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SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 AND 811.—OCTOBER TERM, 1946.

The United States of America, Petitioner,
759 *v.*
United Mine Workers of America, an Unincorporated Association.

The United States of America, Petitioner,
760 *v.*
John L. Lewis, Individually and as President of the United Mine Workers of America.

United Mine Workers of America, an Unincorporated Association, Petitioner,
781 *v.*
The United States of America.

John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner,
782 *v.*
The United States of America.

United Mine Workers of America, an Unincorporated Association, and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioners,
811 *v.*
The United States of America.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

[February —, 1947.]

THE CHIEF JUSTICE delivered the opinion of the Court.

In October, 1946, the United States was in possession of the major portion of the country's bituminous coal mines [1] Terms and conditions of employment were controlled "for the period of Government possession" by an agreement [2] entered into on May 29, 1946, between Secretary of Interior Krug, as Coal Mines Administrator, and John L. Lewis, as President of the United Mine Workers of America.[3] The Krug-Lewis Agreement embodied far reaching

[1] The United States had taken possession of the mines on May 21, 1946, pursuant to Executive Order 9728, 77 F. R. 5593, in which the President, after determining that labor disturbances were interrupting the production of bituminous coal necessary for the operation of the national economy, directed the Secretary of Interior to take possession of and operate the mines and to negotiate with representatives of the miners concerning the terms and conditions of employment.

The President's action was taken under the Constitution, as President of the United States and Commander in Chief of the Army and Navy, and by virtue of the authority conferred upon him by the War Labor Disputes Act, 57 Stat. 163, 50 U. S. C. App. Supp. V, 309, 1501–1511. Section 3 of the Act authorizes the seizure of facilities necessary for the war effort if and when the President finds and proclaims that strikes or other labor disturbances are interrupting the operation of such facilities.

Section 3 directs that the authority under that section to take possession of the specified facilities will terminate with the ending of hostilities and that the authority under that section to operate facilities seized will terminate six months after the ending of hostilities. The President on December 31, 1946, proclaimed that hostilities were terminated on that day, 12 F. R. 1.

[2] The initial paragraph of the contract provided that:

"This agreement between the Secretary of the Interior, acting as Coal Mines Administrator under the authority of Executive Order No. 9728 (dated May 21, 1946, 11 F. R. 5593), and the United Mine Workers of America, covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945."

[3] In compliance with Executive Order No. 9728 and § 5 of the War Labor Disputes Act, the agreement had been submitted to and approved by the National Wage Stabilization Board.

changes favorable to the miners; [4] and, except as amended and supplemented therein, the agreement carried forward the terms and conditions of the National Bituminous Coal Wage Agreement of April 11, 1945.[5]

On October 21, 1946, Mr. Lewis directed a letter to Secretary Krug and presented issues which led directly to the present controversy. According to Mr. Lewis, the Krug-Lewis agreement carried forward § 15 of the National Bituminous Coal Wage Agreement of April 11, 1945. Under that section either party to the contract was privileged to give ten days' notice in writing of a desire for a negotiating conference which the other party was required to attend; fifteen days after the beginning of the conference either party might give notice in writing of the termination of the agreement, effective five days after receipt of such notice. Asserting authority under this clause, Mr. Lewis in his letter of October 21 requested that a conference begin November 1 for the purpose of negotiating new arrangements concerning wages, hours, practices, and other pertinent matters appertaining to the bituminous coal industry.[6]

Captain N. H. Collisson, then Coal Mines Administrator, answered for Secretary Krug. Any contractual basis for requiring negotiations for revision of the Krug-Lewis

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[4] See *infra* p. —.

[5] The saving clause was in the following form:

"Except as amended and supplemented herein, this agreement carries forward and preserves the terms and conditions contained in all joint wage agreements effective April 1, 1941, through March 31, 1943, the supplemental agreement providing for the six (6) day workweek, and all the various district agreements executed between the United Mine Workers and the various Coal Associations and Coal Companies (based upon the aforesaid basic agreement) as they existed on March 31, 1943, and the National Bituminous Coal Wage Agreement, dated April 11, 1945."

[6] The letter also charged certain breaches of contract by the Government and asserted significant changes in Government wage policy.

agreement was denied.[7] In the opinion of the Government, § 15 of the 1945 agreement had not been preserved by the Krug-Lewis agreement; indeed, § 15 had been expressly nullified by the clause of the latter contract providing that the terms contained therein were to cover the period of Government possession. Although suggesting that any negotiations looking toward a new agreement be carried on with the coal mine owners, the Government expressed willingness to discuss matters affecting the operation of the mines under the terms of the Krug-Lewis agreement.

Conferences were scheduled and began in Washington on November 1, both the union and the Government adhering to their opposing views regarding the right of either party to terminate the contract.[8] At the fifth meeting held on November 11, the union for the first time offered specific proposals for changes in wages and other conditions of employment. On November 13 Secretary Krug requested the union to negotiate with the mine owners. This suggestion was rejected.[9] On November 15 the union, by John L. Lewis, notified Secretary Krug that "Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option hereby terminates said Krug-Lewis Agreement as of 12:00 o'clock P. M., Midnight, Wednesday, November 20, 1946."

Secretary Krug again notified Mr. Lewis that he had no power under the Krug-Lewis agreement or under the law to terminate the contract by unilateral declara-

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[7] Captain Collisson also specifically denied breaches of contract and changes in Government wage policy.

[8] Conferences were carried on without prejudice to the claims of either party in this respect.

[9] Secretary Krug and Mr. Lewis met privately on November 13 and again on November 14.

tion.[10] The President of the United States stated his strong support of the Government's position and requested reconsideration by the union in order to avoid a national crisis. However, Lewis, as union president, circulated to the mine workers copies of the November 15 letter to Secretary Krug. This communication was for the "official information" of union members.

The United States on November 18 filed suit in the District Court for the District of Columbia against the United Mine Workers of America and John L. Lewis, individually and as president of the union. The complaint was brought under the Declaratory Judgment Act [11] and sought a judgment to the effect that the defendants had no power unilaterally to terminate the Krug-Lewis agreement. And, alleging that the November 15 notice was in reality a strike notice, the United States, pending the final determination of the cause, requested a temporary restraining order and preliminary injunctive relief.

The court, immediately and without notice to the defendants, issued a temporary order [12] restraining the

[10] Secretary Krug had been advised by the Attorney General, whose opinion had been sought, that § 15 of the 1945 agreement was no longer in force.

[11] Judicial Code, § 274d, 28 U. S. C. 400.

[12] The pertinent part of the order was as follows:

"Now, Therefore, it is by the Court this 18th day of November, 1946,

"Ordered, that the defendants and each of them and their agents, servants, employees, and attorneys, and all persons in active concert or participation with them, be and they are hereby restrained pending further order of this Court from permitting to continue in effect the notice heretofore given by the defendant, John L. Lewis, to the Secretary of Interior dated November 15, 1946; and from issuing or otherwise giving publicity to any notice that or to the effect that the Krug-Lewis Agreement has been, is, or will at some future date be terminated, or that said agreement is or shall at some future date be nugatory or void at any time during Government possession of the bituminous coal mines; and from breaching any of their obligations

defendants from continuing in effect the notice of November 15, from encouraging the mine workers to interfere with the operation of the mines by strike or cessation of work, and from taking any action which would interfere with the court's jurisdiction and its determination of the case. The order by its terms was to expire at 3:00 p. m. on November 27 unless extended for good cause shown. A hearing on the preliminary injunction was set for 10:00 a. m. on the same date. The order and complaint were served on the defendants on November 18.

A gradual walkout by the miners commenced on November 18, and by midnight of November 20, consistent with the miners' "no contract, no work" policy, a full-blown strike was in progress. Mines furnishing the major part of the nation's bituminous coal production were idle.

On November 21 the United States filed a petition for a rule to show cause why the defendants should not be punished as and for contempt, alleging a willful violation of the restraining order. The rule issued, setting Novem-

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under said Krug-Lewis Agreement; and from coercing, instigating, inducing, or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow down, walkout, cessation of work, or otherwise, with the operation of said mines by continuing in effect the aforesaid notice or by issuing any notice of termination of agreement or through any other means or device; and from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728; and from taking any action which would interfere with this Court's jurisdiction or which would impair, obstruct, or render fruitless, the determination of this case by the Court;

"And it is further ordered that this restraining order shall expire at 3 o'clock p. m. on November 27th, 1946, unless before such time the order for good cause shown is extended, or unless the defendants consent that it may be extended for a longer period;

"And it is further ordered that plaintiff's motion for preliminary injunction be set down for hearing on November 27th, 1946, at 10:00 o'clock a. m."

ber 25 as the return day and, if at that time the contempt was not sufficiently purged, setting November 27 as the day for trial on the contempt charge.

On the return day, defendants, by counsel, informed the court that no action had been taken concerning the November 15 notice and denied the jurisdiction of the court to issue the restraining order and rule to show cause. Trial on the contempt charge was thereupon ordered to begin as scheduled on November 27. On November 26 the defendants filed a motion to discharge and vacate the rule to show cause. Their motion challenged the jurisdiction of the court and raised the grave question of whether the Norris-LaGuardia Act [13] prohibited the granting of the temporary restraining order at the instance of the United States.[14]

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[13] 47 Stat. 70, 29 U. S. C. §§ 101–115.

[14] The grounds offered for the motion were:

"1. The Temporary Restraining Order is void in that this case involves and grows out of a labor dispute. Under the provisions of the Norris-LaGuardia Act (47 Stat. 70), and the provisions of Section 20 of the Clayton Act (38 U. S. C. 323, 730), this Honorable Court is without jurisdiction over the subject-matter of this cause.

"2. Equity acts only where there is no plain, adequate, and complete remedy at law. The allegations of the Petition for the Rule purport to show a violation of the War Labor Disputes Act—a serious offense—in which field there is no place for equity intervention.

"3. Observance of all the strict rules of criminal procedure is required to establish criminal contempt. It is apparent that the alleged facts set out in the unverified Petition and in the affidavit of Captain Collisson, filed in support of the Rule, are based wholly upon hearsay, information and belief and are not sufficient to sustain the Rule to Show Cause.

"4. The object of the Petition for the Rule is necessarily punitive and not compensatory. Accordingly, it being for criminal contempt, the Petition should have been presented as an independent proceeding and not as supplemental to the original cause.

"5. The Temporary Restraining Order is beyond the jurisdiction of this Honorable Court and therefore void because it contravenes the First, Fifth, and Thirteenth Amendments to the Constitution of the United States."

After extending the temporary restraining order on November 27, and after full argument on November 27 and November 29, the court on the latter date overruled the motion and held that its power to issue the restraining order in this case was not affected by either the Norris-LaGuardia Act or the Clayton Act.[15]

The defendants thereupon pleaded not guilty and waived an advisory jury. Trial on the contempt charge proceeded. The Government presented eight witnesses, the defendants none. At the conclusion of the trial on December 3, the court found that the defendants had permitted the November 15 notice to remain outstanding, had encouraged the miners to interfere by a strike with the operation of the mines and with the performance of governmental functions, and had interfered with the jurisdiction of the Court. Both defendants were found guilty beyond reasonable doubt of both criminal and civil contempt dating from November 18. The Court entered judgment on December 4, fining the defendant Lewis $10,000, and the defendant union $3,500,000. On the same day a preliminary injunction, effective until a final determination of the case, was issued in terms similar to those of the restraining order.

On December 5 the defendants filed notices of appeal from the judgments of contempt. The judgments were stayed pending the appeals. The United States on December 6 filed a petition for certiorari in both cases. Section 240 (e) of the Judicial Code authorizes a petition for certiorari by any party and the granting of certiorari prior to judgment in the Circuit Court of Appeals. Prompt settlement of this case being in the public interest, we granted certiorari on December 9, and subsequently for similar reasons granted petitions for certiorari filed by the defandants, — U. S. —, —, —. The cases were consolidated for argument.

[15] 38 Stat. 738, 29 U. S. C. § 52.

I.

Defendants' first and principal contention is that the restraining order and preliminary injunction were issued in violation of the Clayton and Norris-LaGuardia Acts. We have come to a contrary decision.

It is true that Congress decreed in § 20 of the Clayton Act that "no such restraining order or injunction shall prohibit any person or persons . . . from recommending, advising, or persuading others" to strike. But by the Act itself this provision was made applicable only to cases "between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment. . . ." [16] For reasons which will be explained at greater length in discussing the applicability of the Norris-LaGuardia Act, we cannot construe the general term "employer" to include the United States, where there is no express reference to the United States and no evident affirmative grounds for believing that Congress intended to withhold an otherwise available remedy from the Government as well as from a specified class of private persons.

Moreover, it seems never to have been suggested that the proscription on injunctions found in the Clayton Act is in any respect broader than that in the Norris-LaGuardia Act. Defendants do not suggest in their argument that it is. This Court, on the contrary, has stated that the Norris-LaGuardia Act "still further . . . [narrowed] the circumstances under which the federal courts could grant injunctions in labor disputes." [17] Consequently, we would feel justified in this case to consider the application of the Norris-LaGuardia Act alone. If it does not apply, neither does the less comprehensive proscription

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[16] *Duplex Co.* v. *Dearing*, 254 U. S. 443, 470 (1921); *American Foundries* v. *Tri-City Council*, 257 U. S. 184, 202 (1921).

[17] *United States* v. *Hutcheson*, 312 U. S. 219, 231 (1941).

of the Clayton Act; [18] if it does, defendant's reliance on the Clayton Act is unnecessary.

By the Norris-LaGuardia Act, Congress divested the federal courts of jurisdiction to issue injunctions in a specified class of cases. It would probably be conceded that the characteristics of the present case would be such as to bring it within that class if the basic dispute had remained one between defendants and a private employer, and the latter had been the plaintiff below. So much seems to be found in the express terms of §§ 4 and 13 of the Act, set out in the margin.[19] The specifications in

[18] See also *United States* v. *Hutcheson, supra*, 312 U. S. at 235, 236 (1941); *Allen Bradley Co.* v. *Union*, 325 U. S. 797, 805 (1945).

[19] "SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

"(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

"(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

"(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

"(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

"(i) Advising, urging, or otherwise causing or inducing without

§ 13 are in general terms and make no express exception for the United States. From these premises, defendants argue that the restraining order and injunction were forbidden by the Act and were wrongfully issued.

Even if our examination of the Act stopped here, we could hardly assent to this conclusion. There is an old and well known rule that statutes which in general terms divest pre-existing rights or privileges will not be applied

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fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act."

"SEC. 13. When used in this Act, and for the purposes of this Act—

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

"(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia."

to the sovereign without express words to that effect.[20] It has been stated, in cases in which there were extraneous and affirmative reasons for believing that the sovereign should also be deemed subject to a restrictive statute, that this rule was a rule of construction only.[21] Though that may be true, the rule has been invoked successfully in cases so closely similar to the present one,[22] and the statement of the rule in those cases has been so explicit,[23] that we are inclined to give it much weight here. Congress was not ignorant of the rule which those cases reiterated; and, with knowledge of that rule, Congress would not, in writing the Norris-LaGuardia Act, omit to use "clear and specific [language] to that effect" if it actually intended to reach the Government in all cases.

But we need not place entire reliance in this exclusionary rule. Section 2,[24] which declared the public policy of the

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[20] *United States* v. *Herron*, 20 Wall. 251, 263 (1873); *Lewis, Trustee* v. *United States*, 92 U. S. 618, 622 (1875). See *Guarantee Co.* v. *Title Guarantee Co.*, 224 U. S. 152, 155 (1912).

[21] *Green* v. *United States*, 9 Wall. 655, 658 (1869); *United States* v. *California*, 297 U. S. 175, 186 (1936).

[22] *Dollar Savings Bank* v. *United States*, 19 Wall. 227, 238, 239 (1873); *United States* v. *American Bell Telephone Co.*, 159 U. S. 548, 553–555 (1895); *United States* v. *Stevenson*, 215 U. S. 190, 197 (1909).

[23] "The most general words that can be devised (for example, any person or persons, bodies politic or corporate) affect not him [the sovereign] in the least, if they may tend to restrain or diminish any of his rights or interests." *Dollar Savings Bank* v. *United States*, 19 Wall. 227, 239 (1873). "If such prohibition is intended to reach the Government in the use of known rights and remedies, the language must be clear and specific to that effect." *United States* v. *Stevenson*, 215 U. S. 190, 197 (1895).

In both these cases the question, as in the present case, was whether the United States was divested of a certain remedy by a statute or a rule of law which, without express reference to the United States, made that remedy generally unavailable.

[24] "SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such

United States as a guide to the Act's interpretation, carries indications as to the scope of the Act. It predicates the purpose of the Act on the contrast between the position of the "individual unorganized worker" and that of the "owners of property" who have been permitted to "organize in the corporate and other forms of ownership association", and on the consequent helplessness of the worker "to exercise actual liberty of contract . . . and thereby to obtain acceptable terms and conditions of employment." The purpose of the Act is said to be to contribute to the worker's "full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives . . . for the purpose of collective bargaining. . . ." These considerations, on their face, obviously do not apply to the Government as an employer or to relations between the Government and its employees.

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jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted."

If we examine §§ 4 and 13, on which defendants rely, we note that they do not purport to strip completely from the federal courts all their preexisting powers to issue injunctions, that they withdraw this power only in a specified type of case, and that this type is a case "involving or growing out of any labor dispute." Section 13 in the first instance declares a case to be of this type when it "involves persons" or "involves any conflicting or competing interests" in a labor dispute of "persons" who stand in any one of several defined economic relationships. And "persons" must be involved on both sides of the case or the conflicting interests of "persons" on both sides of the dispute. The Act does not define "persons". In common usage that term does not include the sovereign, and statutes employing it will ordinarily not be construed to do so.[25] Congress made express provision in 1 U. S. C. 1 for the term to extend to partnerships and corporations, and in § 13 of the Act itself for it to extend to associations. The absence of any comparable provision extending the term to sovereign governments implies that Congress did not desire the term to extend to them.

Those clauses in § 13 (a) and (b) spelling out the position of "persons" relative to the employer-employee relationship affirmatively suggest that the United States, as an employer, was not meant to be included. Those clauses require that the case involve persons "who are engaged in the same industry, trade, craft or occupation", who "have direct or indirect interests therein", who are "employees of the same employer", who are "members of the same or an affiliated organization of employers or employees", or who stand in some one of other specified positions relative to a dispute over the employer-employee relationship. Every one of these qualifications in § 13 (a) and (b) we think relates to an economic role ordinarily filled by a private individual or corporation, and not by a

[25] *United States* v. *Cooper Corp.*, 312 U. S. 600, 604 (1941); *United States* v. *Fox*, 94 U. S. 315, 321 (1876).

sovereign government. None of them is at all suggestive of any part played by the United States in its relations with its own employees. We think that Congress' failure to refer to the United States or to specify any role which it might commonly be thought to fill is strong indication that it did not intend that the Act should apply to situations in which United States appears as employer.

In the type of case to which the Act applies, § 7 requires certain findings of fact as conditions precedent to the issuance of injunctions even for the limited purposes recognized by the Act. One such required finding is that "the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection." Obviously, such finding could never be made if the complainant were the United States, and federal property were threatened by federal employees, as the responsibility of protection would then rest not only on state officers, but also on all federal civil and military forces. If these failed, a federal injunction would be a meaningless form. This provision, like those in §§ 2, 4 and 13, already discussed, indicates that the Act was not intended to affect the relations between the United States and its employees.

Defendants maintain that certain facts in the legislative history of the Act so clearly indicate an intent to restrict the Government's use of injunctions that all the foregoing arguments to the contrary must be rejected.

Congressman Beck of Pennsylvania indicated in the course of the House debates that he thought the Government would be included within the prohibitions of the Act.[26] Congressman Beck was not a member of the Judiciary Committee which reported the bill, and did not vote for its passage. We do not accept his views as ex-

[26] 75 Cong. Rec. 5473. An amendment by Congressman Beck, designed to save to the United States the right to intervene by injunction in private labor disputes, was defeated. 75 Cong. Rec. 5503, 5505.

pressive of the attitude of Congress relative to the status of the United States under the Act.

Congressman Blanton of Texas introduced an amendment to the bill which would have made an exception to the provision limiting the injunctive power "where the United States Government is the petitioner", and this amendment was defeated by the House.[27] The first comment which was made on this amendment, however, after its introduction, was that of Congressman LaGuardia, the House sponsor of the bill, who opposed it not on the ground that such an exception should not be made but rather on the ground that the express exception was unnecessary. Congressman LaGuardia read the definition of a person "participating or interested in a labor dispute" in § 13 (b) and referred to the provisions of § 13 (a) and then added: "I do not see how in any possible way the United States can be brought in under the provisions of this bill." When Congressman Blanton thereupon suggested the necessity of allowing the Government to use injunctions to maintain discipline in the army and navy, LaGuardia pointed out that these services are not "a trade, craft or occupation". Blanton's only answer to LaGuardia's opposition was that the latter "does not know that extensions will be made." A vote was then taken and the amendment defeated.[28] Obviously this incident does not reveal a Congressional intent to legislate concerning the relationship between the United States and its employees.

In the debates in both Houses of Congress numerous references were made to previous instances in which the United States had resorted to the injunctive process in labor disputes between private employers and private employees,[29] where some public interest was thought to have

[27] 75 Cong. Rec. 5503.

[28] *Ibid.*

[29] Most frequently mentioned was the Government action in connection with the railway strikes of 1894 and 1922.

become involved. These instances were offered as illustrations of the abuses flowing from the use of injunctions in labor disputes and the desirability of placing a limitation thereon. The frequency of these references and the attention directed to their subject matter are compelling circumstances. We agree that they indicate that Congress, in passing the Act, did not intend to permit the United States to continue to intervene by injunction in purely private labor disputes.

But whether Congress so intended or not is a question different from the one before us in this case, in which we are concerned only with the Government's right to injunctive relief in a dispute with its own employees. Although we recognize that Congress intended to withdraw such remedy in the former situation, it does not follow that it intended to do so in the latter. The circumstances in which the Government sought such remedy in 1894 and 1922 were vastly different from those in which the Government is seeking to carry out its responsibilities by taking legal action against its own employees, and we think that the references in question have only the most distant and uncertain bearing on our present problem. Indeed, when we look further into the history of the bill, we find that there were other events which unequivocally demonstrate that injunctive relief was not intended to be withdrawn in the latter situation.

When the House had before it a rule for the consideration of the bill, Congressman Michener, a ranking minority member of the Judiciary Committee and the spokesman for the minority party on the Rules Committee, made a general statement in the House concerning the subject matter of the bill and advocating its present consideration. In this survey he clearly stated to the House that the Government's rights with respect to its own employees would not be affected: [30]

[30] 75 Cong. Rec. 5464.

> "Be it remembered that this bill does not attempt to legislate concerning Government employees. I do not believe that the enactment of this bill into law will take away from the Federal Government any rights which it has under existing law, to seek and obtain injunctive relief where the same is necessary for the functioning of the Government."

In a later stage of the debate, Congressman Michener repeated this view as to the proper construction of the bill in the following terms: [31]

> "This deals with labor disputes between individuals, not where the Government is involved. It is my notion that under this bill the Government can function with an injunction, if that is necessary in order to carry out the purpose of the Government. I should like to see this clarified, but I want to go on record as saying that under my interpretation of this bill the Federal Government will not at any time be prevented from applying for an injunction, if one is necessary in order that the Government may function."

Congressmen Michener and LaGuardia were both members of the Judiciary Committee which reported and recommended the bill to the House. They were the two most active spokesmen for the Committee, both in explaining the bill and advocating its passage. No member of the House who voted for the bill challenged their explanations. At least one other member expressed a like understanding.[32] We cannot but believe that the House accepted these authoritative representations as to the proper

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[31] 75 Cong. Rec. 5509.

[32] Congressman Schneider, at 75 Cong. Rec. 5514, stated: "And it has also been pointed out that the enactment of this bill will not take away from the Federal Government any rights which it has under existing law to seek and obtain injunctive relief where the same is deemed by Government officials to be necessary for the functioning of the Government." In other words, a tremendous field in which the injunction can still be used effectively will remain after the enactment of this bill."

construction of the bill.[33] The Senate expressed no contrary understanding,[34] and we must conclude that Congress, in passing the Act, did not effect the withdrawal of the Government's existing rights to injunctive relief against its own employees.

If we were to stop here, there would be little difficulty in accepting the decision of the District Court upon the scope of the Act. And the cases in this Court since the passage of the Act express consistent views concerning the types of situations to which the Act applies.[35] The cases have gone no farther than to follow Congressional desires by regarding as beyond the jurisdiction of the District Courts the issuance of injunctions sought by the United States but running against persons none of whom resemble employees of the United States. None of these cases dealt with the narrow segment of the employer-employee relationship now before us.

But in spite of the determinative guidance so offered, defendants rely upon the opinions of several Senators uttered in May, 1943, while debating the Senate version of the War Labor Disputes Act.[36] The debate at that time

[33] *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110, 125; *Duplex Printing Co.* v. *Deering*, 254 U. S. 444, 475.

[34] We have been cited to no instances in which the consideration of the Senate was directed to the specific issue of the relationship between the United States and its own employees. The use of the injunction by the Government was in question, but primarily in respect to those instances in which the United States had taken action in private labor disputes, *e. g.*, 75 Cong. Rec. 4509, 4619, 4670, 4689, 5001, 5005. Silence upon the status of the Government as employer is not inconsistent with the desires of the House to exclude from the Act those disputes in which the United States is seeking relief against its own employees.

[35] *United States* v. *American Federation of Musicians*, 318 U. S. 741 (1943); see *United States* v. *Hutcheson*, 312 U. S. 219, 227 (1941). In accord is *United States* v. *Weirton Steel Co.*, 7 F. Supp. 255 (1934); cf. *Anderson* v. *Bigelow*, 130 F. (2d) 460 (1942).

[36] It was upon § 3 of this Act that the President based in part the seizure of the bituminous coal mines. See note 1, *supra*.

centered around a substitute for the bill, S. 796, as originally introduced.[37] Section 5 of the substitute, as amended, provided, "The District Courts of the United States and the United States Courts of the Territories or possessions shall have jurisdiction, for cause shown, but solely upon application by the Attorney General or under his direction . . . to restrain violations or threatened violations of this Act." [38] Following the rejection of other amendments aimed at permitting a much wider use of injunctions and characterized as contrary to the Norris-LaGuardia Act,[39] several Senators were of the opinion that § 5 itself would remove some of the protection given employees by that Act,[40] a view contrary to what we have just determined to be the scope of the Act as passed in 1932. Section 5 was defeated and no injunctive provisions were contained in the Senate bill.

We have considered these opinions, but cannot accept them as authoritative guides to the construction of the Norris-LaGuardia Act. They were expressed by Senators, some of whom were not members of the Senate in 1932, and none of whom was then on the Senate Judiciary Committee, which reported the bill. They were expressed eleven years after the Act was passed and cannot be accorded even the same weight as if made by the same

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[37] 89 Cong. Rec. 3812. The substitute bill embodied two amendments proposed by Senator Connally on the floor of the Senate. 89 Cong. Rec. 3809.

[38] Section 5 of the substitute bill originally did not limit the issuance of injunctions to those sought by the Attorney General, but Senator Wagner's proposal to add "but solely upon application by the Attorney General or under his direction" was accepted. 89 Cong. Rec. 3986.

[39] A great part of the references to the Norris-LaGuardia Act were made in connection with the proposed Taft and Reed amendments. 89 Cong. Rec. 3897, 3984, 3985, 3986.

[40] Senators Connally and Danahar expressed this view and other Senators were apparently in accord. 89 Cong. Rec. 3988–9.

individuals in the course of the Norris-LaGuardia debates.[41] Moreover, these opinions were given by individuals striving to write legislation from the floor of the Senate and working without the benefit of hearings and committee reports on the issues crucial to us here.[42] We fail to see how the remarks of these Senators in 1943 can serve to change the legislative intent of Congress expressed in 1932, and we accordingly adhere to our conclusion that the Norris-LaGuardia Act did not affect the jurisdiction of the Courts to issue injunctions when sought by the United States in a labor dispute with its own employees.

It has been suggested, however, that Congress, in passing the War Labor Disputes Act, effectively restricted the theretofore existing authority of the Courts to issue injunctions in connection with labor disputes in plants seized by the United States. Chief reliance is placed upon the rejection by the Senate of § 5 of the Connally substitute bill.[43] But it is clear that no com-

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[41] See *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110, 125 (1942); *McCaughn* v. *Hershey Chocolate Co.*, 283 U. S. 488, 493 (1931); *Duplex Printing Co.* v. *Deering*, 254 U. S. 444, 474 (1921).

[42] 89 Cong. Rec. 3889, 3890, 3904–5.

[43] Section 5, as we have noted before, would have permitted issuing injunctions to restrain violations of the Act. It is not at all clear that the rejection of a proposal in this form should, in any event, be of determinative significance in the case at bar. Here the United States resorted to the District Court for vindication of its right under a formal contract, said to be operative "for the period of Government possession" and mutually adopted by the parties concerned as a satisfactory solution to a grave situation. The District Court, to preserve existing conditions, issued a restraining order and a preliminary injunction, effective until contractual rights could be ascertained. True, the action of Lewis in calling a strike, in addition to terminating the contract, suggests a violation of § 6 of the War Labor Disputes Act. But Senate disapproval of using injunctions to avert the latter event does not necessarily imply a desire to diminish the contractual rights and remedies of the United States.

parable action transpired in the House. Indeed, proposals in the House and the House substitute [44] for S. 796 authorized the use of injunctions in connection with private plants not yet seized by the United States. These admitted inroads on the Norris-LaGuardia Act drew much comment [45] on the floor of the House, but nevertheless prevailed. Seizure was also contemplated and criminal sanctions were made available in this situation, without specifically authorizing the use of injunctions by the United States. The latter issue was not raised, not debated and not commented upon in the House. But the fact that the House version did not provide for the issuance of injunctions to aid in the operation of seized plants is not the issue here. Rather, it is whether the House expressed any intent to restrict the existing authority of the courts. We find not the slightest suggestion to that effect in either the House substitute bill or the debates concerning it.

Nor can the action of the conference committee be construed as a Congressional proscription of issuing injunctions to aid the United States in dealing with employees in seized plants. Neither the House nor Senate versions as these bills went to conference in any way placed this issue before the conferees. The conference committee simply struck the broader provisions of the House bill allowing injunctions to issue in private labor disputes and had no occasion to consider the narrower question we have before us now. The conferees, in producing the Act in its final form, did nothing which suggests that the Congress intended to bar injunctions sought by the Government to aid in the operation of seized plants. We thus find nothing in the legislative background of the War Labor Disputes Act which constitutes an authorita-

[44] 89 Cong. Rec. 5382.

[45] See for example 89 Cong. Rec. 5241, 5243, 5299, 5305, 5321, 5325.

tive expression of Congress directing the courts to withhold from the United States injunctive relief in connection with an Act designed to strengthen the hand of the Government in serious labor disputes.

The defendants contend however that workers in mines seized by the Government are not employees of the federal Government; that in operating the mines thus seized, the Government is not engaged in a sovereign function; and that, consequently, the situation in this case does not fall within the area which we have indicated as lying outside the scope of the Norris-LaGuardia Act. It is clear, however, that workers in the mines seized by the Government under the authority of the War Labor Disputes Act stand in an entirely different relationship to the federal Government with respect to their employment from that which existed before the seizure was effected. That Congress intended such was to be the case is apparent both from the terms of the statute and from the legislative deliberations preceding its enactment. Section 3 of the War Labor Disputes Act calls for the seizure of any plant, mine, or facility when the President finds that the operation thereof is threatened by strike or other labor disturbance and that an interruption in production will unduly impede the war effort. Congress intended that by virtue of Government seizure, a mine should become for purposes of production and operation a Government facility in as complete a sense as if the Government held full title and ownership.[46] Consistent with that view, criminal penalties were provided for interference with the oper-

[46] Thus in the legislative debates Senator Connally stated: ". . . but it does seem to me that the power and authority and sovereignty of the Government of the United States are so comprehensive that when we are engaged in war and a plant is not producing, we can take it over, and that when we do take it over, it is a Government plant, just as much as if we had a fee simple title to it, . . ." 89 Cong. Rec., Part 3, pp. 3811–3112. See also *Ibid.* at p. 3809; *Ibid.*, pp. 3884–3885; *Ibid.*, Part 4, pp. 5772, 5774.

ation of such facilities.[47] Also included were procedures for adjusting wages and conditions of employment of the workers in such a manner as to avoid interruptions in production.[48] The question with which we are confronted is not whether the workers in mines under Government seizures are "employees" of the federal Government for every purpose which might be conceived.[49] The question is rather whether for the purposes of this case the incidents of the relationship existing between the Government and the workers are substantially those of governmental employer and employee. We have concluded that a proper regard for the purposes intended to be accom-

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[47] War Labor Disputes Act, § 6, provided:

"(a) Whenever any plant, mine, or facility is in the possession of the United States, it shall be unlawful for any person (1) to coerce, instigate, induce, conspire with, or encourage any person, to interfere, by lock-out, strike, slow-down, or other interruption, with the operation of such plant, mine, or facility, or (2) to aid any such lock-out, strike, slow-down, or other interruption interfering with the operation of such plant, mine, or facility by giving direction or guidance in the conduct of such interruption, or by providing funds for the conduct or direction thereof or for the payment of strike, unemployment, or other benefits to those participating therein. No individual shall be deemed to have violated the provisions of this section by reason only of his having ceased work or having refused to continue to work or to accept employment.

"(b) Any person who willfully violates any provision of this section shall be subject to a fine of not more than $5,000, or to imprisonment for not more than one year, or both."

[48] *Ibid.* § 5.

[49] Thus according to § 23 of the Revised Regulations for the Operation of the Coal Mines Under Government Control issued by the Coal Mines Administrator on July 8, 1946: ". . . nothing in these regulations shall be construed as recognizing such personnel as officers and employees of the Federal Government within the meaning of the statutes relating to federal employment." And see § 16. Section 23 also provides, however: "All personnel of the mines, both officers and employees, shall be considered as called upon by Executive Order No. 9728, to serve the Government of the United States. . . ."

plished by Congress in excluding situations involving the federal Government and its employees from the operation of the Norris-LaGuardia Act, requires that we hold that Act not applicable to this case.

Executive Order 9728, in pursuance of which the Government seized possession of the mines, authorized the Secretary of the Interior to negotiate with the representatives of the miners, and thereafter to apply to the National Wage Stabilization Board for appropriate changes in terms and conditions of employment for the period of governmental operation.[50] Such negotiations were undertaken and resulted in the Krug-Lewis Agreement. That agreement contains many basic departures from the earlier contract entered into between the mine workers and the private operators on April 11, 1945, which, except as amended and supplemented by the Krug-Lewis Agreement, was continued in effect for the period of Government possession. Among the terms of the Krug-Lewis Agreement were provisions for a new mine safety code. Operating managers were directed to provide the mine employees with the protection and benefits of Workmen's Compensation and Occupational Disease Laws. Provision was made for a Welfare and Retirement Fund and a Medical and Hospital Fund. The agreement granted substantial wage increases and contained terms relating to vacations and vacation pay. Included were provisions calling for changes in equitable grievance procedures.

It should be observed that the Krug-Lewis Agreement was one solely between the Government and the Union. The private mine operators were not parties to the contract nor were they made parties to any of its subsequent modifications. It should also be observed that the provi-

[50] After the negotiation of the Krug-Lewis Agreement, the changes agreed upon therein were approved by the National Wage Stabilization Act and thereafter by the President. This procedure is provided for in § 5 of the War Labor Disputes Act.

sions relate to matters which normally constitute the subject matter of collective bargaining between employer and employee. Many of the provisions incorporated into the agreement for the period of Government operation had theretofore been vigorously opposed by the private operators and have not subsequently received their approval.

It is descriptive of the situation to state that the Government, in order to maintain production and to accomplish the purposes of the seizure, has substituted itself for the private employer in dealing with those matters which formerly were the subject of collective bargaining between the Union and the operators. The defendants by their conduct have given practical recognition to this fact. The Union negotiated a collective agreement with the Government and has made use of the procedures provided by the War Labor Disputes Act to modify its terms and conditions. The Union has apparently regarded the Krug-Lewis Agreement as a sufficient contract of employment to satisfy the mine workers' traditional demand of a contract as a condition precedent to their work. The defendant Lewis in responding to a suggestion of the Secretary of the Interior that certain Union demands should be taken to the private operators with the view of making possible the termination of Government possession, stated in a letter dated November 15, 1946: "The Government of the United States seized the mines and entered into a contract. The mine workers do not propose to deal with parties who have no status under the contract." The defendant Lewis in the same letter referred to the operators as "strangers to the Krug-Lewis Agreement" and to the miners as the "400,000 men who now serve the Government of the United States in the bituminous coal mines."

The defendants, however, point to the fact that the private managers of the mines have been retained by the Government in the role of operating managers with sub-

stantially the same functions and authority. It is true that the regulations for the operation of the mines issued by the Coal Mines Administrator provide for the retention of the private managers to assist in the realization of the objects of Government seizure and operation.[51] The regulations, however, also provide for the removal of such operating managers at the discretion of the Coal Mines Administrator.[52] Thus the Government, though utilizing the services of the private managers, has, nevertheless retained ultimate control.

The defendants also point to the regulations which provide that under Government seizure none of the earnings or liabilities resulting from the operation of the mines are for the account or at the risk or expense of the Government; [53] that the companies continue to be liable for all Federal, State, and local taxes; [54] and that the mining companies remain subject to suit.[55] The regulations on which defendants rely represent an attempt on the part of the Coal Mines Administrator to define the respective powers and obligations of the Government and private operators during the period of Government control. We do not at this time express any opinion as to the validity of these regulations. It is sufficient to state that, in any event, the matters to which they refer have little persuasive weight in determining the nature of the relation existing between the Government and the mine workers.

We do not find convincing the contention of the defendants that in seizing and operating the coal mines the Government was not exercising a sovereign function and that, hence, this is not a situation which can be excluded from

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[51] Regulations for the Operation of the Coal Mines under Government Control, § 15.

[52] Regulations, §§ 16, 31.

[53] Regulations, §§ 17, 40.

[54] Regulations, § 24.

[55] *Ibid.*

the terms of the Norris-LaGuardia Act. In the Executive Order which directed the seizure of the mines, the President found and proclaimed that "the coal produced by such mines is required for the war effort and is indispensable for the continued operation of the national economy during the transition from war to peace; that the war effort will be unduly impeded or delayed by . . . interruptions [in production]; and that the exercise of the powers vested in me is necessary to insure the operation of such mines in the interest of the war effort and to preserve the national economic structure in the present emergency." Under the conditions found by the President to exist, it would be difficult to conceive of a more vital and urgent function of the Government than the seizure and operation of the bituminous coal mines. While engaged in this function the relationship between the mine workers and the Government was substantially that of employer and employee. We hold that in a case such as this where the Government has seized actual possession of mines or other facilities and where the Government has assumed the responsibility of maintaining production in the public interest, the relationship between the workers and the Government is such as to place the case outside the intended scope of the Norris-LaGuardia Act.

II.

Although we have held that the Norris-LaGuardia Act did not render injunctive relief beyond the jurisdiction of the district court, there are alternative grounds which support the power of the district court to punish violations of its orders as criminal contempt.

Attention must be directed to the situation obtaining on November 18. The Government's complaint sought a declaratory judgment in respect to the right of Lewis and the union to terminate the contract by unilateral action. What amounted to a strike call, effective at midnight on

November 20, had been issued by Lewis as an "official notice". Pending a determination of defendants' right to take this action, the Government requested a temporary restraining order and injunctive relief. The memorandum in support of the restraining order seriously urged the inapplicability of the Norris-LaGuardia Act to the facts of this case, and the power of the district court to grant the ancillary relief depended in great part upon the resolution of this jurisdictional question. In these circumstances, the district court unquestionably had the power to issue a restraining order for the purpose of preserving existing conditions pending a decision upon its own jurisdiction.

The temporary restraining order was served on November 18. This was roughly two and one-half days before the strike was to begin. The defendants filed no motion to vacate the order. Rather, they ignored it, and allowed a nationwide coal strike to become an accomplished fact. This Court has used unequivocal language in condemning such conduct,[56] and has in *United States* v. *Shipp*, 203 U. S. 418 (1911), provided protection for judicial authority in situations of this kind. In that case this Court had allowed an appeal from a denial of a writ of *habeas corpus* by the Circuit Court of Tennessee. The petition had been filed by Johnson, then confined under a sentence of death imposed by a state court. Pending the appeal, this Court issued an order staying all proceedings against Johnson. However, the prisoner was taken from jail and lynched. Shipp, the sheriff having custody of Johnson, was charged with conspiring with others for the purpose of lynching Johnson, with intent to show contempt

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[56] "If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the 'judicial power of the United States' would be a mere mockery." *Gompers* v. *Buck Stove & Range Company*, 221 U. S. 418, 450 (1911).

for the order of this Court. Shipp denied the jurisdiction of this Court to punish for contempt on the ground that the stay order was issued pending an appeal over which this Court had no jurisdiction because the constitutional questions alleged were frivolous and only a pretense. The Court, through Mr. Justice Holmes, rejected the contention as to want of jurisdiction, and in ordering the contempt to be tried, stated:

> "We regard this argument as unsound. It has been held, it is true, that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt. *In re Sawyer,* 124 U. S. 200, *Ex parte Fisk,* 113 U. S. 713, *Ex parte Rowland,* 104 U. S. 604. But even if the Circuit Court had no jurisdiction to entertain Johnson's petition, and if this court had no jurisdiction of the appeal, this court, and this court alone, could decide that such was the law. It and it alone necessarily had jurisdiction to decide whether the case was properly before it. On that question, at least, it was its duty to permit argument and to take the time required for such consideration as it might need. See *Mansfield, Coldwater & Lake Michigan Ry. Co.* v. *Swan,* 111 U. S. 379, 387. Until its judgment declining jurisdiction should be announced, it had authority from the necessity of the case to make orders to preserve the existing conditions and the subject of the petition, just as the state court was bound to refrain from further proceedings until the same time. Rev. Stat. 766; act of March 3, 1893, c. 226, 27 Stat. 751. The fact that the petitioner was entitled to argue his case shows what needs no proof, that the law contemplates the possibility of a decision either way, and therefore must provide for it." [203 U. S. 573.]

If this Court did not have jurisdiction to hear the appeal in the *Shipp* case, its order would have had to be vacated. But it was ruled that only the Court itself could determine that question of law. Until it was found that the Court had no jurisdiction, ". . . it had authority, from the

necessity of the case, to make orders to preserve the existing conditions and the subject of the petition . . ."

Application of the rule laid down in *United States* v. *Shipp, supra,* is apparent in *Carter* v. *United States,* 135 F. 2d 858 (1943). There a District Court, after making the findings required by the Norris-LaGuardia Act, issued a temporary restraining order. An injunction followed after a hearing in which the court affirmatively decided that it had jurisdiction and overruled the defendants' objections based upon the absence of diversity and the absence of a case arising under a statute of the United States. These objections of the defendants prevailed on appeal and the injunction was set aside. *Brown* v. *Coumanis,* 135 F. 2d 163 (1943). But in *Carter,* violations of the temporary restraining order were held punishable as criminal contempt. Pending a decision on a doubtful question of jurisdiction, the District Court was held to have power to maintain the *status quo* and punish violations as contempt.[57]

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[57] "It cannot now be broadly asserted that a judgment is always a nullity if jurisdiction of some sort or other is wanting. It is now held that, except in case of plain usurpation, a court has jurisdiction to determine its own jurisdiction, and if it be contested and on due hearing it is upheld, the decision unreversed binds the parties as a thing adjudged. *Treines* v. *Sunshine Mining Co.,* 308 U. S. 66, 60 S. Ct. 44, 84 L. Ed. 85; *Sunshine Anthracite Coal Co.* v. *Adkins,* 310 U. S. 381, 403, 60 S. Ct. 907, 84 L. Ed. 1263; *Stoll* v. *Gottlieb,* 305 U. S. 165, 59 S. Ct. 134, 83 L. Ed. 104. So in the matter of federal jurisdiction, which is often a close question, the federal court may either have to determine the facts, as in contested citizenship, or the law, as whether the case alleged arises under a law of the United States. See *Binderup* v. *Pathe Exchange,* 263 U. S. 291, at page 305, 44 S. Ct. 96, 68 L. Ed. 308. (P. 861.) . . . It alone had authority in the first instance to decide whether or not the case arose under the Norris-LaGuardia Act, 29 U. S. C. A. §§ 101–115, a law of the United States. It could lawfully by a temporary injunction preserve the business which was the subject of the litigation until a hearing could be had. The order was not final. It deprived Carter of no

In the case before us, the district court had the power to preserve existing conditions while it was determining its own authority to grant injunctive relief. The defendants, in making their private determination of the law, acted at their peril. Their disobedience is punishable as criminal contempt.

Although a different result would follow were the question of jurisdiction frivolous and not substantial, such contention would be idle here. The applicability of the Norris-LaGuardia Act to the United States in a case such as this had not previously received judicial consideration, and both the language of the Act and its legislative history indicated the substantial nature of the problem with which the District Court was faced.

Proceeding further, we find impressive authority for the proposition that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings.[58] This is true without regard even for the constitutionality of the Act under which the order is issued. In *Howat* v. *Kansas,* 258 U. S. 181, 189–90 (1922) this Court said:

> "An injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings prop-

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right. It only required that he refrain from interfering with another man for a few days. Carter did not elect to move to dissolve the order, but to flout and disobey it. The order was, while it lasted, a lawful one, such as a district court of the United States in the exercise of its equity powers could make, pending a hearing of a doubtful question of jurisdiciton. The question of jurisdiction was not frivolous. It had never before been decided." 135 F. 2d 858, 861–862.

[58] *Howat* v. *Kansas,* 258 U. S. 181 (1922); *Russell* v. *United States,* 86 F. (2d) 389 (1936); *Locke* v. *United States,* 75 F. (2d) 157 (1935); *O'Hearne* v. *United States,* 66 F. (2d) 933 (1933); *Alemite Mfg. Corp.* v. *Staff,* 42 F. (2d) 832 (1930); *Brougham* v. *Oceanic Steam Navigation Co.,* 205 Fed. 857 (1917); *Schwartz* v. *United States,* 217 Fed. 866 (1914); *Blake* v. *Nesbet,* 144 Fed. 279 (1905).

> erly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished." [59]

Violations of an order are punishable as criminal contempt even though the order is set aside on appeal, *Worden* v. *Searls*, 121 U. S. 14 (1887),[60] or though the basic action has become moot, *Gompers* v. *Bucks Stove & Range Co., supra.*

We insist upon the same duty of obedience where, as here, the subject matter of the suit, as well as the parties, was properly before the court; where the elements of federal jurisdiction were clearly shown; and where the authority of the court of first instance to issue an order ancillary to the main suit depended upon a statute, the scope and applicability of which were subject to substantial doubt. The District Court on November 29 affirmatively decided that the Norris-LaGuardia Act was of no force in this case and that injunctive relief was therefore authorized. Orders outstanding or issued after that date were to be obeyed until they expired or were set aside by appropriate proceedings, appellate or otherwise. Convictions for criminal contempt intervening before that time may stand.

It does not follow, of course, that simply because a defendant may be punished for criminal contempt for dis-

[59] See *Alemite Mfg. Corp.* v. *Staff*, 42 F. (2d) 832, 833 (1930).

[60] See *Salvage Process Corporation et al.* v. *Acme Tank Cleaning Process Corp.*, 86 F. (2d) 727 (1936); *McCann* v. *New York Stock Exchange*, 80 F. (2d) 211, 214 (1931).

obedience of an order later set aside on appeal, that the plaintiff in the action may profit by way of a compensatory fine imposed in a simultaneous proceeding for civil contempt based upon a violation of the same order. The right to compensation falls with an injunction which events prove was erroneously issued, *Worden* v. *Searls*, 121 U. S. 14, 25, 26 (1887); *Salvage Process Corp.* v. *Acme Tank Cleaning Process Corp.*, 86 F. (2d) 727 (1936);[61] *S. Anargyros* v. *Anargyros & Co.*, 191 Fed. 208 (1911); and *a fortiori* when the injunction or restraining order was beyond the jurisdiction of the court. Nor does the reason underlying *United States* v. *Shipp, supra*, compel a different result. If the Norris-LaGuardia Act were applicable in this case, the conviction for civil contempt would be reversed in its entirety.

Assuming, then, that the Norris-LaGuardia Act applied to this case and prohibited injunctive relief at the request of the United States, we would set aside the preliminary injunction of December 4 and the judgment for civil contempt; but we would, subject to any infirmities in the contempt proceedings or in the fines imposed, affirm the judgments for criminal contempt as validly punishing violations of an order then outstanding and unreversed.

III.

The defendants have pressed upon us the procedural aspects of their trial and allege error so prejudicial as to require reversal of the judgments for civil and criminal contempt. But we have not been persuaded.

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[61] See *Leman* v. *Krentlex-Arnold Co.*, 284 U. S. 448, 453 (1932); *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324, 329 (1904); *McCann* v. *New York Stock Exchange*, 80 F. (2d) 211, 214 (1935). In accord in the case of settlement is *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 451–2 (1911): ". . . when the main cause was terminated between the parties, the complainant did not require and was not entitled to, any compensation or relief of any other character."

The question is whether the proceedings will support judgments for both criminal and civil contempt; and our attention is directed to Rule 42 (b) of the Rules of Criminal Procedure.[62] The rule requires criminal contempt to be prosecuted on notice stating the essential facts constituting the contempt charged. In this respect, there was compliance with the rule here. Notice was given by a rule to show cause served upon defendants together with the Government's petition and supporting affidavit. The pleadings rested only upon information and belief, but Rule 42 (b) was not designed to cast doubt upon the propriety of instituting criminal contempt proceedings in this manner.[63] The petition itself charged a violation of the outstanding restraining order, and the affidavit alleged in detail a failure to withdraw the notice of November 15, the cessation of work in the mines, and the consequent interference with governmental functions and the juris-

[62] Rule 42 (b) regulates various aspects of a proceeding for criminal contempt where the contempt is not committed in the actual presence of the court:

"Disposition Upon Notice and Hearing. A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. He is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment."

[63] *Conley* v. *United States*, 59 F. (2d) 929 (1932); *Kelly* v. *United States*, 250 Fed. 947 (1918); see *National Labor Relations Board* v. *Arcade-Sunshine Co.*, 122 F. (2d) 964, 965 (1941).

diction of the court. The defendants were fairly and completely apprised of the events and conduct constituting the contempt charged.

However, Rule 42 (b) requires that the notice issuing to the defendants describe the criminal contempt charged as such. Defendants urge a failure to comply with this rule. The petition alleged a willful violation of the restraining order, and both the petition and the rule to show cause inquired as to why the defendants should not be "punished as and for a contempt" of court. But nowhere was the contempt described as criminal as required by the rule.

Nevertheless, defendants were quite aware that a criminal contempt was charged.[64] In their motion to discharge and vacate the rule to show cause, the contempt charged was referred to as criminal.[65] And in argument on the motion the defendants stated and were expressly informed that a criminal contempt was to be tried. Yet it is now urged that the omission of the words "criminal contempt" from the petition and rule to show cause was prejudicial error. Rule 42 (b) requires no such rigorous application, for it was designed to insure a realization by contemnors

[64] It could be well argued that the use of the word "punished" in the petition and rule to show cause was in itself adequate notice, for "punishment" has been said to be the magic word indicating a proceeding in criminal, rather than civil, contempt. Moskovitz, Contempt of Injunctions, Civil and Criminal (1943), 43 Col. L. Rev. 780, 789–90. But "punishment" as used in contempt cases is ambiguous. "It is not the fact of punishment, but rather its character and purpose. . . ." *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 441 (1911).

Noteworthy also is the allegation in the affidavit that the defendants' violation of the restraining order had "interfered with this Court's jurisdiction." And the charge of "willfully . . . and deliberately" disobeying the restraining order indicates an intention to prosecute criminal contempt.

[65] See point 4, note 14, *supra*. The points and authorities in support of the motion used similar language.

that a prosecution for criminal contempt is contemplated.[66] Its purpose was sufficiently fulfilled here, for this failure to observe the rule in all respects has not resulted in substantial prejudice to the defendants.

Not only were the defendants and the court fully informed that a criminal contempt was charged, but we think they enjoyed during the trial itself all the enhanced protections accorded defendants in criminal contempt proceedings.[67] We need not treat these at length, for defendants in this respect urge only their right to a jury trial. While no constitutional issues are raised by the defendants,[68] § 11 of the Norris-LaGuardia Act is relied

[66] The rule in this respect follows the suggestion made in *McCann* v. *New York Stock Exchange*, 80 F. (2d) 211, 214–215 (1935). Notes to the Rules of Criminal Procedure, Advisory Committee, March, 1945, p. 34.

[67] *Cooke* v. *United States*, 267 U. S. 517, 537 (1925); see *Nye* v. *United States*, 313 U. S. 33, 53 (1941); *Michaelson* v. *United States*, 266 U. S. 42, 66–67 (1924).

[68] The defendants in the District Court initially refused to waive their rights under the Norris-LaGuardia Act. After the Court's ruling upon the applicability of the Act, the defendants waived an advisory jury, made no objections to a trial without a jury, and urged no constitutional grounds for a jury trial. Similarly, defendants have made no claim in their petitions for certiorari and briefs in this Court that their trial without a jury deprived them of constitutional protections.

Thus the defendants apparently recognize that far from ever holding that the Constitution requires a jury trial for punishing contempts of court orders, this Court has instead held that trial by the Court alone is not an "invasion of the constitutional right of trial by jury." *In re Debs*, 158 U. S. 564, 594 (1895). "If it has ever been understood that proceedings according to the common law for contempt of court have been subject to the right of trial by jury, we have been unable to find any instance of it." *Eilenbecker* v. *Plymouth County*, 134 U. S. 31, 36 (1890). "Surely it cannot be supposed that the question of contempt of the authority of a court of the United States, committed by disobedience of its orders, is triable, of right, by a jury." *Interstate Commerce Comm'n.* v. *Brimson*, 154 U. S. 447, 489 (1894). The same principle is found in

upon as guaranteeing a right to a jury trial.[68] But § 11 is not operative here, for it applies only to cases "arising

Michaelson v. *United States*, 266 U. S. 42, 67 (1924); *Myers* v. *United States*, 264 U. S. 95, 104–5 (1924); *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 450 (1911).

The understanding of Congress from its very first session has been in accord, and it would seem strange in 1947 to urge a partial invalidation of the contempt statute having its roots in the First Judiciary Act, 1 Stat. 73, which was passed by the First Congress on September 24, 1789, a few months after the opening of its initial session. There were many members of the First Congress who had participated in the Revolutionary War and Constitutional Convention, and who were aggressively alert for threats to individual rights and personal freedoms. Yet in conferring upon the inferior courts that power it deemed desirable, the First Congress gave to these courts a "broad and undefined power", *Nye* v. *United States*, 313 U. S. 33, 45 (1941), to ". . . punish by fine or imprisonment, at the discretion of said courts, all contempts of authority in any cause or hearing before the same." 1 Stat. 73, 83. This power in 1831 was subjected to "drastic delimitation by Congress", *Nye* v. *United States*, *supra* at 45, but even in that Act, 4 Stat. 487, which was ". . . intended to limit the power of the courts to punish for contempts of its authority by summary proceedings, there is expressly left the power to punish in this summary manner the disobedience of any party, to any lawful writ, process, order, rule, decree or command of said court." *Eilenbecker* v. *Plymouth County*, *supra* at 38.

After preserving this power in § 268 of the Judicial Code, 36 Stat. 1163, 28 U. S. C. 385, Congress in §§ 21 and 22 of the Clayton Act required, if a defendant so requested, a trial by jury when disobedience to an order of a court also constituted a "criminal offense under any statute of the United States. . . ." 38 Stat. 730, 738, §§ 21, 22, 28 U. S. C. 386, 387; *Michaelson* v. *United States*, 266 U. S. 42 (1924). But in § 24 of the same Act, these procedural protections were limited to exclude "contempts committed in disobedience of any lawful . . . decree . . . in any suit or action brought in the name of . . . the United States." Contempts in such suits were left to be "punished in conformity to the usages at law and in equity prevailing on October 15, 1914." 38 Stat. 739, § 24; 28 U. S. C. 389. Cf. *Hill* v. *United States ex rel. Weiner*, 300 U. S. 105 (1937).

Not only did Congress obviously assume that the jury trial provisions of the Clayton Act created a right which a defendant would

Footnote 68 (continued), and footnote 69, on p. 39.

under this Act"; and we have already held that the restriction upon injunctions imposed by the Act do not govern this case. The defendants, we think, were properly tried by the Court without a jury.

If the defendants were thus accorded all their rights and privileges owing to defendants in criminal contempt cases, they are put in no better position to complain because their trial included a proceeding in civil contempt and was carried on in the main equity suit. Common sense would recognize that conduct can amount to both civil and criminal contempt. Behavior may entitle the opposing litigant to remedial relief and at the same time

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not otherwise enjoy, but so well established was the proposition that a court could punish disobedience of its injunctive decrees without the aid of a jury, that the constitutional power of Congress to impose the jury requirements contained in the Clayton Act was denied by a Circuit Court of Appeals in 1923 and was upheld only after consideration of the case by this Court. While holding that Congress could prescribe a jury trial in that narrow class of contempt cases to which the provisions of the Clayton Act were addressed, this Court clearly recognized that trial by jury was not a constitutional right in proceedings to punish violations of court orders as criminal contempt. *Michaelson* v. *United States*, 266 U. S. 42, 67 (1924).

More current recognition of the fact that jury trials in criminal contempt cases is a matter of statutory, not constitutional, right is contained in the recently effective Federal Rules of Criminal Procedure, which, in Rule 42 (b), state that "The defendant is entitled to a jury trial in any case in which an act of Congress so provides." These Rules, of course, were prescribed by this Court and, pursuant to 54 Stat. 688, 18 U. S. C. 687, became effective only after submission to and approval by the Seventy-Ninth Congress.

[69] Section 11 provides in part: "In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed. . . ."

We believe, and the Government admits, that if the Norris-LaGuardia Act applied to this case, defendants would enjoy a right to a jury trial.

justify punitive measures.[70] Disposing of both aspects of the contempt in a single proceeding would seem at least a convenient practice. Litigation in patent cases has frequently followed this course,[71] and the same method can be noted in other situations in both federal and state courts.[72] Rule 42 (b), while demanding fair notice and recognition of the criminal aspects of the case, contains nothing precluding a simultaneous disposition of the remedial aspects of the contempt tried. Even if it be the better practice to try criminal contempt alone and so avoid obscuring the defendant's privileges in any manner, a mingling of civil and criminal contempt proceedings must nevertheless be shown to result in substantial prejudice

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[70] "It may not always be easy to classify a particular act as belonging to either one of these two classes. It may partake of the characteristics of both." *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324, 329 (1904). See *Lamb* v. *Cramer*, 285 U. S. 217, 221 (1932); *Merchants Stock & Grain Co.* v. *Board of Trade of Chicago*, 201 Fed. 20, 24 (1912).

[71] "In patent cases it has been usual to embrace in one proceeding the public and private remedy—to punish the defendant if found worthy of punishment, and, at the same time, or as an alternative, to assess damages and costs for the benefit of the plaintiff." *Hendry* v. *Fitzpatrick*, 19 Fed. 810, 813 (1884). Examples of this procedure appear in *Union Tool* v. *Wilson*, 259 U. S. 107 (1922); *Matter of Christensen Engineering Co.*, 194 U. S. 458 (1904); *Kreplik* v. *Couch Patents Co.*, 190 Fed. 565 (1911); *Wilson* v. *Byron Jackson Co.*, 93 F. (2d) 577 (1937).

[72] *Farmers' Nat'l Bank* v. *Wilkerson*, 266 U. S. 503 (1925); *In re Swan, Petitioner*, 150 U. S. 637 (1893); *In re Ayers*, 123 U. S. 443 (1887); *Merchants Stock & Grain Co.* v. *Board of Trade of Chicago*, 201 Fed. 20 (1912). See *Phillips Sheet & Tin Plate Co.* v. *Amalgamated Ass'n. of Iron & Tin Workers*, 208 Fed. 335, 340 (1913). Instances in the state courts include *Holloway* v. *People's Water Co.*, 100 Kans. 414 (1917); *Carey* v. *District Court of Jasper County*, 226 Iowa 717 (1939); *Grand Lodge, K. P. of New Jersey* v. *Jansen*, 67 N. J. Eq. 737 (1901).

before a reversal will be required.[73] That the contempt proceeding carried the number and name of the equity suit[74] does not alter this conclusion, especially where, as here, the United States would have been the complaining party in whatever suit the contempt was tried. In so far as the criminal nature of the double proceeding dominates[75] and in so far as the defendants' rights in the

[73] We are not impressed with defendants' attack on the pleadings as insufficient to support a judgment for civil contempt. The petition, affidavit, and rule to show cause did not expressly mention civil contempt or remedial relief, but the affidavit contained allegations of interference with the operation of the mines and with governmental functions. These claims far from negative remedial relief. More significantly, the affidavit charged disobedience of the restraining order by failing to withdraw the notice of Nov. 15. We will not assume that defendants were not instantly aware that a usual remedy in such a situation is to commit until the act is performed. This is remedial relief and a function of civil contempt. See *Michaelson* v. *United States*, 266 U. S. 42, 66 (1924); *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 417, 449 (1911). The probabilities apparent at the outset are not dimmed by the ultimate imposition of a fine in preference to coercion by committal. Furthermore, defendants' counsel, in argument on the motion to vacate, remarked that the United States was proceeding upon the theory of civil contempt, and attempted only to demonstrate the inability of the United States to seek this relief. And when the Government's suggestions for fines were before the Court, defendants' counsel argued the excessiveness of the fines for either civil or criminal contempt.

[74] Criminal contempt was apparently tried out in the equity suit in the patent cases in Note 67, *supra*. And this was the practice followed in *Matter of Christensen Engineering Co.*, 194 U. S. 458 (1904); *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324 (1904); *New Orleans* v. *New York Mail Steamship Co.*, 20 Wall. 387 (1874). In none of these cases in this Court, however, has there been an affirmative discussion of the propriety of proceeding in this manner. Compare *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 441 (1911); *United States* v. *Bittner*, 11 F. (2d) 93, 95 (1926), with *Nye* v. *United States*, 313 U. S. 33, 42 (1941).

[75] Cf. *Nye* v. *United States*, 313 U. S. 33, 42 (1941); *Union Tool Co.* v. *Wilson*, 259 U. S. 107, 110 (1922); *Re Merchants Stock Co., Peti-*

criminal trial are not diluted by the mixing of civil with criminal contempt, to that extent is prejudice avoided.[76] Here, as we have indicated, all rights and privileges of the defendants were fully respected, and there has been no showing of substantial prejudice flowing from the formal peculiarities of defendants' trial.

Lastly, the defendants have assigned as error and argued in their brief that the District Court improperly extended the restraining order on November 27 for another ten days. There was then in progress argument on defendants' motion to vacate the rule to show cause, a part of the contempt proceedings. In the circumstances of this case, we think there was good cause shown for extending the order.[77]

IV.

Apart from their contentions concerning the formal aspects of the proceedings below, defendants insist upon the inability of the United States to secure relief by way of civil contempt in this case, and would limit the right to proceed by civil contempt to situations in which the United States is enforcing a statute expressly allowing resort to the courts for enforcement of statutory orders.

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tioner, 223, U. S. 639, 642 (1911); *Matter of Christensen Engineering Co.*, 194 U. S. 458, 461 (1904).

[76] In *Federal Trade Commission* v. *Abe McLean & Son*, 94 F. (2d) 802 (1938), it could not be said that the criminal element had been dominant and clear from the very outset of the case. The same is true of *Norstrom* v. *Wahl*, 41 F. (2d) 910 (1930).

[77] Rule 65 (b) of the Federal Rules of Civil Procedure provides that a temporary restraining order should expire according to its terms "unless within the time so fixed the order, for good cause shown, is extended for a like period. . . ." There being sufficient cause for the extension, there is no conflict with the subsequent clause of Rule 65 (b) requiring that "the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character. . . ."

McCrone v. *United States,* 307 U. S. 61 (1939), however, rests upon no such narrow ground, for the Court there said that "Article 3, ¶2, of the Constitution, expressly contemplates the United States as a party to civil proceedings by extending the jurisdiction of the federal judiciary 'to Controversies to which the United States shall be a party,' " *id* at 63. The United States was fully entitled to bring the present suit and to benefit from orders entered in its behalf.[78] We will not reduce the practical value of the relief granted by limiting the United States, when the orders have been disobeyed, to a proceeding in criminal contempt, and by denying to the Government the civil remedies enjoyed by other litigants, including the opportunity to demonstrate that disobedience has occasioned loss.[79]

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[78] Section 24 of the Judicial Code, 28 U. S. C. 41, extends the jurisdiction of the District Courts to "all suits of a civil nature, at common law or equity, brought by the United States—".

[79] The Court in the *McCone* case affirmed 100 F. (2d) 322 and noted, 307 U. S. 61, 62, note 1, the conflict with *Federal Trade Commission* v. *McClean & Son,* 94 F. (2d) 802 (1938), upon which defendants now rely.

February 19, 1947

759, 760, 781, 782 & 811

U. S. v. UNITED MINE WORKERS

Memorandum to the Conference:

I am submitting, for your consideration, the following substitution for Section V of the printed draft of my opinion in the above case:

V.

It is urged that, in any event, the fine of $10,000 imposed upon the defendant Lewis and the fine of $3,500,000 imposed upon the Union were excessive and in no way related to the evidence introduced at the hearing. The trial court properly determined that the defendants were guilty of both criminal and civil contempts. The record, however, does not reveal what portions of the fines were imposed as punishment for the criminal contempts or what amounts were directed to be paid by reason of the civil contempts.

As we have pointed out above, the charges of criminal and civil contempt were properly tried in the same proceeding. We have held that there was substantial compliance with all the procedural requirements relating to both actions. Sentences for criminal contempt are punitive in their nature and are imposed for the purpose of vindicating the authority of the court. Gompers v. Bucks Stove & Range Co., supra, at 108. The interests of orderly government demand that respect and compliance be given to orders issued by courts possessed of jurisdiction of persons and subject matter. One who defies the public authority and willfully refuses his obedience, does so at his peril. In imposing a fine for criminal contempt, the trial judge may properly take into consideration the extent of the willful and deliberate defiance of the court's

order, the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating the defendant's defiance as required by the public interest, and the importance of deterring such acts in the future. In fixing the amount of the fine the judge should also bear in mind the extent of the financial resources of the defendant and the seriousness of the burden which the fine is likely to impose. Because of the nature of these standards, great reliance must be placed upon the discretion of the trial judge. The serious difficulty here, however, is that there is no way to determine what portion of the fines was imposed as punishment for the criminal contempt.

An indeterminate portion of the fines in this case resulted from the civil contempts of the defendants. Judicial sanctions in civil contempt proceedings are designed to accomplish the two-fold purpose of compensating the complainant for damages sustained and of coercing compliance with the court's order. Gompers v. Bucks Stove & Range Co., supra, at 441-443. A fine made payable to the complaining party in such a proceeding must be based upon evidence of actual loss sustained by the complainant as a result of the defendant's contempt.[76/] In this respect, the record is lacking in precise

76/ Leman v. Kentler-Arnold Hinge Last Co., 284 U.S. 448, 455-456 (1932); Gompers v. Bucks Stove & Range Co., supra, at 443-444; Norstrom v. Wahl, 41 F. (2d) 910, 914 (1930); Judelsohn v. Black, 64 F. (2d) 116 (1933); Parker v. United States, 126 F. (2d) 370, 380 (1942).

evidence concerning the Government's total loss resulting from decreased revenues and otherwise caused by the stoppage in coal production. Nevertheless, the record is adequate to show that substantial damages had been suffered by the Government at the time the fines were imposed.

Exercising its discretion, the District Court imposed a fine of $10,000 upon the defendant Lewis and a fine of $3,500,000 upon the defendant Union. The fines were imposed for both criminal and civil contempt. In view of the record in this case, and in view of the standards for determining fines in civil and criminal contempt proceedings, a majority of the Court holds that there was no abuse of discretion in imposing a fine of $10,000 on the defendant Lewis. However, a majority of the Court holds that the fine of $3,500,000 imposed upon the defendant Union is excessive, and a majority of the Court is of the opinion that a fine of $1,000,000 would not be excessive. Accordingly, the judgment against the Union should be reduced and the fine fixed at $1,000,000.

We have examined the other contentions advanced by the defendants but have found them to be without merit. The temporary restraining orders and the preliminary injunction were properly issued, and the actions of the District Court in these respects are affirmed. The judgment against the defendant Lewis is affirmed. The judgment against the defendant Union is modified so as to impose a fine of $1,000,000, and, as modified, the judgment is affirmed.

SO ORDERED.

The Chief Justice

February 19, 1947

759, 760, 781, 782 & 811

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As we have pointed out above, the charges of criminal and civil contempt were properly tried in the same proceeding. We have held that there was substantial compliance with all the procedural requirements relating to both actions. Sentences for criminal contempt are punitive in their nature and are imposed for the purpose of vindicating the authority of the court. Gompers v. Bucks Stove & Range Co., supra, at 108. The interests of orderly government demand that respect and compliance be given to orders issued by courts possessed of jurisdiction of persons and subject matter. One who defies the public authority and willfully refuses his obedience, does so at his peril. In imposing a fine for criminal contempt, the trial judge may properly take into consideration the extent of the willful and deliberate defiance of the court's

order, the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating the defendant's defiance as required by the public interest, and the importance of deterring such acts in the future. In fixing the amount of the fine the judge should also bear in mind the extent of the financial resources of the defendant and the seriousness of the burden which the fine is likely to impose. Because of the nature of these standards, great reliance must be placed upon the discretion of the trial judge. The serious difficulty here, however, is that there is no way to determine what portion of the fines was imposed as punishment for the criminal contempt.

An indeterminate portion of the fines in this case resulted from the civil contempts of the defendants. Judicial sanctions in civil contempt proceedings are designed to accomplish the two-fold purpose of compensating the complainant for damages sustained and of coercing compliance with the court's order. Gompers v. Bucks Stove & Range Co., supra, at 441-443. A fine made payable to the complaining party in such a proceeding must be based upon evidence of actual loss sustained by the complainant as a result of the defendant's contempt.[76/] In this respect, the record is lacking in precise

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evidence concerning the Government's total loss resulting from decreased revenues and otherwise caused by the stoppage in coal production. Nevertheless, the record is adequate to show that substantial damages had been suffered by the Government at the time the fines were imposed.

Exercising its discretion, the District Court imposed a fine of $10,000 upon the defendant Lewis and a fine of $3,500,000 upon the defendant Union. The fines were imposed for both criminal and civil contempt. In view of the record in this case, and in view of the standards for determining fines in civil and criminal contempt proceedings, a majority of the Court holds that there was no abuse of discretion in imposing a fine of $10,000 on the defendant Lewis. However, a majority of the Court holds that the fine of $3,500,000 imposed upon the defendant Union is excessive, and a majority of the Court is of the opinion that a fine of $1,000,000 would not be excessive. Accordingly, the judgment against the Union should be reduced and the fine fixed at $1,000,000.

We have examined the other contentions advanced by the defendants but have found them to be without merit. The temporary restraining orders and the preliminary injunction were properly issued, and the actions of the District Court in these respects are affirmed. The judgment against the defendant Lewis is affirmed. The judgment against the defendant Union is modified so as to impose a fine of $1,000,000, and, as modified, the judgment is affirmed.

SO ORDERED.

The Chief Justice

We have examined the other contentions advanced by defendants but have found them to be without merit. The temporary restraining orders and the preliminary injunction were properly issued, and the actions of the District Court in these respects are affirmed. The judgment against the defendant Lewis is affirmed. The judgment against the defendant Union is vacated and the cases are remanded to the District Court for further procedings in conformity with this opinion.

So ordered.

To: ~~Mr. Justice Frankfurter~~

From: The Chief Justice

Circulated:

Recirculated: Feb. 14, 1947

Changes throughout

I agree with all the changes made on the portion of the opinion with which I agree - i.e. other than N.L.R.B. portion.

And as soon as I know Jim's fate in fixing an amount of price here, I

Recirculated 2/14/47.

SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 and 811.—October Term, 1946.

The United States of America, Petitioner, 759 *v.* United Mine Workers of America, an Unincorporated Association. John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner, 760 *v.* The United States of America. United Mine Workers of America, an Unincorporated Association, Petitioner. 781 *v.* The United States of America. The United States of America, Petitioner, 782 *v.* John L. Lewis, Individually and as President of the United Mine Workers of America. United Mine Workers of America, an Unincorporated Association and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner, 811 *v.* The United States of America.	On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

[February —, 1947.]

The Chief Justice delivered the opinion of the Court.

In October, 1946, the United States was in possession of the major portion of the country's bituminous coal mines.[1] Terms and conditions of employment were controlled "for the period of Government possession" by an agreement[2] entered into on May 29, 1946, between Secretary of Interior Krug, as Coal Mines Administrator, and John L. Lewis, as President of the United Mine Workers of America.[3] The Krug-Lewis Agreement embodied far reaching

[1] The United States had taken possession of the mines on May 21, 1946, pursuant to Executive Order 9728, 77 F. R. 5593, in which the President, after determining that labor disturbances were interrupting the production of bituminous coal necessary for the operation of the national economy, directed the Secretary of Interior to take possession of and operate the mines and to negotiate with representatives of the miners concerning the terms and conditions of employment.

The President's action was taken under the Constitution, as President of the United States and Commander in Chief of the Army and Navy, and by virtue of the authority conferred upon him by the War Labor Disputes Act, 57 Stat. 163, 50 U. S. C. App. Supp. V, 309, 1501–1511. Section 3 of the Act authorizes the seizure of facilities necessary for the war effort if and when the President finds and proclaims that strikes or other labor disturbances are interrupting the operation of such facilities.

Section 3 directs that the authority under that section to take possession of the specified facilities will terminate with the ending of hostilities and that the authority under that section to operate facilities seized will terminate six months after the ending of hostilities. The President on December 31, 1946, proclaimed that hostilities were terminated on that day, 12 F. R. 1.

[2] The initial paragraph of the contract provided that:

"This agreement between the Secretary of the Interior, acting as Coal Mines Administrator under the authority of Executive Order No. 9728 (dated May 21, 1946, 11 F. R. 5593), and the United Mine Workers of America, covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945."

[3] In compliance with Executive Order No. 9728 and § 5 of the War Labor Disputes Act, the agreement had been submitted to and approved by the National Wage Stabilization Board.

changes favorable to the miners; [4] and, except as amended and supplemented therein, the agreement carried forward the terms and conditions of the National Bituminous Coal Wage Agreement of April 11, 1945.[5]

On October 21, 1946, Mr. Lewis directed a letter to Secretary Krug and presented issues which led directly to the present controversy. According to Mr. Lewis, the Krug-Lewis agreement carried forward § 15 of the National Bituminous Coal Wage Agreement of April 11, 1945. Under that section either party to the contract was privileged to give ten days' notice in writing of a desire for a negotiating conference which the other party was required to attend; fifteen days after the beginning of the conference either party might give notice in writing of the termination of the agreement, effective five days after receipt of such notice. Asserting authority under this clause, Mr. Lewis in his letter of October 21 requested that a conference begin November 1 for the purpose of negotiating new arrangements concerning wages, hours, practices, and other pertinent matters appertaining to the bituminous coal industry.[6]

Captain N. H. Collisson, then Coal Mines Administrator, answered for Secretary Krug. Any contractual basis for requiring negotiations for revision of the Krug-Lewis

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[4] See *infra* p. —.

[5] The saving clause was in the following form:

"Except as amended and supplemented herein, this agreement carries forward and preserves the terms and conditions contained in all joint wage agreements effective April 1, 1941, through March 31, 1943, the supplemental agreement providing for the six (6) day workweek, and all the various district agreements executed between the United Mine Workers and the various Coal Associations and Coal Companies (based upon the aforesaid basic agreement) as they existed on March 31, 1943, and the National Bituminous Coal Wage Agreement, dated April 11, 1945."

[6] The letter also charged certain breaches of contract by the Government and asserted significant changes in Government wage policy.

agreement was denied.[7] In the opinion of the Government, § 15 of the 1945 agreement had not been preserved by the Krug-Lewis agreement; indeed, § 15 had been expressly nullified by the clause of the latter contract providing that the terms contained therein were to cover the period of Government possession. Although suggesting that any negotiations looking toward a new agreement be carried on with the coal mine owners, the Government expressed willingness to discuss matters affecting the operation of the mines under the terms of the Krug-Lewis agreement.

Conferences were scheduled and began in Washington on November 1, both the union and the Government adhering to their opposing views regarding the right of either party to terminate the contract.[8] At the fifth meeting held on November 11, the union for the first time offered specific proposals for changes in wages and other conditions of employment. On November 13 Secretary Krug requested the union to negotiate with the mine owners. This suggestion was rejected.[9] On November 15 the union, by John L. Lewis, notified Secretary Krug that "Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option hereby terminates said Krug-Lewis Agreement as of 12:00 o'clock P. M., Midnight, Wednesday, November 20, 1946."

Secretary Krug again notified Mr. Lewis that he had no power under the Krug-Lewis agreement or under the law to terminate the contract by unilateral declara-

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[7] Captain Collisson also specifically denied breaches of contract and changes in Government wage policy.

[8] Conferences were carried on without prejudice to the claims of either party in this respect.

[9] Secretary Krug and Mr. Lewis met privately on November 13 and again on November 14.

tion.[10] The President of the United States stated his strong support of the Government's position and requested reconsideration by the union in order to avoid a national crisis. However, Lewis, as union president, circulated to the mine workers copies of the November 15 letter to Secretary Krug. This communication was for the "official information" of union members.

The United States on November 18 filed suit in the District Court for the District of Columbia against the United Mine Workers of America and John L. Lewis, individually and as president of the union. The complaint was brought under the Declaratory Judgment Act [11] and sought a judgment to the effect that the defendants had no power unilaterally to terminate the Krug-Lewis agreement. And, alleging that the November 15 notice was in reality a strike notice, the United States, pending the final determination of the cause, requested a temporary restraining order and preliminary injunctive relief.

The court, immediately and without notice to the defendants, issued a temporary order [12] restraining the

[10] Secretary Krug had been advised by the Attorney General, whose opinion had been sought, that § 15 of the 1945 agreement was no longer in force.

[11] Judicial Code, § 274d, 28 U. S. C. 400.

[12] The pertinent part of the order was as follows:

"Now, Therefore, it is by the Court this 18th day of November, 1946,

Ordered, that the defendants and each of them and their agents, servants, employees, and attorneys, and all persons in active concert or participation with them, be and they are hereby restrained pending further order of this Court from permitting to continue in effect the notice heretofore given by the defendant, John L. Lewis, to the Secretary of Interior dated November 15, 1946; and from issuing or otherwise giving publicity to any notice that or to the effect that the Krug-Lewis Agreement has been, is, or will at some future date be terminated, or that said agreement is or shall at some future date be nugatory or void at any time during Government possession of the bituminous coal mines; and from breaching any of their obligations

defendants from continuing in effect the notice of November 15, from encouraging the mine workers to interfere with the operation of the mines by strike or cessation of work, and from taking any action which would interfere with the court's jurisdiction and its determination of the case. The order by its terms was to expire at 3:00 p. m. on November 27 unless extended for good cause shown. A hearing on the preliminary injunction was set for 10:00 a. m. on the same date. The order and complaint were served on the defendants on November 18.

A gradual walkout by the miners commenced on November 18, and by midnight of November 20, consistent with the miners' "no contract, no work" policy, a full-blown strike was in progress. Mines furnishing the major part of the nation's bituminous coal production were idle.

On November 21 the United States filed a petition for a rule to show cause why the defendants should not be punished as and for contempt, alleging a willful violation of the restraining order. The rule issued, setting Novem-

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under said Krug-Lewis Agreement; and from coercing, instigating, inducing, or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow down, walkout, cessation of work, or otherwise, with the operation of said mines by continuing in effect the aforesaid notice or by issuing any notice of termination of agreement or through any other means or device; and from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728; and from taking any action which would interfere with this Court's jurisdiction or which would impair, obstruct, or render fruitless, the determination of this case by the Court;

"And it is further ordered that this restraining order shall expire at 3 o'clock p. m. on November 27th, 1946, unless before such time the order for good cause shown is extended, or unless the defendants consent that it may be extended for a longer period;

"And it is further ordered that plaintiff's motion for preliminary injunction be set down for hearing on November 27th, 1946, at 10:00 o'clock a. m."

ber 25 as the return day and, if at that time the contempt was not sufficiently purged, setting November 27 as the day for trial on the contempt charge.

On the return day, defendants, by counsel, informed the court that no action had been taken concerning the November 15 notice and denied the jurisdiction of the court to issue the restraining order and rule to show cause. Trial on the contempt charge was thereupon ordered to begin as scheduled on November 27. On November 26 the defendants filed a motion to discharge and vacate the rule to show cause. Their motion challenged the jurisdiction of the court and raised the grave question of whether the Norris-LaGuardia Act [13] prohibited the granting of the temporary restraining order at the instance of the United States.[14]

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[13] 47 Stat. 70, 29 U. S. C. §§ 101–115.

[14] The grounds offered for the motion were:

"1. The Temporary Restraining Order is void in that this case involves and grows out of a labor dispute. Under the provisions of the Norris-LaGuardia Act (47 Stat. 70), and the provisions of Section 20 of the Clayton Act (38 U. S. C. 323, 730), this Honorable Court is without jurisdiction over the subject-matter of this cause.

"2. Equity acts only where there is no plain, adequate, and complete remedy at law. The allegations of the Petition for the Rule purport to show a violation of the War Labor Disputes Act—a serious offense—in which field there is no place for equity intervention.

"3. Observance of all the strict rules of criminal procedure is required to establish criminal contempt. It is apparent that the alleged facts set out in the unverified Petition and in the affidavit of Captain Collisson, filed in support of the Rule, are based wholly upon hearsay, information and belief and are not sufficient to sustain the Rule to Show Cause.

"4. The object of the Petition for the Rule is necessarily punitive and not compensatory. Accordingly, it being for criminal contempt, the Petition should have been presented as an independent proceeding and not as supplemental to the original cause.

"5. The Temporary Restraining Order is beyond the jurisdiction of this Honorable Court and therefore void because it contravenes the First, Fifth, and Thirteenth Amendments to the Constitution of the United States."

After extending the temporary restraining order on November 27, and after full argument on November 27 and November 29, the court on the latter date overruled the motion and held that its power to issue the restraining order in this case was not affected by either the Norris-LaGuardia Act or the Clayton Act.[15]

The defendants thereupon pleaded not guilty and waived an advisory jury. Trial on the contempt charge proceeded. The Government presented eight witnesses, the defendants none. At the conclusion of the trial on December 3, the court found that defendants had permitted the November 15 notice to remain outstanding, had encouraged the miners to interfere by a strike with the operation of the mines and with the performance of governmental functions, and had interfered with the jurisdiction of the Court. Both defendants were found guilty beyond reasonable doubt of both criminal and civil contempt dating from November 18. The Court entered judgment on December 4, fining the defendant Lewis $10,000, and the defendant union $3,500,000. On the same day a preliminary injunction, effective until a final determination of the case, was issued in terms similar to those of the restraining order.

On December 5 the defendants filed notices of appeal from the judgments of contempt. The judgments were stayed pending the appeals. The United States on December 6 filed a petition for certiorari in both cases. Section 240 (e) of the Judicial Code authorizes a petition for certiorari by any party and the granting of certiorari prior to judgment in the Circuit Court of Appeals. Prompt settlement of this case being in the public interest, we granted certiorari on December 9, and subsequently for similar reasons granted petitions for certiorari filed by the defendants, — U. S. —, —. The cases were consolidated for argument.

[15] 38 Stat. 738, 29 U. S. C. § 52.

I.

Defendants' first and principal contention is that the restraining order and preliminary injunction were issued in violation of the Clayton and Norris-LaGuardia Acts. We have come to a contrary decision.

It is true that Congress decreed in § 20 of the Clayton Act that "no such restraining order or injunction shall prohibit any person or persons . . . from recommending, advising, or persuading others" to strike. But by the Act itself this provision was made applicable only to cases "between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment. . . ." [16] For reasons which will be explained at greater length in discussing the applicability of the Norris-LaGuardia Act, we cannot construe the general term "employer" to include the United States, where there is no express reference to the United States and no evident affirmative grounds for believing that Congress intended to withhold an otherwise available remedy from the Government as well as from a specified class of private persons.

Moreover, it seems never to have been suggested that the proscription on injunctions found in the Clayton Act is in any respect broader than that in the Norris-LaGuardia Act. Defendants do not suggest in their argument that it is. This Court, on the contrary, has stated that the Norris-LaGuardia Act "still further . . . [narrowed] the circumstances under which the federal courts could grant injunctions in labor disputes." [17] Consequently, we would feel justified in this case to consider the application of the Norris-LaGuardia Act alone. If it does not apply, neither does the less comprehensive proscription

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[16] *Duplex Co.* v. *Dearing*, 254 U. S. 443, 470 (1921); *American Foundries* v. *Tri-City Council*, 257 U. S. 184, 202 (1921).

[17] *United States* v. *Hutcheson*, 312 U. S. 219, 231 (1941).

of the Clayton Act; [18] if it does, defendant's reliance on the Clayton Act is unnecessary.

By the Norris-LaGuardia Act, Congress divested the federal courts of jurisdiction to issue injunctions in a specified class of cases. It would probably be conceded that the characteristics of the present case would be such as to bring it within that class if the basic dispute had remained one between defendants and a private employer, and the latter had been the plaintiff below. So much seems to be found in the express terms of §§ 4 and 13 of the Act, set out in the margin.[19] The specifications in

[18] See also *United States* v. *Hutcheson*, *supra*, 312 U. S. at 235, 236 (1941); *Allen Bradley Co.* v. *Union*, 325 U. S. 797, 805 (1945).

[19] "SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

"(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

"(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

"(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

"(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

"(i) Advising, urging, or otherwise causing or inducing without

§ 13 are in general terms and make no express exception for the United States. From these premises, defendants argue that the restraining order and injunction were forbidden by the Act and were wrongfully issued.

Even if our examination of the Act stopped here, we could hardly assent to this conclusion. There is an old and well known rule that statutes which in general terms divest pre-existing rights or privileges will not be applied

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fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act."

"SEC. 13. When used in this Act, and for the purposes of this Act—

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

"(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia."

to the sovereign without express words to that effect.[20] It has been stated, in cases in which there were extraneous and affirmative reasons for believing that the sovereign should also be deemed subject to a restrictive statute, that this rule was a rule of construction only.[21] Though that may be true, the rule has been invoked successfully in cases so closely similar to the present one,[22] and the statement of the rule in those cases has been so explicit,[23] that we are inclined to give it much weight here. Congress was not ignorant of the rule which those cases reiterated; and, with knowledge of that rule, Congress would not, in writing the Norris-LaGuardia Act, omit to use "clear and specific [language] to that effect" if it actually intended to reach the Government in all cases.

But we need not place entire reliance in this exclusionary rule. Section 2,[24] which declared the public policy of the

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[20] *United States* v. *Herron*, 20 Wall. 251, 263 (1873); *Lewis, Trustee* v. *United States*, 92 U. S. 618, 622 (1875). See *Guarantee Co.* v. *Title Guarantee Co.*, 224 U. S. 152, 155 (1912).

[21] *Green* v. *United States*, 9 Wall. 655, 658 (1869); *United States* v. *California*, 297 U. S. 175, 186 (1936).

[22] *Dollar Savings Bank* v. *United States*, 19 Wall. 227, 238, 239 (1873); *United States* v. *American Bell Telephone Co.*, 159 U. S. 548, 553–555 (1895); *United States* v. *Stevenson*, 215 U. S. 190, 197 (1909).

[23] "The most general words that can be devised (for example, any person or persons, bodies politic or corporate) affect not him [the sovereign] in the least, if they may tend to restrain or diminish any of his rights or interests." *Dollar Savings Bank* v. *United States*, 19 Wall. 227, 239 (1873). "If such prohibition is intended to reach the Government in the use of known rights and remedies, the language must be clear and specific to that effect." *United States* v. *Stevenson*, 215 U. S. 190, 197 (1895).

In both these cases the question, as in the present case, was whether the United States was divested of a certain remedy by a statute or a rule of law which, without express reference to the United States, made that remedy generally unavailable.

[24] "SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such

United States as a guide to the Act's interpretation, carries indications as to the scope of the Act. It predicates the purpose of the Act on the contrast between the position of the "individual unorganized worker" and that of the "owners of property" who have been permitted to "organize in the corporate and other forms of ownership association", and on the consequent helplessness of the worker "to exercise actual liberty of contract . . . and thereby to obtain acceptable terms and conditions of employment." The purpose of the Act is said to be to contribute to the worker's "full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives . . . for the purpose of collective bargaining. . . ." These considerations, on their face, obviously do not apply to the Government as an employer or to relations between the Government and its employees.

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jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted."

If we examine §§ 4 and 13, on which defendants rely, we note that they do not purport to strip completely from the federal courts all their preexisting powers to issue injunctions, that they withdraw this power only in a specified type of case, and that this type is a case "involving or growing out of any labor dispute." Section 13 in the first instance declares a case to be of this type when it "involves persons" or "involves any conflicting or competing interests" in a labor dispute of "persons" who stand in any one of several defined economic relationships. And "persons" must be involved on both sides of the case or the conflicting interests of "persons" on both sides of the dispute. The Act does not define "persons". In common usage that term does not include the sovereign, and statutes employing it will ordinarily not be construed to do so.[25] Congress made express provision in 1 U. S. C. 1 for the terms to extend to partnerships and corporations, and in § 13 of the Act itself for it to extend to associations. The absence of any comparable provision extending the term to sovereign governments implies that Congress did not desire the term to extend to them.

Those clauses in § 13 (a) and (b) spelling out the position of "persons" relative to the employer-employee relationship affirmatively suggest that the United States, as an employer, was not meant to be included. Those clauses require that the case involve persons "who are engaged in the same industry, trade, craft or occupation", who "have direct or indirect interests therein", who are "employees of the same employer", who are "members of the same or an affiliated organization of employers or employees", or who stand in some one of other specified positions relative to a dispute over the employer-employee relationship. Every one of these qualifications in § 13 (a) and (b) we think relates to an economic role ordinarily filled by a private individual or corporation, and not by a

[25] *United States* v. *Cooper Corp.*, 312 U. S. 600, 604 (1941); *United States* v. *Fox*, 94 U. S. 315, 321 (1876).

sovereign government. None of them is at all suggestive of any part played by the United States in its relations with its own employees. We think that Congress' failure to refer to the United States or to specify any role which it might commonly be thought to fill is strong indication that it did not intend that the Act should apply to situations in which United States appears as employer.

In the type of case to which the Act applies, § 7 requires certain findings of fact as conditions precedent to the issuance of injunctions even for the limited purposes recognized by the Act. One such required finding is that "the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection." Obviously, such finding could never be made if the complainant were the United States, and federal property were threatened by federal employees, as the responsibility of protection would then rest not only on state officers, but also on all federal, civil and military forces. If these failed, a federal injunction would be a meaningless form. This provision, like those in §§ 2, 4 and 13, already discussed, indicates that the Act was not intended to affect the relations between the United States and its employees.

Defendants maintain that certain facts in the legislative history of the Act so clearly indicate an intent to restrict the Government's use of injunctions that all the foregoing arguments to the contrary must be rejected.

Congressman Beck of Pennsylvania indicated in the course of the House debates that he thought the Government would be included within the prohibitions of the Act.[26] Congressman Beck was not a member of the Judiciary Committee which reported the bill, and did not vote for its passage. We do not accept his views as ex-

[26] 75 Cong. Rec. 5473. An amendment by Congressman Beck, designed to save to the United States the right to intervene by injunction in private labor disputes, was defeated. 75 Cong. Rec. 5503, 5505.

pressive of the attitude of Congress relative to the status of the United States under the Act.

Congressman Blanton of Texas introduced an amendment to the bill which would have made an exception to the provision limiting the injunctive power "where the United States Government is the petitioner", and this amendment was defeated by the House.[27] The first comment which was made on this amendment, however, after its introduction, was that of Congressman LaGuardia, the House sponsor of the bill, who opposed it not on the ground that such an exception should not be made but rather on the ground that the express exception was unnecessary. Congressman LaGuardia read the definition of a person "participating or interested in a labor dispute" in § 13 (b) and referred to the provisions of § 13 (a) and then added: "I do not see how in any possible way the United States can be brought in under the provisions of this bill." When Congressman Blanton thereupon suggested the necessity of allowing the Government to use injunctions to maintain discipline in the army and navy, LaGuardia pointed out that these services are not "a trade, craft or occupation". Blanton's only answer to LaGuardia's opposition was that the latter "does not know that extensions will be made." A vote was then taken and the amendment defeated.[28] Obviously this incident does not reveal a Congressional intent to legislate concerning the relationship between the United States and its employees.

In the debates in both Houses of Congress numerous references were made to previous instances in which the United States had resorted to the injunctive process in labor disputes between private employers and private employees,[29] where some public interest was thought to have

[27] 75 Cong. Rec. 5503.

[28] *Ibid.*

[29] Most frequently mentioned was the Government action in connection with the railway strikes of 1894 and 1922.

become involved. These instances were offered as illustrations of the abuses flowing from the use of injunctions in labor disputes and the desirability of placing a limitation thereon. The frequency of these references and the attention directed to their subject matter are compelling circumstances. We agree that they indicate that Congress, in passing the Act, did not intend to permit the United States to continue to intervene by injunction in purely private labor disputes.

But whether Congress so intended or not is a question different from the one before us in this case, in which we are concerned only with the Government's right to injunctive relief in a dispute with its own employees. Although we recognize that Congress intended to withdraw such remedy in the former situation, it does not follow that it intended to do so in the latter. The circumstances in which the Government sought such remedy in 1894 and 1922 were vastly different from those in which the Government is seeking to carry out its responsibilities by taking legal action against its own employees, and we think that the references in question have only the most distant and uncertain bearing on our present problem. Indeed, when we look further into the history of the bill, we find that there were other events which unequivocally demonstrate that injunctive relief was not intended to be withdrawn in the latter situation.

When the House had before it a rule for the consideration of the bill, Congressman Michener, a ranking minority member of the Judiciary Committee and the spokesman for the minority party on the Rules Committee, made a general statement in the House concerning the subject matter of the bill and advocating its present consideration. In this survey he clearly stated to the House that the Government's rights with respect to its own employees would not be affected: [30]

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[30] 75 Cong. Rec. 5464.

> "Be it remembered that this bill does not attempt to legislate concerning Government employees. I do not believe that the enactment of this bill into law will take away from the Federal Government any rights which it has under existing law, to seek and obtain injunctive relief where the same is necessary for the functioning of the Government."

In a later stage of the debate, Congressman Michener repeated this view as to the proper construction of the bill in the following terms: [31]

> "This deals with labor disputes between individuals, not where the Government is involved. It is my notion that under this bill the Government can function with an injunction, if that is necessary in order to carry out the purpose of the Government. I should like to see this clarified, but I want to go on record as saying that under my interpretation of this bill the Federal Government will not at any time be prevented from applying for an injunction, if one is necessary in order that the Government may function."

We conclude that Congress was legislating with the understanding that the Norris-LaGuardia Act would not affect the power of federal courts to give relief by injunction in situations involving the United States and its employees.[32]

If we were to stop here, there would be little difficulty in accepting the decision of the District Court upon the

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[31] 75 Cong. Rec. 5509.

[32] We have been cited to no instances in which the consideration of the Senate was directed to the specific issue of the relationship between the United States and its own employees. The use of the injunction by the Government was in question, but primarily in respect to those instances in which the United States had taken action in private labor disputes, *e. g.* 75 Cong. Rec. 4509, 4619, 4670, 4689, 5001, 5005. Silence upon the status of the Government as employer is not inconsistent with the desires of the House to exclude from the Act those disputes in which the United States is seeking relief against its own employees.

scope of the Act. And the cases in this Court since the passage of the Act express consistent views concerning the types of situations to which the Act applies.[33] The cases have gone no farther than to follow Congressional desires by regarding as beyond the jurisdiction of the District Courts the issuance of injunctions sought by the United States but running against persons none of whom resemble employees of the United States. None of these cases dealt with the narrow segment of the employer-employee relationship now before us.

But in spite of the determinative guidance so offered, defendants rely upon the opinions of several Senators uttered in May, 1943, while debating the Senate version of the War Labor Disputes Act.[34] The debate at that time centered around a substitute for the bill, S. 796, as originally introduced.[35] Section 5 of the substitute, as amended, provided, "The District Courts of the United States and the United States Courts of the Territories or possessions shall have jurisdiction, for cause shown, but solely upon application by the Attorney General or under his direction . . . to restrain violations or threatened violations of this Act."[36] Following the rejection of other amendments aimed at permitting a much wider use of injunctions and characterized as contrary to the Norris-

[33] *United States* v. *American Federation of Musicians*, 318 U. S. 741 (1943); see *United States* v. *Hutcheson*, 312 U. S. 219, 227 (1941). In accord is *United States* v. *Weirton Steel Co.*, 7 F. Supp. 255 (1934); cf. *Anderson* v. *Bigelow*, 130 F. (2d) 460 (1942).

[34] It was upon § 3 of this Act that the President based in part the seizure of the bituminous coal mines. See note 1, *supra*.

[35] 89 Cong. Rec. 3812. The substitute bill embodied two amendments proposed by Senator Connally on the floor of the Senate. 89 Cong. Rec. 3809.

[36] Section 5 of the substitute bill originally did not limit the issuance of injunctions to those sought by the Attorney General, but Senator Wagner's proposal to add "but solely upon application by the Attorney General or under his direction" was accepted, 89 Cong. Rec. 3986.

LaGuardia Act,[37] several Senators were of the opinion that § 5 itself would remove some of the protection given employees by that Act,[38] a view contrary to what we have just determined to be the scope of the Act as passed in 1932. Section 5 was defeated and no injunctive provisions were contained in the Senate bill.

The opinions of Senate leaders in 1943 we have considered, but they do not override the intent of Congress as expressed in 1932. Moreover, there is no evidence that the House in 1943 understood the scope of the Norris-LaGuardia Act as did those Senators to whose utterances we have just referred. Debate upon the injunction features of the bill proposed in the House was not concerned with the use of the injunction by the United States in connection with plants seized and operated under Government authority.[39]

Nor should it be concluded that Congress, by passing the War Labor Disputes Act, expressed disapproval of the United States utilizing injunctions in connection with disputes in plants which it had seized. The Senate, it is true, defeated an amendment designed to permit this practice, but no comparable action transpired in the House. Indeed, the House version of the bill would have allowed injunctions to issue in connection with labor disputes in defense plants under private management.[40]

It is clear that the issue of injunctions sought by the United States as an employer was not raised by either the

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[37] A great part of the references to the Norris-LaGuardia Act were made in connection with the proposed Taft and Reed amendments. 89 Cong. Rec. 3897, 3984, 3985, 3986.

[38] Senators Connally and Danahar expressed this view and other Senators were apparently in accord. 89 Cong. Rec. 3988–9.

[39] See note — *infra*.

[40] 89 Cong. Rec. 5382. The House version of the bill would have made obvious inroads upon the Norris-LaGuardia Act, and much comment in debate was to this effect, *e. g.*, 89 Cong. Rec. 5241, 5243, 5299, 5305, 5321, 5325.

Senate or House versions as these bills went to Conference. And the action of the conferees in striking the broader clauses of the House bill, which permitted injunctions to issue in labor disputes arising in connection with plants privately operated, cannot be considered as expressing Congressional desires relative to the rights of the United States as an employer of labor or as operator of a wartime facility. A different conclusion would hardly be consistent with the purposes of the Act, which, far from removing any powers already enjoyed by the United States, was aimed at strengthening the Government's hand in dealing with serious labor disputes in vital industries.

We are left with the undisturbed conclusion that Congress in 1932 was legislating under the assumption that the Norris-LaGuardia Act, as written, excluded those labor disputes to which the United States, acting as an employer, was a party. Our proper choice is to follow this guidance drawn from deliberations of that Congress which brought the Act into being.

The defendants contend however that workers in mines seized by the Government are not employees of the federal Government; that in operating the mines thus seized, the Government is not engaged in a sovereign function; and that, consequently, the situation in this case does not fall within the area which we have indicated as lying outside the scope of the Norris-LaGuardia Act. It is clear, however, that workers in the mines seized by the Government under the authority of the War Labor Disputes Act stand in an entirely different relationship to the federal Government with respect to their employment from that which existed before the seizure was effected. That Congress intended such was to be the case is apparent both from the terms of the statute and from the legislative deliberations preceding its enactment. Section 3 of the War Labor Disputes Act calls for the seizure of any plant, mine, or facility when the President finds that the opera-

tion thereof is threatened by strike or other labor disturbance and that an interruption in production will unduly impede the war effort. Congress intended that by virtue of Government seizure, a mine should become for purposes of production and operation a Government facility in as complete a sense as if the Government held full title and ownership.[41] Consistent with that view, criminal penalties were provided for interference with the operation of such facilities.[42] Also included were procedures for adjusting wages and conditions of employment of the workers in such a manner as to avoid interruptions in production.[43] The question with which we are confronted is not whether the workers in mines under Government

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[41] Thus in the legislative debates Senator Connally stated: ". . . but it does seem to me that the power and authority and sovereignty of the Government of the United States are so comprehensive that when we are engaged in war and a plant is not producing, we can take it over, and that when we do take it over, it is a Government plant, just as much as if we had a fee simple title to it, . . ." 89 Cong. Rec., Part 3, pp. 3811–3112. See also *Ibid.* at p. 3809; *Ibid.*, pp. 3884–3885; *Ibid.*, Part 4, pp. 5772, 5774.

[42] War Labor Disputes Act, § 6, provided:

"(a) Whenever any plant, mine, or facility is in the possession of the United States, it shall be unlawful for any person (1) to coerce, instigate, induce, conspire with, or encourage any person, to interfere, by lock-out, strike, slow-down, or other interruption, with the operation of such plant, mine, or facility, or (2) to aid any such lock-out, strike, slow-down, or other interruption interfering with the operation of such plant, mine, or facility by giving direction or guidance in the conduct of such interruption, or by providing funds for the conduct or direction thereof or for the payment of strike, unemployment, or other benefits to those participating therein. No individual shall be deemed to have violated the provisions of this section by reason only of his having ceased work or having refused to continue to work or to accept employment.

"(b) Any person who willfully violates any provision of this section shall be subject to a fine of not more than $5,000, or to imprisonment for not more than one year, or both."

[43] *Ibid.* § 5.

seizures are "employees" of the federal Government for every purpose which might be conceived.[44] The question is rather whether for the purposes of this case the incidents of the relationship existing between the Government and the workers are substantially those of governmental employer and employee. We have concluded that a proper regard for the purposes intended to be accomplished by Congress in excluding situations involving the federal Government and its employees from the operation of the Norris-LaGuardia Act, requires that we hold that Act not applicable to this case.

Executive Order 9728, in pursuance of which the Government seized possession of the mines, authorized the Secretary of the Interior to negotiate with the representatives of the miners, and thereafter to apply to the National Wage Stabilization Board for appropriate changes in terms and conditions of employment for the period of governmental operation.[45] Such negotiations were undertaken and resulted in the Krug-Lewis Agreement. That agreement contains many basic departures from the earlier contract entered into between the mine workers and the private operators on April 11, 1945, which, except as amended and supplemented by the Krug-Lewis Agreement, was continued in effect for the period of Government posses-

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[44] Thus according to § 23 of the Revised Regulations for the Operation of the Coal Mines Under Government Control issued by the Coal Mines Administrator on July 8, 1946: ". . . nothing in these regulations shall be construed as recognizing such personnel as officers and employees of the Federal Government within the meaning of the statutes relating to federal employment." And see § 16. Section 23 also provides, however: "All personnel of the mines, both officers and employees, shall be considered as called upon by Executive Order No. 9728, to serve the Government of the United States. . . ."

[45] After the negotiation of the Krug-Lewis Agreement, the changes agreed upon therein were approved by the National Wage Stabilization Act and thereafter by the President. This procedure is provided for in § 5 of the War Labor Disputes Act.

sion. Among the terms of the Krug-Lewis Agreement were provisions for a new mine safety code. Operating managers were directed to provide the mine employees with the protection and benefits of Workmen's Compensation and Occupational Disease Laws. Provision was made for a Welfare and Retirement Fund and a Medical and Hospital Fund. The agreement granted substantial wage increases and contained terms relating to vacations and vacation pay. Included were provisions calling for changes in equitable grievance procedures.

It should be observed that the Krug-Lewis Agreement was one solely between the Government and the Union. The private mine operators were not parties to the contract nor were they made parties to any of its subsequent modifications. It should also be observed that the provisions relate to matters which normally constitute the subject matter of collective bargaining between employer and employee. Many of the provisions incorporated into the agreement for the period of Government operation had theretofore been vigorously opposed by the private operators and have not subsequently received their approval.

It is descriptive of the situation to state that the Government, in order to maintain production and to accomplish the purposes of the seizure, has substituted itself for the private employer in dealing with those matters which formerly were the subject of collective bargaining between the Union and the operators. The defendants by their conduct have given practical recognition to this fact. The Union negotiated a collective agreement with the Government and has made use of the procedures provided by the War Labor Disputes Act to modify its terms and conditions. The Union has apparently regarded the Krug-Lewis Agreement as a sufficient contract of employment to satisfy the mine workers' traditional demand of a contract as a condition precedent to their work. The defendant Lewis in responding to a suggestion of the Sec-

retary of the Interior that certain Union demands should be taken to the private operators with the view of making possible the termination of Government possession, stated in a letter dated November 15, 1946: "The Government of the United States seized the mines and entered into a contract. The mine workers do not propose to deal with parties who have no status under the contract." The defendant Lewis in the same letter referred to the "400,000 men who now serve the Government of the United States in the bituminous coal mines."

The defendants, however, point to the fact that the private managers of the mines have been retained by the Government in the role of operating managers with substantially the same functions and authority. It is true that the regulations for the operation of the mines issued by the Coal Mines Administrator provide for the retention of the private managers to assist in the realization of the objects of Government seizure and operation.[46] The regulations, however, also provide for the removal of such operating managers at the discretion of the Coal Mines Administrator.[47] Thus the Government, though utilizing the services of the private managers, has, nevertheless retained ultimate control.

The defendants also point out to the regulations which provide that under Government seizure none of the earnings or liabilities resulting from the operation of the mines are for the account or at the risk or expense of the Government;[48] that the companies continue to be liable for all Federal, State, and local taxes;[49] and that the mining companies remain subject to suit.[50] The regulations on which

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[46] Regulations for the Operation of the Coal Mines under Government Control, § 15.

[47] Regulations, §§ 16, 31.

[48] Regulations, §§ 17, 40.

[49] Regulations, § 24.

[50] *Ibid.*

defendants rely represent an attempt on the part of the Coal Mines Administrator to define the respective powers and obligations of the Government and private operators during the period of Government control. We do not at this time express any opinion as to the validity of these regulations. It is sufficient to state that, in any event, the matters to which they refer have little persuasive weight in determining the nature of the relation existing between the Government and the mine workers.

We do not find convincing the contention of the defendants that in seizing and operating the coal mines the Government was not exercising a sovereign function and that, hence, this is not a situation which can be excluded from the terms of the Norris-LaGuardia Act. In the Executive Order which directed the seizure of the mines, the President found and proclaimed that "the coal produced by such mines is required for the war effort and is indispensable for the continued operation of the national economy during the transition from war to peace; that the war effort will be unduly impeded or delayed by . . . interruptions [in production]; and that the exercise of the powers vested in me is necessary to insure the operation of such mines in the interest of the war effort and to preserve the national economic structure in the present emergency." Under the conditions found by the President to exist, it would be difficult to conceive of a more vital and urgent function of the Government than the seizure and operation of the bituminous coal mines. While engaged in this function the relationship between the mine workers and the Government was substantially that of employer and employee. We hold that in a case such as this where the Government has seized actual possession of mines or other facilities and where the Government has assumed the responsibility of maintaining production in the public interest, the relationship between the workers and the Government is such as to place the case outside the intended scope of the Norris-LaGuardian Act.

II.

Although we have held that the Norris-LaGuardia Act did not render injunctive relief beyond the jurisdiction of the district court, there are alternative grounds which support the power of the district court to punish violations of its orders as criminal contempt.

Attention must be directed to the situation obtaining on November 18. The Government's complaint sought a declaratory judgment in respect to the right of Lewis and the union to terminate the contract by unilateral action. What amounted to a strike call, effective at midnight on November 20, had been issued by Lewis as an "official notice". Pending a determination of defendants' right to take this action, the Government requested a temporary restraining order and injunctive relief. The memorandum in support of the restraining order seriously urged the inapplicability of the Norris-LaGuardia Act to the facts of this case, and the power of the district court to grant the ancillary relief depended in great part upon the resolution of this jurisdictional question. In these circumstances, the district court unquestionably had the power to issue a restraining order for the purpose of preserving existing conditions pending a decision upon its own jurisdiction.

The temporary restraining order was served on November 18. This was roughly two and one-half days before the strike was to begin. The defendants filed no motion to vacate the order. Rather, they ignored it, and allowed a nationwide coal strike to become an accomplished fact. This Court has used unequivocal language in condemning such conduct,[51] and has in *United States* v. *Shipp,* 203

[51] "If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the 'judicial power of the United States' would be a mere mockery." *Gompers* v. *Buck Stove & Range Company,* 221 U. S. 418, 450 (1911).

U. S. 418 (1911), provided protection for judicial authority in situations of this kind. In that case this Court had allowed an appeal from a denial of a writ of *habeas corpus* by the Circuit Court of Tennessee. The petition had been filed by Johnson, then confined under a sentence of death imposed by a state court. Pending the appeal, this Court issued an order staying all proceedings against Johnson. However, the prisoner was taken from jail and lynched. Shipp, the sheriff having custody of Johnson, was charged with conspiring with others for the purpose of lynching Johnson, with intent to show contempt for the order of this Court. Shipp denied the jurisdiction of this Court to punish for contempt on the ground that the stay order was issued pending an appeal over which this Court had no jurisdiction because the constitutional questions alleged were frivolous and only a pretense. The Court, through Mr. Justice Holmes, rejected the contention as to want of jurisdiction, and in ordering the contempt to be tried, stated:

> "We regard this argument as unsound. It has been held, it is true, that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt. *In re Sawyer,* 124 U. S. 200, *Ex parte Fisk,* 113 U. S. 713, *Ex parte Rowland,* 104 U. S. 604. But even if the Circuit Court had no jurisdiction to entertain Johnson's petition, and if this court had no jurisdiction of the appeal, this court, and this court alone, could decide that such was the law. It and it alone necessarily had jurisdiction to decide whether the case was properly before it. On that question, at least, it was its duty to permit argument and to take the time required for such consideration as it might need. See *Mansfield, Coldwater & Lake Michigan Ry. Co.* v. *Swan,* 111 U. S. 379, 387. Until its judgment declining jurisdiction should be announced, it had authority from the necessity of the case to make orders to preserve the existing conditions and the subject of the petition, just as the state court was bound to refrain

from further proceedings until the same time. Rev. Stat. 766; act of March 3, 1893, c. 226, 27 Stat. 751. The fact that the petitioner was entitled to argue his case shows what needs no proof, that the law contemplates the possibility of a decision either way, and therefore must provide for it." [203 U. S. 573.]

If this Court did not have jurisdiction to hear the appeal in the *Shipp* case, its order ~~was invalid~~. But it was ruled that only the Court itself could determine that question of law. Until it was found that the Court had no jurisdiction, ". . . it had authority, from the necessity of the case, to make orders to preserve the existing conditions and the subject of the petition . . ."

would have had to be vacated

Application of the rule laid down in *United States* v. *Shipp, supra,* is apparent in *Carter* v. *United States,* 135 F. 2d 858 (1943). There a District Court, after making the findings required by the Norris-LaGuardia Act, issued a temporary restraining order. An injunction followed after a hearing in which the court affirmatively decided that it had jurisdiction and overruled the defendants' objections based upon the absence of diversity and the absence of a case arising under a statute of the United States. These objections of the defendants prevailed on appeal and the injunction was set aside. *Brown* v. *Coumanis,* 135 F. 2d 163 (1943). But in *Carter,* violations of the temporary restraining order were held punishable as criminal contempt. Pending a decision on a doubtful question of jurisdiction, the District Court was held to have power to maintain the *status quo* and punish violations as contempt.[52]

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[52] "It cannot now be broadly asserted that a judgment is always a nullity if jurisdiction of some sort or other is wanting. It is now held that, except in case of plain usurpation, a court has jurisdiction to determine its own jurisdiction, and if it be contested and on due hearing it is upheld, the decision unreversed binds the parties as a thing adjudged. *Treines* v. *Sunshine Mining Co.,* 308 U. S. 66, 60

In the case before us, the district court had the power to preserve existing conditions while it was determining its own authority to grant injunctive relief. The defendants, in making their private determination of the law, acted at their peril. Their disobedience is punishable as criminal contempt.

Although a different result would follow were the question of jurisdiction frivolous and not substantial, such contention would be idle here. The applicability of the Norris-LaGuardia Act to the United States in a case such as this had not previously received judicial consideration, and both the language of the Act and its legislative history indicated the substantial nature of the problem with which the District Court was faced.

Proceeding further, we find impressive authority for the proposition that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper

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S. Ct. 44, 84 L. Ed. 85; *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 403, 60 S. Ct. 907, 84 L. Ed. 1263; *Stoll* v. *Gottlieb*, 305 U. S. 165, 59 S. Ct. 134, 83 L. Ed. 104. So in the matter of federal jurisdiction, which is often a close question, the federal court may either have to determine the facts, as in contested citizenship, or the law, as whether the case alleged arises under a law of the United States. See *Binderup* v. *Pathe Exchange*, 263 U. S. 291, at page 305, 44 S. Ct. 96, 68 L. Ed. 308. (P. 861.) . . . . It alone had authority in the first instance to decide whether or not the case arose under the Norris-LaGuardia Act, 29 U. S. C. A. §§ 101–115, a law of the United States. It could lawfully by a temporary injunction preserve the business which was the subject of the litigation until a hearing could be had. The order was not final. It deprived Carter of no right. It only required that he refrain from interfering with another man for a few days. Carter did not elect to move to dissolve the order, but to flout and disobey it. The order was, while it lasted, a lawful one, such as a district court of the United States in the exercise of its equity powers could make, pending a hearing of a doubtful question of jurisdiciton. The question of jurisdiction was not frivolous. It had never before been decided." 135 F. 2d 858, 861–862.

proceedings.[53] This is true without regard even for the constitutionality of the Act under which the order is issued. In *Howat* v. *Kansas*, 258 U. S. 181, 189–90 (1922) this Court said:

> "An injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished." [54]

Violations of an order are punishable as criminal contempt even though the order is set aside on appeal, *Worden* v. *Searls*, 121 U. S. 14 (1887),[55] or though the basic action has become moot, *Gompers* v. *Bucks Stove & Range Co.*, *supra*.

We insist upon the same duty of obedience where, as here, the subject matter of the suit, as well as the parties, was properly before the court; where the elements of federal jurisdiction were clearly shown; and where the authority of the court of first instance to issue an order ancillary to the main suit depended upon a statute, the scope and ap-

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[53] *Howat* v. *Kansas*, 258 U. S. 181 (1922); *Russell* v. *United States*, 86 F. (2d) 389 (1936); *Locke* v. *United States*, 75 F. (2d) 157 (1935); *O'Hearne* v. *United States*, 66 F. (2d) 933 (1933); *Alemite Mfg. Corp.* v. *Staff*, 42 F. (2d) 832 (1930); *Brougham* v. *Oceanic Steam Navigation Co.*, 205 Fed. 857 (1917); *Schwartz* v. *United States*, 217 Fed. 866 (1914); *Blake* v. *Nesbet*, 144 Fed. 279 (1905).

[54] See *Alemite Mfg. Corp.* v. *Staff*, 42 F. (2d) 832, 833 (1930).

[55] See *Salvage Process Corporation et al.* v. *Acme Tank Cleaning Process Corp.*, 86 F. (2d) 727 (1936); *McCann* v. *New York Stock Exchange*, 80 F. (2d) 211, 214 (1931).

plicability of which were subject to substantial doubt. The District Court on November 29 affirmatively decided that the Norris-LaGuardia Act was of no force in this case and that injunctive relief was therefore authorized. Orders outstanding or issued after that date were to be obeyed until they expired or were set aside by appropriate proceedings, appellate or otherwise. Convictions for criminal contempt intervening before that time may stand.

It does not follow, of course, that simply because a defendant may be punished for criminal contempt for disobedience of an order later set aside on appeal, that the plaintiff in the action may profit by way of a compensatory fine imposed in a simultaneous proceeding for civil contempt based upon a violation of the same order. The right to compensation falls with an injunction which events prove was erroneously issued, *Worden* v. *Searls*, 121 U. S. 14, 25, 26 (1887); *Salvage Process Corp.* v. *Acme Tank Cleaning Process Corp.*, 86 F. (2d) 727 (1936); [56] *S. Anargyros* v. *Anargyros & Co.*, 191 Fed. 208 (1911); and *a fortiori* when the injunction or restraining order was beyond the jurisdiction of the court. Nor does the reason underlying *United States* v. *Shipp, supra*, compel a different result. If the Norris-LaGuardia Act were applicable in this case, the conviction for civil contempt would be reversed in its entirety.

Assuming, then, that the Norris-LaGuardia Act applied to this case and prohibited injunctive relief at the request of the United States, we would set aside the preliminary injunction of December 4 and the judgment for

[56] See *Leman* v. *Krentler-Arnold Co.*, 284 U. S. 448, 453 (1932); *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324, 329 (1904); *McCann* v. *New York Stock Exchange*, 80 F. (2d) 211, 214 (1935). In accord in the case of settlement is *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 451–2 (1911): ". . . when the main cause was terminated between the parties, the complainant did not require and was not entitled to, any compensation or relief of any other character."

civil contempt; but we would, subject to any infirmities in the contempt proceedings or in the fines imposed, affirm the judgments for criminal contempt as validly punishing violations of an order then outstanding and unreversed.

III.

The defendants have pressed upon us the procedural aspects of their trial and allege error so prejudicial as to require reversal of the judgments for civil and criminal contempt. But we have not been persuaded.

The question is whether the proceedings will support judgments for both criminal and civil contempt; and our attention is directed to Rule 42 (b) of the Rules of Criminal Procedure.[57] The rule requires criminal contempt to be prosecuted on notice stating the essential facts constituting the contempt charged. In this respect, there was compliance with the rule here. Notice was given by a rule to show cause served upon defendants together with the Government's petition and supporting affidavit. The

[57] Rule 42 (b) regulates various aspects of a proceeding for criminal contempt where the contempt is not committed in the actual presence of the court:

"Disposition Upon Notice and Hearing. A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. He is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment."

pleadings rested only upon information and belief, but Rule 42 (b) was not designed to cast doubt upon the propriety of instituting criminal contempt proceedings in this manner.[58] The petition itself charged a violation of the outstanding restraining order, and the affidavit alleged in detail a failure to withdraw the notice of November 15, the cessation of work in the mines, and the consequent interference with governmental functions and the jurisdiction of the court. The defendants were fairly and completely apprised of the events and conduct constituting the contempt charged.

However, Rule 42 (b) requires that the notice issuing to the defendants describe the criminal contempt charged as such. Defendants urge a failure to comply with this rule. The petition alleged a willful violation of the restraining order, and both the petition and the rule to show cause inquired as to why the defendants should not be "punished as and for a contempt" of court. But nowhere was the contempt described as criminal as required by the rule.

Nevertheless, defendants were quite aware that a criminal contempt was charged.[59] In their motion to discharge and vacate the rule to show cause the contempt charged

[58] *Conley* v. *United States*, 59 F. (2d) 929 (1932); *Kelly* v. *United States*, 250 Fed. 947 (1918); see *National Labor Relations Board* v. *Arcade-Sunshine Co.*, 122 F. (2d) 964, 965 (1941).

[59] It could be well argued that the use of the word "punished" in the petition and rule to show cause was in itself adequate notice, for "punishment" has been said to be the magic word indicating a proceeding in criminal, rather than civil, contempt. Moskovitz, Contempt of Injunctions, Civil and Criminal (1943), 43 Col. L. Rev. 780, 789–90. But "punishment" as used in contempt cases is ambiguous. "It is not the fact of punishment, but rather its character and purpose. . . ." *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 441 (1911).

Noteworthy also is the allegation in the affidavit that the defendants' violation of the restraining order had "interfered with this

was referred to as criminal.[60] And in argument on the motion the defendants stated and were expressly informed that a criminal contempt was to be tried. Yet it is now urged that the omission of the words "criminal contempt" from the petition and rule to show cause was prejudicial error. Rule 42 (b) requires no such rigorous application, for it was designed to insure a realization by contemnors that a prosecution for criminal contempt is contemplated.[61] Its purpose was sufficiently fulfilled here, for this failure to observe the rule in all respects has not resulted in substantial prejudice to the defendants.

Not only were the defendants and the court fully informed that a criminal contempt was charged, but we think they enjoyed during the trial itself all the enhanced protections accorded defendants in criminal contempt proceedings.[62] We need not treat these at length, for defendants in this respect urge only their right to a jury trial. But due process has not as yet required trial by jury in criminal contempt cases,[63] and Rule 42 (b) so provides only in case of statutory direction to this effect. Since the commands of the Norris-LaGuardia Act do not govern this case, the defendants were not entitled to the jury

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Court's jurisdiction." And the charge of "willfully . . . and deliberately" disobeying the restraining order indicates an intention to prosecute criminal contempt.

[60] See point 4, note 14, *supra*. The points and authorities in support of the motion used similar language.

[61] The rule in this respect follows the suggestion made in *McCann* v. *New York Stock Exchange*, 80 F. (2d) 211, 214–215 (1935). Notes to the Rules of Criminal Procedure, Advisory Committee, March, 1945, p. 34.

[62] *Cooke* v. *United States*, 267 U. S. 517, 537 (1925); see *Nye* v. *United States*, 313 U. S. 33, 53 (1941); *Michaelson* v. *United States*, 266 U. S. 42, 66–67 (1924).

[63] *In re Debs*, 158 U. S. 564, 594 (1895); cf. *Eilenbecker* v. *Plymouth County*, 134 U. S. 31 (1890).

trial provided by § 11 of that Act;[64] and § 24 of the Clayton Act expressly limits the statute's procedural protections in contempt prosecutions so as to exclude cases in which the United States is party plaintiff.[65]

If the defendants were thus accorded all their rights and privileges owing to defendants in criminal contempt cases, they are put in no better position to complain because their trial included a proceeding in civil contempt and was carried on in the main equity suit. Common sense would recognize that conduct can amount to both civil and criminal contempt. Behavior may entitle the opposing litigant to remedial relief and at the same time justify punitive measures.[66] Disposing of both aspects of the contempt in a single proceeding would seem at least a convenient practice. Litigation in patent cases has frequently followed this course,[67] and the same method can be noted in other situations in both federal and state

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[64] We believe, and the Government admits, that if the Norris-LaGuardia Act applied to this case, defendants would enjoy a right to a jury trial.

[65] Cf. *Hill* v. *United States, ex rel. Weiner*, 300 U. S. 105 (1937). In any event, defendants here did not request a jury or object to a trial by the court alone. An advisory jury was waived.

[66] "It may not always be easy to classify a particular act as belonging to either one of these two classes. It may partake of the characteristics of both." *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324, 329 (1904). See *Lamb* v. *Cramer*, 285 U. S. 217, 221 (1932); *Merchants Stock & Grain Co.* v. *Board of Trade of Chicago*, 201 Fed. 20, 24 (1912).

[67] "In patent cases it has been usual to embrace in one proceeding the public and private remedy—to punish the defendant if found worthy of punishment, and, at the same time, or as an alternative, to assess damages and costs for the benefit of the plaintiff." *Hendry x* v. *Fitzpatrick*, 19 Fed. 810, 813 (1884). Examples of this procedure appear in *Union Tool* v. *Wilson*, 259 U. S. 107 (1922); *Matter of Christensen Engineering Co.*, 194 U. S. 458 (1904); *Kreplik* v. *Couch Patents Co.*, 190 Fed. 565 (1911); *Wilson* v. *Byron Jackson Co.*, 93 F. (2d) 577 (1937).

courts.[68] Rule 42 (b), while demanding fair notice and recognition of the criminal aspects of the case, contains nothing precluding a simultaneous disposition of the remedial aspects of the contempt tried. Even if it be the better practice to try criminal contempt alone and so avoid obscuring the defendant's privileges in any manner, a mingling of civil and criminal contempt proceedings must nevertheless be shown to result in substantial prejudice before a reversal will be required.[69] That the contempt proceeding carried the number and name of the equity

[68] *Farmers' Nat'l Bank* v. *Wilkerson*, 266 U. S. 503 (1925); *In re Swan, Petitioner*, 150 U. S. 637 (1893); *In re Ayers*, 123 U. S. 443 (1887); *Merchants Stock & Grain Co.* v. *Board of Trade of Chicago*, 201 Fed. 20 (1912). See *Phillips Sheet & Tin Plate Co.* v. *Amalgamated Ass'n. of Iron & Tin Workers*, 208 Fed. 335, 340 (1913). Instances in the state courts include *Holloway* v. *People's Water Co.*, 100 Kans. 414 (1917); *Carey* v. *District Court of Jasper County*, 226 Iowa 717 (1939); *Grand Lodge, K. P. of New Jersey* v. *Jansen*, 67 N. J. Eq. 737 (1901).

[69] We are not impressed with defendants' attack on the pleadings as insufficient to support a judgment for civil contempt. The petition, affidavit, and rule to show cause did not expressly mention civil contempt or remedial relief, but the affidavit contained allegations of interference with the operation of the mines and with governmental functions. These claims far from negative remedial relief. More significantly, the affidavit charged disobedience of the restraining order by failing to withdraw the notice of Nov. 15. We will not assume that defendants were not instantly aware that a usual remedy in such a situation is to commit until the act is performed. This is remedial relief and a function of civil contempt. See *Michaelson* v. *United States*, 266 U. S. 42, 66 (1924); *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 417, 449 (1911). The probabilities apparent at the outset are not dimmed by the ultimate imposition of a fine in preference to coercion by committal. Furthermore, defendants' counsel, in argument on the motion to vacate, remarked that the United States was proceeding upon the theory of civil contempt, and attempted only to demonstrate the inability of the United States to seek this relief. And when the Government's suggestions for fines were before the Court, defendants' counsel argued the excessiveness of the fines for either civil or criminal contempt.

suit [70] does not alter this conclusion, especially where, as here, the United States would have been the complaining party in whatever suit the contempt was tried. In so far as the criminal nature of the double proceeding dominates [71] and in so far as the defendants' rights in the criminal trial are not diluted by the mixing of civil with criminal contempt, to that extent is prejudice avoided.[72] Here, as we have indicated, all rights and privileges of the defendants were fully respected, and there has been no showing of substantial prejudice flowing from the formal peculiarities of defendants' trial.

Lastly, the defendants have assigned as error and argued in their brief that the District Court improperly extended the restraining order on November 27 for another ten days. There was then in progress argument on defendants' motion to vacate the rule to show cause, a part of the contempt proceedings. In the circumstances of this case, we think there was good cause shown for extending the order.[73]

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[70] Criminal contempt was apparently tried out in the equity suit in the patent cases in Note 67, *supra*. And this was the practice followed in *Matter of Christensen Engineering Co.*, 194 U. S. 458 (1904); *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324 (1904); *New Orleans* v. *New York Mail Steamship Co.*, 20 Wall. 387 (1874). In none of these cases in this Court, however, has there been an affirmative discussion of the propriety of proceeding in this manner. Compare *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 441 (1911); *United States* v. *Bittner*, 11 F. (2d) 93, 95 (1926), with *Nye* v. *United States*, 313 U. S. 33, 42 (1941).

[71] Cf. *Nye* v. *United States*, 313 U. S. 33, 42 (1941); *Union Tool Co.* v. *Wilson*, 259 U. S. 107, 110 (1922); *Re Merchants Stock Co., Petitioner*, 223, U. S. 639, 642 (1911); *Matter of Christensen Engineering Co.*, 194 U. S. 458, 461 (1904).

[72] In *Federal Trade Commission* v. *Abe McLean & Son*, 94 F. (2d) 802 (1938), it could not be said that the criminal element had been dominant and clear from the very outset of the case. The same is true of *Norstrom* v. *Wahl*, 41 F. (2d) 910 (1930).

[73] Rule 65 (b) of the Federal Rules of Civil Procedure provides that a temporary restraining order should expire according to its

IV.

Apart from their contentions concerning the formal aspects of the proceedings below, defendants insist upon the inability of the United States to secure relief by way of civil contempt in this case, and would limit the right to proceed by civil contempt to situations in which the United States is enforcing a statute expressly allowing resort to the courts for enforcement of statutory orders. *McCrone* v. *United States,* 307 U. S. 61 (1939), however, rests upon no such narrow ground, for the Court there said that "Article 3, ¶2, of the Constitution, expressly contemplates the United States as a party to civil proceedings by extending the jurisdiction of the federal judiciary 'to Controversies to which the United States shall be a party,' " *id* at 63. The United States was fully entitled to bring the present suit and to benefit from orders entered in its behalf.[74] We will not reduce the practical value of the relief granted by limiting the United States, when the orders have been disobeyed, to a proceeding in criminal contempt, and by denying to the Government the civil remedies enjoyed by other litigants, including the opportunity to demonstrate that disobedience has occasioned loss.[75]

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terms "unless within the time so fixed the order, for good cause shown, is extended for a like period. . . ." There being sufficient cause for the extension, there is no conflict with the subsequent clause of Rule 65 (b) requiring that "the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character. . . ."

[74] Section 24 of the Judicial Code, 28 U. S. C. 41, extends the jurisdiction of the District Courts to "all suits of a civil nature, at common law or equity, brought by the United States—".

[75] The Court in the *McCrone* case affirmed 100 F. (2d) 322 and noted, 307 U. S. 61, 62, note 1, the conflict with *Federal Trade Commission* v. *McClean & Son,* 94 F. (2d) 802 (1938), upon which defendants now rely.

V.

It is urged that, in any event, the fine of $10,000 imposed upon the defendant Lewis and the fine of $3,500,000 imposed upon the Union were excessive and in no way related to the evidence introduced at the hearing. The trial court properly determined that the defendants were guilty of both criminal and civil contempts. The record, however, does not reveal what portions of the fines were imposed as punishment for the criminal contempts or what amounts were directed to be paid by reason of the civil contempts.

As we have pointed out above, the charges of criminal and civil contempt were properly tried in the same proceeding. We have held that there was substantial compliance with all the procedural requirements relating to both actions. Sentences for criminal contempt are punitive in their nature and are imposed for the purpose of vindicating the authority of the court. *Gompers* v. *Bucks Stove & Range Co., supra* at 108. The interests of orderly government demand that respect and compliance be given to orders issued by courts possessed of jurisdiction of persons and subject matter. One who defies the public authority and willfully refuses his obedience, does so at his peril. In imposing a fine for criminal contempt, the trial judge may properly take into consideration the extent of the willful and deliberate defiance of the court's order, the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating the defendant's defiance as required by the public interest, and the importance of deterring such acts in the future. In fixing the amount of the fine the judge should also bear in mind the extent of the financial resources of the defendant and the seriousness of the burden which the fine is likely to impose. Because of the nature of these standards, great reliance must be placed upon the discretion of

the trial judge. The serious difficulty here, however, is that there is no way to determine what portion of the fines was imposed as punishment for the criminal contempt.

An indeterminate portion of the fines in this case resulted from the civil contempts of the defendants. Judicial sanctions in civil contempt proceedings are designed to accomplish the two-fold purpose of compensating the complainant for damages sustained and of coercing compliance with the court's order. *Gompers* v. *Bucks Stove & Range Co., supra,* at 441–443. A fine made payable to the complaining party in such a proceeding must be based upon evidence of actual loss sustained by the complainant as a result of the defendant's contempt.[76] At the hearing one witness for the Government testified that if the work stoppage were to continue for sixty days, there would be a net loss in national income amounting to about one billion dollars. Another witness calculated that a loss in national income payments amounting to a billion dollars would result in a loss in federal tax revenues of about $280,000,000.[77] At the time the fines were imposed, however, the work stoppage had been in progress for only fifteen days. It was shown that the damages would increase at an accelerated rate as the work stoppage continued. No other evidence relating to the damages of the Government was introduced. In our view, the record is sufficient to establish

[76] *Leman* v. *Kentler-Arnold Hinge Last Co.*, 284 U. S. 448, 455–456 (1932); *Gompers* v. *Bucks Stove & Range Co., supra,* at 443–444; *Norstrom* v. *Wahl*, 41 F. (2d) 910, 914 (1930); *Judelsohn* v. *Black*, 64 F. (2d) 116 (1933); *Parker* v. *United States,* 126 F. (2d) 370, 380 (1942).

[77] The witness testified that a decline in income payments throughout the country at large to the extent of $10,000,000,000 would result in a decline in the yearly federal tax revenues of about $2,800,000,000. Upon the assumption that the rate of decline in tax revenues would remain constant for a lesser decline in national income payments, the witness testified that a loss in national income payments of one billion dollars would result in a loss to the federal treasury of $280,000,000.

that loss was sustained by the Government; but there is nothing in the record to indicate the amount of such loss at the time the fines were imposed.

We hold, nevertheless, that the $10,000 fine ordered to be paid by the defendant Lewis should stand. Even if it be assumed that the trial court intended that a substantial portion of that fine should serve as compensation to the Government for damages sustained by it, the record is sufficient to support an inference of loss to the Government to that limited extent. Such being the case, the failure of the trial judge to allocate the fines between the civil and criminal contempts will not be regarded as a fatal error where, as here, the Government is the recipient of the fines for both contempts.

But in dealing with the larger fine imposed upon the defendant Union, we cannot fairly draw the inference from the evidence introduced that civil damages were sustained by the Government to the extent of $3,500,000. There is no way to determine how much of that amount was ordered by the trial court to be paid for purposes of compensation nor can the proportion intended as punishment for the criminal contempt be ascertained. The record is plainly inadequate to sustain a fine in such substantial sum based upon the theory of actual loss to the Government at the time the fine was imposed.

Accordingly, the judgment of the trial court is vacated and the case remanded for further proceedings at which time the court may hear such evidence as may be offered relative to the actual damages sustained by the Government as a result of the civil contempt of the Union as well as further evidence which may be relevant to the exercise of the court's discretion with respect to imposition of a fine for criminal contempt. In imposing the fine, the trial court should clearly indicate what portion thereof is ordered as punishment of the criminal contempt and what portion by reason of the civil contempt.

We have examined the other contentions advanced by defendants but have found them to be without merit. The temporary restraining orders and the preliminary injunction were properly issued, and the actions of the District Court in these respects are affirmed. The judgment against the defendant Lewis is affirmed. The judgment against the defendant Union is vacated and the cases are remanded to the District Court for further procedings in conformity with this opinion.

So ordered.

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SUPREME COURT OF THE UNITED STATES

Nos. 759, 760, 781, 782 AND 811.—OCTOBER TERM, 1946.

The United States of America, Petitioner,
759 *v.*
United Mine Workers of America, an Unincorporated Association, Respondent.

John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner,
760 *v.*
The United States of America, Respondent.

United Mine Workers of America, an Unincorporated Association, Petitioner.
781 *v.*
The United States of America, Respondent.

The United States of America, Petitioner,
782 *v.*
John L. Lewis, Individually and as President of the United Mine Workers of America, Respondent.

United Mine Workers of America, an Unincorporated Association and John L. Lewis, Individually and as President of the United Mine Workers of America, Petitioner,
811 *v.*
The United States of America, Respondent.

On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.

[February —, 1947.]

THE CHIEF JUSTICE delivered the opinion of the Court.

In October, 1946, the United States was in possession of the major portion of the country's bituminous coal mines.[1] Terms and conditions of employment were controlled "for the period of Government possession" by an agreement[2] entered into on May 29 between Secretary of Interior Krug, as Coal Mines Administrator, and John L. Lewis, as President of the United Mine Workers of America.[3]

[1] The United States had taken possession of the mines on May 21, 1946, pursuant to Executive Order 9728, 77 F. R. 5593, in which the President, after determining that labor disturbances were interrupting the production of bituminous coal necessary for the operation of the national economy, directed the Secretary of Interior to take possession of and operate the mines and to negotiate with representatives of the miners concerning the terms and conditions of employment.

The President's action was taken under the Constitution, as President of the United States and Commander in Chief of the Army and Navy, and by virtue of the authority conferred upon him by the War Labor Disputes Act, 57 Stat. 163, 50 U. S. C. App. Supp. V, 309, 1501–1511. Section 3 of the Act authorizes the seizure of facilities necessary for the war effort if and when the President finds and proclaims that strikes or other labor disturbances are interrupting the operation of such facilities.

Section 3 directs that the authority under that section to take possession of the specified facilities will terminaate with the ending of hostilities and that the authority under that section to operate facilities seized will terminate six months after the ending of hostilities. The President on December 31, 1946, proclaimed that hostilities were terminated on that day, 12 F. R. 1.

[2] The initial paragraph of the contract provided that:

"This agreement between the Secretary of the Interior, acting as Coal Mines Administrator under the authority of Executive Order No. 9728 (dated May 21, 1946, 11 F. R. 5593), and the United Mine Workers of America, covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945."

[3] In compliance with Executive Order No. 9728 and § 5 of the War Labor Disputes Act, the agreement had been submitted to and approved by the National Wage Stabilization Board.

The Krug-Lewis Agreement embodied far reaching changes favorable to the miners; [4] and, except as amended and supplemented therein, the agreement carried forward the terms and conditions of the National Bituminous Coal Wage Agreement of April 11, 1945.[5]

On October 21, 1946, Mr. Lewis directed a letter to Secretary Krug and presented issues which led directly to the present controversy. According to Mr. Lewis, the Krug-Lewis agreement carried forward § 15 of the National Bituminous Coal Wage Agreement of April 11, 1945. Under that section either party to the contract was privileged to give ten days' notice in writing of a desire for a negotiating conference which the other party was required to attend; fifteen days after the beginning of the conference either party might give notice in writing of the termination of the agreement, effective five days after receipt of such notice. Asserting authority under this clause, Mr. Lewis in his letter of October 21 requested that a conference begin November 1 for the purpose of negotiating new arrangements concerning wages, hours, practices, and other pertinent matters appertaining to the bituminous coal industry.[6]

Captain N. H. Collisson, then Coal Mines Administrator, answered for Secretary Krug. Any contractual basis for requiring negotiations for revision of the Krug-Lewis

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[4] See *infra* p. —.

[5] The saving clause was in the following form:

"Except as amended and supplemented herein, this agreement carries forward and preserves the terms and conditions contained in all joint wage agreements effective April 1, 1941, through March 31, 1943, the supplemental agreement providing for the six (6) day workweek, and all the various district agreements executed between the United Mine Workers and the various Coal Associations and Coal Companies (based upon the aforesaid basic agreement) as they existed on March 31, 1943, and the National Bituminous Coal Wage Agreement, dated April 11, 1945."

[6] The letter also charged certain breaches of contract by the Government and asserted significant changes in Government wage policy.

agreement was denied.[7] In the opinion of the Government, § 15 of the 1945 agreement had not been preserved by the Krug-Lewis agreement; indeed, § 15 had been expressly nullified by the clause of the latter contract providing that the terms contained therein were to cover the period of Government possession. Although suggesting that any negotiations looking toward a new agreement be carried on with the coal mine owners, the Government expressed willingness to discus matters affecting the operation of the mines under the terms of the Krug-Lewis agreement.

Conferences were scheduled and began in Washington on November 1, both the union and the Government adhering to their opposing views regarding the right of either party to terminate the contract.[8] At the fifth meeting, held on November 11, the union for the first time offered specific proposals for changes in wages and other conditions of employment. On November 13 Secretary Krug requested the union to negotiate with the mine owners. This suggestion was rejected.[9] On November 15 the union, by John L. Lewis, notified Secretary Krug that "Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option hereby terminates said Krug-Lewis Agreement as of 12:00 o'clock P. M., Midnight, Wednesday, November 20, 1946."

Secretary Krug again notified Mr. Lewis that he had no power to terminate the contract by unilateral declaration.[10] The President of the United States stated his

[7] Captain Collisson also specifically denied breaches of contract and changes in Government wage policy.

[8] Conferences were carried on without prejudice to the claims of either party in this respect.

[9] Secretary Krug and Mr. Lewis met privately on November 13 and again on November 14.

[10] Secretary Krug had been advised by the Attorney General, whose opinion had been sought, that § 15 of the 1945 agreement was no longer in force.

strong support of the Government's position and requested reconsideration by the union in order to avoid a national crisis. However, Lewis, as union president, circulated to the mine workers copies of the November 15 letter to Secretary Krug. This communication was for the "official information" of union members.

The United States on November 18 filed suit in the District Court for the District of Columbia against the United Mine Workers of America and John L. Lewis, individually and as president of the union. The complaint was brought under the Declaratory Judgment Act [11] and sought a judgment to the effect that the defendants had no power unilaterally to terminate the Krug-Lewis agreement. And, alleging that the November 15 notice was in reality a strike notice, the United States, pending the final determination of the cause, requested a temporary restraining order and preliminary injunctive relief.

The court, immediately and without notice to the defendants, issued a temporary order [12] restraining the

[11] Judicial Code, § 274d, 28 U. S. C. 400.

[12] The pertinent part of the order was as follows:

"Now, Therefore, it is by the Court this 18th day of November, 1946,

Ordered, that the defendants and each of them and their agents, servants, employees, and attorneys, and all persons in acitve concert or participation with them, be and they are hereby restrained pending further order of this Court from permitting to continue in effect the notice heretofore given by the defendant, John L. Lewis, to the Secretary of Interior dated November 15, 1946; and from issuing or otherwise giving publicity to any notice that or to the effect that the Krug-Lewis Agreement has been, is, or will at some future date be terminated, or that said agreement is or shall at some future date be nugatory or void at any time during Government possession of the bituminous coal mines; and from breaching any of their obligations under said Krug-Lewis Agreement; and from coercing, instigating, inducing, or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow down, walkout, cessation of work, or otherwise, with the operation of said mines by continuing in effect the

defendants from continuing in effect the notice of November 15, from encouraging the mine workers to interfere with the operation of the mines by strike or cessation of work, and from taking any action which would interfere with the court's jurisdiction and its determination of the case. The order by its terms was to expire on November 27 unless extended for good cause shown. A hearing on the preliminary injunction was set for the same date. The order and complaint were served on the defendants on November 18.

A gradual walkout by the miners commenced on November 18, and by midnight of November 20, consistent with the miners' "no contract, no work" policy, a full-blown strike was in progress. Mines furnishing the major part of the nation's bituminous coal production were idle.

On November 21 the United States filed a petition for a rule to show cause why the defendants should not be punished as and for contempt, alleging a willful violation of the restraining order. The rule issued, setting November 25 as the return day and, if at that time the contempt was not sufficiently purged, setting November 27 as the day for trial on the contempt charge.

On the return day, defendants, by counsel, informed the court that no action had been taken concerning the

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aforesaid notice or by issuing any notice of termination of agreement or through any other means or device; and from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728; and from taking any action which would interfere with this Court's jurisdiction or which would impair, obstruct, or render fruitless, the determination of this case by the Court;

"And it is further ordered that this restraining order shall expire at 3 o'clock p. m. on November 27th, 1946, unless before such time the order for good cause shown is extended, or unless the defendants consent that it may be extended for a longer period;

"And it is further ordered that plaintiff's motion for preliminary injunction be set down for hearing on November 27th, 1946, at 10:00 o'clock a. m."

November 15 notice and denied the jurisdiction of the court to issue the restraining order and rule to show cause. Trial on the contempt charge was thereupon ordered to begin as scheduled on November 27. On November 26 the defendants filed a motion to discharge and vacate the rule to show cause. Their motion challenged the jurisdiction of the court and raised the grave question of whether the Norris-LaGuardia Act [13] prohibited the granting of the temporary restraining order at the instance of the United States.[14]

After extending the temporary restraining order on November 27, and after full argument on November 27 and November 29, the court on the latter date overruled the motion and held that its power to issue the restraining

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[13] 47 Stat. 70, 29 U. S. C. §§ 101–115.

[14] The grounds offered for the motion were:

"1. The Temporary Restraining Order is void in that this case involves and grows out of a labor dispute. Under the provisions of the Norris-LaGuardia Act (47 Stat. 70), and the provisions of Section 20 of the Clayton Act (38 U. S. C. 323, 730), this Honorable Court is without jurisdiction over the subject-matter of this cause.

"2. Equity acts only where there is no plain, adequate, and complete remedy at law. The allegations of the Petition for the Rule purport to show a violation of the War Labor Disputes Act—a serious offense—in which field there is no place for equity intervention.

"3. Observance of all the strict rules of criminal procedure is required to establish criminal contempt. It is apparent that the alleged facts set out in the unverified Petition and in the affidavit of Captain Collisson, filed in support of the Rule, are based wholly upon hearsay, information and belief and are not sufficient to sustain the Rule to Show Cause.

"4. The object of the Petition for the Rule is necessarily punitive and not compensatory. Accordingly, it being for criminal contempt, the Petition should have been presented as an independent proceeding and not as supplemental to the original cause.

"5. The Temporary Restraining Order is beyond the jurisdiction of this Honorable Court and therefore void because it contravenes the First, Fifth, and Thirteenth Amendments to the Constitution of the United States."

order in this case was not affected by either the Norris-LaGuardia Act or the Clayton Act.

The defendants thereupon pleaded not guilty and waived an advisory jury. Trial on the contempt charge proceeded. The Government presented eight witnesses, the defendants none. At the conclusion of the trial on December 3, the court found that defendants had permitted the November 15 notice to remain outstanding, had encouraged the miners to interfere by a strike with the operation of the mines and with the performance of governmental functions, and had interfered with the jurisdiction of the Court. Both defendants were found guilty beyond reasonable doubt of both criminal and civil contempt dating from November 18. The Court entered judgment on December 4, fining the defendant Lewis $10,000, and the defendant union $3,500,000. On the same day a preliminary injunction, effective until a final determination of the case, was issued in terms similar to those of the restraining order.

On December 5 the defendants filed notices of appeal from the judgments of contempt. The judgments were stayed pending the appeals. The United States on December 6 filed a petition for certiorari in both cases. Section 240 (e) of the Judicial Code authorizes a petition for certiorari by any party and the granting of certiorari prior to judgment in the Circuit Court of Appeals. Prompt settlement of this case being in the public interest, we granted certiorari on December 9, and subsequently for similar reasons granted two petitions for certiorari filed by the defendants, — U. S. —, —. The cases were consolidated for argument.

Defendants' first and principal contention is that the restraining order and preliminary injunction were issued in violation of the Clayton [15] and Norris-LaGuardia [16] Acts. We have come to a contrary decision.

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[15] 38 Stat. 738, 29 U. S. C. § 52.

[16] 47 Stat. 70, 29 U. S. C. § 101–115.

It is true that Congress decreed in § 20 of the Clayton Act that "no such restraining order or injunction shall prohibit any person or persons . . . from recommending, advising, or persuading others" to strike. But by the Act itself this provision was made applicable only to cases "between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment. . . ." [17] For reasons which will be explained at greater length in discussing the applicability of the Norris-LaGuardia Act, we cannot construe the general term "employer" to include the United States, where there is no express reference to the United States and no evident affirmative grounds for believing that Congress intended to withhold an otherwise available remedy from the Government as well as from a specified class of private persons.

Moreover, it seems never to have been suggested that the proscription on injunctions found in the Clayton Act is in any respect broader than that in the Norris-LaGuardia Act. Defendants do not suggest in their argument that it is. This Court, on the contrary, has stated that the Norris-LaGuardia Act "still further [narrowed] the circumstances under which the federal courts could grant injunctions in labor disputes.[18] Consequently, we would feel justified in this case to consider the application of the Norris-LaGuardia Act alone. If it does not apply, neither does the less comprehensive proscription of the Clayton Act; [19] if it does, defendant's reliance on the Clayton Act is unnecessary.

By the Norris-LaGuardia Act, Congress divested the federal courts of jurisdiction to issue injunctions in a

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[17] *Duplex Co.* v. *Dearing*, 254 U. S. 443, 470 (1921); *American Foundries* v. *Tri-City Council*, 257 U. S. 184, 202 (1921).

[18] *United States* v. *Hutcheson*, 312 U. S. 219, 231 (1941).

[19] See also *United States* v. *Hutcheson*, *supra*, 312 U. S. at 235, 236 (1941); *Allen Bradley Co.* v. *Union*, 325 U. S. 797, 805 (1945).

specified class of cases. It would probably be conceded that the characteristics of the present case would be such as to bring it within that class if the basic dispute had remained one between defendants and a private employer, and the latter had been the plaintiff below. So much seems to be found in the express terms of §§ 4 and 13 of the Act, set out in the margin.[20] The specifications in

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[20] "SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

"(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

"(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;.

"(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

"(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

"(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act."

"SEC. 13. When used in this Act, and for the purposes of this Act—

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry,

§ 13 are in general terms and makes no express exception for the United States. From these premises, defendants argue that the restraining order and injunction were forbidden by the Act and were wrongfully issued.

Even if our examination of the Act stopped here, we could hardly assent to this conclusion. There is an old and well known rule that statutes which in general terms divest pre-existing right or privileges will not be applied to the sovereign without express words to that effect.[21] It

trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

"(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia."

[21] *United States* v. *Herron*, 20 Wall. 251, 263 (1873); *Lewis, Trustee* v. *United States*, 92 U. S. 618, 622 (1875). See *Guarantee Co.* v. *Title Guarantee Co.*, 224 U. S. 152, 155 (1912).

has been stated, in cases in which there were extraneous and affirmative reasons for believing that the sovereign should also be deemed subject to a restrictive statute, that this rule was a rule of construction only.[22] Though that may be true, the rule has been invoked successfully in cases so closely similar to the present one,[23] and the statement of the rule in those cases has been so explicit,[24] that we are inclined to give it much weight here. Congress was not ignorant of the rule which those cases reiterated; and, with knowledge of that rule, Congress would not, in writing the Norris-LaGuardia Act, omit to use "clear and specific [language] to that effect" if it actually intended to reach the Government in all cases.

But we need not place entire reliance in this exclusionary rule. Section 2,[25] which declared the public policy of the

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[22] *Green* v. *United States*, 9 Wall. 655, 658 (1869); *United States* v. *California*, 297 U. S. 175, 186 (1936); *United States* v. *Rice*, 327 U. S. 742, 749 (1946).

[23] *Dollar Savings Bank* v. *United States*, 19 Wall. 227, 238, 239 (1873); *United States* v. *American Bell Telephone Co.*, 159 U. S. 548, 553–555 (1895); *United States* v. *Stevenson*, 215 U. S. 190, 197 (1909).

[24] "The most general words that can be devised (for example, any person or persons, bodies politic or corporate) affect not him [the sovereign] in the least, if they may tend to restrain or diminish any of his rights or interests." *Dollar Savings Bank* v. *United States*, 19 Wall. 227, 239 (1873). "If such prohibition is intended to reach the Government in the use of known rights and remedies, the language must be clear and specific to that effect." *United States* v. *Stevenson*, 215 U. S. 190, 197 (1895).

In both these cases the question, as in the present case, was whether the United States was divested of a certain remedy by a statute or a rule of law which, without express reference to the United States, made that remedy generally unavailable.

[25] "SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in

United States as a guide to the Act's interpretation, carries indications as to the scope of the Act. It predicates the purpose of the Act on the contrast between the position of the "individual unorganized worker" and that of the "owners of property" who have been permitted to "organize in the corporate and other forms of ownership association", and on the consequent helplessness of the worker "to exercise actual liberty of contract . . ." and thereby to obtain acceptable terms and conditions of employment. The purpose of the Act is said to be to contribute to the workers' "full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives . . . for the purpose of collective bargaining. . . ." These considerations, on their face, obviously do not apply to the Government as an employer or to relations between the Government and its employees.

If we examine §§ 4 and 13, we note that they do not purport to strip completely from the federal courts all their preexisting powers to issue injunctions, that they

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the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted."

withdraw this power only in a specified type of case, and that this type is a case "involving or growing out of any labor dispute." Section 13 in the first instance declares a case to be of this type when it "involves persons" or "involves any conflicting or competing interests" in a labor dispute of "persons" who stand in any one of several defined economic relationships. And "persons" must be involved on both sides of the controversy or dispute. The Act does not define "persons". In common usage that term does not include the sovereign, and statutes employing it will ordinarily not be construed to do so.[26]

Those clauses in § 13 (a) and (b) spelling out the position of "persons" relative to the employer-employee relationship affirmatively suggest that the United States, as an employer, was not meant to be included. Those clauses require that the case involve persons "who are engaged in the same industry, trade, craft or occupation", who "have direct or indirect interests therein", who are "employees of the same employer", who are "members of the same or an affiliated organization of employers or employees", or who stand in some one of other specified positions relative to a dispute over the employer-employee relationship. Every one of these qualifications in § 13 (a) and (b) we think relates to an economic role ordinarily filled by a private individual or corporation, and not by a sovereign government. None of them is at all suggestive of any part played by the United States in its relations with its own employees. When Congress desired to extend the coverage of these definitions to an abstraction such as the association, not clearly comprehended by the word "persons", it did so expressly. We think that Congress' failure similarly to refer to the United States or to specify any role which it might commonly be thought to fill is strong indication that it did not intend that the Act

[26] *United States* v. *Cooper Corp.*, 312 U. S. 600, 604 (1941); *United States* v. *Fox*, 94 U. S. 315, 321 (1876).

should apply to situations in which United States appears as employer.

Defendants maintain that certain facts in the legislative history of the Act so clearly indicate an intent to restrict the Government's use of injunctions that all the foregoing arguments to the contrary must be rejected.

Congressman Beck of Pennsylvania indicated in the course of the House debates that he thought the Government would be included within the prohibitions of the Act.[27] Congressman Beck was not a member of the Judiciary Committee which reported the bill, and did not vote for its passage. We do accept as authoritative his views as to the status of the United States under the Act.

Congressman Blanton of Texas introduced an amendment to the bill which would have made an exception to the provision limiting the injunctive power "where the United States Government is the petitioner", and this amendment was defeated by the House.[28] The first comment which was made on this argument, however, after its introduction, was that of Congressman LaGuardia, the House sponsor of the bill, who opposed it not on the ground that such an exception should not be made but rather on the ground that the express exception was unnecessary. Congressman LaGuardia read the definition of a person "participating or interested in a labor dispute" in § 13 (b) and referred to the provisions of § 13 (a) and then added: "I do not see how in any possible way the United States can be brought in under the provisions of this bill." When Congressman Blanton thereupon suggested the necessity of allowing the Government to use

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[27] 75 Cong. Rec. 5473. An amendment by Congressman Beck, designed to save to the United States the right to intervene by injunction in private labor disputes, was defeated. 75 Cong. Rec. 5503, 5505.

[28] 75 Cong. Rec. 5503.

injunctions to maintain discipline in the army and navy, LaGuardia pointed out that these services are not "a trade, craft or occupation". Blanton's only answer to LaGuardia's opposition was that the latter "does not know that extensions will be made." A vote was then taken and the amendment defeated.[29] Obviously this incident does not reveal a Congressional intent to legislate concerning the relationship between the United States and its employees.

In the debates in both Houses of Congress numerous references were made to previous instances in which the United States had resorted to the injunctive process in labor disputes between private employers and private employees.[30] These instances were offered as illustrations of the abuses flowing from the use of injunctions in labor disputes and the desirability of placing a limitation thereon. The frequency of these references and the attention directed to their subject matter are compelling circumstances; and we agree that Congress, in passing the Act, did not intend to permit the United States to continue to intervene by injunction in purely private labor disputes.

This does not mean, however, that injunctive relief is withdrawn from the Government in all cases. The situations in which it had sought this remedy, as exemplified by the events of 1894 and 1922, are vastly different from one in which the Government is seeking to carry out governmental responsibilities by taking legal action against its own employees. Indeed, there were other events in the legislative history of the bill which unequivocally demonstrate that injunctive relief was not intended to be withdrawn in this latter situation.

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[29] *Ibid.*

[30] Most frequently mentioned was the Government action in connection with the railway strikes of 1894 and 1922.

When the House had before it a rule for the consideration of the bill, Congressman Michener, a ranking minority member of the Judiciary Committee and the ranking minority member of the Rules Committee, made a general statement in the House concerning the subject matter of the bill and advocating its present consideration. In this survey he clearly stated to the House that the Government's rights with respect to its own employees would not be affected: [31]

> "Be it remembered that this bill does not attempt to legislate concerning Government employees. I do not believe that the enactment of this bill into law will take away from the Federal Government any rights which it has under existing law, to seek and obtain injunctive relief where the same is necessary for the functioning of the Government."

In a later stage of the debate, Congressman Michener repeated this view as to the proper construction of the bill in the following terms: [32]

> "This deals with labor disputes between individuals, not where the Government is involved. It is my notion that under this bill the Government can function with an injunction, if that is necessary in order to carry out the purpose of the Government. I should like to see this clarified, but I want to go on record as saying that under my interpretation of this bill the Federal Government will not at any time be prevented from applying for an injunction, if one is necessary in order that the Government may function."

We conclude that Congress was legislating with the understanding that the Norris-LaGuardia Act would not affect the power of federal courts to give relief by injunc-

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[31] 75 Cong. Rec. 5464.

[32] 75 Cong. Rec. 5509.

tion in situations involving the United States and its employees.[33]

If we were to stop with the legislative history of the Norris-La Guardia Act, there would be little difficulty in accepting the decision of the District Court upon the scope of that Act. And the cases in this Court since the passage of the Act express consistent views concerning the types of labor disputes to which the Act applies.[34] The cases have gone no farther than to follow Congressional desires by regarding as beyond the jurisdiction of the District Courts the issuance of injunctions sought by the United States but running against persons none of whom resemble employees of the United States. None of these cases dealt with the narrow segment of the employer-employee relationship now before us.

But in spite of the determinative guidance offered by the legislative history of the Act of 1932, defendants rely upon the opinions of individual Senators uttered in May, 1943, while debating the Senate version of the War Labor Disputes Act. The debate at that time centered around a substitute for S. 796 as originally introduced.[35] Section

[33] We have been cited to no instances in which the consideration of the Senate was directed to the specific issue of the relationship between the United States and its own employees. The use of the injunction by the Government was in question, but primarily in respect to those instances in which the United States had taken action in private labor disputes, *e. g.* 75 Cong. Rec. 4509, 4619, 4670, 4689, 5001, 5005. Silence upon the status of the Government as employer is not inconsistent with the desires of the House to exclude from the Act those disputes in which the United States is seeking relief against its own employees.

[34] *United States* v. *American Federation of Musicians*, 318 U. S. 741 (1943); *United States* v. *Hutcheson*, 312 U. S. 219, 227 (1941). In accord is *United States* v. *Weirton Steel Co.*, 7 F. Supp. 255 (1934); cf. *Anderson* v. *Bigelow*, 130 F. (2d) 460 (1942).

[35] 89 Cong. Rec. 3812. The substitute bill embodied two amendments proposed by Senator Connally on the floor of the Senate. 89 Cong. Rec. 3809.

5 of the substitute, as amended, provided, "The District Courts of the United States and the United States Courts of the Territories or possessions shall have jurisdiction, for cause shown, but solely under the Attorney General or under his direction . . . to restrain violations or threatened violations of this Act." [36] Following the rejection of other amendments aimed at permitting a much wider use of injunctions and characterized as contrary to the Norris-LaGuardia Act,[37] several Senators were of the opinion that § 5 itself would remove some of the protection offered by that Act,[38] a view contrary to what we have just determined to be the scope of the Act as passed in 1932. Section 5 was defeated and no injunctive provisions were contained in the Senate bill.

The opinions of Senate leaders in 1943 we have considered, but they do not override the intent of Congress as expressed in 1932.[39] Moreover, there is no evidence that the House in 1943 understood the scope of the Norris-LaGuardia Act as did those Senators to whose utterances we have just referred. Debate upon the injunction features of the bill proposed in the House was not concerned with the use of the injunction by the United States in connection with plants seized and operated under Government authority.[40]

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[36] Section 5 of the substitute bill originally did not limit the issuance of injunctions to those sought by the Attorney General. Senator Wagner's proposal to add "but solely upon application of the Attorney General or under his direction" was accepted, but Senator Connally secured a modification which resulted in the language quoted in the text.

[37] A great part of the references to the Norris-LaGuardia Act were made in connection with the proposed Taft and Reed amendments. 89 Cong. Rec. 3897, 3984, 3985, 3986.

[38] Senators Connally and Danahar expressed this view and other Senators were apparently in accord. 89 Cong. Rec. 3988–9.

[39] Here we again note that the Senate, during consideration of the Norris-LaGuardia Act, expressed no opinion upon the narrow issue of governmental power over its own employees.

[40] See note 44 *infra*.

Nor should it be concluded that Congress, by passing the War Labor Disputes Act, in any way expressed disapproval of the United States utilizing injunctions in connection with disputes in plants which it had seized. The Senate, it is true, defeated an amendment designed to permit this practice, but no comparable action transpired in the House. Indeed, the House version of the bill would have allowed injunctions to issue in connection with labor disputes in defense plants under private management. And in respect to facilities taken over by the Government, the bill provided only for criminal penalties.[41]

The issue of injunctions sought by the United States as an employer was not raised by either the Senate or House versions as these bills went to Conference. And the action of the conferees in striking the broader clauses of the House bill, which permitted injunctions to issue in labor disputes arising in connection with plants privately operated, cannot be considered as expressing Congressional desires relative to the rights of the United States as an employer of labor or as operator of a wartime facility. A different conclusion would hardly be consistent with the purposes of the Act, which, far from removing any powers already enjoyed by the United States, was aimed at strengthening the Government's hand in dealing with serious labor disputes in vital industries.

We are left with the undisturbed conclusion that Congress in 1932 was legislating under the assumption that the Norris-LaGuardia Act, as written, excluded those labor disputes to which the United States, acting as an employer, was a party. Our proper choice is to follow this guidance drawn from deliberations of that Congress which brought the Act into being.

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[41] 89 Cong. Rec. 5382. The House version of the bill would have made obvious inroads upon the Norris-LaGuardia Act, and much comment in debate was to this effect, *e. g.*, 89 Cong. Rec. 5241, 5243, 5299, 5305, 5321, 5325.

The defendants contend, however, that workers in mines seized by the Government are not employees of the federal Government; that in operating the mines thus seized, the Government is not engaged in a sovereign function; and that, consequently, the situation in this case does not fall within the area which we have indicated as lying outside the scope of the Norris-LaGuardia Act. It is clear, however, that workers in the mines seized by the Government under the authority of the War Labor Disputes Act stand in an entirely different relationship to the federal Government with respect to their employment from that which existed before the seizure was effected. That Congress intended such was to be the case is apparent both from the terms of the statute and from the legislative deliberations preceding its enactment. Section 3 of the War Labor Disputes Act calls for the seizure of any plant, mine, or facility when the President finds that the operation thereof is threatened by strike or other labor disturbance and that an interruption in production will unduly impede the war effort.[42] Congress intended that by virtue of Government seizure, a mine should become for purposes of production and operation a Government facility in as complete a sense as if the Government held full title and ownership.[43] Consistent with that view, criminal penalties were provided for interference with the operation of such facilities.[44] Also included were procedures for adjusting wages and conditions of employment of the

[42] 57 Stat. 164–165, 50 U. S. C. App., Supp. V, § 1503.

[43] Thus in the legislative debates Senator Connally stated: ". . . but it does seem to me that the power and authority and sovereignty of the Government of the United States are so comprehensive that when we are engaged in war and a plant is not producing, we can take it over, and that when we do take it over, it is a Government plant, just as much as if we had a fee simple title to it, . . ." 89 Cong. Rec., Part 3, pp. 3811–3112. See also *Ibid.* at p. 3809; *Ibid.*, pp. 3884–3885; *Ibid.*, Part 4, pp. 5772, 5774.

[44] War Labor Disputes Act, § 6.

workers in such a manner as to avoid interruptions in production.[45] The question with which we are confronted is not whether the workers in mines under Government seizures are "employees" of the federal Government for every purpose which might be conceived.[46] The question is rather whether for the purposes of this case the incidents of the relationship existing between the Government and the workers are substantially those of governmental employer and employee. We have concluded that a proper deference for the purposes intended to be accomplished by Congress in excluding situations involving the federal Government and its employees from the operation of the Norris-LaGuardia Act, requires that we hold that Act not applicable to this case.

Executive Order 9728, in pursuance of which the Government seized possession of the mines, authorized the Secretary of the Interior to negotiate with the representatives of the miners, and thereafter to apply to the National Wage Stabilization Board for appropriate changes in terms and conditions of employment for the period of governmental operation.[47] Such negotiations were undertaken and resulted in the Krug-Lewis Agreement. That agreement contains many basic departures from the earlier contract entered into between the mine workers and the pri-

[45] *Ibid.* § 5.

[46] Thus according to § 23 of the Revised Regulations for the Operation of the Coal Mines Under Government Control issued by the Coal Mines Administrator on July 8, 1946: ". . . nothing in these regulations shall be construed as recognizing such personnel as officers and employees of the Federal Government within the meaning of the statutes relating to federal employment." And see § 16. Section 23 also provides, however: "All personnel of the mines, both officers and employees, shall be considered as called upon by Executive Order No. 9728, to serve the Government of the United States. . . ."

[47] After the negotiation of the Krug-Lewis Agreement, hereinafter discussed, the changes agreed upon therein were approved by the National Wage Stabilization Act and thereafter by the President. This procedure is provided for in § 5 of the War Labor Disputes Act.

vate operators on April 11, 1945, which, except as amended and supplemented by the Krug-Lewis Agreement, was continued in effect for the period of Government possession. Among the terms of the Krug-Lewis Agreement were provisions for a new mine safety code. Operating managers were directed to provide the mine employees with the protection and benefits of Workman's Compensation and Occupational Disease Laws. Provision was made for a Welfare and Retirement Fund and a Medical and Hospital Fund. The agreement granted substantial wage increases and contained terms relating to vacations and vacation pay. Included were provisions calling for changes in equitable grievance procedures.

It should be observed that the Krug-Lewis Agreement was one solely between the Government and the Union. The private mine operators were not parties to the contract nor were they made parties to any of its subsequent modifications. It should also be observed that the provisions relate to matters which normally constitute the subject matter of collective bargaining between employer and employee. Many of the provisions incorporated into the agreement for the period of Government operation had theretofore been vigorously opposed by the private operators and have not subsequently received their approval.

It is descriptive of the situation to state that the Government, in order to maintain production and to accomplish the purposes of the seizure, has substituted itself for the private employer in dealing with those matters which formerly were the subject of collective bargaining between the Union and the operators. The defendants by their conduct have given practical recognition to this fact. The Union negotiated a collective agreement with the Government and has made use of the procedures provided by the War Labor Disputes Act to modify its terms and conditions. The Union has apparently regarded the Krug-Lewis Agreement as a sufficient contract of employ-

ment to satisfy the mine workers' traditional demand of a contract as a condition precedent to their work. The defendant Lewis is responding to a suggestion of the Secretary of the Interior that certain Union demands should be taken to the private operators with the view of making possible the termination of Government possession, stated in a letter dated November 15, 1946: "The Government of the United States seized the mines and entered into a contract. The mine workers do not propose to deal with parties who have no status under the contract." The defendant Lewis in the same letter referred to the "400,000 men who now serve the Government of the United States in the bituminous coal mines."

The defendants, however, point to the fact that the private managers of the mines have been retained by the Government in the role of operating managers with substantially the same functions and authority. It is true that the regulations for the operation of the mines issued by the Coal Mines Administrator provide for the retention of the private managers to assist in the realization of the objects of Government seizure and operation.[48] The regulations, however, also provide for the removal of such operating managers at the discretion of the Coal Mines Administrator.[49] Thus the Government, though utilizing the services of the private managers, has, nevertheless retained ultimate control.

The defendants also point out that under Government seizure none of the earnings or liabilities resulting from the operation of the mines are for the account or at the risk or expense of the Government; [50] that the companies continue to be liable for all Federal, State, and local taxes; [51] and that the mining companies remain subject

[48] Regulations for the Operation of the Coal Mines under Government Control, § 15.

[49] Regulations, §§ 16, 31.

[50] Regulations, §§ 17, 40.

[51] Regulations, § 24.

to suit.[52] It is obvious that Congress never intended that the temporary possession and operation of an industry or a plant seized under the authority of the War Labor Disputes Act should for all purposes amount to full Government ownership of the facilities seized. The matters which defendants advance relate to the respective powers and obligations of the Government and the private owners during the period of Governmental control. Such considerations have little persuasive weight in determining the nature of the relation existing betwen the Government and the mine workers.

We do not find convincing the contention of the defendants that in seizing and operating the coal mines the Government was not exercising a sovereign function and that, hence, this is not a situation which can be excluded from the terms of the Norris-LaGuardia Act. In the Executive Order which directed the seizure of the mines, the President found and proclaimed that "the coal produced by such mines is required for the war effort and is indispensable for the continued operation of the national economy during the transition from war to peace; that the war effort will be unduly impeded or delayed by . . . interruptions [in production]; and that the exercise of the powers vested in me is necessary to insure the operation of such mines in the interest of the war effort and to preserve the national economic structure in the present emergency." Under the conditions found by the President to exist, it would be difficult to conceive of a more vital and urgent function of the Government than the seizure and operation of the bituminous coal mines. While engaged in this function the relationship between the mine workers and the Government was substantially that of employer and employee. We hold that in a case such as this where the Government has seized actual possession of mines or other facilities and where the Government has assumed

[52] *Ibid.*

the responsibility of maintaining production in the public interest, the relationship between the workers and the Government is such as to place the case outside the intended scope of the Norris-LaGuardian Act.

Although we have held that the Norris-LaGuardia Act did not render injunctive relief beyond the jurisdiction of the district court, there are alternative grounds which support the power of the district court to punish violations of its orders as criminal contempt.

Attention must be directed to the situation obtaining on November 18. The Government's complaint sought a declaratory judgment in respect to the Krug-Lewis Agreement, and the right of Lewis and the union to terminate the contract. What amounted to a strike call, effective at midnight on November 20, had been issued by Lewis as an "official notice". Pending a determination of defendants' contractual right to take this action, the Government requested a temporary restraining order and injunctive relief. The memorandum in support of the restraining order seriously urged the inapplicability of the Norris-LaGuardia Act to the facts of this case, and the power of the district court to grant the ancillary relief depended in great part upon the resolution of this jurisdictional question. In these circumstances, the district court unquestionably had the power to issue a restraining order for the purpose of preserving existing conditions pending a decision upon its own jurisdiction.

The temporary restraining order was served on November 18. This was roughly two and one-half days before the strike was to begin. The defendant's took no steps to vacate the order. Rather, they ignored it, and allowed a nationwide coal strike to become an accomplished fact. This Court has used unequivocal language in condemning such conduct,[53] and has in *United States* v. *Shipp*, 203

[53] "If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them

U. S. 418 (1911), provided protection for judicial authority in situations of this kind. In that case this Court had allowed an appeal from a denial of a writ of *habeas corpus* by the Circuit Court of Tennessee. The petition had been filed by Johnson, then confined under a sentence of death imposed by a state court. Pending the appeal, this Court issued an order staying all proceedings against Johnson. However, the prisoner was taken from jail and lynched. Shipp, the sheriff having custody of Johnson, was charged with conspiring with others for the purpose of lynching Johnson, with intent to show contempt for the order of this Court. Shipp denied the jurisdiction of this Court to punish for contempt on the ground that the stay order was issued pending an appeal over which this Court had no jurisdiction because the constitutional questions alleged were frivolous and only a pretense. The Court, through Mr. Justice Holmes, rejected the contention as to want of jurisdiction, and in ordering the contempt to be tried, stated:

> "We regard this argument as unsound. It has been held, it is true, that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt. *In re Sawyer,* 124 U. S. 200, *Ex parte Fisk,* 113 U. S. 713, *Ex parte Rowland,* 104 U. S. 604. But even if the Circuit Court had no jurisdiction to entertain Johnson's petition, and if this court had no jurisdiction of the appeal, this court, and this court alone, could deside that such was the law. It and it alone necessarily had jurisdiction to decide whether the case was properly before it. On that question, at least, it was its duty to permit argument and to take the time required for such consideration as it might need. See *Mansfield, Coldwater & Lake Michigan Ry. Co.* v. *Swan,* 111 U. S. 379, 387. Until its judgment declin-

aside, then are the courts impotent, and what the Constitution now fittingly calls the 'judicial power of the United States' would be a mere mockery." *Gompers* v. *Buck Stove & Range Company,* 221 U. S. 418, 450 (1911).

ing jurisdiction should be announced, it had authority from the necessity of the case to make orders to preserve the existing conditions and the subject of the petition, just as the state court was bound to refrain from further proceedings until the same time. Rev. Stat. 766; act of March 3, 1893, c. 226, 27 Stat. 751. The fact that the petitioner was entitled to argue his case shows what needs no proof, that the law contemplates the possibility of a decision either way, and therefore must provide for it." [203 U. S. 573.]

If this Court did not have jurisdiction to hear the appeal in the *Shipp* case, its order was invalid. But it was ruled that only the Court itself could determine that question of law. Until it was found that the Court had no jurisdiction, ". . . it had authority, from the necessity of the case, to make orders to preserve the existing conditions and the subject of the petition . . ."

Direct application of the rule laid down in *United States* v. *Shipp, supra,* is apparent in *Carter* v. *United States,* 135 F. 2d 848 (1943). There a District Court issued a temporary restraining order in a case involving a labor dispute. An injunction followed after a hearing in which the court affirmatively decided that it had jurisdiction. The injunction was set aside on appeal for lack of the elements of federal jurisdiction. *Brown* v. *Coumanis,* 135 F. 2d (1943). But in *Carter,* violations of the temporary restraining order were held punishable as criminal contempt. Pending a decision on a doubtful question of jurisdiction, the District Court was held to have power to maintain the *status quo* and punish violations as contempt.[54]

[54] "It cannot now be broadly asserted that a judgment is always a nullity if jurisdiction of some sort or other is wanting. It is now held that, except in case of plain usurpation, a court has jurisdiction to determine its own jurisdiction, and if it be contested and on due hearing it is upheld, the decision unreversed binds the parties as a thing adjudged. *Treinés* v. *Sunshine Mining Co.,* 308 U. S. 66, 60

In the case before us, the district court had the power to preserve existing conditions while it was determining its own authority to grant injunctive relief. The defendants, in making their private determination of the law, acted at their peril. Their disobedience is punishable as criminal contempt.

Although a different result would follow were the question of jurisdiction frivolous and not substantial, such contention would be idle here. The applicability of the Norris-LaGuardia Act to the United States in a case such as this had not previously received judicial consideration, and the determination of the case in this Court affirms the substantial nature of the problem with which the District Court was faced.

Proceeding further, we find impressive authority for the proposition that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper

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S. Ct. 44, 84 L. Ed. 85; *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 403, 60 S. Ct. 907, 84 L. Ed. 1263; *Stoll* v. *Gottlieb*, 305 U. S. 165, 59 S. Ct. 134, 83 L. Ed. 104. So in the matter of federal jurisdiction, which is often a close question, the federal court may either have to determine the facts, as in contested citizenship, or the law, as whether the case alleged arises under a law of the United States. See *Binderup* v. *Pathe Exchange*, 263 U. S. 291, at page 305, 44 S. Ct. 96, 68 L. Ed. 308. (P. 861.) . . . It alone had authority in the first instance to decide whether or not the case arose under the Norris-LaGuardia Act, 29 U. S. C. A. §§ 101–115, a law of the United States. It could lawfully by a temporary injunction preserve the business which was the subject of the litigation until a hearing could be had. The order was not final. It deprived Carter of no right. It only required that he refrain from interfering with another man for a few days. Carter did not elect to move to dissolve the order, but to flout and disobey it. The order was, while it lasted, a lawful one, such as a district court of the United States in the exercise of its equity powers could make, pending a hearing of a doubtful question of jurisdiciton. The question of jurisdiction was not frivolous. It had never before been decided." 135 F. 2d 848, 861–862.

proceedings.[55] This is true without regard even for the constitutionality of the Act under which the order is issued. In *Howat* v. *Kansas*, 128 U. S. 181, 189–90 (1922) this Court said:

> "An injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be pnished.[56]

Violations of an order are punishable as criminal contempt even though the order is set aside on appeal, *Worden* v. *Searls*, 121 U. S. 14 (1887),[57] or though the basic action has become moot, *Gompers* v. *Bucks Stove & Range Co.*, *supra*.

We insist upon the same duty of obedience where, as here, the subject matter of the suit, as well as the parties, was properly before the court; where the elements of federal jurisdiction were at hand; and where the authority of the court of first instance to issue an order ancillary to

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[55] *Howat* v. *Kansas*, 285 U. S. 181 (1922); *Russell* v. *United States*, 86 F. (2d) 389 (1936); *Locke* v. *United States*, 75 F. (2d) 157 (1935); *O'Hearne* v. *United States*, 66 F. (2d) 933 (1933); *Alemite Mfg. Corp.* v. *Staff*, 42 F. (2d) 832 (1930); *Brougham* v. *Oceanic Steam Navigation Co.*, 205 Fed. 857 (1917); *Schwartz* v. *United States*, 217 Fed. 866 (1914); *Blake* v. *Nesbet*, 144 Fed. 279 (1905).

[56] See *Alemite Mfg. Corp.* v. *Staff*, 42 F. (2d) 832, 833 (1930).

[57] See *Salvage Process Corporation et al.* v. *Acme Tank Cleaning Process Corp.*, 86 F. (2d) 727 (1936); *McCann* v. *New York Stock Exchange*, 80 F. (2d) 211, 214 (1931).

the main suit depended upon a statute, the scope and applicability of which were subject to substantial doubt. The District Court on November 29 affirmatively decided that the Norris-LaGuardia Act was of no force in this case and that injunctive relief was therefore authorized. Orders outstanding or issued after that date were to be obeyed until they expired or were set aside by appropriate proceedings, appellate or otherwise. Convictions for criminal contempt intervening before that time may stand.

It does not follow, of course, that simply because a defendant may be punished for criminal contempt for disobedience of an order later set aside on appeal, that the plaintiff in the action may profit by way of a compensatory fine imposed in a simultaneous proceeding for civil contempt based upon a violation of the same order. The right to compensation falls with an injunction which events prove was erroneously issued, *Worden* v. *Searls,* 121 U. S. 14, 25, 26 (1887); *Salvage Process Corp.* v. *Acme Tank Cleaning Process Corp.,* 86 F. (2d) 727 (1936),[58] and a fortiori when the injunction or restraining order was beyond the jurisdiction of the court. Nor does the reason underlying *United States* v. *Shipp, supra,* compel a different result. If the Norris-LaGuardia Act were applicable in this case, the conviction for civil contempt would be reversed in its entirety.

Assuming, then, that the Norris-LaGuardia Act applied to this case and prohibited injunctive relief at the request of the United States, we would set aside the preliminary injunction of December 4 and the judgment for

[58] See *McCann* v. *New York Stock Exchange,* 80 F. (2d) 211, 214 (1935). In accord in the case of settlement is *Gompers* v. *Bucks Stove & Range Co.,* 221 U. S. 418, 451–2 (1911): ". . . when the main cause was terminated between the parties, the complainant did not require and was not entitled to, any compensation or relief of any other character."

civil contempt; but we would, subject to any infirmities in the contempt proceedings or in the fines imposed, affirm the judgments for criminal contempt as validly punishing violations of an order then outstanding and unreversed.

The defendants have pressed upon us the procedural aspects of their trial and allege error so prejudicial as to require reversal of the judgments for civil and criminal contempt. But we have not been persuaded.

The question is whether the proceedings will support judgments for both criminal and civil contempt; and our attention is directed to Rule 42 (b) of the Rules of Criminal Procedure.[59] The rule requires criminal contempt to be prosecuted on notice stating the essential facts constituting the contempt charged. There was compliance with the rule here. Notice was given by a rule to show cause served upon defendants together with the Government's petition and supporting affidavit. The pleadings rested only upon information and belief, but Rule 42 (b) was not designed to cast doubt upon the propriety of

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[59] Rule 42 (b) regulates various aspects of a proceeding for criminal contempt where the contempt is not committed in the actual presence of the court:

"Disposition Upon Notice and Hearing. A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. He is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment."

instituting criminal contempt proceedings in this manner.[60] The petition itself charged a violation of the outstanding restraining order, and the affidavit alleged in detail a failure to withdraw the notice of November 15, the cessation of work in the mines, and the consequent interference with governmental functions and the jurisdiction of the court. The defendants were fairly and completely apprised of the events and conduct constituting the contempt charged.

However, Rule 42 (b) requires that the notice issuing to the defendants describe the criminal contempt charged as such. Defendants urge a failure to comply with this rule. The petition alleged a willful violation of the restraining order, and both the petition and the rule to show cause inquired as to why the defendants should not be "punished as and for a contempt" of court. But nowhere was the contempt described as criminal.

Nevertheless, defendants were quite aware that a criminal contempt was charged. In their motion to discharge and vacate the rule to show cause the contempt charged was referred to as criminal.[61] And in argument on the motion the defendants stated and were expressly informed that a criminal contempt was to be tried.[62] Yet it is now

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[60] *Conley* v. *United States*, 59 F. (2d) 929 (1932); *Kelly* v. *United States*, 250 Fed. 947 (1918). See *National Labor Relations Board* v. *Arcade-Sunshine Co.*, 122 F. (2d) 964, 965 (1941).

[61] See point 4, note 14, *supra*. The points and authorities in support of the motion used similar language.

[62] Furthermore, "punishment" has been said to be the magic word indicating a proceeding in criminal, rather than civil, contempt. Moskovitz, Contempt of Injunctions, Civil and Criminal (1943), 43 Col. L. Rev. 780, 789–90. But "punishment" as used in contempt cases is ambiguous. "It is not the fact of punishment, but rather its character and purpose. . . ." *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 441 (1911).

Noteworthy also is the allegation in the affidavit that the defendants' violation of the restraining order had "interfered with this

urged that the omission of the words "criminal contempt" from the petition and rule to show cause was prejudicial error. Rule 42 (b) requires no such vigorous application, for it was designed to insure a realization by contemnors that a prosecution for criminal contempt is contemplated.[63] Its purpose was sufficiently fulfilled here.

Not only were the defendants and the court fully informed that a criminal contempt was charged, but we think they enjoyed during the trial itself all the enhanced protections accorded defendants in criminal contempt proceedings.[64] We need not treat these at length, for defendants in this respect urge only their right to a jury trial. But due process has not as yet required trial by jury in criminal contempt cases,[65] and Rule 42 (b) so provides only in case of statutory direction to this effect. Since the commands of the Norris-LaGuardia Act do not govern this case, the defendants were not entitled to the jury trial provided by § 11 of that Act; [66] and § 24 of the Clayton Act expressly limits the statute's procedural protections in contempt prosecutions so as to exclude cases in which the United States is party plaintiff.[67]

Court's jurisdiction." And the charge of "willfully . . . and deliberately" disobeying the restraining order indicates an intention to prosecute criminal contempt.

[63] The rule in this respect follows the suggestion made in *McCann* v. *New York Stock Exchange*, 80 F. (2d) 211, 214–215 (1935). Notes to the Rules of Criminal Procedure, Advisory Committee, March, 1945, p. 34.

[64] *Cooke* v. *United States*, 267 U. S. 517, 537 (1925); see *Nye* v. *United States*, 313 U. S. 33, 53 (1941); *Michaelson* v. *United States*, 266 U. S. 42, 66–67 (1924).

[65] *In re Debs*, 158 U. S. 564, 594 (1895); cf. *Eilenbecker* v. *Plymouth County*, 134 U. S. 31 (1890).

[66] We believe, and the Government admits, that if the Norris-LaGuardia Act applied to this case, defendants would enjoy a right to a jury trial.

[67] Cf. *Hill* v. *United States, ex rel. Weiner*, 300 U. S. 105 (1937). In any event, defendants here did not request a jury or object to a trial by the court alone. An advisory jury was waived.

If the defendants were thus accorded all their rights and privileges owing to defendants in criminal contempt cases, they are put in no better position to complain because their trial included a proceeding in civil contempt and was carried on in the main equity suit. Common sense would recognize that conduct can amount to both civil and criminal contempt. Behavior may entitle the opposing litigant to remedial relief and at the same time justify punitive measures.[68] Disposing of both aspects of the contempt in a single proceeding would seem at least a convenient practice. Litigation in patent cases has frequently followed this course,[69] and the same method can be noted in other situations in both federal and state courts.[70] Rule 42 (b), while demanding fair notice and recognition of the criminal aspects of the case, contains

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[68] "It may not always be easy to classify a particular act as belonging to either one of these two classes. It may partake of the characteristics of both." *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324, 329 (1904). See *Lamb* v. *Cramer*, 285 U. S. 217, 221 (1932); *Merchants Stock & Grain Co.* v. *Board of Trade of Chicago*, 201 Fed. 20, 24 (1912).

[69] "In patent cases it has been usual to embrace in one proceeding the public and private remedy—to punish the defendant if found worthy of punishment, and, at the same time, or as an alternative, to assess damages and costs for the benefit of the plaintiff." *Hendry X* v. *Fitzpatrick*, 19 Fed. 810, 813 (1884). Examples of this procedure appear in *Union Tool* v. *Wilson*, 259 U. S. 107 (1922); Matter of Christensen Engineering Co., 194 U. S. 458 (1909); *Krepick* v. *Couch Patents Co.*, 190 Fed. 565 (1911); *Wilson* v. *Byron Jackson Co.*, 93 F. (2d) 577 (1937).

[70] *Farmers' Nat'l Bank* v. *Wilkerson*, 266 U. S. 503 (1925); *In re Swan, Petitioner*, 150 U. S. 637 (1893); *In re Ayers*, 123 U. S. 443 (1887); *Merchants Stock & Grain Co.* v. *Board of Trade of Chicago*, 201 Fed. 20 (1912). See *Phillips Sheet & Tin Plate Co.* v. *Amalgamated Ass'n. of Iron & Tin Workers*, 208 Fed. 335, 340 (1913). Instances in the state courts include *Holloway* v. *People's Water Co.*, 100 Kans. 414 (1917); *Carey* v. *District Court of Jasper County*, 226 Iowa 717 (1939); *Grand Lodge, K. P. of New Jersey* v. *Jansen*, 67 N. J. Eq. 737 (1901).

nothing precluding a simultaneous disposition of the remedial aspects of the contempt tried. Even if it be the better practice to try criminal contempt alone and so avoid obscuring the defendant's privileges in any manner, a mingling of civil and criminal contempt proceedings must nevertheless be shown to result in substantial prejudice before a reversal will be required.[71] That the contempt proceeding carried the number and name of the equity suit [72] does not alter this conclusion, especially where, as

[71] We are not impressed with defendants' attack on the pleadings as insufficient to support a judgment for civil contempt. The petition, affidavit, and rule to show cause did not expressly mention civil contempt or remedial relief, but the affidavit contained allegations of interference with the operation of the mines and with governmental functions. These claims far from negative remedial relief. More significantly, the affidavit charged disobedience of the restraining order by failing to withdraw the notice of Nov. 15. We will not assume that defendants were not instantly aware that a usual remedy in such a situation is to commit until the act is performed. This is remedial relief and a function of civil contempt. See *Michaelson* v. *United States*, 266 U. S. 42, 66 (1924); *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 417, 449 (1911). The probabilities apparent at the outset are not dimmed by the ultimate imposition of a fine in preference to coercion by committal. Furthermore, defendants' counsel, in argument on the motion to vacate, remarked that the United States was proceeding upon the theory of civil contempt, and attempted only to demonstrate the inability of the United States to seek this relief. And when the Government's suggestions for fines were before the Court, defendants' counsel argued the excessiveness of the fines for either civil or criminal contempt.

[72] Criminal contempt was apparently tried out in the equity suit in the patent cases in Note 12, *supra*. And this was the practice followed in *Matter of Christensen Engineering Co.*, 194 U. S. 458 (1904); *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324 (1904); *New Orleans* v. *New York Mail Steamship Co.*, 20 Wall. 387 (1874). In none of these cases in this Court, however, has there been an affirmative discussion of the propriety of proceeding in this manner. Compare *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 441 (1911); *United States* v. *Bittner*, 11 F. (2d) 93, 95 (1926), with *Nye* v. *United States*, 313 U. S. 33, 42 (1941).

here, the United States would have been the complaining party in whatever suit the contempt was tried. In so far as the criminal nature of the double proceeding dominates [73] and in so far as the defendants' status in the criminal trial are not diluted in the mixing of civil with criminal contempt, to that extent is prejudice avoided.[74] Here, as we have indicated, all rights and privileges of the defendants were fully respected, and there has been no showing of substantial prejudice flowing from the formal peculiarities of defendants' trial.

Lastly, the defendants have assigned as error and argued in their brief that the District Court improperly extended the restraining order on November 27 for another ten days. There was then in progress argument on defendants' motion to vacate the rule to show cause, a part of the contempt proceedings. In the circumstances of this case, we think there was good cause shown for extending the order.[75]

Apart from their contentions concerning the formal aspects of the proceedings below, defendants insist upon

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[73] Cf. *Nye* v. *United States*, 313 U. S. 33, 42 (1941); *Union Tool Co.* v. *Wilson*, 259 U. S. 107, 110 (1922); *Re Merchants Stock Co., Petitioner*, 223, U. S. 639, 642 (1911); *Matter of Christensen Engineering Co.*, 194 U. S. 458, 461 (1904).

[74] In *Federal Trade Commission* v. *Abe McLean & Son*, 94 F. (2d) 802 (1938), it could not be said that the criminal element had been dominant and clear from the very outset of the case. The same is true of *Norstrom* v. *Wahl*, 41 F. (2d) 910 (1930).

[75] Rule 65 (b) of the Federal Rules of Civil Procedure provides that a temporary restraining order should expire according to its terms "unless within the time so fixed the order, for good cause shown, is extended for a like period. . . ." There being sufficient cause for the extension, there is no conflict with the subsequent clause of Rule 65 (b) requiring that "the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character. . . ."

the inability of the United States to secure relief by way of civil contempt in this case, and would limit the right to proceed by civil contempt to situations in which the United States is enforcing a statute expressly allowing resort to the courts for enforcement of statutory orders. *McCrone* v. *United States*, 307 U. S. 61 (1939), however, rests upon no such narrow ground, for the Court there said that "Article 3, ¶2, of the Constitution, expressly contemplates the United States as a party to civil proceedings by extending the jurisdiction of the federal judiciary 'to Controversies to which the United States shall be a party,' " *id* at 63. The United States was fully entitled to bring the present suit and to benefit from orders entered in its behalf.[76] We will not reduce the practical value of the relief granted by limiting the United States, when the orders have been disobeyed, to a proceding in criminal contempt, and by denying to the Government the civil remedies enjoyed by other litigants including the opportunity to demonstrate that disobedience has occasioned loss.[77]

It is urged that, in any event, the fine of $10,000 imposed upon the defendant Lewis and the fine of $3,500,000 imposed upon the Union were excessive and in no way related to the evidence introduced at the hearing. The trial court properly determined that the defendants were guilty of both criminal and civil contempts. The record, however, does not reveal what portions of the fines were imposed as punishment for the criminal contempts or what amounts were directed to be paid by reason of the civil contempts.

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[76] Section 24 of the Judicial Code, 28 U. S. C. 41, extends the jurisdiction of the District Courts to "all suits of a civil nature, at common law or equity, brought by the United States—".

[77] The Court in the *McCrone* case affirmed 100 F. (2d) 322 and noted, 307 U. S. 61, 62, note 1, the conflict with *Federal Trade Commission* v. *McClean & Son*, 94 F. (2d) 802 (1938), upon which defendants now rely.

As we have pointed out above, the charges of criminal and civil contempt were properly tried in the same proceeding. We have held that there was substantial compliance with all the procedural requirements relating to both actions. Sentences for criminal contempt are punitive in their nature and are imposed for the purpose of vindicating the authority of the court. *Gompers* v. *Bucks Stove & Range Co., supra* at 108. The interests of orderly government demand that respect and compliance be given to orders issued by courts possessed of jurisdiction of persons and subject matter. One who defies the public authority and willfully refuses his obedience, does so at his peril. In imposing a fine for criminal contempt, the trial judge may properly take into consideration the extent of the willful and deliberate defiance of the court's order, the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating the defendant's defiance as required by the public interest, and the importance of deterring such acts in the future. In fixing the amount of the fine the judge should also bear in mind the extent of the financial resources of the defendant and the seriousness of the burden which the fine is likely to impose. Because of the nature of these standards, great reliance must be placed upon the discretion of the trial judge. The serious difficulty here, however, is that there is no way to determine what portion of the fines was imposed as punishment for the criminal contempt.

An indeterminate portion of the fines in this case resulted from the civil contempts of the defendants. Judicial sanctions in civil contempt proceedings are in their nature remedial and for the benefit of the complaining party. *Gompers* v. *Bucks Stove & Range Co., supra* at 441; *McCrone* v. *United States,* 307 U. S. 61, 64 (1939). Thus the fine in such a proceeding [78] is made payable to the

[78] An individual defendant in a civil contempt proceeding may also be imprisoned until such time as he purges himself of contempt.

complainant to compensate for the loss actually sustained by it by reason of the defendant's contumacious conduct. It follows that the amount of the fine must be based upon evidence of such loss.[79] At the hearing one witness for the Government testified that if the work stoppage were to continue for sixty days, there would be a net loss in national income amounting to about one billion dollars. Another witness calculated that a loss in national income payments amounting to a billion dollars would result in a loss in federal tax revenues of about $280,000,000.[80] At the time the fines were imposed, however, the work stoppage had been in progress for only fifteen days. It was shown that the damages would increase at an accelerated rate as the work stoppage continued. No other evidence relating to the damages of the Government was introduced. In our view, the record is sufficient to establish that loss was sustained by the Government; but there is

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"Imprisonment in such cases is not inflicted as a punishment, but is intended to be remedial by coercing the defendant to do what he had refused to do. The decree in such cases is that the defendant stand committed unless and until he performs the affirmative act required by the court's order." *Gompers* v. *Bucks Stove & Range Co.*, *supra*, at 442. In the present case, upon recommendation of the Government, the trial court chose not to inflict imprisonment either as a remedial device in the civil contempt action or to punish for the criminal contempt.

[79] *Lemen* v. *Kentler-Arnold Hinge Last Co.*, 284 U. S. 448, 455–456 (1932); *Gompers* v. *Bucks Stove & Range Co.*, *supra*, at 443–444; *Norstrom* v. *Wahl*, 41 F. (2d) 910, 914 (1930); *Judelsohn* v. *Black*, 64 F. (2d) 116 (1933); *Parker* v. *United States*, 126 F. (2d) 370, 380 (1942).

[80] The witness testified that a decline in income payments throughout the country at large to the extent of $10,000,000,000 would result in a decline in the yearly federal tax revenues of about $2,800,000,000. Upon the assumption that the rate of decline in tax revenues would remain constant for a lesser decline in national income payments, the witness testified that a loss in national income payments of one billion dollars would result in a loss to the federal treasury of $280,000,000.

nothing in the record to indicate the amount of such loss at the time the fines were imposed.

We hold, nevertheless, that the $10,000 fine ordered to be paid by the defendant Lewis should stand. Even if it be assumed that the trial court intended that a substantial portion of that fine should serve as compensation to the Government for damages sustained by it, the record is sufficient to support an inference of loss to the Government to that limited extent. Such being the case, the failure of the trial judge to allocate the fines between the civil and criminal contempts will not be regarded as a fatal error where, as here, the Government is the recipient of the fines for both ~~the criminal and civil~~ contempts.

But in dealing with the larger fine imposed upon the defendant Union, we cannot fairly draw the inference from the evidence introduced that civil damages were sustained by the Government to the extent of $3,500,000. There is no way to determine how much of that amount was ordered by the trial court to be paid for purposes of compensation nor can the proportion intended as punishment for the criminal contempt be ascertained. The record is plainly inadequate to sustain a fine in such substantial sum based upon the theory of actual loss to the Government at the time the fine was imposed.

Accordingly, the judgment of the trial court is vacated and the case remanded for further proceedings at which time the court may hear such evidence as may be offered relative to the actual damages sustained by the Government as a result of the civil contempt of the Union as well as further evidence which may be relevant to the exercise of the court's discretion with respect to imposition of a fine for criminal contempt. In imposing the fine, the trial court should clearly indicate what portion thereof is ordered as punishment of the criminal contempt and what portion by reason of the civil contempt.

We have examined the other contentions advanced by defendants but have found them to be without merit. The temporary restraining orders and the preliminary injunction were properly issued, and the actions of the District Court in these respects are affirmed. The judgment against the defendant Lewis is affirmed. The judgment against the defendant Union is vacated and the cases are remanded to the District Court for further procedings in conformity with this opinion.

So ordered.

These opinions of Senate leaders suggest that in their minds the scope of the Act was crystal clear and admitted of no doubt whatsoever. If this were true, we would not say, as we do below, that a substantial question of jurisdiction was presented to the District Court, a question which of itself would justify a restraining order pending its resolution. Beyond this, our scrutiny of the Act and its legislative history have led to a conclusion quite contrary to the Senators whose views we have examined. We recall that these opinions upon an Act passed years before were uttered while the Senate was striving to write legislation from the floor without the aid of hearings and Committee Reports upon the matters of significance to us here. We also note the absence of any similar opinions emanating from the House, where debates were not at all concerned with the use of the injunctions by the United States. We remain undisturbed in our conclusion concerning the Norris-LaGuardia Act and follow the guidance drawn from the Act itself and from the deliberations of that Congress which gave the Act life.

Accordingly, the Norris-LaGuardia Act did not deprive courts of their existing jurisdiction to grant injunctive relief to the United States in labor disputes between it and its employees. This power the courts held at the time of ~~that~~ the passage of the War Labor Disputes Act, and nothing short of

express provision in that Act would, we think, be sufficient to impose a further limitation upon the jurisdiction of the District Courts. Obviously the War Labor Disputes Act itself contains no such provision.

But it is suggested that even if the District Court had jurisdiction to issue the injunction in the present case nevertheless it should have refrained from doing so because Congress in authorizing seizure and operation of ~~the~~ essential facilities, provided only criminal penalties to enforce the Act and unequivocally rejected proposals to allow injunctive relief in addition to the criminal penalties. To so hold would not be descriptive of actual events and would place a determinative significance upon the rejection by the Senate of § 5 of the Connally substitute bill.

No similar action transpired in the House. Proposals in the House and the House bill as passed would have permitted injunctions to issue in labor disputes in private plants. These admitted inroads upon the Norris-LaGuardia Act drew much criticism but nevertheless they prevailed by a wide margin. The House version also contemplated Government seizure of plants and facilities, and in regard to these situations provided ~~the~~ for criminal sanctions without expressly authorizing Government use of the injunctive remedy. This issue of the use of the injunction in connection with seized plants was never presented to the House, was never commented upon, and obviously was not a matter which a reading of the House bill would

bring to mind. But the desires of the House were never in doubt. For broad powers, including injunctive controls, over labor disputes in plants not yet seized by the United States were established in the face of sharp criticism and a vocal opposition. We are strongly inclined to believe that had there risen the issue of the use of the injunction by the Government in connection with plants which had been seized as a last resort after other devices, including injunctions sought by private parties, had failed, the House would have authorized this relief. It is most reasonable to infer that the House did not envision a situation in which seizure and criminal penalties would not be adequate. Though the injunctive remedy was not provided in the House bill, we hesitate to conclude from that fact alone that the House in any way was expressing a desire to deny injunctive relief to the United States. We respect that much the temper of the House in 1943; and holding this view, we do not defer to the opinion that the votes of the Senate on S. 796 operate to admonish the courts to refrain from issuing a usual remedy within their usual jurisdiction.

The action of the conference, reduced to its practical realities, does not detract from this view. As we have indicated, neither the House nor the Senate versions, as these bills went to conference, raised the issue of the use of injunctions by the Government to insure operation of seized plants. The conference simply struck the broader provisions of the

House bill allowing injunctions to issue in private labor disputes. But that same conference had no occasion to consider the narrower issue we have before us here, and the conference in producing the Act in its final form did nothing which suggests that the House had agreed to bar injunctions at the suit of the Government. Of course, the Act, being silent on the issue, itself offers no approval of utilizing injunctions ~~xiky~~ in connection with seized plants. But that is not the question here. Rather it is whether Congress intended to restrict an existing authority resting in the courts. The Act, as we have said, is silent on the matter. And we are not justified in recognizing the voices from one side of Capitol Hill as an authoritative Congressional direction to the courts to withhold injunctive relief in connection with an Act designed to strengthen the hand of the Government in dealing with serious labor disputes.

Even if we heeded Senate, rather than Congressional, desires, the action of the Senate referred to above would not extend to the present case. The Senate voted down a proposal to permit injunctions at the suit of the Attorney General to restrain violations of the Act. The bill at that time made illegal the instigation of strikes and seized plants and the ~~inuj~~ injunction would have been a further remedy for dealing with such conduct.

The bill also, much as did the Act as finally passed, provided that these plants would be operated under the terms and conditions of employ-

ment existing at the time of seizure. However, employees of the United States could seek ~~alloilification~~ modification of wages and other conditions of employment through application to the Wage Stabilization Board. The bill and the Act as passed did not deal with the place or significance of a contract entered into between the United States and employees in seized plants, although it is reasonable to infer that any such contracts would require the approval of the Wage Stabilization Board. Nor do we find the Senaters themselves expressing in debate any opinions upon the rights of the United States under any contracts which it might make.

In the case at bar, the United States seized the mines, and in accordance with Presidential directives, the Secretary of Interior bargained with the representatives of the miners. A contract "for the period of Government possession" was made. This contract Lewis claimed authority legally to terminate. The Government claimed its contractual rights and sought vindication of these rights in the District Court. That Court, to preserve existing conditions, issued a restraining order and a preliminary injunction, effective until contractual rights could be ascertained. We find nothing in the Senate debate on the War Labor Disputes Act to diminish the rights of the United States as a party to a formal contract satisfactory to both the Union and the Government as a solution to a grave situation. That Lewis also called a strike by

circulating to the miners his letter to Secretary Krug merely suggests that, in addition to the breach of contract claimed by the United States, there was possibly a violation of § 6 of the War Labor Disputes Act. Senate disapproval of employing injunction to avert the latter event does not reasonably imply a dilution of contractual rights and remedies. The case suggests not only a violation of the Act but a violation of an existing contract. Authority of a court to give injunctive protection to Government rights under an existing contract does not depend upon a Congressional grant in the War Labor Disputes Act, nor is the authority restricted by expressions in the Senate which relate to situations not yet formalized and frozen by a contract ~~virtually~~ mutually adopted by the parties concerned.

We have held that the Norris-LaGuardia Act did not render injunctive relief beyond the jurisdiction of the District Court. However, there is an alternative ground which supports the jurisdiction of the District Court in hearing and determining the contempt proceedings. The District Court had jurisdiction to determine its jurisdiction.

Along with its complaint filed November 18, the Government presented its memorandum in support of the temporary restraining order. Raised therein was a serious question of the applicability of the Norris-LaGuardia Act to the facts of this case. The power of the court to grant the ancillary injunctive relief might have depended upon the resolution of the issue whether the Norris-LaGuardia Act applied, and pending its decision the court had power to protect the status quo by the restraining order issued on November 18.

It must be remembered the setting at the time of the issue of the restraining order. The Court had jurisdiction of the persons and jurisdiction of the subject matter. The Government sought a declaratory judgment in respect of the Krug-Lewis Contract, and the right of Lewis and the union to terminate the contract. What amounted to a strike call, effective on midnight of November 20, had been issued by Lewis as an "official notice". The restraining order sought the postponement of the nationwide coal strike until there could be a hearing and a decision upon the issuance of the preliminary injunction.

In this hearing and decision was the ever present issue - did the Norris-La-Guardia Act bar injunctive relief in this case? Was the Government without power to prevent a great national crisis?

The temporary restraining order was served on November 18, about two and one-half days before the strike was to begin. The defendants ignored the order and took no steps to vacate it. Rather, they concluded the invalidity of the order, and made no attack upon it until the strike was in full bloom, after their citation for contempt, when they made their motion to vacate the rule to show cause why they should not be held in contempt. This court used graphic language in expressly condemning such conduct. It was in Gompers v. Bucks Stove & Range Co., 221 U.S. 418, 450, that this court said:

> "If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobediance set them aside, then are the courts impotent, and what the Constitution now fittingly calls the 'judicial power of the United States' would be a mere mockery."

Continuing the assumption that the Norris-LaGuardia Act did not apply in this case, the violation of the temporary restraining order may be punished as criminal contempt, U.S. v. Shipp, 203 U.S. 563 (1906). In that case, this court had issued an order staying all proceedings against Johnson, under sentence of death by a Tennessee State Court. It had before it a petition for writ of habeas corpus, which had been denied by the Circuit Court of Tennessee. An appeal was pending in this court. The stay order was issued to preserve the status quo pending the appeal. The prisoner was taken from the jail and lynched. Shipp, the sheriff having custody of Johnson, was charged with

conspiring with others to break into the jail for the purpose of lynching Johnson with intent to show contempt for the order of this court, and for the purpose of preventing it from hearing the appeal; that he abetted the mob which took Johnson out of the jail and murdered him. Shipp and the other defendants defended the order to show cause on the ground that this court had no jurisdiction to punish the contempt because it had jurisdiction of the appeal only if a constitutional question were involved, and that the alleged constitutional question was a pretense. Mr. Justice Holmes rejected the contention as to want of jurisdiction, and ordering that the contempt be tried, stated (203 U.S., 573):

> "We regard this argument as unsound. It has been held, it is true, that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt. In re Sawyer, 124 U.S. 200, Ex parte Fisk, 113 U.S. 713; Ex parte Rowland, 104 U.S. 604. But even if the Circuit Court had no jurisdiction to entertain Johnson's petition, and if this court had no jurisdiction of the appeal, this court, and this court alone, could decide that such was the law. It and it alone necessarily had jurisdiction to decide whether the case was properly before it. On that question, at least, it was its duty to permit argument and to take the time required for such consideration as it might need. See Mansfield, Coldwater & Lake Michigan Ry. Co. v. Swan, 111 U.S. 379, 387. Until its judgment declining jurisdiction should be announced, it had authority from the necessity of the case to make orders to preserve the existing conditions and the subject of the petition, just as the state court was bound to refrain from further proceedings until the same time. Rev. Stat. 766; act of March 3, 1893, c. 226, 27 Stat. 751. The fact that the petitioner was entitled to argue his case shows what needs no proof, that the law contemplates the possibility of a decision either way, and therefore must provide for it."

In the Shipp case the jurisdiction of this court was a question in issue. If this court did not have jurisdiction, its order was invalid. This court held that it was for this court to determine this question of law, and that until it had been held that it had no jurisdiction, "it had authority, from the necessity of the case, to make orders to preserve the existing

conditions and the subject of the petition".

In the present case the district court had jurisdiction to determine its jurisdiction and the defendants, in making their determination of the law, did so at their peril and were punishable for criminal contempt. The power to punish for criminal contempt may not be exercised by a court where the question of jurisdiction is frivolous and not substantial. Frivolity and lack of substantiality were not present in this case. It is true that this particular question had not been determined by this court, but the applicability of the Act to the United States in a case such as this was an issue present at the time of the issuance of the restraining order, and the district court necessarily had power to protect its own jurisdiction, and to punish disobediance of orders issued to this end.

Certainly unless the courts are impotent to maintain the status quo pending determination by it of a non-frivolous and a substantial question, an injunction issued by a court, with jurisdiction of the subject matter and person, must be obeyed by the parties until reversal by orderly and proper proceedings. In Howat v. Kansas, 258 U.S. 181 (1922), this court said:

> "An injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority to be punished. Gompers v. Bucks Stove & Range Co., 221 U.S. 418, 450; Toy Toy v. Hopkins, 212 U.S. 542, 548. See also United States v. Shipp, 203 U.S. 563, 573."

This is the correct principle of law without regard even for the constitutionality of the statute under which the injunction is issued.[1] Violations of the order are punishable as criminal contempt even though the determination of the issues in the main action be decided adversely to those seeking relief.[2]

Continuing the assumption that the Norris-LaGuardia Act did not apply, we advert to Carter v. United States, 135 F. 2d 848. This was a contempt conviction growing out of an action involving a labor dispute on the Norris-LaGuardia Act. The Circuit Court of Appeals had determined that the Norris-LaGuardia Act applied in the case of Brown v. Coumanis, 135 F. 2d 163, and held that the district court lacked jurisdiction in the basic action to have issued a restraining order against certain labor unions and union officials. Carter was one such official who had been punished by the court for disobediance of the restraining order. On the same day they decided Brown v. Coumanis, supra, the Circuit Court of Appeals rejected the argument of Carter, who had been punished for contempt, that since the district court did not have jurisdiction to issue the restraining order, there was no basis for contempt proceedings. The court's language was:

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1. Howat v. Kansas, supra.

2. Gompers v. Bucks Stove & Range Co., supra; Worden v. Searl, 121 U.S. 14 (1887).

> "It cannot now be broadly asserted that a judgment is always a nullity if jurisdiction of some sort or other is wanting. It is now held that, except in case of plain usurpation, a court has jurisdiction to determine its own jurisdiction, and if it be contested and on due hearing it is upheld, the decision unreversed binds the parties as a thing adjudged. Treines v. Sunshine Mining Co., 308 U.S. 66, 60 S. Ct. 44, 84 L. Ed. 85; Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 403, 60 S. Ct. 907, 84 L. Ed. 1263; Stoll v. Gottlieb, 305 U.S. 165, 59 S. Ct. 134, 83 L. Ed. 104. So in the matter of federal jurisdiction, which is often a close question, the federal court may either have to determine the facts, as in contested citizenship, or the law, as whether the case alleged arises under a law of the United States. See Binderup v. Pathe Exchange, 263 U.S. 291, at page 305, 44 S. Ct. 96, 68 L. Ed. 308. (p. 861.)."

The Circuit Court of Appeals stated that the language of the case (which we have quoted supra) applied "literally to the district court" in the Carter case. It further stated:

> "It alone had authority in the first instance to decide whether or not the case arose under the Norris-LaGuardia Act, 29 U.S. C. A. §§ 101-115, a law of the United States. It could lawfully by a temporary injunction preserve the business which was the subject of the litigation until a hearing could be had. The order was not final. It deprived Carter of no right. It only required that he refrain from interfering with another man for a few days. Carter did not elect to move to dissolve the order, but to flout and disobey it. The order was, while it lasted, a lawful one, such as a district court of the United States in the exercise of its equity powers could make, pending a hearing of a doubtful question of jurisdiction. The question of jurisdiction was not frivolous. It had never before been decided. (p. 862)."

In the case at bar, the district court on November 29 affirmatively decided that the Norris-LaGuardia Act was of no force in this case, and that injunctive relief was, therefore, authorized. Orders outstanding or issued after that date were, therefore, to be obeyed until they expired, or were set aside by appropriate proceedings, appellate or otherwise. "The orders are not unlawful but lawful orders." Carter v. United States, supra. Conviction for criminal contempt for intervening before that time would stand even if the Norris-LaGuardia Act had been held to apply to the United States in this case.

However, it does not follow that simply because a defendant may be punished for criminal contempt for disobediance of an order later set aside by an appeal, that the plaintiff in the action may profit by way of a compensatory fine imposed in a simultaneous proceeding for civil contempt based upon a violation of the same order. The right to compensation falls with an injunction which events prove was erroneously issued, Worden v. Searl, 121 U.S. 14, 25, 26 (1887); Salvage Process Corp. v. Acme Tank Cleaning Process Corp., 86 F. 2d 727 (1936),[3] and a fortiori when the injunction or restraining order was beyond the jurisdiction of the court. Nor does the reason underlying United States v. Shipp, supra, compel a different result. If the Norris-LaGuardia Act were applicable in this case, the conviction for civil contempt would be reversed in its entirety.

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3. See McCann v. New York Stock Exchange, 80 F. 2d 211, 214 (1935). In accord in the case of settlement is Compers v. Bucks Stove & Range Co., supra: "...when the main cause was terminated between the parties, the complainant did not require and was not entitled to, any compensation or relief of any other character."

Although we have held that the Norris-LaGuardia Act did not render injunctive relief beyond the jurisdiction of the district court, there are alternative grounds which support the power of the district court to punish violations of its orders as criminal contempt.

Attention must be directed to the situation obtaining on November 18. The Government's complaint sought a declaratory judgment in respect to the Krug-Lewis Agreement, and the right of Lewis and the union to terminate the contract. What amounted to a strike call, effective at midnight on November 20, had been issued by Lewis as an "official notice". Pending a determination of defendants' contractual right to take this action, the Government requested a temporary restraining order and injunctive relief. The memorandum in support of the restraining order seriously urged the inapplicability of the Norris-LaGuardia Act to the facts of this case, and the power of the district court to grant the ancillary relief depended in great part upon the resolution of this jurisdictional question. In these circumstances, the district court unquestionally had the power to issue a restraining order for the purpose of preserving existing conditions pending a decision upon its own jurisdiction.

The temporary restraining order was served on November 18, roughly two and one-half days before the strike was to begin. The defendants took no steps to vacate the order. Rather, they ignored it, and allowed a nationwide

coal strike to become an accomplished fact. In Gompers v. Buck Stove & Range Co., 221 U.S. 418 (1911), this Court used unequivocal language in condemning such conduct:

> "If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobediance set them aside, then are the courts impotent, and what the Constitution now fittingly calls the 'judicial power of the United States' would be a mere mockery." [221 U.S. 450]

It follows that regardless of the applicability of the Norris-LaGuardia Act, the defendants' violation of the temporary restraining order may be punished as criminal contempt. In United States v. Shipp, 203 U.S. 563 (1906), this Court had allowed an appeal from a denial of a writ of habeas corpus by the Circuit Court of Tennessee. The petition had been filed by Johnson, then confined under a sentence of death imposed by a state court in Tennessee. Pending the appeal, this Court issued an order staying all proceedings against Johnson. However, the prisoner was taken from jail and lynched. Shipp, the sheriff having custody of Johnson, was charged with conspiring with others to break into the jail for the purpose of lynching Johnson, with intent to show contempt for the order of this Court, and for the purpose of preventing it from hearing the appeal. Shipp and others denied the jurisdiction of this Court to punish for contempt on the ground that the stay order was issued pending an appeal over which this Court had no jurisdiction because the constitutional questions alleged were frivolous and only a pretense. The Court, through Mr. Justice Holmes, rejected the

contention as to want of jurisdiction, and in ordering the contempt to be tried, stated:

> "We regard this argument as unsound. It has been held, it is true, that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt. In re Sawyer, 124 U.S. 200, Ex parte Fisk, 113 U.S. 713, Ex parte Rowland, 104 U.S. 604. But even if the Circuit Court had no jurisdiction to entertain Johnson's petition, and if this court had no jurisdiction of the appeal, this court, and this court alone, could decide that such was the law. It and it alone necessarily had jurisdiction to decide whether the case was properly before it. On that question, at least, it was its duty to permit argument and to take the time required for such consideration as it might need. See Mansfield, Coldwater & Lake Michigan Ry. Co. v. Swan, 111 U.S. 379, 387. Until its judgment declining jurisdiction should be announced, it had authority from the necessity of the case to make orders to preserve the existing conditions and the subject of the petition, just as the state court was bound to refrain from further proceedings until the same time. Rev. Stat. 766; act of March 3, 1893, c. 226, 27 Stat. 751. The fact that the petitioner was entitled to argue his case shows what needs no proof, that the law contemplates the possibility of a decision either way, and therefore must provide for it." [203 U.S. 573]

If this Court did not have jurisdiction to hear the appeal in the Shipp case, its order was invalid. But it was ruled that only the Court itself could determine this question of law. Until it was found that the Court had no jurisdiction, "...it had authority, from the necessity of the case, to make orders to preserve the existing conditions and the subject of the petition ..."

Direct application of the rule laid down in United States v. Shipp, supra, is apparent in Carter v. United States, 135 F. 2d 848 (1943). There a district court issued a temporary restraining order in a case involving a labor dispute. An injunction followed after a hearing in which the court affirmatively decided that it had jurisdiction. The injunction was set aside on

appeal for lack of the elements of federal jurisdiction. Brown v. Coumanis, 135 F. 2d (1943). But in Carter, violations of the temporary restraining order were held punishable as criminal contempt. Pending a decision on a doubtful question of jurisdiction, the District Court was held to have power to maintain the status quo and punish violations as contempt. 1/

Likewise in the case before us, the district court had the power to preserve existing conditions while it was working out the limits of its own power to grant injunctive relief. The defendants, in making their private determination of the law, acted at their peril. Their disobedience is punishable as criminal contempt.

1/ "It cannot now be broadly asserted that a judgment is always a nullity if jurisdiction of some sort or other is wanting. It is now held that, except in case of plain usurpation, a court has jurisdiction to determine its own jurisdiction, and if it be contested and on due hearing it is upheld, the decision unreversed binds the parties as a thing adjudged. Treines v. Sunshine Mining Co., 308 U.S. 66, 60 S. Ct. 44, 84 L. Ed. 85; Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 403, 60 S. Ct. 907, 84 L. Ed. 1263; Stoll v. Gottlieb, 305 U.S. 165, 59 S. Ct. 134, 83 L. Ed. 104. So in the matter of federal jurisdiction, which is often a close question, the federal court may either have to determine the facts, as in contested citizenship, or the law, as whether the case alleged arises under a law of the United States. See Binderup v. Pathe Exchange, 263 U.S. 291, at page 305, 44 S. Ct. 96, 68 L. Ed. 308.(P. 861)." 135 F. 2d 848, 861-862. "It alone had authority in the first instance to decide whether or not the case arose under the Norris-LaGuardia Act, 29 U.S. C. A. §§ 101-115, a law of the United States. It could lawfully by a temporary injunction preserve the business which was the subject of the litigation until a hearing could be had. The order was not final. It deprived Carter of no right. It only required that he refrain from interfering with another man for a few days. Carter did not elect to move to dissolve the order, but to flout and disobey it. The order was, while it lasted, a lawful one, such as a district court of the United States in the exercise of its equity powers could make, pending a hearing of a doubtful question of jurisdiction. The question of jurisdiction was not frivolous. It had never before been decided. (p.862)." 135 F. 2d 848, 861-862.

Supreme Court of the United States.

Memorandum.

----------, 194

In answer to inquiries as to why the Court handed down an opinion on Thursday it might be well for the Clerk to advise our public relations man that printing requirements

Supreme Court of the United States.

Memorandum.

----------, 194

were a factor, as on
Mondays after Opinions
come down.

There were requests
for an unusual
number of the Opinions.

Fred,

Murphy's clerk came in to see me just before I came in here. I stated his understanding of Murphy's views. This was at variance with your statement here, as I understood you, that F.M. would "support" issuance of the mandate now. My understanding was that he "would not oppose" it. So I sent word to Gressman to find out whether I had misunderstood. Here is his response.

W.

Dear Mr. Justice,

A just talked with the Justice and read him your note. Apparently the Chief's statement was based upon the Justice's phone conversation with Kelley this morning, where he said he would not oppose shortening the time unless it appeared that some fundamental right of the union was at stake. But as A informed you, his position is more that of not opposing rather than affirmative support. And unless something significant comes up, it is O.K. with him to let an order be issued. He seems to have the same views as you do on the matter.

Gene

Justice Rutledge

Nos. 759, 760, 781, 782, and 811

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

THE UNITED STATES OF AMERICA, PETITIONER

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, RESPONDENTS

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONERS

v.

UNITED STATES OF AMERICA, RESPONDENT

MOTION BY THE UNITED STATES FOR IMMEDIATE ISSUANCE OF THE MANDATES

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

Nos. 759, 760, 781 and 782

THE UNITED STATES OF AMERICA, PETITIONER

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, RESPONDENTS

No. 811

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONERS

v.

UNITED STATES OF AMERICA, RESPONDENT

MOTION BY THE UNITED STATES FOR IMMEDIATE ISSUANCE OF THE MANDATES

The Attorney General respectfully moves this Court that mandates in the above entitled causes issue forthwith to the District Court of the United States for the District of Columbia.

This motion is based upon the public interest in these cases. Unless the defendants, United Mine Workers of America and John L. Lewis, as directed by this Court, unconditionally withdraw the notice of termination of the Krug-Lewis Agreement prior to March 31, 1947, there is danger, in consequence of

defendants' letter to the union membership dated December 7, 1946, of a further work stoppage in the bituminous coal mines on March 31, 1947.

TOM C. CLARK
Attorney General

To:

WELLY K. HOPKINS,
EDMUND BURKE,
T. C. TOWNSEND,
HARRISON COMBS,
M. E. BOIARSKY,
15th and I Streets, N. W.,
Washington 5, D. C.
Counsel for United Mine Workers
of America and John L. Lewis.

and

JOSEPH A. PADWAY,
HENRY KAISER,
JAMES A. GLENN,
736 Bowen Building,
Washington 5, D. C.
Of Counsel.

Notice is hereby given that this motion will be presented to the Supreme Court on Monday, March 10, 1947.

TOM C. CLARK
Attorney General

Nos. 759, 760, 781, 782, and 811

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

THE UNITED STATES OF AMERICA, PETITIONER

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, RESPONDENTS

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONERS

v.

UNITED STATES OF AMERICA, RESPONDENT

OPPOSITION TO MOTION BY THE UNITED STATES FOR THE IMMEDIATE ISSUANCE OF THE MANDATES

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

Nos. 759, 760, 781 and 782

THE UNITED STATES OF AMERICA, PETITIONER

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, RESPONDENTS

No. 811

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONERS

v.

UNITED STATES OF AMERICA, RESPONDENT

OPPOSITION TO MOTION BY THE UNITED STATES FOR THE IMMEDIATE ISSUANCE OF THE MANDATES.

The United Mine Workers of America and John L. Lewis, individually and as President of the United Mine Workers of America, by their Counsel, oppose the Motion by the United States for Immediate Issuance of the Mandates for these reasons:

1. The opinions in these causes, five in number covering 127 printed pages and composed of approximately 50,000 words, were, at an unusual time, rendered by this Court on the afternoon of March 6, 1947.

2. The said opinions presented many, diverse and intricate questions of law, and justice requires that a reasonable time be allowed for consideration and analysis of these decisions.

3. Rule 34 provides that normally a period of 25 days shall elapse before issuance of mandates.

4. Rule 33 normally allows a period of 25 days for the preparation and filing of petitions for rehearing.

5. The public interest will not in any manner be adversely affected by allowing the normal and reasonable time for the consideration and preparation of a petition for rehearing. On the other hand, a refusal to allow such reasonable time as provided in Rule 33 would be prejudicial to the rights of these defendants.

6. These defendants oppose the immediate issuance of said mandates, not for the purposes of delay, but that justice may be done.

Accordingly, we respectfully pray that the Motion by the United States for Immediate Issuance of the Mandate be denied.

_____
Welly K. Hopkins

_____
Edmund Burke

_____
T. C. Townsend

_____
Harrison Combs

_____
M. E. Boiarsky

_____
Joseph A. Padway

_____
Henry Kaiser

_____
James A. Glenn

To:

TOM C. CLARK,
ATTORNEY GENERAL
GEROGE T. WASHINGTON,
ACTING SOLICITOR GENERAL
JOHN F. SONNETT,
ASSISTANT ATTORNEY GENERAL
JOHN FORD BAECHER,
JOSEPH M. FRIEDMAN,
J. FRANCIS HAYDEN
SPECIAL ASSISTANTS TO THE ATTORNEY GENERAL.

Nos. 759, 760, 781, 782, and 811

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

THE UNITED STATES OF AMERICA, PETITIONER

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, RESPONDENTS

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONERS

v.

UNITED STATES OF AMERICA, RESPONDENT

REPLY TO DEFENDANTS' OPPOSITION TO MOTION BY THE UNITED STATES FOR IMMEDIATE ISSUANCE OF THE MANDATES

1. The immediate issuance of a mandate herein will not prevent any petition for rehearing which the defendants may desire to file in accordance with Rule 33 of the Rules of this Court. Rule 34 provides that mandates shall issue as of course after the expiration of twenty-five days after the judgment is entered irrespective of the filing of the petition for rehearing, unless the time is shortened or enlarged by order of the Court.

2. The mandate of this Court to be issued in accordance with the opinion of the Court will impose upon defendants a simple burden of compliance which can be fully and completely discharged within five days after issuance of the mandates. The opinion of this Court said in part:

> "The defendant union can effect full compliance only by withdrawing unconditionally the notice given by it, signed John L. Lewis, President, on November 15, 1946, to J. A. Krug, Secretary of the Interior, terminating the Krug-Lewis agreement as of twelve o'clock midnight, Wednesday, November 20, 1946, and by notifying, at the same time, its members of such withdrawal in substantially the same manner as the members of the defendant union were notified of the notice to the Secretary of the Interior above-mentioned; and by withdrawing and similarly instructing the members of the defendant union of the withdrawal of any other notice to the effect that the Krug-Lewis agreement is not in full force and effect until the final determination of the basic issues arising under the said agreement."

3. Annexed hereto is a copy of a letter which the defendants issued on December 7, 1946 and in which they directed the resumption of the production of coal until 12 o'clock midnight March 31, 1947. The approach of that date, fixed by the defendants, again presents a threat that production in the bituminous coal mines will cease. It is apparent, therefore, that the public interest

requires that the defendants comply with the mandate of this Court prior to March 31, 1947 and that non-compliance by the defendants may again seriously injure the public at large whereas compliance by the defendants will not seriously or substantially pejudice the interests of the defendants.

Respectfully submitted

TOM C. CLARK
Attorney General

By_____
JOHN F. SONNETT
Assistant Attorney General

To:

WELLY K. HOPKINS,
EDMOND BURKE,
T. C. TOWNSEND,
HARRISON COMBS,
M. E. BOIARSKY,
15th and I Streets, N. W.,
Washington 5, D. C.
Counsel for United Mine Workers
of America and John L. Lewis.

and

JOSEPH A. PADWAY,
HENRY KAISER,
JAMES A. GLENN,
736 Bowen Building
Washington 5, D. C.

Of Counsel.

To all members and all local unions in the bituminous districts of the United States, United Mine Workers of America:

Greetings:

The Administration "yellow-dog" injunction has reached the Supreme Court. The Supreme Court of the United States is a Constitutional Court. Its powers are derived from the Federal Constitution. The Supreme Court is, and we believe will ever be, the protector of American liberties and the rightful privileges of individual citizens. The issues before the Court are fateful for our Republic. It may be presumed that the verdict of the Court, when rendered, will affect the life of every citizen. These weighty considerations and the fitting respect due the dignity of this high tribunal imperatively require that, during its period of deliberation, the Court be free from public pressure superinduced by the hysteria and frenzy of an economic crisis. In addition, public necessity, requires the quantitative production of coal during such period.

Each member is therefore advised as follows:

All mines in all districts will resume production of coal immediately until 12:00 o'clock midnight, March 31, 1947. Each member is directed to return to work immediately to their usual employment, under the wages, working hours and conditions of employment in existence on and before November 20, 1946. Each mine committee, in cooperation with the officers of each bituminous district, will enforce these employment conditions at each mine. Further advice and instructions will be sent from time to time as authorized by the national policy committee or the responsible and authoritative officers of your organization.

During the working period thus defined, the negotiating committee of the United Mine Workers of America will be willing to negotiate a new wage agreement for the bituminous industry with such parties as may demonstrate their authority so to do, whether it be an alphabetical agency of the United States Government or the associated coal operators. If, as and when such negotiations ensue, your representatives will act in full protection of your interests, within the limitations of the findings of the Supreme Court of the United States.

Let there be no hesitation upon the part of any individual member with respect to the effectuation of the policy herein defined. Complete unity of action is our sole source of strength. We will, as always, act together and await the rendition of legal and economic justice.

I salute you, beside whom I have been privileged to fight.

Sincerely,

JOHN L. LEWIS

Washington, D.C.
December 7, 1946

FEB 13 1947

Memorandum to the Chief Justice:

This is just a further suggestion in answer to Justice Reed's point on postponing any question of civil contempt until the resolution of the basic controversy.

The US in bringing the suit was simply trying to establish that a strike would be a breach of contract. The right to an injunction, however, does not depend on how the contract is construed. Even if the contract ~~was~~ carries over Section 15, that simply means that there would be no breach of contract if the union struck, and does not give the union a contractual right to strike or make the seeking of an injunction a breach of contract on the part of the US. The right to an injunction can be placed on the equitable doctrine of protecting the public interest, as in Debs, or upon the Disputes Act, which makes it criminal to strike, and which provides that modifications of existing contracts must be taken up with the board.

Thus the right to the injunction, and so the right to civil contrmpt damages, does not depend on the resolution of the contract action, but upon ~~the~~ a final decision on the right to an injuction in any case. The DC was apparently prepared to entertain a motion for a permanent injunction at the conclusion of the trial, and we could say that for all ~~int~~ intents and purposes, the basic issue---the right to an ~~injunct~~ injunction---has been resolved in the Government's favor.

So civil contempt damages at this time would be quite proper.

Res'ly

BRW

the Chief Justice

Vacate both on ground of adventure 1 elements.

Set Lewis at $10 Jr Cr contempt violation Jrestraining order.

Put coercive penalty J $3.5 on Assn to be remitted in toto on compliance by cancellation Jnotice to Krug + simultaneous advice to Assn members in manner members were notified J letter to Krug

Vacate both on grounds of admiralty jurisdiction.

Set Lewis at #10 for cr circuit for violation of restraining order

Put coercive penalty of $3.5 on Assn to be remitted in toto on compliance by cancellation of notice to King & simultaneous notice to Assn members in manner members were notified of King notice

JR

Perhaps you meant only 2/20 memo

457 Adams v U.S. --

Per curiam - affirmed.

489 at

Zap v U.S.

Petition for Re-H

	G	D
Burton	/	
Rutledge	/	
Jackson		No Part -
Murphy	/	
Douglas	/	
Frankfurter	/	
Reed	/	
Black	/	
Vinson		No Part -

Rules N L & Gen'l
precludes Govt
Application from getting injunction here
of
N. L. H. G.

	Yes	No
Burton		1
Rutledge	1	
Jackson		1
Murphy	1	
Douglas		1
Frankfurter	1	
Reed		1
Black		1
Vinson		1

~~Have Dept in Contempt~~
~~of N.L.R.B. proceedings to~~
~~require Hudson to for Contempt~~

	Yes	No
Burton	1	
Rutledge		1 (2)
Jackson	1 (2)	
Murphy		1
Douglas	1	
Frankfurter	1	
Reed	1	
Black	1	
Vinson	1	

Should we reverse because
of the blending of Criminal
and Civil Contempt.

	Yes	No
Burton		/
Rutledge	/	
Jackson		/
Murphy	/	
Douglas	/	
Frankfurter		/
Reed		/
Black	/	
Vinson		/

~~Was Levine fine excessive~~
~~Excessive if Civil~~
~~Amount of fine~~
~~Yes for Levine~~

	Yes	No
Burton		/
Rutledge	-	
Jackson		/
Murphy	/	
Douglas	/	
Frankfurter		/
Reed	/	
Black	-	
Vinson		/

Worthy Mineworkers for Executive.

	Yes	No
Burton		/
Rutledge -		
Jackson		/
Murphy	/	
Hooper	/	
Frankfurter		/
Reed	/	
Black -	/	
Vinson		/

3/1/47

		Aff'm modified - $700,000	Concurring in part & dissenting in part	Reverse
Burton	V-	/		
Rutledge				/
Jackson		/		
Murphy				/
Douglas			/	
Frankfurter		/		
Reed		/		
Black			/	
Vinson		/		

work case

1st conference

For Respondents:

Welly K. Hopkins

Joseph A. Padway

Henry Kaiser

For Petitioner:

Hon. Tom C. Clark

John F. Sonnett

John Baecher

12-7-46

2nd conference

For respondents

Welly K Hopkins

Joseph A Padway

Henry Kaiser

Petitioner

Hon. Tom C. Clark

John F Sonnet

Mr. Hopkins:

"We join in the petition in conformity with the understanding had with the Attorney General this morning. This is the statement we desire to have presented to the Court."

Mr. Hopkins telephoned the Attorney General this statement and the Department, through Mr. Sonnett, has nothing to add beyond urging its former request for an early hearing of the case.

- Cropley.

Supreme Court of the United States.

Memorandum.

Chief ----------, 194

In your opinion there should be a short paragraph on history of jury trial for contempt.

My pages have a short summary, the contempt statute is changed from 1789-1911 or there

Supreme Court of the United States.

Memorandum.

----------, 194

Linco.

1 R.

If you cannot read please
turn over

[134 U.S. 1, 36
here with]

Justice Miller
Harlan J. the
great guardian
of the palladium of
our liberty - just!

Single Action

Criminal contempt + Civil Contempt
not properly charged

Jury issue re

1st Amendment

13th Amendment

Fantastic

Dehs Inquisitor

Wilkerson "

Michaelson —

LaGuardia —

Yarborough

Fask

In re + Agee

+ 2 more

} Frankfurter

more Samuels 124 U.S. —

Confirm + Depart —

Suits — face — 7th Jur —

Douglas

Govt — as sovereign

having that which no

private person could do —

Employees of Govt —

Murphy — reverse

Penalty — ~~5~~

Could use 45 or Stickbrake



Jackson

Seizure
constitution
War Powers
War Labor Disputes Act

Krug-Lewis Contract
Employees
To continue while Govt was in possession

Declaratory judgment sought.
Jurisdiction of subject matter
Jurisdiction of persons

Subject matter
contract + its interpretation.
Persons —

Court had jurisdiction
W. Italy - did not divest it of jurisdiction

W.L.D. act
W. Italy, a was.
Senate Statements —
House Statements —

36--14

Norris LaGuardia
O'Connor - Michigan, Schmitz Rule

That on the "crew
of economic conflict
in which it is addressed" Carter case - no cert.

But - if not by applic
status quo
Shipp - appellate
Hewatt -
Carter -

No employment by Govt -
no contract with employ - no work -
will work for Govt -
King Lewis agreement
pressure re wages
welfare funds &c
did work for Govt -

...wage-
...on opened
...ue for pay
...nt in pro-

... motions to
...r the statute
...he time in
...ught against
...ation's mini-
...ws.
...inst the tide,"
...of New York,
...ember of the
...mmittee, ac-
...the opposition
...Celler contend-
...late" the Fair
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...aunched one of
...provision which
...rs the right to
... as a defense
... and to cite cus-
...d administrative
...rt of their claim.

...a Glance

... Feb. 28 (AP).—
...ht selling de-
... Bonds dull;
...actionally. Cot-
...ofit taking and
...e selling.
... Wheat sharply
... market; March,
...rply higher; up
...cents, the limit.

(... Page 1-2.)

No Coal Pact Overtures, Lewis Tells Capehart

John L. Lewis, head of the United Mine Workers of America, declared today that neither the Government nor mine owners have made any overtures looking to a new wage agreement since the miners went on record December 7 as willing to negotiate a new agreement.

He made the statement in a letter to Senator Capehart, Republican, of Indiana, who had written both to Mr. Lewis and Interior Secretary Krug expressing the hope that another strike can be avoided when the present work agreement in the mines expires April 1.

Mr. Lewis told Senator Capehart the question of when talks looking to a new contract begin, "depends solely on the Government and the mine operators."

After discussing other questions put to him by the Senator, including the status of the miners' welfare fund, Mr. Lewis closed as follows:

"You will appreciate, I am sure, that the undersigned is obliged to talk with restraint on this subject. The decision of the Supreme Court is not yet forthcoming as affecting the yellow dog injunction issued by Judge Goldsborough."

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... tives" of the ...

Truman As... For Airway...

President T...
Congress for ...
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...Assigned No. 14 Post of 22 at Santa Anita

...n Sports Section.)
...ociated Press

...if., Feb. 28.—Headed ...Armed, weighted at ...nbreds were named ...l the $100,000 Santa ... tomorrow.

...l were:
... 108; El Lobo, 110; ...n, 110; Be Courage- ... Damion, 120; See- ...ric-a-Bac, 114; Pere ...ogue, 115; Hank H., ... Terry Bargello, 109; ...Vitch Sir, 114; Stitch ...haverry, 116; Mon- ...xas Sandman, 114; ... Menu, 108, and Ar-

...l were Galla Damion, ...as Sandman, Nanby Pass, Burning Dream, See-Tee-See, Bric-a-Brac, Pere Time, Adrogue, Hank H., Plover, Terry Gargello, Autocrat, Witch Sir, Stitch Again, Olhaverry, Monsoon, Triplicate, Menu, Artillery and Be Courageous.

Be Courageous and Nanby Pass are entered in another race tomorrow and were deemed doubtful starters in the big race.

Armed drew post position No. 14. Speedy Artillery drew the outside position, No. 22, while another fast breaker, El Lobo, got No. 2.

Post time was set for 5:03 p.m. (PST).

The weather looked good today, but there was still a threat of rain tomorrow.

The race, at a mile and one-

(See SANTA ANITA, Page A-5.)

Wheat Advan... On News of H...

By the Associa...

(Details on Ma...

CHICAGO, Feb. ... wheat, which advan... limit for one day's ... March contract, all ... sharply in heavy t... board of trade today.

A report by Herb... food relief requiren... many set off the ... rocket this morning.

Wheat reached $2... March, the highest ... future since 1920.

Corn was up about ... $1.52, and Oats, 2 cen... Grain experts were ... purchases of cereal... ican Government ... Germany.

THE UNITED MINE WORKERS - EXCLUSIVE - John L. Lewis has always worked on the theory: "Someone else's nerve is bound to break first. When I call a strike I always bet that I can outlast the other fellow." However, three inside factors caused John L. Lewis' nerve this time to crack first. One came on Friday, when Chief Justice Fred Vinson held a very significant conference with President Truman in which he expressed his private opinion that the Supreme Court would uphold the lower court injunction against the United Mine Workers. The Chief Justice, of course, was only speaking for himself, but his influence on the Court is important and afterward word of the Chief Justice's view was quietly transmitted to the United Mine Workers. (Dec. 8, 1946 broadcast)

First I want to correct an impression I may have conveyed last week that Chief Justice Vinson took any sides in the coal strike case or conferred with anyone in such a way as to indicate he might decide against the miners. The Chief Justice, for whom I have the highest regard, took absolutely no sides, except to express himself very forcefully that the Supreme Court owed it to the nation to try this injunction case in a hurry. That in itself probably had a lot to do with John L. Lewis's calling off the strike. For full details on this important incident, see the Washington Merry-Go-Round tomorrow. (Dec. 15 broadcast)

COPY

PORTLAND, OREGON JOURNAL
April 8, 1947

...

A.F.L. COUNSEL TURNS CRITICAL
GAZE ON COURT.

MILWAUKEE, April 8. (AP). Joseph Padway, general counsel of the American Federation of Labor, said last night that "political expediency was placed ahead of some principles of law" in the U.S. supreme court's decision upholding contempt fines against John L. Lewis and the United Mine Workers union.

Padway, one of the defense attorneys in the case, predicted in an address before the A.F. of L. Hotel and Restaurant Employees and Bartenders' convention, that the court would "some day have occasion to repudiate this decision."

It was Padway's first comment on the decision. He has been under treatment at a local hospital for a stomach ailment.

COPY

MILWAUKEE SENTINEL
Tuesday, April 8, 1947
Part 1, Page 3, Column 3.

GREEN ASSAILS 'WORK' ORDER

No government can compel a union member to work with a non-union employee, William Green, president of the American Federation of Labor, said here yesterday.

Green and Joseph Padway, General AFL attorney, came from Washington to speak at the convention of the AFL restaurant employees and bartenders union. Sessions are in the Futuristic ballroom, though headquarters are at the Schroeder Hotel.

Green denounced "enemies of labor" sponsoring legislation against the union shop on the ground that every worker has a right to work. He said: "This is misleading propaganda. The union shop does not deprive the worker of the right to work. It gives him the chance of working at a certain plant under union conditions or some place else."

Padway bitterly attacked the U.S. Supreme Court for its decision in the John Lewis contempt case. He asserted "some justices had sacrificed judicial principle to political expediency." Asked why he did not request a rehearing, Padway said "Sometimes you conclude: What's the use, when you get politics instead of law."

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
SUPREME COURT BUILDING
WASHINGTON 13, D. C.

HENRY P. CHANDLER
DIRECTOR

ELMORE WHITEHURST
ASSISTANT DIRECTOR

October 30, 1947.

NOV 3 1947

Dear Mr. Kelley:

District Judge Claude McColloch of the District of Oregon, with whom I have become very pleasantly acquainted in the course of our official relations, writes me occasionally a personal letter. One such came in September when I was absorbed in preparations for the meeting of the Judicial Conference of Senior Circuit Judges. Judge McColloch wrote that he was very much disturbed about sharp criticisms appearing in the April 1947 issue of the University of Chicago Law Review of the opinion of the Supreme Court in the Lewis case. He had been moved to write a letter to the editor of the Law Review criticising the nature of the comments on the decision as lacking in proper respect for the courts.

In his letter Judge McColloch wrote, "If you deem it proper, I would be glad if you would pass the enclosure on to your friend, Kelley, in the Chief Justice's office. I doubt if the Chief Justice, who I happen to think is a great man for the position and the times, knows of the unprofessional comment Padway has been making." Enclosed were a copy of the Judge's letter to the editor of the Law Review, also copies of newspaper reports of comments by the late Mr. Padway, Counsel for the American Federation of Labor, and Mr. Green, President of the Federation,

on the subject.

Mr. Padway has recently died, and I do not know whether you will wish to call the attention of the Chief Justice to Judge McColloch's letter. I give you the copy, however, so that you can use your judgment.

Judge McColloch in another statement which he sent me added to his praise of the Chief Justice, saying, in reference to the opinion of the latter in the Lewis case:

> "The opinion of the Chief Justice was strong -- like the country -- majestic, and, best of all, reassuring."

I put with this a copy of the April issue of the University of Chicago Law Review in which the articles upon the Lewis decision referred to by Judge McColloch appeared.

With kind regards, I am,

Sincerely yours,

Henry P. Chandler

Mr. Paul L. Kelley,
Administrative Assistant to the
Chief Justice,
Washington, D. C.

Incl.

August 28, 1947

To the Editor-in-Chief
The University of Chicago Law Review:

I attended the University of Chicago Law School and ask space to answer the intemperate attack on the Supreme Court in the April number of the Review. I refer to the articles by Assistant Professor Watt and Professor Gregory entitled "The Divine Right of Government by Judiciary" and "Government by Injunction Again." These articles dealt with the decision in the John L. Lewis case.

Professor Watt said "..... hysteria and political expediency triumphed." (p. 411.) "The words of Congress and the words of the Court itself were twisted and distorted to suit the needs of a conclusion." (p. 453.)

I consider this a charge of dishonesty. I see no difference between saying that a court yielded to influences outside the record and the law of the case, and saying that it was bought off by money.

Padway, one of the lawyers, made the same charge in an address. He said the Court "had put political expediency ahead of principles of law." Associated Press, April 8, 1947.

I realize that neither Professor Watt nor Lawyer Padway are in contempt, because the Court has stripped itself, by its decisions, of practically all contempt power. But both Professor Watt and Lawyer Padway have forgotten their duty as lawyers. That duty is "to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent

of the judicial office, but for the maintenance of its supreme importance." Canon 1 of Professional Ethics, American Bar Association.

Now, whether, in letting the bars down to the newspapers in contempt cases, the high court intended that the lawyers could enjoy the same license is not known. However, I will tell you what would happen in one district if a lawyer who had lost a case made the public statement that the case had been decided against him on political grounds: He would be put on trial by the Disciplinary Committee of the Bar at once. And I think that would happen in other districts.

As to Professor Watt, one does not have to look far to discover that the cause of his rage is not difference over legal principles: "At a time when Government enterprise and Government intervention in business and industry inevitably are bound to increase...." (p. 453.) "It is strange--no, frightening -- in an economy already beginning to stagger from uncontrolled prices and exorbitant profits, to see the Executive, the Congress, and the courts join together to shackle the economic strength of the millions, whose purchasing power alone can save the structure from a dizzy fall." (p.411.)

Someone else can give this the right name. I merely want to point out it is not law the Assistant Professor is talking about.

Clarence E. Wolfe

United Mine Workers of America

JOHN L. LEWIS
PRESIDENT

METROPOLITAN
0530

UNITED MINE WORKERS' BUILDING
Washington 5, D.C.

December 7, 1946

TO ALL MEMBERS AND ALL LOCAL UNIONS IN THE BITUMINOUS DISTRICTS OF THE UNITED STATES, UNITED MINE WORKERS OF AMERICA:

Greetings:

The Administration "yellow-dog" injunction has reached the Supreme Court. The Supreme Court of the United States is a Constitutional court. Its powers are derived from the Federal Constitution. The Supreme Court is, and we believe will ever be, the protector of American liberties and the rightful privileges of individual citizens. The issues before the Court are fateful for our republic. It may be presumed that the verdict of the Court, when rendered, will affect the life of every citizen. These weighty considerations and the fitting respect due the dignity of this high tribunal imperatively require that, during its period of deliberation, the Court be free from public pressure superinduced by the hysteria and frenzy of an economic crisis. In addition, public necessity requires the quantitative production of coal during such period.

Each member is therefore advised as follows:

All mines in all districts will resume production of coal immediately until 12:00 o'clock midnight, March 31, 1947. Each member is directed to return to work immediately to their usual employment, under the wages, working hours and conditions of employment in existence on and before November 20, 1946. Each

mine committee, in cooperation with the officers of each bituminous district, will enforce these employment conditions at each mine. Further advice and instructions will be sent from time to time as authorized by the National Policy Committee or the responsible and authoritative officers of your Organization.

During the working period thus defined, the negotiating committee of the United Mine Workers of America will be willing to negotiate a new wage agreement for the bituminous industry with such parties as may demonstrate their authority so to do, whether it be an alphabetical agency of the United States Government or the associated coal operators. If, as and when such negotiations ensue, your representatives will act in full protection of your interests, within the limitations of the findings of the Supreme Court of the United States.

Let there be no hesitation upon the part of any individual member with respect to the effectuation of the policy herein defined. Complete unity of action is our sole source of strength. We will, as always, act together and await the rendition of legal and economic justice.

I salute you, beside whom I have been privileged to fight.

Sincerely,

John L. Lewis.