# Growth of the Injunction
# (May 6, 1905)

In the month of December, 1893, something over eleven years ago, a federal injunction was issued that broke all the records up to that time and stirred up the whole country. This injunction was issued by James G. Jenkins, judge of the United States circuit court, and restrained the employees of the Northern Pacific Railway from quitting the service of that company under penalty of being found guilty of contempt and sent to jail.

The facts in the case, which are recalled by a recently published interview with Judge Jenkins, who has retired from the bench, were as follows:

The Northern Pacific, robbed and wrecked by the knaves who had control of its affairs, applied to the federal court in the person of Judge Jenkins for a receivership, which was promptly granted. Following this order of the court and the appointment of the receivers, the latter petitioned the court for an order making sweeping reductions in the wages of employees, and fearing that a strike might follow, the receivers asked the court at the same time to issue an order restraining the employees from leaving the service of the company, and this was also promptly granted. It was this latter order that aroused the storm and it raged fiercely for some months. Indignation meetings were held by labor unions, notably in Chicago, where a mass meeting was called for the special purpose of denouncing Judge Jenkins and demanding his impeachment. Obedient to the indignation and clamor of organized labor. Congressman McGann,[1] of Illinois, introduced a resolution in Congress looking to the investigation of the affair by the judiciary committee, but, of course, nothing came from it, and it was not long before the judicial crime, for such it was, was forgotten.

The strange thing about it was that the employees did not strike under such extreme provocation, and this was due to the fact that their leaders, the national officers of the unions, urged them not to do so, and united in a letter to the general manager accepting the order of the court and acquiescing in the situation. The writer, who was then organizing the American Railway Union, tried to have the employees resent the despotic decree of the court and quit in a body from end to end of the line, but other counsels prevailed and they remained at work. It would have been interesting to see the ten or twelve thousand employees quit as one and defy the outrageous

order of the court, and then see Jenkins make good his order and send them to jail. The judicial bluff would have been called and not only would they not have gone to jail, but the court would have stood exposed and rebuked and the reduction in the wages would have been restored. I am still waiting for organized workingmen to take advantage of just such an opening when ten thousand or more workers shall all be simultaneously in contempt for the defiance of some outrageous federal injunction. It will have a most wholesome effect — infinitely better than the servile pleas of labor leaders and legislative committees in the humiliating role of mendicants, crawling in the dust at the feet of their supposed servants.

Had the army of Northern Pacific employees resented the outrage of Judge Jenkins in 1893 quitting in defiance of his injunction — and they would have done it but for the national officers of their unions — an object lesson of inestimable value would have been taught the courts and their capitalist masters, and the rapid evolution of the labor injunction which had then fairly set in would have been checked for a time at least, and it is doubtful if it had ever developed its present unrestrained restraining power.

Judge Henry Clay Caldwell, who was also on the federal bench at the time the Jenkins injunction was issued, declared strongly in opposition to it, saying:

> If receivers should apply for leave to reduce the existing scale of wages, before acting on their petition I would require them to give notice of the application to the officers or representatives of the several labor organizations to be affected by the proposed change, of the time and place of hearing, and would also require them to grant such officers or representatives leave of absence and furnish them transportation to the place of hearing and subsistence while in attendance, and I would hear both sides in person, or by attorneys, if they wanted attorneys to appear for them. * * * If, after a full hearing and consideration, I found that it was necessary, equitable, and just to reduce the scale of wages, I would give the employees ample time to determine whether they would accept the new scale. If they rejected it they would not be enjoined from quitting the service of the court either singly or in a body.

Judge Jenkins gave the employees no hearing, no notice, no consideration. He simply ordered their wages reduced and told them that if they quit work he would send them to jail. This is the order — and a beautiful order it is in a land of boasted freedom — that Judge Jenkins now says has

been vindicated and that the precedent then established by him is now followed by all courts. He is right. The evolution of the injunction has indeed been swift and what was regarded as exceedingly novel and venturesome a decade ago is now securely incorporated in our established system of capitalistic jurisprudence.

The late Judge Dundy, of Omaha, notoriously the creature of the Union Pacific, issued the order reducing wages on that system when it was in the hands of receivers appointed by him, but Judge Caldwell, who was on the circuit bench and had prior jurisdiction, took the case away from Dundy, had the employees come into court and be heard, and, after hearing all the evidence, revoked the order of Dundy, restored the wage reductions and administered a scathing rebuke to the receivers.

Judge Caldwell was appointed to the federal bench by President Lincoln. They don't appoint that kind of judge any more.

Such eminent lights as Dundy, Jenkins, Ricks, Taft, Ross, Woods, Grosscup, and Kohlsaat[2] now illumine the federal bar and all their names are immortally associated with the evolution of the injunction and the subjugation of labor by judicial prowess.

One of the first and most illustrious in this line is Judge Taft, who won his spurs in the Toledo, Ann Arbor & North Michigan case. He has been a prime favorite with the corporations ever since, is now in the cabinet, and is being groomed for the presidency. As a candidate for the White House he has the two essential qualifications — unswerving loyalty to capital and unmitigated contempt for labor — and this should and doubtless will secure his nomination and election by an overwhelming majority.

In his published interview, Judge Jenkins, discussing his Northern Pacific injunction, says:

> Within the last twelve years, by reason of popular discontent at legal restraint, the issuance of this writ has been designated opprobriously as "government by injunction." Well, it is in a true and proper sense "government by injunction," for it is a government by law. The remedy has long existed and will exist so long as government by law continues, so long as we have liberty regulated by law, and not irresponsible, uncontrolled license to exercise one's sweet will without regard to others' rights, which is anarchy, and no howling of the mob can ever abolish it until government by law is wrecked and "chaos is come again."

Let me ask Judge Jenkins if he would be of the same opinion if at the time he cut the wages of the Northern Pacific employees and restrained them from quitting some other judge had issued an order reducing his salary as judge and restraining him from resigning under penalty of being sent to jail. That is the position precisely in which he placed the employees of the Northern Pacific, and it is this that he now calls "liberty regulated by law." If that is liberty it would be interesting to know what slavery is.

It has been about fifteen years since the court injunction began to figure in labor affairs. It was threatened in the C, B & Q railroad strike of 1888, but not resorted to. After the Homestead strike, in 1892, during which Pinkertonism reached its culmination and this brutal form of warfare upon labor by Carnegie and Frick excited the most intense indignation, the injunction came into general use. It proved a great thing for the corporations, just what they had been looking for. No longer was there any need for a private Pinkerton army. That was a clumsy contrivance compared to the noiseless, automatic, self-acting injunction. The Pinkertons were expensive, cumbersome, aroused hatred, and some- times missed fire. The injunction was free from all these objections. One shock from the judicial battery and labor was paralyzed and counted out.

Since first introduced in the struggle between labor and capital the injunction has developed from the flintlock to the rapid-fire. Judge Jenkins enjoys in his retirement the distinction of having contributed one of its chief improvements. His fame is secure and so is his infamy. He need not worry about vindication. He was as loyal a judge as ever bowed to Mammon, as faithful a tool as ever served his master, and as consummate a hypocrite as ever stabbed liberty in the name of law.

The injunction is playing its usual role in the teamsters' strike in Chicago. The Team Owners' Association of Chicago are incorporated in West Virginia and by this trick become an interstate association and nestled under the wing of the United States court. The federal injunction to destroy the strike and rout the strikers has already been applied for and granted. This goes without saying. What are Judges Grosscup and Kohlsaat on the bench for? Certainly not for the health of the teamsters. They are there to do what they were appointed to do by the president of the exploiting capitalists elected by the exploited workers.

At this writing carloads of Negroes are being shipped into Chicago to take the places of the striking teamsters, while injunctions, like swords suspended by threads, hang above their heads and ten thousand regular

soldiers with shotted guns are on the edge of the city awaiting the command to sprinkle the streets with the blood of labor.

Oh, that all the workers of Chicago would back up the teamsters and garment workers by throwing down their tools and quitting work! Twenty-four hours of such a strike would bring the masters to their knees. But they have too many unions and too many leaders for this, and so they must fight it out to the bitter end.

In the meantime the evolution of the injunction is making for socialism. Nothing more clearly shows that the labor question is also a political question and that to conquer their exploiters the working class must build up the Socialist Party and capture the powers of government.

Published in *Social Democratic Herald,* vol. 8, no. 1, whole no. 353 (May 6, 1905), pp. 1, 4.

---

[1] Lawrence E. McGann (1852-1928) was an Irish-born Democratic politician from Chicago, who served variously as commissioner of public works and city controller for a decade before his election to Congress in 1890. McGann was e-elected in 1892 but defeated in 1894 in a bitter and contested vote.

[2] Christian C. Kohlsaat (1844-1918), of Chicago, was the brother of prominent Republican newspaper publisher Herman Kohlsaat. He was appointed to a seat on the federal district court bench in 1899 by President William McKinley. Kohlsaat was promoted to the US Court of Appeals for the Seventh Circuit by Theodore Roosevelt in 1905, remaining in that position until the time of his death.