

IT MUST STAND.

Judge Jenkins Refuses to Change His Famous Decision.

It Is Modified in a Minor Particular, But He Remains Firm Regarding His Main Features—Strikes Are Bitterly Condemned.

SYNOPSIS OF THE DECISION.

MILWAUKEE, April 9.—If labor organizations achieved a victory in Omaha Thursday at the hands of Judge Caldwell they were given a black eye by Judge Jenkins Friday when he decided the motion to amend his strike order and sustained his original order in every particular except that he struck out the clause which reads: "And from ordering, recommending, approving and advising others to quit the service of the receivers of the Northern Pacific January 1, 1894, or any other time." In all its essential features the original order is sustained. He takes an exactly contrary view to that of Judge Caldwell. The judge's review of the case is complete and exhaustive and carefully covers every point raised in the argument. It is a sweeping victory for the receivers. The judge was nearly two hours in delivering the decision.

Labor Organizations Denounced.

The decision is made noticeable by the pronounced stand taken by the judge on what is generally known as the "labor question." The vehemence of the language used, coupled with the general denunciation of labor organizations and their methods, will cause the order to be discussed in every section of the country. The decision contains fully 12,000 words, a large portion, however, being made up of opinions quoted from various decisions of other judges. After reviewing the case the judge says in his decision:

Combined Capital and Combined Labor.

"In the discussion of the important and interesting questions presented by this motion it is not within the province of the court to assume part in the contest between capital and labor which it is asserted have been involved. It may be that the aggregated power of combined capital is fraught with danger to the republic. It may be that the aggregated power of combined labor is perilous to the peace of society and to the rights of property. It doubtless is true that in the contest the rights of both have been invaded, and that each has wrongs to be redressed. If danger to the state exists from the combination of either capital or labor, requiring additional restraint or modification of existing laws, it is within the peculiar province of the legislature to determine the necessary remedy, and to declare the general policy of the state touching the relations between capital and labor. With that the judicial power of the government is not concerned. But it is the duty of the courts to restrain those warring factions so far as their action may infringe the declared law of the land, that society may not be disrupted or its peace invaded and that individual and corporate rights may not be infringed.

Induction of the Proper Remedy.

"If the combination and conspiracy alleged and the acts threatened to be done in pursuance thereof are unlawful, cannot, I think, be otherwise redressed than by injunction. It may be that an appropriate remedy.

"It may be that a right of action at law would arise upon consummation of the threatened injury, but manifestly such remedy would be inadequate. The threatened interference with the operations of the railway, if carried into effect, would result in paralysis of its business, stopping the commerce ebbing and flowing through seven states of the union, working incalculable injury to the property and causing great public privation. Pecuniary compensation would be wholly inadequate. The injury would be irreparable. Compensation could be obtained only through a multiplicity of suits against 12,000 men scattered along the line of this railway for a distance of 4,400 miles. It is the peculiar function of equity in such cases, where the injury would result not alone in severe private but in great public wrong, to restore the commission of the threatened acts and not to send a party to seek uncertain and inadequate redress at law.

"That jurisdiction rests upon settled and unassailable grounds, and no longer open to controversy that a court of equity may restrain threatened trespass involving the immediate or ultimate destruction of property, and causing irreparable injury, and for which there would be no adequate compensation at law. It will in extreme cases, where the peril is imminent and the danger great, issue mandatory injunctions requiring a particular service to be performed, or a particular direction to be given, or a particular order to be revoked, in prevention of a threatened trespass upon property or upon public rights.

"I need not enlarge upon the subject. The jurisdiction is beyond question; is plenary and comprehensive."

Punishment for Contempt Not Enough.

The judge cited cited several authorities and continued:

"It would be anomalous indeed if the court, holding this property in possession, in trust, could not protect it from injury and could not restrain interference which would render abortive all efforts to perform the public duties charged upon this railway.

"It was suggested by counsel that as improper interference with this property during its possession by the court is a contempt, punishment therefor would furnish ample remedy, and that therefore no injunction would not lie. This is clearly an erroneous view. Punishment for contempt is not compensation for an injury. The pecuniary penalty for contumacy does not go to the owner of the property injured. Such contempt is deemed a public wrong and the fine inures to the government. The injunction goes in prevention of wrong to property and injury to the public welfare; the fine, in punishment of contumacy. The writ reaches the inchoate conspiracy to injure and prevents the contemplated wrong. The proceedings in contempt is *ex post facto*, punishing for a wrong effected."

No Right to Quit When He Pleases.

The judge then reviews the conditions that gave rise to the issuance of the writ. Continuing he says:

"There would seem to exist in some minds a lamentable misrepresentation of the terms 'liberty' and 'right.' It would seem by some to be supposed that in this land one has the constitutional right to do as one may please, and that any restraint upon the will is an infringement upon freedom of action. Rights are not absolute, but are relative. Rights grow out of duty and are limited by duty. One has not the right arbitrarily to quit service without regard to the necessities of that service. His right of abandonment is limited by the assumption of that service, and the conditions and exigencies attaching thereto.

"Ordinarily the abandonment of service by an individual is accompanied by so little of inconvenience, and with such slight resulting loss that it is a matter of but little moment when or how he may quit the service. But for every just mind, that the quitting must be voluntary and decent, in view of existing conditions."

"It would seem that I have stated to be correct as to individual action, the principle applies with greater force to the case of a combination of a large number of employees to abandon service suddenly and without reasonable notice, with the result of crippling the operation of the railway and injuring the public. The effect in this particular instance would have proven disastrous. The labor organizations are said to represent three-fourths of all the employees upon the railways within the United States—an army of many hundred thousands of men. The skilled labor necessary to the safe operation of a rail-

way could not be readily supplied along 4,000 miles of railway.

Could Not Fill Their Places.

"The difficulty of obtaining substitutes in the place of those who should leave the service would be intensified by the fact asserted and conceded at the argument that no member of these large organizations would dare to accept service in the place of those who should leave, because such acceptance would be followed by expulsion from their order and by social ostracism by their fellows. If this conspiracy had proven effective by failure on the part of the court to issue its preventive writ, this vast proportion of the commerce which have ceased to revolve, many portions of seven states would have been shut off in the midst of winter from the necessary supply of clothing, food and fuel, the mails of the United States would have been stopped, and the general business of seven states and the commerce of the whole country passing over this railway would have been suspended for an indefinite time. All these hardships and inconveniences it is said must be submitted to that certain of these men, discontented with the conditions of their service, may combine and conspire with the object and intent of crippling the property, to suddenly cease the performance of their duties. It is said that to restrain them from so doing is abridgment of liberty and infringement of constitutional right. I do not so apprehend the law. I freely concede the right of the men to abandon service at a proper time and in a decent manner. I concede the right of all the employees of this rail road, in concert, to abandon their service at a proper time and in a decent manner, but I do not concede the right to abandon such service suddenly without reasonable notice.

Strikers Bitterly Condemned.

"The second branch of the action has reference to the writ of injunction issued upon the supplemental petition of the receivers restraining any combination or conspiracy from having for its purpose the inauguration of a strike upon the lines of the railway operated by the receivers and from ordering, advising or approving by communication or instruction or otherwise the employees of the receivers to join in a strike. This part of the motion presents the issue whether this is lawful. The answer must largely depend upon the proper definition of the term."

The judge then cited the various definitions of the word strike and dwelt upon strikes in general. He said he knew of no peaceful strike, and that no strike was ever heard of that was or could be successful, unaccompanied by intimidation or violence. He continued:

"A strike without violence would equal the representation of the tragedy of Hamlet with the part of Hamlet omitted. The moment that violence becomes an essential part of a strike or a necessary means of effecting the purpose of a combination, that moment the combination otherwise legal becomes illegal. All combinations to interfere with perfect freedom in the proper management and control of one's lawful business, to dictate terms upon which such business shall be conducted, by means of threats or by interference with property or traffic, or with the lawful employment of others, are within the condemnation of the law."

Makes a Slight Modification.

Judge Jenkins then, referring to the clause in the supplemental injunction which enjoins any one from ordering, recommending, approving or advising others to quit the service of the Northern Pacific railway, and which has been characterized as wholly unwarranted, said the clause was inserted out of abundant caution, that the meaning of the court might be clear, that there would be no unwarrantable interference with the property, no intimidation, no violence, no strike. Since this language of the writ in this respect had been misconstrued and the restraint intended was in his judgment comprehended within the other provisions of the writ, the motion in that respect would be granted and the clause stricken from the writ. In all other respects the motion would be denied.

TO TREAT ALL ALIKE.

Judge Dundy Says Union Pacific Men Will Have Justice.

OMAHA, Neb., April 9.—The American Railway union has made application in the United States district court to have the salaries of the members of the order on the Union Pacific road, which were cut last August, restored to the old rate. Judge Dundy was visibly excited when addressing the attorneys from the bench. He said:

"It is stated that no one can be held responsible in the wages of these men connected with this organization—or outside of it, on this railway, when others who are drawing higher pay have been so highly favored. I will see that those who are drawing less pay will be treated the same way and I will advise that the old pay be restored. Still, it is but fair to the other side that they should have notice. You have to rely a great deal on the testimony of railway men in these cases, and they should have notice, and I suggest the propriety when Mr. Dickinson returns of making the order.

"Now, I have got myself into difficulty, as you can readily see, by following the example Judge Jenkins made in the Northern Pacific case when he allowed a schedule reducing the pay and fixing in the order that the parties were bound to comply with it when notice, no minute was given. I do not propose to do in this shape again and be denounced in open court where I have to preside at times. I followed his order, though mine was less stringent than his when he did not give the man a minute's notice, and now I am denounced all over the country for doing the very thing he did, when I was following a precedent he set. My term of court commences at Norfolk on Monday, but if necessary I will postpone that in order to have a speedy hearing in this case."

In conclusion Judge Dundy said:

"If you want to make application to have the old pay restored, I want you and every other one of the employees on the road to understand that if they have been wronged by the reduction that they will not have to join any union to get a hearing, because, as I have said before, I will hear one person that has a grievance or I will hear 100, or 1,000 or 4,000—as they claim to have in this union—and I will make no distinction between the parties."

UNDER A BRICK WALL.

Five Men Badly Injured by the Fall of a Section of a Building.

ELIZABETH, N. J., April 9.—A brick wall of a building on Broad street in process of erection fell upon a gang of brick-layers who were at work on a scaffold on the opposite wall. The wounded are: William Headly, fractured skull, legs broken, taken to hospital; James Kerr, leg broken and hip fractured; Alexander Kerr, badly cut and face disfigured; Robert Irwin, one arm broken and skull probably fractured; James Fury, head badly injured. The men were all rendered unconscious. It is thought Headly will die. Several of the helpers about the work were hurt by flying bricks.

Big Iron Firm Goes Under.

SAN FRANCISCO, April 9.—J. K. Firth & Co., iron dealers, have filed a petition in insolvency. Liabilities, \$60,000; assets, \$36,000. Mr. Firth is inventor and builder of the Firth wheel at the Midwinter fair, but has no property interest in it.

DEATH 'MID FLAMES.

Brave Milwaukee Firemen Plunged Into a Seething Furnace.

They Fall with the Blazing Roof of the Davidson Theater, and Nine of Them Are Taken Out Dead—A Thrilling Rescue.

BRAVE MEN PERISH.

MILWAUKEE, April 11.—Nine firemen met a horrible death in a fire which destroyed the Davidson theater on Third street between 4 and 5 a.m. Monday. The big stone building, which contained the finest playhouse in the city and the Davidson hotel, was burned to the ground in the midst of a blinding storm of rain and sleet, and in the final crash of falling roof and walls several companies of the fire brigade were thrown from the top story into the pit of the flaming furnace. The disaster is one of the most frightful that has befallen the city since the Newhall house burned down, when scores of lives were lost. The Davidson block was one of the most imposing in Milwaukee and the pecuniary loss of the fire is estimated at between \$300,000 and \$350,000.

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The judge then cited the various definitions of the word strike and dwelt upon strikes in general. He said he knew of no peaceful strike, and that no strike was ever heard of that was or could be successful, unaccompanied by intimidation or violence. He continued:

"A strike without violence would equal the representation of the tragedy of Hamlet with the part of Hamlet omitted. The moment that violence becomes an essential part of a strike or a necessary means of effecting the purpose of a combination, that moment the combination otherwise legal becomes illegal. All combinations to interfere with perfect freedom in the proper management and control of one's lawful business, to dictate terms upon which such business shall be conducted, by means of threats or by interference with property or traffic, or with the lawful employment of others, are within the condemnation of the law."

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