which an employe injured in the services of his employer does not lose all his right to recover because of slight negligence on his part.

"Then there is the act providing for compensation for injury to government employes, together with the various statutes requiring safety appliances upon interstate commerce railroads for the protection of their employes, and limiting the hours of their employment. These are all instances of the desire of the republican party to do justice to the wage earner.

Doubtless a more comprehensive measure for compensation of government employes will be adopted in the future; the principle in such cases has been recognized, and in the necessarily slow course of legislation will be more fully embodied in definite statutes.

"The interests of the employer and employe never differ except when it comes to a division of the joint profit of labor and capital into dividends and wages. This must be a constant source of periodical discussion between the employer and the employe, as indeed are the other terms of the employment.

"To give to employes their proper position in such a controversy, to enable them to maintain themselves against employers having great capital, they may well unite, because in union there is strength and without it each individual laborer and employe would be helpless. The promotion of industrial peace through the instrumentality of the trade agreement is often one of the results of such union when intelligently conducted.

"There is a large body of laborers, however, skilled and unskilled, who are not organized into unions. Their rights before the law are exactly the same as those of the union men, and are to be protected with the same care and watchfulness.

"In order to induce their employer into a compliance with their request for changed terms of employment, workmen have the right to strike in a body. They have a right to use such persuasion as they may, provided it does not reach the point of duress, to lead their reluctant colaborers to join them in their union against their employer, and they have a right, if they choose, to accumulate funds to support those engaged in a strike, to delegate to officers the power to direct the action of the union, and to withdraw themselves and their associates from dealings with, or giving custom to those with whom they are in controversy.

"What they have not the right to do is to injure their employer's property, to injure their employer's business by use of threats of methods of physical duress against those who would work for him, or deal with him, or by carrying on what is sometimes known as a secondary boycott against his customers or those with whom he deals in business. All those who sympathize with them may unite to aid them in their struggle, but they may not through the instrumentality of a threatened or actual boycott compel third persons against their will and having no interest in their controversy to come to their assistance. These principles have for a great many years been settled by the courts of this country.

"Threatened unlawful injuries to business, like those described above, can only be adequately remedied by an injunction to prevent them. The jurisdiction of a court of equity to enjoin in such cases arises from the character of the injury and the method of inflicting it and the fact that suit for damages offers no adequate remedy.

"The unlawful injury is not usually done by one single act, which might be adequately compensated for in damages by a suit at law, but it is the result of a constantly recurring series of acts, each of which in itself might not constitute a substantial injury or make a suit at law worth while, and all of which would require a multiplicity of suits at law. Injuries of this class have since the foundation of courts of equity been prevented by injunction.

"It has been claimed that injunctions do not issue to protect anything but property rights and that business is not a property right; but such a proposition is wholly inconsistent with all the decisions of the courts. The supreme court of the United States says that the injunction is a remedy to protect property or rights of a pecuniary nature, and we may well submit to the considerate judgment of all laymen whether the right of a man in his business is not as distinctly a right of a pecuniary nature as the right to his horse or his house or the stock of goods on his shelf; and the instances in which injunctions to protect business have been upheld by all courts are so many that it is futile further to discuss the proposition.

INJUNCTIONS

"It is difficult to tell the meaning of the democratic platform upon this subject. It says:

"'Questions of judicial practice have arisen especially in connection with industrial disputes. We deem that the parties to all judicial proceedings should be treated with rigid impartiality, and that injunctions should not be issued in any cases in which injunctions would not issue if no industrial dispute were involved.

"This declaration is disingenuous. It seems to have been loosely drawn with the especial purpose of rendering it susceptible to one interpretation by one set of men and to a diametrically opposite interpretation by another. It does not aver that injunctions should not issue in industrial disputes, but only that they should not issue merely because they are industrial disputes, and yet those responsible for the declaration must have known that no one has ever maintained that the fact that a dispute was industrial gave any basis for issuing an injunction in reference thereto.

"The declaration seems to be drawn in its present vague and ambiguous shape in order to persuade some people that it is a declaration against the issuing of injunctions in any industrial dispute, while at the same time it may be possible to explain to the average plain citizen who objects to class distinctions that no such intention exists at all.

"Our position is clear and unequivocal. We are anxious to prevent even an appearance of any injustice to labor in the issuance of injunctions, not in a spirit of favoritism to one set of our fellow citizens. The reason for exercising or refusing to exercise the power of injunction must be found in the character of the unlawful injury and not in the character or class of the persons who inflict this injury.

"The man who has a business which is being unlawfully injured is entitled to the remedies which the law has always given him, no matter who has inflicted the injuries. Otherwise we shall have class legislation unjust in principle and likely to sap the foundations of a free government.

"I come now to the question of notice before issuing an injunction. It is a fundamental rule of general jurisprudence that no man shall be affected by a judicial proceeding without notice and hearing. This rule, however, has sometimes had an exception in the issuing of temporary restraining orders commanding a defendant in effect to maintain the status quo until a hearing. Such a process should issue only in rare cases where the threatened change of the status quo would inflict irreparable injury if time were taken to give notice and a summary hearing.

"The unlawful injury usual in industrial disputes, such as I have described, does not become formidable except after sufficient time in which to give the defendants notice and a hearing. I do not mean to say that there may not be cases even in industrial disputes where a restraining order might properly be issued without notice, but generally I think it is otherwise. In some state courts and in fewer federal courts the practice of issuing a temporary restraining order without notice merely to preserve the status quo on the theory that it won't hurt anybody has been too common.

"Many of us recall that the practice has been pursued in other than industrial disputes, as, for instance, in corporate and stock controversies like those over the Erie railroad, in which a stay order without notice was regarded as a step of great advantage to the one who secured it, and a corresponding disadvantage to the one against whom it was secured. Indeed, the chances of doing injustice on an ex parte application are much increased over those when a hearing is granted, and there may be circumstances under which it may affect the defendant to his detriment.

"In the case of a lawful strike the sending of a formidable document restraining a number of defendants from doing a great many different things which the plaintiff avers they are threatening to do often so discourages men always reluctant to go into a strike from continuing what is their lawful right. This has made the laboring men feel that an injustice is done in the issuing of a writ without notice. I conceive that in the treatment of this question it is the duty of the citizen and the legislator to view the subject from the standpoint of the man who believes himself to be unjustly treated, as well as from that of the community at large.

"I have suggested the remedy of returning in such cases to the original practice under the old statute of the United States and the rules in equity adopted by the supreme court, which did not permit the issuing of an injunction without notice. In this respect the republican convention has adopted another remedy, that, without going so far, promises to be efficacious in securing proper consideration in such cases by courts by formulating into a legislative act the best present practice.

"Under this recommendation a statute may be framed which shall define with considerable particularity and emphasize the exceptional character of the cases in which restraining orders may issue without notice, and which shall also provide that when they are issued they shall cease to be operative beyond a short period, during which time notice shall be served and a hearing had unless the defendant desires a postponement of the hearing. By this provision the injustice which has sometimes occurred by which a preliminary restraining order of widest application has been issued without notice, and the hearing of the motion for the injunction has been fixed weeks and months after its date, could not recur.

"The number of instances in which restraining orders without notice in industrial disputes have issued by federal courts is small, and it is urged that they do not, therefore, constitute an evil to be remedied by statutory amendment. The small number of cases complained of above shows the careful manner in which most federal judges have exercised the jurisdiction, but the belief that such cases are numerous has been so widespread and has aroused such feeling of injustice that more definite specification in procedure to prevent recurrence of them is justified if it can be effected without injury to the administration of the law.

"With respect to notice the democratic platform contains no recommendation. Its only intelligible declaration in regard to injunction suits is a reiteration of the plank in the platforms of 1896 and 1904 providing that in prosecutions for contempt in federal courts, where the violation of the order constituting the contempt charged is indirect, i. e., outside of the presence of the court, there shall be a jury trial.

"This provision in the platform of 1896 was regarded then as a most dangerous attack upon the power of the courts to enforce their orders and decrees, and it was one of the chief reasons for the defeat of the democratic party in that contest, as it ought to have been. The extended operation of such a provision to weaken the power of the courts in the enforcement of its lawful orders can hardly be overstated.

"Under such a provision a recalcitrant witness who refuses to obey a subpoena may insist on a jury trial before the court can determine that he received the subpoena. A citizen summoned as a juror and refusing to obey the writ when brought into court must be tried by another jury to determine whether he got the summons. Such a provision applies not alone to injunctions but to every order which the court issues against persons. A suit may be tried in the court of first instance and carried to the court of appeals and thence to the supreme court, and a judgment and decree

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