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IS GOMPERS IN CONTEMPT?

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The fining of Gompers, Mitchell and Morrison by Justice Wright, of the District of Columbia, is likely to focus attention upon the subject of injunctions as nothing else could do. This is really a controversy between a large corporation and its employes, and the writ of injunction is being used to assist the corporation in its contest against those who were employed by it. In order to further its cause and to obtain an advantage against the workmen, the stove company secured the injunction restraining the American Federationist (the official organ of the Federation of Labor) "or any other printed or written newspaper, magazine, circular, letter or other document or instrument whatever," from referring to the complainant, its business or its business product in the "we don't patronize" or "unfair" list, etc.

Mr. Gompers, Mr. Mitchell and Mr. Morrison were accused of violating this injunction and sentenced to imprisonment; the case is being appealed to the higher courts, and full discussion of the principles involved will be delayed until final decision. However, as the corporation papers are loudly condemning Mr. Gompers and his associates and insisting that they ought to have obeyed the restraining order whether constitutional or not, it is worth while to present the side of the defendants. The restraining order was believed by Mr. Gompers, Mr. Mitchell and Mr. Morrison to be an unconstitutional interference with the right of free speech, and a court decree which violates the constitution is null and void just as an unconstitutional statute is null and void. Now, how could the unconstitutionality of this decree be tested? Two ways were open. The defendants could have obeyed it and contested it at the time of the hearing, taking an appeal in case of an adverse decision, but this course would have left the stove company in possession of the field; it would have given it the advantage pending the litigation, and with this advantage, the corporation might have won its fight against the employes before a final decision could have been obtained. It might have dismissed its suit, after winning its contest, and left the defendants without even the advantage of a final decision sustaining their position.

There was another method of testing the injunction, and this they adopted. They condemned the decree as unconstitutional and protested against such interference with the freedom of speech and the freedom of the press. They denied doing the things specifically enjoined, but that question is not so material as the question whether they had a right to test the constitutionality of the order by disobedience of it. Let the case be stated as favorably as possible for the stove company; let it be assumed that Mr. Gompers, Mr. Mitchell and Mr. Morrison deliberately disobeyed the order issued by the judge on the ground that it violated the constitutional guarantees which surround freedom of speech and freedom of the press. Are these men to be condemned for thus testing the question by disobedience?

Judge Parker, their counsel, calls attention to the effort that is being made to invest a judicial decree with a sacredness superior to that which surrounds a statute ,and he is perfectly right in insisting that a statute enacted by a legislature and approved by an executive officer is entitled to as much respect as an order issued by a judge. And yet nearly every statute which is passed is tested by disobedience, and where the statute is directed against a corporation, it is expected that it will be tested by disobedience. The newspapers which hold the labor leaders up to public condemnation because they violated a judicial order think it entirely proper that the great corporation shall await a judicial construction of a statute before obeying it. It is never suggested by such papers that a corporation is doing anything disreputable when it disputes the constitutionality of a law and violates the law in order to secure a decision upon that point. Why should the labor leaders be treated more harshly than the heads of corporations?

Not only do the managers of corporations test the constitutionality of law by disobedience, but public officials constantly do so. A case in point is recalled. About twenty-one years ago the city council of Lincoln, Nebraska, was investigating charges made against a police magistrate. The attorneys for the police magistrate secured a temporary suspension of the investigation and before the investigation was resumed, secured from Judge Brewer, then on the circuit bench of the United States, an order restraining the city council from the removal of the offending official. The restraining order was made returnable at a date about two months away. If the council had followed the advice now being given to Mr. Gompers and his associates it would have awaited for two months and then, if the temporary injunction had been made permanent, it would have taken an appeal, and possibly by the time the magistrate's term expired, or a few years afterwards, a final decision could have been secured. But the mayor and council, believing that Judge Brewer was interfering with the constitutional right of the city authorities, proceeded to violate the injunction by continuing the investigation and removing the official. They were cited before Judge Brewer for contempt, and because of the prominence of the defendants, a fine of $600 was imposed on all but two of them who, for special reasons, were fined only $50. The defendants, with one exception, refused to pay the fines and went to jail, while their attorney presented the matter to the United States supreme court. The court decided that Judge Brewer exceeded his authority in issuing the order; that the order was void; and that the defendants acted within their rights in refusing to obey the order. The defendants were, therefore, discharged. The one councilman who, because of ill health paid his fine rather than go to jail, recently recovered the fine by an act of congress.

This case is reported in the United States Court Reviews, "ex parte: in the matter of Andrew J. Sawyer, et al. petitioners;" volume 124, page 200.

There are many other cases that might be cited, but here is one involving a constitutional right. If public officials are justified in deliberately violating an injunction in order to test its constitutionality, why should Mr. Gompers, Mr. Mitchell and Mr. Morrison be condemned for resorting to the same method of testing the constitutionality of a restraining order which, in the opinion of the defendants, violated the constitutional rights of themselves and the large body of men for whom they acted?

If the supreme court sustains the position taken by Justice Wright, it becomes the law of the land until the decision of the court is reversed or until congress enforces the guarantees of the constitution.

This case also shows the imperative necessity for legislation which will give trial by jury in cases of indirect contempt.

Is it not time for a congressional limitation of the power of the court in matters of temporary injunction? Is it not time for legislation along the lines of the democratic platform? It seems impossible to arouse the public to the need of a reform until someone has suffered. Every step in advance has behind it the suffering of some for others. Mr. Gompers, Mr. Mitchell and Mr. Morrison are to be commended rather than condemned that they are willing to suffer, if by their suffering, they can secure to their fellow laborers protection from the increasing injustice which comes from the arbitrary issuance of injunctions. The president has already pointed out in his messages that the writ of injunction has been abused and he has warned congress that these abuses, if not corrected will lead to a revolt against even the legitimate use of the powers of the equity court. The republican national platform, while seeming to admit the need of remedial legislation, employed deceptive language, and the adoption of that platform was hailing during the campaign as a triumph for the corporations in their contest against their employes. It will be remembered that Mr. Van Cleve, who is back of the stove company's prosecution of the labor leaders, issued campaign documents appealing to the business men to support the republican ticket because the republican convention rejected the petitions of the labor organizations. It will be but poetic justice if the prosecution which Mr. Van Cleve has started results in the very legislation which he opposes, and yet this is not only the natural result, but it is a result to be desired.

HOW JUDGE SENTENCED THE FEDERATION LEADERS

Justice Daniel Wright of the supreme court of the District of Columbia has sentenced President Gompers, Vice President Mitchell and Secretary Morrison of the American Federation of Labor, to serve jail sentences for contempt of court, Gompers for one year, Mitchell for nine months and Morrison for six months. The contempt consisted of refusing to obey the court's order not to print or otherwise convey to organized labor the information that the Buck Stove and Range Co., is unfair to organized labor. Believing that the court's order was a violation of the right of free speech and a free press, the Federation officials ignored it. Had they been the head magnates of of a big corporation, like the beef trust or the lumber trust, the court would not have been able to find the responsible parties, but being mere workingmen it was easy to locate them and mete out punishment. In his decision Justice Wright uses language that clearly shows his hatred of organized labor. He could not have been more emphatic in his denunciation had he been the prosecutor in a criminal case instead of the judge in a quasi-criminal case.

The history of this now famous case is interesting. In 1906 the union metal polishers and buffers in the employ of the Buck Stove and Range Co., at St. Louis struck to enforce the eight hour day. Rather they struck to maintain the eight hour day. The company, early in the year, on the specious plea that it would rather shorten hours than lay off men, reduced the hours from nine to eight. Later when business picked up it sought to lengthen the hours again, but the metal polishers and buffers insisted that the company be consistent and put on more men instead of lengthening the hours. This the company refused to do and the men struck. The matter was taken up through the usual Federation channels and in due time the Buck Stove and Range Co. ,was put in the "we do not [pa]tronize list" carried in the American Federationist.

In September, 1907, the executive council of the American Federation of Labor was cited to appear in court and show cause why an injunction should not issue restraining them from continuing the "unfair" notice in the American Federationist. The case came up [be]aring before Justice Gould, and a preliminary restraining order was granted on December 18, 1907. This order was made perpetual on December 27.

July, 1908, Gompers, Mitchell and Morrison were cited to appear and show why they should not be punished for contempt. The case was dragged along for months, every postponement save one being at the request of the prosecution. The case was finally argued before Justice Wright, and he decided the defendants guilty of contempt of the court. The result was a jail sentence. The defendants at once gave bail and have appealed the case to a higher court.

In his opinion Justice Wright fairly froths at the mouth in his effort to denounce union labor and stand up for the dignity of the court. After reviewing the history of the case Justice Wright declared that the Federation and claimed that through the labor organizations were "forced and intimidated individually willing or not."

After reading several yards of stuff on the question of restraint of trade, he opined that:

"From the foregoing it ought to seem apparent to thoughtful men that the defendants to the bill, each and all of them, have combined together for the purpose of:

"1. Bringing about the breach of plaintiff's existing contracts with the others.

"2. Depriving plaintiff of property (the value of the good will of its business) without due process of law.

"3. Restraining trade among the several states.

"4. Restraining commerce among the several states."

He then opined some more to the effect that

"The ultimate purpose of the defendants was unlawful, their concerted project an offense against the law, and they were guilty of crime."

Coming to the question of the violation of the court's injunction, he said:

"That Gompers and others had in advance of the injunction determined to violate it, if issued, and had in advance of the injunction counseled all members of labor unions and of the American Federation of Labor and the public generally to violate it in case it should be issued, appears from the following, which references point out also the general plan and mutual understanding of the organizations and their various members."

The court here read a mass of extracts from reports of proceedings of conventions, of the federation reports of President Gompers, editorials from the columns of the American Federationist and the labor press generally in support of his statement that there was a predetermination to violate.

Discussing the actions of the defendants since the issuance of the injunction, Justice Wright said:

"Having in mind what may be in the foregoing delineation which indicates that either of the three respondents did before the issuance of the injunction deliberately determine to willfully violate it, and did counsel others to do the same, let me now turn to their sayings and doings since the decision of Mr. Justice Gould was formally announced, and the order of injunction itself put into technical operation by the giving of the injunction bond.

"On December 17, 1907, the opinion of the court was filed in the case; the order of injunction was entered December 18; the giving of the undertaking required by it was consummated on December 23, and I am disposed now to look at the separate conduct of each respondent with a view of recording his individual responsibility in sufficient detail."

The court, after quoting at great length the attitude taken by Mr. Gompers, since the injunction was issued, his writings, interviews and public addresses, remarked: "All of which was done, all of which was published and all of which was circulated in willful disobedience and deliberate violation of the injunction and for the purpose of inciting and accomplishing the violation generally, and in pursuance of the original common design of himself and confederates, to bring about the breach of plaintiff's existing contracts with others; deprive plaintiff of property (the good will of its business) without due process of law; restrain trade among the several states; restrain commerce among the several states."

Secretary Morrison had full knowledge of all that was being done, and as for Mitchell, the court said he had not only signed many of the documents referred to, but also referred to the presence of Mitchell in the chair on January 25, 1908, at the annual convention of the United Mine Workers of America, when a resolution was adopted placing the Bucks Stove & Range Co., on the "unfair list."

Continuing as to all three of the defendants, the court said:

"In defense of the charges now at bar, neither apology nor extenuation is deemed fit to be embraced; no claim of unmeant contumacy is heard; persisting in contemptuous violation of the order, no defense is offered save these: "That the injunction (1) infringed the constitutional guaranty of the freedom of the press, and (2) infringed the constitutional guaranty of freedom of speech."

"These defenses do not fill the measure of the case; the injunction was designed to stay the general conspiracy of which the publication of the 'unfair' and 'we don't patronize' lists were but incidents; the injunction interferes with no legitimate right of criticism or comment that law has ever sanctioned and the respondents' intimation that it does so is a mockery and a pretense."

In reference to the freedom of the press, the court declares that the constitution nowhere conferred the right to speak, to print or to publish.

"It guarantees," said he, "only that in so far as the federal government is concerned its congress shall not abridge it and leaves the subject to the regulation of the several states, where it belongs."

In the opinion of the court, even where a tribunal has fallen into error in the determination of a cause which it was invested with jurisdiction to "hear and determine" the duty and necessity of obedience remained nevertheless the same. "And," said the court, "I plac the decision of the matter at bar distinctly on the proposition that were the order confessedly erroneous yet it must have been obeyed. It is between the supremacy of law over the rabble or its prostration under the feet of the disordered throng."

Here is a gem:

"It stands in the nature of things that the unlettered be most sensible of that authority which most often shows itself in their modest affairs, although a higher may exist to which their attention is not every moment directed by some interference with them, but to which they stand ready to adhere upon the moment that shows them that the lesser authority was in mistake, or leading them awrong.

"That the universal recognition, the desirability of associations of craftsmen for the ascertainment and advancement of the welfare of their kind is so retarded as to be much deplored; yet it is in the history of man that some lesson must be unlearned; that systems

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