THE STATUS OF ORGANIZED LABOUR

An Outline of the Development of the Law in Great Britain, the United States and Canada.* **

PART I — THE LAW IN GREAT BRITAIN

THE DOCTRINE OF CONSPIRACY

The common-law doctrine of conspiracy which pervades the development of Labour Law in England, and consequently its development also in the United States and in Canada, finds its first roots in statutes dating as far back as the reign of Edward the First.

It is the Ordinance of Labourers of 1349 or 1350 (23 Edward III) which is said to be the earliest labour legislation in England. Decimation of the population by the great plague of 1348 had created a problem of scarcity of servants, and Edward III who had schemes for state interference with trade and industry, found this situation a good opportunity for launching them. A long series of statutes followed; they crystallized what for several centuries was the judicial attitude toward the labour contract. Basically, wages were not to be the subject of negotiation, but were to be fixed at maximum rates, at first by reference to the rate of wages prevailing in a particular year, and later by justices of the peace. Everyone under sixty, not having property of his own and not serving any other, was bound to serve the employer who required him at not more than the rate fixed in the statutes. Anything done in concert to defeat the purpose of the statutes was a conspiracy and punishable as a crime.

These early enactments were, of course, quite distinct and apart from the great mass of craft gild ordinances and customs upon which so much of the mediaeval social order had developed more or less free from the intervention of a central authority. The pressure of that strengthening central authority broke down the old order and manifested itself by a further long series of regulatory statutes in various crafts, until in 1563

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the Statute of Apprentices (5 Eliz. c. 4), which for generations afterwards exercised such an important influence upon English industrial life, was passed into law. It repealed the earlier statutes dealing with particular trades and provided really a comprehensive codification of the principles of law applicable to the wage-earners of the greater part of the industry and trade of the period. Although the social atmosphere of the Middle Ages had long since changed, this Act provided for the enactment by the justices of each locality of the typical ordinances of the mediaeval gild. They were to meet every year and, "calling unto them such discreet and grave persons . . . . . as they shall think meet, and conferring together respecting the plenty or scarcity of the time", they were to fix the wages of practically every kind of labour. Service was made obligatory for the persons who fell within certain categories detailed in the statute. Breach of contract of service on the part of either party was a punishable offence, and detailed provisions were made as to the necessity of apprenticeship, the length of its term and the number of apprentices to be taken by each employer.

At Common Law, all persons who should concert to defeat the ends of the statute were guilty of the offence of conspiracy to infringe a statute.

The scope of the Elizabethan Statute of Apprentices was extended by way of "explaining" the wages clauses which had been construed as giving the justices only a limited right of fixing, and in 1604 by 1 James I, c. 6, power was given to the justices to fix the wages of "any labourers, weavers, spinsters, workmen or workwomen whatsoever, either working by the day, week, month, year, or otherwise".

These provisions for fixing maximum wages were part of a closely regulated system of economic life which gradually broke down under the great increase in population and the technical changes made in industry. The statutes fell into disuse; before the middle of the 18th century the practice of fixing wages by justices was no longer prevalent. A revolutionary change had come over Parliament; statutory maximum wages gradually gave way to laissez-faire and to what socialists have called "administrative nihilism". Notions of free enterprise and freedom of contract born in the upsurge of material prosperity which characterized that period tended to give labour the character of a marketable commodity to be purchased in the cheapest market and subjected to the law of supply and

demand. Adam Smith's Wealth of Nations published in 1776 had outlined the intellectual justification of the new industrial policy. "Natural liberty" was the moral basis of the new economic theory.

EARLY TRADE-UNIONISM

From the very early times, workmen had associated however in trade clubs and secret friendly societies and, with the disintegration of the old system such extensive organizations of wage-earners, as the woollen-makers of the West of England and the Midland frame-work knitters, were active in appealing to Parliament for the enforcement of the old apprenticeship laws and wage-regulating statutes. These combinations to enforce the existing laws were never regarded as unlawful. The result of this activity on the part of both journeymen and masters during the 18th century was that Parliament enacted some 40 statutes regulating the conditions of employment in particular trades and industries, but always, as an incident to such regulation, forbidding combinations for advancing wages, lessening hours, or otherwise altering the conditions of employment laid down by the statute.

On the other hand, when we come to combinations of workmen aiming to improve the conditions of employment without an appeal to existing statute law, both the common law and express enactments were available to prohibit such activities as not only illegal but criminal.

These journeymen's organizations which so curiously were left free to combine and petition Parliament for the enforcement of existing laws were in fact the pioneers of present day Trade Unions. They had accompanied the birth of the modern proletariat, *i.e.* that class of life-long wage-earners bereft by the new industrial conditions of practically any chance of becoming themselves entrepreneurs. Workmen, in the economic world shaped by the Industrial Revolution, had generally lost all interest in the profits of their trade and "the rise of permanent trade combinations is so ascribed, in a final analysis, to the definite separation between the functions of the capitalist entrepreneur and the manual worker — between that is to say, the direction of industrial operations and their execution". (The History of Trade Unionism, by Sidney and Beatrice Webb— Revised Edition, 1920, p. 41).

MODERN TRADE-UNIONISM

Combinations began therefore to lose the temporary character which had resulted from such occasional purposes as the petitioning of Parliament, and the degradation of the workmen's standard of life under the new system led these associations to acquire permanence. It began to dawn upon workpeople that direct action on their own part would be necessary to maintain or improve the conditions of their employment.

By the end of the 18th century, picketing and large-scale intimidation were first practised; unions began to accumulate funds and there was a growing consciousness that the old trade disputes were resolving themselves into a "class war".

The many special statutes governing specific industries and crafts were soon found to be inadequate and the common law was brought to their aid to treat as conspiracies in restraint of trade and therefore contrary to public policy all combinations for regulating the relations between employers and employees, or for that matter between workmen and workmen, and between employers and employers, or for imposing restrictive conditions on the conduct of any industry or trade.

THE COMBINATION LAWS

In 1799 the first general Combination Act was enacted (39 Geo. III, c. 81) to suppress combinations in all trades, and in the following year (1800) it was replaced by a still more comprehensive statute (39 and 40 Geo. III, c. 106) codifying all the existing laws against combinations and extending them from the particular trades to the whole field of industry. Section 1 enacted that:

> "All contracts, covenants, and agreements whatsoever, in writing or not in writing, at any time or times heretofore made or entered into, by or between any journeymen manufacturers or other persons within this kingdom :
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> a) for obtaining an advance of wages of them or any of them, or any other journeymen manufacturers, or workmen, or other persons in any manufacture, trade or business, or
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> b) for lessening or altering their or any of their usual hours or times of working, or
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> c) for decreasing the quantity of work (save and except any contract made or to be made between any master and his journeyman or manufacturer for or on account of the work or service of such journeyman or manufacturer with whom such contract may be made), or

d) for preventing or hindering any person or persons from employing whomsoever he, or she or they should think proper to employ in his, her or their manufacture, trade or business, or

e) for controlling or in any way affecting any person or persons carrying on any manufacture, trade or business, in the conduct or management thereof,

should be illegal, null and void, to all intents and purposes whatsoever."

Offences were created for attending or summoning meetings, striking, paying money to combinations. Combinations of masters were also prohibited.

This legislation was in no way intended to override the powers of the justices under the old laws to fix wages or regulate the mode or time of working or quantity of work, and a really constructive feature of the Act was the provision of a mechanism for the settlement of disputes between masters and workmen by arbitration by a justice of the peace. "The machinery however never really worked satisfactorily". (The Legal History of Trade Unionism by R. Y. Hedges and Allan Winterbottom, 1930, p. 24).

The old Statute of Apprentices and kindred legislation, already fallen into disuse, were suspended in 1803 (43 Geo. III, c. 136) and definitely repealed as to woollen manufacture in 1809 (49 Geo. III, c. 109). In 1813 the clauses empowering justices to fix wages were definitely repealed by 53 Geo. III, c. 40. The following year 54 Geo. III c. 96 swept away the apprenticeship clauses of the Elizabethan statute of 1563 and with them practically the last vestige of the protection which the law had for centuries provided at first to protect the employer and regulate prices, but, as it turned out, to maintain the artisan's Standard of Life, and which had survived from the Middle Ages.

The next landmark in this cursory survey of the English legislative record are the Combination Acts of 1824 and 1825. But it may be useful briefly to recapitulate, and to state that labour organizations, until then, if organized and carried on for any such purposes as they serve today, had no legal status whatever. By what were inclusively referred to as the Combination Laws, as well as under the common-law doctrine of conspiracy, criminal liability attached to participation by workers in concerted action to better their working conditions.

These repressive measures could breed only discontent and disorder. The first quarter of the 19th century saw the wide-

spread introduction of machinery and steam appliances into factories and, in a then growing state of commercial depression and national distress, the artisans could do nothing under the law but look upon their lowering standard of living accompanied by circumstances which in themselves were enormously increasing the productivity of their labour. The influence of Benthamite philosophy, and the agitation of that great radical individualist and consummate lobbyist Francis Place, assisted by Joseph Hume, brought down in 1824 the report of the Select Committee on Artisans and Machinery and a Bill to repeal all the Combination Laws and to legalize trade societies (5 Geo. VI, c. 95).

> Combinations "to obtain an advance or to fix the rate of wages, or to lessen or alter the hours or duration of the time of working, or to decrease the quantity of work, or to induce another to depart from his service before the end of the time or term for which he was hired, or to quit or return his work before the same should be finished, or not being hired, to refuse to enter into work or employment, or to regulate the mode of carrying on any manufacture, trade, or business, or the management thereof, should not therefor be subject or liable to any indictment, or prosecution, for conspiracy, or to any other criminal information or punishment whatever, under the common or the statute law." (Section 2).

Section 3 dealt in the same way with combinations of masters. Penal provisions were enacted against violence, threats and intimidation.

Act of 1825 — First Legal Recognition of Trade Unions

However, because of the social and economic conditions of the day, this legislation did not have the effect of reducing the number of strikes and exhibitions of violence, and the great industrial stoppages brought on a swift reaction in Parliament. Peel's Act was passed in 1825 (6 Geo. IV, c. 129) to replace the Act of 1824. According to Sir Henry Slesser, this Act of 1825 may be regarded as the foundation of the present law concerning trade unions. Although it fell short of the wide measure of liberty which Place and Hume had so skilfully obtained from Parliament the year before, yet it did confirm the emancipation of trade organizations, both of employers and workmen, from the mass of English combination statutes. It also established penalties for the use of violence, threats or intimidation, molestation, or obstruction in connection with attempts to

regulate employer-employee relations. Curiously the section (3) is aimed at "any person", and no attempt is made to meet the case where individuals combined to commit the offences. "The most tenable explanation of this is that the legislature intended to leave the prohibition of such combinations to the operation of the 17th century rule as to conspiracy, according to which a conspiracy to commit a crime (e.g. infringing a penal statute) was a misdemeanor at common law triable on indictment" (Hedges and Winterbottom, p. 39).

But apart from the long list of statutory enactments against combinations or agreements to alter the conditions of labour which were being swept away, there remained the rigour of the common law marking as a criminal conspiracy any combination in restraint of trade. All Parliament did on that score was to enact, in the form of rather puzzling provisoes, that "any person", whether workman or master, would not be liable to any prosecution or penalty who should have met together for the sole purpose of consulting upon and determining the rate of wages or the hours of work or by entering into agreements for the purpose of fixing wages or the hours of work. The latter, the very essence of collective bargaining was, in the light of to-day, a great contribution by the Statute to the development of labour legislation, because although the power to enforce collective decisions by concerted action in the form of strikes or lock-outs was not expressly conferred, yet the right to strike or to lock out for the sole purpose of carrying out an agreement held to be legal under the statute, i.e. having to do with wages or hours of work, was later recognized either expressly or by implication in several cases (p. 40 note 2—Hedges and Winterbottom).

On the whole, however, the scope of labour-union activity was considerably restricted by the courts in their interpretations of the words "intimidation", "molestation" and "obstruction" and in spite of the repeal of the Combination Laws, prosecutions for conspiracy continued to take place. In fact, in 1851 Erle J. held in *Reg.* v. *Rowlands*, 17 Q.B. 671, that the leaders of a trade union who had prevailed on the men employed by a firm to leave their employment until the firm agreed to pay wages at a certain rate were guilty, not only of criminal conspiracy at common law, but also of the offence of "molestation" or "obstruction" within section 3 of the Act of 1825.

MOLESTATION OF WORKMEN ACT OF 1859.
RIGHT OF PEACEFUL PICKETING.

Such construction had never been anticipated by Parliament and in 1859 the Molestation of Workmen Act (22 Vict., c. 34) was enacted to declare and to further the intention of the Act of 1825. It provided that no person, by reason merely of his entering into an agreement with any other person for fixing the rate of wages at which they should work or "by reason merely of his endeavouring peaceably, and in a reasonable manner, and without threat or intimidation, direct or indirect, to persuade others to cease or abstain from work" in order to obtain a rate of wages or an alteration in hours, should be guilty of molestation or obstruction within the Act of 1825; but nothing in the Act was to authorize a workman to break a contract, or to attempt to induce any other workman to break a contract of employment. This statute, therefore, recognized a limited right of peaceful picketing, but it afforded no protection to secure objects other than those of raising wages or altering hours, (*e.g.* to secure the dismissal of non-unionists or the improvement of factory conditions). There was also implicit in the Act a recognition of the paramountcy of the old master and servant legislation, in that the persuasion exercised could only be to induce a person to leave an employment on due notice and not to commit a breach of contract.

MASTER AND SERVANT LAWS

A word should be said here about the master and servant laws, because they too played their part. The enactments rendering the workman liable to imprisonment for simple breach of a contract of service while the employer was only liable to be sued in damages are traceable to the period when the law denied to the labourer the right to withhold his service. To work for hire was as a duty flowing from social status. The law on the subject dates back to the celebrated Statute of Labourers (1351) and it was reasserted by the Statute of Apprentices in 1563; all through the 18th century, a long series of statutes had made the provisions more definite and stringent in many industries and 4 Geo. IV, c. 34 had extended them to all trades in 1823.

A Parliamentary Return showed that 10,339 cases of breach of contract of service had come before the courts in a single year.

In fact the growing trade unions won their first positive victory in the legislative field by successfully agitating for passage of the Master and Servant Act of 1867 (30 and 31 Vict., c. 141) which remedied what had become a dangerously intolerable situation.

Perhaps at this stage something should be said of the position of trade unions. The fact is that they had no legal status whatever, and the activities of a union had to be confined practically to the purely benevolent purposes of a friendly society, if its officers desired to keep it within the bounds of legality. It could go further and achieve what are really trade union objects, but only in the narrow confines of Section 4 of the Act of 1825. Outside the statute, they were either outlawed in the sense that the courts would not recognize their decisions or agreements and deprived them of all right and power of protecting their property, or they were considered to be criminal associations. Their rules and by-laws were in all cases under the closest scrutiny in the light of the doctrine of restraint of trade.

Nevertheless trade unions had already grown to considerable strength by 1867 when the Royal Commission of Inquiry on Trade Unionism was appointed. The organization of insurance benefits upon a national scale had created such strong bodies of skilled workmen as the Amalgamated Society of Engineers and the Amalgamated Society of Carpenters, whose chief officers, William Allan and Robert Applegarth, were the leaders of that small circle of trade union men of political action who became known as the Junta. It was their agitation and the expert assistance of their legal friend Frederic Harrison, which brought on the Inquiry and finally the enactment of the Trade Union Act of 1871 (34 and 35 Vict., c. 31), and its companion the Criminal Law Amendment Act (34 and 35 Vic. c. 32). By the first statute, trade unions were for the first time legally recognized, but by the second, trade union action was curtailed.

The Trade Union Act of 1871

The Trade Union Act of 1871 defines a trade union and provides that its purposes "shall not by reason merely that they are in restraint of trade be deemed to be unlawful, so as to render any (of its) member(s) . . . . . liable to criminal prosecution for conspiracy or otherwise" or "so as to render void or voidable any agreement or trust". But while the Act

makes trade union agreements lawful, yet it went on to deny to them the sanction of enforcement in the courts in a comprehensively worded number of cases. Thus it provided that nothing in the Act should enable a court to entertain any legal proceedings for directly enforcing or for recovering damages for the breach of "any agreement between one trade union and another". Since by its definition in the Act a "trade union" includes an association of employers formed to deal with terms of employment, the effect of this is to make unenforceable in the courts all agreements between labour unions and associations of employers.

Nevertheless in providing for the registration of trade unions and in placing their legal status on a reasonably secure footing, the Act of 1871, amended as it later was in 1876 (39 and 40 Vict., c. 22), marks an important point in the development of labour law in England.

Concurrently with it, however, was passed the Criminal Law Amendment Act, which repealed the Molestation of Workmen Act of 1859 (with its qualified picketing clause) and contained provisions making liable to imprisonment anyone who used violence or intimidation to, or molested, a workman to induce him not to accept work. It defined "molesting" as including (*inter alia*) the well-known "watching and besetting", and it contained no clause authorizing picketing.

This unfortunate statute was, however, of short duration. It had aroused the labour-union world to political action, leadership of the labour movement having by then been assumed by the Parliamentary Committee appointed at the Trades Union Congress of 1871. The agitation to secure repeal of the Criminal Law Amendment Act soon widened into a determined attempt toward abrogation of all penal legislation bearing upon labour disputes. At the General Election of 1874, Alexander MacDonald and Thomas Burt, the two leading officials of the National Union of Miners became the first Labour members of the House of Commons and in the same year another Royal Commission was appointed to enquire into the operation of the whole of the so-called "Labour Laws". It resulted in the formal and unconditional repeal of the Criminal Law Amendment Act of 1871 and in the enactment in 1875 of two progressive measures of considerable importance : the Conspiracy and Protection of Property Act (38 and 39 Vict., c. 86) and the Employers and Workmen Act (38 and 39 Vict., c. 90).

THE ACT OF 1875

The first contains provisions which still remain on the statute book. It effectively removed the taint of *criminal* conspiracy from trade union activity in industrial disputes by providing that an agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute is not to be indictable as a conspiracy if such act committed by one person would not be punishable as a crime. This appears to be a legalization of strikes, so far as the criminal law is concerned. Certain restrictive provisions were inserted however to assure the maintenance of essential public services and to penalize any breach of contract of employment committed wilfully and maliciously with knowledge that the probable consequences would be to endanger human life or cause serious bodily injury, or to expose property to destruction or serious injury.

Peaceful picketing was permitted at least by implication and the right to strike, that necessary complement of the principle of collective bargaining sanctioned 50 years previously on the repeal of the Combination Laws, was finally recognized by a statute.

The Employers and Workmen Act replaced the Master and Servant Act of 1867; the change in nomenclature being in itself a fundamental revolution. Rules for the execution of this statute were framed by the Lord Chancellor in 1876. Employer and employee would henceforth come to the contract of employment as parties equal at least in status.

TEMPERTON V. RUSSELL

It is perhaps necessary at this point to turn away from legislation for a moment and to examine what the courts did to the trade unions when they were called upon to deal with what Mr. and Mrs. Webb call "the legal assault" made upon them.

Temperton v. *Russell* [1893] 1 Q.B. 715 was an action for damages against the officers of three Hull unions in the building trade who, in order to coerce contractors to comply with certain rules laid down by the unions with regard to the conduct of building operations, threatened that workmen would be withdrawn from the employ of all suppliers of building materials entering into contract with the plaintiff, who was a master mason serving a recalcitrant builder. A case of secondary

labour boycott, as it would be called in the United States. The Court of Appeal found that breaches of contract had been procured maliciously, and under the doctrine of "conspiracy to injure" as an actionable wrong it based a judgment in damages. This judgment was followed in a line of cases and use was made of the injunction where the court was convinced that an actionable wrong was intended.

The Court of Appeal had however in the Temperton case, on the appeal from an interlocutory order directing an amendment of the writ, held that the case was not one in which the defendants could be sued in a representative capacity under General Order No. XVI—rule 9 (1883). Its decision on this procedural matter was, however, later impugned by the House of Lords in *Duke of Bedford* v. *Ellis* [1901] A.C. 1 and the full blow of liability for civil wrongs was made to fall upon at least some trade unions by the decision in *The Taff Vale Railway Company* v. *The Amalgamated Society of Railway Servants* [1901] A.C. 426.

THE TAFF VALE CASE

A turbulent strike had broken out among the employees of The Taff Railway Company in South Wales, in the course of which there had been a certain amount of unlawful picketing in the neighbourhood of a Cardiff station. The Company brought an action in damages against the union of railway employees under its registered name (*i.e.* registered under the Trade Union Acts of 1871 and 1876) and also against two of its officers who were active in organizing the workmen's side of the dispute, claiming an injunction and such further relief as the court might direct.

Now during the thirty years from the enactment of the Trade Union Act in 1871 to the Taff Vale decision, a period during which there had been thousands of strikes and lockouts, there had been some suits against trade union officers and members, but no attempt had ever been made to sue the union itself. It seems clear that a trade union's immunity from suit had been taken for granted. In fact when proposals had been made before the Royal Commission on Labour in 1894 that trade unions be required to incorporate or in some other way be made liable to suit, they had been rejected and a report of a minority of the commissioners gives the palpable reasons for their rejection.

> To expose the large amalgamated societies of the country with their accumulated funds, sometimes reaching a quarter of a million sterling, to be sued for damages by any employer in any part of the country, or by any discontented member or non-unionist, for the action of some branch secretary or delegate, would be a great injustice. If every Trade Union were liable to be perpetually harassed by actions at law on account of the doings of individual members; if Trade Union funds were to be depleted by lawyers' fees and costs, if not even by damages or fines, it would go far to make Trade Unionism impossible for any but the most prosperous and experienced artisans. Royal Commission on Labour, Fifth and Final Report, Cd. 7421 (1894), at 146.

But the House of Lords in the Taff Vale case stunned the labour world by reversing the Court of Appeal and holding that a registered trade union could be sued in its registered name for the torts of its agents and, consequentially, to paraphrase Lord Lindley, at page 443, that the property of trade unions could be reached, by legal proceedings properly framed, to satisfy damages caused by their agents in violation of "the rights of other people."

The result of this blow to trade union activity was that in a very short time there were damages and costs adjudged against trade unions and trade union officials to the extent of something like 200,000 pounds.

One among the many cases which followed *Temperton* v. *Russell* and allowed damages to persons injured by a combination to induce customers to break their contracts in order to enforce compliance with union rules, was *Quinn* v. *Leathem* [1901] A.C. 495.

The decision was remarkable for the sharpness of the language used by some of the judges and for the care with which the doctrine of liability for damage caused by a "conspiracy to injure" by procuring a breach of contract, was framed with hardly any regard for the position of trade unionism by then quite firmly consolidated by statute, and already accepted "as a part of the administrative machinery of the State". (Webb, p. 595).

Realization of the full implication of the Taff Vale decision gave a tremendous impetus to the political activity of the then established Labour Party. The Government had recourse to the usual dilatory expedient, a Royal Commission on Trade Disputes and Trade Combinations. The Commission, on which labour was not represented, was boycotted by the unions and

the Balfour government, having failed to correctly appraise labour's political strength, was defeated in the General Election of December, 1905 when in addition to a large number of Liberals pledged to support trade union legislation, 54 working-class members were returned, of whom 29 belonged to the new Labour Party.

THE TRADE DISPUTES ACT — 1906

The Trade Disputes Act of 1906 (6 Edw. VII, c. 47) was promptly passed to meet labour's demands. It contains to the present day the main legislative immunity of labour organizations in Great Britain. Section 1 abolished the doctrine of civil conspiracy, as the Conspiracy and Protection of Property Act of 1875 had abolished the crime of conspiracy, "if (the act be) done in contemplation or furtherance of a trade dispute".

Section 2 formally introduced the right of peaceful persuasion "to work or to abstain from working", an amplification of the picketing clause of 1875. Section 3 removed the liability for interfering with the trade of third parties which had been so securely established by *Temperton* v. *Russell*, but this again only when the act was done "in contemplation or furtherance of a trade dispute". The statute also provided a wide definition of the term "trade dispute" which the courts had previously restricted to disputes between employers and their immediate employees (*J. Lyons & Sons* v. *Wilkins* [1899] 1 Ch. 255 and *Quinn* v. *Leathem*).

Finally by its section 4, the Act enacted an absolute prohibition of actions of tort against trade-unions. The restrictive words "in contemplation or furtherance of a trade dispute" which appear in sections 1, 2 and 3 are not present in subsection 1 of section 4 and it has been settled that the immunity of trade unions from any action for a tortious act is not limited to acts done in contemplation or furtherance of a trade dispute (*Vacher & Sons* v. *London Society of Compositors*, [1913] A.C. 107). These words in the sections where they occur mean that "either a dispute is imminent and the act is done in expectation of and with a view to it, or that the dispute is already existing and the act is done in support of one side to it. In either case the act must be genuinely done as described, and the dispute must be a real thing imminent or existing" (per Lord Loreburn, L.C., in *Conway* v. *Wade*, [1909], A.C., p. 512).

The Act of 1906 had therefore given trade unions a rather privileged legal status. "The lawyers were not long in taking their revenge" (Webb p. 608).

In 1893 Keir Hardie had founded the Independent Labour Party merging it with the result of his earlier attempt at obtaining the political severance of trade unionists from the existing political parties, the Scottish Labour Party. In 1898 a special congress was held of representatives of the Trade Unions, Co-Operative Societies and Socialist Organizations. Ramsay MacDonald represented the Independent Labour Party and George Bernard Shaw, the Fabian Society. Out of this emerged the Labour Representation Committee with MacDonald as Secretary. In 1906 the Committee was renamed the Labour Party. We have seen with what initial success it took part in the General Election of 1905.

The Osborne Case

It was well known on all sides that the trade unions were the financial mainstay of the Party, and the Registrar under the registration sections of the Trade Union Act of 1871 had for a long time accepted for filing, trade union rules providing for the making of political contributions as a trade union object. The achievement in obtaining the 1906 Act had given the Labour Party adherents some taste of political power, and it was at this juncture that the momentous judgment in *Osborne* v. *Amalgamated Society of Railway Servants* [1910] A.C. 87 destroyed in part the peculiar legal status which Trade Unions enjoyed. Osborne, secretary of a local branch of the Society brought suit against it to enjoin payment of political contributions to the Labour Party charging that the rule of the Society authorizing such contributions was *ultra vires* and illegal. The Earl of Halsbury and Lords Macnaghten and Atkinson decided that it was. They treated in effect the registration provisions of the statute as the equivalent of a certificate of incorporation and consequently held that the objects which a registered trade union could legitimately pursue must be ascertained from the statute itself, and that the powers which it could lawfully use in furtherance of those objects must either be expressly conferred or derived by reasonable implication from its provisions. It was therefore found that the lawful and only purposes of trade unions were to be found in the terms of the definition of the Act of 1871 as amended in 1876, namely: "The term 'trade union' means any combination, whether temporary or permanent,

for regulating the relations between workmen and masters, or between workmen and workmen or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the principal Act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade."

The other two members of the court Lord James of Hereford and Lord Shaw of Dunfermline based their decision on broad grounds of public policy in that it was contrary to the sound working of representative government that members of Parliament should be assisted upon condition that they accept to support a particular party's policy and be subject to its "whip".

The Osborne judgment was no less than a practical denial of labour's right of representation in Parliament, because we must remember that members of the House of Commons at that time were not remunerated from public funds. The decision therefore meant that the Labour Party in the House of Commons would have to find other ways and means than contributions from trade unionists to maintain their members in Parliament. In fact over sixteen Labour members of Parliament found their salaries cut off as a consequence of the decision. The feeling was that "what lay behind the Osborne judgment was a determination to exclude the influence of the workmen's combinations from the political field" (Webb p. 626).

Trade Union Act of 1913

The first act of the Asquith government was to obtain an appropriation for payment to members of the House of Commons of a salary of 400 pounds a year together with travelling expenses. It was not until 1913 however that the Trade Union Acts were supplemented by provisions, supported by Mr. Winston Churchill, as Home Secretary, designed to render inapplicable the doctrine of *ultra vires* developed in the Osborne judgment. To this end, the "statutory objects" of Trade Unions were defined. If the Registrar found that the principal objects of a trade union were "statutory objects", then it could pursue political activities, except that political contributions could be levied only in the manner prescribed by the statute.

The Act also provided for certification of unregistered trade unions. Both registration and certification entitled a trade union to all the privileges and protection of the various statutes.

The really controversial matter involved the settlement of the conditions upon which trade unions were to be allowed to levy from their members contributions for political purposes. They were: 1) that the rules or by-laws creating a political fund be approved by a majority of the members at a meeting called for the purpose;

2) that any union member could obtain exemption from contributing to the political fund by giving written notice of his objection. (This provision was later revised by the Trade Disputes and Trade Unions Act of 1927 which now requires Trade Union members to give notice of their willingness to contribute to a political fund).

The whole effect of the "legal assaults" upon labour organizations between 1901 and 1913 was therefore to obtain for them a very firm, but rather anomalous status in statute law.

This rise in status was confirmed by the Government's recognition of the trade unions, as constituent parts of the country's economic and industrial structure, at the famous Treasury Conference of February 1915, which produced the Treasury Agreements. For the duration of the war, the Unions agreed to waive the right to strike, accepted the principle of compulsory arbitration of wage disputes in the munitions industries and relinquished the entire system and network of labour standards and factory conditions,—the fruits of long years of struggle—in the trades concerned with the supply of munitions upon the condition that these standards and practices be restored after the war. These agreements were given legislative sanction by the various Munitions of War Acts beginning in 1915.

Whitley Committee

Perhaps the most significant development, during the last war, toward the permanent improvement of employer-employee relationships in Great Britain, was the implementation of the report of the Whitley Committee. In October 1916, the Government anticipated the difficult industrial conditions that would have to be faced after the war and established, under the chairmanship of Mr. J. H. Whitley (later Speaker of the House of Commons), a committee on relations between employers and employed, as a special subcommittee of Mr. Asquith's cabinet committee on reconstruction. In October 1917 the committee made its first report, expressing the opinion that "an essential

condition of securing a permanent improvement in the relations between employers and employed is that there should be adequate organization on the part of both employers and workpeople", and recommending in addition for the better organized industries the setting up of joint industrial councils on a nation-wide basis with an elaborate plan of district and local or shop councils. An active campaign was carried on by the Ministry of Labour, and in the period 1918–21 there were set up 60 such industry-wide joint councils. Although in the ensuing 20 years many of these joint bodies have disbanded, several have survived and constitute a substantial contribution to the building of that splendid framework of collective bargaining machinery now existing in Great Britain.

The Industrial Court

A piece of legislation worth mentioning in connection with the Government's attempt to solve the post-war labour problems, developed from the experience with compulsory arbitration under war conditions. It is the Industrial Courts Act of 1919, which created a permanent court to decide controversies submitted to it by the Minister of Labour with the consent of both parties, after (and only after) any existing joint machinery for settlement has failed. In 1938, the Industrial Court was handling about two cases a week. Its award, which is not binding, contains a full statement of the opposing cases and a decision, but without an opinion. Referring to the work of the Court, the report of the United States Commission on Industrial Relations in Great Britain in 1938 contains the following statement: "The absence of opinions has been occasioned by the desire of both sides in some industries to avoid the application of precedents to their disputes. The result has been to avoid, rather than to foster, the development of a body of industrial case-law." (section 52, p. 14).

Another governmental agency, the development of which was not traced in this paper, are the trade boards, constituted under the succeeding Trade Board Acts, and having power to fix minimum wages and normal working hours in industries having no effective organizations of their own for collective bargaining and where wages were unduly low.

The General Strike and the Act of 1927

Conditions which need not be described here brought on the National Strike of 1926, called off after 9 days. Its failure

was a severe set-back for the British labour movement and was followed by the passage of The Trade Disputes and Trade Unions Act of 1927 (17 and 18 Geo. V, c. 22), a statute containing extensive amendments to trade union law to which the Trades Union Congress has never been reconciled. The Hon. Ernest Bevin has called this statute "more an insult than an injury". Time does not permit a full analysis of the provisions of this the last of the major English statutes bearing upon our subject. It will perhaps be sufficient to say that it declares that in the case of an illegal strike or lock-out, a trade-union is deprived of the legal immunities which we have seen enacted to protect the activity of organized labour. The statute declares illegal any strike which (a) has any object other than, or in addition to, the furtherance of a trade dispute within the trade or industry in which the strikers are engaged; *and* (b) is designed or calculated to coerce the Government, either directly or by inflicting hardship upon the community. It would seem that the definition could be extended to include practically all sympathetic strikes on any large scale. This main feature of the Act has never been really put into effect but Trade Union leaders have always felt that it was a formidable statutory weapon against them.

Since the outbreak of the war, one of the outstanding developments in Great Britain has been the adoption of the principle of the extension of collective agreements to non-parties, a long-debated principle which has been the subject of a Bill in the British House of Commons for many years. Its adoption would mean of course a considerable degree of Government intervention, because the collective agreement to be extended must be approved and given a legal status; The Cotton Manufacturing Industry (Temporary Provisions) Act, (1934) 24 and 25 Geo. V, c. 30, is an example of that type of legislation, and so is the Road Haulage Wages Act, (1938) 1 and 2 Geo. VI, c. 44.

The Conditions of Employment and National Arbitration Order

During the war (1914-18), there had been emergency measures taken in the munitions industries to make legally binding, even upon third parties, the awards made in pursuance of collective agreements governing the majority of persons engaged in a particular trade or district (The Munitions of War Act of 1917 and The Wages (Temporary Regulation) Act of 1918). Again the exigencies of war production and the necessity of

preventing its interruption by trade disputes have led the Minister of Labour and National Service to make on July 18th, 1940, under the emergency powers granted by the Defence Regulations, the all-embracing Conditions of Employment and National Arbitration Order. It provides for the constitution of a National Arbitration Tribunal to which the Minister may, in the final analysis, refer all trade disputes for settlement, and the rate of wages and conditions of employment determined in the manner outlined in the order become part of the contract between the employers and workers to which the award relates. All trades and industries are subject to the obligation to observe what the Order defines as "recognized terms and conditions" of employment or such terms and conditions of employment as are not less favourable than the recognized terms and conditions. All strikes and lock-outs are prohibited unless and until the Minister has had an opportunity of referring the dispute for settlement. Emergency provisions though they be, the terms of this Order for extending collective agreements contain the germ of possible lasting developments in the field of labour relations law in Great Britain after the war.

Conclusion

In concluding this bare outline of the development of labour legislation in England it is important to note that there is no statute compelling trade union recognition by the employers and also, that collective agreements are not legally enforceable in the courts. The fact is that legislation to those two ends would be virtually superfluous in England, where collective bargaining is accepted as a commonplace and trade unions have become recognized constituents of the social and economic structure of the State. Collective bargaining practised as it can be in England on a nation-wide industry basis places upon the organizations involved that heavy responsibility which is so conducive to the exercise of "patience, understanding, and a desire to make and keep agreements and to achieve industrial peace". (Report of the United States Commission on Industrial Relations in Great Britain, 1938, sec. 93, p. 24).

Part II — The Law in the United States

It may be useful to preface our survey of labour relations law in the United States by stating briefly the constitutional position.

An allotment of legislative powers to the national government on the one side and to the local governments on the other is at the very root of every federal system of government. The constitution of the United States proceeded upon the principle that the powers allotted to the national government were to be those, and those only, which were required for the purposes of the collective life of the nation and contains an enumeration of those powers, among which is the power to regulate interstate commerce. No powers were expressly allotted to the states, because they were considered as continuing to enjoy those pre-existing powers which they had by their own right, and not as devolved upon them by the nation. In the States therefore rested the primary power to enact legislation affecting working conditions and the relations between employers and workmen.

In the States, the common-law restrictions upon concerted action by groups of workmen had been carried over from the English precedents. The attitude of the courts was dominated by the doctrines of conspiracy and of restraint of trade both of which had worked themselves into American labour law. In the early 19th century, several associations of workmen were held to be illegal combinations and strikes for the purpose of raising wages were declared to be criminal conspiracies. A notable change in attitude was expressed in the judgment of Chief Justice Shaw of Massachusetts in *Commonwealth* v. *Hunt*, 4 Metcalf 111 (Mass. 1842). Although said by some to have been a political decision, the court refused to accept the criminality of a combination as inherent, and proceeded to determine its lawfulness on the basis of motive and means of action. This "liberalization" of the doctrine of conspiracy, as applied in labour disputes, had become prevalent by the latter part of the century, but as a result, there was a large degree of uncertainty in the law. Although the legality of labour organizations *per se* was seldom questioned, judicial decisions turned more and more upon what could be considered permissible activities of labour unions and whether the methods they used could be deemed legal. Fine distinctions had to be drawn between "motive" and "intent", between "malice in law" and "malice in fact".

American Federation of Labour

Speaking generally, however, the individualistic philosophy of the conspiracy and restraint of trade doctrines were quite compatible with the economic environment of early American industrial relations. The Knights of Labour were in the middle

of the nineteenth century a "one big union" of Owenite inspiration, imbued with socialist and reformist tendencies, but it was not until a number of craft unions broke away in 1886 to form the American Federation of Labour that the modern trade union movement in the United States was really born. The Federation was set up as a federated body of autonomous national unions (or international unions, if they included locals in Canada), each union maintaining complete control of its own affairs. The chief function of the central organization was to assign and to maintain the jurisdictional spheres of the several unions.

Sherman Anti-Trust Act

The first and perhaps the greatest restriction upon the activities of organized labour arose from a federal statute which at the time of its enactment was thought to have no applications to labour unions: the Sherman Anti-Trust Act of 1890, amended in 1914 by the so-called Clayton Act. It declared illegal every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the states or with foreign nations, and every attempt to monopolize, or every actual monopoly of, such trade or commerce. The Act carried severe penalties and granted power to the federal district attorneys, under direction of the Attorney-General, to institute proceedings in equity to restrain violations of the law. Provision was also made that any person injured in his business or property by any action forbidden under the act might sue for and recover three times the damages sustained, plus the costs of the suit, including a reasonable attorney's fee.

Loewe v. Lawlor and The Clayton Act

In *Loewe* v. *Lawlor*, 208 U.S. 274, 293 (1908), the historic Danbury Hatters' case, the federal Supreme Court construed the statute to apply to the activities of labour organizations that directly and substantially affect the "free flow of commerce between the states". The purpose of preventing an employer from engaging in interstate commerce, by means of a strike affecting the production of goods before they entered interstate transportation and a boycott after they had reached their destination, was sufficient, the Court ruled, to make members of the combination guilty of violation of the act. Again in *Gompers* v. *Bucks Stove and Range Co.*, 221 U.S. 418 (1911), the

Supreme Court decided, among other things, that a boycott, when effecting a substantial reduction of the movement of goods in interstate commerce, constituted a violation of the Sherman Act. This construction of the Act brought agitation for legislation to exempt labour from its operation and in 1914 there was enacted the Clayton amendment declaring that nothing in the Anti-Trust Act should be construed to forbid the existence and operation of labour organizations, or to forbid individual members thereof from "lawfully" carrying out their legitimate objects. The Act also declared in section 6: "Nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws". Another important section was section 20 which was believed, until it had been construed by the courts, to have placed drastic restrictions upon the issuance of injunctions.

The Duplex Printing Case

But, as it was finally construed by the Supreme Court, the Clayton Act improved hardly at all the legal position of labour combinations and their individual members. "There is nothing in section 6," the Court declared in *Duplex Printing Press Company* v. *Deering*, 254 U.S. 443, 469 (1921), "to exempt a trade union or its members from accountability where they depart from its normal and legitimate objects and engage in an actual combination or conspiracy in restraint of trade. And by no fair or permissible construction can it be taken as authorizing any activity otherwise unlawful, or enabling a normally lawful organization to become a cloak for an illegal combination or conspiracy in restraint of trade as defined by the anti-trust laws".

In other words, the problem was one of reconciliation of rights of trade unions as lawful organizations with the maintenance of a public policy of free interstate trade.

Down through a number of cases, the first Coronado Case (*United Mine Workers of America* v. *Coronado Coal Company*, 259 U.S. 344) in 1922,—which incidentally had held that a labour union, guilty of violation of the Sherman Act, could be sued as an entity,—the second Coronado Case (*Coronado Coal Co. et al.* v. *United Mine Workers of America et al.*, 268 U.S. 295, 310) in 1925, the Bedford decision (*Bedford Cut Stone Co.* v. *Journeymen Stone Cutters' Association of North America*, 274 U.S. 37) in 1927, the Supreme Court used two general rules in

determining whether the Sherman Act applied to concerted action by workmen: 1) that intent to restrain interstate commerce must have been proved, and 2) that the restraint or reduction of such commerce must have been unreasonable and not merely incidental. However, the criteria of intent and of reasonableness are so uncertain and elastic that the legal status in interstate industries of strikes and boycotts, the weapons or direct action available to labour unions, remains still one of the unsettled problems of American labour law.

THE INJUNCTION

No review of American labour law can be complete without particular mention being made of the injunction which for so many years has been the favourite legal process in the United States against labour union activities. The use of the restraining order in labour disputes was, of course, not unknown in Great Britain before the passage of the Trade Disputes Act of 1906, where probably the first reported case in which it was applied was *Springhead Spinning Co.* v. *Riley*, L.R. 6 Eq. 551 in 1868. But such use was never on the wide scale made of it in the United States from about 1880. The great efficacy of the injunction as a restrictive measure on labour union activities was first demonstrated and advertised in the Pullman strike of 1894.

> Injunctions have been issued in the United States to prohibit unlawful boycotts, unlawful strikes, unlawful picketing, damage to physical property, restraint of interstate commerce, the spending of strike funds when the strike has been for an unlawful purpose, and the holding of meetings; to prevent organizers from disturbing a closed non-union shop where non-union contracts are in use, and also to prevent inciting a strike when the complainant alleges (and the court agrees) that the strike would be of an unlawful character; and finally, in a few isolated cases (though generally at the risk of being reversed by higher courts) to restrain workers from leaving their work, as in strikes on the railroads, street car systems, and other public utilities. The injunctions have ordinarily named specific parties—usually strike leaders and those guilty of violations and intimidation—sometimes labour unions as entities and, in the sweeping blanket injunction, 'all persons whomsoever'. (Government and Economic Life, Vol. I, Publication No. 79, The Institute of Economics of The Brookings Institution).

Labour's campaign for emancipation from the use of the injunction in labour disputes resulted in the anti-injunction

provisions of the Clayton Act, but section 20 declared that no injunction could be granted in a dispute "concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property or to a property right, of the party making the application, for which injury there is no adequate remedy at law . . . . ." And a second paragraph attempted to confer immunity from injunction in the case of strikes, boycotts and persuasion, when the actions were peaceful and lawful.

There are several obvious uncertainties in these enactments and the Supreme Court finally interpreted them, in *American Steel Foundries Co.* v. *Tri-City Trades Council*, 257 U.S. 184 (1921), in the *Duplex Printing* case and in the second *Coronado* case, as adding little to the rights and immunities of workers when acting in concert.

NORRIS-LAGUARDIA ACT OF 1932

The most far-reaching federal anti-injunction legislation is the Norris-LaGuardia Act of 1932. It deprives any court of the United States, *i.e.* those which are of congressional creation, of jurisdiction to issue temporary or permanent injunctions in any labour dispute except upon a finding, based upon evidence heard in open court, of the following facts :

1. THAT unlawful acts have been threatened and will be committed unless restrained, or have been committed and will be continued unless restrained;
2. THAT substantial and irreparable injury to complainant's property will follow;
3. THAT as to each item of relief granted greater injury will be inflicted upon the complainant by denial of relief than will be inflicted upon the defendants by the granting of relief;
4. THAT the complainant has no adequate remedy at law; and
5. THAT the public officers charged with the duty to protect the complainant's property are unable or unwilling to furnish adequate protection.

Moreover, the requirement as to the complainant having no other remedy at law is strengthened by the provision in section 8 that he must have made all reasonable efforts to settle the dispute by negotiation and by utilization of any existent and available government machinery of arbitration. Then again, section 4 gives a list of labour dispute activities that no federal court has jurisdiction to restrain "whether done singly or in concert".

By the end of 1938, 22 states had anti-injunction laws on their statute books, most of them modelled closely after the Norris-LaGuardia Act.

In *Lauf* v. *E. G. Shinner and Co., Inc.*, 303 U.S. 323 (1938) the Supreme Court overruled a district court which had granted an injunction restraining picketing without having first made all the findings expressly required by the Act. There is therefore reason to suppose that the main provisions of the Act will be upheld.

ANTI-UNION CONTRACTS

Another interesting aspect of labour relations law in the United States deals with the use made by employers of what was commonly called the "yellow dog", or anti-union contract. In England it was known as the "iron clad" or "the document". In 1917 the Supreme Court, in the Hitchman case (*Hitchman Coal and Coke Co.* v. *Mitchell*, 245 U.S. 229) declared that all effort to organize workers who were under oral contract not to join a trade union was equivalent to inducing breach of contract, and as such ground for issuance of an injunction against the union organizers.

A federal statute, the Erdman Act, had previously attempted in 1898 to prohibit the anti-union contract among carriers engaged in interstate commerce, but in the *Adair* case of 1908 (*Adair* v. *United States*, 208 U.S. 161) the Supreme Court decided that it constituted a violation of the freedom of contract clause of the constitution. This view was reiterated in 1915 in *Coppage* v. *Kansas*, 236 U.S. 1, when State legislation making it a criminal offence to require employees to sacrifice union affiliation was held unconstitutional.

The Norris-LaGuardia Act also contains a prohibition of issuance of injunctions to protect anti-union contracts, and the National Labour Relations Act (the so-called Wagner Act), has in effect out-lawed such contracts by providing that "it shall be an unfair labour practice for an employer . . . . . by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labour organization" (section 8 (3)). This provision was among those sustained by the Supreme Court in the cases decided in April 1937: *N.L.R.B.* v. *Jones and Laughlin Steel Corp.*, 301 U.S. 1 (1937); *N.L.R.B.* v. *Fruehauf Trailer Co.*, 301 U.S. 49 (1937); *N.L.R.B.* v. *Friedman-Harry Marks Clothing*

Co., 301 U.S. 58 (1937); *Associated Press* v. *N.L.R.B.*, 301 U.S. 103 (1937); *Washington, Virginia and Maryland Coach Co.* v. *N.L.R.B.*, 301 U.S. 142 (1937).

NATIONAL LABOUR RELATIONS ACT OF 1935

The Wagner Act of 1935 is without doubt the most important statute in the field of labour relations law ever enacted in the United States. It applies to industries affecting interstate commerce, with the exception of agriculture, and employments covered by the Railway Labour Act, and it declares a number of "rights of workers" with respect to self-organization and collective bargaining. The National Industrial Recovery Act of 1933 had declared, it is true, that workers "could organize and bargain collectively through representatives of their own choosing . . . . . free from interference, restraint, or coercion of employers . . . . ." but the Wagner Act went much further in defining for the protection of those rights certain so-called "unfair labour practices".

The National Labour Relations Board, a quasi-judicial and administrative body, is empowered to assist employees in the selection and designation of representatives for purposes of collective bargaining, to determine the appropriate unit for such bargaining, to investigate alleged infringements upon the workers' rights, to order cessation of "unfair labour practices" and such affirmative action as may be necessary to effectuate the purposes of the Act.

The Board has the legal machinery to prevent the commission of the following violations or "unfair labour practices":

(1) interference with, restraint, and coercion of employees in the exercise of the rights to unionize and to bargain collectively;
(2) domination of a labour union or interference with the formation or administration of a labour union by an employer or his financial contribution or other support to a labour union;
(3) discrimination against employees because of union membership;
(4) the discharge or other discrimination against an employee because he has filed charges or given testimony under the Act;
(5) the refusal to bargain collectively with the representatives of the employees designated by the majority of employees in an appropriate bargaining unit.

A very considerable body of precedent has already been built up by the National Labour Relations Board, a practice contrary to that of the Industrial Court in England.

One of the major problems with which the Board has had to deal concerns the determination of the appropriate bargaining unit. In October 1935, the American Federation of Labour at its annual convention rejected by a vote of 18,000 to 10,900 a motion to recognize the right to workers to organize in industrial unions. On November 9th, 1935, the Committee for Industrial Organization (C.I.O.) was formed by certain American Federation of Labour unions to promote the organization by industry of workers in the mass production and unorganized industries. Where possible, the Board has endeavoured to avoid the craft versus industrial union controversy. In its Third Annual Report (1939), pp. 156–197, it has stated that in its decisions as to the proper bargaining unit it has been guided by: (1) the history of labour relations in the industry; (2) the present form of self organization; (3) the eligibility to membership in labour organizations; (4) the desire of employees as to inclusion in a particular unit; (5) mutual interest arising from similarity of work, wages, working conditions, skill, or similar causes; (6) functional coherence and interdependence; (7) geographical and organizational arrangement of the employer's business.

In fact, though, the Board, under the constant pressure of the two large labour groupings, has had to resort in many of the important disputes to employee elections as a method of determining the appropriate bargaining unit.

Assisted by the federal circuit courts of appeals the Board has the powers to enforce its decisions.

Referred to by labour as its Magna Carta, the National Labour Relations Act has affected the whole pattern of the American labour movement, by fostering the growth of trade union membership and propagating the technique of collective bargaining on the wide industrial scale of a great manufacturing nation. Although violent inter-union struggles for power have added their bitterness to the usual difficulties of employer-employee relations, the United States may be moving steadily in the all-important process of educating both industrial management and organized labour in the art of determining working conditions and settling their conflicts through collective bargaining.

Part III — The Law in Canada

Constitutional Jurisdiction

Perhaps to a much greater degree than in the United States, the development of labour legislation is dominated in Canada by the division of jurisdiction between the federal and provincial legislatures. Little, if anything, need be said about the state of the law prior to Confederation. Although both British and American trade unions had established branches in Canada as early as the middle of the 19th century, the relative absence of industrial activity, until the implementation of Sir John MacDonald's National Policy, had made it unnecessary to legislate upon the status of workmen's organizations.

To state it in rough terms, the Dominion Parliament in order to deal effectively with labour matters under the British North America Act must do it auxiliarily to a proper exercise of jurisdiction upon other matters, e.g. railways, shipping, criminal law, the implementation of treaties, public works. Provincial control rests upon jurisdiction over "property and civil rights". It will therefore become necessary to carry this outline into the provincial statutes.

Federal Trade Unions Act of 1872

We have seen that trade unions were for the first time given legal status in England by the Act of 1871. A Canadian statute patterned after it was passed in 1872 and is now the Trade Unions Act, R.S.C. 1927 ch. 202. Expressly applicable only to unions registered in accordance with its provisions, this statute has been put to very little practical use, there having been very few registrations and its constitutional validity having been seriously questioned by the courts on many occasions (*Duff J. in Chase* v. *Starr*, [1924] S.C.R., at p. 507; *Raney J. in Polakoff* v. *Winters Garment Company* (1928), 62 O.L.R. at p. 54; Middleton J.A., in *Amalgamated Builders' Council* v. *Herman* [1930] 2 D.L.R., at p. 513). It did however effectively relieve registered trade unions from the taint of criminality and their members from liability to prosecution for conspiracy; but even that provision became superfluous when sections 497 and 590 were introduced into the Criminal Code.

The agreements and trusts of registered unions, save certain exceptions, are enforceable and they may sue and be sued concerning their property.

British Columbia Trade-Unions Act

British Columbia was the first province to enact a statute dealing with trade unions. An injunction in the terms of the Taff Vale decision and an award of $12,500 damages, receivership and costs having been granted against the Rossland Miners' Union, for picketing activities, a Bill was passed in 1902 and remains on the statute-books as The Trade-unions Act, R.S.B.C. 1936, ch. 289. It makes associations of workmen and their officers immune from civil liability for the consequences of a wrongful act done in connection with a labour dispute, but only if the members of the union or its executive committee did not concur in or authorize the commission of the wrongful act. It also confers a certain freedom from liability in the event of acts of peaceful persuasion, and for the publication of information concerning a labour grievance. This statute, however, goes far short of the English Trade Disputes Act of 1906 which, as we have noted, was designed to free trade organizations from the disabilities of the doctrine of civil conspiracy and effectively exempted them from all manner of actions of tort.

Manitoba Industrial Conditions Act

In 1919, the Manitoba Legislature enacted the Industrial Conditions Act which provided for the appointment of a Joint Council of Industry to settle labour disputes. The real significance of this statute, however, arose from the appended schedule containing the four rules of the English Act of 1906. The aftermath of Winnipeg's general strike made it that the schedule was not declared in force, and in 1920 it was replaced by three sections declaring the right of employers and employees to organize for any lawful purpose and the right to bargain collectively or individually, provided that any dispute as to the method and terms of such bargaining should be submitted to the Joint Council of Industry. The only substance of such declarations was perhaps in the fact that in *Chase* v. *Starr* [1923] 3 W.W.R. at pp. 513, 522 and 542 (Perdue, C.J., and Dennistown and Trueman JJ.), the Court of Appeal referred to the Act as manifesting the public policy of Manitoba towards trade unions and collective bargaining.

Quebec Professional Syndicates Act

The Quebec legislature enacted a comprehensive statute in 1924: the Professional Syndicates Act. It is necessary when examining this legislation to bear in mind that, outside the

scope of criminal law, Quebec is not a common law province. The Act empowers the Provincial Secretary to authorize the incorporation of an association of twenty or more persons in a trade or related trades as a professional syndicate the object of which must be "the study, defence and promotion of the economic, social and moral interests of the profession". Once constituted the corporation enjoys civil rights. Only British subjects may be members of the executive committee and two-thirds of the members of the syndicate must be British subjects,—provisions which are obviously meant to hamper the establishment of local branches of the international unions as syndicates governed by the Act.

The most remarkable feature of this Act, however, lies in the fact that for the first time collective agreements are given a definite legal standing under certain conditions. Neither in the English common law nor in the French civil law, are collective labour agreements by themselves binding contracts enforceable as an obligatory relationship between two parties. Statutory provisions to that effect were introduced in France in 1919 and 1920. As a matter of fact, the English Act of 1871, although it declared such agreements to be lawful, made it clear that they were not to be enforced in the Courts.

The Quebec statute declares that a collective agreement fulfilling its conditions, shall bind the individual members of the bodies of employers and employees who are parties to it and that they shall have available all the legal recourses established for the enforcement of the obligations created by such agreement.

Other Provincial Trade-Union Legislation

In 1937 and 1938 there was considerable legislative activity in the legislatures, most of which was designed to safeguard to a greater or less degree the right of workmen to unionize and to bargain collectively, and to protect workmen from interference with those rights.

British Columbia enacted the Industrial Conciliation and Arbitration Act, Statutes of 1937, ch. 31; *Alberta*, the Industrial Conciliation and Arbitration Act, Statutes of 1938, ch. 57; *Saskatchewan*, The Freedom of Trade Union Association Act, Statutes of 1938, ch. 87; *Manitoba*, The Strikes and Lockouts Prevention Act, now R.S.M. 1940, ch. 200; *Quebec*, amendments to the Collective Labour Agreement's Act, Statutes of 1938,

ch. 52; *Nova Scotia*, The Trade Union Act, Statutes of 1937, ch. 6; and *New Brunswick*, The Labour and Industrial Relations Act, Statutes of 1938, ch. 68.

The Provinces of Ontario and Prince Edward Island alone have remained inactive.

Section 502 A was added to the Criminal Code in 1939 declaring it to be an offence for any employer to refuse to employ, or to dismiss from employment any person because of his membership in a lawful trade union, or to use intimidation to prevent a workman from belonging to a trade union, or to conspire with other employers to do either of such acts.

Time does not permit an analysis of all these statutes. They undoubtedly mark a great forward step in the development of Canadian labour legislation, perhaps as a consequence to some extent of the passage of the National Labour Relations Act in the United States. The fact is, however, that such fundamental matters as the right of workmen to organize and to bargain collectively have received quite different treatment in the various provinces and the important gap is the absence of enforcement provisions.

Legal Status of Trade Unions

The substantial question of the real legal status of an unregistered (*i.e.* under the Federal Statute) or unincorporated trade union (a few unions having obtained corporate status under various Companies' Acts or by special legislation), whose main purposes are in restraint of trade, still remains undefined in the common law provinces. Probably by representative action properly framed it could maintain actions in the courts on matters not relating to its main objects, but the fact remains that, although there are statutes in most of the provinces directed to the encouragement of the unionization of workmen for the purpose of effectual collective bargaining, trade unions with rules for restraining trade are perhaps still unlawful at common law to the extent that their agreements and trusts are unenforceable.

Liability in Tort

We have seen that the liability of trade unions in tort has been definitely eliminated by statute in Great Britain. In Canada, with the exception of the limited immunity enacted in British Columbia and the special case of Quebec, most trade

unions would appear on this point to be in the same position before the law as are other voluntary societies. Their liability might differ greatly as between the various provinces, and in some cases it would depend, under the rules governing representative actions (*Barrett* v. *Harris*, 51 O.L.R. at p. 491), upon the very existence of a common fund available to meet a condemnation in damages. This is a situation which is not conducive to the creation of responsibility in Trade Union leadership.

There is no question, of course, of the liability of individual members of a trade union for their own wrongful acts.

In the Province of Quebec, where the representative action is unknown (*Society Brand Clothes Ltd.* v. *Amalgamated Clothing Workers of America* [1931] 3 D.L.R. 361), there is no procedural restriction to the liability of any trade union since the passage of a statute(an Act to Facilitate the Exercise of Certain Rights, ch. 96) in 1938.[1]

Law of Picketing

In the enforcement of their demands or of what they consider to be their rights under legislation or under an agreement, workmen have practically only one avenue of action, the calling of a strike. To make a strike effective, the principal method employed is picketing, *i.e.* the placing of strikers at or near the place of employment for the purpose of informing the public and workmen of the fact that a strike is in progress, to persuade them to join the strike and to prevent them, if necessary, from going to work and breaking the strike. Our statutory law relating to picketing is found in section 501 of the Criminal Code enacted first in 1872, later patterned upon the English Conspiracy and Protection of Property Act of 1875 with its "peaceful picketing" clause. In 1892 when the criminal law was codified, what is now paragraph (g) of the section was omitted and the so-called "peaceful picketing" clause was not restored until 1934.

There is probably no graver source of dissatisfaction to organized workmen in Canada than the state of our law of picketing. From the point of view of the lawyer, the section would seem to allow much too wide latitude for interpretation and as a matter of fact the decisions of the Courts have been remarkably inconsistent. In the opinion of a learned commentator, Professor Jacob Finkelman, "the judges appear to

[1] But that statute does not confer the right to bring suit (International Ladies Garment Workers Union et al v. Rothman, [1941] S.C.R. 388).

flutter from precedent to precedent and often become involved in a web of contradictions so that it is almost impossible to extract lucid legal principles from their decisions" (The University of Toronto Law Journal, vol. 2, p. 68).

His conclusion is that in the criminal sphere "peaceful picketing" only is legal when it is for the purpose of communicating information or persuading workers to join a strike, subject however to the limitation that the picketing does not constitute a nuisance or other tortious act.

I shall not attempt to state what on its civil side is the law of picketing in Canada, except to say that it too is in great need of clarification.

When, in 1934, Parliament restored to section 501 of the Criminal Code the clause permitting the communication of information or, as it is called, the "peaceful picketing clause, the option which the accused expressly had until then to be tried by a jury was eliminated. I should think that that option would now be exercisable by the Crown alone. In England there seems to be no doubt that a person accused before a court of summary jurisdiction of an offence under the "picketing" section of the Conspiracy and Protection of Property Act of 1875, as amended, has an unfettered and absolute right to be tried by a jury. (*Rex* v. *Mitchell*, [1913] 1 K.B. 561). The situation in Canada can only give rise to discontent among workingmen.

In their efforts toward the preservation of industrial peace, most of the Governments in Canada have spared no efforts in legislating for the settlement of labour disputes by investigation and conciliation. (There are no provisions in Canada for compulsory arbitration). The result is a certain amount of overlapping of conciliation services. There are two Federal statutes to be mentioned: The Conciliation and Labour Act, R.S.C. 1927 ch. 110 and the Industrial Disputes Investigation Act, R.S.C. 1927 ch. 112. Under the first statute, the Minister of Labour maintains a permanent staff of conciliation officers, but, except in the case of railway disputes, he cannot intervene on his own motion and impose their services or the process of amicable settlement in a labour dispute.

The Industrial Disputes Investigation Act

The Industrial Disputes Investigation Act passed in 1907 was first intended to apply to mines, transportation and public utilities not all of which were under Dominion jurisdiction.

Its essential feature is compulsory postponement of a strike or lock-out until a board of conciliation and investigation has had the opportunity of functioning in accordance with the procedure outlined in the Act. In 1923, a board was appointed to deal with a dispute between the Toronto Electric Commissioners and their employees. When the Commissioners refused to nominate a representative on the board, one was appointed by the Minister of Labour. The Commissioners then challenged the validity of the statute in its application to employees of a provincial or municipal authority and the point was finally settled against the Dominion by the Privy Council (*Toronto Electric Commissioners* v. *Snider* [1925] 2 D.L.R. 5).

In March, 1925, the Act was amended: 1) to restrict its application to labour disputes in the industries and undertakings clearly within Dominion jurisdiction, and 2) to permit its application to disputes within provincial jurisdiction on the enactment of enabling provincial legislation. Following these amendments, all the legislatures but that of Prince Edward Island enacted legislation bringing the Federal statute into operation within their jurisdictions. British Columbia, however, has since repealed its enabling legislation.

The fact is that the record of conciliation under the Industrial Disputes Investigation has been a very good one. The fundamental principles of the statute have been the subject of study by various countries and have been embodied in their legislation.

By Order in Council P.C. 3495 dated November 7th, 1939, under the War Measures Act (R.S.C. 1927, ch. 206), the provisions of the Act have been made applicable to all war industries and defence projects and provision has also been made for the setting up of an Industrial Disputes Enquiry Commission to effect settlements without recourse to a board of conciliation and investigation.

Extension of Collective Labour Agreements

Because of its necessary relation to the degree of organization of labour, the extension by statute of the terms of a collective labour agreement is a matter of considerable importance to the subject of this paper. Interesting experiments have been made in England, as I have indicated: the first in the depressed cotton industry in 1934 and continued in effect from time to time, and the second in a relatively new business, that of road transportation. Essentially, a collective agreement is a freely

negotiated voluntary bargain between employers and organized labour unions. Except in so far as conciliation services may assist in the conclusion of the agreement, there is no governmental intervention at any point and the agreement as such is not a legally enforceable document. The kind of legislation which we are considering now extends the operation of a collective agreement to all employers and employed in the industry within a given territory, when it is deemed by proper authority that the actual parties to the agreement are sufficiently representative of that industry.

The Province of Quebec is the only Canadian province to provide by statute that wages and hours of labour which were agreed upon by the representatives of employers and organized employees in an industry for a given area could be made by order-in-council legally binding on all employers and employees for the specified area. Subsequently, Ontario, Alberta, Saskatchewan, Nova Scotia and New Brunswick enacted legislation similar in some respects, but differing from the Quebec statute in certain fundamental features.

Quebec Collective Labour Agreements Act

The distinctive merit of the Quebec Collective Labour Agreements Act (now ch. 38 — Statutes of 1940) is that it is predicated upon those prerequisites of an ordered industrial economy under modern conditions : the organization of labour and collective bargaining, as is shown by the definition it gives of a collective agreement in section 1 (d): "any arrangement respecting working conditions entered into between persons acting for one or more associations of employees, and an employer or several employers or persons acting for an association or several associations of employers".

Although the individual employee obtains a definite personal right to sue for the recovery of the wage fixed by the order-in-council or decree, as it is called, the Act really confers upon the industry itself the duty and power of enforcement. Section 16 of the Act declares:

> The parties to a collective agreement rendered obligatory must form a parity committee (or joint committee) to supervise and ensure the carrying out of the decree.

To that committee, the Minister of Labour may add such members, not exceeding four, as are submitted to him in equal number by the employers and employees who are not parties

to the agreement, but who are bound by its terms. The committee becomes a corporation and may enter suit to exercise all rights of employees.

An examination of the detailed provisions of this statute indicates that it is intended to introduce a large measure of self-government in industry (*i.e.* upon both management and labour), regarding wages, hours and other matters concerning apprentices and the classification of workmen.

Industrial Standards Acts

Under the various Industrial Standards Acts, on the other hand, there is no recognition either of trade unions or of collective agreements as such. Upon the petition of representatives of employers or employees in any industry within a designated zone, the Minister may call a conference of representatives of employers and employees, at which a schedule of wages and hours and days of labour is agreed upon. The Lieutenant-Governor in Council may then declare such schedule to be in force within the designated zone and to be binding upon the employers and employees in the industry referred to. In most of the provinces, the actual enforcement of the schedules is left to the governmental authority charged with the administration of the act, although the Minister may establish a joint advisory committee to assist in carrying out the provisions of the statute. Schedules run during the pleasure of the Lieutenant-Governor in Council or for a period not exceeding one year. They can be amended, without a new conference, by an Order of the Industry and Labour Board concurred in by the Advisory Committee.

This type of enactment for the determination of minimum conditions of employment is similar to the provisions of the British Trade Board Acts of 1909 and 1918 which were primarily designed to supplement the inadequacy or the absence of collective bargaining machinery in certain industries.

The scope of this paper does not permit more than a mere reference to the fact that there is in addition to these statutes a considerable body of legislation in Canada concerned with the fixation of minimum wages. Two trends seem to be apparent: the extension of minimum wages to male workers and also to industries and trades where wages have not necessarily been unduly low. The effectiveness of all these regulations and of the Industrial Standards legislation depends largely upon the

efficiency shown in their administration and enforcement. I am not competent to state what improvements should be made in the field of enforcement and administration, but there was a noteworthy sign of the desire to promote higher standards when the Canadian Association of Administrators of Labour Legislation was established in 1938. Officials of the various Labour Departments in Canada have been meeting annually ever since.

But in the final analysis, all of this regulatory mechanism leaves absolutely untouched a great bulk of workmen, the thousands who are employed in the mass production and metal industries. We find specialized service trades like the barbers and the skilled trades (plumbers, bricklayers, etc.) fairly well covered by wage schedules and agreements, but the standard of livelihood of most of the unskilled and semi-skilled labour is still without legal protection; and because in the past it has had no place in the craft unions, and has practically no organized strength, it has not been able to protect itself through collective bargaining.

Emergency Wartime Legislation

This is, of course, an incomplete statement at this moment, the Federal Government having shown (if I may say so) commendable sagacity in its drafting of emergency wartime labour legislation. There is in the Dominion statute-book an Act called The Fair Wages and Hours of Labour Act of 1935 (chapter 39), restricted in its scope to works directly connected by contract, subsidy or otherwise with the activity of the Government of Canada, and rather oblivious of the practice of collective bargaining. This Act is manifestly insufficient to carry out the declared wartime labour policy of the government which was to assure freedom to the institutions and practices of collective bargaining and thereby, maintain labour organizations in the exercise of their legitimate functions (P.C. 2685—June 19th, 1940). On December 19th, 1940, Order in Council P.C. 7440 was passed to establish a uniform wartime wage policy for the guidance of Boards of Conciliation and Investigation appointed under the Industrial Disputes Investigation Act, the purview of which, as I have said was extended by P.C. 3495 to all war industries. It was later amended on June 27th, 1941 by P.C. 4643. It provides that the highest wage rates generally prevailing and normally established for the different occupations in any given establishment during the period 1926–29 or any higher rates established thereafter but before the date of the

Order in Council (December 16, 1940), shall be accepted as fair and reasonable unless they are shown to be unduly low or subnormal. Such fair and reasonable rates may be supplemented by a separate flat bonus, uniform for all workers, based upon the cost of living and calculated to protect the worker against increases in the cost of basic necessaries of life.

But these regulations are temporary and are framed to meet wartime conditions.

I. L. O. Conventions

In concluding this review of some of the aspects of labour law in Canada, it must be noted that, although Canadian workers enjoy, at least at this moment, higher standards than the workers of many other countries, Canada is, according to Professor A. E. Grauer who prepared a comprehensive survey on the subject for the Royal Commission on Dominion-Provincial Relations, "one of the backward countries" in the matter of labour legislation. For more than twenty years Canada has been a member of the International Labour Organization, yet, according to a chart issued by the Organization in 1938, Canada had only ratified 4 of the conventions designed to establish uniform labour standards throughout the world. Afghanistan and Liberia were the only countries who had ratified less than that number. Great Britain stood near the top of the list with 30 ratifications. To give effect to these treaties would require legislation which it is not within the competence of the Parliament of Canada to enact (*Attorney-General for Canada* v. *Attorney-General for Ontario* [1937] A.C. 326), and which of course the provinces are under no legal obligation to enact. Lord Atkin, speaking for the Privy Council, described the situation in the following terms (case cited at p. 353): "It must not be thought that the result of this decision is that Canada is incompetent to legislate in performance of treaty obligations. In totality of legislative powers, Dominion and Provincial together, she is fully equipped. But the legislative powers remain distributed, and if in the exercise of her new functions derived from her new international status Canada incurs obligations, they must, so far as legislation be concerned, when they deal with Provincial classes of subjects, be dealt with by the totality of powers, in other words by co-operation between the Dominion and the Provinces".

Little or no serious effort appears to have been made to encourage the provinces to take such action upon the subject

matters of the Conventions as would place the Dominion in a position to ratify them.

The present situation is indeed entirely unsatisfactory and when the time comes the Dominion and the provinces together should decide how International Labour Conventions are to be implemented. It is to be hoped that the Canadian Association of Administrators of Labour Legislation will be an important step in that direction.

Our present relatively high standards should not make us forgetful of the fact that our social economy is still that of an immature industrial country whose experience in the stress of the decade which preceded the war is one of which we have no reason to be proud.

The conclusion to which one is led by a comparative examination of the status of organized labour in Great Britain and in the United States and Canada is a rather paradoxical one. While in fact in Great Britain labour is organized to a very great extent and there is also a wide and experienced practice of collective bargaining, there has never been a statute enforcing trade union recognition or preventing interference with the organization of workmen nor has there been a statute compelling collective bargaining. While in the United States and in Canada, the Wagner Labour Relations Act and several provincial statutes declare in explicit terms that workmen have the right to organize and to bargain collectively, yet trade unionism and collective bargaining, the one being the inevitable complement of the other, are still far from being accepted as the commonplace features of industrial relations which they have been in Great Britain now for so long a time. We are in effect attempting by statute to lift our labour relations to the plane which they have attained in Britain by voluntary and free action. We have perhaps overlooked the fact that in England the basic condition which made possible the development of a sound and responsible labour union movement was that it was eventually permitted to organize in full freedom from interference, and in the enjoyment of the immunity, given by The Trade Disputes Act of 1906, from all actions in tort and from the liability flowing from the common law doctrines such as civil conspiracy, and inducing breach of contract which still underlie labour law in the United States and in Canada.

In this period of fundamental change in economic conditions, a full practical recognition of in particular the second of the essential principles enunciated in the preamble to the 13th part of the Treaty of Versailles, governing the establishment of the International Labour Organization, a body whose origin dates back to 1890, is a purpose which should engage the earnest attention of all who are concerned with the public welfare. And it is perhaps, Mr. Chairman, not inappropriate to remind Canadian lawyers that Canada as a High Contracting Party, "moved", as the Preamble reads, "by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world", agreed to the following among other general principles :

1. The guiding principle that labour should not be regarded merely as a commodity or article of commerce;

2. The right of association for all lawful purposes by the employed as well as by the employers.

3. The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country.

CONCLUSION

As a conclusion to this inadequate comparative survey of the law governing the status of organized labour, I would like to submit that the following matters could well be considered with the view of improving Canadian legal standards in the light of those principles:

(1) the clarification of the legal status of trade unions from the point of view of their liability to be sued, of their right to sue, and, in the common law provinces, of the doctrine of restraint of trade. An attempt should be made to end in this country that "peculiar condition of trade union law" to which the Chief Justice of Canada referred in *Chase* v. *Starr* [1924] S.C.R. 495 at p. 507. To that purpose the Commissioners on Uniformity of Legislation in Canada could perhaps be asked to examine the federal Trade Union statute and the various provincial enactments which have been enumerated with the view of drafting a model Act which would bring the legal status of organized labour in Canada to what it is in England, particularly under the provisions of the Trade Disputes Act of 1906;

(2) the setting up of a Labour Court or Labour Relations Board. The Federal Government could well consider the advisability of legislation, under its wartime emergency powers, to give practical effect to the exhortation contained in Order in Council P.C. 2685 (June 19th, 1940) concerning the maintenance of the freedom of the institutions and practices of collective bargaining. The Court or Board should in particular have discretionary powers, within defined limits, to recognize or to refuse to recognize the bargaining status of a labour organization in a given case and it should also have the effective means of preventing "unfair practices" (to use the expression of the Wagner Act) of both employers and labour.

(3) the enactment of rules defining the conditions under which injunctions may be granted in labour disputes. An indispensable corollary to the right of association among workmen is the freedom to promote the objects of their association within clear and unmistakable limits. There is perhaps no graver cause of genuine labour discontent and consequently of irresponsible agitation than the injunctions issued to restrain picketing or some mode of action or other designed by labour unions to promote what they consider to be their legitimate purposes. Very often an interim order granted *ex parte* is sufficient to defeat the objects which the workmen want to achieve. Very serious consideration should be given of the principles of the Norris-LaGuardia Act and to their introduction into our labour legislation;

(4) trial by jury in picketing cases. Section 501 of the Criminal Code should be amended so as to make it clear that the person accused in picketing cases has a right to a trial by jury;

(5) the implementation of I.L.O. conventions. Steps should be taken immediately after the war to obtain Dominion and Provincial agreement upon a plan which would enable Canadian legislative labour standards to be brought into line with those of the conventions adopted by the International Labour Organization.

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