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The December Meeting and Debate

Dicta Editorial Board

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THE DECEMBER MEETING AND DEBATE

THE monthly meeting for December was held December 3, Mr. Shattuck presiding in the absence of Mr. Toll. Those members who attended were entertained by a spirited debate between Mr. Wayne C. Williams (for the Affirmative) and Mr. James H. Pershing (for the Negative) upon the subject: "Resolved: That Congress Should Enact a Law Limiting the Power of the Federal Courts in the Use of Injunctions in Suits Involving Labor Disputes."

It had been the intention of the speakers to debate the Shipstead Bill, which, unfortunately, perhaps, for the clarity of the issue, had been withdrawn upon the very day of the meeting. Mr. Williams in opening said the debate reminded him of the occasion when William Penn, sailing back to England, in a severe attack of nostalgia began to whistle "Home Sweet Home". Suddenly, Penn remembered that the tune had not yet been written, so he was forced to stop.

Each speaker was allowed fifteen minutes for his opening argument, seven minutes for rebuttal, and Mr. Williams three minutes in which to close. We present a resume of the arguments in the order of their presentation.

Mr. Williams: The Federal courts should be further limited in issuing injunctions in labor disputes. No injunction was issued in this country prior to 1848. In earlier years in England it had been a statutory crime for laborers to form unions or to strike for higher wages. But in this country a broader view was adopted in the first instance, and unions and strikes were declared legal. The leading cases in the United States are: *In re Debs, 158 U. S. 564,* in which it was held that a strike leader who obstructed the mails and interstate commerce might be imprisoned; *Loewe vs. Lawlor (Danbury Hatters' case), 208 U. S. 274* and *235 U. S. 522;* and *Gompers vs. Bucks Stove Co., 221 U. S. 418,* cases arising upon alleged violations of the Sherman Anti-Trust Act, which never contemplated labor strikes as restraints upon commerce; *Hitchman Coal Co. vs. Mitchell, 245 U. S. 229; Truax vs. Corrigan, 257 U. S. 312,* in which Chief Justice Taft agreed that violent picketing could be restrained, but not peaceful picket-

ing; *United Leather Workers Union vs. Herbert, 265 U. S. 457;* and *Bedford Stone Co. vs. Journeymen Stone Cutters' Assn., 273 U. S. 677.*

In 1914 Labor demanded an Act to give relief from injunctions. The Clayton Act was supposed to grant this relief by prohibiting injunctions in labor disputes "unless necessary to prevent irreparable injury to property, or to a property right * * * for which injury there is no adequate remedy at law". By the *Bedford Stone Co.* case and other cases, this Act has been whittled away, so that a further Act controlling interpretation of the Clayton Act has become necessary.

In 1920 the Federal District Court in *United Leather Workers vs. Herkert* enjoined illegal picketing as a violation of the Sherman Act. The Supreme Court through Chief Justice Taft held that the acts complained of were not a restraint upon interstate commerce, and overruled the lower Court. Yet for four years and two months the injunction had been in force, and had illegally hindered the strikers. George Wharton Pepper declared in a recent speech that three hundred injunctions had been issued in the Railway Shopmen's strike, and not a single one refused. The acts forbidden in this strike included paying out strike funds, meeting upon church property to discuss the strike, asking others to strike, singing songs, singing hymns.

The right to enjoin violence and destruction is undeniable, but rights of free speech continue, and include the right to persuade others not to serve as "scabs". Appeals from injunctions should be more speedily determined. The right to meet and to speak peaceably, the right of peaceful picketing, and of paying out strike money, should be protected according to the Act, and a jury should be required in labor cases to prevent liberty being lost without due process.

Mr. Pershing: The cases already determined put insuperable obstacles in the way of limiting equity powers of the Federal courts by legislation without a Constitutional amendment.

Two other bills introduced prior to the Shipstead Bill were abandoned because this fact was recognized by the party offering the bill. The Shipstead Bill was an attempt to amend Chapter 2 of the judiciary rules; namely, the rule that equity

courts shall have equity powers where there is no remedy at law. The Bill attempts to have property defined by the word "tangible".

Knowing that the Bill was unconstitutional, Shipstead withdrew it and substituted another. But underlying all of these bills is an attempt to define property and to hold that the right to work for another is not a property right. They urge two propositions: first, that the right to employ and to be employed is not property; second, that there is no equity power in the Federal courts to determine labor disputes. The real issue is therefore, "Has Congress the right to tell the courts how to decide labor disputes", and also "Shall this right be asserted because equity powers have been abused by some of the courts".

Even if these powers have been abused, which I don't admit, the Constitution was written to establish justice. The courts are the proper agencies for this purpose. Article III, Section 1, declares that the judicial powers shall be vested in the courts. The extent of these powers is that which existed in the English court of Chancery at the time of the Revolution. The United States Supreme Court held in *Pennsylvania vs. Wheeling Bridge Co., 13 How. 518,* that original equity jurisdiction was conferred upon it by the Constitution, and in *United States vs. Klein, 13 Wall. 128,* that Congress cannot limit this power by legislation.

The Constitution gives the Supreme Court original jurisdiction and gives Congress the power to limit the jurisdiction of the lower courts. But under the color of this right, Congress cannot trespass upon the judicial power. This would be a violation of the Fifth Amendment.

Therefore, Congress by legislation cannot declare that what has been held property is not property. And this is true in cases involving the right to employ or to be employed, see *Adair vs. United States 208 U. S. 161, Coppage vs. Kansas, 236 U. S. 1.*

Mr. Williams: If constitutionality is the issue, I am willing to debate it. But it is not the question. The issue is one of fundamental policy: of the right of the courts under equity powers to deprive individuals of their liberty. There has been great abuse; six hundred injunctions were issued last

year. The jurisdiction of the District and Circuit Courts may be limited by Congress, and it is in those courts that the abuse exists. The fact is Mr. Pershing stands for property and I stand for liberty. Liberty can't be restrained.

By the Clayton Act Congress has said no injunction shall issue in labor disputes, unless there is no adequate legal remedy. In *American Steel Foundries vs. Tri-City Council, 257 U. S. 201, 208,* Chief Justice Taft held that Congress might by legislation restrict the jurisdiction of the courts. Mr. Pershing's quarrel is therefore with Chief Justice Taft and the Supreme Court, not with me. The court there held that unions may persuade others to strike; that a single employee is helpless, and that unions are necessary to cope with the big employer. If this decision is right, no court may restrain these things; and if this is true, Congress may pass a bill to that effect. The lower courts are restraining these things, however. Abuse exists and if Mr. Pershing doesn't like their prohibition by legislation, it is for him to suggest a remedy.

Mr. Pershing: If such a bill is unconstitutional, it is against policy to adopt it. Every bill upon the subject has been thrown out for that reason. I don't say that legislation might not be proposed which is constitutional. The Constitution imposes upon the Supreme Court and such lower courts as Congress has created judicial power. This power, once acquired, can't be destroyed by Congress. Mr. Williams refers to a case in which Taft has declared certain acts legal. But suppose Congress had said that Taft couldn't declare them legal or illegal.

Mr. Williams says I am for property and he is for liberty. But such legislation would destroy both property and liberty. In *Adair vs. United States* the decision was upon the constitutionality of an Act prohibiting employers from discharging employees under certain conditions. It was held the Act violated rights of liberty and property. So also in *Coppage vs. Kansas.* Suppose there are abuses of the equity powers; it isn't necessary to burn down the house to correct them.

Mr. Williams: I don't want the liberties of a man restricted by an *ex parte* injunction of which he knows nothing until he goes to jail. I have no quarrel with Mr. Pershing over the definition of property. He says Congress can't limit

equity jurisdiction. Then the Clayton Act is unconstitutional and the Supreme Court wrong. Under the *Adair* case and the *Coppage* case no court can prevent a laborer from leaving his employment, though his employer is thereby ruined. Yet it has been done by injunction. The courts are not greater than the Constitution. The *Adair* and *Coppage* cases relate to statutes prohibiting employers from discharging men because of their union affiliations. They aren't concerned with injunctions.

Mr. Pershing then asked Mr. Williams, "Granting the rights involved are rights of liberty, not property, who is to determine them, Congress or the courts"? To this Mr. Williams answered, "Primarily, Congress is to determine them".

Editor's Note.—The Clayton Act, Act of October 15, 1914, c. 323, secs. 6, 20, contains the following language:

"Sec. 6. The labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural 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 anti-trust laws.

"Sec. 20. 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 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, * * *."