

**REPORT OF A HEARING BEFORE
THE COMMITTEE ON THE
JUDICIARY OF THE HOUSE OF
REPRESENTATIVES, MARCH 23.
1900**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649367313

Report of a hearing before the Committee on the Judiciary of the House of Representatives,
March 23. 1900 by Various

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

VARIOUS

**REPORT OF A HEARING BEFORE
THE COMMITTEE ON THE
JUDICIARY OF THE HOUSE OF
REPRESENTATIVES,
MARCH 23. 1900**

REPORT

265

OF A

U. S. Congress, 2d Session
HEARING BEFORE THE COMMITTEE ON THE JUDICIARY
OF THE HOUSE OF REPRESENTATIVES

MARCH 23, 1900,

ON THE BILL "TO LIMIT THE MEANING OF THE WORD 'CONSPIRACY,'
AND ALSO THE USE OF 'RESTRAINING ORDERS AND INJUNC-
TIONS,' AS APPLIED TO DISPUTES BETWEEN EMPLOYERS
AND EMPLOYEES IN THE DISTRICT OF COLUMBIA
AND TERRITORIES OR ENGAGED IN COMMERCE
BETWEEN THE SEVERAL STATES, DISTRICT
OF COLUMBIA, AND TERRITORIES,
AND WITH FOREIGN NATIONS."

DECEMBER 20, 1900.—Ordered to be printed, to accompany S. 4233.

THE LIBRARY
OF THE
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON:

GOVERNMENT PRINTING OFFICE.

1900.

HJ 7219
U.S.A.
1900

OF CONGRESS
THE LIBRARY

U.S. T. Ser. 2, 2/20/07
81 Oct 30 1907

CONSPIRACIES AND INJUNCTIONS.

COMMITTEE ON THE JUDICIARY,
Friday, March 23, 1900.

The Committee on the Judiciary this day met, Hon. George W. Ray, chairman, presiding.

The CHAIRMAN. We agreed to give a hearing this morning to Mr. Gompers, who is to be here, and some other gentlemen who desire to be heard regarding a bill. Can you tell me the number of it?

Mr. MORRISON. It is H. R. 8917.

[H. R. 8917. Fifty-sixth Congress, first session.]

A BILL to limit the meaning of the word "conspiracy" and also the use of "restraining orders and injunctions" as applied to disputes between employers and employees in the District of Columbia and Territories, or engaged in commerce between the several States, District of Columbia, and Territories, and with foreign nations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no agreement, combination, or contract by or between two or more persons to do, or procure to be done, or not to do, or procure not to be done, any act in contemplation or furtherance of any trade dispute between employers and employees in the District of Columbia or in any Territory of the United States, or who may be engaged in trade or commerce between any Territory and another, or between any Territory or Territories and any State or States, or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States, or foreign nations, shall be deemed criminal, nor shall those engaged therein be indictable or otherwise punishable for the crime of conspiracy if such act committed by one person would not be punishable as a crime, nor shall such agreement, combination, or contract be considered as in restraint of trade or commerce, nor shall any restraining order or injunction be issued with relation thereto. Nothing in this act shall exempt from punishment, otherwise than as herein excepted, any persons guilty of conspiracy, for which punishment is now provided by any act of Congress, but such act of Congress shall, as to the agreements, combinations, and contracts hereinbefore referred to, be construed as if this act were therein contained.

The CHAIRMAN. Are the gentlemen here who desire to be heard regarding this proposition?

Mr. MORRISON. Mr. Chairman, as representing the Federation of Labor, we have here Mr. Darrow, who would like to be heard.

The CHAIRMAN. What is your name?

Mr. MORRISON. Frank Morrison, secretary of the American Federation of Labor.

The CHAIRMAN. Where do you live?

Mr. MORRISON. 423 G street.

The CHAIRMAN. Who are the other gentlemen?

Mr. MORRISON. The others are Mr. C. S. Darrow, of Chicago, Ill.; Mr. Thomas I. Kidd, of Chicago, vice-president of the American Federation of Labor; Mr. John B. Lennon, of Bloomington, Ill., treasurer of the American Federation of Labor; Mr. Max Morris, of Denver, Colo., vice-president of the American Federation of Labor, and Mr.

Andrew Furuseth. I will state that we expect Mr. Gompers, president of the American Federation of Labor, and Mr. Mitchell, another vice-president, here at a later date.

The CHAIRMAN. We will hear them when they come. You must recollect that you have only an hour and a quarter, and you gentlemen must divide the time among yourselves.

Mr. MORRISON. I will ask that Mr. Darrow be heard.

STATEMENT OF MR. C. S. DARROW, OF CHICAGO, ILL.

Mr. DARROW. Mr. Chairman and gentlemen of the committee, I do not know what your rules are as to how long you want to hear one. I prefer, if any of you wish to ask any questions in reference to what our people desire, to have you do that at any time.

The CHAIRMAN. Let me remind you that the House meets at 12 o'clock and I suppose the members of the committee will want to be present at the meeting of the House and you will have to bear yourselves accordingly.

Mr. CLAYTON. I suggest that they divide the time among themselves.

Mr. DARROW. If you gentlemen have that much time; I assumed you had considerable other business, and we would not have all that time.

The CHAIRMAN. Make your remarks as brief as possible. We have other business, but we want to give you all the time we have at our disposal.

Mr. DARROW. This bill as presented is meant, I take it, to provide against what the working people think are very flagrant violations of their personal liberties and their personal rights by the issuing of injunctions in the various Federal courts of the United States. This matter has grown to an alarming extent within the last few years, to an alarming extent to all the people who believe these injunctions are wrongfully issued, and certainly to an amazing extent from whatever view of the question you may take.

Commencing with the great railroad strike in which the Debs injunction was issued, and running on down to the present time, there is scarcely a labor trouble of any consequence anywhere in the United States but what the first act of the employer is to rush off to the court and get an injunction. In the Debs case, which is, perhaps, a typical case, and it can be referred to because it was typical, a blanket injunction was issued, somewhat uncertain in its terms, but still it could fairly be said to have been an injunction issued against Debs and all his associates, and all other people whomsoever, specifically mentioning every officer and director of what was called the American Railway Union, and perhaps a hundred other men, and then with a general clause of all other people whomsoever, and this injunction was served by serving copies, by publishing it in newspapers, by tacking it on telegraph poles and freight cars, and in every possible way, and the court held that everybody was under injunction, and they are bound to obey it. It was served by reading it to a great crowd of people, strikers and others, who had assembled where there was trouble and difficulty. It was not an injunction which, properly and rightfully construed, meant to enjoin these men against committing any act of

violence. At the same time all these people were indicted by the grand jury—the Federal grand jury.

After a few weeks a hearing was had before the court as to whether this injunction had been violated. Judge Woods on hearing found that it had been; that Mr. Debs and his associates had violated this injunction. No effort was made to punish any person excepting officers of the American Railway Union. While nobody contended that any single member of this organization had committed any offense or any overt act of any sort, it was contended, and truthfully, that some other people had committed some offense, yet no effort was made to enforce this injunction against any person excepting the officers of the American Railway Union, simply because this prosecution was in the hands of the officers of the railroad company who had been appointed special agents by the Government, and the object and purpose of it—

Mr. LITTLEFIELD. You say "prosecution." Do you mean the injunction proceedings?

Mr. DARROW. The injunction proceedings. It was a prosecution under the Sherman Act, which provided that the Attorney-General might file information—

Mr. LITTLEFIELD. That is, the antitrust law?

Mr. DARROW. Yes; the antitrust law. A bill was filed under that act, and Mr. Edwin Walker was appointed special counsel for the Government in Chicago, and he at the same time was general counsel for the General Managers' Association, which included every railroad centering in Chicago, so it is safe to say that he was there in a dual capacity, as representing the railroads to use what power the Government could give him to put down the strike; and, secondly, as the special agent of the Government to enforce this law against the men he was after.

Judge Woods held in that case that these men were all guilty of contempt, although not one man had ever been present where any unlawful act was done; not one word was ever proven that anyone had ever spoken a word counseling any unlawful act, or written letters, or sent a telegram, and that every single word that they had uttered had been in favor of observing law and peace. On the trial of the case, which lasted three weeks, just before it closed, a juror was taken ill and we, on the part of the defense, asked to proceed with eleven jurors, which the Government refused promptly to do, and compelled a continuance of the case. The next term we were ready, and they refused to prosecute, and dismissed the case. I undertake to say that no jury could have been found that would have convicted one of those men; that there was not one single fact—one single fact—upon which to warrant a conviction, not one; but the matter was decided by the judge instead of by the jury. It was brought to the Supreme Court of the United States upon a writ of habeas corpus.

The only question that the Supreme Court could examine was the question of jurisdiction; as to whether the men were rightfully convicted. That question was not examined and passed upon by the Supreme Court of the United States. Those men were enjoined purely and simply from committing a criminal offense. If they did anything, it was the commission of a criminal act, and a criminal act only. The commission of assault and battery—

The CHAIRMAN. You are mistaken about that, I think. The Supreme

Court of the United States decided the case upon the simple and sole question as to whether or not a public highway carrying interstate commerce and the United States mails was obstructed by what amounted to a nuisance.

Mr. LITTLEFIELD. What is the title of the case?

The CHAIRMAN. And the court below decided it was so obstructed, and that obstruction interfered with interstate commerce and the transportation of the mails, and they held that the courts of the United States had the right to restrain and prevent such obstruction by an injunction.

Mr. LITTLEFIELD. What is the case?

Mr. DARROW. The Debs case.

The CHAIRMAN. The case is *In re Debs* (158 U. S., p. 564).

Mr. DARROW. In that case the Supreme Court held rightly that they had power to inquire into the question whether the conviction was right or wrong, whether there was any facts that would warrant the decision of the circuit court who decided this case—

The CHAIRMAN. That is, whether or not the injunction had been violated?

Mr. DARROW. Yes; whether the injunction had been violated or not.

Mr. LITTLEFIELD. Was that a new proposition peculiar to this case, or is it not general?

Mr. DARROW. I think perhaps it is a general proposition upon the writ of *habeas corpus*.

Mr. LITTLEFIELD. You do not state that any exception was made in this particular case?

Mr. DARROW. No; excepting this is under procedure in a Federal court, and in these courts you can not appeal and the judgment is final. In most of the State courts, perhaps not all, but in ours an appeal—

Mr. LITTLEFIELD. That is statutory; you would not have any if the statute did not give it to you?

Mr. DARROW. No.

The CHAIRMAN. The Supreme Court in that case expressly held and decided that the court never interfered by injunction to enjoin the commission of a crime as a crime, but only used the power or remedy where property rights were being interfered with and there was no adequate, full, and complete remedy at law.

Mr. DARROW. There were no property rights in any way interfered with on the part of the Government in this case. It was a simple, flimsy excuse, such as can be gotten up in any case that arises when the court wants to act.

Mr. LITTLEFIELD. Were there such allegations?

Mr. DARROW. In the bill, possibly, as to the United States mails, but when the troops were sent to Chicago—

Mr. LITTLEFIELD. You do not mean to say that no property was interfered with in connection with that?

Mr. DARROW. No United States property, no property of the Government of the United States. The United States Government would have no right to take an appeal under this act because the property of some specific railroad was interfered with.

The CHAIRMAN. The Supreme Court of the United States expressly held in this case that the property of the United States was interfered with. They expressly held that the Government of the United States

has property rights in the mails. I have been all through this case carefully in investigating the trust question, and I have called attention to that case because I wanted the argument directed to the point of the case as connected with your bill. I simply call attention to that.

Mr. DARROW. It is entirely right, and I am glad to have you do so. The Supreme Court of course held the facts as charged in the bill—nothing else. There is no discussion of evidence; no record coming up here. The case came to the Supreme Court upon practically the bill, upon the theory that the United States Government upon their bill had no jurisdiction. The Supreme Court held, among other things, that there was an allegation in the bill in reference to the obstruction of mail; but, while there was such an allegation, and while Judge Woods, in deciding the case, said he supposed the United States Government owned the mail bags and had property interest in the mail bags, still there was no claim upon anybody's part that any mail bag was interfered with or anything of that sort, and when the Federal troops were sent to Chicago they were all sent to the stock-yards district, where there were no mail trains and nothing except the strike. That course was not taken on account of any mail; it was taken because it was a great strike; that is all. It is very easy, as all you gentlemen know—most of you, I take it, being lawyers—it is very easy for courts to give good excuses for any act which they are willing to justify or think they ought to justify.

Mr. ALEXANDER. Do I understand there were no mail cars and no mail trains interfered with in any shape or manner during that strike?

Mr. DARROW. There was some claim that by reason of the strike mails were delayed.

Mr. LITTLEFIELD. Was it not an absolute fact that they were delayed?

Mr. DARROW. No doubt—

Mr. LITTLEFIELD. And delayed how long?

Mr. DARROW. The longest was once, I think, ten or twelve hours.

Mr. LITTLEFIELD. In other words, traffic was absolutely interrupted at times?

Mr. DARROW. Yes, sir; by reason of the strike.

Mr. LITTLEFIELD. And designedly and intentionally so?

Mr. DARROW. No doubt. There was, gentlemen, a strike—

Mr. LITTLEFIELD. For the specific purpose of interrupting traffic. That is what its object was, and it succeeded in its purpose to a certain extent.

Mr. DARROW. Certainly. The railroad employees inaugurated a general strike. They had what they believed was a just cause; that is, there was a question between Pullman and his employees. They said that so long as the Pullman Company carried on its business in the way in which it was carrying it on that they would refuse to haul the Pullman cars, and until the railroads would cease hauling the Pullman cars they would not work; and of course it did result, in many instances, in stopping the mails, in stopping traffic; there is no doubt about that, and that was the object, as you suggest.

Mr. ALEXANDER. Let me ask you. There are some trains made up exclusively of mail cars and no day coaches or Pullman coaches. Were those trains interfered with during the strike? I simply ask for information.