

CONTEMPT OF COURT IN LABOR  
INJUNCTION CASES

BY

CLEON OLIPHANT SWAYZEE, A. M.

*Assistant Professor in the  
University of Nebraska*

SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS  
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY  
IN THE  
FACULTY OF POLITICAL SCIENCE  
COLUMBIA UNIVERSITY

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## PREFACE

THE tendency toward highly specialized studies in the field of economics in the last few years has been met with some criticism. For the most part, this criticism has been based upon the belief that (1) detailed analysis of material of limited scope is of interest to a small number of specialists only, and that (2) such highly specialized studies have no direct and practical bearing upon the general body of economic theory. To these objections the writer would dissent vigorously, and while the argument will be stated in terms of the relationship of labor-contempt analysis to general economic theory and problems, it is believed that it will furnish a significant key to the generalized objections.

Experience in most of our industries where labor is highly organized seems definitely to point to the desirability of greatly extending worker-organized labor unions. This experience reflects two important advantages which flow from unionization. In the first place, through collective bargaining, labor organizations furnish our most satisfactory means of preventing industrial disputes, the costs of which if considered only in terms of increased expense of production and lost wages are tremendous. It is only where there is ably led and recognized organization on both sides of a dispute that effective machinery for prevention and peaceful settlement of controversies can be set up. In those disputes where the workers are poorly organized, or where their leadership is bad through inexperience, or again, where employers refuse to recognize and deal with legiti-

mate worker organizations, it is to be expected that conflicting rights will result in costly stoppage of work. In the absence of collective bargaining machinery issues become clouded and distorted from the growing fears and mutual distrust which inevitably develop between contending parties who are either unable or unwilling to meet for joint conference. On the other hand, in those disputes where employers recognize and deal with the selected representatives of a completely organized and competently led working force, provision for joint discussion promotes clarification of issues and encourages mutual confidence and respect. Without this, it goes without saying, there can be no agreement, and this is true even though a governmental agency forces arbitration upon the disputants.

In the second place, a high degree of labor organization assures greater equality of bargaining power between employers and employees, without which wages, hours and conditions of work will become burdensome not only to the wage-earning population but to society as a whole. It is doubtless true, as some will maintain, that many employers of labor would, even in the absence of trade-union pressure, maintain satisfactory levels of wages, hours and conditions of work. But unfortunately, the pace is set by the meanest employer whose power enables him to drive hard bargains with individual workers, and whose sharp competition forces other less greedy employers to depress their labor and other costs as much as possible.

That low wage levels are detrimental to the social structure is easily demonstrated. For the great bulk of our lower-paid wage earners and the labor-supply curve is negatively inclined,—that is, lower wages oblige wage earners to offer an increased supply of labor. When the earnings of the chief breadwinner are barely sufficient to maintain a family at an accustomed standard, any diminution in his

earnings is necessarily followed either by an offer of more hours of work by the chief breadwinner or by an attempt of other members of the family to sell their labor, or both. In either event, the supply of labor being increased, wages are further depressed, and the cumulative low wage — increased supply — lower wage sequence is set in motion. Under such conditions, it is not inconceivable, indeed it is probable, that in time we would find ourselves developing a new industrial serfdom even more undesirable than the agricultural serfdom of the late middle ages. While it is difficult, if not impossible, to say what these minimum wages should be, it does seem clear that there is a minimum below which wages should not be allowed to go. In our present economic system, extensive trade-unionism would stand as a desirable form of insurance against unhealthy wage depression.

Moreover, if these considerations are supplemented with knowledge of the close relationship existing between wage and living standards on the one hand and the efficiency of labor as a production factor on the other, and if we recognize also the importance of increased purchasing power in the hands of wage-earners, the case for more complete organization becomes clearer.

Since, then, the functioning of labor organizations in our economic society is accompanied by such far-reaching social and economic repercussions, any process which vitally affects the development of the trade-union movement is worthy of the most careful and detailed scrutiny. The use of the injunction in labor disputes and the power of the courts to punish for violation of a restraining order do vitally affect labor organization. Trade unions are wholly ineffective in their attempt to improve living and working standards if the courts are allowed either to deprive them of the only instruments of industrial warfare at their disposal or render

them innocuous by limiting their use. In other words, laborers may attain a high degree of organization but if they are restrained from or punished for striking, picketing or the other means of prosecuting a dispute their organization is of no advantage either to themselves or to society. The situation is very much like that found in employee representation plans under which discussion is limited to the choice of a site for a company picnic, the style and color of uniforms for the company baseball team, and so on.

A study of contempt proceedings in labor injunction cases is further justified by the light which it throws upon the intimate relationship existing between economic and the other social sciences. As is demonstrated by the evolution of college curricula, there has been for a great many years a tendency toward specialization which has served to conceal the fundamental unity of the social sciences. This study will not have been entirely fruitless if it adds something to the ever-growing collection of evidence that economics is not a body of laws originating and culminating in economic relationships, but that it is instead only one of the sciences of social behavior—a behavior which is conditioned quite as much by our legal and other non-economic institutions as it is by the alleged effect of an increase in price on demand. In other words, this study should support the belief that economic behavior is a reflection of all of the institutional environment within which it operates.

Finally, the importance of detailed contempt analysis is attested by the attention which both our federal congress and state legislatures have given it in the last few years. In the short period of three years the federal government and no less than eight states have written laws into their statute books modifying contempt procedure in labor injunction cases. Whether this legislation has resulted from the pressure of labor leaders or from pressure wholly out-

side the labor movement is of little importance. The fact remains that it represents a significant movement which is deserving of most careful study.

Several people, not all of whom can be mentioned here, have contributed to whatever merits this monograph may have. I am indebted to Professor Leo Wolman and Dr. E. M. Burns of the Economics department and to Dr. Robert Hale of the School of Law, Columbia University, for many helpful suggestions. I owe an especial debt to Professor Paul Brissenden of the School of Business, Columbia University, who was largely responsible for my undertaking the study in the first place, and whose tireless counsel has been of immeasurable value. To Wanda Birch Swayzee must go the credit for assuming much of the burdensome and monotonous mechanics of manuscript preparation.

C. O. S.

APRIL 20, 1935.



# TABLE OF CONTENTS

PAGE

## PART I

### INTRODUCTION

#### CHAPTER I

##### CONTEMPT IN GENERAL

Introduction . . . . .	15
Definition and Classification . . . . .	17
Power of the Courts to Punish . . . . .	22
Contempt Procedure . . . . .	25
Criticism of Contempt Procedure . . . . .	28

## PART II

### THE NEW YORK CASES, 1904-1932

#### CHAPTER II

##### PROCEDURE AND LEGAL DISPOSITION

Number and Distribution of Cases . . . . .	41
Classification . . . . .	44
The Persons Cited . . . . .	48
Liability of Union Officers . . . . .	56
Service and Knowledge . . . . .	58

#### CHAPTER III

##### PROCEDURE AND LEGAL DISPOSITION (Cont'd)

When Contempt Actions are Started . . . . .	64
Acts Alleged to be in Contempt . . . . .	69
Penalty for Contempt . . . . .	81
The Law's Delay . . . . .	84
The Crime of Contempt . . . . .	86

## CONTENTS

PAGE

## CHAPTER IV

## CONTEMPT IN SELECTED CASES

International Tailoring Co. <i>v.</i> Hillman . . . . .	93
Interborough Rapid Transit Co. <i>v.</i> Lavin . . . . .	96
Union-plaintiff Cases . . . . .	98
Summary of New York Experience . . . . .	99

## PART III

## REVISION

## CHAPTER V

## LEGISLATIVE STEPS TOWARD REVISION

Historical Review . . . . .	105
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## CHAPTER VI

## SUGGESTIONS AND CONCLUSION

The Case for Reclassification and Revision . . . . .	111
Appendix I. Digest of the New York Cases . . . . .	118
Appendix II. Table of Cases . . . . .	122
Appendix III. Sample Contempt Papers . . . . .	130
Appendix IV. State and Federal Contempt Statutes . . . . .	139
INDEX . . . . .	143

**PART I**  
**INTRODUCTION**

## CHAPTER I

### CONTEMPT IN GENERAL

**Introduction.** There is nothing inherent in the words which form an ordinance, injunction or mandate of any kind to compel obedience, even though these words constitute a command no less authoritative than the orders given by a general to a soldier. The mere order as it stands alone is without life and without force. It is only when the person giving the order is endowed with the power of enforcement, or with the power to punish in the event of disobedience or disregard, that any imperative statement becomes an "order". The angry imperative shouted by a small boy at his elders does not constitute an order, but is a mere form of expression coming from a source lacking the power necessary to transform words into an order. His wish is made known by his use of the imperative mood, but unfortunately, in this case at least, grammatical construction is not the most important of the factors necessary to get results. This is true whether the order-giving authority be the governor of the state, the parent, the policeman on the corner or the court.

Likewise the teeth of injunctions are the provisions for their enforcement. The injunction as such represents no club over the heads of the laborers or labor unions, since standing alone—a typewritten page or two signed by a justice of a court—it is without force and not as a rule capable of inducing fear or commanding respect. This being true, it is probably true that when reference is made to the "injunction evil" the thing alluded to is, to some extent at

least, that part of our judicial machinery which is designed to secure the execution of the orders of the courts: the power exercised by the courts to impose a penalty on any person who disobeys the court's order or who assumes an "attitude or manner which shows a gross want of that regard and respect to which the courts are entitled".

Since it is this power to punish for disregard or disobedience of a court order that compels obedience and secures for injunctions whatever measure of obedience they get, it is not strange that much of the criticism of their use in labor-dispute cases has centered upon the procedure which is followed in the attempt to determine the guilt or innocence of alleged violators of these orders and in the imposition of punishment upon those found guilty. An important phase of the general attack upon the use of the injunction in labor controversies, in other words, is the specific attack upon the exercise of the power of the courts to punish for contempt. The spokesmen of organized labor insist that the manner in which the courts use this power is objectionable not only because (1) it is used summarily, depriving the accused of jury trial but also because (2) this summary power is exercised by a single judge, that judge usually being the one whose orders are alleged to have been disobeyed.

It is believed that judgment as to the fairness and the efficacy of the methods now in use can best be formed on the basis of careful scrutiny of the circumstances and results of a fairly large number of contempt actions that have grown out of injunctions issued in labor-dispute cases. The writer has examined, therefore, all of the labor contempt actions<sup>1</sup> of which there is record in the archives of

<sup>1</sup> The phrase "labor-contempt action" will be used in these pages to designate an action to punish for contempt of an injunction issued in a labor controversy.

the New York Supreme Court.<sup>1</sup> The results of this examination are set out on the following pages. Before coming to grips with the cases, however, it seems desirable briefly to discuss the general nature of contempt and the usual methods of proceeding against it and to summarize the criticisms that have been directed at it. Finally the discussion of the New York cases will be followed up by a review of legislative efforts to deal with the matter and some suggestions by the writer with respect to revision.

**Definition and Classification.**<sup>2</sup> Contempt of court may be defined as the commission of any act which tends to hamper a court in the administration of justice or to lessen its authority or dignity, whether by disobedience to an order of a court, by a publication of a libel on a court, or by such disorderly behavior or insolent language in the presence of a court as would tend to annoy it in the prosecution of its duties. A court is contemned by "any act, attitude, speech or manner which demonstrates a gross want of that regard and respect which, when once courts of justice are deprived of their authority, is entirely lost amongst the people".<sup>3</sup> And it is not necessary that contempt be active. Either an act or an omission may be in the nature of a contempt and a merely passive attitude may be such as to invite contempt proceedings.<sup>4</sup> Such an act or omission

<sup>1</sup> In the case citations herein the New York state labor injunction cases are set in italics. New York state labor cases not involving injunctions and labor dispute cases arising in other state courts and in the federal courts are identified by the parenthetical insertion of the word "labor" at the end of the citation.

<sup>2</sup> Reference to statutes, e. g. Judiciary Law, Civil Practice Act, etc., is to those of New York state except where indicated to the contrary.

<sup>3</sup> Case of P. H. Darby, 3 *Whe. Crim. Cases* 3, (1824), Supreme Court, Nashville, Tenn.

<sup>4</sup> *Stimpson v. Putnam*, 41 *Vt.* 238, (1867).

to act, whether or not in the presence of the court, may, if directed at the authority of the law, offend the dignity of the court; or it may be such as to defeat, impair, or impede the rights of a party to the litigation. This distinction between the results of an act has given rise to the usual classification of contempts; an act offending the majesty of the law being designated as "criminal contempt", while an act putting the rights of a party litigant in jeopardy is known as "civil contempt".<sup>1</sup>

Criminal contempts are usually defined as those which constitute an offense against the public justice, which offend the dignity and majesty of the court contemned. In a great many instances such contempt arises out of a "wilful" disobedience to a lawful mandate<sup>2</sup> of the court, which disobedience may or may not be malicious; it need only be "in pursuance of an intent to disregard the mandate of the violated order".<sup>3</sup> Moreover, it is not even necessary in a case of criminal contempt that injury to the complainant be shown.<sup>4</sup> This class of contempts has in various places been called "public" contempts since the "cause and result are a violation of the rights of the public as represented by their legal tribunals".<sup>5</sup> But whatever the name given to the class,

<sup>1</sup> *Hoenig v. Eagle Waist Co.*, 176 A. D. (N. Y.) 724, (1917); *Willett v. Tichenor*, 220 S. W. (Mo.) 709, (1920); (not reported in state reports); *Matter of Stevens*, 151 Minn. 238, (1922), 4 *Law and Labor* 68. Collateral to labor dispute case of *Campbell v. Motion Picture Mch. Op.*, 4 *Law and Labor* 68, 186 N. W. (Minn.) 781, (1922); *State ex rel Rodd v. Verage*, 177 Wis. 295, (1922); *State v. Magee Pub. Co.*, 29 N. M. 455, (1924).

<sup>2</sup> *Gillie v. Fleming*, 191 Ind. 444, (1922).

<sup>3</sup> *People ex rel Kelly v. Aitken*, 26 Hun. (N. Y.) 327, (1879).

<sup>4</sup> *People ex rel Munsell v. Court of Oyer and Terminer*, 101 N. Y. 245, (1886).

<sup>5</sup> In the case of *People ex rel Stearns v. Marr*, 181 N. Y. 466, (1903) Judge Vann said: "An act in wilful contempt of a court of justice or its process is an offense against the people of the state. Government by law

it seems to include only those acts, the aim of which is to defeat the purpose of the judicial system by wilful disregard for its authority. It should be noted, too, that in most instances the commission of a criminal contempt alters the parties to the case except, of course, in those cases where the State is one of the parties in the main action. Usually, instead of being the typical biparty action, a third party, the people, is added.<sup>1</sup>

According to Section 750 of the Judiciary Law of New York state there are six ways in which a person may render himself liable to punishment for criminal contempt. It may be done either by: “ (1) disorderly, contumacious or insolent behavior committed during [the court’s] sitting, in its immediate view and presence and directly tending to interrupt its proceedings, or to impair the respect due to its authority; (2) breach of the peace, noise or other disturbance directly tending to interrupt its proceedings; (3)

cannot exist without the courts, and courts cannot enforce the law unless disobedience of their orders is properly punished. The wrong done to a party by the violation of an order made by a court for his protection is of less importance than the wrong done to the public by obstructing the course of justice and bringing dishonor upon the law itself.” See also *Matter of Ganz*, 7 N. Y. Supp. 260, (1902); *Glady v. People*, 94 Ill. App. 602, (1901); *Stubbs v. Ripley*, 39 Hun. (N. Y.) 626, (1886).

<sup>1</sup> “ There are three parties to every proceeding to punish for a criminal contempt; the Plaintiff, the Defendant, and the People. . . . While the court may be set in motion by a person who has been injured, (i. e., the Plaintiff in the main case) it acts to punish the wrong to the public rather than to redress the private injury.” *People ex rel Stearns v. Marr*, (note 5, *supra*). This case, which in the action for an injunction was entitled “ *Stearns v. Marr*”, became “ *People ex rel Stearns v. Marr*” in the contempt action. There are, of course, cases in which the parties to the action are altered, but which remain biparty actions, the State becoming the plaintiff. Such a case, sometimes entitled “ *In re—*”, “ *Matter of—*”, and the like, might arise if a party before the court should disturb the court’s sitting to such an extent that the court would initiate a contempt action in its own behalf, even though it were not a party to the case in which the contempt arose.



wilful disobedience to its lawful mandate; (4) resistance wilfully offered to its lawful mandate; (5) contumacious and unlawful refusal to be sworn as a witness, or after being sworn, to answer any legal and proper interrogatory, or (6) publication of a false, or grossly inaccurate report of its proceedings; but a court cannot punish as a contempt, the publication of a true, full and fair report of a trial, argument, decision or other proceeding therein." In the event the contempt is committed in the immediate view of the court, the court may immediately proceed against the offender and punish him summarily for the offense. In all other cases, however, the offending party may not be punished summarily but must be given notice of the charge against him and be given adequate time in which to prepare a defense,<sup>1</sup> the theory being that any provision for summary punishment for acts outside the immediate view of the court, would violate the alleged contemnor's constitutional rights, depriving him of liberty or property without due process of law.<sup>2</sup>

Civil contempts, on the other hand, are said to grow out of acts which amount to an invasion of some private right, acts which serve to "defeat, impair, impede or prejudice a right or remedy" of one of the parties to the action,<sup>3</sup> but which are not acts of intentional disregard for the authority of the court. For example, if after carefully examining an order of the court, a person misinterprets the order and as a result of this mistake disobeys the order, or if the person

<sup>1</sup> Section 10, Code of Civil Procedure, New York state.

<sup>2</sup> *People v. Hanbury*, 162 A. D. (N. Y.) 337, (1914).

<sup>3</sup> *Dailey v. Fenton*, 47 A. D. (N. Y.) 418, (1900); *Robertson v. Hay*, 33 N. Y. Supp. 31, (1895); *Boon v. McGlucken*, 67 Hun. (N. Y.) 251, (1893); *Wolf v. Buttner*, 26 N. Y. Supp. 52, (1892); *King v. Barnes*, 113 N. Y. 476, (1889); *Moffat v. Herman*, 116 N. Y. 131, (1889); *Sanford v. Sanford*, 40 Hun. (N. Y.) 540, (1886); *Cleary v. Christie*, 41 Hun. (N. Y.) 566, (1886); *Fischer v. Raub*, 81 N. Y. 235, (1880).

to whom the order applies acts in violation of the order by committing some act said by his legal adviser not to be a violation, but which act impairs or impedes the rights of a party litigant, the violator may be held for civil contempt. In such a case, and in the absence of "wilful" intent to disregard the authority of the court, the law is not dishonored nor the dignity of the court offended. Section 753 of the Judiciary Law of New York state makes the following provision for civil contempts:

Contempts punishable civilly: A Court of Record has power to punish, by fine or imprisonment, or either, a neglect or violation of duty, or other misconduct by which a right or remedy of a party to a civil action or special proceeding pending in the court, may be defeated, impaired or prejudiced, . . .

[among others]

(3) A party to an action or special proceeding, an attorney, counsellor or other person, for the non-payment of a sum of money, ordered or adjudged by the court to be paid . . . or for any other disobedience to a lawful mandate of the court.

Just as criminal contempts have been called "public", so have civil contempts been called "private". In the words of Judge Finch: "If we describe this first civil class of contempts as private contempts because their occasion and result is primarily and in the main, the vindication of private rights, we shall avoid confusion and misapprehension."<sup>1</sup>

However obvious the above distinction may appear to be it should not be inferred that no confusion exists in the definition and classification of contempts, or for that matter, in the distinction between civil contempts and criminal contempts, for even the most cursory examination of cases and

<sup>1</sup> People *ex rel* Munsell v. Oyer and Terminer, (*supra*, p. 18).

other published material will indicate the confusion. The classifications are manifold and the definitions obscure, few jurists being agreed as to the proper basis for classification and fewer still in agreement as to the inclusiveness of the classes. The result is not only confusing to the layman, but to the lawyer as well, who as a result of his confusion is at a loss in many instances to know what procedure should be followed.<sup>1</sup>

Such then is the tangle of concept and definition which is to be found in this single phase of the law of contempt. Scarcely less confusion marks other aspects of the subject.

**Power of Courts to Punish.** When our federal constitution was framed very little was done by way of limitation or definition of the detail of organization and administration of the judicial department. The same may be said of most of our state constitutions. The broader classes of litigation were designated but almost nothing was done in the

<sup>1</sup>Other terms which add to the confusion of contempt classification are "direct", "indirect", "constructive" and "consequential". "Contempts are either direct, such as are offered to the court while sitting as such, and in its presence, or constructive, but tending by their operation to obstruct, embarrass or prevent the due administration of justice." *O'Neil v. People*, 113 Ill. App. 196, (1904). The same definitions are to be found in *Whittem v. State*, 140 Ind. 7, (1895). "An indirect contempt is not committed in the presence of the court." *Stewart v. State*, 140 Ind. 7, (1895). Consequential contempts are those "which plainly tend to create a universal disrespect for their [the Court's] authority." *Nienaber v. Tarvin*, 104 Ky. 155, (1898). While one can not be certain from the definitions given, it appears that consequential contempts are the same as constructive and indirect contempts.

Church on Habeas Corpus is quoted in *O'Neil v. People*, 113 Ill. App. 196, (1904); "Courts have an undoubted power to punish direct and criminal contempts, and their power to punish direct or criminal contempts also necessarily includes the power to punish indirect, consequential or constructive contempts—such acts as are calculated to impede, embarrass, or obstruct the court in the administration of justice". The apparently careless use of the words "and" and "or" increases the confusion.

way of definition and limitation of judicial power, and in no place is to be found a guide to procedure. The absence of such consideration of judicial power and procedure is probably due to the fact that the framers of the constitution considered that these powers were sufficiently defined in the English Common Law which, of course, our courts had followed more or less faithfully since the establishment of our own judicial system before the Revolution. The result has been, however, a mild confusion as to the power of our courts to punish for contempt. Unquestionably, the power has been exercised for many scores of years, long antedating the issuance of the first labor injunction, but whether the power has been applied in the manner and to the extent applied under the Common Law is a question the answer to which remains uncertain. There seems to be little doubt that direct disobedience to the processes of a court has always been punishable by attachment, and the record of the cases of the last century would seem to indicate that the courts have held more or less consistently to the attitude that contempts by strangers committed out of court were punishable summarily and without the intervention of a jury, an attitude based on the belief that such power to punish was "inherent" in the courts<sup>1</sup> and founded upon "immemorial usage". However, in recent years some question has been raised as to the validity of this claim of "inherent" power and "immemorial usage", one writer maintaining that the English courts all through the medieval period could not punish summarily an alleged contemnor unless he confessed his guilt, and that in the absence of a confession he had to be regularly indicted and convicted.<sup>2</sup> Another writer has produced evidence that the

<sup>1</sup> That is, a natural function of the courts, existing wholly without regard to the delegation of the power by legislative bodies.

<sup>2</sup> Holdsworth, *A History of English Law*, 1922, vol. iii, pp. 391-394.

practice of punishing summarily was not current until the seventeenth century.<sup>1</sup>

Despite the fact, however, that recent investigation has thrown a shadow of doubt on the contention that all courts of record enjoy inherent powers to punish summarily, and regardless of how great the error of law may be, the summary procedure has become firmly fixed. Therefore, the point has little more than academic importance and should not be relied upon as a defense in a contempt action. The orthodox theory that every court of record does have such inherent powers finds most favor with American judges,<sup>2</sup> it being considered that such powers are necessary for the protection of the courts from insults and oppression, and to keep what the constitution fittingly calls "the judicial power of the United States" from coming to be no more than an empty phrase and a mockery.<sup>3</sup> That the holding that "a court having power to issue an injunction has inherent power to punish for contempt"<sup>4</sup> is universally accepted by our courts is unquestionable. It is, of course, essential that it appear that the court against whom the

<sup>1</sup> Sir John C. Fox, *Contempt of Court*, Oxford, 1927. "The evidence will show that the practice of trying contempts out of court summarily and punishing them by the double penalty was first established in the seventeenth century," p. 4. See also Frankfurter and Landis, "The Power to Regulate Contempts", 37 *Harvard Law Review*, p. 1010, June 1924.

<sup>2</sup> *Matter of Barnes*, 204 N. Y. 108, (1912); *People v. Rice*, 144 N. Y. 249, (1894); *People v. Court of Oyer and Terminer*, 101 N. Y. 245, (1886); *People ex rel Stearns v. Marr*, 181 N. Y. 463, (1905); *Martindale v. State*, 16 Okla. Crim. 23, (1919); *Little v. State*, 90 Ind. 338, (1883).

<sup>3</sup> *Gompers v. Bucks Stove & Range Co.*, 221 U. S. 418, (1912) [labor injunction]; *Bessette v. Conkey Co.*, 199 U. S. 333, (1904).

<sup>4</sup> *People v. Tool*, 35 Colo. 225, (1905); *People ex rel Cauffman v. Van Buren*, 136 N. Y. 252, (1892); *People ex rel Davis v. Sturtevant*, 9 N. Y. 263, (1853); *Sheffield v. Cooper*, 21 A. D. (N. Y.) 518, (1897); *Winichi v. Silverman*, 163 N. Y. Supp. 634, (1917).

contempt is alleged to have been committed had jurisdiction of the case out of which the contempt arose.<sup>1</sup>

As between courts of law and courts of equity there seems to be no difference in the power to punish. The exercise of this power is, however, more frequent in equity cases since in some instances it is only by the use of this power that violation of an equity court's order can be prevented.<sup>2</sup>

**Contempt Procedure.** The procedure followed in both civil and criminal contempt actions is very much like the procedure followed in the parent suits for injunctions out of which contempt proceedings arise. Such proceedings are initiated by filing an affidavit with the court setting forth specifically the acts which are believed to constitute a violation of the injunction order.<sup>3</sup> In the great majority of cases this affidavit is drawn by one of the parties to the original action, but it is not necessary that this be so, anyone being competent to draw the affidavit who has knowledge of the violation.<sup>4</sup> In New York state, the courts

<sup>1</sup> *Morgan v. State*, 154, Ark. 273, (1922); 13 *Corpus Juris*. 47, § 62. A question may arise as to the status of a contemnor if the contempt is committed during the litigation of the question of jurisdiction. It seems well settled that no person is obliged to obey nor liable for disobedience to an order of a court not having jurisdiction [*Brougham v. Oceanic Nav. Co.*, 205 Fed. 857, (1913); *Ex parte Fisk*, 113 U. S. 713, (1884)] but until it is shown that an order is defective for want of jurisdiction or for some other reason, a person is bound to obey and liable to punishment. Litigation of the question of jurisdiction does not disturb the operative force of an order. 3 C. J., pp. 1280-1282; *People v. Sturtevant*, 9 N. Y. 363, (1853).

<sup>2</sup> *Rapalje on Contempt*, (1884), p. 4.

<sup>3</sup> Unlike the procedure followed in the main injunction actions, it is not necessary that a complaint accompany this affidavit. Not a single case has been found where a complaint was filed in the contempt action.

<sup>4</sup> *McFarland v. Superior Ct., etc.*, 194 Cal. 407, (1924); *Castner v. Pocahontas*, 117 Fed. 184, (1902).

may, on receipt of the affidavit, do one of two things: either issue an order to show cause<sup>1</sup> addressed to the alleged contemnor designating a time and place at which he will be given an opportunity to show why he should not be punished for contempt; or issue a warrant of attachment directed to the sheriff and commanding him to arrest the alleged offender and bring him before the court for trial.<sup>2</sup> However, from an examination of the case, it appears that the second alternative is almost never used, probably because of the refusal of the court to issue the warrant, rather than because of failure of the plaintiff to request it. In regard to the first of the alternative methods, it should be noted that the law seems to be sufficiently flexible to prevent any embarrassment to the plaintiff, the phrase "addressed to alleged contemnor" being broad enough to allow frequent appearance of such names as "John Doe", "Richard Roe", etc., in the list of defendants. Usually the plaintiff submits additional affidavits, some of which are intended to give support to the charges in the initial affidavit, and while others indicate that a copy of the injunction had been served on the defendant.

These affidavits, accompanied by the signed order to show cause, are then served on the defendant who prepares his answer to the charges, the answer usually taking the form of affidavits in which denial of the charges is made or ignorance of the injunction is asserted. On the return date, after service of the defendant's answer, and assuming (which is scarcely the rule) that no adjournments have been taken, the hearing takes place. The papers prepared by the plaintiff, together with the defendant's papers in opposition, are

<sup>1</sup> This show cause order, in the typical case, will have been prepared by the complainant's attorney and is submitted with the affidavit for the signature of the court.

<sup>2</sup> New York Judiciary Law, Sec. 757.

presented to the court. Witnesses may be examined, though this is not always done, and oral argument may be made by counsel for either or both parties. It is on the strength of the evidence thus presented that the court makes its decision.

If and after the accused is found guilty of the contempt charges an order to that effect is entered, reciting, in civil contempt cases, that the acts of the defendant were such as to defeat, impair, impede or prejudice the rights of the plaintiff, and in the case of criminal contempt, that the defendant's acts were in wilful contempt of the order of the court.<sup>1</sup> Following this, and in the event a jail sentence is imposed, a warrant of commitment is issued. Copies of this instrument, as well as the others herein described, will be found in Appendix III.

As is true in the original injunction suits, a defendant found guilty of contempt may, in New York state at least, take an appeal to a higher court. There is one difference, however, which should be noted. In the ordinary equity case both the law and the facts will be considered on review, whereas the rule in contempt cases seems to limit review to alleged legal error, questions of jurisdiction and the power of the lower court to punish.<sup>2</sup> An order refusing to punish an alleged contempt by violation of injunction is never appealable, the doctrine of double jeopardy being the reason therefor.<sup>3</sup>

<sup>1</sup> *Eastern Concrete Steel Co. v. Bricklayers*, 200 A. D. (N. Y.) 714, (1922); *Matter of Gordon*, 149 A. D. (N. Y.) 246, (1912).

<sup>2</sup> *Watrous v. Kearney*, 79 N. Y. 496, (1880); *Jannings v. U. S.*, 264 Fed. 399, (1920).

<sup>3</sup> *U. S. v. Sanges*, 144 U. S. 310, (1892); *Simmonds v. Simmons*, 75 N. Y. 612, (1878); 4 *Bl. Comm.* 335: "First the plea of *autrefois acquit*, or a former acquittal, is grounded on the universal maxim of the Common Law of England, that no man is to be brought into jeopardy of his life more than once for the same offense, and hence it is allowed as a consequence, that when a man is once fairly found not guilty upon any



In the trial of contempt actions it seems to be universally accepted that the burden of proof rests on the complainant, and that the defendant is entitled to the benefit of every reasonable doubt; no court being willing to adjudge a person in contempt except on clear proof of the violation.<sup>1</sup> It is, of course, to be expected that these rules of evidence would be followed in contempt cases, where so frequently the conduct complained of is considered criminal in nature and the manner of proceeding to punish the conduct gives it the character of criminal process.<sup>2</sup>

**Criticism of Contempt Procedure.** The amount of adverse criticism directed at contempt procedure is exceeded only by that directed at the use of the injunction out of which so many of the contempt proceedings arise. For the most part this criticism of contempt procedure is based on two points: first, that a person charged with contempt is denied his constitutional right of trial by jury; and second, that in contempt cases a person may be required to stand trial for both the contempt and the crime committed in violation of the order, and that punishment for the contempt is given in accordance with the seriousness of the crime

indictment, or other prosecution, before any court having competent jurisdiction of the offense, he may plead such acquittal in bar of any subsequent accusation for the same crime . . . " See also *People v. Ann Arbor Ry. Co.*, 137 Mich. 673, 100 N. W. 892, (1904); *Roach v. Sheppard*, 105 Mich. 667, (1895), 63 N. W. 968, (1895); *Commonwealth v. Richardson*, 136 Ky. 699, (1910), 125 S. W. 147, (1910).

<sup>1</sup> *Greenberg v. Polausky*, 140 A. D. (N. Y.) 326, (1910); *Ketcham v. Edwards*, 153 N. Y. 534, (1897).

<sup>2</sup> It has been held, however, that the positive evidence of the plaintiff is of more weight than the negative evidence of the defendants. *Yablono-witz v. Korn*, 199 N. Y. Supp. 769, 205 A. D. (N. Y.) 440, (1923). In this case the plaintiffs submitted affidavits swearing to acts of violence against them. The defendants also submitted affidavits by persons who claimed to have observed all of the defendants' activities and to have seen no interference or disturbance. The court said: "In such a case as this, proof of actual occurrence is of great weight, while proof that affiants *did not see* is of little weight."

committed. Of the two points of criticism, however, the first occupies the position of greater importance, both in frequency of expression and in respect of the possibility of effecting a revision of present contempt procedure. The second point of criticism,<sup>1</sup> though not lacking for expression, is weaker than the first since, in fact, a person is almost never tried for the crime committed and tried also for the contempt. There are, of course, many contempt convictions and even more cases in which laborers have been arrested and convicted either for the misdemeanor of contempt (under Section 600, New York Penal Law) or, more frequently, for disorderly conduct, but there are only a negligible number of cases in which persons have been tried for both the contempt and the crime. This criticism, then, becomes of relatively little consequence.

As already indicated, a much stronger case has been made out for the criticism regarding denial of the right to jury trial. In establishing its case, labor points first to our common law background for evidence of the righteousness of its complaint. Clause 29 of Magna Charta, which provides that no free man shall be taken or imprisoned or outlawed, or be adjudged guilty of an alleged offense, save by the lawful judgment of his peers, or by the law of the land, is cited in support of the claim of injustice.<sup>2</sup> Old books on

<sup>1</sup> This criticism, as stated by Pres. Gompers to the American Federation of Labor Convention of 1905, is as follows: "Aye, men may be charged with an offense of which they may be entirely innocent, punished by the court with imprisonment for violation of the terms of an injunction, and yet, when later confronted by a jury, be honorably acquitted. Thus, the constitutional guarantees which provide against a man's life and liberty being placed in jeopardy twice upon the same charge are flagrantly violated." *Proceedings of the 25th Annual Convention of the American Federation of Labor*, p. 32.

<sup>2</sup> "Nullus liber homo capitur, vel imprisonetur, aut disseisietur de libero tenemento suo, vel libertatibus, vel liberis, consuetudinibus suis, aut utlagetur, aut exuletur, aut aliquo modo destruat, nec super eum ibimus, nec super eum mitimeus, nisi per legale iudicium parium suorum, vel legem terrae."

the history of the common law and the British Constitution which indicate long and general prevalence of the jury trial are quoted,<sup>1</sup> and finally, the sixth amendment to our federal constitution<sup>2</sup> is pointed out as being irrefutable authority for labor's claims.

This conviction of injustice is intensified somewhat by realization of the fact that judges sitting alone, without the assistance of a jury, may abuse their power to punish. Quoting again from the late Samuel Gompers: "The new scheme is even worse than the old repudiated conspiracy laws, for under them the defendant was always given the right of a trial by a jury of his peers. Now, however, under the new system, it is purely a personal trial by a judge, a

<sup>1</sup> *The American Federationist*, vol. 17, at p. 386 quotes "an old law book" (which is not named) on the British Constitution: "By the laws of King Ethelred, it is apparent that juries were in use many years before the conquest; and they are, as it were, incorporated with our constitution, being the most valuable part of it . . ." Sir Matthew Hale's *The History of the Common Law* (1779) might also be quoted:

"The method of the trial by jury . . . is justly esteemed one of the chief excellencies of our constitution, it being an institution most admirably calculated for the preservation of liberty, life and property; and indeed, what greater security can we have for these inestimable blessings, than the certainty that we can not be divested of either, without the unanimous decision of twelve of our honest and impartial neighbors. Our sturdy ancestors insisting on it as the principal bulwark of their liberties, compelled the confirmation of it, by Magna Charta . . .

"The truth seems to be that this tribunal [the jury] was [at the time of Alfred the Great] universally established among all the northern nations, and so interwoven in their very constitutions . . . In this nation, it should seem to have been used time out of mind, and to have been coeval with the first civil government thereof; and though its establishment was shaken for a time by the introduction of the Norman trial by battle, it was always so highly valued by the people, that on conquest, no change of government, could ever prevail to abolish it." (Notes to 12th Chapter, Note A, p. 296.)

<sup>2</sup> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which districts shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

jeopardy depending on his peculiar notion of the fractured dignity of his court and his sympathy with one or the other of the parties at issue.”<sup>1</sup> This abuse, of course, may not be deliberate but the difficulty of erasing from the judge’s mind the feeling that the disobedience was a personal affront remains and doubtless will remain as long as human nature continues unchanged. This argument, it is said, is not a product of the imagination of those most intimately associated with the interest of the working-class groups, but is a real danger recognized by the courts themselves. They quote Mr. Chief Justice Taft: “The delicacy there is in the judge’s deciding whether an attack upon his own judicial action is mere criticism or real obstruction, and the possibility that impulse may incline his views to personal vindication are manifest.”<sup>2</sup> A slightly less conservative indictment suggests that a judge with pride and self-respect would refuse to hear a contempt case where the contempt was a violation of his own order and committed outside of the court room, on the theory that he was the least competent person to decide the case.<sup>3</sup>

Expression of this criticism of contempt procedure has come chiefly from the American Federation of Labor. Beginning with the twenty-second convention of November

<sup>1</sup> *American Federationist*, June 1897.

<sup>2</sup> Concurring opinion of Mr. Chief Justice Taft, *Craig v. Hecht*, 263 U. S. 255, (1923). Senator David B. Hill of New York made the following statement (1896): “It is not simply the fact that one man is clothed with this power which no man ought to have; it is not simply the fact that there never was a man good enough and wise enough to be endowed with the power that judges now have in this regard; but it is the fact that they are frequently called upon to decide these questions when they have personal feelings in the matter.” Quoted in *51 Cong. Record*, p. 14370, (Aug. 1914).

<sup>3</sup> Testimony Feb. 16, 1928 of M. L. Ernst, *Hearings on Bill S. 1482* before a sub-committee of the Committee on the Judiciary, U. S. Senate, 70th Congress, p. 159.

1902, at which time demands were made for "the enactment of laws at an early date that shall relieve us from this just complaint," there have been very few conventions during which no indictment was made of contempt procedure and no recommendation adopted that "this convention and all organized labor should take emphatic grounds against this injustice." During the 1913 convention a constitutional amendment was proposed which each state was urged to adopt.<sup>1</sup> In the following year, however, the convention changed to its present policy, going on record at that time as favoring revision of contempt procedure by legislative enactment rather than by state constitutional amendment.<sup>2</sup>

Those who favor the retention of the usual method of dealing with contempt have given an answer to the above criticism as unsatisfactory as it is difficult to refute, namely, that the power to punish for contempt is inherent in the courts—an incident to judicial status independent of statutory provision—and that any statute which gives a court power to punish for contempt merely affirms a pre-existent power, which has been enjoyed by the courts "from time immemorial."<sup>3</sup> The League for Industrial Rights, one of the most ardent opponents of any revision of contempt or

<sup>1</sup> *Proceedings of American Federation of Labor*, 33rd Convention (1913), p. 67. The proposed amendment was as follows: "The legislature shall pass laws defining contempts and regulating the proceedings and punishment in matters of contempt. Any person accused of violating or disobeying when not in the presence or hearing of the court or judge, sitting as such, any order of injunction or restraint made and entered by any court or judge of the state, shall before penalty or punishment be imposed, be entitled to a trial by jury, as to his guilt or innocence, and all questions of fact upon which the injunction or restraining order was issued shall be determined by the jury. In no case shall a penalty or punishment be imposed for contempt until opportunity to be heard is given."

<sup>2</sup> *Ibid.*, 34th Convention, p. 100.

<sup>3</sup> *People v. Wilson*, 64 Ill. 195 (1872); *Case of P. H. Darby*, 3 Whe. Crim. Cases (N. Y.) 3, (1824).

injunction procedure, has stated the objection by suggesting that the right of a trial by jury in contempt cases "would impair the fundamental power of our courts to enforce their own orders and decrees." Then in explanation of its position it proceeds with the statement that "the right to enforce an order by punishment is an inherent part of the right to issue such an order, and various courts have already declared that a statute as broad in character as this [revised Shipstead Bill, S. 2497, 71st Congress, 2nd Session, 1930], giving the accused the right to a jury trial for violation of an injunction order, is an unconstitutional encroachment upon judicial power."<sup>1</sup> Support of this view is found in no less an authority than Blackstone, who has claimed immemorial usage for the punishment of all kinds of contempt by the summary process of attachment. "The process of attachment for these and the like contempts must necessarily be as ancient as the laws themselves."<sup>2</sup>

Although it is difficult to refute the statement of "inherent power" with any degree of finality, it is equally difficult for the proponents of the inherent-powers theory to establish their case. The claims made for inherent powers sound very much like the claims made for the divine right of kings. They may be able to quote authoritative sources supporting their position, but sources no less authoritative are to be found in opposition to their views. Senator Poin-dexter, in no uncertain terms, said, "I deny that there are any inherent powers of the courts that are not derived from the constitution and the statutes".<sup>3</sup> Moreover, a number of studies have cast some doubt on the conten-

<sup>1</sup> *Law and Labor*, Dec. 1928, p. 255.

<sup>2</sup> 4 *Bl. Com.*, Chap. 20, Sec. 3; see also *Armstrong v. U. S.*, 18 Fed. (2) 371, (1927), (U. S. C. C. A.); *Francis v. Williams*, 11 Fed. (2) 860, (1926), (U. S. C. C. A.).

<sup>3</sup> 51 *Cong. Record* 14375, (1914).

tion of immemorial usage.<sup>1</sup> It is pointed out that, up to the time of the late Tudor period, the time at which the court of Star Chamber came into its own, contempts were treated as breaches of the king's peace, and as such were tried by indictment and with the assistance of a jury. Sir John C. Fox lists forty cases in which the contemnor was tried by the ordinary course of the law,<sup>2</sup> and concludes that from the 14th century to the 18th century the jurisdiction of the courts to punish criminal contempts summarily was limited to offences committed in the actual view of the court, and further, that the extension of powers which came in the 18th century was induced by reason of statutes giving courts power to punish after examination and without a jury in certain cases and by the bad example set by the Council and Star Chamber.<sup>3</sup> "In cases of criminal contempt committed altogether out of court by persons other than officers of justice, the offense was punished by *qui tam* bill or information, on behalf of the king and the party injured; or like any other misdemeanor, by indictment. The fact that such contempts were punishable in the ordinary course of the law would not by itself preclude a concurrent summary jurisdiction, but the proposition is that certainly down to the 18th century they never were punished summarily in common law courts."<sup>4</sup> It is further

<sup>1</sup> Sir John C. Fox, "The Summary Process to Punish Contempt," XXV, *Law Quarterly Review*, p. 238 (July 1909). See also Brief for Appellant, *People ex rel Frank v. McCann*, Court of Appeals, New York, 1930. File No. 12961, County Clerk's Records, N. Y. Co.

<sup>2</sup> *Ibid.*, pp. 242-244.

<sup>3</sup> Holdsworth in his *History of English Law*, (1922), (vol. iii, p. 392), says: "But all through the mediæval period, and long afterwards, the courts, though they might attach persons who were guilty of contempt of court, could not punish them summarily. Unless they confessed their guilt, they must be regularly indicted and convicted."

<sup>4</sup> Fox, XXV *Law Quarterly Review* 246, (July, 1909).

indicated that since at the time of the beginning of the American judicial system there had been no actual decisions in England contrary to the common law practice, except those of Star Chamber, and since these were considered usurpations rather than law, the American courts started their operation under a state of law different from what we see in operation today.<sup>1</sup>

Perhaps a more curt but equally plausible answer to those favoring the retention of present contempt procedure is the fact that every argument which has been used in establishing a case against jury trial in contempt cases is an equally good argument against the use of juries in all other cases. As suggested by one writer, it may very well be that the time will come when juries will have to be abandoned in the interests of scientific progress.<sup>2</sup> We may discover that justice comes more often from specialists than from juries of laymen, but it is doubtful whether even those who are opposed to jury trials in contempt cases would be in favor of such a sweeping change at this time.

No less serious, perhaps, than the actual injustice which is done to laboring men and women as a result of the denial of the right to jury trial by the present contempt procedure, is the mental attitude which these men and women assume toward the judicial system. They believe that the courts in cases arising out of labor disputes are paid instruments of the capitalist class, administering law which is molded and remolded according to the bargaining skill of the litigants before them.<sup>3</sup> This indictment of present contempt procedure is rarely made, probably because so few are aware of the intensity or even the existence of the conviction, but an intimate association with laboring men will serve to con-

<sup>1</sup> Brief for Appellant: *People ex rel Frank v. McCann*, (*supra*).

<sup>2</sup> Harry Elmer Barnes in the *New York Telegram*, June 16, 1930.

<sup>3</sup> See *American Federationist*, Dec. 1927.



vince the most doubtful. When large groups of laborers march down the street shouting, "Down with the courts! Down with injunctions! To hell with the Judges!"<sup>1</sup> they are not merely "showing off", nor are their actions determined entirely by what is known as mob psychology. They are men and women with sincere convictions attempting to attract attention to a condition which they honestly believe to be unjust. Observe a group of laborers as they greet a fellow laborer who is just being released from jail after serving time for picketing in violation of an injunction. They shout his praises with as much enthusiasm as that which greeted Lindbergh's return. His courage is established. He has dared to stand up against a system which they believe to be bad. His position among his fellows is secure.<sup>2</sup>

As a rule laborers have much less objection to being arrested and tried for a misdemeanor for violation of an injunction or arrested for disorderly conduct during a labor dispute than they have to being cited for contempt in the conventional fashion. It is not difficult for laborers to appreciate the need for and justice of the exercise of police power, but when they are cited for contempt by an agent of the court, tried and punished by a civil court which sits in judgment on a violation of its own order without the assistance of a jury, the worker's sense of justice is outraged. They have the feeling that they are being penalized, not so much for disobedience to the law, as for the disregard of an injunction issued by a judge as a personal order. As the workingman sees it, the conflict is between two persons

<sup>1</sup> See the *New York Telegram*, Jan. 10, 1930, p. 1.

<sup>2</sup> The following notation, clipped from *The Daily Worker* of Dec. 25, 1929, is typical: "A large delegation of his fellow workers in the Independent Shoe Workers Union greeted Max Cohen when he left jail yesterday. He has just served a 10-day sentence and was fined for picketing the Brooklyn Shoe Company. He was escorted to the union headquarters, where 250 more shoe workers gave him an enthusiastic welcome."

rather than between an impersonal court and the accused. As stated by one man who had just been released after serving a thirty-day jail sentence: "I wouldn't care if they arrested me for starting a fight, that's all right; but when they run me in on account of an injunction that some judge has made, then that's something else. But as long as there are injunctions they can run me in!"<sup>1</sup> This statement is typical.

Let us now turn to an examination of labor contempt cases that have arisen out of injunction proceedings in the New York state courts. It is hoped that an examination of the procedural incidents and other circumstances relevant to contempt actions in this limited group of labor-injunction contempt cases may aid in the appraisal of current practice and of the proposals for change now being brought forward by critics of current practice in this class of cases.

<sup>1</sup> Statement made by a laborer to the writer.

## PART II

### THE NEW YORK LABOR CASES, 1904-1932 <sup>1</sup>

<sup>1</sup> Most of these cases, the titles of which appear below in italics, are unreported. Indeed in many cases the main case as well as the collateral contempt action is unreported. The decisions quoted or referred to in these unreported cases were generally found among the papers filed in the county clerk's offices, and the only citations that can be given are to the appropriate county clerk's index numbers, which are noted opposite the titles of the cases in the Table of Cases in the appendix. Where no other citation is given it is to be understood, therefore, that the citation is to the county clerk's index number.

## CHAPTER II

### PROCEDURE AND LEGAL DISPOSITION

**Number and Distribution.** The first year in which a contempt action grew out of a labor injunction case in New York state, so far as the records have revealed, seems to have been 1904. From 1904 to 1932, inclusive, there have been no fewer than one hundred and one such actions, criminal or civil, in the state courts. There may be, of course, additional cases which have been overlooked, but probably not many since a careful search has been made of all known sources, including the New York State Reports, Abbott's Digest, The New York Daily Law Journal Index and the clerk's records in New York, Kings, Queens, Bronx and Westchester counties, from which were gleaned the majority of the cases herein discussed. Contacts were established with no less than a score of attorneys active in labor cases, with labor union officials, and with employees, both by personal interview and correspondence, and even though these sources were not as fruitful as the others, it is believed that very few cases escaped discovery.

In addition to the one hundred and one main injunction actions to which these contempt cases were collateral, record was found of eight hundred and thirty-eight applications for injunctive relief which were not followed by contempt proceedings. However, since the injunction cases are distributed over the period from 1875 to 1932 a more accurate impression of the frequency of contempt proceedings may be had by comparing the number of contempt actions with the total injunction actions arising between 1904 and 1932,

during which period no less than nine hundred and one injunctions, either preliminary, temporary, or permanent were granted in the New York state courts.

In attacking the contempt cases for the purpose of analysis the records of the county clerk's offices were first consulted, and in every case where the records were available a careful examination of each paper filed with the county clerk was made. For additional information regarding these cases and for information concerning cases not on record there, the files of the attorneys for the parties and of the labor union offices were consulted. In all but a few cases, however, the county clerk's records were most fruitful, while labor union records afforded only the scantiest information.<sup>1</sup>

From the sources mentioned it has been possible to secure information adequate for analysis for only ninety-two of the one hundred and one contempt cases known to have been tried. Of the nine cases for which only fragmentary data were available five arose outside of the metropolitan area, two having arisen in Onondaga County, one in Erie, one in Monroe and the other in Oneida County. Three of the four remaining cases about which little could be learned arose in New York County and the fourth in Kings County. Of the ninety-two cases for which more or less complete information was found, eighty-one arose in the metropolitan area; forty-five having been tried in New York County, twenty-five in Kings County, nine in Bronx County, one in Queens and one in Richmond. The remain-

<sup>1</sup> Almost without exception the local and international unions were entirely without records of the cases in which they had been involved, the officers depending, for the most part, on their memory for information. In a few instances they were able to furnish a copy of the complaint, answer, order to show cause, etc., but in no case were complete records available. Even the American Federation of Labor offices in Washington were without adequate records, having only partial records of some one hundred injunction cases.

ing nine cases arose in upstate counties; three in Westchester County, two in Onondaga, two in Erie, two in Monroe, and one each in Oswego and Albany counties.

In 1904, the year of our first contempt case, three such actions were tried. During the following fifteen years there were no less than forty-three labor cases in which injunctions were granted and from which only fifteen contempt actions arose. However, in 1920 after a rather striking increase in the number of injunction cases there came a corresponding increase in the number of contempt actions. For the thirteen-year period, 1920-1932 inclusive, eighty-four such actions arose out of the seven hundred and eighty-four injunction cases which came before the courts. Of the six hundred and fourteen cases in which injunctions, either preliminary, temporary, or permanent, were granted approximately thirteen per cent were followed by contempt proceedings.

The following table presents the yearly distribution of both the number of injunctions granted and collateral contempt proceedings:

TABLE I. INJUNCTIONS GRANTED AND CONTEMPT ACTIONS ARISING, BY YEARS

	1904	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914	1915	1916	1917	1918
Number of Injunctions Granted . . . .	1	3	4	5	2	1	6	3	2	6	3	1	10	8	5
Number of Contempt Actions . . . . .	3*	0	0	0	0	0	1	1	1	1	1	1	1	3	3

  

	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932
Number of Injunctions Granted . . . .	38	27	77	32	32	41	27	54	51	39	58	59	58	59
Number of Contempt Actions . . . . .	2	12	9	8	4	1	1	5	8	7	6	11	7	5

\* In 1903 seven injunctions were granted out of which these contempt proceedings arose.

Even though these figures betray great irregularity in the frequency of actions for contempt, the persistence of low ratios of contempt motions to injunctions granted through the last decade may be significant. It is frequently alleged that the "left-wing" unions are more prone to violence and disregard for the law than are the unions affiliated with the American Federation of Labor and other conservative groups. However, in view of the fact that the "left-wing" unions have grown greatly in number and have been the defendants in a much large proportion of the post-war than of the pre-war cases, it would seem, on the face of these figures at least, that the allegation is not well founded.

The majority of the cases herein discussed are entirely regular, being cases in which the employers have sought to have employees punished for an alleged violation of an injunction issued against the employees. Fourteen cases, however, depart from the usual type, eleven being cases in which the plaintiffs were employees who sought to have the employer punished for violation of an injunction. In the remaining three cases the employer interests played only incidental roles, the parties to the actions being members of labor unions, one of which secured injunctive relief against the other and moved to punish for a violation of the order. A detailed discussion will be given these two groups of irregular cases in due course.

Forty-six unions were involved in the one hundred and one contempt actions, most of them, of course, being involved in no more than one case each, and none of them being involved in more than nine cases.

**Classification.** As has already been indicated, contempts may be either civil or criminal, a civil contempt resulting from an act which "defeats, impairs, impedes or prejudices" the rights of a party to the litigation, while a crim-

inal contempt results from an act deemed to be offensive to the majesty and dignity of the court. In fifty of the New York cases the defendants were charged with criminal contempt; in only twenty-seven with civil contempt, and it is impossible to determine from the records whether the remaining fifteen cases are civil or criminal. There are two reasons for this: first, the confusion which exists in court decisions and other legal writings regarding the inclusiveness of the classes, namely, what acts constitute a civil contempt and what a criminal contempt, and under what circumstances, makes it impossible to make a logical determination of the classification on the basis of the acts alleged to have been committed; and second, the lack of standardization in the language used in the court orders is conducive to confusion in the minds of an investigator. According to the opinion in the case of *Eastern Concrete Steel Company v. Bricklayers and Masons Protective International Union*<sup>1</sup> an order punishing for a criminal contempt should recite that the defendant "wilfully" disobeyed the order of the court, while a civil contempt order should recite only that the acts of the defendants were such as to "defeat, impair, impede, and prejudice rights of the plaintiff". This procedure, however, is not always followed. In many instances of criminal contempt the orders contain recitals appropriate for a civil contempt proceeding while civil contempt orders may give recitals appropriate for criminal contempt cases. In some cases, indeed, an order may recite provisions appropriate for both civil and criminal contempt. The case of *Nugent v. Hallman* (New York County, 1920) is in point. This was a case of criminal contempt, but the recitals given in the order were those characteristic of both civil and criminal contempt. The order read: "Ordered, adjudged and determined: first, that the defendant Benjamin Hall-

<sup>1</sup> 200 A. D. (N. Y.) 714, (1922).



man is guilty of a wilful contempt of court in knowingly and wilfully disobeying the order made in this action . . . ; Second, that the said contempt was calculated to and actually did defeat, impair, impede, and prejudice the rights and remedies of the plaintiff herein . . .”<sup>1</sup>

Of the fifty cases which were proceeded against as criminal contempts the defendants were found guilty in twenty-one cases. In three cases appeals were taken but with little success, two being affirmed in all respects and one modified and affirmed. The modification in this case consisted in striking out a \$500.00 assessment for attorney’s fees.

In the cases proceeded against as civil contempt, the defendants were even less fortunate, being found guilty in seventeen of the twenty-seven cases. Of the three taken to the Appellate Division the decision in one was reversed, the others being affirmed unanimously.

In all cases, including civil and criminal contempt and cases of unknown classification, a total of five hundred and sixty-one persons were cited, of whom only one hundred and eighty-one were found guilty. Thirty-seven of these persons were given a penalty of both fine and imprisonment, eighty-seven were given fines only, fifty-one were given prison sentences only, while the penalty for the remaining six could not be learned.

For civil contempt one hundred and ninety-two persons were cited of whom seventy-six were found guilty. In this class twenty were given a penalty of both fine and imprisonment, while fifty-six were given fines only.

Three hundred and two persons were charged with criminal contempt, and of this number ninety-nine were found guilty as charged. Seventeen were given both a prison sentence and a fine, thirty-one were penalized by fine only,

<sup>1</sup> Recitals for both civil and criminal contempt were also given in the case of *Utility Electric Co. v. Wilson, Westchester Co.*, 1930.

forty-five by imprisonment only, while the penalty for the remaining six is not known.

For the fifteen cases in which it has been impossible to determine the classification, sixty-seven persons were cited and six were found guilty. Each was given a jail sentence of thirty days.

Table 2 presents a summary of the cases.

TABLE 2. LEGAL DISPOSITION OF CONTEMPT CASES, BY CLASS

Classifi- cation	Number of Cases				Number of Persons				Penalty Imposed on Persons Found Guilty							
	Tried		Decided Against Defts.		Cited		Found Guilty		Fine		Imprison- ment		Both		Unknown	
	No.	Per- cent	No.	Per- cent	No.	Per- cent	No.	Per- cent	No.	Per- cent	No.	Per- cent	No.	Per- cent	No.	Per- cent
Criminal..	50	100	21	42	302	100	99	32.1	31	31.3	45	45.4	17	17.2	6	6.1
Civil.....	27	100	17	63	192	100	76	39.5	56	73.6	—	—	20	26.4	—	—
Unknown..	15	100	1	6.6	67	100	6	8.9	—	—	6	100	—	—	—	—
Total...	92	100	38	41.3	561	100	181	32.3	87	48.1	51	28.2	37	20.4	6	3.3

There are, of course, many circumstances which influence the decisions of the courts in these cases and doubtless most of them are more important than the fact of classification. But if any weight, however slight, is given to the matter of contempt classification it would seem, from the above figures at least, that the courts are more zealous in the protection of the rights of the party litigants than they are sensitive to the preservation of judicial and personal dignity—a somewhat surprising finding in view of the decision in *Stearns v. Marr* in which it is implied at least, that crim-

inal contempt is a more serious offense than civil, referring to the case at hand as "a case of *mere* civil contempt".<sup>1</sup>

**The Persons Cited.** One phase of the law of contempt to which much attention has been given, and which has given rise to not a few interesting legal encounters is that involving the question of who may be held liable for contempt for violation of an injunction. When an injunction restrains "the defendants, their and each of their agents, servants, confederates and any and all persons working in aid of or in conjunction with them", or when it is directed to the named defendants and "all who may hereafter violate this order", it is pertinent to pose the question:—Who, exactly, may be held in contempt for violation? Is it possible to hold persons in contempt by naming the persons in the order to show cause, or by merely designating a general class of persons to which the alleged contemnor may belong? In short may "strangers", with or without knowledge, be punished for violation or may only parties defendant be so held?

Although, in labor cases at least, the experience of the New York courts with this issue has been slight, and very little is to be found in the decisions which throws a revealing light on the issue, it is of some interest to note both the relationships existing between the persons cited for contempt and those named as parties to the original action, and the disposition of these cases by the courts. Of the eighty-nine cases for which adequate information is available thirty-nine were cases in which at least some of those cited for contempt were not named defendants. Of this number the motions to punish were denied in seventeen cases, granted in fourteen cases, while in the remaining eight cases the motions were either withdrawn by the court or dropped after settlement of the original dispute. Altogether five

<sup>1</sup> See 181 N. Y. 463, at p. 466, (1903).

hundred and nineteen persons were cited, of which number only two hundred and seventy-five persons were named as parties to the actions, leaving two hundred and forty-four persons who, though cited for contempt were not named as defendants in the original actions. It might be added, however, that in six cases involving thirty-two persons not specifically named in the actions, "John Doe", "Harry Roe", "Richard Doe", and so forth, were named as defendants, which names may or may not have been intended for parties to the actions. Indeed, in one case<sup>1</sup> in which the order to show cause was addressed to "each of the defendants" in the major action the title included twenty-four names, eighteen of which were "John Coe", "John Doe", "John Foe", "John Goe", and so forth. The name of "John Roe" appeared twice! In one<sup>2</sup> of the five cases, the evidence appears to be conclusive that the fictitious names accurately described and were intended for the parties to the action, for in one of the affidavits of service filed it was indicated that the summons, complaint and order to show cause were served on Dave Vecker and "John Doe" by the deponent who "knew the persons served aforesaid to be the persons mentioned and described in the said summons, complaint, and order to show cause as the defendants herein"! That the name of "John Doe" did not even appear in the title of the action seems not to have disturbed the deponent.

Despite the fact that the motions to punish were denied in seventeen of these cases and granted in fourteen, we are not, of course, justified in drawing the conclusion that the New York courts hold to the position that a person must be specifically named in an action in order to be punished for contempt, for in only one of the seventeen cases in which the motions were denied was this issue raised directly

<sup>1</sup> *Goldberg v. Kleinman*, Kings County, 1924.

<sup>2</sup> *Sanford Butter and Egg Co. v. Vecker*, New York Co., 1925.

and specifically. Moreover, in this case the issue was dismissed with only brief mention, the court's terse opinion being that: "The persons served with the order to show cause appear to be strangers to the action".<sup>1</sup> So cursory was the treatment here that it cannot be said with certainty that our introductory questions were answered in the negative, for no indication is given as to the meaning of the word "strangers". If by "strangers" is meant any person not specifically designated in the order to show cause, then the question was, in this one case, answered negatively. If, however, a person is made a party to an action by merely falling within that class of "agents, servants, confederates, and any or all of those associated with the defendants", the confusion is not avoided, for in that case the persons cited were members of the defendant union. In the other case<sup>2</sup> only implicit reference, if any, was made to the question at hand. In this instance, five men, not parties to the original action, and incidentally not even employees of the firm which secured the injunction, were haled before the court to answer charges of contempt for having picketed a firm only two or three doors away from the plaintiff concern in defiance of an injunction which restrained any picketing or congregating around the plaintiff's place of business within a radius of ten blocks. After hearing the evidence Justice Levy handed down his decision, denying the motion to punish, in which he said, "the idea of attempting to bring five men who were working in the same building with a concern that was cut off, completely divorced from that for whom you secured your order, and seek to hold them . . . is a high-handed proceeding in my opinion, and certainly not one that I will tolerate or suffer". While at no point in his opinion did Justice Levy make specific mention of the power of a court to punish persons not par-

<sup>1</sup> *Ibid.*

<sup>2</sup> *International Tailoring Co. v. Hillman, New York Co., 1925.*

ties to an action, this case might be cited as implying denial of the existence of that power. Certainly its relationship to the issue is no less intimate than many supporting citations which are to be found in almost every brief. Granting, however, that these two cases do answer our question in the negative, it is probable, as was indicated above, that they would not be given more than scant consideration by the majority of our courts.

A more accurate reflection of the law is probably to be found in the group of fourteen cases in which the motions to punish were granted, one being reviewed and affirmed by the Court of Appeals. It is not, of course, to be supposed that each one of this group of cases was decided on the issue immediately before us; perhaps none of them was so decided; but in a few of the cases there is sufficient evidence to indicate the opinion of the courts. One or two cases will illustrate the point. On May 15, 1903 the members of Iron Molders Union, Local No. 80, went on strike against the Stearns foundry at Syracuse. In the usual manner they attempted to induce others, not members of the union, to leave their jobs and join the strike. They made some effort to keep applicants for the vacated jobs away from the plant. Picket lines were established, "threats practiced and finally violence was resorted to". On application by the employer, an injunction was granted, running against ten named defendants and Iron Molders Union, Local No. 80, "its each and every member, said defendants and each of them, their agents, servants, representatives and coadjutors, and all persons connected with them or any of them." Shortly thereafter four men, only one of whom was named as a party to the action, were brought before the court on charges of injunction violation. At Special Term a referee was appointed to take evidence, who found three of the four guilty as charged, each being given a sentence of both fine and imprisonment.<sup>1</sup> The defendants appealed and the decision

<sup>1</sup> *Stearns v. Marr*, 84 N. Y. Supp. 36, (1903).

of the lower court was affirmed by the Appellate Division, which court in its opinion felt called upon to settle the question of whether or not persons not parties to an action may be punished for contempt. It said, "Two of the applicants were not parties to the action and were not served with the injunction, and it is contended that as to these persons the court was without power to punish for contempt. It has been frequently adjudicated that at common law all courts of record have inherent power to punish contempts. . . ." Following this the court indicated that although this power to punish may be conferred by statute the court may go above and beyond the statute and exercise its broader "constitutional" powers for self-protection.<sup>1</sup> Thus did the Appellate Division dispose of the issue; stating one question and answering another, leaving the issue more confused than ever. However, on further appeal to the Court of Appeals the issue was settled, for this case at least, in no uncertain terms. In affirming the action of the Appellate Division and in commenting on the defendant contention that the two men, not parties to the action, could not be punished the court said: "This position is unsound. An

<sup>1</sup> *People ex rel Stearns v. Marr*, 84 N. Y. Supp. 965, (1903). The complete paragraph reads as follows: "Two of the appellants were not parties to the action and were not served with the injunction, and it is contended that as to these persons the court was without power to punish for contempt. It has been frequently adjudicated that at common law all courts of record have inherent power to punish contempts. This power is recognized to be inherent in the court, by reason of its necessity for the enforcement of the powers of the court, the maintenance of its authority, and the conduct of its proceedings. While the power to punish contempts may be conferred by statute, and statutes may, within certain limits, declare acts to be such as may be punishable as contempts, yet the courts may exercise that power beyond and above the statute, and may assert their constitutional powers by treating as contempts acts which may invade and defy their authority, or destroy the power and force of their decrees. Courts of record cannot be hampered or restrained in the enforcement of this inherent power".

injunction not only restrains the parties to an action in which it was granted, but also, when so drawn, those who act under or in connection with a party. . . . No person with knowledge of the terms of an injunction, even though not a party, can aid or cooperate with a party . . . without incurring the penalty of the statute. . . ." "They were parties to the injunction because they were mentioned therein as members of the union."<sup>1</sup>

The same view was reflected by the Supreme Court in a case involving a shoe workers union. After alleged violation of the injunction a motion was made to punish, being directed against "those individuals, members of the striking union, who participated and were responsible for the violation of the injunction". In finding the fourteen men brought before the court guilty of contempt, the court said, in part, "The individual members of the shoe workers union, as well as the union itself, are covered by the injunction and those members who participated in its violation are liable for contempt. . . ."<sup>2</sup>

In a third case, the Appellate Division went even further. The contempt order to show cause was directed to "Lazar Raimist, as Treasurer of Local No. 500, Bakery and Confectionery Workers' International Union of America, his and their agents, servants, employees, member-associates and confederates". After hearing, however, the order read that "Lazar Raimist, . . . Henry Jager, Rose Weisman, Mollie Weingart, Frank Crosswaith and Ralph Meyerson [none of whom, except Raimist, had been named in the original complaint, the injunction, or the contempt order to show cause] are each of them hereby deemed guilty of contempt of this court. . . ." One of the five defendants, convicted but not cited, moved to have the order vacated on the ground,

<sup>1</sup> *Ibid.*, 181 N. Y. 463, (1905).

<sup>2</sup> *Utz and Dunn v. Sheridan*, 201 N. Y. Supp. 46, (1923).



*inter alia*, that he was not cited. This motion was denied, and upon appeal to the Appellate Division the decision of the lower court was affirmed and a motion to appeal to the Court of Appeals was denied. From this it appears that not only may persons not named in the original action be cited and punished, but persons neither named in the original action *nor* cited in the contempt order to show cause may be punished, if found guilty of injunction violation.<sup>1</sup>

That the decisions in these cases more nearly reflect the "best law" is given support by the many cases, both labor and non-labor, in other jurisdictions and in the non-labor cases of New York state in which the same holding may be found.<sup>2</sup> Moreover, the fact that seventy-eight of two hundred and forty-four persons, cited but not named defendants, were found guilty and punished for the contempt seems to establish rather definitely that the New York courts hold closely to this position. The judicial justification of this position, at least in the cases where the persons cited for contempt, though not named, were members of the union involved, is found not only in practical administrative necessity,<sup>3</sup> but also is grounded in a belief in the increasing soli-

<sup>1</sup> *Aberon Baking Co. v. Raimist*, Case # 1, Bronx Co., (1929).

<sup>2</sup> *State v. Freshwater*, 107 W. Va. 210, (1929); *Tosh v. West Ky. Coal Co.*, 252 Fed. 44, (1918); *Berger v. Superior Ct.*, etc., 175 Cal. 719, (1917); *People v. Andrews*, 197 N. Y. 53, (1909); *Regas v. Livingston*, 178 N. Y. 20, (1904); *King v. Barnes*, 113 N. Y. 476, (1908); *People ex rel*, etc. *v. Somers*, 208 N. Y. 621, (1913); *Employers' Teaming Co. v. Teamsters' Joint Council*, 141 Fed. 679, (1908) [Labor]; *Garrigan v. U. S.*, 163 Fed. 16, (1908); *Hutchins v. Munn*, 209 U. S. 246, (1906); *Anderson v. Hall*, 128 Ga. 525, (1907); *State v. Sides*, 95 Kan. 633, (1915); *Ex parte Young*, 103 Tex. 470, (1910); *U. S. v. Sweeny*, 95 Fed. 434, (1899); *Ex Parte Lennon*, 166 U. S. 548, (1894); *O'Brien v. People*, 216 Ill. 354, (1905); *Fowler v. Beckman*, 66 N. H. 424, (1891); *Anderson v. Ind. Drop Forging Co.*, 34 Ind. App. 100, (1904); *Strawberry Island Co. v. Cowles*, 140 N. Y. Supp. 333, (1912); *Huttig Sash Co. v. Fuelle*, 143 Fed. 363, (1906); *Chisolm v. Caines*, 121 Fed. 397, (1903); *King v. Ohio and Miss. Ry Co.*, Fed. Case # 7800, (1877).

<sup>3</sup> *New York Law Journal*, Oct. 26, 1933 (editorial), p. 1468.

clarity of purpose and action within individual unions. As stated by the Supreme Court in one case, "The unionization of labor has developed rapidly in the last few years and the organizations have become more elaborate as well as more extensive. The court must assume that in such labor unions there is complete organization as would be expected in such elaborate associations, that members are amenable to discipline and that members are subject to notice from their officers."<sup>1</sup>

Unfortunately, the one case which, had it been decided, held greatest promise for clarification of this issue was one in which the motion to punish was withdrawn by the plaintiff. In this case<sup>2</sup> an injunction was granted against the International Ladies Garment Workers Union and certain individual members, restraining intimidation, threats or interference with the plaintiff or its customers. One Karop Boghosian, who owned a restaurant situated immediately across the street from the plaintiff's business, was cited for contempt on the ground that he allowed groups of the strikers to sit in his place of business for hours at a time without ordering or eating a bite. These men, the plaintiff alleged, were there in such great numbers as to intimidate both the employees and the customers of the plaintiff. Of course, it is impossible to state what disposition would have been made of the case had the motion not been withdrawn, but in view of the Court of Appeals opinion in the Stearns case it is probable that Boghosian's acquittal would have had to rest on something more substantial than a plea of distant relationship to the members of the striking union. Precedent for his punishment might have been found in a federal case.<sup>3</sup> Here a sympathetic barber, no more intimately asso-

<sup>1</sup> *Borden v. Sterbinsky*, 192 N. Y. Supp. 757, (1922), at p. 759.

<sup>2</sup> *Cancl Dress Co. v. Sigman, N. Y. Co.*, (1923).

<sup>3</sup> *U. S. v. Tallifero*, 290 Fed. 214, (1923).

ciated with the defendants than was Boghosian in the New York case, was held to be in contempt for displaying a sign (directed to prospective customers), "No Scabs Wanted Here", in his shop window after an injunction against "the defendants . . . and all persons conspiring . . ." etc. had been granted.

**Liability of Union Officers.** One other closely related question arises in regard to our general inquiry as to who may be punished for contempt: May officers of a union be punished for contempt as a result of injunction violation by members of the union enjoined? The decisions in the New York cases in which this question is discussed seem to indicate that no one answer can be given, that the question can be answered only after an examination of individual cases. The first case to arise in New York state in which this question was involved arose in 1910,<sup>1</sup> at which time the president and two general organizers of the Typographical Union were tried and convicted for criminal contempt for injunction violation by the striking members of the union. On appeal the lower court decision was affirmed. The evidence in the case indicated that, even though the officers were in a position to exercise considerable control over the membership, they did not do all in their power to prevent violation. The injunction was read at a poorly attended meeting, and according to the referee "the reading of the injunction took on an appearance of a mere compulsory act" which "was not the measure of duty of the officers in the matter of obeying the order of the court. . . ." In finally disposing of the case Referee Wiener, in commenting on the responsibility of the officers, said:

Upon the facts in evidence I must hold that the omission by these officers of reasonable endeavors to cause this injunction to

<sup>1</sup> *Typhothetae of the City of N. Y. v. Typographical Union # 6*, 117 N. Y. Supp. 70 (App. Div.), (1910).

be obeyed was colored by bad faith and that the mere reading of the injunction at a meeting attended by a relatively small portion of its members, while the single effective means of preventing its violation by those really concerned was not employed, amounted to no fulfillment of their legal duty.

Obedience in good faith, not appearance of compliance, to mask a desire and intent to evade the order, was the measure of the duty cast upon the defendants' officers, and the only measure, if the authority of the court is to have practical expression.<sup>1</sup>

Thus although the first case answers our question in the affirmative the answer covers only one set of circumstances—that in which the officers of the union, by a passive attitude, encouraged violation.

A second case, though involving officers who were in a position to exercise more direct control over the strikers, again gives support to the affirmative. In this case,<sup>2</sup> the officers who were sought to be held responsible for the actions of the members of their union and punished for contempt constituted a strike committee, which, acting in conjunction with a joint council of local unions and a general executive committee, had complete control of the strike activities. In finding the defendants guilty, Justice Rodenbeck of the Supreme Court said that "the officials who had direct charge of the strike . . . are equally culpable with those who participated personally in the picketing . . . and cannot evade responsibility on the plea of having given advice and instruction. . . . They should not be permitted to hide behind their official positions while their subordinates are punished . . ."

In two other cases,<sup>3</sup> however, we find decisions which are not altogether in harmony with the cases just examined.

<sup>1</sup> *Ibid.*, p. 73.

<sup>2</sup> *Utz and Dunn v. Sheridan*, 201 N. Y. Supp. 46, at p. 47 (1923).

<sup>3</sup> *Strauss v. Hillman*, N. Y. Co., (1921), *Fruhauf v. Hillman*, N. Y. Co., (1921). The circumstances of the two cases were identical.

An injunction was issued against Sidney Hillman individually and as president of the Amalgamated Clothing Workers and a number of individual members of the union. Acts of picketing, sufficient to constitute a violation of the order, were committed but none of those actually engaging in the picketing was brought before the court on contempt charges. Instead the officers of the parent organization were brought in. After indicating that these men did not have any degree of control over the striking members and after assuring the plaintiffs that no court would excuse violation by a mere negative compliance, the court pointed out that since there was no evidence that the defendants had advised disobedience the case against them rested only on the fact that the order had been violated. In addressing himself to the question at hand Justice Tierney of the Supreme Court said, "when the matter of punishment for violation of the order is presented, the individual proceeded against must be shown to be actually responsible for doing or omitting something prohibited or required by him. A violation of another does not determine such responsibility".<sup>1</sup>

In sum, it would appear that union officers who are in a position to exercise sufficient control to forestall injunction violation but who do not honestly and sincerely exercise that control may be punished for the contempt even though they did not personally engage in the violation of an injunction. However, if such control is exercised in good faith or if the organization is such that the officers are able to exert influence on only those members who respect them for their official positions, the courts, it seems from an examination of the New York cases at least, are loathe to punish.

**Service and Knowledge.** Another question which frequently tries the patience of the court is whether or not the injunction alleged to have been violated has been served on

<sup>1</sup> *Fruhauf v. Hillman*, N. Y. Co., # 9010, (1921).

the person accused of the violation. In many cases page after page of testimony relates the nature, time, and place of service. Was the alleged contemnor served with the injunction which he is alleged to have violated? In what manner was the service made? When, in relation to the commission of the acts in violation, was he served? Where was the service made? By whom? Such are the questions of fact put to the witnesses, the answers to which present to the courts a problem of more than usual difficulty—a difficulty which arises from the fact that this phase of the law of contempt, like others, is not entirely free from confusion. However, despite the fact of confusion and the ease with which one can find cases to support almost any theory of service, the New York courts have taken a position sufficiently consistent to indicate that they see almost eye to eye with courts in other jurisdictions.

There have been no less than ten labor contempt cases in New York state in which the issue of service and knowledge has been raised, i. e., in which the defendants claimed immunity on the ground that personal service of the injunction had not been made. In five of these cases, including one case heard by the Court of Appeals, the motions to punish were granted, in six denied, but since the courts did not in all eleven cases indicate that the decision rested on the issue of service, we are not, of course, justified in concluding that a person disclaiming personal service would in slightly less than fifty per cent. of the cases be held not guilty of contempt. Any faithful appraisal of the law, however, requires an examination of individual cases.

The most severe interpretation of the law regarding service is to be found in a case already discussed, *Stearns v. Marr*,<sup>1</sup> one of the few contempt cases heard by the Court of Appeals. In this case the defendants took the position

<sup>1</sup> 181 N. Y. 463, (1904).

that they could not be punished since personal service of the injunction order had not been made, citing in support of their position the decisions in five cases,<sup>1</sup> two state statutes<sup>2</sup> and *High on Injunctions*.<sup>3</sup> The court, however, disagreed, saying, "It is further insisted in behalf of some of the appellants that they cannot be lawfully punished for criminal contempt, because the injunction was not personally served upon them. The rule on the subject is well settled. 'This court has upheld the proceedings of the Supreme Court, punishing parties for contempt in violating an injunction who had knowledge of it, though not served . . . [or] imperfectly or irregularly served'".<sup>4</sup> The court pointed out, further, that it was not even necessary that the contemnor have knowledge of the provisions of the injunction, it being enough if it were shown that such knowledge was in his reach and offered to him. This, then, is the position taken by the Court of Appeals in the first instance in which the issue was raised. A few additional cases will indicate the extent to which subsequent cases followed the precedent established by the Court of Appeals.

In two cases<sup>5</sup> the defendants maintained that they had not been personally served with the injunction but it developed in the course of the hearings that the attorneys for the defendants had been served. The motions to punish were granted in both cases. In only one case was an opinion written, but it probably reflects the judicial position in both

<sup>1</sup> Three of these were decisions of the Court of Appeals: *People v. Oyer and Terminer*, 101 N. Y. 245, (1885); *Sherwin v. People*, 100 N. Y. 351, (1885); *People v. Dwyer*, 90 N. Y. 402, (1882).

<sup>2</sup> Code of Criminal Proc., Sec. 222, and Penal Code, Sec. 143.

<sup>3</sup> Third Edition, Sec. 1452.

<sup>4</sup> 181 N. Y. at p. 470. The case cited by the court is *Daly v. Amberg*, 126 N. Y. 490, (1891).

<sup>5</sup> *Association of Dress Mfgs. v. Hyman, N. Y. Co.*, (1927); *Aberon Baking Co. v. Raimist, Case # 1, Bronx Co.*, (1930).

cases. In the Hyman case, Justice Erlanger, in answer to the contention that service on the attorney was not sufficient, said, "It is unnecessary to discuss the fallacy of the position so taken, because notice to the attorney was full notice of the existence of the injunctive order to the clients, and they were as much bound by its terms as though they had been personally served . . .".<sup>1</sup>

The decision in a fourth case<sup>2</sup> lends additional support to this point of view. The circumstances were slightly different—the injunction having been served on the officers of the union, but not on the individuals charged with contempt—but the principle involved is identical. The court in this case held that, although the members of a union cannot be punished unless they have knowledge of the injunction, the court must assume that labor unions have effective organization and that members, being amenable to discipline and subject to notice from their officers, are presumed to have knowledge of an injunction which has been served on their officers.

In other cases the courts have indicated that they will tolerate no tricks or subterfuge in the denial of injunction knowledge and further that in some cases knowledge will be presumed even though the defendant has established a superficial case for his ignorance. In one case<sup>3</sup> the defendants disclaimed any knowledge of the injunction, but admitted that "certain papers" were handed to them, the contents of which they did not know since they immediately handed them to some other person. A similar circumstance is found in another case in which an injunction was granted against a bakery drivers' and helpers' union.<sup>4</sup> A sympathetic group,

<sup>1</sup> N. Y. Co. Clerk's Index # 12456 of 1927.

<sup>2</sup> *Borden's Farm Products Co. v. Sterbinsky*, 192 N. Y. Supp. 757, Supreme Court, (1922).

<sup>3</sup> *W. P. Davis Machine Co. v. Robinson, Monroe Co.*, (1903).

<sup>4</sup> *Ward Baking Co. v. Ursprung, Kings Co.*, (1919).



drivers of milk wagons, refused on occasion to deliver milk to retailers who bought the plaintiff's products. An attempt was made to inform the milk-wagon drivers of the injunction by putting copies of the order into the hands of the retailers who were to give them to the drivers. This plan, however, met with failure since each of the drivers on whom service was attempted declined to accept the papers. The courts in both cases found the defendants guilty, affirming the judgment in the case of *Stearns v. Marr* (*supra*), holding that it is enough that it be shown that knowledge was within the reach of or offered to the defendants.

If we could conclude the discussion at this point, a clear statement of the law could be made, for in the cases discussed the decisions have followed the Court of Appeals precedent. Unfortunately, however, that is not possible. Other cases somewhat obscure the issue, partly because of apparent conflict in opinion and partly because the courts in commenting on the point made such brief statements that their position was not made altogether clear. In the first case<sup>1</sup> the motion to punish was denied with the laconic statement that "There is not sufficient proof of service of the [injunction] order of [Mr. Justice] Lydon, nor of the order to show cause", a statement which gives no indication of what is meant by proper service, but which, on its face, seems in conflict with the other cases. The second case<sup>2</sup> is even less satisfactory. In denying this motion to punish, Justice Lydon said that there was "no proof that Urbano knew of the *specific* terms of the injunction order, or that he was served with a copy of the order". Does this mean that a person must either have *specific* knowledge of the provisions of any injunction or be *personally* served with the order before being liable to contempt proceedings—that

<sup>1</sup> *Hammer v. Baum*, N. Y. Co., (1921).

<sup>2</sup> *Ceanel Dress Co. v. Sigman*, Case # 2; N. Y. Co., (1923).

general knowledge of the injunction is insufficient? Apparently it does, but here again the court has implied a rule of law apparently at variance with earlier opinions—one of which came from the Court of Appeals—without explanation or effort to distinguish.

However, despite the ambiguities inherent in the cases, it seems probable that, in view of the decisions in the majority of the New York labor cases (one of which was a Court of Appeals decision) and of the decisions in other New York cases,<sup>1</sup> the New York courts are more inclined toward the holding that personal service of the injunction is not necessary for punishment, but if service is not made, the plaintiff must clearly show that the defendants had actual knowledge of the decree. This position is probably to be accounted for by the more or less general feeling that since the rules of evidence applicable in criminal cases are also applicable in contempt proceedings, mere preponderance of evidence is insufficient, proof of the alleged offense being required beyond reasonable doubt.<sup>2</sup>

<sup>1</sup> *Sutton v. Davis*, 64 N. Y. 633, (1876); *Ross v. Butler*, 57 Hun. (N. Y.) 110, (1890); *Slater v. Merritt*, 75 N. Y. 268, (1879); *Weeks v. Smith*, 3 Ab. Pract. Rep. 212, (1856).

<sup>2</sup> See *Typothetae v. Typographical Union*, 117 N. Y. Supp. 70, (1906).

## CHAPTER III

### PROCEDURE AND LEGAL DISPOSITION (*Continued*)

**When Contempt Actions are Started.** It is not without interest to note the stage in the actions for injunctions at which contempt proceedings are instituted. It would seem, and it has been so charged by many attorneys for labor unions, that whenever possible the attorneys for the plaintiff bring contempt actions after alleged violation of the *ex parte* order and before the hearing on the temporary injunction in order that the alleged violation may be used as evidence at the hearing, thus making the chance of success in securing the temporary order somewhat greater. However, examination of the sixty-five New York labor-contempt cases the records of which contained information on the point revealed no such tendency. In only twenty-one cases were the contempt proceedings instituted after the issuance of an *ex parte* order but before the hearing on the temporary injunction. In forty-four cases the injunction proceedings had progressed at least as far as preliminary hearing before the contempt actions were brought. In seventeen of the twenty-one cases in which the contempt actions were brought before the hearing, temporary injunctions were issued<sup>1</sup>—a much higher percentage of *ex parte* continuance than is found in New York labor injunction cases generally, but whether or not these figures are significant is conjectural. In all probability the evidence of contempt was of some

<sup>1</sup> In nine of the seventeen pre-hearing contempt actions the defendants were found guilty.

weight in the decisions of the court on the temporary injunctions—at any rate, in the nine cases in which the defendants were found guilty of contempt, but even this is a matter of speculation. It would seem that the only statement which can be made without reservation is that in four of the twenty-one cases the evidence of contempt was not sufficient to warrant the continuance of the *ex parte* order.

However, when the dates on which the injunctions were granted are cast alongside of the dates on which contempt proceedings were instituted, a significant fact emerges. It is the fact of delay. It would seem that if the acts of the defendants were serious enough to warrant the issuance of an injunction, the acts, if continued, would likewise warrant immediate contempt proceedings. It would seem also that if the defendants did intend to violate the orders of the courts they would do so immediately after the issuance of the injunction in the majority of the cases; in other words, there is no reason to believe that laborers are any more loath to violate an injunction on the day after the issuance than they are to violate it a month or so later.

There are seventy-two cases for which information is available as to the point in the main action at which contempt proceedings are begun; in only ten of these cases were the contempt proceedings instituted within ten days after the issuance of the injunction; in only twenty-four cases were they instituted within twenty-one days after issuance of the injunction, leaving thirty-eight cases in which more than three weeks were allowed to elapse between the issuance of the injunction and the beginning of the contempt actions. In twenty cases more than one hundred days elapsed; in eleven cases over two hundred days; in six cases over four hundred days; in two cases the contempt actions were not started for some seven hundred days after the issuance of the injunction. Table 3 presents the situation more clearly.

TABLE 3. TIME ELAPSING BETWEEN DATE OF INJUNCTION ISSUANCE AND DATE CONTEMPT ACTION WAS STARTED

Rank	Days
Low.....	3
First Quartile.....	12
Median.....	32
Third Quartile.....	108
High.....	752

These figures indicate that in one-fourth of the cases contempt actions were begun within twelve days of the issuance of the injunction and that in one-half the cases these actions were brought within thirty-two days; but that in one-fourth of the cases initiation of contempt proceedings came from one to four months, and in another fourth of the cases from four months to nearly two years after the injunctions were granted.

It is to be noted, moreover, that this summary understates the extent of time-lag of contempt action after injunction issue. The cases included in it naturally include those in which more than one injunction order was issued. Many cases are marked, in other words, by the successive issuance of *ex parte* and temporary injunction orders and some cases by *ex parte*, temporary and permanent injunction orders. In making the above summary the time measured has been not the interval between the *first* order issued and the initiation of the contempt action, but the elapsed time between initiation of contempt action and the injunction order issued at the nearest prior date. In many cases the acts alleged to have been in contempt were acts committed between the time of the issuance of the *ex parte* order and the issuance of the temporary injunction (or after the temporary and before the permanent order), while the contempt proceedings were not instituted until after issuance of the tem-

porary order (or after the issuance of the permanent injunction). Just why there should be this great delay is not entirely clear. Doubtless some of these delays are to be accounted for by the fact that the defendant did not commit a violation until the injunction had been in force for some time, but, as indicated above, it is not reasonable to believe that this accounts for the delay in all cases. It must, of course, be considered that the process of initiating an action is time-consuming, but surely it need not be so much as to cause a delay of thirty-two days on the average.<sup>1</sup>

A question as to how long the benefits of an injunction will last presents itself: Is it never too late to institute contempt proceedings? An early New York case<sup>2</sup> indicates that the benefit of an injunction is not waived even though the plaintiff delays three years before proceeding for violation of it, but this falls short of answering our question. It fails to set an upper time limit. That such benefit does lapse, however, in something more than three years, is indicated by a recent Philadelphia decision.<sup>3</sup> In this case a Philadelphia building contractor got a temporary injunction against the Council of Associated Building Trades of Philadelphia and Vicinity in September, 1919, but nothing further was done to bring the case on for trial. In December, 1929, the plaintiffs filed a petition alleging that some of the defendants were guilty of contempt of court in having violated the old injunction by calling what was styled a "sympathetic strike" on the new Philadelphia University Club building. Testimony was taken on the petition, after which counsel for the defendant filed a motion

<sup>1</sup> If instead of the median time-lag of contempt proceedings after injunction issue we use as the average the arithmetic mean of the periods the average delay is seventy-seven and one-half days.

<sup>2</sup> *Dale v. Rosevelt*, 1 Paige (N. Y.) 35, (1828).

<sup>3</sup> *Anderson v. Council of Associated Bldg. Trades, Phila. Co., Pa.*, Court of Common Pleas # 2, (No. 2981, Sept. Term, 1919).

to dismiss the original proceedings for delay in prosecution. Counsel for the plaintiff then asked for leave to have the original proceedings put down for final hearing. Quoting from a letter from Justice Lewis: "Our court refused the petition for leave to put the case down for final hearing and granted the petition to dismiss the whole proceeding for laches on the part of the plaintiff. In other words, for a failure to prosecute the proceeding with due diligence."

A more recent New York case<sup>1</sup> answers the question in a slightly different manner, though reaching the same general conclusion that injunctive protection is not everlasting. In this case, the result of a controversy between two rival unions, the answer came in a decision of the Court of Appeals modifying a judgment of the Appellate Division. In giving clarity to the term "perpetual injunction", Judge Cardozo said, "The decree, perpetual in its operation, is broad enough to prohibit picketing for all time at any bakery or shop in alliance with the plaintiff, no matter what the grievance or occasion of the controversy. This is too far-reaching. At some time in the future, a controversy unrelated to the dispute between the plaintiff and the defendant may arise between the defendant and a bakery or shop now protected by the judgment. The evidence is that three hundred and seventy shops or bakeries are within the terms of the injunction. The restraint is to be interpreted as limited to acts done by the defendant in furtherance of its plan to exterminate the plaintiff union or in the course of the controversy that is the subject to the pending action". In other words, an injunction applies only to a given situation, and its benefits last only until the termination of the set of circumstances which provoked the dispute out of which the injunction issued.<sup>2</sup>

<sup>1</sup> *Nann v. Raimist*, 255 N. Y. 307 (1931).

<sup>2</sup> After the completion of this monograph, the *Nann v. Raimist* injunction of 1928 was held inapplicable to a new situation. It may be

Nature of the Acts Alleged to be in Contempt. Careful scrutiny of the several acts complained of as contemptuous, when the judicial treatment of them is noted, makes still more sharply evident the confusion arising from the lack of any clear basis for judgment as to whether any particular act constitutes civil or criminal contempt or, indeed, any contempt at all. Not less importantly, examination of the protested acts shows to what length complainants and the courts may go on some occasions to strain the interpretation of injunction orders sufficiently to cover acts alleged to have been in violation of them. Consideration of the judicial treatment of the several sorts of protested acts makes possible a comparison between what is considered to be contemptuous behavior in New York state and what is so considered in other states.

In twenty-four cases the acts alleged to have been committed in violation of the injunction were acts of picketing. In fourteen of these cases<sup>1</sup> the defendants were charged

recalled that the injunction was secured by Bakery Union Local 3 of the Amalgamated Food Workers International Union against a rival union. In February, 1934, an employer brought suit against Locals 505, 507 and 509 of the Amalgamated, charging violations of the 1928 injunction. The allegations, however, were stricken out on motion, based on the facts that (1) there was a different plaintiff; (2) the action was brought for different reason, i. e., interference with employer's business rather than destruction by rival union; (3) the defendant was different—the original defendant had ceased to exist, three new unions having grown up in its stead. *Zeidweg Bakery Co. v. Schlansky*, cited in International Juridical Association Bulletin, February 1934, p. 3.

<sup>1</sup> *Willow Cafeteria v. Kramberg*, N. Y. Co., (1929); *United Restaurant Owners v. Kramberg*, N. Y. Co., (1929); *Fruhauf v. Hillman*, N. Y. Co., (1921); *Strauss v. Hillman*, N. Y. Co., (1921); *Superior Window Cleaning Co. v. Awerkin*, N. Y. Co., (1929); *Exchange Bakery v. Rubinfeld*, N. Y. Co., (1928); *Kurtzman v. Cohen*, Bronx Co., (1927); *International Tailoring Co. v. Hillman*, N. Y. Co., (1925); *Commercial House and Window Cleaning Co. v. Awerkin*, N. Y. Co., (1929); *Bressler v. Alexanderson*, *Septum Shoe Co. v. Alexanderson*, *Dickstein v. Alexanderson*, Kings Co., (all 1929); *Grand Shoe Co. v. Children's Shoe Workers Union*, Kings Co., (1920); *Scher v. Goldberg*, N. Y. Co., (1917).



with criminal contempt, in six with civil contempt,<sup>1</sup> while in the remaining four cases<sup>2</sup> the classification is not known. In eight of the fourteen criminal contempt actions the motions to punish were denied,<sup>3</sup> in one case the motion was granted,<sup>4</sup> in two cases the motions were withdrawn,<sup>5</sup> and in three cases the motions were apparently dropped or "pigeon-holed", no decision having been rendered six months after the hearing had taken place.<sup>6</sup> In two of the six civil contempt actions the motions to punish were granted,<sup>7</sup> in one the motion was denied,<sup>8</sup> while in three the motions were dropped before final adjudication.<sup>9</sup> Of the four cases the classification of which is not known, the motions were denied in two cases<sup>10</sup> and dropped in two.<sup>11</sup>

<sup>1</sup> *Association of Dress Mfgs. v. Hyman*, N. Y. Co., (1927); *Gingold Mason and Co. v. "John Doe"*, N. Y. Co., (1929); *Jaeckel v. Kaufman*, N. Y. Co., (1920); *Christel v. Weisman* (2 cases) Bronx Co., (1930); *Aberon Baking Co. v. Raimist*, Case # 2, Bronx Co., (1929).

<sup>2</sup> *Sussman v. Malmud*, N. Y. Co., (1928); *Theolen Lunch v. Reiner*, N. Y. Co., (1919); *Elishewitz v. Green*, N. Y. Co., (1921); *Manhattan Theatres, Inc. v. Kaplan*, Kings Co., (1931).

<sup>3</sup> *United Restaurant Owners v. Kramberg*, N. Y. Co., (1929); *Fruhauf v. Hillman*, N. Y. Co., (1921); *Strauss v. Hillman*, N. Y. Co., (1921); *Superior Window Cleaning Co. v. Awerkin*, N. Y. Co., (1929); *Exchange Bakery v. Rubinfeld*, N. Y. Co., (1928); *Kurtzman v. Cohen*, Bronx Co., (1927); *International Tailoring Co. v. Hillman*, N. Y. Co., (1925); *Scher v. Goldberg*, N. Y. Co., (1917).

<sup>4</sup> *Willow Cafeteria v. Kramberg*, N. Y. Co., (1929).

<sup>5</sup> *Commercial Window Cleaning Co. v. Awerkin*, N. Y. Co., (1929); *Grand Shoe Co. v. Children's Shoe Workers Union*, Kings Co., (1920).

<sup>6</sup> *Bressler v. Alexanderson*, *Dickstein v. Alexanderson*, *Septum v. Alexanderson*, Kings Co., (all 1929).

<sup>7</sup> *Association of Dress Mfgers v. Hyman*, N. Y. Co., (1927); *Gingold Mason & Co. v. "John Doe"*, N. Y. Co., (1929).

<sup>8</sup> *Aberon Baking Co. v. Raimist*, Case # 2, Bronx Co., (1929).

<sup>9</sup> *Jaeckel v. Kaufman*, N. Y. Co., (1920); *Christel v. Weisman* (2 cases), Bronx Co., (1930).

<sup>10</sup> *Sussman v. Malmud*, N. Y. Co., (1928); *Theolen Lunch Co. v. Reiner*, N. Y. Co., (1919).

<sup>11</sup> *Elishewitz v. Green*, N. Y. Co., (1921); *Manhattan Theatres, Inc. v. Kaplan*, Kings Co., (1931).

In nineteen of the above twenty-four cases in which acts of picketing constituted the alleged violations, the alleged acts were clearly within the restraining provisions of the injunction orders, no stretch of the imagination being required to see the basis for the charges. In five cases, however, this was not true, and the basis for contempt proceedings was anything but clear. In three of the cases no reference, either explicit or implicit, was made in the injunction to picketing, the only phrase in the orders under which the charges might have been made being "any unlawful interference with the plaintiff's business". In neither of these two cases were the motions to punish successful, being denied in two<sup>1</sup> and dropped in the other;<sup>2</sup> but this is scant consolation since the legal disposition in no way lessened the humiliation and cost of litigation to the defendants. In the remaining two cases the lack of clarity in the orders was doubtless partly responsible for the contempt charges. In one case,<sup>3</sup> in which the motion to punish was denied, the injunction order restrained picketing, but the court explained that even though such rights were not involved in this case "the rights possessed by the defendants under the doctrine of *Exchange Bakery v. Rifkin*, of course, exist". Since the doctrine referred to by the court made picketing allowable even in the absence of a strike, and since the court indicated that this right existed for the defendants in this case, it is not difficult to see how the defendants may have unintentionally gone afoul of the law. In the other case<sup>4</sup> one in which the motion to punish was granted and in which fines aggregating \$10,250 were imposed, the order enjoined

<sup>1</sup> *Theolen Lunch v. Reiner*, N. Y. Co., (1919); *Scher v. Goldberg*, N. Y. Co., (1917).

<sup>2</sup> *Elishewitz v. Green*, N. Y. Co., (1921).

<sup>3</sup> *Superior Window Cleaning Co. v. Awerkin*, N. Y. Co., (1929).

<sup>4</sup> *Association of Dress Mfgs. v. Hyman*, N. Y. Co., (1927).

the defendants "from *unlawfully* picketing upon the street adjacent to or in front of the building in which the shops and factories of the plaintiff's members are located for the purpose of preventing any of such workers or any person or persons who now are or may hereafter be in the employment of the plaintiff's members or desirous of entering same from entering it or continuing in it", no other reference to picketing being made in the order. By an examination of the many cases involving picketing in which so many conflicting opinions are to be found, it becomes easy to see how even a well-trained lawyer might be misled by the court's use of the equivocal term "unlawfully".

In another group of cases the acts constituting the alleged violation were acts of congregation around the plaintiff's place of business and accosting the customers of the plaintiff as they sought to enter. Of the eight cases comprising this group, five were proceeded against as criminal contempt,<sup>1</sup> two as civil contempt,<sup>2</sup> while the remaining one is of unknown classification.<sup>3</sup> In the group of five criminal contempt actions only one motion was granted,<sup>4</sup> two denied,<sup>5</sup> one dropped before a decision was handed down,<sup>6</sup> and the other referred, no further action being recorded.<sup>7</sup> In the cases proceeded against as civil contempt the motion to

<sup>1</sup> *Sanford Butter and Egg Co. v. Vecker*, N. Y. Co., (1925); *Gimiger v. Hebrew Butchers*, Bronx Co., (1922); *Liebowitz Bros. v. Bronx Shoe Salesman*, Bronx Co., (1927); *Rothberg v. Cline*, Kings Co., (2 cases), (1928).

<sup>2</sup> *Aberon Baking Co. v. Raimist*, Case # 1, Bronx Co., (1930); *Levy v. Hillman*, N. Y. Co., (1918).

<sup>3</sup> *Hammer v. Baum*, N. Y. Co., (1921).

<sup>4</sup> *Gimiger v. Hebrew Butchers*, Bronx Co., (1922).

<sup>5</sup> *Sanford Butter and Egg Co. v. Vecker*, N. Y. Co., (1925); *Rothberg v. Cline*, Kings Co., (1928).

<sup>6</sup> *Liebowitz v. Bronx Shoe Salesman*, Bronx Co., (1927).

<sup>7</sup> *Rothberg v. Cline*, Kings Co., (1928).

punish was granted in one and withdrawn in the other. The motion in the case of unknown classification was denied.

In seven of the above eight cases the contempt charges were justified by the wording of the orders alleged to have been violated, even though not proved in all cases. In each case the injunction was explicit as to the prohibition of congregation around the plaintiff's place of business and accosting the customers of the plaintiff. In one case, however, there was no statement in the injunction under which the contempt charges could have been rightfully made.<sup>1</sup> The dispute out of which the injunction action grew involved two unions and an employer who was working under an agreement with one of them. In an attempt to displace the union which had the contract with the employer, the defendant union distributed circulars and made statements which indicated that the employer-plaintiff was operating a non-union shop. On application to the court the employer secured an injunction which restrained the defendants "from representing or stating, either by circulars, placards, and other writings, or by any other means, that the plaintiffs . . . are not employing union labor, that their bakeries . . . are unsanitary and disease-breeding . . . , and that the plaintiffs are seeking to destroy the defendant's union". Clearly this order in no way prohibits congregation around the plaintiff's place of business. Nevertheless, Justice Schmuck, at the behest of the plaintiffs, ordered certain of the defendants to show cause why they should not be punished for violation of the order and *why the injunction should not be extended to prohibit the defendants from picketing or congregating around the plaintiff's shop*. The affidavits which formed the justification for the order to show cause alleged that the contempt consisted in congregation and

<sup>1</sup> *Aberon Baking Co. v. Raimist*, Case # 1, Bronx Co., (1930).

picketing. They also indicated, but quite incidentally, that disparaging remarks were made during the congregation, but the bulk of the charges had nothing to do with the acts restrained. On the hearing of the case the defendants were found guilty and assessed fines aggregating \$1000, and this despite the fact that the acts which formed the bulk of the plaintiff's allegations of contempt were acts which, though enjoined in the original injunction order of July 12, 1929, were struck out of the order as modified on July 30, 1929<sup>1</sup> some weeks before the beginning of the contempt proceedings.

Violence and threats of violence were responsible for the contempt actions in twenty-two cases, twelve of which were proceeded against as criminal contempt, three as civil contempt, while the classification of seven is unknown. In six of the twelve criminal cases the motions to punish were granted,<sup>2</sup> in four cases denied,<sup>3</sup> and in two referred but apparently without ever coming before the referee.<sup>4</sup> In the three cases proceeded against as civil contempt the motions were granted,<sup>5</sup> while of the seven cases of unknown classi-

<sup>1</sup> See papers on Appeal, *Aberon Baking Co. v. Raimist*, Case # 2, p. 32, folio 94, Clerk's file No. 4895, Bronx Co., (1929). As to the law regarding the violation of an injunction subsequently reversed, see discussion below.

<sup>2</sup> *People ex rel Stearns v. Marr*, 181 N. Y. 463, (1905); *People ex rel Bob v. Goldstein*, Kings Co., (1919); *Ward Baking Co. v. Ursprung*, Kings Co., (1919); *Tonawanda Board and Paper Co. v. Papermakers*, Erie Co., (1921); *Borden v. Sterbinsky*, Kings Co., (1921); *Cortlandt Hat Co. v. Greene*, Westchester Co., (1921).

<sup>3</sup> *Schwartz and Jaffee v. Hillman*, Kings Co., (1921); *Rosenthal v. United Garment Workers*, N. Y. Co., (1913); *Rogers Peet Co. v. Hillman*, N. Y. Co., (1919); *Bossert v. Dhuy*, Case # 1, Kings Co., (1912).

<sup>4</sup> *Katcher v. Zuckerman*, N. Y. Co., (1927); *Gottfried v. Bakery and Confectionery Workers*, N. Y. Co., (1917).

<sup>5</sup> *Merchant Tailors v. Journeymen*, N. Y. Co., (1920); *Lipshitz v. Amoruso*, Westchester Co., (1926); *Fifth Ave. Tailors v. Horan*, N. Y. Co., (1921).

fication the motions to punish were denied in five,<sup>1</sup> granted in one,<sup>2</sup> and referred in one.<sup>3</sup> In twenty of these cases the acts complained of in the contempt proceedings were clearly within the restraining provisions of the injunction. In the other two cases the full content of the injunction order is not known.

Distribution of printed or written matter served as a basis for five contempt actions, three of which were proceeded against as criminal contempts<sup>4</sup> and two as civil contempts.<sup>5</sup> In each of the cases, both civil and criminal, the motions to punish were denied, doubtless due, in part at least, to the fact that in three of the cases either the language of the orders was so vague and indefinite as to invite the institution of the actions and in part to the fact that the acts alleged to have been in contempt were clearly outside the prohibitions of the injunction order. In the Probolsky case, no reference whatsoever was made in the injunction order to the distribution of circulars. The injunction ran against threats, intimidation, or use of force on the employees or customers of the plaintiff; against marching up and down in front of the plaintiff's place of business and "from in any way, shape or manner interfering with or preventing, or attempting to prevent the public, customers of the plaintiff . . . from doing business with the plaintiff". The defendants issued a circular appealing to the public of

<sup>1</sup> *Ceanel Dress Co. v. Sigman*, (two cases) N. Y. Co., (1923); *J. F. Tapley Company v. Newman*, (two cases) N. Y. Co., (1917); *Knickerbocker Bindery v. Ryan*, N. Y. Co., (1921).

<sup>2</sup> *Silber v. Waterproof Garment Workers*, Richmond Co., (1919).

<sup>3</sup> *Bossert v. Dhuy*, Case # 2, Kings Co., (1915).

<sup>4</sup> *Pleaters and Stitchers' Assn. v. Taft*, N. Y. Co., (1927); *Cantor v. Retail Dairy and Grocery Clerks*, Kings Co., (1927); *Probolsky v. Rubinsberg*, Kings Co., (1923).

<sup>5</sup> *Goldberg v. Highleib*, Kings Co., (1927); *Joekel v. Kaufman*, N. Y. Co., (1920).

Brownsville and East New York to purchase only bread bearing the union label. The name of the employer was not mentioned! Nevertheless the plaintiff brought the contempt action on the strength of the clause quoted. The defendant's attorney, moreover, had advised the defendants that the circular in question did not come within the provisions of the restraining order. In another case,<sup>1</sup> the defendants were enjoined, among other things, from "inducing the plaintiff's employees to leave their employment by means of intimidation, threats, *defamatory* circulars or otherwise". The defendants shortly thereafter issued a circular directed "to all non-union workers in the fancy leather goods industry" in which they were asked to organize. No shops were mentioned and no reference was made to any dispute. The circular appeared to be in no way defamatory. Contempt charges were, however, brought. In the third case,<sup>2</sup> the defendants were enjoined from sending visiting committees to the homes of the workers for the purpose of intimidating them. The defendants in an attempt to get in touch with each worker involved in the dispute sent letters to each worker requesting that he call at a certain place at a specified time. In closing the letter said, "Should you fail to report, we will be obliged to send a visiting committee to your home". The plaintiffs, of course, contended that the letter was a violation of the injunction, inasmuch as it carried a threat. On hearing, however, Justice McAvoy felt that "the letter's language . . . is not so terrorizing . . .", and further that there was "a legitimate explanation for its sending which would exclude guilt".<sup>3</sup>

In five cases the contempt actions arose as a result of carrying signs and banners back and forth in front of the

<sup>1</sup> *Goldberg v. Highleib, Kings Co., (1920).*

<sup>2</sup> *Jaeckel v. Kaufman, N. Y. Co., (1920).*

<sup>3</sup> *Jaeckel v. Kaufmann, N. Y. Co., (1920).*

plaintiff's place of business. In four of the five cases the defendants were charged with criminal contempt,<sup>1</sup> in one with civil contempt,<sup>2</sup> the motions to punish in each case being granted. In three of the cases the injunctions were sufficiently explicit in the prohibition of sign and banner carrying, but in the remaining two cases the orders were such as to create doubt in the minds of the defendants as to what they might and might not do under the order. In one case,<sup>3</sup> the defendants, after the issuance of the injunction, carried banners on which the words "DO NOT SCAB IT" were printed. No reference was made to signs and banners in the injunction but the defendants were cited for having violated the provision which restrained them from "making any demonstrations calculated to or which may intimidate persons seeking employment or who may be employed, or which may entice persons to leave their employment or prevent them from entering". In the other case,<sup>4</sup> an even more confusing situation prevailed. About the middle of March, 1925, the defendants, members of the Bakery and Confectionery Workers International Union, were enjoined from:

Interfering with the plaintiffs, their business, employees or any person, corporation or corporations doing business with the plaintiffs by resorting to threats, intimidation or coercion or the use of force upon the plaintiffs, their employees, patrons or customers and from picketing in front of or in the immediate vicinity of the place of business of any person, persons, corporation, or corporations doing business with the plaintiffs and

<sup>1</sup> *W. P. Davis Mch. Co. v. Robertson*, Monroe Co., (1904); *Goldberg v. Kleinman*, Kings Co., (1924); *Wycoff v. Kaplan*, Kings Co., (1917); *Weissman Shoe Co. v. Cosgrove*, Kings Co., Case # 2, (1926).

<sup>2</sup> *Probolsky v. Markowitz*, Kings Co., (1924).

<sup>3</sup> *W. P. Davis Mch. Co. v. Robertson*, Monroe Co., (1904).

<sup>4</sup> *Probolsky v. Markowitz*, Note 139, Kings Co., (1924).



from preventing or attempting to prevent the public, customers of the plaintiffs or prospective customers from doing business with the plaintiffs by force, threats, coercion or intimidation.

Subsequent to the entry of this order and prior to the proceeding with which we are here concerned, a proceeding was instituted against certain of the defendants for violation. This proceeding, however, was terminated by an agreement entered into by the parties, which, after indicating that the main question was that of construction of the term "picketing", provided:

That the term 'picketing' within the meaning and intent of the said judgment and decree shall include the act of marching up and down in front of or in the immediate vicinity of the plaintiff's place of business or in front of or in the immediate vicinity of any places of business of any person, persons, corporation or corporations doing business with the plaintiffs and carrying any placards, signs or other writing, *except such as will show distinctly and conspicuously on the face thereof that any campaign in which such placards, signs or writings are used is directed against a specified employer named on such placard, sign or other writing other than the plaintiff.*<sup>1</sup>

The contempt action in one case arose as a result of an alleged violation of the above order as construed by the parties. The ground upon which the plaintiffs based their charge of contempt was the fact (admitted by the defendants) that the defendants carried large placards on which it was indicated that "The shop of Boss Schnell—Star Bread—is on Strike". Since there was no business relationship of any kind existing between Boss Schnell and the plaintiff, and since the legend on the placard was "distinctly and conspicuously" shown (the placards being about fifteen inches high and twenty inches wide), the placard came squarely

<sup>1</sup> Italics mine.

within the provisions of the agreement between the parties which excepted from the operation of the injunction any placards which indicated conspicuously that the campaign was directed against an employer other than the plaintiff. The clarity of this point, however, failed to impress either the plaintiffs or the court, for nine persons were found guilty and given both fines and jail sentences. The decision was handed down without opinion.

As a result of the refusal on the part of the defendants to sell products to the plaintiffs, two contempt actions arose.<sup>1</sup> Both of these were prosecuted as criminal contempt, and both motions to punish were granted. In these two cases the alleged violations came squarely within the restraining provisions.

In eight cases,<sup>2</sup> the contempt actions arose as a result of the defendant employers' attempt to breach a union agreement in violation of an injunction specifically restraining such breach. Of the six cases prosecuted as civil contempt, four motions were granted and two denied. In the case, the classification of which is not known, the motion was denied, while in the criminal contempt case the motion was granted. In each of these eight cases the alleged contempts fell squarely under the provisions of the injunctions.

In five cases the alleged contempt was picketing with attending violence,<sup>3</sup> four of which were prosecuted as civil

<sup>1</sup> *Ward Baking Company v. Ursprung*, (two cases) Kings Co., (1919).

<sup>2</sup> *Albert v. Cohen*, N. Y. Co., (1930); *Goldman v. Rosensweig*, N. Y. Co., (1928); *Nugent v. Hallman*, N. Y. Co., (1928); *Sum v. Independent Retail Fruit Merchants*, N. Y. Co., (1931); *Zmurko v. Manhattan Window Cleaning Employers*, N. Y. Co., (1931); *Cursi v. Berman*, N. Y. Co., (1932); *Albert v. Austrian*, N. Y. Co., (1932); *Cuneo v. Albin Upholstering Co.*, N. Y. Co., (1931).

<sup>3</sup> *Weissman Shoe Co. v. Cosgrove*, Kings Co., (1926); *Kaufman v. Doe*, Bronx Co., (1932); *Ondoris Cafeteria, Inc. v. Kramberg*, N. Y. Co., (1932); *Bluebird Bakery, Inc. v. Cohen*, N. Y. Co., (1920); *Gross v. Kempinski*, Bronx Co., (1930).

contempt. Of these four, the motions to punish were granted in three cases, and withdrawn in the fourth. In the remaining case, of unknown classification, the motion to punish was denied. In each case the injunction giving rise to the contempt actions plainly prohibited the acts complained of.

In each of the four remaining cases the action arose from different causes, three having been prosecuted as criminal contempt. It is not known whether the fourth case was one of civil or criminal contempt. In the first case, the violation consisted of calling a strike which was clearly prohibited by the injunction.<sup>1</sup> This motion to punish, however, was withdrawn before decision. In the second case,<sup>2</sup> a criminal contempt action, the defendants were charged with contempt for instituting a unionization program in the plaintiff's shops. The injunction was explicit as to this activity but the motion was denied. The third criminal contempt action in this group arose in an intra-union case from the refusal of one faction to remove its label from an employer's window. This motion also was denied.<sup>3</sup>

In the remaining case<sup>4</sup> the defendant, in no way associated with the union involved, was cited for aiding the union in allowing its members to use his restaurant as a gathering place. The motion, however, was withdrawn before a decision was handed down.

Table 4 presents the number of civil and criminal contempt cases classified according to the nature of the acts alleged to have been in contempt.

Unfortunately, it is not possible to determine from the records of any of these cases why identical acts were pro-

<sup>1</sup> *Meltzer v. Kaminer*, Kings Co., (1927).

<sup>2</sup> *People ex rel I. R. T. v. Lavin*, 228 N. Y. Supp. 218, (1927). This case is discussed at length in the following pages.

<sup>3</sup> *Retail Dairy and Grocery Clerks v. Vecker*, Kings Co., (1927).

<sup>4</sup> *Ceanel Dress Co. v. Sigman*, N. Y. Co., (1923).

ceeded against differently on different occasions, i. e., in one case as criminal contempt, and in another as civil. In less than half of all the contempt cases examined have opinions been written and in none of these is to be found a clue to the mystery, such opinions being, for the most part, merely

TABLE 4. CLASSIFICATION OF CASES ACCORDING TO NATURE OF ALLEGED CONTEMPTUOUS ACTS

Nature of Acts Alleged to be in Contempt	Criminal		Civil		Unknown	
	Number of Cases	Motion to Punish Granted	Number of Cases	Motion to Punish Granted	Number of Cases	Motion to Punish Granted
Picketing .....	14	1	6	3	4	0
Congregating and Accosting.....	5	1	2	1	1	0
Violence and Threats.....	12	6	3	3	7	2
Distribution of Circulars and other Printed Matter .....	3	0	2	0	0	0
"Bannering" .....	4	4	1	1	0	0
Refusal to Deal with Plaintiff.....	2	2	1	1	0	0
Picketing and Attending Violence.	0	0	4	3	1	0
Violation of Union Contract by Employer .....	1	1	6	4	1	0
"Strangers" Aiding Defendants...	0	0	0	0	1	0
Miscellaneous .....	3	0	1	1	0	0
Total.....	44	15	26	17	15	2

discussions of fact. It is probable, however, that the confusion which now clouds the classification of contempt accounts for the situation; a confusion which makes it impossible to determine in many cases the nature of the contempt.

Penalty for Contempt. In the event a conviction is obtained for contempt, the contemnor may be penalized either by fine or imprisonment, or both. In cases of criminal

contempt the penalty is punitive, imposed for the purpose of maintaining the dignity of the court; the fine, if any, inuring to the public and the jail sentence imposed to prevent future breaches of the same kind.<sup>1</sup> In civil contempt cases the fine is paid to the adverse party as compensation for injuries sustained, and a jail sentence imposed merely as a means of enforcing payment of the fine.

For criminal contempt the New York law provides for a jail sentence not in excess of thirty days.<sup>2</sup> For civil contempt, the court may, whether or not it is still within the power of the contemnor to perform, imprison only until such time as the duty has been performed (the duty usually being payment of a fine); such imprisonment, however, not to be in excess of six months.<sup>3</sup>

In addition to a jail term a person convicted of a criminal contempt may be fined two hundred and fifty dollars,<sup>4</sup> which amount is also the limit in civil contempt cases unless actual

<sup>1</sup> *Typothetae v. Typographical Union # 6*, 66 Misc. Rep. (N. Y.) 486, (1906).

<sup>2</sup> New York Judiciary Law, Section 751. "Punishment for a contempt, specified in Section seven hundred fifty, may be by fine, not exceeding two hundred fifty dollars or by imprisonment, not exceeding thirty days. . . . Where a person is committed to jail, for the non-payment of such a fine, he must be discharged at the expiration of thirty days; but where he is also committed for a definite time, the thirty days must be computed from the expiration of the definite time . . ."

<sup>3</sup> New York Judiciary Law, Section 774. "Where the misconduct proved consists of an omission to perform an act or duty, which is yet within the power of the offender to perform, he shall be imprisoned only until he has performed it, and paid the fine imposed, but if he shall perform the act or duty required to be performed, he shall not be imprisoned for the fine imposed more than three months if the fine is less than five hundred dollars or more than six months if the fine is five hundred dollars or more . . . In every other case, where special provision is not otherwise made by law, the offender may be imprisoned for a reasonable time, not exceeding six months, and until the fine, if any, is paid. . . ."

<sup>4</sup> New York Judiciary Law, Section 751.

loss and injury is shown. In the event such loss is shown, the fine may be sufficient to indemnify the aggrieved party.<sup>1</sup>

In cases of civil contempt an additional penalty in the form of costs may be imposed, a provision which does not apply to criminal contempt actions.<sup>2</sup>

In the ninety-two New York cases for which we have information one hundred and eighty convictions were obtained; ninety-nine for criminal contempt, seventy-five for civil contempt, and six in cases of unknown classification.

Of the seventy-five persons found guilty of civil contempt, seventy-four were given fines; five being fined \$25.00 each, one \$75., thirteen \$100. each, one fined \$150., one \$200., nineteen \$250. each, one \$350., fourteen given a fine totaling \$456.50, and eighteen given an aggregate fine of \$10,000. plus \$250. for each defendant. In the remaining case, the amount of the fine is not known. In addition to these, one union was fined to the amount of \$500.

Of the ninety-nine persons convicted for criminal contempt fifty-three persons and three unions were given fines. Of these, twenty-six were fined \$50. each, one \$70., one \$75., four \$100., while twenty-one persons were given the maximum fine of \$250. each. Each of the three unions were fined \$100.

Jail sentences were imposed on one hundred four persons, on fifty-four for civil contempt and fifty for criminal

<sup>1</sup> New York Judiciary Law, Section 773. "If an actual loss or injury has been produced to a party to an action . . . a fine, sufficient to indemnify the aggrieved party, must be imposed upon the offender and collected and paid over to the aggrieved party, under the direction of the court. . . . Where it is not shown that such an actual loss or injury has been produced, a fine must be imposed, not exceeding the amount of the complainants costs and expenses, and two hundred fifty dollars in addition thereto. . . ."

<sup>2</sup> *Stearns v. Marr*, 181 N. Y. 463, (1905); *Eastern Concrete Co. v. Bricklayers*, 193 N. Y. Supp. 368, (1922).

contempt.<sup>1</sup> Of those found guilty of civil contempt, forty-four were given jail sentences until such time as they had paid the fines imposed upon them, seven were given ten days, while only three were given the maximum sentence of thirty days.

For criminal contempt there were only six persons whose prison sentences were dependent on the payment of the fine, the remaining forty-four persons being given definite terms. Eight persons were imprisoned for ten days, six for fifteen days, five for twenty days, and twenty-five for the maximum thirty-day period.

Total fines assessed amounted to \$24,309.50, and jail sentences for the fifty-four persons given definite terms totaled eleven hundred eighty days. The terms for the remaining fifty were dependent on payment of fines imposed, and information regarding the actual time served has not been available.

**The Law's Delay.** One of the arguments which has always been put forward for a continuation of the customary method of dealing with contempts, i. e., that of allowing the court contemned to try the cases without the assistance of a jury, and as an argument against the treatment of contempts as crimes, is to the effect that a jury trial would slow up the procedure and have a tendency to choke up the court calendar. This, however, would seem to be not so much an argument for non-jury trials, as it is for an increase in the personnel and equipment of the judiciary. It is no doubt true, as is indicated in a recent Johns Hopkins study,<sup>2</sup> that in the average case there is, between the attorney's acceptance of the case and its final disposition, a greater lapse of time in the jury than in the non-jury, or equity

<sup>1</sup> The remaining six persons were fined in cases of unknown classification.

<sup>2</sup> *Study of Civil Justice in New York*, Institute of Law, Johns Hopkins, (1931).

cases. The delay in non-jury cases, nevertheless, is sufficiently great to cause unnecessary loss and hardship.

Using the fifty New York labor contempt cases for which adequate time information could be had, it was found that the average total time of litigation was fifty-two and five-tenths days, the median time being thirty-two days. In one case, only six days elapsed between the order to show cause and the decision, but the other extreme is represented by a case which took three hundred ninety-three days to run the legal gamut. In half of the cases the total time consumed was more than a month. The following table summarizes the facts for the fifty cases; the figures giving the number

TABLE 5. ELAPSED TIME BETWEEN VARIOUS STAGES OF CONTEMPT PROCEDURE

	Number of Days of Elapsed Time Between:			Total Litigation Time (days)
	Order to Show Cause and Answer	Answer and Hearing	Hearing and Decision	
Least Time Consumed..	.0*	.0	.0	6.0
Median Time .....	7.5	3.5	17.0	32.0
Average Time .....	10.9	5.7	23.7	52.5
Longest Time Consumed	60.0	20.0	139.0	393.0

\* Answer drawn on same day as order to show cause served.

of days elapsed time. The most impressive figures in the above table are those indicating the time elapsing between the hearing and the decision. It is doubtless true that if only the time actually spent before the court were considered jury trials would be more time-consuming than trials without juries, but a consideration of the time intervening



between hearing and decision in non-jury trials arouses some doubt as to the contention. It is probable that only in rare instances are three weeks allowed to lapse after a jury trial before a decision is given. Juries, as a rule, are eager to finish their tasks.

Such delays as are found in non-jury trials are costly to defendants. In addition to the expense of retaining legal counsel, there is the indeterminate cost arising in labor cases as a result of the uncertain status of strike activities. If one member is charged with contempt of court as a result of his picketing activities, other members cannot safely carry on a picketing program until the contempt case has been decided. In the event the person charged with contempt is acquitted and the union fails to win the strike, partly at least, as a result of the restraint on its activities during the two or three weeks of uncertainty, a damage has been inflicted for which there is no remedy.

**The Crime of Contempt.** By way of intensifying the confusion which has resulted from the time-worn civil and criminal classification, Section 600 of the New York Penal Law has included contempts in the class of misdemeanors. This section provides that,

A person who commits a contempt of court of any of the following kinds, is guilty of a misdemeanor: (A) Disorderly, contumacious or insolent behavior committed during the sitting of the court, in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority. (B) Behavior of a like character, committed in the presence of a referee or referees, while actually engaged in a trial or hearing, pursuant to the order of the court, or in the presence of a jury, while actually sitting for a trial of a cause, or upon an inquest or other proceeding authorized by law. (C) Breach of the peace, noise or other disturbance directly tending to interrupt the proceedings of the court, jury

or referee. (D) Wilful disobedience to the lawful process or other mandate of a court. (E) Resistance wilfully offered to its lawful process or other mandate. (F) Contumacious and unlawful refusal to be sworn as a witness, or after being sworn, to answer any legal or proper interrogatory. (G) Publication of a false or grossly inaccurate report of its proceedings. But no person can be punished as provided in this section for publishing a true, full, and fair report of a trial, argument, decision or other proceeding had in court.

This provision, then, introduces a third classification, the crime of contempt, which, though seldom considered, is none the less real. It was not until the spring of 1929, however, that this section was used. Until that time all of the New York contempt cases, both civil and criminal, with one exception, had been treated as *special* proceedings in civil actions:<sup>1</sup> that is to say, treated as actions original in character and fully independent of the proceedings in which the contempt arose but treated, nevertheless, as civil<sup>2</sup> rather than criminal actions. Just why Section 600 was not sooner brought into use is not entirely clear, some attorneys being of the opinion that it is to be accounted for by the general lack of knowledge of the existence of the provision, and others feeling that the employers did not care to use it against the unions affiliated with the American Federation of Labor. These causes, however, apparently have been removed, for since the outbreak of the cafeteria strike in April 1929, the section has been used with little restraint; it having been used against the shoe workers and grocery clerks as well as against the cafeteria workers, all of them unaffiliated organizations.

<sup>1</sup> See *Eastern Concrete Steel Co. v. Bricklayers*, 200 A. D. (N. Y.) 714, (1922); *People v. Warner*, 3 N. Y. Supp. 768, (1889); *People v. Sutherland*, 9 A. D. (N. Y.) 313, (1896).

<sup>2</sup> Despite the fact that, as shown in the table on p. 81, *supra*, the majority of the New York labor contempt actions discussed herein were actions in which defendants were charged with criminal contempt.

The first contempt proceeding to be brought under Section 600 of the Penal Law (the exception mentioned above) was brought against two members of the Bakery and Confectionery Workers International Union of America, Local No. 305, in 1929, for violation of an injunction granted to one Moritz Schwartz running against the union. The matter was heard before Judge Gordon of the Magistrate's Court who held the defendants to be guilty of contempt but suspended sentence upon them.<sup>1</sup>

In the cafeteria strike of 1929 no fewer than two hundred arrests were made under Section 600. Of those arrested approximately forty were tried and found guilty, and given sentences of \$100. fine or sixty days in prison. The remaining cases are still pending. The number arrested and later dismissed is not known.

Between September 1929 and July 1930 there were some two hundred seventy-five arrests in the shoe strikes. Of these about one hundred were under Section 600, twenty-six having been sentenced to the workhouse for thirty days. The remaining cases were still pending in the fall of 1932.

During the Grocery Workers' strike of 1929 some twenty-five arrests were made, all but one of which were still pending in the fall of 1932. The one case already disposed of was dismissed because of insufficient evidence.

Perhaps the most interesting question which arises as a result of this anomalous third type of contempt is a question of jurisdiction, the issue raised and taken to the Court of Appeals in a case arising, indirectly, out of the cafeteria strike.<sup>2</sup> The immediate question is whether or not Special

<sup>1</sup> This information is taken from a letter from the plaintiff's attorney, Mr. Henry Mayer, to the writer. The case out of which the contempt arose was *Moritz Schwartz v. Joe Bless*, New York Co., (1924). This case, however, like so many others, could not be found in the files of the New York County Clerk. Moreover, Judge Gordon's opinion was not reported, nor has the plaintiff's attorney a copy of it.

<sup>2</sup> *People ex rel Frank v. McCann*, 253 N. Y. 221 (1930).

Sessions, an inferior court, has power to punish for a contempt committed against a court other than itself. Both the Appellate Division and the Court of Appeals<sup>1</sup> have answered the question in the affirmative, but despite this fact an examination of the issue involved arouses some doubt as to the soundness of their view.<sup>2</sup> The judicial reasoning on the point seems to run as follows: Section 600 of the Penal Law provides that a person who commits certain enumerated acts is guilty of a misdemeanor, one of the acts of which is "wilful disobedience to the lawful process or other mandate of a court". In Article III, Section 31, of the Inferior Criminal Courts it is provided that "The Court of Special Sessions shall have jurisdiction as follows: (a) The court shall have in the first instance exclusive jurisdiction to hear and determine all charges of misdemeanor committed within the city of New York, except charges of libel." By linking the two provisions together, it is maintained that it naturally follows that the Court of Special Sessions has the power to "hear and determine" actions on the crime of contempt.

As conclusive as this may seem, however, it will be found on a more thorough examination of the statutes that the answer is not quite so simple. Let us first consider Section 602 of the Penal Law which reads, "Punishment for a contempt, as prescribed in Article 19 of the Judicial Law, does not bar an *indictment* for the same offense; but where a person who has been so punished is convicted on such an *indictment*, the court, in sentencing him, must take into consideration the previous punishment". In this section the word of great significance is the word "indictment".

<sup>1</sup> *People ex rel Frank v. McCann, supra*, aff'g. 227 A. D. 57, (1929).

<sup>2</sup> A splendid discussion of this question is contained in the brief of the Relator-Appellant to the Court of Appeals in the case of *People ex rel Frank v. McCann*. (J. Buitenkant, attorney, L. Boudin and P. Wittenberg of Counsel.)

“Punishment for contempt . . . does not bar an *indictment*.” This statement alone would seem to bar the action from Special Sessions because in that court cases are prosecuted on an information and tried without a jury. Moreover, that it was the intention of the legislators and revisers that “indictment” should be construed to mean “indictment” only and not to include information, is indicated by the faithful way in which the word has been used since its first use in the Revised Statutes of 1829.<sup>1</sup> This intention is again indicated in the Reviser’s Notes<sup>2</sup> in which it is explained that,

“In preparing the preceding sections the Revisers have not designed to take from the Courts of Justice any power which was essential to the maintenance of their dignity or enforcement of their mandates. But they have herein pursued their general plan to define and limit undefined powers, wherever it was possible, as well for the information as the protection of the citizen. . . . It cannot be necessary at this day, to urge any reasons for substituting the trial by jury in all possible cases, instead of a trial by an offended tribunal.”

Attacking the question from a slightly different angle, it may be noted that it was not until the Code of Criminal Procedure of 1881 that any but a court of record was empowered to punish for contempt. At this time Special Sessions was given power to punish as a contempt the disobedience of a subpoena. There are no other contempt provisions applying to Special Session until 1913 when Section 31 of the Inferior Criminal Courts Act was amended by the addition of Subdivision 5 which states that, “It

<sup>1</sup> Vol. II, Part IV, Chap. I, Sec. 14, p. 692: “Every person who shall be guilty of any criminal contempts, enumerated in the Second Title of the Third Chapter of the third part of the Revised Statutes shall be liable to indictment therefore as a misdemeanor; and upon conviction, shall be punished as hereinafter prescribed.”

<sup>2</sup> Brief for Relator-Appellant, *People ex rel Frank v. McCann*, p. 17.

shall have power to punish for a criminal contempt, a person guilty thereof, in the manner and subject to the limitations provided for the courts of record, as prescribed by Article No. 19 of the Judicial Law". Let us examine this section. Section 750 of Article 19 gives courts of record the power to punish as criminal contempts the following acts:

1. Disorderly, contemptuous, or insolent behavior, committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings, or to impair the respect due to its authority.
2. Breach of the peace, etc., tending to interrupt its proceedings.
3. Wilful disobedience to its lawful mandate.
4. Resistance wilfully offered to its lawful mandate.

By noting the consistent use of the word *its*, the conclusion seems obvious. Until 1881 the court of Special Sessions had no power to punish for contempts, even those committed against itself. In 1913, to correct this situation it was given such powers but the power was limited to punishment for contempt of *its own* orders.

Moreover, if we grant that Special Sessions does have power to punish for a contempt of *any* court we are confronted with a situation which on its face is highly illogical. In such a situation Special Sessions, an inferior court of limited jurisdiction but having jurisdiction over all misdemeanors, is empowered to impose a jail sentence of a year and fine of \$500.<sup>1</sup> for a contempt which the Supreme Court, a superior court of general jurisdiction, in trying a case for violation of its own order, can punish by a thirty-day jail sentence and a fine not in excess of \$250.

In view of the fact, however, that such dubious reasoning is not a novelty in judicial decisions, and in view also

<sup>1</sup> Penal Code (N. Y.) Sec. 15 and 143.

of the fact that the court of highest appellate jurisdiction in the state of New York has put its stamp of approval on this reasoning, the experience of the recent past indicates that Special Sessions contempt cases will become more frequent in the future; and granting this to be true, it is probable that a more forceful and persistent demand for revision of contempt procedure will be developed. When men are tried for crimes in criminal courts sitting without the assistance of a jury, it is probably more difficult to convince them that the rights given by the sixth amendment to the constitution are not being violated. In these circumstances, the feeling of disrespect and distrust of the judicial system, entertained by so many laborers to-day, is less likely to be dispelled than it is to be intensified and extended.<sup>1</sup>

<sup>1</sup> There is another method of meeting the problem of injunction violation, real or imagined, which employers have been using with increasing frequency, and that is to cause the police to arrest pickets and others on a charge of disorderly conduct. Although hundreds of such arrests are made each year, it is impossible to subject these cases to analysis since there is no way of separating them from the many other disorderly conduct cases found in the court records.

## CHAPTER IV

### CONTEMPT IN SELECTED CASES

*International Tailoring Co. v. Hillman.* Clear perspective on contempt procedure as a whole, as it finds expression in labor injunction cases, can best be given, perhaps, by a somewhat detailed recital of the circumstances of one or two important labor-contempt cases. The two cases selected for this purpose are *International Tailoring Co. v. Hillman* and *People ex rel. I. R. T. Co. v. Lavin*, both of which, it may be remarked, are of considerable importance quite apart from procedural questions.

One of the most interesting of the contempt cases is that of *International Tailoring Co. v. Hillman* which arose out of an injunction bearing the same title<sup>1</sup> and which involved the company named and Sidney Hillman, as President of the Amalgamated Clothing Workers of America. An injunction was issued *ex parte* by Justice McGoldrick on July 18th, 1925, which was continued after hearing by Justice Churchill on August 17th. This order, among other things, enjoined the defendants "from picketing or congregating and standing within ten blocks of the plaintiff's place of business in any direction". It was for violation of this provision that the defendants were cited for contempt.

<sup>1</sup> *International Tailoring Co. v. Hillman*, N. Y. Law Journal, August 13, 1925; 7 *Law and Labor* 238, (# 26599 of 1925, N. Y. Co.). The circumstances of the main case are related in some detail in an article on "The Use of the Labor Injunction in the New York Needle Trades" by P. F. Brissenden and C. O. Swayzee, 44 *Political Science Quart.*, 87 at p. 90 (March, 1930).



After the *ex parte* order of July 18th was issued, there was no evidence of picketing or standing around until the morning of August 20th, 1925. At 7:50 a. m. of this day five men were seen walking up and down in front of the shop of J. L. Taylor and Company, which was a subsidiary of the plaintiff in the action and which was located within sixty feet of the plaintiff's shop. The men carried signs bearing the words "STRIKE—J. L. Taylor and Company".

The picketing continued "not over two minutes" when the men were arrested for violation of the order of August 17th. The next day, August 21st, 1925 Justice Churchill, on application by the plaintiffs, issued an order to show cause citing President Hillman, Martin Siegel, Secretary and Treasurer of the Amalgamated, and the five men who were picketing, for contempt. The affidavits on which the order was made charged "picketing and marching up and down in violation of the injunction order granted by Justice Churchill on August 17, 1925". No charges of violence, threats or intimidation were made. Affidavits of service were included in the moving papers, as well as an affidavit of the officer making the arrest, whose affidavit, incidentally, stated that no violence or intimidation had been evident. It stated further that when he approached the pickets, he asked them if they were aware of the injunction issued by Justice Churchill. They answered in the affirmative and added that they were there at the orders of the union and "wanted to make a test case". The officer obliged by making the arrest.

The answering affidavits were served on August 27, 1925. The affidavits of defendants Hillman and Siegel denied any connection whatever with the alleged violation and claimed to have no knowledge of the acts complained of until they were served with the moving papers in the con-

tempt action. The affidavits of the five men who picketed were almost identical, each claiming to be a former employee of J. L. Taylor and Company and out on strike against the oppressive policy of the company. Each admitted having knowledge of the injunction order which was issued by Churchill but claimed to have violated the order in no way since they had no intentions of picketing the International Tailoring Company. The affidavit of one Jack Cohen stated that within the ten-block radius about the shop of the International Tailoring Company (within which Mr. Justice Churchill had prohibited picketing) there were seven hundred manufacturers of clothing employing some forty thousand union members.

The hearing took place on August 27th before Justice Levy. The plaintiff, in support of the motion to punish, cited *People ex rel. Stearns v. Maxr* as the leading case in New York state and charged the defendants with deliberately defying the order of the court by resorting to deceit and subterfuge. In answer, the defense indicated their good intentions and claimed to have been picketing the firm of J. L. Taylor in good faith, having no desire to violate the order of Justice Churchill by molesting the employees or customers of the International Tailoring Company.

The decision of Justice Levy is both interesting and significant in that it throws some much needed light on the confusion which seems to cloud the law applicable to labor disputes. In dismissing the complaints against the defendants the Justice said:

There is no man in the world probably who has a higher jealousy for the dignity and integrity of the courts than I have . . . but it strikes me that this is the most far-fetched proceeding I have ever found coming to my notice. . . . The idea of attempting to bring five men who were working in the same building with a concern that was cut off, completely divorced from that

for whom you secured your order, and seek to hold them criminally for what they regard as their legitimate rights in protesting over conditions and wages or whatever it be that proves unsatisfactory and make demonstration in evidence of that protest and seek to jail them, is a high-handed proceeding in my opinion, and certainly not one that I will tolerate or suffer.<sup>1</sup>

From this time until the end of the dispute, the union conducted mass picketing in front of the J. L. Taylor Company even though it was located next door to the International Tailoring Company.

On September 18 the plaintiff made a motion to resettle the order of August 27, but this motion like the earlier one was denied by Justice Levy.

*People ex rel. I. R. T. v. Lavin.*<sup>2</sup> The cause for dismissal of the contempt charges in the case of the Interborough Rapid Transit Company makes it of more than usual interest. The history of the case is, briefly, as follows:

On December 30, 1926 Justice Delehanty issued an injunction against the defendant union, the Amalgamated Association of Street and Electric Railway Employees, enjoining them from advising or inducing the plaintiff's employees to leave their employment or to join any union other than the Brotherhood of Interborough Rapid Transit

<sup>1</sup> Justice Levy's decision may be found in the *New York Times*, Aug. 13, 1925. In Justice Levy's decision he refers to the Taylor Co. as one "that was cut off, completely divorced from" the plaintiff company. This is somewhat misleading. While the two companies did operate as separate companies and deal with the union separately, the International Tailoring Co. owned a controlling interest in the Taylor Co. Justice Levy's reference is probably to this specific instance in which the two companies were dealing with the union as individual units.

<sup>2</sup> Collateral action to *I. R. T. v. Lavin*, (# 29988 of 1926, N. Y. Co.); 247 N. Y. 65 (1928), (159 N. E. 863), reversing 220 App. Div. 830, (1927); 10 *Law and Labor* 31.

Company Employees, and from printing and distributing handbills or other circulars urging the same. From this order the defendants appealed to the Appellate Division only to have the order affirmed. The case was further appealed to the Court of Appeals, the pleas being made on November 12, 1927 and that court, on January 10, 1928, reversed the decision of the lower court and refused to allow the injunction.

On October 31, 1927 an order to show cause was issued by Justice Mitchell citing two of the defendants for contempt for alleged violation of the injunction order of December 30, 1926. The moving papers indicated that, in violation of the injunction order, the two defendants charged had attempted to persuade certain employees of the plaintiff company to organize men in their respective departments; that letters were sent out by Coleman, one of the defendants, to a great many of the plaintiff's employees, urging the men to join the Amalgamated and in them were enclosed applications for membership. It was further alleged that mass meetings were held, the purpose of which was to create an interest in the defendant organization.

In keeping with the usual practice the answering affidavits flatly denied the plaintiff's allegations. However, to justify such activity, assuming it to have occurred, conferences with Mayor Walker were described at which, it was claimed, the Mayor assured the defendant union of its right to carry on organization campaigns. Mr. Hedley, the President and General Manager of the plaintiff company, it was stated, refused to accept an invitation from the Mayor to sit in on the meetings.

The hearing on the contempt action took place on November 30, 1927, but the decision of Mr. Justice Wasservogel did not come down until February 15, 1928, a month after the Court of Appeals had reversed the decision in the

main action. In denying the motion to punish, Justice Wasservogel said, in part,

. . . Discussion is not necessary to establish that an injunction order must be obeyed, although it may have been erroneously granted. So long as it remains in force it must be explicitly observed. In the instant case, however, the injunction order was, reversed by the highest court of the state. . . .

Then continuing he said,

. . . an injunction which is but an order of the court can have no more force or extended operation after it is set aside or modified than a statute repealed or modified in regard to acts previously done. In either case the rule being abolished, the infraction of it is abolished also, and nothing remains on which a conviction can be found.

That the injunction had been violated is not seriously doubted; that the delay in the decision of Justice Wasservogel was an unexpected blessing is the firm conviction of many of those concerned.

**Union-Plaintiff Cases.** Fourteen of the contempt cases in our list were irregular, inasmuch as they did not involve an action by an employer against employees. In ten of the cases the plaintiffs were members of labor unions and the defendants were employers. In four cases both the plaintiffs and the defendants were labor union members. In the union-plaintiff group, nine were cases in which the defendant employers had been operating under a union agreement, but as a result of their desire to free themselves therefrom had violated it and thus brought about the action for an injunction. Continued violation precipitated the contempt actions, the motions of which were granted in six

cases<sup>1</sup> and denied in three.<sup>2</sup> In the tenth case, the defendant-employer<sup>3</sup> had continued to use the union label after the expiration of his agreement with the union and after his refusal to renew the agreement. Continued use, even after an injunction was granted, brought on the contempt proceedings. The motion to punish was granted.

In the intra-union cases the desire to have additional employers under contract, i. e., the struggle between competitive unions, accounted for the disputes. In one case, the unions involved had at one time been one and the same union but on the development of the "left-wing" sympathies by a group within the union, a second union was organized.<sup>4</sup> In the other cases,<sup>5</sup> the defendants were brought in on charges of contempt for continuing to solicit the employers with whom the plaintiff union was already under contract. In none of the cases were the motions to punish granted. In none of the fourteen cases was there any irregularity except the irregularity of parties. The most striking thing about this group of cases is that eight of the fourteen cases arose after 1930, indicating a growing tendency for unions to carry labor disputes into the courts.

Summary of the New York Experience. So much, then, for the experience in the labor-contempt cases before the

<sup>1</sup> *Nugent v. Hallman*, N. Y. Co., (1928); *Goldman v. Wile Importing Co.*, N. Y. Co., (1928); *Albert v. Cohen*, N. Y. Co., (1930); *Sum v. Ind. Retail Fruit Merchants*, N. Y. Co., (1931); *Zmurko v. Manhattan Window Cleaning Employers Assn.*, N. Y. Co., (1931); *Cuneo v. Albin Upholstering Co.*, N. Y. Co., (1931).

<sup>2</sup> *Goldman v. Rosenzweig*, N. Y. Co., (1928); *Cursi v. Berman*, N. Y. Co. (1932); *Albert v. Austrian*, N. Y. Co. (1932).

<sup>3</sup> *Myrup v. Kallfels Bros.*, Onondaga Co., (1924).

<sup>4</sup> *Retail Dairy and Grocery Clerks v. Vecker*, Kings Co. (1927).

<sup>5</sup> *Sussman v. Malmud*, N. Y. Co., (1928); *Christel v. Weisman* (2 cases), Bronx Co., (1930).

courts of New York state. The analysis reveals a number of interesting things, a few of which may be recalled in summary here. In the first place, we have seen that in less than half of the cases (42%) were the defendants found guilty of the contempt charges. This may indicate one of two things: (1) the courts are, as a rule, inclined to be tolerant of and sympathetic with the labor groups in their industrial struggles; or (2) the employers are so eager for successful termination of a labor dispute that they make contempt allegations on grounds sufficiently flimsy that the courts of necessity dismiss the complaints in the greater part of the cases. In view of our second finding of interest, namely, that in many cases injunction orders are stretched considerably in order to cover alleged acts of contempt, the second alternative indication probably more nearly reflects the truth.

A third revelation of interest is to be found in the failure of the lower courts in many instances to follow "ruling law", that is, precedent as established in cases decided by the Court of Appeals. While this situation holds by no means in the majority of cases, it is important in that it reveals a very common fallacy in labor law treatment. In most instances of labor law discussion (this is especially true in the field of injunctions) the "important" cases, that is, cases decided by courts of highest appellate jurisdiction, are cited as determining the status of Labor before the law. In view of the fact, however, that the number of laborers coming under the influence of the decisions of the lower courts is greater by at least ten to one than the number coming under the influence of appellate court decisions, and in view of the fact also that the lower courts in many instances do not follow the precedent established by the appellate courts, the "important cases", it would seem,

would have to share their place with the great number of academically unmentioned cases heard in the lower courts.

Another interesting revelation is found in the great confusion which seems to cloud the orthodox classification of contempts as criminal and civil. It may be recalled that no rule or reason could be found for the classification of the New York cases, identical acts being prosecuted in one instance as civil contempt and in another as criminal contempt; indeed, in some cases, the papers being drawn in the language specified for both criminal and civil contempt.

Without summarizing further the findings made in the examination of the New York cases, we may proceed to a survey of the attempts made to remedy the shortcomings of this phase of the law. This will, of course, serve as a foundation upon which to make suggestions of our own.



**PART III**  
**REVISION**

## CHAPTER V

### LEGISLATIVE STEPS TOWARD REVISION

**Historical Review.** The first attempt to restrict the powers of the Federal courts in the matter of punishing for contempt growing out of violations of labor injunctions seems to have been made in 1895, at which time Mr. Bartlett of Georgia introduced a bill in the House of Representatives which provided for trial by jury in cases of indirect contempt. This bill, however, like so many others, was never favorably considered. Each year following this Mr. Bartlett introduced bills of a similar nature,<sup>1</sup> but it was not until 1912 at the meeting of the Sixty-second Congress that he was successful in getting one (H. R. 22591) passed by the House.

The first attempt at remedial legislation by the Senate seems to have been in 1896 when a bill (S. 2984) providing for jury trials in cases of indirect contempt was introduced by Senator Hill of New York. After a rather stormy session the bill was passed by the Senate only to meet its death in the House Judiciary Committee.<sup>2</sup> Even though bills were introduced each succeeding year in Congress, it was not until 1914 that the labor interests were able to muster sufficient support to get a bill passed by both houses and signed by the President. This law, the Clayton Act, among other things, provided that persons or corporations wilfully disobeying orders or decrees issued under the Sherman law

<sup>1</sup> 51 *Cong. Record*, p. 9664, (1914).

<sup>2</sup> 28 *Cong. Record*, p. 6443, (1896).

were to be proceeded against as for criminal contempt, and that the defendants could in certain cases demand a jury trial.<sup>1</sup> This provision, of course, seemed to be just what the labor interests had been fighting for. Indeed, labor was so well pleased with the Act that it was called the Magna Charta of Labor. However, as is generally known, the act did not give to labor the rights which the laboring groups read into the wording of the law. It was discovered that the right of jury trial applied only to a restricted class of cases. The jury trial provision was interpreted to apply only when the contempt also constituted a crime either under the laws of the United States or under the laws of the state in which the contempt was committed. Nor was the right in this small class of cases unrestricted, for in cases where the contempt was committed in the presence of the court or so near thereto as to obstruct the administration of justice the right of jury trial was held not to apply. Moreover, there was doubt as to whether or not the Act made the jury trial mandatory in any case. "Such trial *may* be by the court or upon demand by the accused, by a jury." The use of the word "may" seemed to some to indicate that the jury trial was to be granted only at the discretion of the court—and apparently seemed so to many, for jury trials

<sup>1</sup> Sec. 22 of the Clayton Act provides that wilful disobedience of 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 forbidden, if such act or thing be of such character as to constitute also a criminal offense under any statute of the United States or law of any state in which the act is committed, shall be proceeded against as in the statute provided. In all such cases the "trial may be by the court, or, upon the demand of the accused, by a jury" and "such trial shall conform, as near as may be, to the practice in criminal cases prosecuted on indictment or on information". Upon conviction the accused is to be punished "by fine or imprisonment, or both, the fine to be paid to the United States or to the complainant, or other party injured by the act constituting the contempt, and, where more than one is so damaged, divided among them as to the court may direct."

were and still are the exception rather than the rule, and it was not until ten years had passed that the Supreme Court met the challenge of constitutionality and made a definite statement as to the meaning of the provision. In an opinion written by Mr. Justice Sutherland, the court said, "Neither is it necessary to consider at length the final contention that the jury provision of the statute is not mandatory but permissive. It is mandatory. The argument to the contrary is based on the use of the permissive word 'may'—'such trial may be by the court, or, upon demand by the accused, by a jury'. Strictly and grammatically considered the word 'may' limits both phrases, 'by the court' and 'by a jury'; but to construe it as intended, in practical effect, would be to subvert the plain intent and good sense of the statute. And this is made clear by the history leading up to and accompanying the enactment, as well as the reports of the committees having the bill in charge".<sup>1</sup>

Probably as a result of the feeling that labor has been benefited only slightly by the jury provision of the Clayton Act, no less than nineteen bills have been introduced in Congress since 1924. In 1924 eight bills were introduced in the Sixty-eighth Congress—one determining the jurisdiction of the courts and regulating punishment,<sup>2</sup> one defining direct and indirect contempt,<sup>3</sup> and six providing for jury trials<sup>4</sup>—but all died in committee. A year later, during the Sixty-ninth Congress two bills were introduced,<sup>5</sup> both providing for jury trials in contempt arising out of labor cases, but neither of these was reported out of the committee. Four bills were introduced in 1929 during the Seventieth Con-

<sup>1</sup> *Michaelson v. United States*, 266 U. S. 70, (1924) [labor].

<sup>2</sup> H. R. 2911, (1924).

<sup>3</sup> H. R. 709, (1924).

<sup>4</sup> S. 422, H. R. 654, H. R. 720, (1924), H. R. 3925, H. R. 5712, H. R. 570.

<sup>5</sup> H. R. 479 and H. R. 3917, (1925).

gress<sup>1</sup> and four during the Seventy-first Congress,<sup>2</sup> all providing for jury trials but all, like so many others, died in the committee. However, in March of 1932 a bill<sup>3</sup> sponsored by Senator Norris of Nebraska and Representative La Guardia of New York was passed by both the House and the Senate and became a law over the signature of President Hoover. Although this bill was primarily an anti-injunction bill it carried provisions<sup>4</sup> for a speedy public trial by jury for labor contempts not committed in the presence of the court and gave the defendant the right to demand the retirement of the judge sitting in the case if the contempt arose from an attack made upon the character of the judge.

Until very recent years, the record of the various states in legislating against summary punishment has been hardly more satisfactory than the record of our national Congress. There have been, at one time or another, laws providing for jury trials in contempt cases in Massachusetts, Michigan, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, and Virginia, but all these have been nullified.<sup>5</sup> The grounds for the nullification of all these are well stated in a Massachusetts case:<sup>6</sup> "It is an essential element of a court that it possess power to enforce its orders, and to protect itself from having its authority flouted". As unsatisfactory as this record may be, however, it is not difficult to see why the various states have kept clear of the subject, for on

<sup>1</sup> H. R. 99, H. R. 13293, S. 849, S. 4202, (1929).

<sup>2</sup> S. 819, S. 1726, H. R. 5413. The revised Shipstead Bill (S. 2497, 71st Congress, 2nd Session, 1930) also provides (in Section 11 and 12) for jury trial in contempt cases and under certain conditions, for hearing by a judge other than the one whose order was alleged to have been violated.

<sup>3</sup> H. R. 5315.

<sup>4</sup> Sections 11 and 12. See Appendix IV, p. 142.

<sup>5</sup> Frankfurter and Greene, *The Labor Injunction*, p. 195, (1930).

<sup>6</sup> *Walton Lunch Co. v. Kearney*, 236 Mass. 310, (1920).

examination of the cases it is clearly evident that the weight of authority is sufficient to discourage the most ardent labor partisan. In almost every case where the question has arisen it has been held that it is beyond the power of the legislature to curtail the jurisdiction or power of the courts over contempts.<sup>1</sup>

Despite the weight of this precedent, however, twelve states now have statutes providing for jury trials in contempt cases, eight having been enacted during the last two years (Colorado, Idaho, Indiana, Maine, Minnesota, Oregon, Louisiana, Massachusetts).<sup>2</sup> Pennsylvania has had such a law since 1931,<sup>3</sup> Wisconsin since 1927,<sup>4</sup> New Jersey since 1925<sup>5</sup> and Utah since 1917.<sup>6</sup> The texts of some of these laws, most of which are modeled after the federal Norris-La Guardia Act of 1932, are printed in full in Appendix IV.

Although bills intended to limit the powers of the courts to issue injunctions have been introduced in the New York legislature more or less regularly since 1917, apparently no attempt was made to provide for jury trials in contempt cases until 1928, at which time two such bills<sup>7</sup> were intro-

<sup>1</sup> *State v. Morril*, 16 Ark. 384, (1855); *Cheadle v. State* 110 Ind. 301, (1887); *In re Hays*, 72 Fla. 558, (1916); *McDougal v. Sheridan*, 23 Ida. 191, (1913); *Joyce v. Everson*, 161 Ind. 440, (1903); *C. B. and Q. R. R. Co. v. Gildersleeve*, 219 Mo. 170, (1909); *State v. Clancy*, 30 Mont. 193, (1904); *In re Bowers*, 89 N. J. Eq. 307, (1918); *In re Shortridge*, 99 Calif. 526, (1893); *In re Chadwick*, 67 N. W. (Mich.) 1071, (1896).

<sup>2</sup> Colorado Session Laws of 1933, Chap. 59, Sec. 11; Idaho Session Laws of 1933, Chap. 215, Sec. 10; Indiana Acts of 1933, Chap. 12, Sec. 11 and 12; Maine Laws of 1933, Chap. 261, Sec. 2; Minnesota Session Laws of 1933, Chap. 416, Sec. 10 and 11; Oregon Laws of 1933, Chap. 355, Sec. 11 and 12; Louisiana Laws of 1934, No. 203; Massachusetts Laws of 1934, Chap. 381, p. 552.

<sup>3</sup> Act 310 of Laws of 1931.

<sup>4</sup> Wisconsin Statutes of 1927, vol. i, sec. 133.07.

<sup>5</sup> New Jersey Laws of 1925, Chap. 169, p. 417.

<sup>6</sup> Utah Compiled Laws of 1917, vol. i, sec. 3655.

<sup>7</sup> Assembly bills 113 and 949.

duced. Another bill of a similar nature was introduced in 1929,<sup>1</sup> but this, like the 1928 bills, was not reported out of the Judiciary Committee.<sup>2</sup>

As we recall the number of instances when newspapers have indicated definitely the very unsatisfactory character of present contempt procedure, and as we scan the political party platforms since 1896 and note therein the allegations of injustice claimed to arise from the prevailing practice,<sup>3</sup> it may, at first blush, be difficult to understand why, in view of so much moral support, Labor has received no more favors than it has in the matter of relief from the alleged injunction abuse and objectionable contempt practice. On examination, however, three or four reasons stand out. In the first place, our legislative bodies contain a great many members of the legal profession whose conservatism is notorious.<sup>4</sup> Both they and the great bulk of the small property-holding electorate are zealous in the protection of property rights to which, it is commonly believed, trade unions stand as a threat. In the second place, the appearance of racketeers in the trade-union movement has increased the difficulty of gaining either popular approval or legislative favors for organized labor. Finally, if we supplement these considerations with the fact that the American Federation of Labor, nominally the leader of the American labor movement, is not a driving organization, but a loose federation lacking in constructive leadership, the principal reasons for the failure to make headway in the revision of our practice in proceeding against laborers who are accused of violating injunctions will be apparent.

<sup>1</sup> Assembly bill 51.

<sup>2</sup> During the 1935 session of the New York Legislature, passed laws (Assembly bill No. 26) amending the civil practice act by providing that no person should be punished for a contempt for disobedience to an injunction growing out of a labor dispute except after trial by jury.

<sup>3</sup> See Democratic Party Platform of 1896, 1908 and 1912. Also Progressive Party Platform of 1912.

<sup>4</sup> On this matter of the conservatism of the legal profession, see Frankfurter and Green, *The Labor Injunction*, p. 197n.

## CHAPTER VI

### SUGGESTIONS AND CONCLUSION

The Case for Reclassification and Revision. If we assume that the power to punish for contempt is not "a mystical emanation inhering in the unique nature of the court",<sup>1</sup> and if we assume also that there is a very real danger, as expressed in the case of *Craig v. Hecht*,<sup>2</sup> that the courts contemned may abuse their power to punish, a suggestion for re-classification of contempts and revision of contempt procedure may not be out of order.

The present classification of contempts is unsatisfactory because the basis for the classification, *i. e.*, the party to whom the injury is done, allows no sharp lines of distinction to be drawn between the two classes. The present procedure is unsatisfactory because it allows the determination of guilt to rest with one man, in many cases the one whose order is alleged to have been contemned, a practice running counter to early common law procedure and against the rights and interests of parties whose liberty and property may be endangered.

Reverting then to something more nearly like the practice in the purely common law period and more in harmony with American institutions, all contempts might better be treated as misdemeanors, and within this broad class two subdivisions made on the basis of the place at which the contempt was committed. Obviously the treatment of contempts committed within the actual view of the courts might

<sup>1</sup> Frankfurter and Landis, "Power to Regulate Contempts," 37 *Harvard Law Review*, 1022, (June 1924).

<sup>2</sup> 263 U. S. 255, (1923).



well be different from that of contempts committed wholly outside the court. For contempts committed in the face of the court, it needs no jury to assist in the determination of the facts surrounding the contempt. Moreover, if the contempt is clearly wilful and done for no other purpose than to embarrass the court, there is no reason for extending time to the contemnor to prepare a defense. Such contempts, being malicious and wilful interference with the administration of justice, might well be punished summarily. However, in cases where the contempt is not clearly wilful, but is committed by inadvertence or as a result of a zealous desire to safeguard a right or property (such as refusal to deliver up papers which the contemnor believes he rightly holds) the court contemned, no doubt, would be the appropriate court to try the contemnor, since it is already informed of the facts, but such trial should not take place until the alleged contemnor has had adequate opportunity to make his defense. In such cases, then, the contemnor would be ordered to show cause on a certain date before the court contemned why he should not be punished for the contempt.

For contempts committed outside the court, whether wilful or otherwise, a different procedure should be followed—a procedure like that used in all other criminal cases. Such contempts as disobedience to an order of the court or wilful resistance to a court mandate are no more or less criminal than disobedience to the ordinances and laws passed by city councils and state legislatures, and should be treated in the same manner. There is no less liberty involved when one is punished for disobedience to an order of a court than there is when one is punished for disobedience to an order or law of the state legislature. It is quite as important to keep out of jail when accused of violating an injunction as it is when accused of committing a crime, and it is no less

important to have the same presumption of innocence. It is hardly reasonable, therefore, to believe that the framers of the constitution held liberty more or less dear, depending upon the source of a law. Such "outside" contempts, then, would be prosecuted on *indictment* and tried by a court of competent criminal jurisdiction with the assistance of a jury, which would determine (1) whether the contempt was in fact committed, (2) the penalty for the disobedience to the law, and (3) the amount of damages to be paid by the contemnor in the event a third party had suffered injury in consequence of the contempt.<sup>1</sup>

The salient features of the suggested revision are set out in outline form below :

- A. Direct. Any contempt committed in the presence of the court.
  - 1. To be tried by the court contemned.
    - a. If the contempt is clearly wilful and malicious the punishment may be summary.
    - b. If contempt is not a result of malice, an order to show cause to issue, returnable to the court contemned.
  - 2. Punishment to be fixed by statutory limitation.

<sup>1</sup> The state of Minnesota classifies contempt similarly. Section 9792, Chapter 91, Mason's Minnesota Statutes, 1927, reads as follows: "Contempts of court are of two kinds—direct and constructive. Direct contempts are those occurring in the immediate view and of the court and arise from one or more of the following acts: 1. Disorderly, contemptuous or insolent behavior toward the Judge while holding court, tending to interrupt the due course of a trial or other judicial proceeding. 2. A breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the business of the court," Section 9793 reads: "Constructive contempts are those not committed in the immediate presence of the court, and of which it has no personal knowledge, and may arise from any of the following acts or omissions: [among others]. 3. Disobedience to any lawful judgment, order or process of the court."

**B. Indirect.** Any contempt committed outside the presence of the court. (This would include (1) disobedience to any lawful mandate of a court, (2) wilful resistance to a lawful mandate, (3) publication of false and grossly inaccurate report of a court's proceedings.)

1. To be tried by any court having competent criminal jurisdiction, but only after indictment.
2. Jury to determine (1) whether a contempt has in fact been committed, (2) punishment (within statutory limitations) for disregard of the court's authority, (3) damages, if any, to be paid to the party injured by the contempt.

By such an arrangement each court contemned would retain its power to punish for any disobedience caused during its sitting and in its presence. The "inherent powers", so long enjoyed, would thus be maintained and the court assured of uninterrupted administration of justice. On the other hand, the alleged contemnors, who enjoy rights no less "inherent", would stand their fair and speedy trial without fear that justice might be upset by the personal equation.

Doubtless the question of whether or not it is within the power of Congress and the state legislatures to regulate the powers of the courts to punish for contempt will be raised here as it has been so often in the past. While it is patently impossible to dispose of a controversial constitutional question in a few sentences, there are a few considerations which may well be called to the attention of those who raise this question. In the first place, the foregoing proposal is one for *regulation* rather than for *restriction* of the powers of the courts to punish for contempt. The power to punish would in no sense be lessened, but the manner of its exercise would be somewhat changed. That this might be done without encountering great constitutional difficulties is sup-

ported by the great amount of regulatory contempt legislation which came as a sequel to the impeachment of Judge Peck in 1831.<sup>1</sup> Additional support may be found in the extent to which the general operation of the courts has been regulated. Frankfurter and Landis,<sup>2</sup> in commenting upon the extent to which Congress has regulated the courts by legislative enactment, cite the following as questions the answers to which are to be found only in legislation:

What courts shall be; where they shall sit and when; what extraordinary circumstances shall justify other sittings; what of a failure to sit; who can sue and where and for what; how are parties to be brought into court; what proceedings may be

<sup>1</sup> See Frankfurter and Landis, "The Power to Regulate Contempts" 37 *Harvard Law Review*, 1010, (June 1924). Judge Peck, it may be recalled, imprisoned and disbarred a lawyer who caused to be published a criticism of Judge Peck's decision in a case which was awaiting appeal. An immediate investigation was made which resulted in impeachment proceedings against the Judge before the Senate. He defended himself on the ground that he had followed common law precedent and although he was acquitted there were twenty-one votes of the forty-three which held him guilty. These proceedings resulted in a demand for immediate legislation which would define the acts "which may be punishable as contempts, and also to limit the punishment of the same". Twenty-eight days after Judge Peck's acquittal such a bill passed the House. Two days later it passed the Senate and was approved by the President. The law (Chap. XCIX, of Acts of 21st Congress, 2nd Session) provided that "the power of the several courts of the United States to issue attachments and inflict summary punishment shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the said courts in their official transactions and the disobedience or resistance of any officer of the said courts, party, juror, witness or any other person or persons, to any lawful writ, process, order, rule, decree or command of the said courts". A more detailed account of this case is given by Nelles and King in "Contempt by Publication in the United States", 28 *Columbia Law Rev.* 423, (April 1928).

<sup>2</sup> *Ibid.*, p. 1018.

taken before the trial; what proceedings may be taken during trial; how are facts to be established; who is to determine the facts; how is the jury to be summoned and selected when it is the trier of facts; what are the rules for decision in different classes of cases; when and to what extent must the law of the state in which the Federal court sits be followed; when and what litigation may be taken out of State courts and put into Federal courts; what remedies may be given; how may the remedies be enforced; to what extent are remedies final; how, when and to what extent are actions of the court subject to review?

If these phases, then, are subject to regulation, it is difficult to understand why the manner of exercise of contempt practice may not also be subject to regulation.<sup>1</sup> If, as some seem to assume, contempt would cease to be punishable if a jury were charged with the determination of facts, the proposal would, of course, be untenable,<sup>2</sup> but such would not be

<sup>1</sup> While the constitutionality of the jury trial provision of the Norris-La Guardia Act (47 Stat. 70-73; 29 U. S. C., March 1932) has not been tested specifically, two cases involving the injunction provisions have been heard and their constitutionality upheld. In the first case (*Cinderella Theatre Co. v. Sign Writers Local Union No. 591*, 6 F. Supp. 164, (1934) D. C. Mich.) Judge Tuttle, in answer to the contention that the act was unconstitutional since it impaired the judicial power vested by the Constitution in the federal courts, said that this contention "seems to me to overlook the settled rule in the federal courts to the effect that, inasmuch as all federal courts inferior to the Supreme Court are dependent for their very creation upon the will of Congress, such courts have only whatever jurisdiction is conferred upon them by Congress which may either destroy, in whole or in part, or may limit as it deems advisable, such jurisdiction." Substantially the same was held in June 1934 by the United States Circuit Court of Appeals in a second case (*Levering and Garrigues Co. v. Morrin, et al.*, C. C. A. 2, No. 13260, 1934).

<sup>2</sup> It is, of course, obvious that the courts would lose their usefulness if their orders could be ignored without penalty. From the standpoint of practical administration it is essential that the courts have power to enforce their orders, but, so far as the author is aware, no one denies this.

the case. The acts which now constitute contempt of court would continue to do so. Punishment would in no case be less severe or certain. The only important difference between present contempt law and that proposed would be found in extending the use of a very satisfactory and traditional fact-finding institution, the jury.

**APPENDIX I**  
**DIGEST OF NEW YORK LABOR CONTEMPT CASES**

Title of Action	Date	County	Classification	No. of persons cited		No. Convicted	Am't of Fine	Length of Imprisonment	Total Liti-gation Time (Days)
				Named Def'ts	Others				
Aberon Baking Co. v. Raimist No. 1.....	1930	Bronx	Civil	1	0	6	\$100 <sup>1</sup>	'til pd.	44
Aberon v. Raimist No. 2.....	1929	Bronx	Civil	1	0	0	0	0	6
Albert v. Austrian.....	1932	N. Y.	Civil	1	0	0	0	0	145
Albert v. Cohen.....	1930	N. Y.	Civil	2	0	2	250	'til pd.	233
American Machine Fdry v. Dixon.....	1919	Kings	?	—	—	—	—	—	—
Assn. of Dress Mfgs. v. Hyman.....	1927	N. Y.	Civil	29	0	18	\$10,250 <sup>2</sup>	'til pd.	231
Bluebird Baking Co. v. Raimist.....	1929	Bronx	Civil	5	0	2	?	0	185
Bob v. Goldstein.....	1919	Kings	Criminal	0	1	1	250	10d.	8
Borden v. Sterbinsky.....	1921	Kings	Criminal	0	10	6	0	15d.	49
Bossert v. Dhuy No. 1.....	1912	Kings	Criminal	2	0	0	0	0	126
Bossert v. Dhuy No. 2.....	1915	Kings	?	2	4	0	0	0	22
Bressler v. Alexanderson ...	1929	Kings	Criminal	2	22	*	*	*	?
Cantor v. R. G. & D. C. U. of G. N. Y. ....	1927	Kings	Criminal	2 <sup>3</sup>	0	0	0	0	39
Ceanel v. Sigman No. 1.....	1923	N. Y.	?	0	1	†	†	—	9
Ceanel v. Sigman No. 2 ...	1923	N. Y.	?	0	1	0	—	—	6
Ceanel v. Sigman No. 3 ...	1923	N. Y.	?	5	0	0	—	—	6
Christel v. Weisman No. 1..	1930	Bronx	Civil	1	2	†	†	†	119
Christel v. Weisman No. 2..	1930	Bronx	Civil	0	9	†	†	†	109
Commercial House & Window Clean. Co. v. Awerkin	1929	N. Y.	Criminal	0	2	0	0	0	116
Cortland Hat Co. v. Greene.	1921	Westchester	Criminal	6	21	27	\$100 <sup>4</sup>	30d.	150
Cuneo v. Albin Upholstering Co.....	1931	N. Y.	Civil	1	0	1	250	0	10

<sup>1</sup> The union was fined \$500.

<sup>2</sup> Aggregate fines.

<sup>3</sup> A plus mark after a figure indicates an indeterminable number of named defendants in the main action who were cited in addition to the number indicated by the figure.

<sup>4</sup> This fine assessed upon three unions.

\* No decision.

† Motion withdrawn.

## APPENDIX I (Cont'd)

Title of Action	Date	County	Classification	No. of persons cited		No. Convicted	Am't of Fine	Length of Imprisonment	Total Litigation Time (days)
				Named Def'ts	Others				
Cursi v. Berman .....	1932	N. Y.	Civil	1	0	0	0	0	14
Davis, W. P. v. Robertson..	1903	Monroe	Criminal	1	0	1	\$70	30d.	106
Eastern Concrete Steel Co. v. Bricklayers U. ....	1922	Erie	Criminal	1	0	1	0	30d.	9
Elbee v. Alexanderson .....	1929	Kings	Criminal	2	1	1	*	*	?
Elishewitz v. Green.....	1921	N. Y.	?	4	7	†	†	—	11
Exchange Bakery v. Rubenfeld .....	1928	N. Y.	Criminal	4	0	0	0	0	10
Fifth Ave. Men's Tailors v. Horan.....	1921	N. Y.	Civil	0	2	2	\$25	0	17
Fruhau v. Hillman.....	1921	N. Y.	Criminal	17	8	0	0	0	104
Gingold v. "Doe" .....	1929	N. Y.	Civil	1	5	6	\$100	'til pd.	71
Ginger v. Hebrew Butchers.	1922	Bronx	Criminal	3	0	3	?	?	96
Goldberg v. Highleib.....	1921	Kings	Civil	21	0	0	0	0	40
Goldberg v. Kleinman.....	1924	Kings	Criminal	6	18 <sup>1</sup>	24	\$50	0	157
Goldman v. Rosenzweig.....	1928	N. Y.	?	6	0	†	†	†	87
Goldman v. Wile Import Co. Gottfried v. Bakery & Con. Works.....	1928	N. Y.	Criminal	1	1	2	\$250	'til pd.	144
Graff-Washburne & Dunne v. Amalg. Silver Workers ...	1921	N. Y.	Criminal	0	1	0	0	0	17
Grand Shoe Co. v. Children's Shoe Workers Union ....	1920	Kings	Criminal	4+	0	0	0	0	?
Gross v. Kempinski.....	1930	Bronx	?	1	2	0	0	0	27
Hammer v. Baum .....	1921	N. Y.	Criminal	0	2	0	0	0	35
Int'l Tailoring Co. v. Hillman	1925	N. Y.	Criminal	2	5	0	0	0	6
Jaeckel v. Kaufman No. 1 ..	1920	N. Y.	Civil	0	1	0	0	—	32
Jaeckel v. Kaufman No. 2 ..	1920	N. Y.	Civil	1	0	0	—	—	32
Katcher v. Zuckerman .....	1927	N. Y.	Criminal	2	0	†	†	†	?
Kaufman v. "Doe".....	1932	Bronx	Civil	6	0	1	\$250	0	34
Kayser v. Fitzgerald.....	1920	Oswego	Criminal	4	?	4	250	30 <sup>2</sup>	?
Knickerbocker Bindery v. Ryan .....	1921	N. Y.	?	1	0	0	0	0	15
Kurtzman v. Cohen.....	1927	Bronx	Criminal	5	0	0	0	0	23
Lehman v. Washinsky .....	1930	N. Y.	?	?	?	?	?	?	?
Livy v. Hillman .....	1918	N. Y.	Civil	4	0	†	†	†	51

<sup>1</sup> These were designated as "John Doe," etc.

<sup>2</sup> Only three of the four were given prison sentences. The fourth, a woman, was penalized by fine only.

<sup>3</sup> Motion granted but no more information at hand.

\* No decision.

† Referred but no further record.

† Motion withdrawn.



## APPENDIX I (Cont'd)

Title of Action	Date	County	Classification	No. of persons cited		No. Convicted	Am't of Fine	Length of Imprisonment	Total Litigation Time (Days)
				Named Def'ts	Others				
Liebowitz v. Bronx Shoe Salesmen .....	1927	Bronx	Criminal	6	?	†	—	—	31
Lipshitz v. Amoruso .....	1924	Westchester	Civil	5	3	1	\$150	'til pd.	64
Manhattan Theatres, Inc. v. Kaplan .....	1931	Kings	?	1	0	†	—	—	64
Meltzer, v. Kaminer .....	1927	Kings	Criminal	0	3	0	?	?	?
Merchant Tailors v. Journeymen .....	1920	N. Y.	Civil	1	0	1	\$250	30	102
Middle Village Laundry v. Stillerman .....	1929	Queens	Criminal	3	0	1	0	10 <sup>1</sup>	?
Morrin v. Structural Steel Bd. of Trade .....	1931	N. Y.	?	?	?	?	?	?	?
Myrup v. Kalfelz .....	1927	Onondaga	Civil	1	0	1	\$75	0	7
Nugent v. Hallman .....	1928	N. Y.	Civil	4	0	1	\$250	'til pd.	122
Ondoris Cafeteria, Inc. v. Kramberg .....	1932	N. Y.	Civil	?	?	?	?	?	?
People <i>ex rel.</i> I. R. T. v. Lavin .....	1926	N. Y.	Criminal	2	0	0	0	0	107
Pleaters & Stitchers v. Taft .....	1927	N. Y.	Criminal	3	0	0	0	0	7
Probolsky v. Markowitz .....	1924	Kings	Civil	0	22	9	\$250	{ 2-30 } { 7-10 }	48
Probolsky v. Rubinberg .....	1923	Kings	Criminal	1	2	0	0	0	33
R. G. & D. C. U. No. 338 v. Vecker .....	1927	Kings	Criminal	7	0	0	0	0	42
Rogers Peet v. Hillman .....	1919	N. Y.	Criminal	0	2	0	0	0	360
Rosenthal v. U. G. W. ....	1913	N. Y.	Criminal	0	1	0	0	0	60
Rothberg v. Cline, No. 1 .....	1928	Kings	Criminal	1	1	0	0	0	26
Rothberg v. Cline, No. 2 .....	1928	Kings	Criminal	8	0	†	†	†	38
Sanford Butter & Egg Co. v. Vecker .....	1925	N. Y.	Criminal	2	1	0	0	0	27
Schlesinger v. Finkenberg .....	1931	N. Y.	?	?	?	†	†	†	?
Scher v. Goldberg .....	1917	N. Y.	Criminal	2	1	0	0	0	10
Schwartz & Jaffee v. Hillman .....	1921	Kings	Criminal	1	0	0	0	0	11
Septum v. Alexanderson .....	1929	Kings	Criminal	2	32	*	*	*	—
Silber v. Waterproof Union .....	1919	Richmond	?	8	0	6	0	30	?
Stearns v. Marr .....	1903	Onondaga	Criminal	2	2	3	{ 1-75 } { 2-50 }	2 for 30	?

† Never served—dismissal of injunction prevented.

\* Motion granted but no more information at hand.

\* No decision.

† Motion withdrawn.

‡ Referred but no further record.

APPENDIX I (Cont'd)

Title of Action	Date	County	Classification	No. of persons cited		No. Convicted	Am't of Fine	Length of Imprisonment	Total Litigation Time (Days)
				Named Def'ts	Others				
Strauss v. Hillman .....	1921	N. Y.	Criminal	16	2	0	0	0	100
Sum v. Ind. Retail Fruit Merchants Association ...	1931	N. Y.	Criminal	1	0	1	\$250	0	353
Superior v. Awerkin .....	1929	N. Y.	Criminal	0	2	0	0	0	23
Sussman v. Malmud .....	1928	N. Y.	?	1	0	0	0	0	45
Tapley Co. v. Newman, No. 1	1917	N. Y.	?	2	0	0	0	0	10
Tapley Co. v. Newman, No. 2	1917	N. Y.	?	1	0	0	0	0	5
Theolen Lunch v. Reiner ...	1919	N. Y.	?	1	0	0	0	0	22
Tonowanda Paper Co. v. Int'l Brotherhood .....	1922	Erie	Criminal	7	0	5	\$250	30	393
Typothetae v. Typographical Union .....	1910	N. Y.	Criminal	16	?	5	\$250	20 <sup>1</sup>	?
United v. Kramberg .....	1929	N. Y.	Criminal	2	0	0	0	0	22
United Traction v. Droogan	1921	Albany	Criminal	1	0	1	\$250	30	11
Utility Electric Co. v. Wilson	1930	Westchester	Civil	5	0	2	\$250	'til pd.	135
Utz & Dunn v. Sheridan....	1923	Monroe	Civil	14+	?	14	\$456.50	0	?
Ward Baking Co. v. Ursprung, No. 1 .....	1919	Kings	Criminal	0	1	1	\$100	'til pd.	34
Ward Baking Co. v. Ursprung, No. 2 .....	1919	Kings	Criminal	0	3	3	\$100	'til pd.	29
Ward Baking Co. v. Ursprung, No. 3 .....	1919	Kings	Criminal	1	0	1	0	10	9
Weissman Shoe v. Askinsky.	1926	Kings	Criminal	3	2	5	0	10	26
Weissman Shoe v. Cosgrove.	1926	Kings	Civil	1	0	1	\$350	'til pd.	30
Willow v. Kramberg .....	1929	N. Y.	Criminal	1	1	2	\$250	0	22
Wycoff v. Kaplan .....	1917	Kings	Criminal	3	0	3	0	30	17
Zmurko v. Manhattan Window Cleaning Employers Prot. Assn.....	1931	N. Y.	Civil	4	38	8	{ 2-\$250 1-\$200 2-\$100 3-\$ 25 }	'til pd. }	?

<sup>1</sup> This sentence stayed on payment of fine within 10 days.

## APPENDIX II

### TABLE OF CASES CITED OR DISCUSSED <sup>1</sup>

\**Aberon Baking Company v. Raimist*, #1, Bronx County, #4895 of 1929, Unreported.

\**Aberon Baking Company v. Raimist*, #2, Bronx County, #4895 of 1929.

\**Albert v. Austrian*, New York County, #2922 of 1932.

\**Albert v. Cohen*, New York County, #6695 of 1930, Unreported.

*Anderson v. Council of Associated Bldg. Trades*, #2981, Court of Common Pleas. #2, Sept. Term, 1919, Phila. Co., Pa.

[*Anderson v. Hall*, 128 Ga. 525, (1907).]

[*Anderson v. Indiana Drop Forge Co.*, 34 Ind. App. 100, (1904).]

*Armstrong v. U. S.*, 18 Fed. (2) 371, (1927).

\**Assn. of Dress Mfgs. v. Hyman*, New York County, #12456 of 1927, Unreported.

[*Barnes, In re*, 204 N. Y. 108, (1912).]

*Berger v. Superior Court*, 175 Calif. 719, (1917).

[*Bessette v. Conkey Company*, 199 U. S. 333, (1904).]

\**Bluebird Baking Company v. Raimist*, Bronx County, #26895 of 1929.

\**Bob v. Goldstein*, Kings County, #8574 of 1919 and #4968 of 1920, Unreported.<sup>2</sup>

[*Boon v. McGlucken*, 67 Hun. (N. Y.) 251, (1893).]

<sup>1</sup> Starred (\*) cases are the New York labor contempt cases given detailed analysis in this inquiry. Where citations are given they are to decisions in the contempt proceedings, not to decisions in the main cases to which they are collateral. The notation "unreported" refers to the contempt case only, although it is true as a matter of fact that many of the main cases are also unreported. The italicized cases are the New York labor contempt cases whose titles are identical with their respective parent (injunction) cases. Cases not directly or indirectly arising out of labor disputes are inclosed in brackets.

<sup>2</sup> Collateral contempt action entitled *People ex rel. Bob v. Goldstein*.

- \**Bordens Farm Products Company v. Sterbinsky*, 192 N. Y. Supp. 757, (1922), #14833 of 1921, Kings County.
- \**Bossert v. Dhuy*, #1, 137 N. Y. Supp. 321, (1912), Kings County, #11977, of 1912.
- \**Bossert v. Dhuy*, #2, Kings County, #11977 of 1915.  
[*Bowers*, In re, 89 N. J. Eq. 307, (1918).]
- \**Bressler v. Alexanderson*, Kings County, #23853 of 1929.  
[*Brougham v. Oceanic Nav. Co.*, 205 Fed. 857, (1913).]
- Campbell v. Moving Picture Machine Op.*, 151 Minn. 238, (1922), 4 *Law and Labor* 68.
- \**Cantor, (Irving) v. Retail Dairy and Grocery Clerks*, Kings County, #13285 of 1927, Unreported.
- Castner v. Pocahontas Coll. Co.*, 117 Fed. 184, (1902).
- \**Ceanel Dress Company v. Sigman*, New York County, #24774 of 1923, Unreported.  
[*Chadwick* In re, 67 N. W. (Michigan) 1071 (1896).]  
[*Cheadle v. State*, 110 Ind. 301, (1887).]  
[*Chicago, B. and Q. Ry. v. Gildersleeve*, 219 Mo. 170, (1909).]  
[*Chisolm v. Caines*, 121 Fed. 397, (1903).]
- \**Christel v. Weisman*, #1, Bronx County, #5541 of 1930.
- \**Christel v. Weisman*, #2, Bronx County, #5541 of 1930.  
[*Cleary v. Christie*, 41 High Court Reports (India) 566, (1886).]
- \**Commercial House and Window Cleaning Company v. Awerkin*, N. Y. Co., #9462 of 1929, Unreported.  
[*Commonwealth v. Richardson*, 136 Ky. 699, (1910).]
- \**Cortlandt Hat Co. v. Greene*, Westchester County, #2265 of 1921.
- [*Craig v. Hecht*, 263 U. S. 255, (1923).]
- \**Cuneo v. Albin Upholstering Company*, N. Y. Co., #4465 of 1931.
- \**Cursi v. Berman*, New York County, #22924 of 1932.
- [*Dailey v. Fenton*, 47 A. D. (N. Y.) 418, (1900).]  
*Dale v. Roosevelt*, 1 Paige (N. Y.) 35, (1828).  
[*Darby, P. H.*, Case of, 3 Whe. Crim. Cases 3, (1824).]
- \**Davis, W. P., Machine Company v. Robertson*, Box 630, Monroe County, 1904, Unreported.<sup>1</sup>
- \**Dickstein v. Alexanderson*, Kings County, #23869 of 1929, Unreported.
- [*Dill*, In re, 32 Kansas 668, (1884).]

<sup>1</sup> Main action reported at 84 N. Y. Supp. 837.

- [*Early v. People*, 117 Ill. App. 608, (1904).]  
 \**Eastern Concrete Steel Company v. B. and M. P. I. U.*, 200 A. D. (N. Y.) 714, (1922).  
 \**Elbee v. Alexanderson*, Kings County, #23853 of 1929, Unreported.<sup>1</sup>  
 \**Elishewitz v. Green*, New York County, #34856 of 1921, Unreported.  
*Employers' Teaming Company v. Teamsters' Joint Council*, 141 Fed. 679, (1908).  
 \**Exchange Bakery v. Rubinfeld*, New York County, #440 of 1928, Unreported.  
 \**Fifth Ave. Men's Tailors v. Horan*, N. Y. Co., #7166 of 1921.  
 [Fischer v. Raub, 81 N. Y. 235, (1880).]  
 [Fisk, Ex Parte, 113 U. S. 713, (1884).]  
 [Fowler v. Beckman, 66 N. H. 424, (1891).]  
 [Francis v. Williams, 11 Fed. (2) 860, (1926).]  
 \**Fruhauf v. Hillman*, New York County, #9010 of 1921, Unreported.  
 [Ganz, Matter of, 78 N. Y. Supp. 260, (1902).]  
 Garrigan v. U. S., 163 Fed. 16, (1908).  
 [Gillie v. Fleming, 191 Ind. 444, (1922).]  
 \**Gingold Mason and Company v. "John Doe"*, New York County, #5757 of 1928, Unreported.  
 \**Giniger v. Hebrew Butchers*, Bronx County, #564 of 1922, Unreported.  
 Glay v. People, 94 Ill. App. 602, (1901).  
 \**Goldberg v. Highlieb*, Kings County, #3258 of 1921, Unreported.<sup>2</sup>  
 \**Goldberg v. Kleinman*, Kings County, #19873 of 1924, Unreported.  
 \**Goldman v. Rosenzweig*, New York County, #24358 and #27397 of 1928, Unreported.  
 \**Goldman v. Wile Import Company*, New York County, #24359 of 1928, Unreported.  
 Gompers v. Buck Stove and Range Company, 221 U. S. 418, (1912).  
 [Gordon, Matter of, 149 A. D. (N. Y.) 246, (1912).]  
 \**Gottfried v. Bakery & Confectionery Workers*, N. Y. Co., #35092 of 1917, Unreported.

<sup>1</sup> Collateral to *Bressler v. Alexanderson*, N. Y. Law J., Dec. 31, 1929, # 23853 of 1929, Kings County.

<sup>2</sup> Main action is # 10961 of 1920.

- \**Graff, Washbourne and Dunne v. Amalgamated Silver Workers*, N. Y. Co., #11788 of 1921, Unreported.
- \**Grand Shoe Company v. Children's Shoe Workers Union*, Kings County, #7177 of 1920, Unreported.  
[*Greenberg v. Polansky*, 140 A. D. (N. Y.) 326, (1910).]
- \**Gross v. Kempinski*, Bronx County, #2286 of 1930.
- \**Hammer v. Baum*, New York County, #30208 of 1921, Unreported.  
[*Hays*, In re, 72 Fla. 558, (1916).]  
[*Hoenig v. Eagle Waist Company*, 176 A. D. (N. Y.) 724, (1917).]  
[*Hutchins v. Munn*, 209 U. S. 246, (1906).]  
*Huttig Sash Company v. Fuelle*, 143 Fed. 363, (1906).
- \**International Tailoring Company v. Hillman*, New York County, #26599 of 1925.
- \**Jaeckel v. Kaufman*, New York County, #30641 of 1920, Unreported.  
[*Joyce v. Everson*, 161 Ind. 440 (1903).]
- \**Katcher v. Zuckerman*, New York County, #18554 of 1927, Unreported.
- \**Kaufman v. "Doe"*, Bronx County, #451 of 1932.
- \**Kayser v. Fitzgerald*, 191 A. D. (N. Y.) 929, 180 N. Y. Supp. 941, 178 N. Y. Supp. 130, (1920).<sup>1</sup>  
[*Ketcham v. Edwards*, 153 N. Y. 534, (1897).]  
[*King v. Barnes*, 113 N. Y. 476, (1889).]  
[*King v. Ohio and M. R. Company*, Fed. Case No. 7800, (1877).]
- \**Knickerbocker Bindery v. Ryan*, New York County, #20744 of 1921.
- \**Kurtzman v. Cohen*, 1927, Bronx County, #7576 of 1926, Unreported.
- \**Lehman v. Washinsky*, New York County, #10645 of 1930.  
*Lennon*, Ex Parte, 64 Fed. 320, (1894).
- \**Levy v. Hillman*, New York County, #1909 of 1918.
- \**Liebowitz Bros. v. Bronx Shoe Salesmen's Union*, Bronx County, #2907 of 1927, Unreported.
- \**Lipshitz v. Amoruso*, Westchester County, #1149 of 1924.  
[*Little v. State*, 90 Ind. 338, (1893).]

<sup>1</sup> Main action begun in 1919.

- \**Manhattan Theatres, Inc. v. Kaplan*, Kings County, #10758 of 1931.  
 [Martindale v. State, 16 Okla. Cr. 23, (1919).]  
 [McDougal v. Sheridan, 23 Ida. 191, (1913).]  
 [McFarland v. Superior Court, 194 Calif. 407, (1924).]  
 \**Meltzer v. Kaminer*, Kings County, #7200 of 1927, Unreported.  
 \**Merchant Tailors v. Journeymen*, New York County, #405 of 1920, Unreported.<sup>1</sup>  
 Michaelson v. United States, 266 U. S. 70, (1924).  
 \**Middle Village v. Stillerman*, Queens County, 1930, Unreported.  
 [Moffat v. Herman, 116 N. Y. 131, (1889).]  
 [Morgan v. State, 154 Ark. 273, (1922).]  
 \**Morrin v. Structural Steel Board of Trade*, N. Y. County, #1280 of 1931.  
 \**Myrup v. Kalfelz*, (Civil Action Book, Vol. 36, p. 172, Box 679), Onondaga County, 1927, Unreported.<sup>2</sup>
- [Nienaber v. Tarvin, 104 Ky. 155, 46 S. W. 513, (1898).]  
 \**Nugent v. Hallman*, New York County, #16362 of 1928, Unreported.
- O'Brien v. People, 114 Ill. App. 40, (1905), 216 Ill. 354 (1905).  
 [O'Neil v. People, 113 Ill. App. 195, (1904).]  
 \**Ondoris Cafeteria, Inc. v. Kramberg*, New York County, #45597 of 1932.  
 [People v. Andrews, 197 N. Y. 53, (1909).]  
 [People v. Court of Term. and Oyer, 101 N. Y. 245, (1886).]  
 People v. Dwyer, 90 N. Y. 402, (1882).  
 [People v. Hambury, 162 A. D. (N. Y.) 337, (1914).]  
 [People v. Rice, 144 N. Y. 249, (1894).]  
 [People v. Somers, 208 N. Y. 621, (1913).]  
 [People v. Tool, 35 Colo. 225, (1905).]  
 [People v. Wilson, 64 Ill. 195, (1872).]  
 \**People ex rel. Bob v. Goldstein*, Kings County, #8574 of 1919.<sup>3</sup>  
 [People ex rel. Cauffman v. Van Buren, 136 N. Y. 252, (1892).]  
 [People ex rel. Davis v. Sturtevant, 9 N. Y. 263, (1853).]  
 [People ex rel. Dean v. Ann Arbor Ry. Co., 137 Mich. 673, (1904).]

<sup>1</sup> Main action is No. 180 of 1920.

<sup>2</sup> Main action begun in 1924.

<sup>3</sup> Collateral to *Bob and Baskin v. Goldstein*, Kings County, 1919.

- \*People *ex rel.* Frank *v.* McCann, 253 N. Y. 221, (1930).<sup>1</sup>  
 [People *ex rel.* Grant *v.* Warner, 3 N. Y. Supp. 768, (1889).]  
 [People *ex rel.* Kelly *v.* Aitken, 26 Hun. (N. Y.) 327, (1879).] }  
 \*People *ex rel.* I. R. T. Co. *v.* Lavin, 228 N. Y. Supp. 218, (1928).<sup>2</sup>  
 [People *ex rel.* Phillips *v.* Sutherland, 9 A. D. (N. Y.) 313, (1896).]  
 \*People *ex rel.* Stearns *v.* Marr, 181 N. Y. 463, (1905).<sup>3</sup>  
 \*Pleaters' and Stitchers' Ass'n *v.* Taft, New York County, #42434  
 of 1927, Unreported.  
 \*Probolsky *v.* Markowitz, Kings County, #11624 of 1924, Unre-  
 ported.  
 \*Probolsky *v.* Rubinberg, Kings County, #3900 of 1923, Unreported.  
 [Regas *v.* Livingston, 178 N. Y. 20, (1904).]  
 \*Retail Dairy and Grocery Clerks *v.* Vecker, Kings County, #4702  
 of 1928, Unreported.  
 Roach *v.* Sheppard, 105 Mich. 667, (1895).  
 [Robertson *v.* Hay, 33 N. Y. Supp. 31, (1895).]  
 \*Rogers Peet *v.* Hillman, New York County, #21897 of 1919, Un-  
 reported.  
 \*Rosenthal *v.* U. G. W., New York County, #1508 of 1913, Un-  
 reported.  
 [Ross *v.* Butler, 57 Hun. (N. Y.) 110, 10 N. Y. Supp. 444, (1890).]  
 \*Rothberg *v.* Cline, Kings County (2 cases), #5878 of 1928, Un-  
 reported.  
 \*Sanford B. and E. Company *v.* Vecker, New York County, #25884  
 of 1925, Unreported.  
 [Sanford *v.* Sanford, 40 Hun. (N. Y.) 566, (1886).]  
 \*Scher *v.* Goldberg, New York County, #13202 of 1917.  
 \*Schlesinger *v.* Finkenberg, New York County, #15963 of 1931.  
 \*Schwartz *v.* Bless, New York County, 1924.  
 \*Schwartz and Jafee *v.* Hillman, Kings County, #4285 of 1921,  
 Unreported.  
 \*Septum Shoe Company *v.* Alexanderson, Kings County, #23853 of  
 1929, Unreported.  
 [Sheffield *v.* Cooper, 21 A. D. (N. Y.) 519, (1897).]  
 Sherwin *v.* People, 100 N. Y. 351, (1885).

<sup>1</sup> Collateral to *Willow Cafeterias v. Kramberg*, 237 N. Y. Supp. 76.

<sup>2</sup> Collateral to *I. R. T. Co. v. Lavin*, 247 N. Y. 65.

<sup>3</sup> Collateral to *Stearns v. Marr*, 84 N. Y. Supp. 965.



- [Shortridge, In re, 99 Calif. 526, (1893).]  
 \**Silber v. Waterproof Garment Workers*,<sup>1</sup> Richmond Co., 2 *Law and Labor* 15, (1919), Unreported.  
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<sup>1</sup> Index number of main case 12961 of 1929.

<sup>2</sup> Summons and complaint in main case dated Dec. 28, 1928.

<sup>3</sup> Main action begun in July, 1922.

<sup>4</sup> Collateral to main case entitled *Weissman v. Cosgrove*, Kings County, # 1167 of 1926.

<sup>5</sup> One collateral contempt action bears the title of the main case; the other is entitled, *People ex rel. Frank v. McCann*.

APPENDIX III

SAMPLE PAPERS USED IN CONTEMPT PROCEEDINGS IN NEW  
YORK STATE

I. *Order To Show Cause:*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

THE PEOPLE *et rel.*

HERMAN D. BOB & LOUIS BASKIND,      co-partners  
Relators

against

MAX GOLDSTEIN as Treasurer of the Shirt  
& Boys' Waist Workers' Union, Local # 249  
of the Amalgamated Clothing Workers of  
America, "ISAAC" AXELRAD, "ANTONIO" FERRILLE,  
HARRY WAGNER, JOSEPH MITCHELL, "JOHN DOE",  
"RICHARD ROE", "WILLIAM WHITE", "MARY DOE",  
"JANE ROE" and "ANNA WHITE", (the names  
"ISAAC", "ANTONIO", "JOHN DOE", "RICHARD ROE",  
"WILLIAM WHITE", "MARY DOE", "JANE ROE" and  
"ANNA WHITE" being fictitious, real names of  
defendants being unknown to plaintiffs),

and

MICHAELENE WARBELY,

Respondent.

Upon the annexed affidavits of Herman D. Bob, Albert Aversano [and others] . . . all verified on the 8th day of September 1919, upon the injunction order . . . and upon all proceedings heretofore had herein, by which it appears that the said respondent has wilfully disobeyed the lawful mandate of this Court, thereby making her liable for punishment for contempt of this Court, and on motion of Aaron Wm. Levy, attorney for the relators, it is

ORDERED, that Michaelene Warbely, the respondent herein, appear before me or one of the Justices of the Supreme Court of the State of New York, County of Kings, held at Special Term, Part I, thereof, at the County Court House, in the Borough of Brooklyn, County of Kings, City and State of New York, on the 12th day of September 1919, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, and show cause why said Michaelene Warbely, the respondent herein, should not be punished as and for a contempt of this Court in wilfully disobeying the lawful mandate of this Court in accordance with the injunction order heretofore served on her, and why the relators herein should not have such other, further and different relief as in the premises may be deemed just and proper.

Sufficient reason appearing therefor, let service of a copy of this order and affidavits upon the respondent, Michaelene Warbely, on or before the 10th day of September, 1919, be deemed sufficient.

Dated,  
Brooklyn, New York.  
September 8, 1919.

(Signed) Townsend Scudder  
Justice of the Supreme Court  
of the State of New York.

2. *Affidavit of Service:*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

. . . . .

Same title as above

. . . . .

Henry J. Bauer, being duly sworn, deposes and says that he is over the age of 21 years and a resident of the City and State of New York.

That on the 9th day of September 1919, at 484 Rodney Street, in the Borough of Brooklyn, County of Kings, City and State of New York, at 8 o'clock in the forenoon, he served upon Michaelene Warbely, the respondent in the above entitled action, a copy of the foregoing order to show cause and affidavits, by delivering to and leaving with her personally true copies thereof and at the same time and place exhibiting to her the within original signature of Mr. Justice Townsend Scudder thereunto affixed.

Deponent further says that he knew the person so served as aforesaid to be the same person mentioned and described in the papers herein as the respondent therein.

(Signed) Henry J. Bauer

3. *Order:*

At a Special Term, Part I of the Supreme Court of the State of New York, held in and for the County of Kings, at the County Court House, in the Borough of Brooklyn, city of New York, on the 16th day of September, 1919.

Present:

*Hon. Leander B. Faber*  
Justice

The People of the State of New York, ex rel.  
HERMAN D. BOB & LOUIS BASKIND, co-partners,

Relators

against

MAX GOLDSTEIN, as Treasurer of the Shirt & Boys'  
Waist Workers' Union, Local # 249 of the Amalgamated  
Clothing Workers of America, "ISAAC" AXELRAD,  
"JOHN DOE", "RICHARD ROE", "WILLIAM WHITE", et al

Defendants

and

MICHAELENE WARBELY,

Respondent

. . . . .

An order having been made herein upon the 8th day of Sep-  
tember 1919, that Michaelene Warbely, the respondent in the  
above entitled action, show cause why she should not be pun-  
ished for contempt of court in wilfully disobeying the order of  
injunction made by Isaac M. Kapper, one of the Justices of the  
Supreme Court of the State of New York, County of Kings,  
on the 29th day of August 1919, in an action then pending in  
the Supreme Court of the State of New York, County of Kings,  
wherein Herman D. Bob and Louis Baskind, co-partners, were  
plaintiffs and the above named were defendants, and the said  
motion having duly come on to be heard . . .

Now upon reading and filing the preliminary injunction  
granted herein by Honorable Isaac M. Kapper, one of the Jus-  
tices of this Court, dated the 29th day of August 1919, and the  
order to show cause in contempt proceedings, herein dated the  
8th day of September 1919, together with the affidavits of  
Herman D. Bob; Albert Aversano [and others] . . . all veri-  
fied the 8th day of September 1919, upon which foregoing said  
affidavits and all of them, the said order to show cause of Sep-  
tember 1919, was issued and the affidavit of service of said order

to show cause and affidavits upon said respondent, of Henry J. Bauer, verified the 11th day of September 1919, all in support of said application, and due deliberation having been had thereon, it is on motion of Aaron W. Levy, attorney for the relators,

ORDERED, that the said motion to punish the respondent, Michaelene Warbely herein, be and the same is hereby granted, and it is

ORDERED, ADJUDGED AND DECREED, that said respondent, Michaelene Warbely, is guilty of a criminal contempt and has wilfully disobeyed said injunction order, in that, with knowledge of the existence of said injunction and its terms and for the purpose of intimidating, threatening and preventing one Anna Ravanis, who was an employee of the relators herein, from continuing in the employ of the relators, the said respondent, Michaelene Warbely, did on the 3d day of September 1919, while the said Anna Ravanis was on her way to work to the relators' factory, attempt to block the passage of said Anna Ravanis and said to her: "You are a dirty scab; this is the last time that you are going to work because if I don't kill you I will get somebody else who will"; and it is further

ORDERED AND DIRECTED that said Michaelene Warbely, the respondent herein, be imprisoned for a period of ten (10) days in close custody in the Common Jail of the County of Kings, and that she be and she is hereby fined the sum of Two Hundred and Fifty (\$250) dollars, and in case of default in the payment of the aforesaid fine, that she be imprisoned in close custody in the Common Jail of the County of Kings, until said fine is fully paid or for a period of thirty (30) days after the expiration of the period of ten (10) days above mentioned shall have expired, and it is hereby

ORDERED that a warrant issue to carry into effect the provisions of this order.

(Signed) L. B. Faber  
J. S. C.

#### 4. *Warrant of Commitment.*

To Daniel J. Griffin, Sheriff of the County of Kings

THE PEOPLE OF THE STATE OF NEW YORK, COUNTY OF KINGS,  
GREETING:

WHEREAS, on the 16th day of September, 1919, by an order made by Hon. Leander B. Faber, one of the Justices of the Supreme Court of the State of New York, at a Special Term, Part I thereof, held at the County Court House, in the Borough of Brooklyn, County of Kings, City and State of New York, in a proceeding in said Court in the name of the People of the State of New York on the relation of Herman D. Bob and Louis Baskind, copartners, Relators, against Max Goldstein, as Treasurer of Shirt and Boys' Waist Workers' Union, Local 249 of the Amalgamated Clothing Workers of America, [and others] . . . and Michaelene Warbely, Respondent, it was adjudged that Michaelene Warbely was guilty of a contempt of this Court and has wilfully disobeyed the injunction order heretofore served on her . . . and it was thereupon

ORDERED, that the said Michaelene Warbely be committed to the Common Jail in said County, there to remain charged with the aforesaid contempt to be imprisoned for a period of ten (10) days in close custody in the Common Jail of the County of Kings, and that she be and hereby is fined the sum of Two Hundred and fifty (\$250) Dollars, and in case of default of the aforesaid fine that she be imprisoned in close custody in the Common Jail of the County of Kings, until said fine is fully paid or for a period of thirty (30) days after the expiration of the period of ten (10) days above mentioned shall have expired; and that a warrant issue to carry the said order into effect:

NOW, THEREFORE, WE COMMAND YOU, that you keep the body of the said Michaelene Warbely and her safely and closely kept in your custody in the Common Jail of the County of Kings, for a period of ten (10) days and that she be and hereby is fined the sum of Two hundred and fifty (\$250) Dollars,



and in case of default of the aforesaid fine that she be imprisoned in close custody in the Common Jail of the County of Kings, until said fine is fully paid or for a period of thirty (30) days after the expiration of the period of ten (10) days above mentioned shall have expired; and you are to return this writ and to make and return to our said Court a certificate, under your hand of the manner in which you shall have executed the same.

WITNESS, HON. LEANDER B. FABER, Justice of our said Court, at the County Court House, in the Borough of Brooklyn, County of Kings, City and State of New York, on the 16th day of September, 1919.

(Signed) William E. Kelley  
Clerk

(Signed) *Aaron Wm. Levy*  
Attorney for Relators,  
Office & P. O. Address,  
Sixty Wall Street,  
Borough of Manhattan,  
New York City.

The foregoing warrant of commitment for contempt of court is hereby allowed this 16th day of September, 1919.

(Signed) L. B. Faber  
Justice of the Supreme Court.

##### 5. *Sample Labor Injunction.*

At a Special Term of the Supreme Court held in and for the County of Erie at the City and County Hall in the City of Buffalo, N. Y., on the 4th day of April, 1921.

Present: Hon. Wesley C. Dudley,  
Justice Presiding.

Tonawanda Board and Paper Company,  
Plaintiff,  
against  
International Brotherhood of Paper Makers,  
and Local Union No. 188, et al,  
Defendants,

It appearing satisfactorily from the summons and complaint in the above entitled action, and from the affidavits of James Wallace, verified March 31, 1921 [and others] . . . that the above named defendants have formed, are continuing and are doing acts in furtherance of a conspiracy to injure the plaintiff in its business and in its property, and that the above named defendants, by unlawful means, have prevented and have attempted to prevent the plaintiff from obtaining employees at its plant in the City of Tonawanda, County of Erie, New York, and that they have unlawfully interfered with reference to the relation of the plaintiff's employees to the plaintiff, and toward said employees have used force, violence, intimidation and obscene, profane and blasphemous language for the purpose of severing the relation of master and servant between the plaintiff and its employees;

NOW ON MOTION of Moot, Sprague, Brownell and Marcy, attorneys for the plaintiff, it is

ORDERED that the application of the plaintiff for an injunction pending the trial of this action be and the same hereby is granted and the above named defendants and each of them and *all persons* be and hereby are and each of them is enjoined, restrained and forbidden from assaulting, threatening, intimidating or annoying by offensive acts or language the employees of the plaintiff or any of them, and from interfering by threats of intimidation or other similar methods with the employees of the plaintiff, or with persons who may seek employment with the plaintiff and from doing any act or thing for the purpose of preventing employees of the plaintiff from continuing in said employment, and the above named defendants and *all other persons* be and hereby are enjoined, restrained and forbidden

from parading or marching in collective numbers in front of or upon the premises of the plaintiff and from loitering or collecting at the entrance of the premises of the plaintiff or in the streets adjacent thereto and from interfering in any way with the free passage of the employes of the plaintiff or of persons seeking employment of the plaintiff, and the said defendants and *all other persons* are enjoined, restrained and forbidden from calling the employes of the plaintiff or persons seeking employment from the plaintiff "scabs", "rats," or other like names and from printing, publishing or otherwise disseminating statements to the effect that the plaintiff or its officers or agents are opposed to organized labor, or are unfair to organized labor and said defendants and *every other persons* are, and each of them is, hereby enjoined, restrained and forbidden from interfering with or injuring by any of the acts or things herein restrained, the business, property or contracts of the plaintiff and from preventing or attempting to prevent the use, handling, sale purchase or dealing in or with the products of the plaintiff and said defendants and *every other person* are, and each of them is enjoined, restrained and forbidden from conspiring to do or counselling or advising or aiding or suggesting to other persons to do any of the acts herein forbidden, and are enjoined, restrained and forbidden from injuring or threatening to injure or intimidating or threatening to intimidate the family or any member thereof of the plaintiff's employes or any of them.

IT IS FURTHER ORDERED AND ADJUDGED that the plaintiff give an undertaking executed by an incorporated surety company authorized to do business in the State of New York to the effect that the plaintiff will pay to the above named defendants hereby enjoined such damages not exceeding the sum of Two Hundred and Fifty Dollars (\$250.00) as said defendants may sustain by reason of the granting of this injunction if the court finally decides that the plaintiff was not entitled thereto.

WESLEY C. DUDLEY,  
J. S. C.

Dated: April 4, 1921.  
(Note: Italics mine.)

## APPENDIX IV

### EXISTING STATE AND FEDERAL CONTEMPT STATUTES

The states of Colorado (Session Laws of 1933, Chapter 59, Section 11), Idaho (Session Laws of 1933, Chapter 215, Section 10) and Pennsylvania (Laws of 1931, Act 310, page 925) have enacted the following legislation with reference to contempt procedure.

Be it enacted etc., That in all cases where a person shall be charged with indirect criminal contempt for violation of a restraining order or injunction issued by a court or judge or judges thereof, the accused shall enjoy

(a) The rights as to admission to bail that are accorded to persons accused of crime;

(b) The right to be notified of the accusation and a reasonable time to make a defense, provided the alleged contempt is not committed in the immediate view or presence of the court:

(c) Upon demand, the right to a speedy and a public trial by an impartial jury of the judicial district wherein the contempt shall have been committed, provided that this requirement shall not be construed to apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice, or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court; and—

(d) The right to file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge, and if the attack occurred otherwise than in open court. Upon the filing of any such demand, the judge shall thereupon proceed no further but another judge shall be designated by the presiding judge of said court. The demand shall be filed prior to the hearing in the contempt proceeding.

The legislation of the state of Maine (Laws of 1933, Chapter 261, Section 2) follows the above statute except for the omission of sub-section (d).

The following legislation has been enacted in Indiana (Acts of 1933, Chapter 12, Sections 11 and 12), Minnesota (Session Laws of 1933, Chapter 416, Sections 10 and 11), and Oregon (Laws of 1933, Chapter 355, Sections 11 and 12).

In all cases arising under this act in which a person shall be charged with contempt in a court of the State of \_\_\_\_\_, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and county wherein the contempt shall have been committed; *Provided*, That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice, or to apply to the misbehavior, misconduct, or disobedience of any officer of the Court in respect to the writs, orders or process of the court.

The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceedings, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred otherwise than in open court. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated by the presiding judge of said court. The demand shall be filed prior to the hearing in the contempt proceeding.

**New Jersey.** (Laws of 1925, Chapter 169)

*Section 1.* Whenever any person or persons shall be cited for disobeying any order issued out of the Court of Chancery; or for contempt of the Court of Chancery, except such order relate to the specific performance of contracts or enforcement of covenants; or relate to restraining an action of law; . . . then such citation shall be referred for hearing by the Chancellor to a Vice Chancellor other than the one by whom the original order of restrain was issued.

*Section 2.* Whenever such a citation shall relate to the disobedience of an order issuing out of the Court of Chancery, or for contempt of any such order which order relates to a labor dispute, then the person or persons so cited may, at the discretion of the Vice Chancellor hearing the order, have the facts concerning such dispute determined by a jury. Such jury shall be summoned by the sergeant-at-arms of the Court of Chancery from the panel of jurors summoned for duty in the Court of Common Pleas for the term when the alleged violation of the order, or contempt, was committed. The procedure before the Vice Chancellor in impaneling and selecting the jury, and in admitting evidence, shall be the same as that provided for the trial of feigned issues issuing out of the Court of Chancery or other civil cases tried in the Supreme Court.

**Utah.** (Compiled Laws of 1917, Vol. I, Title 58, Chapter II) *Section 3655.* In all cases within the purview of this chapter, 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.

*Section 3658.* In all cases where persons are charged with contempt of court for violation of writs of injunction, issued within the purview of this chapter (Titled "Bettering Conditions of Labor") unless such contempt be committed in the immediate presence of the court, the accused shall have the right to a jury trial upon demand, and, in case a jury trial be demanded, such jury shall be selected and impaneled as in criminal cases, and the trial shall conform as nearly as may be to the district court practice in criminal cases.

**Wisconsin.** (Statutes of 1927, Vol. I, Section 133.07).

*Sub-section 4.* Whenever in any matter relating to the violation of any such restraining order or injunction an issue of fact shall arise, such issue shall be tried by a jury, in the same manner as provided for the trial of other cases.

**Federal Law.** (Public No. 65, 72nd Congress, H. R. 5315, approved March 23, 1932).

*Section 11.* In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided,* That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

*Section 12.* The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or the conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed prior to the hearing in the contempt proceeding.

Additional laws similar to the above were passed in Louisiana (No. 203) and Massachusetts (Chapter 381, page 552) during 1934.

# INDEX

## A

- Affidavit of Service, 132
- Amalgamated Association of Street and Electric Railway Employees, 96
- Amalgamated Clothing Workers of America, 58, 93
- American Federation of Labor, 31, 42n, 44, 87, 110
- Appeal from decisions, 27
- Arrests for contempt, 88
  - disorderly conduct, 92n.
  - injunction violation, 36

## B

- Bakery and Confectionary Workers' International Union, 53, 77, 88
- Breach of contract by employers, 79

## C

- Civil contempt, 18, 20, 27, 44, 77, 79, 81
- Clayton Act, 105, 106n.
- Colorado contempt statute, 139
- Complaints in contempt actions, 25n.
- Classification of contempts, 17-22, 44-48
  - confusion in, 21, 45, 101
  - criticism of, 111
- Congregation around place of business, 72
- Consequential contempts, 22n.
- Constructive contempts, 22n.
- Contempt
  - alteration of parties to case, 19
  - appeals, 27
  - arrests, 36, 88
  - attitude of workers toward, 35
  - by "strangers", 23, 95
  - civil, 18, 20, 27, 44, 77, 81
  - classification, 17-22, 44-48
  - common law provision, 34
  - consequential, 22n.
  - constructive, 22n.
  - convictions for, 83, 100

- criminal, 18, 27, 44, 77, 81
  - definition, 17-22
  - direct, 22n.
  - early English practice, 23
  - hearings, 27
  - indirect, 22n.
  - "inherent powers" to punish, 24
  - initiation of actions, 25
  - misdemeanor of, 29, 86
  - nature of acts prosecuted, 69
  - number of cases involving service, 59
  - penalty for, 81
  - persons cited for, 46, 48-56
  - power of courts to punish, 22, 23, 52n.
  - practice in Tudor period, 34
  - private, 21
  - procedure, 25-28
  - proposed constitutional amendment, 32
  - public, 21
  - sign and banner carrying, 76
  - special proceeding in civil actions, 87
  - summary punishment, 20, 24
  - trade unions involved, 44
  - trial, 28
  - union-plaintiff cases, 98
  - unusual cases, 44
  - wilful, 19, 21
- Contempt actions
    - number and distribution, 41-44
    - when started, 64-68
  - Contempt classification, 17-22, 44-48
    - confusion in, 21, 45
  - Contempt legislation, 32
    - existing statutes, 139-142
    - federal law, 8, 142
    - history of, 105-110
    - state laws, 8, 108
  - Contempt papers,
    - complaint, 25n.
    - order, 132
    - order to show cause, 26
    - recitations in orders, 27
    - warrant of commitment, 27



Contempt procedure, 28  
 criticism of, 28-37  
 delays in, 65  
 proposed revision, 113  
 revision of, 105  
 sample papers, 130-138  
 Court of Special Sessions  
 jurisdiction over contempts, 88-  
 92  
 Convictions in contempt actions, 46,  
 83, 100  
 Crime of contempt, 86  
 Criminal contempt, 18, 27, 44, 77,  
 79, 80, 81  
 convictions for, 46  
 New York Judiciary Law, 19  
 number of cases, 45

## D

Daily Worker, The, 36  
 Delays in contempt cases, 65, 84  
 costs of, 86  
 reasons for, 67  
 Direct contempts, 22n.  
 Disorderly conduct arrests, 92n.  
 Distribution of printed matter as  
 contempt, 75  
 Double jeopardy doctrine, 27

## E

Evidence,  
 burden of proof, 28  
 positive and negative, 28n.  
 rules applicable in contempt  
 cases, 63  
 weight of, 47

## F

Fictitious names in contempt ac-  
 tions, 26, 49  
 Fines imposed, 83  
 Fox, Sir John C., 24, 34

## G

Gompers, Samuel, 29, 30

## I

Idaho contempt statute, 139  
 Impeachment of Judge Peck, 115  
 Indiana contempt statute, 140  
 Indirect contempt, 22n.  
 Inferior Criminal Courts Act, 90  
 Inherent powers of courts, 114  
 Injunctions,  
 copy of, 136

criticism of, 16  
 enforcement of, 15  
 number granted, 41  
 operation of, 98  
 permanence of, 67, 68n.  
 persons enjoined, 48  
 service and knowledge of, 58-64  
 stretched to cover contempts, 69,  
 100  
 violation by subterfuge, 61  
 Interborough Rapid Transit Co., 96  
 company union, 96  
 International Ladies Garment  
 Workers' Union, 55  
 International Tailoring Company, 93  
 Iron Moulders International Union,  
 51

## J

Jail sentences imposed, 83  
 Jury trial, 27, 107  
 argument against, 32, 84  
 arguments for, 33-37  
 constitutionality, 33  
 early use, 30n.  
 right to demand, 29, 106  
 Jurisdiction of courts, 25n.  
 court of Special Sessions, 88-92

## L

Labor organizations,  
 advantages of, 5  
 amenability of members of dis-  
 cipline, 55, 61  
 liability of officers, 56  
 Labor supply curve, 6  
 League for Industrial Rights, 32  
 "Left wing" unions, 44  
 Legal profession,  
 conservatism of, 110  
 Liability of persons not named in  
 contempt actions, 54  
 Litigation time in contempt cases, 85

## M

Maine contempt statute, 140  
 Minimum wages, 7  
 Minnesota contempt statute, 140

## N

New Jersey contempt statute, 140  
 New York Judiciary Law, 82  
 New York Penal Law, 86  
 Norris-La Guardia Act, 116n.  
 Number of contempt actions, 41-44

**O**  
 Order to Show Cause, 130  
 Oregon contempt statute, 140  
 Organization campaigns, 80

**P**  
 Parties to contempt actions, 19, 19n.  
 Penalty for contempt, 81, 82, 83  
   purpose of, 82  
 Pennsylvania contempt statute, 139  
 Permanence of injunction benefits,  
   67, 68n.  
 Persons cited for contempt, 46, 48  
   liable to contempt action, 53  
 Picketing, 69, 76, 78, 79  
   Interborough Rapid Transit Co.  
   case, 94  
 Power to punish contempts,  
   abuse of, 30  
   common law, 23  
   constitutional provisions, 22  
   courts of law and equity, 25  
   " inherent power ", 114  
   regulation of, 114  
 Precedent,  
   weight in contempt cases, 100  
 Private contempts, 21  
 Procedure in contempt cases, 25-28  
 Public contempts, 21

**R**  
 Ratio of contempt actions to in-  
   junctions, 43  
 Revising of contempt procedure, 105  
 " Ruling law ", 100

**S**  
 Service of injunctions, 61

Shipstead anti-injunction bill, 33  
 Sherman anti-trust act, 105  
 Social sciences,  
   relationship, 8  
 Source of contempt information, 42  
 Star Chamber, 34  
 " Strangers " to contempt actions, 23  
   liability of, 48, 50, 51  
   meaning of, 50  
 Strikes, 80  
 Summary punishment, 20, 24

**T**  
 Taft, Justice Wm. H., 31  
 Time consumed in contempt cases, 85  
 Trade unions  
   complainants in actions, 98  
   liability of, 56, 58  
   number involved in contempt  
   actions, 44  
   organization campaigns, 80  
   racketeers in, 110  
 Trials in contempt actions, 28

**U**  
 Utah contempt statutes, 141

**V**  
 Violence and threats as contempt,  
   74, 79

**W**  
 Wage levels, 6  
 Warrant of commitment, 27, 135  
 Wisconsin contempt statute, 142  
 Workers' attitude toward contempt,  
   35, 37

## V I T A

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CLEON OLIPHANT SWAYZEE was born in Indiana, June 3, 1903, in which state he received his secondary education. After taking the A.B. degree at Wabash College, Crawfordsville, Indiana, he entered the Graduate School of Political Economy in the University of Chicago. He taught in Indiana and Ohio high schools for two and one-half years, and matriculated at Columbia University in 1928. Here he finished the Master's degree and engaged in research in industrial relations for the Council for Research in the Social Sciences. In 1930 he went to the University of Nebraska where he was given the rank of assistant professor. In the fall of 1934 he returned to Columbia University to give courses in University Classes and to become a candidate for the Doctor's degree.

In addition to special studies on unemployment, published in the Nebraska Business Studies, he has contributed to the Political Science Quarterly, the Personnel Journal, and the American Federationist.