty-First Biennial Report of the Secretary of State of the State of Kansas, 1917-'18 (Topeka, 1918), p.85.
4 Twenty-Second Biennial Report of the Secretary of State of the State of Kansas, 1919-'20 (Topeka, 1920), p.41.

100,000 votes. The tribunal was safe from any attempt to abolish it for at least two more years. Allen carried Cherokee county but lost in Crawford county by a close vote, which showed that the opposition to the governor and his measure had not gathered a great deal of strength in the coal mining districts.[5]

The members of the two houses elected in 1920 were in favor of retaining the tribunal. A member of that legislature[6] has said that the greatest controversy concerning the court was the appointment of the judges by the governor. No qualifications had been established for them and it was possible that very inefficient and incompetent men might be selected. However, nothing was done concerning that matter. After the session a feeling began developing among the legislators that the tribunal should be abolished. State Senator R. C. Howard from Cowley county, a Republican who voted for the act, said he would vote for its repeal if such a bill were introduced at the next session. The reason he gave was that there had been no call for it and state expense was enormously increased without any particular benefit.[7]

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5 Ibid., pp. 92-93. Attention will be paid to the vote in Cherokee and Crawford counties in the following election, for they were the ones which became much opposed to Allen. Both are coal mining districts.

6 Probate Judge Charles F. Johnson, Riley County, Kansas.

7 The New York Times, August 20, 1921.

The interval between the creation of the court in 1920 and the election of 1922 was filled with many speeches, both for and against the tribunal. Governor Allen and Judge Huggins were its strongest supporters. Various labor leaders such as Gompers and Howat were opposing its operation and questioning its constitutionality.

Opposition of the unions came for several reasons. There was a deep-seated dislike and suspicion of many of the old line trade unionists for all government interference in industrial disputes.[8] "Industrial disputes cannot be settled by government fiat. Courts make errors; governments, as workers know, are not infallible; the question of how much a man shall get for a day's work is not a legal question but a problem in human adjustment."[9] They believed the only genuine gains that the labor movement could achieve were those it made and held for itself. The prohibition of strikes seemed to many to rob the unions of all their force, of their only means of accomplishing anything.[10]

In council the American Federation of Labor denounced the Kansas law, calling it the greatest legislative fraud ever perpetrated on the American people. It pledged the federation to support the campaign for early repeal.[11] The

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8 Herbert Feis, "The Kansas Court of Industrial Relations," in Quarterly Journal of Economics, Vol. 37 (August, 1923), p. 723.

9 "The Kansas Industrial Snag," in Literary Digest, Vol. 71 (December 31, 1921), p. 14, citing New York World.

10 Feis, loc. cit., pp. 723-724.

11 The New York Times, September 14, 1922.

court was established during a Republican administration, thus it was only natural that the labor unions and people opposing it should look to the Democratic party for its abolition. In 1922 the Democrats wrote a plank in their state platform calling for its complete abolition and the substitution of a court of conciliation, mediation, and arbitration. That issue was predicted to be the determining factor in the election that fall.[12]

W. Y. Morgan was chosen by Allen to be his successor. In the primary Morgan supported the industrial act as it stood, while his opponent, W. R. Stubbs, said it should be made a part of the state supreme court.[13] Morgan gained the Republican nomination. Jonathan M. Davis was again the Democratic nominee. In November, 1922, Davis was elected. The industrial law had been vigorously supported in the campaign by the Republicans and opposed by the Democrats. About the only difference in the two platforms was that regarding the court.[14] The non-partisan league and various other organizations combined with the farmers to elect Davis on a ticket of lower taxes and abolition of the court.[15] Both Cherokee and Crawford counties went for the Democrat. In

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12 Ibid., February 25, 1922.
13 Ibid., August 5, 1922.
14 "Governor Allen's Court Threatened," in Literary Digest, Vol. 75 (December 9, 1922), p. 12.
15 C. M. Harger, "Kansas Stands by for Industrial Welfare," in Outlook, Vol. 133 (April 11, 1923), p. 649.

the former he received more than 1,000 plurality over Morgan while in the latter the vote was nearly two to one for Davis. Over the entire state the vote stood: Davis, 271,038; Morgan, 252,602.[16]

Davis interpreted his election as a repudiation of Allen's pet measure by the people, and said that as soon as he took office he would start a movement for its repeal. There was a chance that he misinterpreted the election, for the Republicans received a large majority in both houses. If that had been the main and controlling issue and the people desired its repeal, a Democratic house and senate would have been elected. It was more reasonable to believe that Davis had won because he was well liked. The voters appreciated the service he had rendered in the legislature[17] and they were tired of Allen and his puppets.

In a speech to the shopmen and businessmen of Pittsburg, Kansas, on November 23, 1922, the governor-elect again pledged himself to secure the repeal of the industrial court law. He stated that it violated the fundamental principles of government. It was expensive, unworkable, tended to become a football of politics, and it must go.[18]

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16 Twenty-Third Biennial Report of the Secretary of State of the State of Kansas, 1921-'22 (Topeka, 1922), pp. 71-72.

17 The New York Times, November 15, 1922.

18 Ibid., November 24, 1922.

At the meeting of the new legislature in January, 1923, Davis demanded its abolition. He relied upon his own party and a few Republicans to do the deed but the demand was blocked. There was agitation to reduce the number of judges but nothing came of it.[19] Davis suggested the substitution of an industrial commission to investigate labor disputes for it, but that fell on deaf ears.[20]

Employers and employees joined in condemning the executive appointment of judges. A movement was started, demanding that appointments be made by the supreme court and for a longer term. Judge Huggins said the law must be amended to get it out of politics. Allen was opposed to a direct vote for judges, by the people, because they were not qualified to select good men and would elect someone of low standing.[21] The demand for altering or changing the method of selection failed. In the end Davis was forced to sign the appropriation bill and appoint new individuals.[22]

Having failed in getting the law repealed, Davis appointed Henderson Martin, a man very bitter toward the court, as one of the judges. Leo Goodrich, a man publicly pledged against it, was also appointed during that administration.

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19 Harger, loc. cit.
20 The New York Times, January 11, 1923.
21 Ibid., February 25, 1922.
22 Harger, loc. cit., pp. 649-650.

In that manner the measure was nullified. The appropriations for 1923 and 1924 were barely enough to keep it alive.[23] It was said at that time that the only reason the court was kept on the books was because of courtesy of the Republican legislature to Henry J. Allen.[24] The tax payers were yet to become so tired of paying for it that they would insist upon repeal.[25]

With the adverse decision of the supreme court of the United States in the Wolff Packing Company case, the industrial act was dealt a staggering blow. The ultimate constitutional question involved was how far the state might interfere in an individual business as to contract rights between employers and employees, without violating that provision of the fourteenth amendment which forbids the deprivation of one's property or liberty without due process of law.[26]

A statement was made at that time that the decision "should be welcomed by labor and capital alike as a victory for true liberalism. Such assaults on individualism under the guise of public welfare are becoming more and more frequent in state legislation and against them all liberals

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23 Charles B. Driscoll, "The Kansas Industrial Court Gassed," in The Nation, Vol. 116 (April 25, 1923), pp. 489-490.

24 The New York Times, November 22, 1922.

25 Ibid.

26 "The Supreme Court on the Kansas Industrial Law," in Outlook, Vol. 139 (April 29, 1925), p. 638.

should be on guard."[27] The decision was approved by both employers and employees; it was hailed and celebrated by organized labor as its greatest legal victory in a generation. The American Federation of Labor was immensely pleased with the blow that had been dealt the policy of compulsory arbitration in labor disputes.[28]

That setback did not destroy the institution but curtailed its activities. At least one limit had been defined, beyond which such a tribunal could not act with authority and compulsory power.[29] It was left with other duties to perform.

Immediately following the decision of the United States supreme court, Governor Davis considered calling a special session of the legislature to abolish the law. He said that its abolition would save the tax payers $100,000 after the expenses of the session were paid.[30] Davis was still determined to carry out his campaign pledge.

No special session was called so another scheme was tried to accomplish the same result. The governor wrote the

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27 "The Supreme Court Admonishes Kansas," in The Independent, Vol. 110 (June 23, 1923), p. 293.

28 "A Blow to Compulsory Arbitration," in Literary Digest, Vol. 85 (April 28, 1925), p. 11.

29 "Industrial Court of Kansas," in Outlook, Vol. 134 (June 27, 1923), p. 252.

30 The New York Times, June 13, 1923.

judges, asking them to refuse to draw their salaries, thereby putting an end to the tribunal. He said their duties were ended. They could meet once a month for which they would receive $15 and expenses. A clerk would be kept to take care of the business. It was said that if the plan were followed, $40,500 a year would be saved.[31]

The proposition was considered by the judges and Davis was informed that the court would continue its activities as contemplated by the laws creating it, at the least possible expense. This reply was signed by the two Republicans--McDermott and Crawford. In order to save him embarrassment, they had not asked Martin, the Davis Democratic appointee, to join in the reply.[32] In the correspondence the governor said all duties, such as the Bureau of Labor Statistics, Free Employment Service, and the like, could be taken care of under the existing law. The judges stated that he was trying to destroy those functions, to which he replied that they were selfish and were only after their pay.[33]

After that attempt by Davis to abolish the court, nothing of importance was done to put an end to it. He appointed a new judge who was not at all in favor of the law.

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31 Ibid., July 1, 1923.
32 Ibid., July 3, 1923. Leo Goodrich had not yet been appointed by Davis.
33 Ibid., July 9, 1923.

Davis had done about all he could, considering the opposition. Although he ran for re-election in 1934, he was defeated by Ben Paulen, the Republican candidate, by a vote of nearly two to one. Paulen received 333,403 and Davis 182,-861. Both Crawford and Cherokee counties went Republican.[34]

It was in 1934 that the Wolff Packing Company case was again appealed to the supreme court of the United States. It was decided on April 13, 1925. Justice Van Devanter delivered the opinion which was sufficient in itself to spell the doom of the Kansas industrial law.

The decision in brief was as follows: the industrial relations act of Kansas, which sought to promote continuity of operation and production in the industries to which it related by compelling employer and employees to submit their controversies to compulsory settlement by a state agency, was, as applied to a manufacturer of food products, unconstitutional. It was void not only so far as it permitted compulsory fixing of wages (as was decided in the former Wolff case), but also and for the same reasons in the provision for compulsory fixing of hours of labor. The compulsion in both those features alike was but part of a system by which the act sought to compel the owner and employee to continue in business on terms not of their own making. The law infringed the rights of property and liberty guaranteed

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34 Twenty-Fourth Biennial Report of the Secretary of State of the State of Kansas, 1923-'24 (Topeka, 1924), pp. 94-95.

by the due process clause of the fourteenth amendment. The judgment of the state court was reversed.[35] It can easily be seen how that decision, even though other industries were not mentioned, would apply to them in the future. It struck a severe blow to the policy of compulsory arbitration.

Dorchy again took his case to the United States supreme court. Justice Brandeis delivered the opinion on October 25, 1926. The history of the matter was reviewed; the cause for calling the strike and several other points were considered. The main point in the decision rested upon the reason for calling the strike. First it was settled that a ruling by a state supreme court as to separability of parts of a state statute from other parts found invalid was binding and final.

It was declared that there was no constitutional right to call a strike solely for the purpose of coercing the employer to pay a disputed stale claim to a former employee, a member of the union. The state possessed power to enact laws making it unlawful to call strikes or induce others to quit their employment in order to suspend operations of the industry. That did not deny the liberty guaranteed by the fourteenth amendment. "The legislature may make such actions punishable criminally as extortion or otherwise....

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35 Charles Wolff Packing Company vs. The Court of Industrial Relations of the State of Kansas, 267 U. S., 552-569.

And it may subject to punishment him who uses the power or influence incident to his office in a union to order a strike. Neither the common law nor the fourteenth amendment confers the absolute right to strike." The judgment of the state court was affirmed.[36] Thus it was shown that the state could prohibit strikes.

Neither of the above mentioned decisions had any bearing upon the future of the industrial act. The legislature elected in 1924 and meeting in 1925 created a Public Service Commission, which took over all duties, powers, etc., of the Public Utilities Commission and the Court of Industrial Relations. Thus both were abolished by one legislative act.[37]

In the five years of its existence the court had cost the state $164,384,61.[38] The question of whether or not the benefits derived (which were few) were worth the cost is debatable.

The tribunal was never able to get a start. It was created in a hurry, lacked the power of subpoena and mandamus, hence of itself could not command either attendance or obedience. It was forced to go to the supreme court in every contested case for write enabling it to function.

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36 Dorchy vs. Kansas, 272 U. S., 306-311.

37 Laws of Kansas, 1925 (Topeka, 1925), pp. 335-337.

38 Figure compiled from the five annual reports of the court. Expenditures for other than matters pertaining to the industrial side are excluded.

"With such a stumbling start there was no chance for the industrial relations body to cultivate effectively the stony field of compulsory arbitration."[39] The party to the third part must now find some other means of bringing the rival interests to agreement, so the public will not suffer injury through strikes.[40]

APPENDIX

The More Important Sections of the Kansas Court of Industrial Relations Act

Sec. 3. (a) The operation of the following named and indicated employments, industries, public utilities and common carriers is hereby determined and declared to be affected with a public interest and therefore subject to supervision by the state as herein provided for the purpose of preserving the public peace, protecting the public health, preventing industrial strife, disorder and waste, and securing regular and orderly conduct of the businesses directly affecting the living conditions of the people of this state and in the promotion of the general welfare, to wit: (1) The manufacture or preparation of food products whereby, in any stage of the process, substances are being converted, either partially or wholly, from their natural state to a

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39 "A Court out of Court," in The Independent, Vol. 114 (April 25, 1925), p. 459.

40 "A Blow to Compulsory Arbitration," in Literary Digest, Vol. 85 (April 25, 1925), p. 11.

condition to be used as food for human beings; (2) The manufacture of clothing and all manner of wearing apparel in common use by the people of this state whereby, in any stage of the process, natural products are being converted, either partially or wholly, from their natural state to a condition to be used as such clothing and wearing apparel; (3) The mining or production of any substance or material in common use as fuel either for domestic, manufacturing, or transportation purposes; (4) The transportation of all food products and articles or substances entering into wearing apparel, or fuel, as aforesaid, from the place where produced to the place of manufacture or consumption; (5) All public utilities as defined by section 8329, and all common carriers as defined by section 8330 of the General Statutes of Kansas of 1915.

Sec. 6. It is hereby declared and determined to be necessary for the public peace, health and general welfare of the people of this state that the industries, employments, public utilities and common carriers herein specified shall be operated with reasonable continuity and efficiency in order that the people of this state may live in peace and security, and be supplied with the necessaries of life. No person, firm, corporation, or association of persons shall in any manner or to any extent, willfully hinder, delay, limit or suspend such continuous and efficient operation

for the purpose of evading the purpose and intent of the provisions of this act; nor shall any person, firm, corporation, or association of persons do any act or neglect or refuse to perform any duty herein enjoined with the intent to hinder, delay, limit or suspend such continuous and efficient operation as aforesaid, except under the terms and conditions provided by this act.

Sec. 7. In case of a controversy arising between employers and workers, or between groups or crafts of workers, engaged in any of said industries, employments, public utilities, or common carriers, if it shall appear to said Court of Industrial Relations that said controversy may endanger the continuity or efficiency of service of any of said industries, employments, public utilities or common carriers, or affect the production or transportation of the necessaries of life affected or produced by said industries or employments, or produce industrial strife, disorder or waste, or endanger the orderly operation of such industries, employments, public utilities or common carriers, and thereby endanger the public peace or threaten the public health, full power, authority and jurisdiction are hereby granted to said Court of Industrial Relations, upon its own initiative, to summon all necessary parties before it and to investigate said controversy, and to make such temporary findings and orders as may be necessary to preserve the public peace and

welfare and to preserve and protect the status of the parties, property and public interests involved pending said investigations, and to take evidence and to examine all necessary records, and to investigate conditions surrounding the workers, and to consider the wages paid to labor and the return accruing to capital, and the rights and welfare of the public, and all other matters affecting the conduct of said industries, employments, public utilities or common carriers, and to settle and adjust all such controversies by such findings and orders as provided in this act. It is further made the duty of said Court of Industrial Relations, upon complaint of either party to such controversy, or upon complaint of any ten citizen taxpayers of the community in which such industries, employments, public utilities or common carriers are located, or upon the complaint of the attorney-general of the state of Kansas, if it shall be made to appear to said court that the parties are unable to agree and that such controversy may endanger the continuity or efficiency of service of any of said industries, employments, public utilities or common carriers, or affect the production or transportation of the necessaries of life affected or produced by said industries or employments, or produce industrial strife, disorder or waste, or endanger the orderly operation of such industries, employments, public utilities or common carriers, and thereby endanger the

public peace or threaten the public health, to proceed and investigate and determine said controversy in the same manner as though upon its own initiative. After the conclusion of any such hearing and investigation, and as expeditiously as possible, said Court of Industrial Relations shall make and serve upon all interested parties its findings, stating specifically the terms and conditions upon which said industry, employment, utility or common carrier should be thereafter conducted insofar as the matters determined by said court are concerned.

Sec. 8. The Court of Industrial Relations shall order such changes, if any, as are necessary to be made in and about the conduct of said industry, employment, utility or common carrier, in the matters of working and living conditions, hours of labor, rules and practices, and a reasonable minimum wage, or standard of wages, to conform to the findings of the court in such matters, as provided in this act, and such orders shall be served at the same time and in the same manner as provided for the service of the court's findings in this act; Provided, All such terms, conditions and wages shall be just and reasonable and such as to enable such industries, employments, utilities or common carriers to continue with reasonable efficiency to produce or transport their products or continue their operations and thus to promote the general welfare. Service of such order shall be

made in the same manner as service of notice of any hearing before said court as provided by this act. Such terms, conditions, rules, practices, wages, or standard of wages, so fixed and determined by said court and stated in said order, shall continue for such reasonable time as may be fixed by said court, or until changed by agreement of the parties with the approval of the court. If either party to such controversy shall in good faith comply with any order of said Court of Industrial Relations for a period of sixty days or more, and shall find said order unjust, unreasonable or impracticable, said party may apply to said Court of Industrial Relations for a modification thereof and said Court of Industrial Relations shall hear and determine said application and make findings and orders in like manner and with like effect as originally. In such case the evidence taken and submitted in the original hearing may be considered.

Sec. 9. It is hereby declared necessary for the promotion of the general welfare that workers engaged in any of said industries, employments, utilities or common carriers shall receive at all times a fair wage and have healthful and moral surroundings while engaged in such labor; and that capital invested therein shall receive at all times a fair rate of return to the owners thereof. The right of every person to make his own choice of employment and to make and

carry out fair, just and reasonable contracts and agreements of employment, is hereby recognized. If, during the continuance of any such employment, the terms or conditions of any such contract or agreement hereafter entered into, are by said court, in any action or proceeding properly before it under the provisions of this act, found to be unfair, unjust or unreasonable, said Court of Industrial Relations may by proper order so modify the terms and conditions thereof so that they will be and remain fair, just and reasonable and all such orders shall be enforced as in this act provided.

Sec. 14. Any union or association of workers engaged in the operation of such industries, employments, public utilities or common carriers, which shall incorporate under the laws of this state shall be by said Court of Industrial Relations considered and recognized in all its proceedings as a legal entity and may appear before said Court of Industrial Relations through and by its proper officers, attorneys or other representatives. The right of such corporations, and of such unincorporated unions or associations of workers, to bargain collectively for their members is hereby recognized: Provided, That the individual members of such unincorporated unions or associations, who shall desire to avail themselves of such right of collective bargaining, shall appoint in writing some officer or officers of such union or association, or some other person or persons as

their agents or trustees with authority to enter into such collective bargains and to represent each and every of said individuals in all matters relating thereto. Such written appointment of agents or trustees shall be made a permanent record of such union or association. All such collective bargains, contracts, or agreements shall be subject to the provisions of section nine of this act.

Sec. 15. It shall be unlawful for any person, firm or corporation to discharge any employee or to discriminate in any way against any employee because of the fact that any such employee may testify as a witness before the Court of Industrial Relations, or shall sign any complaint or shall be in any way instrumental in bringing to the attention of the Court of Industrial Relations any matter of controversy between employers and employees as provided herein. It shall also be unlawful for any two or more persons, by conspiring or confederating together, to injure in any manner any other person or persons, or any corporation, in his, their, or its business, labor, enterprise, or peace and security, by boycott, by discrimination, by picketing, by advertising, by propaganda, or other means, because of any action taken by any such person or persons, or any corporation, under any order of said court, or because of any action or proceeding instituted in said court, or because any such person or persons, or corporation, shall have invoked the jurisdiction of

said court in any matter provided for herein.

Sec. 16. It shall be unlawful for any person, firm, or corporation engaged in the operation of any such industry, employment, utility, or common carrier willfully to limit or cease operations for the purpose of limiting production or transportation or to affect prices, for the purpose of avoiding any of the provisions of this act; but any person, firm or corporation so engaged may apply to said Court of Industrial Relations for authority to limit or cease operations, stating the reasons therefor, and said Court of Industrial Relations shall hear said application promptly, and if said application shall be found to be in good faith and meritorious, authority to limit or cease operations shall be granted by order of said court. In all such industries, employments, utilities or common carriers in which operation may be ordinarily affected by changes in season, market conditions, or other reasons or causes inherent in the nature of the business, said Court of Industrial Relations may, upon application and after notice to all interested parties, and investigation, as herein provided, make orders fixing rules, regulations and practices to govern the operation of such industries, employments, utilities or common carriers for the purpose of securing the best service to the public consistent with the rights of employers and employees engaged in the operation of such industries, employments, utilities or

common carriers.

Sec. 17. It shall be unlawful for any person, firm or corporation, or for any association of persons, to do or perform any act forbidden, or to fail or refuse to perform any act or duty enjoined by the provisions of this act, or to conspire or confederate with others to do or perform any act forbidden, or to fail or refuse to perform any act or duty enjoined by the provisions of this act, or to induce or intimidate any person, firm or corporation engaged in any of said industries, employments, utilities or common carriers to do any act forbidden, or to fail or refuse to perform any act or duty enjoined by the provisions of this act, for the purpose or with the intent to hinder, delay, limit, or suspend the operation of any of the industries, employments, utilities or common carriers herein specified or indicated, or to delay,limit, or suspend the production or transportation of the products of such industries, or employments, or the service of such utilities or common carriers: Provided, That nothing in this act shall be construed as restricting the right of any individual employee engaged in the operation of any such industry, employment, public utility, or common carrier to quit his employment at any time, but it shall be unlawful for any such individual employee or other person to conspire with other persons to quit their employment or to induce other persons to quit their employment for

the purpose of hindering, delaying, interfering with, or suspending the operation of any of the industries, employments, public utilities, or common carriers governed by the provisions of this act, or for any person to engage in what is known as "picketing," or to intimidate by threats, abuse, or in any other manner, any person or persons with intent to induce such person or persons to quit such employment or for the purpose of deterring or preventing any other person or persons from accepting employment or from remaining in the employ of any of the industries, employments, public utilities, or common carriers governed by the provisions of this act.

Sec. 20. In case of the suspension, limitation or cessation of the operation of any of the industries, employments, public utilities or common carriers affected by this act, contrary to the provisions hereof, or to the orders of said court made hereunder, if it shall appear to said court that such suspension, limitation, or cessation shall seriously affect the public welfare by endangering the public peace, or threatening the public health, then said court is hereby authorized, empowered and directed to take proper proceedings in any court of competent jurisdiction of this state to take over, control, direct and operate said industry, employment, public utility or common carrier during such emergency: Provided, That a fair return and compensation shall be paid to

the owners of such industry, employment, public utility or common carrier, and also a fair wage to the workers engaged therein, during the time of such operation under the provisions of this section.

Sec. 23. Any order made by said Court of Industrial Relations as to a minimum wage or a standard of wages shall be deemed prima facie reasonable and just, and if said minimum wage or standard of wages shall be in excess of the wages theretofore paid in the industry, employment, utility or common carrier, then and in that event the workers affected thereby shall be entitled to receive said minimum wage or standard of wages from the date of the service of summons or publication of notice instituting said investigation, and shall have the right individually, or in case of incorporated unions or associations, or unincorporated unions or associations entitled thereto, collectively, to recover in any court of competent jurisdiction the difference between the wages actually paid and said minimum wage or standard of wages so found and determined by said court in such order. It shall be the duty of all employers affected by the provisions of this act, during the pendency of any investigation brought under this act, or any litigation resulting therefrom, to keep an accurate account of all wages paid to all workers interested in said investigation or proceeding: Provided, That in case said order shall fix a wage or standard of wag-

es which is lower than the wages theretofore paid in the industry, employment, utility or common carrier affected, then and in that event the employers shall have the same right to recover in the same manner as provided in this section with reference to the workers.

Sec. 24. With the consent of the governor, the judges of said Court of Industrial Relations are hereby authorized and empowered to make, or cause to be made, within this state or elsewhere, such investigations and inquiries as to industrial conditions and relations as may be profitable or necessary for the purpose of familiarizing themselves with industrial problems such as may arise under the provisions of this act. All the expenses incurred in the performance of their official duties by the individual members of said court and by the employees and officers of said court, shall be paid by the state out of funds appropriated therefor by the legislature, but all warrants covering such expenses shall be approved by the governor of said state.

Sec. 25. If any section or provision of this act shall be found invalid by any court, it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section or provision, and the act as a whole shall not be declared invalid by reason of the fact that one or more sections or provisions may be found to be invalid by any court.

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