

CLASS LEGISLATION FOR INDUSTRY

(By James A. Emery.)
I feel that in addressing you this morning upon the general legislative situation, I do so under circumstances that, quite apart from the merit of my remarks, insure your interest and attention. The storm that gathered over Washington some ten days ago, and dissipated in sheet lightning, has re-formed its injunctive clouds during the past thirty-six hours and is rumbling threats over the devoted heads of your Congressional representatives. This most recent of continuously insistent efforts to secure anti-injunction legislation is probably the last desperate movement of a session abounding in similar attempts. The proponents of class legislation have presented their demands in a variety of forms so closely related that it would be impossible to present any one of them to you intelligently, unless all are summoned into your presence.

What Influences Congressmen.
The legislative situation at Washington will become clear only when you realize the personal position of the average representative. Our Congressmen proceed to Washington from every part of the United States. Their term is so short that almost before grateful congratulations upon election have died away, a nerve-wearing struggle for re-nomination is in progress. The Congressman is therefore almost continuously engaged in a contest to retain his seat.

The number and variety of subjects upon which he is required to legislate render it impossible for him to know all about more than a few measures, and leaves him of necessity in practical ignorance of the details of numerous others. To meet this very condition the various committees of Congress exist, each giving special consideration to a particular class of subjects and recommending them favorably or unfavorably, or often not at all, to the general body. Under these circumstances the great struggles that determine the fate of a bill take place in committee and, generally speaking, the judgment of the committee determines the life or death of a proposed measure. The members of the more important committees are the busiest of men, frequently working longer hours than those of closest application in private life. It is in these committees that the individual ability and character of a member, perhaps unnoticed to any great extent in general debate, counts most. It is there that your representatives are most potential and do most to influence the general policy of Congress.

Your Congressman desires to help his constituents and his party in such a way that he will help himself. He performs in Washington; he lives in his district. What he thinks his district thinks is a great factor in shaping his conduct, just as what his district thinks he thinks is the great factor in securing his election. It is only natural that he should pay most attention to those from whom he most frequently hears. But a small percentage of the people who vote for him give intimate care to his public action or communicate with him concerning it, and if he heeds those who heed him, it is because he has every reasonable ground to assume that those who endeavor to influence his action will take an equal interest in voting in one way or another on his future election; and if an unusual number of people address him upon a particular subject it is very easy for him to believe they represent a large and interested sentiment in his community. So the average Congressman becomes more or less of an adept in receiving, measuring and acting on "word from home," and if in any issue of importance he is persistently importuned by the proponents of a measure, and hears little or nothing in opposition to it, being human like the rest of mankind, he is likely to follow the line of least resistance. He is impressed by what reaches him. He measures the opinion of his district by its expression, your interest in anything he does by what you say, and there is no way to be sure of right action on his part unless you give impressive evidence of right and determined views. He cannot be expected to hear the silent, or be himself affected or react upon others, by things unwritten or unsaid. Organized labor is his regular correspondent. He hears from it on every occasion, and frequently when there is none. If you are equally interested he should hear

from you, and if you do not speak you lose the right to complain if his conduct opposes your proper interests.

The great industrial questions in which you are interested and which have been presented more variously, frequently and insistently during this session than any preceding one, bears a direct, delicate, and sometimes embarrassing relation to the individual Congressman, to his party, his executive (his party leader), and to the general country. So he has pressure both from within and from without, from the suggestions of party policy and his notion of the wishes of his constituency. So the expression of your opinion in measures touching the labor relation not only affects the actions of individual public men, but reacts to modify party policies. Your interest or your indifference becomes a measure of the political value of contemplated party action.

A Word About Injunctions.

Having suggested the personal equation in legislation, let us now consider the so-called "labor measures" presented for Congressional action. Years of continuous agitation and discussion have familiarized you with their meaning beyond the generality of men. Perhaps the chief and most insistent demand of organized labor has been for a modification of the existing practice in the issuance of writs of injunction, based upon a loudly asserted charge that this great writ is constantly issued in labor disputes improvidently, and enforced with injustice and oppression; claiming that instead of securing protection against irreparable injury to property or mixed property and personal rights the injunction has in numerous instances wrought grievous wrongs to the rights of those against whom such writs have run. If there be merit in that accusation, it indeed demands immediate consideration. If the conservators of justice, if courts work doers of justice, if courts wrongs and judges attack the rights they exist to protect, the very elements of civil security are threatened. But if the charge is unsupported by facts and is repeated, not only without the slightest evidence, but without visible effort to secure or offer it, then, be they who utter it high or low, this assault upon the conduct of our Federal judges necessarily weakening by repetition of unproved and unprovable charges, the confidence of our people in the last refuge of constitutional government finds no language too strong to rebuke its malicious authors, or those who, with far greater responsibility, lend the influence of a great office to the circulation of an indefensible slander.

So long as courts exist and causes are tried, disappointed litigants will voice the resentful criticisms of defeat. Organized labor, checked in its efforts to violate or evade law with impunity, might be pardoned an exhibition of temper, but its slanderous criticism has long passed the stage of spasmodic anger and become a habit of deliberate attack upon the judicial character. Such charges from a body seeking to become a favored class of wrong-doers, arousing the resentment of all good citizens, could not have obtained serious consideration had not the Chief Executive echoed and re-echoed the assertions of bitter and baffled violators of law. (Note: This was spoken in May, 1908.)

You know that we are a government of three distinct and separate powers; we have executive, legislative and judicial departments, co-ordinate and exclusive in the exercise of their separate functions, nor can either trespass upon or exercise the powers of the other. Each is the agent of the people, possessing only such powers as they have conferred, and beyond the delegated right of that agency, holding no authority. The legislative department cannot intrude upon the judicial nor the judicial upon the legislative, nor the executive upon either, and we have so willed in the language of the Commonwealth of Massachusetts, declared by Webster to be the greatest words of any public utterance, that they may be a "government of laws and not of men." Nothing, then, can be more serious than a reflection by one department on the actions of another, and if duty requires it, the most complete evidence should be back the criticism. For more than two years President Roosevelt in his messages to Congress has iterated and reiterated his belief that there has been a continuous improper and oppressive use of the writ of injunction in labor disputes by courts of the United States. Summing up these serious

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statements, he declared in his special message of April 27, 1908:

"First, as to the power of injunction and of punishment for contempt. In contempt cases, save where immediate action is imperative, the trial should be before another judge. As regards injunctions, some such legislation as that I have previously recommended should be enacted. They are blind who fail to realize the extreme bitterness caused among large bodies of worthy citizens by the use that has been repeatedly made of the power of injunction in labor disputes. Those in whose judgment we have most right to trust, are of the opinion that while much of the complaint against the use of the injunction is unwarranted, yet that it is unquestionably true that in a number of cases this power has been used to the grave injury of the rights of laboring men. I ask that it be limited in some such way as that I have already pointed out in my previous messages, for the very reason that I do not wish to see an embittered effort made to destroy it."

Now, sirs, let us inquire upon what facts are these grave reflections predicated. Surely the highest official of the nation cannot utter them without warrant. Certainly, he must possess facts to verify this declaration. Has he supplied them to Congress, as at other times and in other cases he has offered evidence to substantiate the wisdom of his recommendations? Do those to whose protest he alludes, offer proof of the numerous abuses to which they have been subjected? We have heard the indictment, let us examine the evidence.

The average man might really believe from the clamorous denunciation of "government by injunction," that the Federal courts do little but issue injunctions in labor disputes. One would imagine their approaches jammed with jostling employers, petition in hand, the judge distributing restraining orders as a bill-boy seats circulars. But, sirs, with the record spread open, before we consider how frequently the writ issues, let us pause to ask ourselves what it is. The writ of injunction is an extraordinary remedy. It does not issue with the frequency of a summons or subpoena. It is an order of a court of competent jurisdiction generally prohibiting the doing of certain things, but sometimes assuming a mandatory form to require the doing of others. It proceeds from an equity tribunal whose chief function is to prevent the doing of wrong, an office in which it is distinguished from courts of law, whose purpose is to compel compensation after harm has been inflicted, and since the very essence of equity power exercised through this writ is prevention rather than cure, it acts upon the presentation of allegation of fact, supported by affidavits and such other evidence as it may require, not merely to prevent future irreparable injury, but that which is immediately present and threatening, and might either destroy or impair the subject matter of controversy before the court could adjudicate upon it, or would work irreparable harm while the plaintiff is proving the danger of his position. As it is the office of a court of law to hear and give judgment in compensation for injury suffered in the past, so it is the very nature and purpose of an equity court to interpose its arm to prevent the commission of an injury immediately menacing and for which law courts can provide neither adequate protection nor adequate compensation, and as the great Lord Coke said, "The prevention of wrong is far more important than its compensation."

To return now to our inquiry as to the frequency with which this writ is applied. How often, think you, does it issue in the innumerable cases brought to the attention of Federal courts? After carefully examining all the injunctions appearing in the records of the circuit courts of the United States in the five years from January 1, 1903, to the present (May, 1908) we find only 328 instances in which injunctions of any kind have issued, and of these 328 writs issued in five years, only twenty are involved in labor dis-

putes. Now, are all of these twenty complained of? The 308 writs issued to guard patents, to suppress unfair competition, to abate nuisances and to protect a great variety of rights in varying circumstances, excite no indignation, but the forlorn and isolated twenty, do they all arouse the resentment of organized labor? Is each a cause of executive accusation? If so, in what respect? President Roosevelt offers no bill of particulars. The attorney-general, Bonaparte, with access to the records of every circuit court, professes himself unable to give information concerning the abuse of injunctions to inquiring members of Congress, and is, apparently, without facts for either the executive or the legislature.

During three years of argument before the judiciary committee of the House on various proposals to limit or withdraw the writ of injunction in labor disputes, constant effort has been made, both by your representatives and by members of the committee, to secure specific statements as to the alleged improper use of the writ. We have repeatedly said to the opponents of such legislation: "You are before the Law Committee of the House. You make assertions that reflect upon the very integrity of the judiciary. Upon what facts do you base them? Where are the injunctions improvidently issued and oppressively enforced? What are the judicial decisions against which you protest? File them with the committee and let us have evidence, not vague, loose and declamatory statements upon which to base discussion, for never in our history has a single judge, much less the judiciary of the nation, been impeached without a specific pleading." And in response to these requests we have had isolated injunctions occasionally presented, and much disjointed criticism based upon misapprehension of adjudications, and frequent misstatements of circumstances, the evidence of which exists in the records of numerous hearings before the Judiciary Committee. But about May 1, 1908, twenty-three restraining orders, complaints and a number of decisions were filed with the Judiciary Committee as the basis for these years of continuous demand for remedial legislation. Among their numbers are fourteen of the twenty injunctions issued during the past five years, to which I have referred, but in no case does the complaint upon which they were issued accompany them, and in no instance are the errors alleged or the wrongs asserted even suggested, much less are they definitely specified. Indeed, when asked if they would not accompany them, the representatives of organized labor declined to do so. So it must be assumed that they protest against the injunctions presented, not for specific error, but because they were issued at all. With this contention it is useless to argue, as it is not a legitimate subject of discussion or an issue raised by any but the extreme and radical without serious support in any responsible quarter. Nor is the right of a court to issue an ex parte order under proper circumstances questioned in the most recent legislative proposals, as I shall presently show you, and this despite the demands of organized labor, the recommendation of the Executive, or the opinions of politicians.

(Continued in Next Issue.)

Pension bill of \$40,000,000, which passed the House at Washington, and no doubt will pass the Senate, is a worthy bill.

Though we may think, on first conclusions, this a vast amount to obligate the Government, but let us consider if the 100,000,000 people in the country were asked to contribute fifty cents each to the man or family giving up or offering his life for his country, we all would be pleased to do so.

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