63D CONGRESS, 2d Session. } SENATE. { REPORT No. 698.

UNLAWFUL RESTRAINTS AND MONOPOLIES.

JULY 22, 1914.—Ordered to be printed.

Mr. CULBERSON, from the Committee on the Judiciary, submitted the following

REPORT.

[To accompany H. R. 15657.]

The Committee on the Judiciary, having had under consideration the bill (H. R. 15657) to supplement existing laws against unlawful restraints and monopolies, and for other purposes, report the same to the Senate with the recommendation that it be amended as shown on the face of the bill, and that, as amended, it do pass.

It is well, at the outset, to state the theory of the bill, both as it passed the House of Representatives and as it is proposed to be amended, for the general scope of the House measure is unchanged. It is not proposed by the bill or amendments to alter, amend, or change in any respect the original Sherman Antitrust Act of July 2, 1890. The purpose is only to supplement that act and the other antitrust acts referred to in section 1 of the bill. Broadly stated, the bill, in its treatment of unlawful restraints and monopolies, seeks to prohibit and make unlawful certain trade practices which, as a rule, singly and in themselves, are not covered by the act of July 2, 1890, or other existing antitrust acts, and thus, by making these practices illegal, to arrest the creation of trusts, conspiracies, and monopolies in their incipiency and before consummation. Among other of these trade practices which are denounced and made unlawful may be mentioned discrimination in prices for the purpose of wrongfully injuring or destroying the business of competitors; exclusive and tying contracts; holding companies; and interlocking directorates.

Existing antitrust acts are further supplemented by a provision that whenever a corporation shall violate the antitrust acts such

violation shall be regarded as that also of the individual directors and officers of the corporation who shall have authorized, ordered, or committed any of the acts constituting such violation, thus fixing the personal guilt of the officials of the corporation who are responsible for the infraction of the law.

The other important and general purposes of the bill are to exempt labor, agricultural, horticultural, and other organizations from the operation of the antitrust acts; to regulate the issuance of temporary restraining orders and injunctions generally by the Federal courts, and particularly in labor controversies, and to make provision for the trial by jury of contempts committed without the presence of the court.

The following is the analysis of the bill as made by the Committee on the Judiciary of the House of Representatives in their report recommending its passage:

"ANALYSIS OF THE BILL.

I.

DEFINITIONS OF TERMS.

Section 1 of the bill defines technically for the purposes of this bill certain words, phrases, and terms used in the body of the bill. The definitions thus given are designed merely for convenient reference and to avoid repetition. The definition of commerce, it will be observed, is broadened so as to include trade and commerce between any insular possessions or other places under the jurisdiction of the United States, which at present do not come within the scope of the Sherman antitrust law or other laws relating to trusts. The act approved July 2, 1890, and commonly referred to as the Sherman law, and supplementary legislation pertaining to the same subject, are restricted in application to commerce among the several States and Territories, the District of Columbia, and with foreign nations. Your committee can conceive of no good reason why the insular possessions or other places now under the jurisdiction of the United States should not be included within the provisions of our antitrust laws, and with this idea in view we have accordingly in this bill broadened the scope of these laws so as to make them applicable to all places under the jurisdiction of the United States.

II.

PRICE DISCRIMINATIONS.

Section 2 of the bill is intended to prevent unfair discriminations. It is expressly designed with the view of correcting and forbidding a common and widespread unfair trade practice whereby certain great corporations and also certain

smaller concerns which seek to secure a monopoly in trade and commerce by aping the methods of the great corporations, have heretofore endeavored to destroy competition and render unprofitable the business of competitors by selling their goods, wares, and merchandise at a less price in the particular communities where their rivals are engaged in business than at other places throughout the country. This section expressly forbids discrimination in price between different dealers of commodities that are sold for use, consumption, or resale within the United States or any place within its jurisdiction, when such discrimination is made with the purpose or intent to thereby destroy or wrongfully injure the business of a competitor, either of such dealer or seller. It will be observed that the language used makes this section applicable only to domestic commerce, or, in other words, its application is restricted to commerce carried on in the United States, or in places under the jurisdiction thereof, and has no reference to commodities sold either in this country or abroad which are intended solely for our export trade. The violation of any of the provisions of this section is made a misdemeanor, and is made punishable by fine or imprisonment, or both. There are two provisos in this section which are important. The first proviso permits discrimination in prices of commodities on account of differences in grade, quality, and quantity of the commodity sold, or that makes only due allowance for difference in the cost of transportation. The second proviso permits persons selling goods, wares, and merchandise in commerce to select their own customers, except as provided in section 3, which will be considered later. The necessity for legislation to prevent unfair discriminations in prices with a view of destroying competition needs little argument to sustain the wisdom of it. In the past it has been a most common practice of great and powerful combinations engaged in commerce—notably the Standard Oil Co., and the American Tobacco Co., and others of less notoriety, but of great influence—to lower prices of their commodities, oftentimes below the cost of production in certain communities and sections where they had competition, with the intent to destroy and make unprofitable the business of their competitors, and with the ultimate purpose in view of thereby acquiring a monopoly in the particular locality or section in which the discriminating price is made. Every concern that engages in this evil practice must of necessity recoup its losses in the particular communities or sections where their commodities are sold below cost or without a fair profit by raising the price of this same class of commodities above their fair market value in other sections or communities. Such a system or practice is so manifestly unfair and unjust, not only to competitors who are directly injured thereby but to the general public, that your committee is strongly of the opinion that the present antitrust laws ought to be supplemented by making this particular form of discrimination a specific

offense under the law when practiced by those engaged in commerce.

The necessity for such legislation is shown by the fact that 19 States have enacted laws forbidding this particular form of discrimination within their borders. These State statutes have practically all been enacted in the last few years, and most of them in the years 1911, 1912, and 1913. It is important that these State statutes be supplemented by additional legislation by Congress, for it is now possible for one of these great corporations doing business in not only the 48 States but throughout the world to lower the prices of its commodities in a particular State and sell within that State at a uniform price in compliance with State laws, and thereby destroy the business of all independent concerns and competitors operating within the State. The loss incurred by such gigantic effort in destroying competition can be more than regained by general increase in the prices of their commodities in other sections. In fact, complaint has been made to your committee that efforts have been made by certain great corporations engaged in commerce in some of the States which have enacted statutes forbidding such discrimination to circumvent the State laws by the methods above described. In seeking to enact section 2 into law we are not dealing with an imaginary evil or against ancient practices long since abandoned, but are attempting to deal with a real, existing, widespread, unfair and unjust trade practice that ought at once to be prohibited in so far as it is within the power of Congress to deal with the subject. This we think is accomplished by section 2 of this bill. As further showing the necessity for such legislation, we call attention to the States which have heretofore adopted statutes varying in form but for the purpose of preventing unfair discriminations in price, as follows:

1. Arkansas, act 1905, as amended March 12, 1913.
2. Idaho, antitrust act of 1911.
3. Iowa, Revised Statutes.
4. Louisiana, act of 1908.
5. Missouri, Revised Statutes.
6. Nebraska, act of 1913.
7. New Jersey, act 1913.
8. North Carolina, act 1913.
9. Oklahoma, act 1913.
10. South Carolina, act 1902.
11. Utah, act 1913.
12. Wisconsin, act 1913.
13. Wyoming, Revised Statutes, 1911.
14. Kansas, act 1905.
15. Michigan, act 1913.
16. Massachusetts, act 1912.
17. Montana, act 1913.
18. North Dakota, act of 1913.
19. California, act 1913.

III.

MINE PRODUCTS.

Section 3 of the bill makes it unlawful for the owner or operator of a mine, or the person controlling the sale of the product thereof in commerce, to arbitrarily refuse to sell such product to a responsible person who applies to purchase the same. This section, like section 2, is limited in its application to the United States and to places under the jurisdiction thereof, and has no reference to persons desiring to purchase such a product for export sale. In that case the seller is permitted to arbitrarily refuse to sell to a responsible bidder, for otherwise a foreign dealer being responsible might purchase the entire output of a mine, to the detriment of manufacturers and dealers in the United States and the owner be powerless to prevent it. The section is based on the broad conservation idea that natural products such as iron, coal, and other minerals, stored in the earth as the result of nature's laws should not be monopolized by the mere acquisition of the title to the lands which contain such resources. The design is to prevent those who have acquired or may acquire a monopoly or partial monopoly of mines from discriminating against certain manufacturers, railroads, or other persons who need the products of the mines in carrying on their industries where the commodity is used in its crude state, as coal, and, further, to prevent arbitrary discrimination against responsible purchasers who desire to obtain such products for use or consumption or for resale to persons who desire to purchase same for use or consumption.

This provision is new, but in view of the fact that many railroad corporations, the United States Steel Corporation, and other corporations have acquired and own, either directly or indirectly, through the medium of subsidiary corporations, vast areas of land containing coal, iron, and copper and other minerals in common use, we feel that this legislation is needed and fully justified. By its enactment into law we make it impossible for mere ownership of mines to enable the owners or those disposing of the products thereof to direct the disposal of such products into monopolistic channels of trade. It will liberate from the power of the trust every small manufacturer who is compelled to go into the open market for his raw material and every person who desires to purchase coal for use or for resale to those who desire to purchase for use or consumption, and will afford to every such manufacturer an opportunity to purchase same for cash wherever offered for sale in commerce. The section expressly forbids the mine owner or person controlling the sale of the product of the mine to arbitrarily refuse to sell such product to any responsible purchaser, and thereby prevents the mine owner or operator from giving the preference to another and rival dealer in the disposal of such product.

IV.

EXCLUSIVE AND "TYING" CONTRACTS.

Section 4 of this bill has apparently been much misunderstood, and great confusion seems to have arisen in regard to its provisions. Whether designedly or from a misunderstanding of its purport, we know not, but it has been contended very earnestly that its provisions prevent exclusive or sole agencies. It not only does not prohibit or forbid exclusive agencies, but on the contrary it in no way whatever relates to agencies properly so termed. Let us therefore consider what this section really accomplishes. It prohibits the exclusive or "tying" contract made between the manufacturer and the dealer by purchase or lease, whereby the latter agrees, as a condition of his contract, not to use or deal in the commodities of the competitor or rival of the seller or lessor. It is designed merely to prevent this unfair trade practice now so common throughout the country, and which is generally regarded by everyone who has given the subject any serious consideration as unjust to the local dealer and to the community and as monopolistic in its effects. The section provides that any person engaged in commerce who either leases or makes a sale of goods, wares, and merchandise in the United States or in any places under its jurisdiction on the condition or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor of either the lessor or seller shall be deemed guilty of a misdemeanor and punished as provided in the section. The words "or fix a price charged therefor or discount therefrom or rebate upon such price" are merely descriptive of the different methods used by the manufacturers to induce the dealer or local merchant to enter into this exclusive or "tying" contract, which obligates him to surrender a right which every dealer should enjoy, namely, to handle any manufacturer's goods, wares, or merchandise he sees fit to handle. Of course, the manufacturer must offer some very flattering and extraordinary inducements on his part, for otherwise no dealer would be foolish enough to enter into any such contract. The first inducement in every case must of necessity relate to price.

By fixing the price so high that the retail dealer will make an extraordinary or unusual profit on the commodities actually sold, the manufacturer is enabled to induce him to enter into an arrangement whereby the local dealer can actually increase his profits for the time being at least by giving up his entire trade in competitive commodities which he is compelled to handle on a small margin. But, rest assured that when the local dealer enters into such a contract and gives up a portion of his trade to rivals, he at once attempts by the aid of the manufacturer to establish a monopoly in the trade of the commodity handled under the exclusive contract and sold at a higher profit. If the

transaction results in completely driving out competitive articles from the community as the contract by its terms takes them out of the business of the local dealer, there can be little room to question the contention of the advocates of this system that both the manufacturer and the dealer are benefited by the transaction. If on the contrary the local merchant who has tied his hands by an exclusive contract can not drive out of the community competitive articles and thereby secure a monopoly of the trade in his immediate locality, it is manifest that he has been seriously hampered and injured in his business by the restrictions placed upon him by his contract. But, the advocates of this system and practice of monopoly, in dealing with this question never look beyond the manufacturer or the local dealer to the millions of American consumers who are compelled to purchase daily the necessary food, raiment, and all the necessities of life through the ordinary channels of trade in their respective communities. What about the interest of consumers—the general public—the American people, as a whole? How do they fare under this unnatural arbitrary system and trade practice devised by American manufacturers and put in operation by great and powerful combinations in trade for their own enrichment and with the ultimate view of obtaining a complete monopoly in their special line of industry? Undoubtedly, the system results in higher prices to consumers. Great department stores, and mail-order houses flourish under it. Local customers can not purchase or obtain at their local stores particular commodities desired and often necessary and hence are compelled to send their money abroad in order to secure the desired commodity which ought under any fair system to be procurable in their local community through their local dealer. On account of this very condition, the temptation to the local merchant is very strong to break away from his contract and to deal in the commodities of others. The needs of his customers demand constantly that he should do so.

The customer having once gone to another dealer or procured the desired commodity through a mail-order house may not return to his local dealer and the goods purchased under an exclusive or "tying" contract may remain on the shelves of the local merchant unsold. The local dealer has invested his money in them; he has paid for them; they belong to him. But the manufacturer has a contract that binds him not to deal in other like commodities. So every such contract provides for a discount from or rebate upon such price as a further inducement for the local merchant or retailer to enter into a discriminating contract which ties his hands. What is the result? Let us see. What is the motive and purpose of the manufacturer in making or entering into such exclusive contract? It is undoubtedly his purpose to drive out competition and to establish a monopoly in the sale of his commodities in that particular community or locality. His contract by its express terms completely shuts out com-

petition in the business of the local dealer with whom he makes it. The dealer bound by this exclusive contract not to handle the goods, wares, and merchandise of another becomes the ally of the manufacturer in his effort and purpose to drive out competition in the locality or community in which such commodities are sold. This is done by means of extensive advertising, and let it be borne in mind also that this advertising is added in the price of the commodities and paid for by the consumer. If by the combined efforts of the manufacturer and the local dealer and the glowing and overdrawn and oftentimes false advertisements competitors are compelled to retire from the field, a monopoly in the particular community or locality is the invariable result. In this connection it is important to state that to-day in every village and locality where there is only a single store and this exclusive or "tying" contract is entered into between the manufacturer and the local dealer concerning any commodity, the exclusive or "tying" contract gives both the manufacturer and the local dealer a complete monopoly of that particular commodity in the locality or community. That the effect of such a system is detrimental to the consumers and to the general public can not be questioned for a moment.

The public is compelled to pay a higher price and local customers are put to the inconvenience of securing many commodities in other communities or through mail-order houses that can not be procured at their local stores. The price is raised as an inducement. This is the local effect. Where the concern making these contracts is already great and powerful, such as the United Shoe Machinery Co., the American Tobacco Co., and the General Film Co., the exclusive or "tying" contract made with local dealers becomes one of the greatest agencies and instrumentalities of monopoly ever devised by the brain of man. It completely shuts out competitors, not only from trade in which they are already engaged, but from the opportunities to build up trade in any community where these great and powerful combinations are operating under this system and practice. By this method and practice the Shoe Machinery Co. has built up a monopoly that owns and controls the entire machinery now being used by all great shoe-manufacturing houses of the United States. No independent manufacturer of shoe machines has the slightest opportunity to build up any considerable trade in this country while this condition obtains. If a manufacturer who is using machines of the Shoe Machinery Co. were to purchase and place a machine manufactured by any independent company in his establishment, the Shoe Machinery Co. could under its contracts withdraw all their machinery from the establishment of the shoe manufacturer and thereby wreck the business of the manufacturer. The General Film Co., by the same method practiced by the Shoe Machinery Co. under the lease system, has practically destroyed all competition and acquired a virtual monopoly of all films manu-

factured and sold in the United States. When we consider contracts of sales made under this system, the result to the consumer, the general public, and the local dealer and his business is even worse than under the lease system.

The local dealer is required under the contract system to purchase and pay for each article secured for his business. He is required to contract for purchase on condition that he will not deal in like articles manufactured by competitors. If he can not sell the commodities so purchased, he must go out of business. It was shown in testimony before the committee during the recent hearings that a certain automobile manufacturing company, with a capital of only $2,000,000, had made a profit of $25,000,000 net on their investment in a single year. Was that a profit on the $2,000,000 actually invested by the manufacturing company? Not at all. It was the profit on that $2,000,000 supplemented by many times that many millions actually invested by local dealers in the machines of that company by so-called selling agencies throughout the country. The selling agencies are not in reality agencies at all, but are purchasers and owners of machines who have paid the full price therefor under contracts conditioned that these same dealers will not deal in the machines of any competitor or rival company. These extraordinary profits have been made largely on money actually invested in machines by customers, hundreds of which remain unsold in the possession of the local dealer. This illustration alone is sufficient to show the absolute unfairness of any such practice or system. The system is wholly bad for consumers and the general public, and in its last analysis detrimental to the interests of local dealers generally. We have penalized this practice under the provisions of section 4 and made it a misdemeanor punishable as prescribed in the section.

V.

SUPPLEMENT SECTION 7 OF SHERMAN ACT.

Section 5 is supplementary to the existing laws, and extends the remedy under section 7 of the Sherman Act to persons injured in their business or property by the wrongful acts of persons or combinations violating any of the antitrust laws, and allows the recovery of threefold damages therefor.

VI.

DECREE ADMISSIBLE IN OTHER SUIT.

Section 6 provides that a final decree obtained by the United States in a suit to dissolve a corporation or unlawful combination may be offered in evidence in a suit brought by a private suitor for damages under the antitrust laws by reason of the unlawful acts of the defendant corporation, and that when such decree or judgment is so offered it shall

be conclusive evidence of the same facts and be conclusive as to the same questions of law as between the parties in the original suit or proceeding. This section also provides that the statutes of limitations shall be suspended in favor of private litigants who have sustained damage to their property or business by the wrongful acts of the defendant during the pendency of the suit or proceeding instituted by or on behalf of the United States. The entire provision is intended to help persons of small means who are injured in their property or business by combinations or corporations violating the antitrust laws.

It is in keeping with a recommendation made by the President in his message to Congress on the general subject of trusts and monopolies.

VII.

FRATERNAL, LABOR, AND OTHER ORGANIZATIONS.

The object of section 7 is to make clear certain questions about which doubt has arisen as to whether or not fraternal, labor, consumers, agricultural, or horticultural organizations, orders, or associations organized for mutual help, not having capital stock or conducted for profit, come within the scope and purview of the Sherman antitrust law in such way as to warrant the courts under interpretations heretofore given to that law to enter a decree for the dissolution of such organizations, orders, or associations upon a proper showing, as may be done in regard to industrial corporations and combinations which have been found to be guilty of violation of its provisions.

A second paragraph is inserted in this section to remove a question of doubt as to whether associations of traffic, operating, accounting, or other officers of common carriers for the purpose of conferring among themselves or of making any lawful agreement as to any matter which is subject to the regulating or supervisory jurisdiction of the Interstate Commerce Commission, come within the prohibitions of the antitrust laws.

It was contended before your committee by Mr. Gompers, president of the American Federation of Labor, that under the interpretations of the Sherman law as construed by the courts, the labor organizations as they exist to-day might, under certain conditions, be deemed and held illegal combinations in restraint of trade and be dissolved by a decree of the court under section 4 of the act of July 2, 1890, and that the American Federation of Labor and all organizations affiliated with it exist and operate to-day at the sufferance of the administration in power. Mr. Gompers, among other things in his address before the committee, said:

> Gentlemen, under the interpretation placed upon the Sherman antitrust law by the courts, it is within the province and within the power of any administration at any time to begin proceedings to dissolve any organization of labor in the United States and to take charge of and receive whatever funds any worker or organization may have wanted to contribute or felt that it is his duty to contribute to the organization.

Mr. WEBB. Are there any suits pending in the courts now looking to this end, Mr. Gompers?

Mr. GOMPERS. There are no suits now pending, but an organization of workingmen, the window-glass workers, was dissolved by order of the court under the provisions of the Sherman antitrust law, charged with conspiracy as an illegal combination in restraint of trade. And while that organization was dissolved by action of the court, yet it created no furor, for this reason: I have no desire to reflect upon the men who are in charge of that organization as its officers and representatives, but it was, in my judgment, supine cowardness for them not to resist an attempt of the dissolution of their associated effort as a voluntary organization of men to protect the only thing they possessed—the power to labor.

Mr. WEBB. Have you any case where a labor organization has been dissolved simply because they themselves united in asking or fixing a certain wage and went no further in uniting with the manufacturers?

Mr. GOMPERS. I can not tell you, sir, about that. But that is the very essence of the life of the organization. What I want to convey is this, that there are probably, of these 30,000 or more local associations of workingmen, what we call local unions of working men and working women, probably more than two-thirds of whom have agreements with employers. As a matter of fact, I think that every observer and every humanitarian who knows greeted with the greatest satisfaction the creation of the protocol in the sweated industries of New York City and vicinity which abolished sweatshops and long hours of labor, and the burdensome, miserable toil prevailing, and established the combination of employers and of work men and work women by which certain standards are to be enforced, and no employer can become a member of the manufacturers' association in that trade unless he is willing to undersign an agreement by which the conditions prevailing in the protocol will be inaugurated by him. Yet, under the provisions of the Sherman antitrust law that association of manufacturers has been sued, I think, for something like $250,000, because it is a conspiracy in restraint of trade.

What I mean to say is this: I am perfectly satisfied in my own mind that the Attorney General of this administration, the Attorney General of the United States under the present administration, is not going to dissolve or make any attempt to dissolve the organizations of the working people of this country. I firmly believe that if there should be any of them, any individual or an aggregation of individuals, guilty of any crime, that the present administration would proceed against them just as readily, and perhaps more so, as any other; I am speaking of the procedure against the organizations themselves and the dissolution of them. But who can tell whether this administration is going to continue very long, or whether the same policy is going to be pursued; that is, the policy of permitting these associations to exist without interference or attempts to isolate them? Who can tell? What may come; what may not the future hold in store for us working people who are engaged in an effort for the protection of men and women who toil to make life better worth living? We do not want to exist as a matter of sufferance, subject to the whims or to the chances or to the vindictiveness of any administration or of an administration officer. Our existence is justified not only by our history, but our existence is legally the best concept of what constitutes law. It is an outrage; it is an outrage of not only the conscience; it is not only an outrage upon justice; it is an outrage upon our language to attempt to place in the same category a combination of men engaged in the speculation and the control of the products of labor and the products of the soil on the one hand and the associations of men and women who own nothing but themselves and undertake to control nothing but themselves and their power to work.

Mr. FLOYD. I want to see if I understand your position. If I understand your position under the existing status of the law as determined by the Federal courts, if the Attorney General should proceed to dissolve any of your labor organizations they could be dissolved. Is that your proposition?

Mr. GOMPERS. Yes, sir.

Mr. FLOYD. And that your existence, therefore, depends upon the sufferance of the administration which happens to be in power for the time being?

Mr. GOMPERS. Yes, sir.

Mr. FLOYD. What you desire is for us to give you a legal status under the law?

Mr. GOMPERS. Yes, sir.

Mr. FLOYD. So you can carry on this cooperative work on behalf of the laborers of the country and of the different organizations without being under the ban of the existing law?

Mr. GOMPERS. Yes, sir.

In the light of previous decisions of the courts and in view of a possible interpretation of the law which would empower the courts to order the dissolution of such organizations and associations, your committee feels that all doubt should be removed as to the legality of the existence and operations of these organizations and associations, and that the law should not be construed in such a way as to authorize their dissolution by the courts under the antitrust laws or to forbid the individual members of such associations from carrying out the legitimate and lawful objects of their associations. This will be accomplished by the provisions of section 7 of this bill, which recognize as legal the existence and operations of fraternal, labor, consumers, agricultural, or horticultural organizations, orders, or associations organized for purposes of mutual help, and not having capital stock or conducted for profit, and forbids the danger and possibility of the dissolution of such organizations, orders, or associations by a decree of the courts as unlawful combinations in restraint of trade or commerce under the provisions of the antitrust laws. It also guarantees to individual members of such organizations, orders, or associations, the right to pursue without molestation or legal restraint the legitimate objects of such association. This section should be construed in connection with sections 15 to 22, inclusive, which regulate the issuance of injunctions and provide for jury trials in certain cases of contempts in Federal courts. The sections relating to injunctions and contempts constitute for labor a complete bill of rights in equitable proceedings in United States courts.

This section further provides that nothing contained in the antitrust laws shall be construed to forbid associations of traffic, operating, accounting, or other officers of common carriers for the purpose of conferring among themselves or of making any lawful agreement as to any matter which is subject to the regulating or supervisory jurisdiction of the Interstate Commerce Commission. In actual practice the officers of common carriers in the interest of the public and to avoid complications must necessarily confer with the officers of other railroad companies, but as all agreements or arrangements made between them are subject to the jurisdiction of the Interstate Commerce Commission, your committee consider it but just to make clear that such associations are not in violation of the Sherman Act. When the desirability of this provision was brought to the attention of the committee, the question was referred to the Interstate Commerce Commission by the chairman of the committee for its opinion in regard to the proposed legislation, and this provision as drawn is in keeping with the views of the Interstate Commerce Commission.

VIII.

HOLDING COMPANIES.

Section 8 deals with what is commonly known as the "holding company," which is a common and favorite method of promoting monopoly. "Holding company" is a term, generally understood to mean a company that holds the stock of another company or companies, but as we understand the term a "holding company" is a company whose *primary* purpose is to hold stocks of other companies. It has usually issued its own shares in exchange for these stocks, and is a means of holding under one control the competing companies whose stocks it has thus acquired. As thus defined a "holding company" is an abomination and in our judgment is a mere incorporated form of the old-fashioned trust. Most of the corporations engaged in interstate commerce are organized under the laws of one or the other of the States. It is right that this should be so, and it is right that the various States, each of which has the right to exclude corporations of any other State from its borders, should exhibit comity to these other States, and that the Federal Government, which perhaps has the right to exclude corporations of any State from interstate commerce, should exhibit comity to all the States.

At common law a corporation had no right to own stock in another corporation, but from time to time the various States have, by special statutes, permitted it, until now certainly more than a majority of all the States permit corporate stockholding either generally or of certain kinds and under certain conditions. This legislation in its early operation may have served a useful, economic purpose. Trade and commerce could do as well without steam and electricity as without the idea of the commercial unit which is embodied in the word "corporation." Hence there are certain corporations which may properly be interested with individuals other than its own stockholders, but experience has taught us that the "holding company" as above described no longer serves any purpose that is helpful to either business or the community at large when it is operated purely as a "holding company." Section 8 is intended to eliminate this evil so far as it is possible to do so, making such exceptions from the law as seem to be wise, which exceptions have been found necessary by business experience and conditions, and the exceptions herein made are those which are not deemed monopolistic and do not tend to restrain trade.

IX.

INTERLOCKING DIRECTORATES.

Section 9 of the bill deals with the general subject of interlocking directorates. The President, in his message deliv-

ered before Congress on January 20, 1914, on the subject of trusts and monopolies, among other things, said:

> We are all agreed that "private monopoly is indefensible and intolerable," and our program is founded upon that conviction. It will be a comprehensive but not a radical or unacceptable program, and these are its items, the changes which opinion deliberately sanctions and for which business waits:
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> It waits with acquiescence, in the first place, for laws which will effectually prohibit and prevent such interlockings of the *personnel* of the directorates of great corporations—banks and railroads, industrial, commercial, and public-service bodies—as in effect result in making those who borrow and those who lend practically one and the same, those who sell and those who buy but the same persons trading with one another under different names and in different combinations, and those who affect to compete in fact partners and masters of some whole field of business. Sufficient time should be allowed, of course, in which to effect these changes of organization without inconvenience or confusion.
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> Such a prohibition will work much more than a mere negative good by correcting the serious evils which have arisen because, for example, the men who have been the directing spirits of the great investment banks have usurped the place which belongs to independent industrial management working in its own behoof. It will bring new men, new energies, a new spirit of initiative, new blood, into the management of our great business enterprises. It will open the field of industrial development and origination to scores of men who have been obliged to serve when their abilities entitled them to direct. It will immensely hearten the young men coming on and will greatly enrich the business activities of the whole country.

In drafting the provisions of section 9 your committee has endeavored to carry out the recommendations of the President. In order that the corporations affected may have ample time in which to readjust their boards of directors in keeping with the requirements of this act, it is expressly provided that the provisions of this section shall not become effective until two years after the date of the approval of the act. This section is divided into three paragraphs, each of which relates to the particular class of corporations described, and the provisions of each paragraph are limited in their application to the corporations belonging to the class named herein.

The first paragraph deals with the eligibility of directors in interstate-railroad corporations, and provides that no person who is engaged as an individual or who is a member of a partnership or is a director or other officer of a corporation engaged in the business of producing or selling equipment, materials, or supplies, or in the construction or maintenance of railroads or other common carriers engaged in commerce, shall act as a director or other officer or employee of any other corporation or common carrier engaged in commerce to which he or such partnership or corporation sells or leases, directly or indirectly, equipment, material, or supplies, or for which he or such partnership or corporation, directly or indirectly, engages in the work of construction or maintenance. It is further provided in this paragraph that no person who is engaged as an individual or who is a member of a partnership, or is a director or other officer of a corporation which is engaged in the conduct of a bank or trust company, shall act as a director or other officer or

employee of any common carrier for which he or such partnership, or bank, or trust company, acts, either separately or in connection with others, as agent for or underwriter of the sale or disposal by such common carrier of issues or parts of issues of its securities, or from which he or such partnership or bank or trust company purchases, either separately or in connection with others, issues or parts of issues of securities of such common carriers. The provisions of this paragraph prevent absolutely common directors or interlocking directors between corporations occupying relations to each other described therein, without any reference to the capital, surplus, and undivided profits of the corporations dealing with each other.

The second paragraph of the bill deals with the eligibility of directors, officers, and employees of banks, banking associations, and trust companies organized or operating under the laws of the United States, either of which has deposits, capital, surplus, or undivided profits aggregating more than $2,500,000, and provides that no private banker or person who is a director in any bank or trust company organized and operating under the laws of a State having such aggregate amount of deposits, capital, surplus, and undivided profits shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. The purpose of this provision, which relates exclusively to banks and banking associations, is to prevent as far as possible control of great aggregations of money and capital through the medium of common directors between banks and banking associations, the object being to prevent the concentration of money or its distribution through a system of interlocking directorates. Your committee have not deemed it necessary or wise, therefore, to include within the provisions of this paragraph the smaller banks throughout the country, except where located in cities and towns of more than 100,000 inhabitants. There are three provisos relating to this paragraph. The first proviso excepts from its provisions mutual savings banks not having capital stock represented by shares. The second proviso permits a director, officer, or employee of a bank or banking association or trust company to be a director, officer, or employee in another bank or trust company organized under the laws of the United States or any State where the entire capital stock of one is owned by stockholders in the other. And the third proviso allows a director of class A of a Federal reserve bank, as defined in the Federal reserve act, to be a director or officer, or both a director and officer, in one member bank. This is permitted by the provisions of the Federal reserve act, and this proviso is inserted to avoid repealing that provision.

The third paragraph of section 9 deals with the eligibility of directors in industrial corporations engaged in commerce, and provides that no person at the same time shall be a director in any two or more corporations, either of which has capital, surplus, and undivided profits aggregating more than

$1,000,000, other than common carriers which are subject to the act to regulate commerce, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that an elimination of competition by agreement between them would constitute a violation of any of the provisions of the antitrust laws. In this, as in the preceding paragraph relating to banks, it was not deemed necessary or advisable that interlocking directorates should be prohibited between the smaller industrial corporations. The importance of the legislation embodied in section 9 of this bill can not be overestimated. The concentration of wealth, money, and property in the United States under the control and in the hands of a few individuals or great corporations has grown to such an enormous extent that unless checked it will ultimately threaten the perpetuity of our institutions. The idea that there are only a few men in any of our great corporations and industries who are capable of handling the affairs of the same is contrary to the spirit of our institutions. From an economic point of view, it is not possible that one individual, however capable, acting as a director in fifty corporations, can render as efficient and valuable service in directing the affairs of the several corporations under his control as can fifty capable men acting as single directors and devoting their entire time to directing the affairs of one of such corporations. The truth is that the only real service the same director in a great number of corporations renders is in maintaining uniform policies throughout the entire system for which he acts, which usually results to the advantage of the greater corporations and to the disadvantage of the smaller corporations which he dominates by reason of his prestige as a director and to the detriment of the public generally.

As the President has well said in his message, the adoption of the provisions of this section will bring new men, new energies, new spirit of initiative, and new blood into the management of our business enterprises. It will open the field of industrial development and origination to scores of men who have been obliged to serve when their abilities entitled them to direct. It will immensely hearten the young men coming on and will greatly enrich the business activities of the whole country.

X.

VENUE.

Section 10 relates to procedure and provides that any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant but also in any district wherein it may be found. Under the law as it now exists, a suit against a corporation must be brought in the district whereof it is an inhabitant.

XI.

SUBPŒNAS RUN INTO OTHER DISTRICTS.

Section 11 provides that in any suit, action, or proceeding brought by or on behalf of the United States, subpœnas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the antitrust laws, may run into any other district. Under the existing law, subpœnas for witnesses in such suits may run only in the district in which they are issued.

XII.

PERSONAL GUILT.

Section 12 is the personal guilt provision of the bill. It provides that whenever a corporation shall be guilty of a violation of any of the provisions of the antitrust laws the offense shall be deemed to be also that of the individual officers or agents of such corporation, and upon the conviction of the corporation, any director, officer, or agent who shall have authorized, ordered, or done any of such prohibited acts shall be deemed guilty of a misdemeanor and upon conviction therefor shall be punished as prescribed in the section.

XIII.

SAME AS SECTION 4 OF SHERMAN ACT.

Section 13 is a reenactment of section 4 of the act of July 2, 1890, so as to enable the United States to proceed against corporations for the violation of any of the provisions of this act as it is now authorized by law to proceed against corporations for violations of the Sherman Act.

XIV.

INJUNCTIVE RELIEF AUTHORIZED.

Section 14 authorizes a person, firm, or corporation or association to sue for and have injunctive relief against threatened loss or damage by a violation of the antitrust laws, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity under the rules governing such proceedings. Under section 7 of the act of July 2, 1890, a person injured in his business and property by corporations or combinations acting in violation of the Sherman antitrust law, may recover loss and damage for such wrongful act. There is, however, no provision in the existing law authorizing a person, firm, corporation, or association to enjoin threatened loss or damage to his business or property by the commission of such

unlawful acts, and the purpose of this section is to remedy such defect in the law. This provision is in keeping with the recommendation made by the President in his message to Congress on the subject of trusts and monopolies.

INJUNCTIONS AND CONTEMPTS.

The remaining sections of the bill, 15 to 23, inclusive, are substantially the same as the provisions of the two separate bills (H. R. 23635 and H. R. 22591, 62d Cong.), known as the Clayton injunction and contempt bills, which were considered and passed by the House of Representatives at the last Congress, but failed of passage in the Senate. They deal entirely with questions of Federal procedure relating to injunctions and contempts committed without the presence of the court. The reports upon these bills made to the House in the last Congress are comprehensive and explain in detail their purpose, and for convenience are adopted as a part of this report. They follow in order:

REGULATION OF INJUNCTIONS.

[House Report No. 612, Sixty-second Congress, second session.—April 26, 1912: Referred to the House Calendar and ordered to be printed.]

Mr. CLAYTON, from the Committee on the Judiciary, submitted the following report. (To accompany H. R. 23635.)

The Committee on the Judiciary, having had under consideration H. R. 23635, to amend an act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, report the same back with the recommendation that the bill do pass.

The too ready issuance of injunctions or the issuance without proper precautions or safeguards has been called to the attention of the Congress session after session for many years. The bill now reported seeks to remedy the evils complained of by legislation directed to those specific matters which have given rise to most criticism. These matters are so segregated in various sections of the bill that they may be separately discussed.

I.

The first section of the bill amends section 263 of the judicial code which relates to two distinct steps in the procedure, namely, notice and security. But the amended section relates only to the notice, leaving the matter of security to be dealt with by a new section 266a.

FORMER STATUTES.

In order to fully understand the subject of notice in injunction cases it is necessary to give an historical résumé of the subject. In the judiciary act of 1789 which was passed during the first session of that year, Congress having

created the different courts according to the scheme outlined by Chief Justice Ellsworth, conferred upon the courts power to issue all writs, including writs of ne exeat (a form of injunction), according to legal usages and practice. In 1793, however, there was a revision of that statute, and among other things the same powers, substantially, were conferred upon the judges as before; but at the end of the section authorizing the issuance of injunctions, was this language: "No injunction shall be issued in any case without reasonable previous notice to the adverse party or his attorney."

The law stood thus until the general revision of 1873, during which period the law expressly required reasonable notice to be given in all cases. But the will of Congress as thus expressed was completely thwarted and the statute nullified by the peculiar construction placed upon it by the courts. The question frequently arose. The courts got around it in various ways, but usually by holding that it did not apply to a case of threatened irreparable injury, notwithstanding that its language was broad and sweeping, plainly covering all cases. Another form of expression often used is found in Ex parte Poultney (4 Peters C. C. C., 472):

> Every court of equity possesses the power to mold its rules in relation to the time of appearing and answering so as to prevent the rule from working injustice, and it is not only in the power of the court, but it is its duty to exercise a sound discretion upon this subject.

The court found a similar method of evading the sweeping prohibition of the revision of 1793, with respect to notice in Lawrence *v.* Bowman (1 U. S. C. C., Alester, 230).

But the earliest provision requiring notice came before the Supreme Court in 1799, in New York v. Connecticut (4 Dall., 1). Its constitutionality was not questioned. The only issue was as to the sufficiency of the notice, Chief Justice Ellsworth, for the court, saying: "The prohibition contained in the statute that writs of injunction shall not be granted without reasonable notice to the adverse party or his attorney, extends to injunctions granted by the Supreme Court or the circuit court as well as to those that may be granted by a single judge. The design and effect, however, of injunctions must render a shorter notice, reasonable notice, in the case of an application to a court than would be so construed in most cases of an application to a single judge, and until a general rule shall be settled the particular circumstances of each case must also be regarded."

Here was a case in which, although no point was made by counsel on any question of constitutionality, the Supreme Court accepted the comprehensive requirement of the act of 1793 as binding on all the Federal courts.

Now we come to the present law, found in section 263 of the Judicial Code, and reading thus:

> Whenever notice is given of a motion for an injunction out of a district court, the court or judge thereof may, if there appears to be danger of irreparable injury from delay, grant an order restraining the act sought to be enjoined until the decision upon the motion; and such order may be granted with or without security, in the discretion of the court or judge.

This was the law as contained in section 718 of the Revised Statutes, said section having been enacted in 1872. It simply embodies the practice of the courts with respect to notice, a practice established notwithstanding the nonconformity of the practice to the positive requirement of the act of 1793.

PROPOSED CHANGES.

But it will be seen that the giving of notice and requiring security, left by the present law to the discretion of the court, is by this bill a positive duty, except where irreparable and immediate injury might result from the giving of a notice or the delay incident thereto, in which case the court or judge may issue a temporary restraining order pending the giving of the notice. The concluding part of the amended section has an effect to safeguard parties from the reckless and inconsiderate issuance of restraining orders. Injuries compensable in damages recoverable in an action at law are not treated or considered by the courts as irreparable in any proper legal sense, and parties attempting to show why the injury sought to be restrained is irreparable would often disclose an adequate legal remedy. This provision requires the reason to appear in the order, but it should be read in connection with the new section 266b, requiring the order to be made by the court or judge to be likewise specific in other essentials, and section 266c, requiring that every complaint filed for the purpose of obtaining the order, in the cases there specified, shall contain a particular description of the property or property right for which the prohibitive power of the court is sought, and that such complaint shall be verified.

A valuable provision of the amendment is one that a restraining order issued without notice "shall by its terms expire within such time after entry, not to exceed seven days, as the court or judge may fix, unless within the time so fixed the order is extended or renewed for a like period, after notice to those previously served, if any, and for good cause shown, and the reasons for such extension shall be entered of record."

A legislative precedent for such legislation is found in the act of 1807, wherein it was provided that injunctions granted by the district courts "shall not, unless so ordered by the circuit court, continue longer than to the circuit court next ensuing, nor shall an injunction be issued by a district judge in any case where a party has had a reasonable time to apply to the circuit court for the writ." (U. S. Stat. L., vol. 2, p. 418.)

If the views of President Taft on this subject have not changed, he will welcome an opportunity to approve a bill containing such provisions as those in the amendment governing notice, because in his message of December 7, 1909, to the regular session of the Sixty-first Congress, after a quotation from the Republican platform of 1908, he said:

I recommend that in compliance with the promise thus made appropriate legislation be adopted. The ends of justice will best be met and the chief

cause of complaint against ill-considered injunctions without notice will be removed by the enactment of a statute forbidding hereafter the issuing of any injunction or restraining order, whether temporary or permanent, by any Federal court without previous notice and a reasonable opportunity to be heard on behalf of the parties to be enjoined; unless it shall appear to the satisfaction of the court that the delay necessary to give such notice and hearing would result in irreparable injury to the complainant, and unless, also, the court shall from the evidence make a written finding, which shall be spread upon the court minutes, that immediate and irreparable injury is likely to ensue to the complainant, and shall define the injury, state why it is irreparable, and shall also indorse on the order issued the date and the hour of the issuance of the order. Moreover, every such injunction or restraining order issued without previous notice and opportunity by the defendant to be heard should by force of the statute expire and be of no effect after seven days from the issuance thereof or within any time less than that period which the court may fix, unless within such seven days or such less period the injunction or order is extended or renewed after previous notice and opportunity to be heard.

My judgment is that the passage of such an act, which really embodies the best practice in equity and is very likely the rule now in force in some courts, will prevent the issuing of ill-advised orders of injunction without notice and will render such orders, when issued, much less objectionable by the short time in which they may remain effective.

II.

Section 266a simply requires security for costs and damages in all cases, leaving it no longer within the discretion of the courts whether any such security or none shall be given.

Prior to the said act of 1872 (contained in the revision of 1873) there appears to have been no legislation on the matter of security in injunction cases; but that security was usually required is a fact well known to the legal profession. It seems clearly just and salutary that the extraordinary writ of injunction should not issue in any case until the party seeking it and for whose benefit it issues has provided the other party with all the protection which security for damages affords.

It appears by the authorities, both English and American, to have been always within the range of judicial discretion, in the absence of a statute, to waive security, though better practice has been to require security as a condition to issuing restraining orders and injunctions.

The new section, 266a, takes the matter of requiring security out of the category of discretionary matters, where it was found by the Committee on Revision and permitted to remain.

For a discussion of the existing law on the question of security, we refer to Russell *v.* Farley (105 U. S., 433).

III.

Section 266b is of general application. Defendants should never be left to guess at what they are forbidden to do, but the order "shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained." It also contains a safeguard against what have been heretofore known as dragnet or blanket injunctions, by which large numbers may be

accused, and eventually punished, for violating injunctions in cases in which they were not made parties in the legal sense and of which they had only constructive notice, equivalent in most cases to none at all. Moreover, no person shall be bound by any such order without actual personal notice.

EXISTING LAW AND PRACTICE.

There was heretofore no Federal statute to govern either the matter of making or form and contents of orders for injunctions. Of course, where a restraining order is granted that performs the functions of order, process, and notice. But the writ of injunction, where temporary, is preceded by the entry of an order, and where permanent by the entry of a decree.

The whole matter appears to have been left, both by the States and the Federal Government, to the courts, which have mostly conformed to established principles.

The most important of these was that the order should be sufficiently clear and certain in its terms that the defendants could by an inspection of it readily know what they were forbidden to do.

See Arthur *v.* Oakes, 63 Fed. Rep., 310, 25 L. R. An., 414; St. Louis Min., etc., Co. *v.* Co. c. Montana Min. Co., 58 Fed. Rep., 129; Sweet *v.* Mangham, 4 Jur., 479; 9 L. J. Ch., 323, 34 Eng. Ch., 51; Cother *v.* Midland R. Co., 22 Eng. Ch., 469.

It should also be in accordance with the terms of the prayer of the bill. (State *v.* Rush County, 35 Kan., 150; McEldowney *v.* Lowther, 49 W. Va., 348.) It should not impose a greater restraint than is asked or is necessary (Shubert *v.* Angeles, 80 N. Y. App. Div., 625; New York Fire Dept. *v.* Baudet, 4 N. Y. Supp., 206), and should be specific and certain. (Orris *v.* National Commercial Bank, 81 N. Y. App. Div., 631; St. Rege's Paper Co. *v.* Santa Clara Lumber Co., 55 N. Y. App. Div., 225; Norris *v.* Cable, 8 Rich (S. C.), 58; Parker *v.* First Ave. Hotel Co., 24 Ch. Div., 282; Hackett *v.* Baiss, L. R., 20 Eq., 494; Dover Harbour *v.* London, etc., R. Co., 3 De G. F. & J., 559; Low *v.* Innes, 4 De G. J. & S., 286.)

So it appears that section 266b really does not change the best practice with respect to orders, but imposes the duty upon the courts, in mandatory form, to conform to correct rules, as already established by judicial precedent.

That such provision is necessary and timely will appear upon an inspection of some orders which have issued.

For instance, take the case of Kansas & Texas Coal Co. *v.* Denney, decided in the district court for Arkansas in 1899. And here, as in most of such cases, no full official report of the case can be obtained, but a mere memorandum. In this case the defendants (strikers) were ordered to be and were enjoined from "congregating at or near or on the premises of the property of the Kansas & Texas Coal Co. in, about, or near the town of Huntington, Ark., or elsewhere, for the purpose of intimidating its employees or pre-

venting said employees from rendering service to the Kansas & Texas Coal Co. from inducing or coercing by threats, intimidation, force, or violence any of said employees to leave the employment of the said Kansas & Texas Coal Co., or from in any manner interfering with or molesting any person or persons who may be employed or seek employment by and of the Kansas & Texas Coal Co. in the operation of its coal mines at or near said town of Huntington, or elsewhere."

It will be observed that a defendant in that suit would render himself liable to punishment for contempt if he met a man seeking employment by the company in a foreign country and persuaded him not to enter its service.

The bill further provides that it shall be "binding only upon parties to the suit, their agents, servants, employees, and attorneys, or those in active concert with them, and who shall by personal service or otherwise have received actual notice of the same." Unquestionably this is the true rule, but unfortunately the courts have not uniformly observed it. Much of the criticism which arose from the Debs case (64 Fed. Rep., 724) was due to the fact that the court undertook to make the order effective not only upon the parties to the suit and those in concert with them, but upon all other persons whomsoever. In Scott *v.* Donald (165 U. S., 117), the court rebuked a violation by the lower court in the following language:

> The decree is also objectionable because it enjoins persons not parties to the suit. This is not a case where the defendants named represent those not named. Nor is there alleged any conspiracy between the parties defendant and other unknown parties. The acts complained of are tortious and do not grow out of any common action or agreement between constables and sheriffs of the State of South Carolina. We have indeed a right to presume that such officers, though not named in this suit, will, when advised that certain provisions of the act in question have been pronounced unconstitutional by the court to which the Constitution of the United States refers such questions, voluntarily refrain from enforcing such provisions; but we do not think it comports with well-settled principles of equity procedure to include them in an injunction in a suit in which they were not heard or represented or to subject them to penalties for contempt in disregarding such an injunction. (Fellows *v.* Fellows, 4 John. Chan., 25, citing Iveson *v.* Harris, 7 Ves., 257.)
>
> The decree of the court below should therefore be amended by being restricted to the parties named as plaintiff and defendants in the bill, and this is directed to be done, and it is otherwise.

IV.

Section 266c is concerned with cases between "employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment."

The first clause of the new section 266c relates to the contents and form of the complaint. It must disclose a threatened irreparable injury to property or to a property right of the party making the application for which there is no adequate remedy at law. And the property or property right must be described "with particularity."

These requirements are merely those of good pleading and correct practice in such cases established by a long line of precedents, well understood by the profession and which should be but perhaps have not been uniformly applied. To show this it is only necessary to briefly state the applicable rules, citing some of the numerous authorities.

As the granting of an injunction rests in some degree in the discretion of the chancellor, allegations in the complaint should show candor and frankness. (Moffatt *v.* Calvert County Comm'rs, 97 Md., 266; Johnston *v.* Glenn, 40 Md., 200; Edison Storage Battery Co. *v.* Edison Automobile Co., 67 N. J. Eq., 44; Sharp *v.* Ashton, 3 Ves. & B., 144.)

The omission of material facts which, in the nature of the case, must be known to the plaintiff will preclude the granting of the relief. (Sprigg *v.* Western Tel. Co., 46 Md., 67; Walker *v.* Burks, 48 Tex., 206.)

An injunction may be refuesd if the allegations are argumentative and inferential. (Battle *v.* Stevens, 32 Ga., 25; Warsop *v.* Hastings, 22 Minn., 437.)

The allegations of the complaint must be definite and certain. (St. Louis *v.* Knapp Co., 104 U. S., 658.)

The complaint must set forth the facts with particularity and minuteness (Minor *v.* Terry, Code Rep. N. S. (N. S.), 384), and no material fact should be left to inference. (Warsop *v.* Hastings, 22 Minn., 437; Philphower *v.* Todd, 11 N. J. Eq., 54; Perkins *v.* Collins, 3 N. J. Eq., 482.)

Facts, and not the conclusions or opinions of the pleader, must be stated. (McBride *v.* Ross (D. C.), 13 App. Cas., 576.)

An injunction should not ordinarily be granted when the material allegations are made upon information and belief. (Brooks *v.* O'Hara, 8 Fed. Rep., 529; In re Holmes, 3 Fed. Rep. Cases No. 1, 562.)

The complaint must clearly show the threats or acts of defendant which cause him to apprehend future injury. (Mendelson *v.* McCabe, 144 Cal., 230; Ryan *v.* Fulghum, 96 Ga., 234.) And it is not sufficient to allege that the defendant claims the right to do an act which plaintiff believes illegal and injurious to him, since the intention to exercise the right must be alleged. (Lutman *v.* Lake Shore, etc., R. Co., 56 Ohio St., 433; Attorney General *v.* Eau Claire, 37 Wis., 400.)

The bill must allege facts which clearly show that the plaintiff will sustain substantial injury because of the acts complained of. (Home Electric Light, etc., Co. *v.* Gobe Tissue Paper Co., 146 Ind., 673; Boston, etc., Ry. Co. *v.* Sullivan, 177 Mass., 230; McGovern *v.* Loder (N. J. Ch., 1890), 20 Atl. Rep., 209; Smith *v.* Lockwood, 13 Barb., 209; Jones *v.* Stewart (Tenn. Ch. App., 1900), 61 Sov., 105; Spokane St. R. Co. *v.* Spokane, 5 Wash., 634; State *v.* Eau Claire, 40 Wis., 533. And it is not sufficient to merely allege injury without stating the facts. Giffing *v.* Gibb, 2 Black, 519; Spooner *v.* McConnell, 22 Fed. Cases No. 13245; Bowling *v.* Crook, 104 Ala., 130; Grant *v.* Cooke, 7 D. C., 165;

Coast Line R. Co. *v.* Caben, 50 Ga., 451; Dinwiddie *v.* Roberts, 1 Greene, 363; Wabaska Electric Co. *v.* Wymore Co., Nebr., 199; Lubrs *v.* Sturtevant, 10 Or., 170; Farland *v.* Wood, 35 W. Va., 458.)

Since the jurisdiction in equity depends on the lack of an adequate remedy at law, a bill for an injunction must state facts from which the court can determine that the remedy at law is inadequate. (Pollock *v.* Farmers' Loan & Tr. Co., 157 U. S., 429; Safe-Deposit, etc., Co. *v.* Anniston, 96 Fed. Rep., 661.)

If the inadequacy of the legal remedy depends upon the defendant's insolvency the fact of insolvency must be positively alleged. (Fullington *v.* Kyle Lumber Co., 139 Ala., 242; Graham *v.* Tankersley, 15 Ala., 634.)

An injunction will not be granted unless the complaint shows that a refusal to grant the writ will work irreparable injury. (California Nav. Co. *v.* Union Transp. Co., 122 Cal., 641; Cook County Brick Co., 92 Ill. App., 526; Manufacturers' Gas Co. *v.* Indiana Nat. Gas, etc., Co., 156 Ind., 679.) And it is not sufficient simply to allege that the injury will be irreparable, but the facts must be stated so that the court may see that the apprehension of irreparable injury is well founded. (California Nav. Co. *v.* Union Transp. Co., 122 Cal., 641; Empire Transp. Co. *v.* Johnson, 76 Conn., 79; Orange City *v.* Thayer, 45 Fla., 502.)

The plaintiff must allege that he has done or is willing to do everything which is necessary to entitle him to the relief sought. (Stanley *v.* Gadsley, 10 Pet. (U. S.), 521; Elliott *v.* Sibley, 101 Ala., 344; Burham *v.* San Francisco Fuse Mfg. Co., 76 Cal., 26; Sloan *v.* Coolbaugh, 10 Iowa, 31; Lewis *v.* Wilson, 17 N. Y. Supp., 128; Spann *v.* Sterns, 18 Tex., 556.)

The second paragraph of section 266c is concerned with specific acts which the best opinion of the courts holds to be within the right of parties involved upon one side or the other of a trades dispute. The necessity for legislation concerning them arises out of the divergent views which the courts have expressed on the subject and the difference between courts in the application of recognized rules. It may be proper to notice, in passing, that the State courts furnish precedents frequently for action by the Federal courts, and vice versa, so that a pernicious rule or an error in one jurisdiction is quickly adopted by the other. It is not contended that either the Federal or the State courts have stood alone in any of the precedents which are disapproved. The provisions of this section of the bill are self-explanatory, and in justification of the language used we content ourselves with submitting quotations from recognized authorities. We classify these authorities by quoting first the clauses of the bill to which they have particular reference.

The first clause:

> And no such restraining order or injunction shall prohibit any person or persons from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do.

In Allis Chalmers Co. *v.* Iron Molders' Union (C. C., 150 Fed. R., 155), Judge Sanborn said:

The conclusion to be drawn from the cases, as applicable to this controversy, is, I think, that the combination of the defendant unions, their members, and the defendant O'Leary, to strike, and to further enforce the strike, and if possible to bring the employers to terms by preventing them from obtaining other workmen to replace the strikers, was not unlawful, because grounded on just cause or excuse, being the economic advancement of the union molders, and the competition of labor against capital.

In Arthur *v.* Oakes (63 Fed. R., 310, 317) Justice Harlan, for the court, said:

If an employee quits without cause, and in violation of an express contract to serve for a stated time, then his quitting would not be of right, and he would be liable for any damages resulting from a breach of his agreement, and perhaps, in some states of case, to criminal prosecution for loss of life or limb by passengers or others, directly resulting from his abandoning his post at a time when care and watchfulness were required upon his part in the discharge of a duty he had undertaken to perform. And it may be assumed for the purposes of this discussion that he would be liable in like manner where the contract of service, by necessary implication arising out of the nature or the circumstances of the employment, required him not to quit the service of his employer suddenly, and without reasonable notice of his intention to do so. But the vital question remains whether a court of equity will, under any circumstances, by injunction, prevent one individual from quitting the personal service of another? An affirmative answer to this question is not, we think, justified by any authority to which our attention has been called or of which we are aware. It would be an invasion of one's natural liberty to compel him to work for or to remain in the personal service of another. One who is placed under such constraint is in a condition of involuntary servitude—a condition which the supreme law of the land declares shall not exist within the United States, or in any place subject to their jurisdiction. Courts of equity have sometimes sought to sustain a contract for services requiring special knowledge or skill by enjoining acts or conduct that would constitute a breach of such contract.

* * * * * * *

The rule, we think, is without exception that equity will not compel the actual, affirmative performance by an employee of merely personal services, any more than it will compel an employer to retain in his personal service one who, no matter for what cause, is not acceptable to him for service of that character. The right of an employee engaged to perform personal service to quit that service rests upon the same basis as the right of his employer to discharge him from further personal service. If the quitting in the one case or the discharging in the other is in violation of the contract between the parties, the one injured by the breach has his action for damages; and a court of equity will not, indirectly or negatively, by means of an injunction restraining the violation of the contract, compel the affirmative performance from day to day or the affirmative acceptance of merely personal services. Relief of that character has always been regarded as impracticable.

Sitting with Justice Harlan at circuit in that case were other learned jurists, but there was no dissent from these views.

In this connection we cite from the luminous opinion by Judge Loring delivering the opinion in Pickett *v.* Walsh (192 Mass., 572), a clear exposition of our views here expressed. We regret the necessity of limiting the quotation, because the whole opinion could be studied with profit.

The case is one of competition between the defendant unions and the individual plaintiffs for the work of pointing. The work of pointing for which these two sets of workmen are competing is work which the con-

tractors are obliged to have. One peculiarity of the case, therefore, is that the fight here is necessarily a triangular one. It necessarily involves the two sets of competing workmen and the contractor, and is not confined to the two parties to the contract, as is the case where workmen strike to get better wages from their employer or other conditions which are better for them. In this respect the case is like Mogul Steamship Co. *v.* McGregor (23 Q. B. D., 598; S. C., on appeal (1892); A. C., 25).

The right which the defendant unions claim to exercise in carrying their point in the course of this competition is a trade advantage, namely, that they have labor which the contractors want, or, if you please, can not get elsewhere; and they insist upon using this trade advantage to get additional work, namely, the work of pointing the bricks and stone which they lay. It is somewhat like the advantage which the owner of back land has when he has bought the front lot. He is not bound to sell them separately. To be sure, the right of an individual owner to sell both or none is not decisive of the right of a labor union to combine to refuse to lay bricks or stone unless they are given the job of pointing the bricks laid by them. There are things which an individual can do which a combination of individuals can not do. But having regard to the right on which the defendant's organization as a labor union rests, the correlative duty owed by it to others, and the limitation of the defendants' rights coming from the increased power of organization, we are of opinion that it was within the rights of these unions to compete for the work of doing the pointing and, in the exercise of their right of competition, to refuse to lay bricks and set stone unless they were given the work of pointing them when laid. (See in this connection Plant *v.* Woods, 176 Mass., 492, 502; Berry *v.* Donovan, 188 Mass., 353, 357.)

The result to which that conclusion brings us in the case at bar ought not to be passed without consideration.

The result is harsh on the contractors, who prefer to give the work to the pointers, because (1) the pointers do it by contract (in which case the contractors escape the liability incident to the relation of employer and employee); because (2) the contractors think that the pointers do the work better, and if not well done the buildings may be permanently injured by acid; and, finally, (3) because they get from the pointers better work with less liability at a smaller cost. Again, so far as the pointers (who can not lay brick or stone) are concerned, the result is disastrous. But all that the labor unions have done is to say you must employ us for all the work or none of it. They have not said that if you employ the pointers you must pay us a fine, as they did in Carew *v.* Rutherford (106 Mass., 1). They have not undertaken to forbid the contractors employing pointers, as they did in Plant *v.* Woods (176 Mass., 492). So far as the labor unions are concerned, the contractors can employ pointers if they choose, but if the contractors choose to give the work of pointing the bricks and stones to others the unions take the stand that the contractors will have to get some one else to lay them. The effect of this in the case at bar appears to be that the contractors are forced against their will to give the work of pointing to the masons and bricklayers. But the fact that the contractors are forced to do what they do not want to do is not decisive of the legality of the labor union's acts. That is true wherever a strike is successful. The contractors doubtless would have liked it better if there had been no competition between the bricklayers' and masons' unions on the one hand and the individual pointers on the other hand. But there is competition. There being competition, they prefer the course they have taken. They prefer to give all the work to the unions rather than get nonunion men to lay bricks and stone to be pointed by the plaintiffs.

Further, the effect of complying with the labor unions' demands apparently will be the destruction of the plaintiff's business. But the fact that the business of a plaintiff is destroyed by the acts of the defendants done in pursuance of their right of competition is not decisive of the illegality of the acts. It was well said by Hammond, J., in Martell *v.* White (185 Mass., 255, 260) in regard to the right of a citizen to pursue his business without interference by a combination to destroy it: "Speaking generally, however, competition in business is permitted, although frequently disastrous to those engaged in it. It is always selfish, often sharp, and sometimes deadly."

* * * * * * *

The application of the right of the defendant unions, who are composed of bricklayers and stonemasons, to compete with the individual plaintiffs, who can do nothing but pointing (as we have said) is in the case at bar disastrous to the pointers and hard on the contractors. But this is not the first case where the exercise of the right of competition ends in such a result. The case at bar is an instance where the evils which are or may be incident to competition bear very harshly on those interested, but in spite of such evils competition is necessary to the welfare of the community.

To the same effect is Allis-Chalmers Co. *v.* Iron Molders' Union (C. C.) (150 Fed. Rep., 155), per Sanborn, J.

The consensus of judicial view, as expressed in these cases and others which might be cited, is that workingmen may lawfully combine to further their material interests without limit or constraint, and may for that purpose adopt any means or methods which are lawful. It is the enjoyment and exercise of that right and none other that this bill forbids the courts to interfere with.

The second clause:

Or from attending at or near a house or place where any person resides or works, or carries on business, or happens to be for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or to abstain from working.

This language is taken from the British trades dispute act of 1906, the second section of which is as follows:

It shall be lawful for one or more persons acting on their own behalf or on behalf of an individual, corporation, or firm in contemplation or furtherance of a trade dispute to attend at or near a house or place where a person resides or works or carries on business or happens to be if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from work.

This, it has been said, "might well be termed a codification of the law relating to peaceful picketing as laid down by a majority of the American courts." (Martin's Law of Labor Unions, sec. 173.) Upon the general subject the same author says:

There are some decisions which hold that all picketing is unlawful, and it has been said that from the very nature of things peaceful picketing is of rare occurrence and "very much of an illusion," yet the view taken by the majority of decisions and which is best supported by reason is that picketing, if not conducted in such numbers as will of itself amount to intimidation, and when confined to the seeking of information such as the number and names and places of residence of those at work or seeking work on the premises against which the strike is in operation, and to the use of peaceful argument and entreaty for the purpose of procuring such workmen to support the strike by quitting work or by not accepting work, is not unlawful, and will furnish no ground for injunction or an action at law for damages. * * * That the views set forth in this section are correct does not admit of doubt. Indeed, it may readily be seen that the right almost universally conceded to striking workmen to use peaceable argument and persuasion to induce other workmen to aid them in their strike might, and very probably would be, most seriously hampered if the right of picketing were denied. "The right to persuade new men to quit or decline employment is of little worth unless the strikers may ascertain who are the men that their late employer has persuaded or is attempting to persuade to accept employment." While it is true that in the guise of picketing strikers may obstruct and annoy the new men, and by insult and menacing attitude intimidate them as effectually as by physical assault, yet it can always be determined from the evidence whether the efforts of the pickets are limited to getting into communication with the

new men for the purpose of presenting arguments and appeals to their free judgment. (Martin's Modern Law of Labor Unions, sec. 169, pp. 233, 234, and 235.)

The third clause:

Or from ceasing to patronize or to employ any party to such dispute; or from recommending, advising, or persuading others by peaceful means so to do.

The best opinion to be gathered from the conflicting opinions on this matter have been well summarized in the most recent textbook on the subject as follows:

It is lawful for members of a union, acting by agreement among themselves, to cease to patronize a person against whom the concert of action is directed when they regard it for their interest to do so. This is the so-called "primary boycott," and in furtherance thereof it is lawful to circulate notices among the members of the union to cease patronizing one with whom they have a trade dispute and to announce their intention to carry their agreement into effect. For instance, if an employer of labor refuses to employ union men the union has a right to say that its members will not patronize him. A combination between persons merely to regulate their own conduct and affairs is allowable, and a lawful combination though others may be indirectly affected thereby. And the fact that the execution of the agreement may tend to diminish the profits of the party against whom such act is aimed does not render the participants liable to a prosecution for a criminal conspiracy or to a suit for injunction. Even though he sustain financial loss, he will be without remedy, either in a court of law or a court of equity. So long as the primary object of the combination is to advance its own interests and not to inflict harm on the person against whom it is directed, it is not possible to see how any claim of illegality could be sustained. (Martin's Modern Law of Labor Unions, pp. 107, 108, and 109.)

It is not unlawful for members of a union or their sympathizers to use, in aid of a justifiable strike, peaceable argument and persuasion to induce customers of the person against whom the strike is in operation to withhold their patronage from him, although their purpose in so doing is to injure the business of their former employer and constrain him to yield to their demands, and the same rule applies where the employer has locked out his employees. These acts may be consummated by direct communication or through the medium of the press, and it is only when the combination becomes a conspiracy to injure, by threats and coercion, the property rights of another that the power of the courts can be invoked. The vital distinction between combinations of this character and boycotts is that here no coercion is present, while, as was heretofore shown, coercion is a necessary element of a boycott. In applying the principles stated it has been held that the issuance of circulars by members of a labor union notifying persons engaged in the trade of controversies existing between such members and their employer and requesting such persons not to deal with the employer is not unlawful and will not be enjoined where no intimidation or violence is used. (Martin's Modern Law of Labor Unions, pp. 109 and 110.)

Said Mr. Justice Van Orsdel in his concurring opinion in Court of Appeals of the District of Columbia (the American Federation of Labor et al., appellants, *v.* the Buck's Stove & Range Co., No. 1916, decided Mar. 11, 1909):

* * * * * * *

Applying the same principle, I conceive it to be the privilege of one man, or a number of men, to individually conclude not to patronize a certain person or corporation. It is also the right of these men to agree together, and to advise others, not to extend such patronage. That advice may be given by direct communication or through the medium of the press, so long as it is neither in the nature of coercion or a threat.

As long as the actions of this combination of individuals are lawful, to this point it is not clear how they can become unlawful because of their subsequent acts directed against the same person or corporation. To this

point there is no conspiracy—no boycott. The word "boycott" is here used as referring to what is usually understood as "the secondary boycott," and when used in this opinion it is intended to be applied exclusively in that sense. It is, therefore, only when the combination becomes a conspiracy to injure by threats and coercion the property rights of another that the power of the courts can be invoked. This point must be passed before the unlawful and unwarranted acts which the courts will punish and restrain are committed.

The definition of a boycott given by Judge Taft in Toledo Co. *v.* Penna. Co. (54 Fed., 730) is as follows: "As usually understood, a boycott is a combination of many to cause a loss to one person by coercing others against their will to withdraw from him their beneficial business intercourse through threats that, unless those others do so, the many will cause similar loss to them." In Gray *v.* Building Trades Council (91 Minn., 171) the word "boycott" is defined as follows: "A boycott may be defined to be a combination of several persons to cause a loss to a third person by causing others against their will to withdraw from him their beneficial business intercourse through threats that unless a compliance with their demands be made the persons forming the combination will cause loss or injury to him, or an organization formed to exclude a person from business relations with others by persuasion, intimidation, and other acts which tend to violence, and thereby cause him through fear of resulting injury to submit to dictation in the management of his affairs. Such acts constitute a conspiracy and may be restrained by injunction." In Brace Brothers *v.* Evans (3 R. & Corp. L. J., 561) it is said: "The word itself implies a threat. In popular acceptation it is an organized effort to exclude a person from business relations with others by persuasion, intimidation, and other acts which tend to violence, and they coerce him, through fear of resulting injury, to submit to dictation in the management of his affairs."

It will be observed that the above definitions are in direct conflict with the earlier English decisions and indicate a distinct departure by our courts. This undoubtedly is in recognition of the right of a number of individuals to combine for the purpose of improving their condition. The rule of the English common law, from which we have so far departed, is expressed in Bowen *v.* Hall (6 Q. B. Div., 333) as follows: "If the persuasion be used for the indirect purpose of injuring the plaintiff, or of benefiting the defendant at the expense of the plaintiff, it is a malicious act, which is in law and in fact a wrong act, and therefore a wrongful act, and therefore an actionable act if injury ensues from it."

From this clear distinction it will be observed that there is no boycott until the members of the organization have passed the point of refusing to patronize the person or corporation themselves and have entered the field where, by coercion or threats, they prevent others from dealing with such persons or corporation. I fully agree with this distinction.

So long, then, as the American Federation of Labor and those acting under its advice refused to patronize complainant, the combination had not arisen to the dignity of an unlawful conspiracy or a boycott.

In Hopkins *v.* Oxley Stave Co. (83 Fed. R., 912), Judge Caldwell, in a dissenting opinion, said:

While laborers, by the application to them of the doctrine we are considering, are reduced to individual action, it is not so with the forces arrayed against them. A corporation is an association of individuals for combined action; trusts are corporations combined together for the very purpose of collective action and boycotting; and capital, which is the product of labor, is in itself a powerful collective force. Indeed, according to this supposed rule, every corporation and trust in the country is an unlawful combination, for while its business may be of a kind that its individual members, each acting for himself, might lawfully conduct, the moment they enter into a combination to do that same thing by their combined effort, the combination becomes an unlawful conspiracy. But the rule is never so applied.

Corporations and trusts and other combinations of individuals and aggregations of capital extend themselves right and left through the entire community, boycotting and inflicting irreparable damage upon and crushing out all small dealers and producers, stifling competition, establishing monopolies, reducing the wages of the laborer, raising the price of food on

every man's table, and of the clothes on his back and of the house that shelters him; and inflicting on the wage earners the pains and penalties of the lockout and the black list, and denying to them the right of association and combined action by refusing employment to those who are members of labor organizations; and all these things are justified as a legitimate result of the evolution of industries resulting from new social and economic conditions, and of the right of every man to carry on his business as he sees fit, and of lawful competition. On the other hand, when laborers combine to maintain or raise their wages or otherwise to better their condition or to protect themselves from oppression or to attempt to overcome competition with their labor or the products of their labor in order that they may continue to have employment, and live, their action, however open, peaceful, and orderly, is branded as a "conspiracy." What is "competition" when done by capital is "conspiracy" when done by laborers. No amount of verbal dexterity can conceal or justify this glaring discrimination. If the vast aggregation and collective action of capital is not accompanied by a corresponding organization and collective action of labor, capital will speedily become proprietor of the wage earners as well as the recipient of the profits of their labor. This result can only be averted by some sort of organization that will secure the collective action of wage earners. This is demanded, not in the interest of wage earners alone, but by the highest considerations of public policy.

In Vegelahn *v.* Gunter (167 Mass., 92) Justice Holmes, now of the Supreme Court of the United States, delivering the opinion, said:

It is plain from the slightest consideration of practical affairs, or the most superficial reading of industrial history, that free competition means combination, and that the organization of the world, now going on so fast, means an ever-increasing might and scope of combination. It seems to me futile to set our faces against this tendency. Whether beneficial on the whole, as I think it is, or detrimental, it is inevitable, unless the fundamental axioms of society and even the fundamental conditions of life are to be changed. One of the eternal conflicts out of which life is made up is that between the effort of every man to get the most he can for his services and that of society, disguised under the name of capital, to get his services for the least possible return. Combination on the one side is potent and powerful. Combination on the other is a fair and equal way. * * * If it be true that the workingmen may combine with a view, among other things, to getting as much as they can for their labor, just as capital may combine with a view to getting the greatest possible return, it must be true that when combined they have the same liberty that combined capital has, to support their interest by argument, persuasion, and the bestowal or refusal of those advantages which they otherwise lawfully control.

The logic of Justice Sherwood, of the Supreme Court of Missouri, in Marx & Haas Co. *v.* Watson (56 L. R. A., 951), appears unanswerable. He discussed the question from a constitutional standpoint, taking for his text the Missouri bill of rights, substantially the same as the first amendment to the Federal Constitution, saying (p. 956):

The evident idea of that section is penalty or punishment, and not prevention, because if prevention exists, then no opportunity can possibly arise for one becoming responsible by saying, writing, or publishing "whatever he will on any subject." The two ideas—the one obsolete freedom "to say, write, or publish whatever he will on any subject," coupled with responsibility therefor, and the other idea of preventing any such free speech, free writing, or free publication—can not coexist.

The opinion continues, after citing authorities, Federal and State, as follows:

Section 14, supra, makes no distinction and authorizes no difference to be made by courts or legislatures between a proceeding set on foot to enjoin the publication of a libel and one to enjoin the publication of any other sort or nature, however injurious it may be, or to prohibit the use of free speech or

free writing on any subject whatever, because wherever the authority of injunction begins there the right of free speech, free writing, or free publication ends. No halfway house stands on the highway between absolute prevention and absolute freedom.

The fourth clause:

Or from paying or giving to or withholding from any person engaged in such dispute any strike benefits or other moneys or things of value.

In at least two instances State courts (Reynolds *v.* Davis, 198 Mass., 294, and A. S. Barnes & Co. *v.* Chicago Typographical Union, 232 Ill., 424) have held that if the purpose of a strike was unlawful the officers and members of unions should be enjoined from giving financial aid in the form of strike benefits in furtherance thereof. But in the only case of the kind disposed of by a Federal court an entirely different conclusion was reached. In A. S. Barnes & Co. *v.* Berry (157 Fed. R., 883) it was held without exception or qualification that an employer against whom a strike was in operation could not have enjoined the officers of a union from giving its striking members strike benefits. The reason assigned was that—

the strike benefit fund is created by moneys deposited by the men with the general officers for the support of themselves and families in times of strike, and the court has no more control of it than it would have over deposits made by them in the banks.

This decision is in harmony with two recent English decisions—Denaboy, etc., Collieries *v.* Yorkshire Miners' Assn. (75 L. J. K. B., 384); Lyons *v.* Wilkins (67 L. J., ch. 383).

The fifth and sixth clauses:

Or from peaceably assembling at any place in a lawful manner and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto.

After all that can be asserted against the provisions of section 266c, or any provision of the bill elsewhere found has been said, we can truly say that it does not transcend or contravene the clear and conclusive statement of the law as stated in National Fireproofing Co. *v.* Mason Builders Assn. (169 Fed. Rep., 260). Delivering the opinion of the court in that case, Judge Noyes said (p. 265):

As a general rule it may be stated, that when the chief object of a combination is to injure or oppress third persons, it is a conspiracy; but that when such injury or oppression is merely incidental to the carrying out of a lawful purpose, it is not a conspiracy. Stated in another way: A combination, entered into for the real malicious purpose of injuring a third person in his business or property, may amount to a conspiracy and furnish a ground of action for damages sustained or call for an injunction, even though formed for the ostensible purpose of benefiting its members, and actually operating to some extent to their advantage. But a combination without such ulterior oppressive object entered into merely for the purpose of promoting by lawful means the common interests of its members, is not a conspiracy. A laborer, as well as a builder, trader, or manufacturer, has the right to conduct his affairs in any lawful manner, even though he may thereby injure others. So several laborers and builders may combine for mutual advantage, and so long as the motive is not malicious, the object not unlawful nor oppressive, and the means neither deceitful nor fraudulent, the result is not a conspiracy, although it may necessarily work

injury to other persons. The damage to such persons may be serious—it may even extend to their ruin—but if it is inflicted by a combination in the legitimate pursuit of its own affairs, is a damnum absque injuria. The damage is present, but the unlawful object is absent. And so the essential question must always be, whether the object of a combination is to do harm to others or to exercise the rights of the parties for their own benefit.

Any attack upon the policy of this section of the bill must be directed at its specific prohibitions; nor will any mere general criticism, or any attack which does not particularize herein, be worthy of serious attention. The ready and perfect defense to all such is at hand, and imposes no difficult task. Is there any reason why the complainant, seeking an injunction against workingmen, should not describe with particularity in his cause of complaint the nature of the threatened injury, and the property or property right involved, as in other cases? Is there any reason why an injunction should issue at all involving or growing out of the relation created between employer and employee to prevent the termination of the relation, or advising and persuading others to do so, or to prevent the unrestricted communication and exchange of information between persons, or the giving of aid by financial contributions in any labor affair or dispute? Is there any reason, after a labor dispute has arisen and a socially hostile attitude has been created, for an injunction to prevent abstinence in patronizing or service by one party for the other's benefit, or the exercise of the right of free speech in advising or inducing such abstinence on the part of others? Is there, in short, any good reason why, after a dispute has arisen and the parties are "at arms length," a court of equity should interpose its strong arm merely because such dispute has arisen?

At its hearings the committee had the benefit of learned and illuminating arguments against the several bills. Counsel in opposition were patiently and respectfully heard, and the committee profited largely by having heard them, as is shown by the results of its labors. The bill does not interfere with the Sherman Antitrust Act at all; it leaves the law of conspiracy untouched, and is not open to effective criticism on any constitutional ground. The subject of the constitutionality of such legislation was exhausted at the hearings on the contempt bill (H. R. 22591), returned to the House with a separate report in which all constitutional objections are fully met.

NO QUESTION OF CONSTITUTIONALITY INVOLVED.

This bill does not, any more than does the contempt bill, invade the jurisdiction of the courts or attempt legislatively to exercise a judicial function. It merely limits and circumscribes the remedy and procedure. While we here enter into no elaborate discussion of the authorities on this topic, yet, for convenience of reference, we insert a synopsis. On point

of inconsistency between our theory of government and exercise of arbitrary power see Yick Wo *v.* Hopkins (118 U. S. Rep., 369). For a case in which Congress was held to have constitutionally exercised power to take away all remedy see Finck *v.* O'Neill (106 U. S., 272); and for a case where a statute taking away the power to issue an injunction in a certain case wherein the jurisdiction had been previously held and exercised was recognized without question as of binding force see Sharon *v.* Terry (36 Fed. Rep., 365). For a general statement of the proposition that the inferior courts of the United States are all limited in their nature and constitutions and have not the powers inherent in courts existing by prescription or by the common law see Cary *v.* Curtiss (3 How. (U. S.), 236, 254). The same principle still more elaborately stated and applied, Ex parte Robinson (19 Wall. (U. S.), 505).

Many decisions on the question of injunctive process and jurisdiction in labor cases are greatly influenced by, and, indeed, sometimes founded upon, precedents established when to be a wage earner was to be a servant whose social and legal status was little above that of slavery. But even England has preceded us in new views and policies herein. The English act of 1906, set forth at length in the hearings, goes farther than it has yet been deemed possible to go in this country in relieving labor, and especially organized labor, of legal burdens and discriminations. The Supreme Court has more than once protested against attempts by any branch of the Government to exercise arbitrary power, and the courts should, and probably will, welcome the definite limitations contained in this bill if it should be enacted.

The idea has been advanced, and ably supported in argument, by one of the proponents of this legislation that liberty, and more of it, is safe in the hands of the workingmen of the country. We are convinced of the merit and truth of that contention. The tendency toward freedom and liberation from legal trammels and impediments to progress and to a great social advance is seen in nearly all civilized nations. It is an unpropitious time to oppose a reform like that embodied in this bill, in view of the fact that the abuses of power which it seeks to terminate have been, admittedly, numerous and flagrant.

[H. R. 23635, Sixty-second Congress, second session.]

IN THE HOUSE OF REPRESENTATIVES, APRIL 22, 1912.

Mr. Clayton introduced the following bill; which was referred to the Committee on the Judiciary and ordered to be printed.

A BILL To amend an act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 263 of the act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, be, and the same is

hereby, amended so as to read as follows, and that said act be further amended by inserting after section 266 thereof three new sections, to be numbered, respectively, 266a, 266b, 266c, reading as follows:

"SEC. 263. That no injunction, whether interlocutory or permanent, in cases other than those described in section 266 of this title, shall be issued without previous notice and an opportunity to be heard on behalf of the parties to be enjoined, which notice, together with a copy of the bill of complaint or other pleading upon which the application for such injunction will be based, shall be served upon the parties sought to be enjoined a reasonable time in advance of such application. But if it shall appear to the satisfaction of the court or judge that immediate and irreparable injury is likely to ensue to the complainant, and that the giving of notice of the application or the delay incident thereto would probably permit the doing of the act sought to be restrained before notice could be served or hearing had thereon, the court or judge may, in his discretion, issue a temporary restraining order without notice. Every such order shall be indorsed with the date and hour of issuance, shall be forthwith entered of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed seven days, as the court or judge may fix, unless within the time so fixed the order is extended or renewed for a like period, after notice to those previously served, if any, and for good cause shown, and the reasons for such extension shall be entered of record.

"SEC. 266a. That no restraining order or interlocutory order of injunction shall issue except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

"SEC. 266b. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained; and shall be binding only upon the parties to the suit, their agents, servants, employees, and attorneys, or those in active concert with them, and who shall by personal service or otherwise have received actual notice of the same.

"SEC. 266c. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

"And no such restraining order or injunction shall prohibit any person or persons from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at or near a house or place where any person resides or works, or carries on business, or happens to be for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute; or from recommending, advising, or persuading others by peaceful means so to do; or from paying or giving to or withholding from any person engaged in such dispute any strike benefits or other moneys or things of value; or from peaceably assembling at any place in a lawful manner and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto."

PROCEDURE IN CONTEMPT CASES.

[House Report No. 613, Sixty-second Congress, second session.—April 26 (calendar day, April 27), 1912: Referred to the House Calendar and ordered to be printed.]

Mr. CLAYTON, from the Committee on the Judiciary, submitted the following report. (To accompany H. R. 22591.)

The Committee on the Judiciary, having had under consideration H. R. 22591, to amend an act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, report the same back with the recommendation that the bill do pass.

The bill leaves section 268 of the judicial code, formerly section 725 of the Revised Statutes, in full force and inserts five new sections, none of whose provisions conflict with said section 268.

ANALYSIS OF BILL.

By section 268a, in such cases of contempt specified in section 268 as constitute a criminal offense under any statute of the United States or at common law, the proceedings against the accused party shall be "as hereinafter provided", that is, in the subsequent section of the bill.

Most of the important provisions of the bill are contained in section 268b. Before action by the court, except in the cases excepted from the operation of the bill, there must be presented a formal charge showing reasonable ground; and before the party is put upon trial he must be afforded an opportunity to purge himself of any actual or technical contempt which he may have committed. He can not be arrested until he has opportunity to either purge himself or make answer and has refused to do either. If arrested, or in case the matter can not be disposed of on the return day, he may be required to give bail.

The trial is by the court (1) in case no jury be demanded by the accused, (2) if the contempt be in the presence of the court or so near thereto as to obstruct the administration of justice, or (3) if the contempt be charged to be in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name or on behalf of the United States. In other cases the trial is to be by jury.

Section 268c provides for the preservation of bills of exception, for review upon writ of error, for stay of execution pending proceeding, for review, and for bail in case the accused shall have been sentenced to imprisonment.

Section 268d excepts from the operation of the act contempts in the presence of the court, or so near thereto as to obstruct the administration of justice, and contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of or on behalf of the United States and provides that in the excepted cases as well as in all other

cases not specifically embraced within section 268a, the punishment shall be in conformity to the usages at law and in equity now prevailing.

Section 268e bars proceedings for contempt unless begun within one year from the date of the act complained of, and preserves the right of criminal prosecution, notwithstanding any proceeding and punishment for the contempts covered by the bill. It also excepts from the provisions of the bill any proceedings for contempt pending at the time of its passage.

Thus it is seen that the bill applies and gives a jury trial, with the exception noted, in all proceedings for contempt wherein the acts alleged to have been committed constitute a criminal offense, either under any Federal statute or at common law. The trial where a jury is had, is governed (sec. 268b), as near as is practicable, by the practice in criminal cases prosecuted by indictment or upon information.

Before calling further attention to the provisions of the bill now reported it is appropriate to review some of the contentions of those who have opposed every form of legislation whatever on this subject.

OBJECTIONS ANSWERED.

All the grounds of objection are reducible to two heads:

First. That any legislation whatever materially limiting or curtailing the power of the courts in the trial of contempts is unconstitutional.

Second. That any interference with the full and complete dominion or discretion of the judge in contempt cases tends to disorganization and a weakening of judicial efficiency.

Let us consider first the constitutional objections.

It is said that although the courts inferior to the Supreme Court owe their existence and jurisdiction to congressional action, yet a distinction should be made between the jurisdiction and judicial power, for instance, in the citation, trial, and punishment of a party charged with contempt of court.

The controversy goes back over 60 years. In 1831 Congress passed an act limiting the power of the courts subjectively; that is to say, it lopped off some of the jurisdiction which the court had assumed and exercised—a jurisdiction, or power, if the latter term be preferred, which Congress believed, and by its legislation asserted, was a usurpation. Never, until within a very recent period, was the authority of Congress to do that questioned, either by the courts or by any respectable authority. The particular circumstance or event, instigating the act of 1831, was the punishment by Judge Peck in Missouri, as for a contempt of court, of a party who had criticized one of his decisions in the columns of a newspaper.

The law before the act of 1831 read thus:

> The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority.

The act of 1831 consisted in the addition of a proviso, reading as follows:

Provided, That such power to punish contempt shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said court in their official transactions, and the disobedience or resistance by any officer, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the said court.

The extensive scope of this amendatory statute has been generally overlooked. The Federal courts were assuming and exercising the unlimited and unchecked powers resorted to by common-law courts, of deciding for themselves, not only the mode of procedure and degree and amount of punishment, but of selecting for themselves particular acts of alleged misconduct which should be placed in the category of contempts. Congress treated the term "power" as synonymous with "jurisdiction," circumscribed the field of jurisdiction, specified the acts which should constitute contempts, and said that such power or jurisdiction shall not extend beyond these specified acts.

It has been suggested that Congress might have refused to create the inferior courts, or even the Supreme Court, and have thus caused the failure of the Government.

But it is said that when Congress has acted and established a Federal court the common-law and equity powers of the courts immediately flow into these judicial receptacles out of the Constitution. It is only necessary to examine this new doctrine to know to what absurdities it would lead. The common-law courts of England, with the King's bench at their head, in addition to administering statutory law and the common law proper, exercised certain parliamentary powers. In the English system the legislative and judicial departments were, and are, entirely independent of each other. It is true that the courts were bound by acts of Parliament as construed by them, but outside the statutes their powers were as free from limitation as those of Parliament itself. They were the exponents and final arbiters of public policy for the Kingdom.

Though it is often said that the three departments of our Government are separate and independent, which is true in the sense that they must not invade each other's constitutional domain, and thus destroy each other, yet it is also true that arbitrary unchecked power does not abide with either of them. As the Supreme Court has well expressed it, in Yick Wo *v.* Hopkins (118 U. S. Rep., 369):

When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power.

To concede that the courts might, even with the limits fixed in the act of 1831, exclusively decide when a contempt

has been committed, and the amount or degree of punishment, with no power in Congress to set a limit thereto, would be to concede to the courts the power to annul every act of Congress, to paralyze the Executive arm, to confiscate all property, and destroy all liberty. Of course, few, if any, believe that the courts would ever proceed to such extremes, but it is sufficient to say that, according to our interpretation, the framers of the Constitution took care to safeguard the people against the possibilities of all such calamitous tendencies.

Referring to this bill, and comparing its provisions with the proviso added in 1831, it is seen that the bill only changes the procedure in contempt cases, while, as before stated, that proviso limited the jurisdiction subjectively.

The opposition was represented before the committee by able counsel and many authorities were cited, few of which, however, in our opinion, had any direct bearing on the question from a constitutional point of view. In fact, the power of Congress, as exhibited in the act of 1831, was so generally and uniformly conceded that not a single case has been found which ever questioned or doubted it. A few cases which, though not directly bearing upon the point of constitutionality, yet shed more or less light upon it will now be noticed.

It is argued that Congress can not require a court of equity to try issues of fact by jury. That is unquestionably sound doctrine, and the case of Brown *v.* Kalamazoo, Circuit Judge (87 Mich., 274), is sound law. But it is wholly inapplicable here. No one has thus far ever insisted that contempt is of equitable cognizance, or other than what the textbooks designated, namely, a special proceeding, criminal in its nature, not necessarily connected with any particular suit or action pending in the court.

Numerous State cases were cited in argument. They may all be answered as a class. The relation between Congress and Federal courts is not the same as that between State legislature and the State courts. The constitutions of the various States themselves provide for and establish the court, partition the powers of government between the legislative, executive, and judicial departments, prescribing safeguards, and defining their powers in detail; whereas the Federal Constitution has delegated full and complete control of the matter to Congress. Nor should the fact be overlooked that the State decisions on the subject are often based upon precedents of the common law, which is no part of the Federal system. Thus, in Ex parte McCowan (139 N. Car., 95), that being typical of many such cases relied upon, it was said:

> We are satisfied that at common law the acts and conduct of the petitioner, as set out in the case, constitute a contempt of court, and if the statute does not embrace this case and in terms repeal the common law applicable to it, we would not hesitate to declare the statute in that respect unconstitutional and void for reasons which we will now state.

In Finck *v.* O'Neill (106 U. S. Rep., 272) it appeared that Congress has taken from the court all power to enforce its

judgment, and the act of Congress was upheld by the Supreme Court of the United States. In that case (p. 280) the court said:

> The United States can not enforce the collection of a debt from an unwilling debtor, except by judicial process. They must bring a suit and obtain a judgment. To reap the fruit of that judgment they must cause an execution to issue. The courts have no inherent authority to take any one of these steps, except as it may have been conferred by the legislative department; for they can exercise no jurisdiction except as the law confers and limits it.

And in Cary *v.* Curtiss (3 How., 236, 254) the same court said:

> The courts of the United States are all limited in their nature and constitutions, and have not the powers inherent in courts existing by prescription, or by the common law.

But in section 720, of the Revised Statutes, we have a statute of Congress prohibiting the Federal courts from issuing injunctions in certain cases, and the constitutional validity of that statute was declared in Sharon *v.* Terry (36 Fed. R., 365). Now, the writ of injunction is the arm of the Federal courts in the exercise of their equitable powers, which it has been urged enjoy complete immunity from congressional action. And here a Federal circuit court sustained an act of Congress which subtracted an important part of equitable jurisdiction. Anyone taking the trouble to examine the judiciary act of 1789, with or without subsequent additions and amendments, will observe that it consists, in large part, of regulations of and limitations upon jurisdiction.

We close this head with the quotation from Ex parte Robinson (19 Wall., 505), cited with approval in the case of Bessette *v.* Conkey (194 U. S., 327), which is so clearly and obviously applicable and conclusive that no comment appears to be necessary:

> The power to punish for contempts is inherent in all courts. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject they became possessed of this power, but the power has been limited and defined by the act of Congress of March 3, 1831. The act, in terms, applies to all courts. Whether it can be held to limit the authority of the Supreme Court, which derives its existence and power from the Constitution, may, perhaps, be a matter of doubt; but that it applies to the circuit and district courts there can be no question. These courts were created by act of Congress. Their powers and duties depend upon the act calling them into existence, or subsequent acts extending or limiting their jurisdiction. The act of 1831 is, therefore, to them the law specifying the cases in which summary punishment for contempts may be inflicted. It limits the power of these courts in this respect to three classes of cases.
>
> (1) Where there has been misbehavior of a person in the presence of the courts, or so near thereto as to obstruct the administration of justice.
>
> (2) Where there has been misbehavior of any officer of the courts in his official transaction.
>
> (3) Where there has been disobedience or resistance by an officer, party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the courts. The law happily prescribes the punishment which the courts can impose for contempts. The seventeenth section of the judiciary act of 1789 (1 Stat. L., 73), declares that the court shall have

power to punish of their authority in any cause or hearing before them by fine or imprisonment, at their discretion. The enactment is a limitation upon the manner in which the power shall be exercised, and must be held to be a negation of all other modes of punishment. The judgment of the court debarring the petitioner, treated as a punishment for contempt, was therefore unauthorized and void.

As to the other ground of objection urged—that is, that any interference with the full and complete dominion and discretion of the courts tends to disorganization and to the weakening of judicial authority—judging by the course of previous discussion on this measure, it is not anticipated that the policy of the provision placing a limitation upon the punishment which can be inflicted will be strenuously criticized, and, therefore, we will make no further comment on that.

TRIAL BY JURY.

The feature of the bill against which the most strenuous argument has been directed is that providing for jury trials. But no one has shown that such provision amounts to anything more than a change of procedure. So that the question comes down to this, Has Congress or not the power to prescribe procedure? The courts will still, if this bill passes, have all the substantive power left in their hands by the act of 1831. Not one of the acts there catalogued will have been eliminated. The method of ascertaining the facts in certain cases is changed, but their ascertainment is still under supervision of the court, and ample safeguards are provided against evasions and miscarriages of justice.

A contemnor, from the moment the facts are judicially ascertained, is, by uniform practice, either placed in durance or required to give bail. The result of an adverse judgment is always penal, both in form and effect, though the fine be sometimes turned over to a private litigant.

The manner of disposing of the fine does not alter, in any respect, the form and effect of the procedure, or change it from criminal to civil.

SUCH LEGISLATION LONG DEMANDED.

The bill is an evolution from prolonged and varied discussion, by no means limited to a recent date or to the present Congress. Every feature and provision of it has been subjected to attack and defense, but the whole controversy appears to have at length converged upon the issue of whether or not the policy and practice of jury trial in contempt cases shall be admitted in the Federal jurisprudence at all.

That complaints have been made and irritation has arisen out of the trial of persons charged with contempt in the Federal courts is a matter of general and common knowledge. The charge most commonly made is that the courts, under the equity power, have invaded the criminal domain, and

under the guise of trials for contempt have really convicted persons of substantive crimes for which, if indicted, they would have had a constitutional right to be tried by jury. It has been the purpose of your committee in this bill to meet this complaint, believing it to be a sound public policy so to adjust the processes of the courts as to disarm any legitimate criticism; and your committee confidently believes that, so far from weakening the power and effectiveness of Federal courts, this bill will remove a cause of just complaint and promote that popular affection and respect which is in the last resolve the true support of every form of governmental activity."

As heretofore stated, the general scope of the House bill is followed in the Senate amendments. The form of the substantive law and the remedies provided for its enforcement are, however, changed in several instances by the proposed amendments. These will appear in detail in this report, as the amendments to the sections of the bill will be considered separately and in order, but a reference to the more important of them at this point may not be amiss. In sections 2 and 4, which deal respectively with discrimination in prices and exclusive and tying contracts, instead of declaring that the acts named constitute offenses punishable by fine and imprisonment, as in the House bill, the proposed amendments declare the acts unlawful and provide for the enforcement of the sections through the agency of the Federal Trade Commission, to be created. So, also, in sections 8 and 9, which deal with holding companies and interlocking directorates, respectively, some changes have been made in the provisions of positive and substantive law; and the enforcement of the sections has been confided by the amendments to the Interstate Commerce Commission, in the case of common carriers, and to the Federal Trade Commission, in the case of individuals and corporations other than banks and common carriers. All the remedies provided in the bill and amendments are cumulative.

The proposed amendments will now be considered by sections of the bill:

SECTION 1.

This section, which is one confined exclusively to the definition of terms employed in the bill, is only amended in one respect; this is exempting the Philippine Islands from the operation of the act. The reasons for this exemption are stated in a letter of the Acting Secretary of War, as follows:

WAR DEPARTMENT,
Washington, June 9, 1914.

MY DEAR SENATOR: I find that in the bill H. R. 15657, which has now been referred to the Committee on the Judiciary, there are provisions which would, in part, extend the application of this act to the Philippine Islands.

It seems that it was the intention of the House committee having the bill in charge so to do. It is apparent, however, that the committee did not consider the present status of the Philippine Islands with reference to the laws which it is proposed to supplement by the contemplated legislation.

None of the acts enumerated in the enacting section of this bill are in effect in the Philippine Islands.

I hope that for the following reasons it may be possible to so modify the bill as not to include the Philippine Islands within its provisions:

1. The bill is in its terms supplemental to certain existing laws against unlawful restraints and monopolies and for other purposes, which laws do not apply to the Philippine Islands.

2. The instruments on which the execution of this law depends, such as the district courts of the United States, etc., do not exist in the Philippine Islands.

3. From the passage of the organic act of the Philippine Islands, July 1, 1902, in which act it was specifically provided that the statutory law of the United States should not extend to the Philippine Islands, it has been the policy to create in the Philippine Islands an autonomous government and to give to that government ample power to legislate on all matters of local concern. In this act extending to those islands amendatory legislation of legislation not applicable there, this principle is violated.

4. The Philippine Islands has an import tariff of its own quite distinct from that of the United States and in most of its schedules departing greatly from the rates in our own tariff. American exporters must enter that field in competition with foreign manufacturers of like goods and without the protection which is uniform in practically all other territory under our jurisdiction. Trade there is not a question of American firms competing with each other, but of American firms competing with foreign firms, and any restriction such as imposed in sections 2 and 4 of that act simply has the effect of placing American business at a great disadvantage in meeting foreign competition.

For the same reason that these sections are not made to apply to American trade with foreign countries they should not be made to apply to trade with the Philippine Islands.

Please understand that I make no suggestion as to the form of the bill, but desire to call attention to what was manifestly an oversight in making the bill apply to the Philippine Islands.

Sincerely, yours,

HENRY BRECKINRIDGE,
Acting Secretary of War.

Hon. CHARLES A. CULBERSON,
Chairman Committee on the Judiciary, United States Senate.

SECTION 2.

This section relates to discrimination in price by persons engaged in commerce with the purpose and intent thereby to destroy or wrongfully injure the business of a competitor. The first Senate amendment to this section changes the form of the substantive law to a declaration of the illegality of the act, instead of the declaration of the House bill that the person committing the act shall be deemed guilty of a misdemeanor, and may be punished. This was done because it was thought best, especially in view of the experimental stage of this legislation, that the harshness of the criminal law should not be applied but that the enforcement of the section should be given to the Federal Trade Commission. Accordingly the penalty provision is stricken out, and the enforcement of the section is provided for in section 9b, under which the commission may arrest the practice by an order, failing in which it can apply to the courts where disobedience of such order may be redressed.

The words "in the same or different sections or communities," in the first part of this section, are stricken out because they are either surplusage, when applied to "commerce," as defined in the bill; or if they are used in a more restricted sense, in a sense which would apply them to local transactions merely, they would attempt to regulate intrastate commerce and be therefore void.

After full consideration it is deemed advisable to enlarge the exception in the first proviso to the section by adding that due allowance may be made for difference in the cost of "selling," as well as

transportation, and "discrimination in price made in good faith to meet competition and not intended to create monopoly," upon the ground that the enlargement will tend to foster wholesome competition. In the second proviso of this section, to the effect that nothing contained in the section shall prevent persons from choosing their own customers, the limitation is made by amendment that the selection must be made "in *bona fide* transactions and not in restraint of trade," which will enforce good faith and prevent restraint of trade by this method.

SECTION 3.

This section of the bill is a short one and is as follows:

SEC. 3. That it shall be unlawful for the owner, operator, or transporter of the product or products of any mine, oil or gas well, reduction works, refinery, or hydroelectric plant producing coal, oil, gas, or hydroelectric energy, or for any person controlling the products thereof, engaged in selling such product in commerce to refuse arbitrarily to sell such product to a responsible person, firm, or corporation who applies to purchase such product for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and any person violating this section shall be deemed guilty of a misdemeanor and shall be punished as provided in the preceding section.

The proposed Senate amendment is to strike out this section altogether, because, in the opinion of the committee, it would be unwise to enact such legislation as is contained in it. It would, primarily, deny freedom of contract to one of the parties, and consequently would be of doubtful constitutional validity. Passing from this consideration, the Committee believe that such an enactment, which would practically compel owners of the products named to sell to anyone or else decline to do so at the peril of incurring heavy penalties, would project us into a field of legislation at once untried, complicated and dangerous.

SECTION 4.

This section relates to exclusive and tying contracts. The first Senate amendment to the section changes the form of the declaration of substantive law by denouncing the acts as unlawful, instead of declaring, as in the House bill, that persons committing the acts shall be deemed guilty of misdemeanors, subject to the penalties prescribed. Following the course marked out in section 2, and for the same reason, the penalties provided in section 4 are stricken out and the enforcement of the section confided to the Federal Trade Commission by section 9b. It is believed section 4 is strengthened by the proposed Senate amendments to add "contracts for sale" to leases and sales denounced by the House provision, and to make the prohibition applicable whether the articles leased, sold, or contracted to be sold are "patented or unpatented."

SECTION 5.

This section, which gives any person injured by a violation of the antitrust acts the right to sue in the Federal courts for threefold the damages by him sustained, including the costs and reasonable attorney's fees, is not proposed to be amended in any particular.

SECTION 6.

In section 6 there are two paragraphs as it came from the House. The first paragraph provides in substance that whenever in any suit in equity hereafter instituted by the United States a final decree is rendered against a defendant for violating any of the antitrust laws said decree shall, to the full extent to which such decree would constitute in any other proceeding an estoppel as between the United States and such defendant, constitute against such defendant conclusive evidence of the same facts, and be conclusive as to the same questions of law, in favor of any other party in any action brought under the provisions of any of the antitrust laws. It is proposed to amend this by making the decree in favor of the United States *prima facie* evidence against the same defendant in any suit brought by any other party under the antitrust laws as to all matters respecting which said decree would be an estoppel as between the parties thereto. The material difference between the House provision and the Senate amendment is of course whether the decree in favor of the Government shall be *prima facie* evidence against the same defendant in a subsequent suit by another party or be conclusive against such defendant. The Committee think there are considerations of public policy which favor the House provision of conclusiveness, but in the state of the decisions of the Supreme Court of the United States in kindred cases they believe the law should go no further than to make the decree *prima facie* evidence. As a type of the opinions of the Supreme Court which have been examined by the committee in analogous cases attention is invited to the following:

> Without going at length into the discussion of a subject so often considered, we think the conclusion reached by the courts generally may be stated as follows: It is competent for the legislature to declare that a tax deed shall be *prima facie* evidence not only of the regularity of the sale, but of all prior proceedings, and of title in the purchaser, but that the legislature can not deprive one of his property by making his adversary's claim to it, whatever that claim may be, conclusive of its own validity, and it can not, therefore, make the tax deed conclusive evidence of the holder's title to the land.
>
> Mr. Cooley sums up his examination of the cases on this subject in the following statement: "That a tax deed can be made conclusive evidence of title in the grantee we think is more than doubtful. The attempt is a plain violation of the great principle of Magna Charta, which has been incorporated in our bill of rights, and, if successful, would in many cases deprive the citizen of his property by proceedings absolutely without warrant of law or of justice; it is not in the power of any American legislature to deprive one of his property by making his adversary's claim to it, whatever that claim may be, conclusive of its own validity. It can not, therefore, make the tax deed conclusive evidence of the holder's title to the land, or of the possible jurisdictional facts which would make out title. But the legislature might doubtless make the deed conclusive evidence of * * * everything except the essentials." Cooley on Taxation, 521, 5th ed., 1886. (Marx *v.* Hanthorn, 148 U. S., 183.)

By the second paragraph of section 6 of the House bill it is provided that whenever any suit in equity is brought by the United States under any of the antitrust laws, the statute of limitations in respect of every private right of action, arising under such antitrust laws, and based in whole or in part on any matter complained of in said suit by the Government, shall be suspended during the pendency of such suit. The proposed Senate amendment of this paragraph does not change its substance but the statute of limitations is extended from three to six years, except as to offenses heretofore committed.

SECTION 7.

This is the section which declares that nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, horticultural and other organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

The Senate amendments propose to strike out "fraternal" organizations, because, in the opinion of the Committee, not even a forced construction can bring them under the ban of the antitrust laws, and there is no reason for including them in this enactment. It is also proposed to strike out "consumers" in this paragraph. This is recommended by the Committee upon the ground that "consumers" in the economic sense in which the word is used in the bill, while probably intended to apply only to consumers of food products and clothing, is susceptible of much abuse if in the unrestricted sense it is applied, as possibly it may be in imaginable cases, to all character of consumers, including corporations generally, as they are unquestionably consumers. But the principal consideration which moved the Committee to strike out "consumers," which also applies in a less degree to "fraternal" organizations, is that they believe the only organizations which should be excluded from the operation of the antitrust laws are those where labor is the basis or one of the chief factors in the organizations, as in the case of labor organizations proper, and in agricultural and horticultural organizations. The Committee rest this distinction upon the broad ground that labor is not, and ought not be regarded as, a commodity, within the purview of antitrust laws.

It is recommended that the last paragraph of this section be stricken out because it is not believed that such agreements, as those named, should be made whether approved or not by the Interstate Commerce Commission, nor that such traffic and operating associations as those mentioned should be formed.

SECTION 8.

This is the section of the bill directed against what are termed holding companies, and the object of the measure is stated in the report of the Committee on the Judiciary of the House of Representatives, heretofore reproduced herein, and to which reference is now again made.

Some of the Senate amendments to this section are minor ones. The word "commerce" is substituted for "trade" at two places, inasmuch as commerce is defined in the bill and trade is not. The words "in any section or community," as they appear in the first two paragraphs of the section, are stricken out, for reasons heretofore given under section 2.

The House provision that nothing contained in the section shall be held to affect or impair any right heretofore legally acquired, provided that nothing in the paragraph shall make stock-holding relations between corporations legal, when such relations constitute violations

of the antitrust laws, is stricken out and a substitute proposed at the end of the section. This substitute is broader than the House provision, in that it is not limited to stock-holding relations of corporations, but reaches and extends to "anything prohibited and made illegal by the antitrust laws."

The House provision in this section that nothing contained therein shall be construed to prohibit any railroad corporation from aiding in the construction of branch or short-line railroads so located as to become feeders to the main line, etc., is amended so as to apply to any common carrier, thus including telephone and pipe lines, the committee believing that all common carriers should be given the same rights in this respect and that the extension of the rights to telephone and pipe lines would inure to the benefit of the public. Finally, in this section, the penalty provision is stricken out, for reasons heretofore given under section 2, and the enforcement of the section should be confided to the Interstate Commerce Commission, in the case of common carriers, and to the Federal Trade Commission, in the case of other corporations.

SECTION 9.

This is the section of the bill aimed at interlocking directorates in corporations. The purpose of the enactment is fully stated in the report of the Committee on the Judiciary of the House of Representatives, already reproduced in this report and to which reference is here made. The section, in its declaratory provisions, seeks to prevent the interlocking of directorates affecting three classes of corporations, namely, common-carrier corporations, industrial corporations, and banking and trust corporations. The first Senate amendment would substitute entirely new matter for the House provision in reference to directors of common carriers. The House provision in effect declares that from and after two years from the approval of the act no person who is engaged as an individual, or who is a member of a partnership, or is a director or other officer of a corporation that is engaged in the business of producing or selling equipment, material or supplies to, or in the construction or maintenance of railroads or other common carriers, shall act as a director or other officer or employee of any other corporation or common carrier engaged in commerce to which he, or such partnership or corporation, sells or leases equipment, material, or supplies, or for which he or such partnership or corporation engages in the work of construction or maintenance; and after the expiration of said period no person who is engaged as an individual or who is a member of a partnership or is a director or other officer of a corporation which is engaged in the conduct of a bank or trust company shall act as a director or other officer or employee of any such common carrier for which he or such partnership or bank or trust company acts, either separately or in connection with others, as agent for or underwriter of the sale or disposal by such common carrier of issues or parts of issues of its securities, or from which he or such partnership or bank or trust company purchases, either separately or in connection with others, issues or parts of issues of securities of such common carrier. The prime object of this provision is to prevent common or interlocking directors in corporations which occupy the relations to each other which are thus described; and is mainly intended to arrest the

practice of the same persons occupying conflicting and incompatible relations in the corporate dealings of common carriers, often being practically both seller and purchaser, lessor and lessee and trustee and beneficiary of the trust. While this evil is fully appreciated, the committee nevertheless recognize that, especially in the case of railroads, emergencies may arise when absolutely prohibitory law against such dealings would be most injurious to the public. In the case of railroads calamities of fire and flood might make it necessary in the shortest possible time and to a certain extent regardless of lesser consequences to replace engines, cars and bridges. The Committee have, therefore, recommended a substitute for the House paragraph on this subject, which, with the publicity, competitive bidding and the supervision of the Interstate Commerce Commission provided for, will, it is believed, minimize if not wholly cure the evil to be reached.

The House provision in this section relating to interlocking directorates of industrial corporations is not proposed to be changed or amended in any respect.

A Senate amendment to this section strikes out the entire paragraph which relates to interlocking directorates of banks and trust companies. In proposing this amendment a majority of the Committee believed that such legislation as this more properly belongs to the domain of banking rather than of commerce and such additional regulation of bank directorates as may be wise and just should be made by amendments to the national bank acts, and the enforcement of it given to the Comptroller of the Currency and the Federal Reserve Board.

The penalty provision in this section is stricken out for reasons already given under sections 2, 4 and 8, but a penalty is expressly provided for violating the provisions of the amendment to the paragraph relating to interlocking directorates in the case of common carriers.

SECTION 9A.

This is an entirely new provision, fully explains itself, and is as follows:

SEC. 9a. Every president, director, officer or manager of any firm, association or corporation engaged in commerce as a common carrier, who embezzles, steals, abstracts or willfully misapplies any of the moneys, funds, credits, securities, property or assets of such firm, association or corporation, or willfully or knowingly converts the same to his own use or to the use of another, shall be deemed guilty of a felony and upon conviction shall be fined not less than $500 or confined in the penitentiary not less than 1 year nor more than 10 years, or both, in the discretion of the court.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been committed.

SECTION 9B.

This is also an entirely new provision and is intended to provide the administrative agency through which sections 2, 4, 8, and 9 are to be enforced. It carries its own explanation and is as follows:

SEC. 9b. That authority to enforce compliance with the provisions of sections two, four, eight, and nine of this Act by the corporations, associations, partnerships, and individuals respectively subject thereto is hereby vested: In the Interstate Commerce Commission where applicable to common carriers and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Whenever the commission vested with jurisdiction thereof has reason to believe, either upon information furnished by its agents or employees or upon complaint, duly

verified by affidavit, of any interested person, that any corporation, association, partnership, or individual is violating any of the provisions of sections two, four, eight, and nine of this Act, it shall issue and cause to be served a notice, accompanied with a written statement of the violation charged, upon such corporation, association, partnership, or individual who shall thereupon be called upon, within a reasonable time fixed in such notice, not to exceed thirty days thereafter, to appear and show cause why an order should not issue to restrain and prohibit the violation charged. If upon a hearing held pursuant to such notice it shall appear to the commission that any of the provisions of said sections have been or are being violated, then it shall issue and cause to be served an order commanding such corporation, association, partnership, or individual forthwith to cease and desist from such violation, and to transfer or dispose of the stock or resign from the directorships held contrary to the provisions of sections eight or nine, as the case may be, within the time and in the manner prescribed in said order. Any such order may be modified or set aside at any time by the commission issuing it for good cause shown.

If any corporation, association, partnership, or individual charged with obedience thereto fails and neglects to obey any such order of a commission, the said commission, by its attorneys, if any it has, or by the appropriate district attorney acting under the direction of the Attorney General of the United States, may apply for an enforcement of such order to the district court of the United States for the district wherein such corporation, association, partnership, or individual is an inhabitant or may be found or transacts any business, and therewith transmit to the said court the original record in the proceeding, including all the testimony taken therein and the report and order of the commission. Upon the filing of the record, the court shall have jurisdiction of the proceeding and of the questions determined therein and shall have power to make and to enter upon the pleadings, testimony, and proceedings such orders and decrees as may be just and equitable.

On motion of the commission and on such notice as the court shall deem reasonable, the court shall set down the cause for summary final hearing. Upon such final hearing the finding of the commission shall be prima facie evidence of the facts therein stated, but if either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may allow such additional evidence to be taken before the commission or before a master appointed by the court and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem just.

Disobedience to any order or decree which may be made in any such proceeding or any injunction or other process issued therein shall be punished by a fine not exceeding $100 a day during the continuance of such disobedience or by imprisonment not exceeding one year, or by both such fine and imprisonment.

Any party to any proceeding brought under the provisions of this section before either the Interstate Commerce Commission or the Federal Trade Commission, including the person upon whose complaint such proceeding shall have been begun, as well as the United States by and through the Attorney General thereof, may appeal from any final order made by either of such commissions to any court having jurisdiction to enforce any order which might have been made upon application of such commission as hereinbefore provided, at any time within ninety days from the date of the entry of the order appealed from, by serving notice upon the adverse party and filing the same with the said commission; and thereupon the same proceedings shall be had as prescribed herein in the case of an application by the same commission for the enforcement of its order as hereinbefore provided.

Any final order or decree made by any district court in any proceeding brought under this section may be reviewed by the Supreme Court upon appeal, as in cases in equity, taken within ninety days from the entry of such order or decree.

SECTIONS 10 AND 11.

These sections relate to the venue and issuance of process in suits arising under the antitrust laws. They are proposed to be amended in certain respects, as shown on their face, but the amendments require no special explanation here.

SECTION 12.

This is the persona' guilt provision of the law. The substance of the section is not altered, but the Committee think the Senate amendment better expresses the purpose and is more direct. Instead of visiting the offense of the corporation over on its directors, officers and agents, as in the House provision, the amendment declares directly that they shall be guilty and somewhat enlarges the several acts which constitute the offenses denounced.

SECTION 13.

This section, which is existing law, is not proposed to be amended in any particular.

SECTION 14.

This section provides that any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief in the Federal courts against threatened loss or damage by a violation of the antitrust laws, etc. It is proposed by a Senate amendment to make this Section apply expressly to Sections 2, 4, 8, and 9 of this bill, so that all doubt of the cumulative and not exclusive character of the remedy provided in section 9b may be removed. The House proviso in Section 14 is proposed to be stricken out because the Committee are of the opinion that actions under this section should lie against common carriers as well as other corporations.

SECTION 15.

The purpose of this section is to prohibit the issuance of preliminary injunctions in any case without notice to the opposite party, and to regulate the issuance generally of temporary restraining orders. The principal Senate amendment strikes out the words "property or property right of," so that a temporary restraining order may issue, if otherwise proper under the act, even though no property or property right is involved. Suits in equity by the United States may be instituted where no such property or property right may be involved, and there are classes of cases by private suitors where the same is true, and if the House provision were adopted no temporary restraining orders would be issuable in those cases. If the Senate amendment is adopted the provision will in this respect be practically Equity Rule 73 promulgated by the Supreme Court of the United States.

Cases may arise where it would be unjust that a temporary restraining order would necessarily and irrevocably expire at a time not to exceed 10 days after entry of the order, as is provided in the House bill. Accordingly it is proposed by a Senate amendment to insert the words "unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extensions shall be entered of record."

SECTIONS 16 AND 17.

Section 16 provides that no restraining order or interlocutory order of injunction shall issue except on the giving of bond by the applicant. Section 17 declares that every order of injunction or

restraining order shall set forth the reasons for its issuance, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the complaint or other document, the acts sought to be restrained, and shall be binding only upon the parties to the suit, their agents, servants, employees, and attorneys, or those in active concert with them, and who shall, by personal service or otherwise, have received actual notice of the same.

Neither section is proposed to be amended in any material respect.

SECTION 18.

This is the section which regulates the issuance of restraining orders and injunctions in labor controversies, to which several amendments are proposed.

The words "singly or in concert" are inserted in line 4, page 27, to guard the right of workingmen to act together in terminating, if they desire, any relation of employment, and to act together and in concert in doing or abstaining from doing any other of the acts named in that paragraph of the section. Some minor amendments also are made in this section, the reasons for which will appear obvious on examination.

The most important amendment to this section is that which strikes out the words, in lines 7 to 11, inclusive, page 27, namely, "or from attending at or near a house or place where any person resides or works or carries on business, or happens to be, for the purpose of peacefully obtaining or communicating information." This, as is well known, is what is termed picketing. The House provision declares that no restraining order or injunction in a labor case shall issue prohibiting any person from doing any of the acts quoted above, and if the Senate amendment, which was proposed by a majority of the Committee, is adopted the Federal courts will be left free to issue restraining orders and injunctions in such cases. The authorities as to the legality pro and con of picketing are collated in Martin's Modern Law of Labor Unions, pages 132 et seq.

SECTIONS 19, 20, 21, 22, AND 23.

These sections regulate the trial of contempts committed without the presence of the court. Only two amendments of consequence to these sections are proposed. In Section 19 the words "at common law" are stricken out, because the common law of England is not in force in the United States, and the words "under the laws of any State in which the act was committed" are inserted. It is proposed to amend Section 20 by adding at the end of the section the following:

Provided, That in any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

The object of this amendment is to insure the presence of a party charged with contempt.

The bill as reported from the committee is as follows:

Calendar No. 612.

63d Congress, 2d session.

H. R. 15657.

[Report No. 698.]

IN THE SENATE OF THE UNITED STATES.

JUNE 5 (calendar day, JUNE 6), 1914.

Read twice and referred to the Committee on the Judiciary.

JULY 22, 1914.

Reported by Mr. CULBERSON, with amendments.

[Omit the part struck through and insert the part printed in italic.]

AN ACT

To supplement existing laws against unlawful restraints and monopolies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That "antitrust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen

hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided, That nothing in this Act contained shall apply to the Philippine Islands.*

The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

SEC. 2. That *it shall be unlawful for* any person engaged in commerce ~~who shall~~ either directly or indirectly *to*

discriminate in price between different purchasers of commodities ~~in the same or different sections or communities~~, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, with the purpose or intent thereby to destroy or wrongfully injure the business of a competitor, of either such purchaser or seller~~, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both, in the discretion of the court~~: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of *selling or* transportation *or discrimination in price in the same or different communities made in good faith to meet competition and not intended to create monopoly: And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers *in bona fide transactions and not in restraint of trade*~~, except as provided in section three of this Act~~.

~~SEC. 3. That it shall be unlawful for the owner, operator, or transporter of the product or products of any mine,~~

~~oil or gas well, reduction works, refinery, or hydroelectric plant producing coal, oil, gas, or hydroelectric energy, or for any person controlling the products thereof, engaged in selling such product in commerce to refuse arbitrarily to sell such product to a responsible person, firm, or corporation who applies to purchase such product for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and any person violating this section shall be deemed guilty of a misdemeanor and shall be punished as provided in the preceding section.~~

SEC. 4. That *it shall be unlawful for* any person engaged in commerce ~~who shall~~ *to* lease or make a sale *or contract for sale* of goods, wares, merchandise, machinery, supplies, or other commodities *whether patented or unpatented* for use, consumption, or resale within the United States, or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller ~~shall be deemed guilty of a~~

~~misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both, in the discretion of the court.~~

SEC. 5. That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

SEC. 6. ~~That whenever in any suit or proceeding in equity hereafter brought by or on behalf of the United States under any of the antitrust laws there shall have been rendered a final judgment or decree to the effect that a defendant has entered into a contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce, or has monopolized, or attempted to monopolize or combined with any person or persons to monopolize, any part of commerce, in violation of any of the antitrust laws, said judgment or decree shall, to the full extent to which such judgment or decree would constitute in any other proceeding an estoppel as between the United States and such defendant, constitute against such defendant conclusive evidence of the same facts, and be conclusive as to the same~~

~~questions of law in favor of any other party in any action or proceeding brought under or involving the provisions of any of the antitrust laws.~~

~~Whenever any suit or proceeding in equity is hereafter brought by or on behalf of the United States, under any of the antitrust laws, the statute of limitations in respect of each and every private right of action, arising under such antitrust laws, and based, in whole or in part, on any matter complained of in said suit or proceeding in equity, shall be suspended during the pendency of such suit or proceeding in equity.~~

That a final judgment or decree rendered in any suit or proceeding in equity brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto.

Any person may be prosecuted, tried, or punished for any offense under the antitrust laws, and any suit arising under those laws may be maintained if the indictment is found or the suit is brought within six years next after the occurrence of the act or cause of action complained of, any statute of limitation or other provision of law heretofore enacted to the contrary

notwithstanding. Whenever any suit or proceeding in equity is instituted by the United States to prevent or restrain violations of any of the antitrust laws the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof: Provided, That this shall not be held to extend the statute of limitations in the case of offenses heretofore committed.

SEC. 7. That nothing contained in the antitrust laws shall be construed to forbid the existence and operation of ~~fraternal,~~ labor, ~~consumers,~~ agricultural, or horticultural organizations, ~~orders, or associations,~~ instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations~~, orders, or associations~~ from *lawfully* carrying out the legitimate objects thereof; nor shall such organizations, ~~orders, or associations,~~ or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

~~Nothing contained in the antitrust laws shall be construed to forbid associations of traffic, operating, accounting, or other officers of common carriers for the purpose of conferring among themselves or of making any lawful agreement as to any matter which is subject to the regulating or~~

~~supervisory jurisdiction of the Interstate Commerce Commission, but all such matters shall continue to be subject to such jurisdiction of the commission, and all such agreements shall be entered and kept of record by the carriers, parties thereto, and shall at all times be open to inspection by the commission, but no such agreement shall go into effect or become operative until the same shall have first been submitted to, and approved by, the Interstate Commerce Commission: *Provided*, That nothing in this Act shall be construed as modifying existing laws prohibiting the pooling of earnings or traffic, or existing laws against joint agreements by common carriers to maintain rates.~~

SEC. 8. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce where the effect of such acquisition is to eliminate or substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to create a monopoly of any line of ~~trade~~ *commerce* ~~in any section or community~~.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, is to eliminate or sub-

stantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to create a monopoly of any line of ~~trade~~ *commerce* ~~in any section or community~~.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to eliminate or substantially lessen competition.

~~Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this paragraph shall make stockholding relations between corporations legal when such relations constitute violations of the antitrust laws.~~

Nor shall anything herein contained be construed to prohibit any ~~railroad corporation~~ *common carrier subject to the laws to regulate commerce* from aiding in the construction of ~~branch~~ *branches* or short ~~line~~ *lines* ~~railroads~~ so

located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch ~~line~~ *lines*, nor to prevent any ~~railroad corporation~~ *such common carrier* from acquiring and owning all or any part of the stock of a branch or short line ~~railroad~~ constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein nor to prevent ~~any railroad company~~ *such common carrier* from extending any of its lines through the medium of the acquisition of stock or otherwise of any other ~~railroad company~~ *such common carrier* where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: Provided, That nothing herein shall be held or construed to authorize or make lawful anything prohibited and made illegal by the antitrust laws

~~A violation of any of the provisions of this section shall be deemed a misdemeanor, and shall be punishable by a fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both, in the discretion of the court.~~

SEC. 9. ~~That from and after two years from the date of the approval of this Act no person who is engaged as an individual, or who is a member of a partnership, or is a director or other officer of a corporation that is engaged in the business, in whole or in part, of producing or selling equipment, materials, or supplies to, or in the construction or maintenance of, railroads or other common carriers engaged in commerce, shall act as a director or other officer or employee of any other corporation or common carrier engaged in commerce to which he, or such partnership or corporation, sells or leases, directly or indirectly, equipment, materials, or supplies, or for which he or such partnership or corporation, directly or indirectly, engages in the work of construction or maintenance; and after the expiration of said period no person who is engaged as an individual or who is a member of a partnership or is a director or other officer of a corporation which is engaged in the conduct of a bank or trust company shall act as a director or other officer or employee of any such common carrier for which he or such partnership or bank or trust company acts, either separately or in connection with others, as agent for or underwriter of the sale or disposal by such common carrier of issues or parts of issues of its securities, or from which he or such partnership or bank or trust company purchases, either separately~~

~~or in connection with others, issues or parts of issues of securities of such common carriers.~~

After two years from the approval of this Act no common carrier engaged in commerce having upon its board of directors or as its president, manager, or purchasing officer or agent any person who is at the same time an officer, director, manager, or general agent of, or who has any direct or indirect interest in, another corporation, firm, partnership or association, with which latter corporation, firm, partnership or association or with such person such common carrier shall make purchases of supplies or articles of commerce or have any dealings in securities, railroad supplies or other articles of commerce or contracts for construction or maintenance of any kind with any such corporation, firm, partnership, or association to the amount of more than $50,000 in any one year, unless and except such purchases shall be made from or such dealings shall be with the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding after public notice published in a newspaper or newspapers of general circulation, to be named and the time, character and scope of the publication to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the names and addresses of the officers, directors, and general managers thereof, if it be

a corporation, or of the members, if it be a partnership or firm, be given with the bid.

Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding or shall do any act to prevent free and fair competition among the bidders or those desiring to bid shall be punished as prescribed in this section.

Every such common carrier having any such transactions or making any such purchases shall within ten days after making the same file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner and time of the advertisement given for competition, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall have reason to believe that the law has been violated in and about the said purchases or transactions it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

If any common carrier shall violate this section, every director or officer thereof who shall have knowingly voted for or directed the act constituting such violation or who shall have aided or abetted in such violation shall be deemed guilty of a misdemeanor and shall be fined not exceeding $25,000 and con-

fined in jail not exceeding two years, in the discretion of the court.

~~That from and after two years from the date of the approval of this Act no person shall at the same time be a director or other officer or employee of more than one bank, banking association, or trust company organized or operating under the laws of the United States either of which has deposits, capital, surplus, and undivided profits aggregating more than $2,500,000; and no private banker or person who is a director in any bank or trust company, organized and operating under the laws of a State, having deposits, capital, surplus, and undivided profits aggregating more than $2,500,000, shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. The eligibility of a director, officer, or employee under the foregoing provisions shall be determined by the average amount of deposits, capital, surplus, and undivided profits as shown in the official statements of such bank, banking association, or trust company filed as provided by law during the fiscal year next preceding the date set for the annual election of directors, and when a director, officer, or employee has been elected or selected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter under said election or employment.~~

~~No bank, banking association, or trust company organized or operating under the laws of the United States in any city or incorporated town or village of more than one hundred thousand inhabitants, as shown by the last preceding decennial census of the United States, shall have as a director or other officer or employee any private banker or any director or other officer or employee of any other bank, banking association, or trust company located in the same place: *Provided*, That nothing in this section shall apply to mutual savings banks not having a capital stock represented by shares: *Provided further*, That a director or other officer or employee of such bank, banking association, or trust company may be a director or other officer or employee of not more than one other bank or trust company organized under the laws of the United States or any State where the entire capital stock of one is owned by stockholders in the other: *And provided further*, That nothing contained in this section shall forbid a director of class A of a Federal reserve bank, as defined in the Federal Reserve Act, from being an officer or director or both an officer and director in one member bank.~~

That from and after two years from the date of the approval of this Act no person at the same time shall be a director in any two or more corporations, ~~either~~ *any one* of which has capital, surplus, and undivided profits aggregating more than $1,000,000, engaged in whole or in part in

commerce, other than common carriers subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that ~~an~~ *the* elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

When any person elected or chosen as a director or officer or selected as an employee of any ~~bank or other~~ corporation subject to the provisions of this Act is eligible at the time of his election or selection to act for such ~~bank or other~~ corporation in such capacity, his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such ~~bank or other~~ corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the

expiration of one year from the date of his election or employment.

~~That any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not exceeding $100 a day for each day of the continuance of such violation, or by imprisonment for such period as the court may designate, not exceeding one year, or by both, in the discretion of the court.~~

SEC. 9a. Every president, director, officer or manager of any firm, association or corporation engaged in commerce as a common carrier, who embezzles, steals, abstracts or willfully misapplies any of the moneys, funds, credits, securities, property or assets of such firm, association or corporation, or willfully or knowingly converts the same to his own use or to the use of another, shall be deemed guilty of a felony and upon conviction shall be fined not less than $500 or confined in the penitentiary not less than one year nor more than ten years, or both, in the discretion of the court.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been committed.

SEC. 9b. That authority to enforce compliance with the provisions of sections two, four, eight, and nine of this Act by the corporations, associations, partnerships, and individuals respectively subject thereto is hereby vested: In the Interstate

Commerce Commission where applicable to common carriers and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Whenever the commission vested with jurisdiction thereof has reason to believe, either upon information furnished by its agents or employees or upon complaint, duly verified by affidavit, of any interested person, that any corporation, association, partnership, or individual is violating any of the provisions of sections two, four, eight, and nine of this Act, it shall issue and cause to be served a notice, accompanied with a written statement of the violation charged, upon such corporation, association, partnership, or individual who shall thereupon be called upon, within a reasonable time fixed in such notice, not to exceed thirty days thereafter, to appear and show cause why an order should not issue to restrain and prohibit the violation charged. If upon a hearing held pursuant to such notice it shall appear to the commission that any of the provisions of said sections have been or are being violated, then it shall issue and cause to be served an order commanding such corporation, association, partnership, or individual forthwith to cease and desist from such violation, and to transfer or dispose of the stock or resign from the directorships held contrary to the provisions of sections eight or nine, as the case may be, within the time and in the manner prescribed in said order. Any such order may be modified or set

aside at any time by the commission issuing it for good cause shown.

If any corporation, association, partnership, or individual charged with obedience thereto fails and neglects to obey any such order of a commission, the said commission, by its attorneys, if any it has, or by the appropriate district attorney acting under the direction of the Attorney General of the United States, may apply for an enforcement of such order to the district court of the United States for the district wherein such corporation, association, partnership, or individual is an inhabitant or may be found or transacts any business, and therewith transmit to the said court the original record in the proceeding, including all the testimony taken therein and the report and order of the commission. Upon the filing of the record, the court shall have jurisdiction of the proceeding and of the questions determined therein and shall have power to make and to enter upon the pleadings, testimony, and proceedings such orders and decrees as may be just and equitable.

On motion of the commission and on such notice as the court shall deem reasonable, the court shall set down the cause for summary final hearing. Upon such final hearing the finding of the commission shall be prima facie evidence of the facts therein stated, but if either party shall apply to the court for leave to adduce additional evidence and shall show to the

satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may allow such additional evidence to be taken before the commission or before a master appointed by the court and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem just.

Disobedience to any order or decree which may be made in any such proceeding or any injunction or other process issued therein shall be punished by a fine not exceeding $100 a day during the continuance of such disobedience or by imprisonment not exceeding one year, or by both such fine and imprisonment.

Any party to any proceeding brought under the provisions of this section before either the Interstate Commerce Commission or the Federal Trade Commission, including the person upon whose complaint such proceeding shall have been begun, as well as the United States by and through the Attorney General thereof, may appeal from any final order made by either of such commissions to any court having jurisdiction to enforce any order which might have been made upon application of such commission as hereinbefore provided, at any time within ninety days from the date of the entry of the order appealed from, by serving notice upon the adverse party and filing the same with the said commission; and thereupon the

same proceedings shall be had as prescribed herein in the case of an application by the same commission for the enforcement of its order as hereinbefore provided.

Any final order or decree made by any district court in any proceeding brought under this section may be reviewed by the Supreme Court upon appeal, as in cases in equity, taken within ninety days from the entry of such order or decree.

SEC. 10. That any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also any district wherein it may be found or ~~has an agent~~ *transacts any business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.*

SEC. 11. That in any suit, action, or proceeding brought by or on behalf of the United States subpœnas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the antitrust laws may run into any other district: ~~*Provided*, That in civil cases no writ of subpœna shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.~~

SEC. 12. That ~~whenever a corporation shall violate any of the provisions of the antitrust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation~~ *every director, officer, or agent of a corporation which shall violate any of the penal provisions of the antitrust laws, who shall have aided, abetted, counseled, commanded, induced, or procured such violation,* shall be deemed *guilty of* a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding $5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

SEC. 13. That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hear-

ing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not, and subpœnas to that end may be served in any district by the marshal thereof.

SEC. 14. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, *including sections two, four, eight, and nine of this Act*, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: ~~*Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States,~~

~~to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.~~

SEC. 15. That no preliminary injunction shall be issued without notice to the opposite party.

No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss, or damage will result to ~~property or a property right of~~ the applicant before notice ~~could~~ *can* be served ~~or~~ *and a* hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, *unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record.* In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the

issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with ~~his~~ *the* application for a preliminary injunction, and if he does not do so the court shall dissolve ~~his~~ *the* temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.

Section two hundred and sixty-three of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, is hereby repealed.

Nothing in this section contained shall be deemed to alter, repeal, or amend section two hundred and sixty-six of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

SEC. 16. That~~, except as otherwise provided in section fourteen of this Act,~~ no restraining order or interlocutory order of injunction shall issue, except upon the giving of

security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

SEC. 17. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their *officers*, agents, servants, employees, and attorneys, or those in active concert *or participating* with them, and who shall, by personal service or otherwise, have received actual notice of the same.

SEC. 18. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in

the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons *whether singly or in concert* from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; ~~or from attending at or near a house or place where any person resides or works, or carries on business or happens to be, for the purpose of peacefully obtaining or communicating information,~~ or ~~of~~ *from* peacefully persuading any person to work or to abstain from working; or from ~~ceasing to patronize or to employ~~ *withholding their patronage from* any party to such dispute, or from recommending, advising, or persuading others by peaceful *and lawful* means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling ~~at any place~~ in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held ~~unlawful~~ *to be violations of the antitrust laws.*

SEC. 19. That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of

any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or ~~at common law~~ *under the laws of any State in which the act was committed*, shall be proceeded against for his said contempt as hereinafter provided.

SEC. 20. That whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reasonable ground to believe that any person has been guilty of such contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court: *Provided, however*, That if the accused, being a natural person, fail or

refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused ~~person~~ is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

In all cases within the purview of this Act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform as near as may be to the practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the con-

tempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of $1,000, nor shall such imprisonment exceed the term of six months: *Provided, That in any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.*

SEC. 21. That the evidence taken upon the trial of any persons so accused may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon writ of error in all respects as now provided by law in criminal cases, and may be affirmed, reversed, or modified as justice may require. Upon the granting of such writ of error, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment, shall be admitted to bail in such

reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia.

SEC. 22. That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section nineteen of this Act, may be punished in conformity to the usages at law and in equity now prevailing.

SEC. 23. That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this Act.

Passed the House of Representatives June 5, 1914.

Attest: SOUTH TRIMBLE,

Clerk.

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