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INDUSTRIAL COURTS: WITH SPECIAL REFERENCE  
TO THE KANSAS EXPERIMENT<sup>1</sup>

BY J. S. YOUNG\*

2. *Involuntary Servitude*.—Section 17 of the Kansas act creating a court of industrial relations for the settlement of disputes between employers and employees in the industries affected with public interest makes it unlawful for any employee or other person wilfully to strike or picket any of the specified industries, etc., for the purpose of hindering, delaying, interfering with or suspending their operation.

In the debate between Mr. Samuel Gompers, President of the American Federation of Labor, and Governor Henry J. Allen of Kansas at Carnegie Hall, May 28, 1920, the former contended that section 17 is an abridgment of a person's right to quit work and therefore constitutes involuntary servitude, which is prohibited by the thirteenth amendment; that the right to strike has been the chief weapon of labor unions in bettering the conditions of working men; that denying the use of this right compels workmen to labor against their will, which is involuntary servitude.<sup>2</sup> Governor Allen replying contended that the point involved is not the right of men to quit work, but the coercive power of unions to compel them to quit work against their own will. He said the object of the Kansas act is not to prohibit a single individual from quitting work, but to prevent a conspiracy to quit work for the purpose of injuring an industry whose continuous operation is imperative for furnishing the necessaries of

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<sup>1</sup> Continued from 5 MINNESOTA LAW REVIEW 185; also 4 MINNESOTA LAW REVIEW 483 and 5 MINNESOTA LAW REVIEW 39.

<sup>2</sup> Gompers-Allen Debate, p. 9 et seq.

For judicial definition and discussion of slavery and involuntary servitude see Civil Rights Cases, (1883) 109 U. S. 3, 27 L. Ed. 835; Slaughter House Cases, (1872) 16 Wall. (U.S.) 36; Plessy v. Ferguson, (1896) 163 U. S. 537, 16 S. C. R. 1138, 41 L. Ed. 256; Hodges v. United States, (1906) 203 U. S. 1, 27 S. C. R. 6, 51 L. Ed. 65; Robertson v. Baldwin, (1897) 165 U. S. 275, 17 S. C. R. 326, 41 L. Ed. 715; Patterson v. The Eudora, (1903) 190 U. S. 169, 23 S. C. R. 821, 47 L. Ed. 1002; In Re Dassler, (1886) 35 Kan. 678, 12 Pac. 130; Bailey v. Alabama, (1911) 219 U. S. 219, 315, 55 L. Ed. 191; Arthur v. Oakes, (1894) 63 Fed. 310, 25 L. R. A. 419; United States v. Sugar, (1917) 243 Fed. 423; Story v. Perkins, (1917) 243 Fed. 997; Arver v. United States, (1918) 245 U. S. 366, 62 L. Ed. 352, 38 S. C. 159.

life to the people of the state. He then put to Mr. Gompers the following question which brings into striking relief the public aspect of the whole matter:<sup>3</sup>

"When a dispute between capital and labor brings on a strike affecting the production or distribution of the necessities of life, thus threatening the public peace and impairing the public health, has the public any right in such a controversy, or is it a private war between capital and labor?"<sup>4</sup>

Mr. Gompers did not attempt an answer to this question at the time of the debate, saying he hoped to live long enough to answer it; but there was so much unfavorable newspaper comment concerning his attitude in the matter that he attempted an answer a few days later, maintaining that in case of an industrial dispute between capital and labor there is no disinterested public; that is, there are only two classes of persons, namely, capitalists and their sympathizers and workers and their sympathizers. Of course, everyone knows this is no answer. It is an evasion. It is common knowledge that in an industrial dispute which involves a lockout or strike there are three parties—the employers, the employees and the public.<sup>4</sup> The latter are not directly concerned in the controversy but suffer in at least two ways: (1) by inconvenience and deprivation while the contest lasts; (2) by being compelled later to pay the bill when the controversy is settled.

Section 17 safeguards the rights of the individual to quit work as follows:

"That nothing in this act shall be construed as restricting the right of an individual employee engaged in the operation of any such industry, [etc.] to quit his employment at any time."<sup>5</sup>

In the brief<sup>6</sup> of Mr. Redmond S. Brennan, counsel for Howat before the supreme court of Kansas, the contention is made that this provision protects the rights of the floating laborer, but overlooks the rights of a resident of the state who has family ties and interests which make him a part and parcel of the community; that the force of circumstances makes it impossible for the

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<sup>3</sup> Gompers-Allen Debate, p. 36 et seq.

<sup>4</sup> Professor Alvin Hansen, of the University of Minnesota, estimates the proportions as follows in 1910: Capital, 13.8 per cent; labor 38.2 per cent; public, 41.9 per cent; unclassified, 6 per cent. See *Quarterly Publications of American Statistical Society*, December, 1920. Governor Allen of Kansas estimates that in a particular controversy the proportions are, the public, 90 per cent; capital and labor combined, 10 per cent. *Saturday Evening Post*, March 1920, p. 6.

<sup>5</sup> *Laws of 1920*; Chap. 29, Sec. 9.

<sup>6</sup> See Brief of Redmond S. Brennan, p. 37.

latter to quit his work, finally, because there is a determinism in industry that binds the laborer as inexorably as the slave of old was bound to his oar in the galley; that the training and skill he has acquired relate him to one job and to one alone, not through choice but force of circumstances; that he cannot go outside his industry, but must continue in his present employment and accept such wages and working conditions as he may there obtain; that the only thing which differentiates him from the slave is his liberty of contract concerning wages, hours and working conditions; that the right to strike is a part of the liberty of contract and when this right is taken away the liberty of contract is destroyed and the laborer is reduced to involuntary servitude.

This is a gloomy medieval view to take in the midst of twentieth century opportunities in the United States. The statements made by Mr. Gompers and Mr. Brennan overlook the provision of the law which scrupulously safeguards the right of every person "to make his own choice of employment and to make and carry out fair, just and reasonable contracts and agreements" and the section set out above which expressly declares that nothing contained in it shall be construed as restricting the right of an individual employer engaged in the operation of any such industry to quit his employment at any time.

The proponents<sup>7</sup> of the Kansas act contend that section 17 enacts into law what courts of equity have been doing already by restraining conspiracies. It was held in the case of *Hitchman Coal and Coke Company v. Mitchell*,<sup>8</sup> by Justice Pitney, as follows:

"The right [to form unions and have third parties such as officers of labor unions] is not so absolute that it may be exercised under any circumstances; whereas in truth like other rights that exist in civilized society, it must always be exercised with reasonable regard for the conflicting rights of others."

In a note to *Beckman v. Marsters*,<sup>9</sup> by Justice Loring, the following is found:

"Injunction will also be granted to restrain the representative of a labor union from attempting to induce apprentices to violate

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<sup>7</sup> See brief of Messrs. R. J. Hopkins, A. B. Keller and F. S. Jackson, counsel for the state in the Howat case, p. 12.

<sup>8</sup> (1917) 245 U. S. 229, 62 L. Ed. 260.

<sup>9</sup> (1907) 11 L. R. A. (N.S.) 202. See *Flacus v. Smith*, (1901) 199 Penn. 128, 133, 54 L. R. A. 640, 85 A. S. R. 779, 48 Atl. 894. See *Enterprise Foundry Co. v. Iron Moulders' Union*, (1907) 149 Mich. 31, 112 N. W. 685.

the contract of apprenticeship [in which they agreed not to join labor unions] by joining his labor union."

Also,

"It has long been settled that interference with labor contracts by inducing laborers to break their contracts of employment would be restrained by injunction. In fact it was to protect such contracts as this that the aid of equity was first invoked."

Furthermore, conspiracies that have for their object the betterment of the conditions of the workmen may be restrained by injunctive process if the conspiracy would result in a breach of the law.<sup>10</sup> This same point was discussed in the case of *Toledo, etc., Co. v. Penn. Co.*,<sup>11</sup> by Judge Taft, in the following words:

"While an employee may bestow or withhold his labor as he will, if he uses the benefit which his labor is or will be to another by threatening to withhold or agreeing to bestow it, or by actually withholding it, or bestowing it for the purpose of enforcing, procuring or compelling that other to commit an unlawful act, such withholding or bestowing of labor is itself an unlawful and criminal act."

Justice Blatchford, speaking for the Supreme Court in the case of *Joy v. St. Louis*,<sup>12</sup> said:

"It is one of the most useful functions of the court of equity that its methods of procedure are capable of being made such as to accommodate themselves to the development of the interests of the public in the progress of trade and traffic by new methods of intercourse and transportation."

If a court of equity can restrain employees from violation and intimidation and from enforcing rules of labor unions which result in irremediable injuries to their employers and the public, does not the legislature likewise have the power to define and prescribe rules to protect the public in similar circumstances? The contention of the opponents of the Kansas act that section 17 re-establishes involuntary servitude is not sound because (1) there is no economic duress in our land of opportunity and mobility of labor; (2) the law carefully safeguards the right of the individual to make his own choice of labor and carry out fair, just and reasonable contracts and agreements of employment and to quit his employment at any time, provided he does not conspire with others for the purpose of hindering the operation of an essential industry. The law does not attempt to compel any

<sup>10</sup> See *In re Debs*, (1894) 158 U. S. 564, 39 L. Ed. 1092.

<sup>11</sup> (1893) 19 L. R. A. 387.

<sup>12</sup> (1890) 138 U. S. 1, 34 L. Ed. 843, 11 S. C. R. 243.

person to work against his will; therefore, there is no involuntary servitude.

3. *The "Closed Shop" and the Obligation of Contracts.*—Section 9 empowers the court of industrial relations to modify contracts of employment in the industries affected with a public interest so that they shall be and remain fair, just and reasonable, "if, during the continuance of any such employment the terms or conditions of any such contract or agreement, hereafter entered into, are by said court, in any action or proceeding properly before it under the provisions of this act found to be unfair, unjust and unreasonable."

The union labor officials claim that this section is a blow aimed at the "closed shop" because the court would be empowered to prevent, and in case of any dangerous controversies between employer and employee, could make it impossible for the unions to enforce a contract with their employers, requiring them to use union laborers only. In other words, their contention is that section 9 will make it impossible to maintain the "closed shop" in the state. No one denies that laborers may join and maintain labor unions for lawful purposes which include the right to bargain collectively; but the right to contract is not absolute either for individuals or labor unions. The Supreme Court in *Gompers v. Buck's Stove and Range Co.*,<sup>13</sup> by Justice Lamar, said:

"Society itself is an organization, and does not object to organizations for social, religious, business and all legal purposes. The law, therefore, recognizes the right of workmen to unite and to invite others to join their ranks, thereby making available the strength, influence and power that come from such association. By virtue of this right powerful labor unions have been organized.

"But the very fact that it is lawful to form these bodies with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the constitution; or by standing on such rights, and appealing to the preventive powers of a court of equity. When such appeal is made it is the duty of the government to protect one against the many as well as the many against the one."

The labor unions make much of the *Adair*<sup>14</sup> and *Coppage*<sup>15</sup> cases which emphasized the right of the employer to maintain

<sup>13</sup> (1910) 221 U. S. 439, 55 L. Ed. 805.

<sup>14</sup> *Adair v. United States*, (1908) 208 U. S. 161, 52 L. Ed. 436, 13 Ann. Cas. 764.

the "open shop." They maintain that the unions have the same right to insist on the "closed shop." In other words, they argue that the whole matter should be subject to contract between employer and employee and that section 9 limits this contractual right. This contention is tenable so far as the public interest is not involved. The decision in the *Coppage case* declared that the fourteenth amendment bars the states from striking down personal liberty or property rights, or materially restricting their normal exercise, "excepting so far as may be incidentally necessary for the accomplishment of some other or paramount object, and one that concerns the public welfare." Section 9 is grounded on this exception. The state of Kansas has declared by legislative act that contracts between employers and employees which hinder or prevent the operation of the industries, etc., affected with a public interest, are subversive of public right and may be modified by the court of industrial relations to make them conform to the public interest. The pronouncement of Chief Justice White in the case of *Wilson v. New*<sup>15</sup> is the latest word of the Supreme Court touching this point. The Chief Justice said:

"Here again it is obvious that what we have previously said is applicable and decisive, since whatever would be the right of an employee engaged in private business to demand such wages as he desires, to leave the employment if he does not get them, and by concert of action, to agree with others to leave upon the same condition, such rights are necessarily subject to limitation when employment is accepted in a business charged with a public interest and as to which the power to regulate commerce possessed by Congress applied, and the resulting right to fix, in case of disagreement and dispute, a standard of wages, as we have seen necessarily obtained. In other words, considering comprehensively the situation of the employer and the employee in the light of the obligations arising from the public interest and of the work in which they are engaged, and the degree of regulation which may be lawfully asserted by Congress as to that business, it must follow that the exercise of the lawful governmental right is controlling."

Justice McKenna in a concurring opinion said:

"When one enters into interstate commerce, one enters into a service in which the public has an interest, and subjects one's self to its behests. And this is no limitation of liberty; it is the consequence of liberty exercised, the obligation of his under-

<sup>15</sup> *Coppage v. Kansas*, (1914) 236 U. S. 1, 59 L. Ed. 441, 35 S. C. R. 240.

<sup>16</sup> (1917) 243 U. S. 332, 61 L. Ed. 755, 37 S. C. R. 298.

taking, and constrains no more than any contract constrains. The obligation of a contract is the law under which it is made, and submission to regulation is the condition which attaches to one who enters into or accepts employment in a business in which the public has an interest."

The employer may contract to maintain the "open shop" and the unions may contract to maintain the "closed shop" but the exception quoted from the *Coppage case* and whole tenor of the *Wilson v. New case* uphold the power of the legislature to modify both classes of contracts under the police power, in order to preserve peace, order and safety and promote the general welfare of the public.

Mr. Brennan's brief<sup>17</sup> contends that section 23 is unconstitutional because it impairs the obligation of the contract.<sup>18</sup> The section in question provides that the orders of the court of industrial relations as to minimum or standard of wages are to be deemed prima facie as reasonable and just and such minimum wage takes effect as of the time the investigation by the court began, not when the order is made, and either party to the controversy having a balance due on account of the minimum wage fixed may sue for it in any court of competent jurisdiction. The contention is that the retroaction from the date of the order to the beginning of the investigation works the impairment. The opinion of the writer is that this section is unwise, unworkable and should be repealed; but it does not impair the obligation of the contract. It would be an impairment if applied to a contract made before the law was passed. Section 9 specifically states that the law shall apply "to such contract or agreement hereafter entered into." It is a well known principle that all contracts made

<sup>17</sup> See Mr. Brennan's brief, p. 46.

<sup>18</sup> See 6 R. C. L. "Obligations of Contracts," secs. 314-15 and cases cited. For additional cases on impairment of obligation of contracts, see *New Orleans Water Works Co. v. Louisiana Sugar Refining Co.*, (1888) 125 U. S. 18, 8 S. C. R. 741, 31 L. Ed. 607; *Trustees of Dartmouth College v. Woodward*, (1819) 4 Wheat. (U.S.) 518, 4 L. Ed. 629; *Odgen v. Saunders*, (1827) 12 Wheat. (U.S.) 213, 6 L. Ed. 606; *Von Hoffman v. City of Quincy*, (1866) 4 Wall. (U.S.) 535, 18 L. Ed. 403; *Fletcher v. Peck*, (1810) 6 Cranch 87, 3 L. Ed. 162; *Charles River Bridge v. Warren Bridge*, (1837) 11 Pet. (U.S.) 420, 9 L. Ed. 733; *Rochester Ry. Co. v. Rochester*, (1907) 205 U. S. 236, 51 L. Ed. 784, 27 S. C. R. 469; *Covington v. Kentucky*, (1899) 173 U. S. 231, 43 L. Ed. 679, 19 S. C. R. 383; *Greenwood v. Freight Co.*, (1881) 105 U. S. 13, 26 L. Ed. 961; *Beer Co. v. Massachusetts*, (1877) 97 U. S. 25, 24 L. Ed. 989; *Fertilizing Co. v. Hyde Park*, (1878) 97 U. S. 659, 24 L. Ed. 1036; *Stone v. Mississippi*, (1879) 101 U. S. 814, 25 L. Ed. 1079; *New Orleans Gas. Co. v. Louisiana Light Co.*, (1885) 115 U. S. 650, 29 L. Ed. 516; *Illinois Central R. Co. v. Illinois*, (1892) 146 U. S. 387, 36 L. Ed. 1018, 13 S. C. R. 110.

after the passage of a law are made in view of and are subject to the existing law; therefore, section 9 does not impair the obligation of the contract.

4. *Relation of the Act to Interstate Commerce.*—The constitutionality of the Kansas act has been denied because it places an unnecessary burden on interstate commerce and conflicts with federal legislation passed in conformity with the interstate commerce clause of the constitution. This objection was raised before the court of industrial relations in the case of *Wendele v. Union Pacific R. Co.*<sup>19</sup> Wendele, as vice-president of the International Brotherhood of Stationary Firemen and Oilers, filed a complaint touching the wage situation and asked the court to take jurisdiction, fix a minimum wage, and prescribe reasonable rules and regulations in the premises. Counsel for the railroads denied the jurisdiction of the court on the ground that the railroads were engaged in interstate commerce and, therefore, come under the act of Congress, approved February 28, 1920, known as "The transportation act of 1920" which provides means for the settlement of such disputes as were involved in the case. Judge Huggins delivered the opinion of the court and on taking jurisdiction of the case said the evidence showed that while the members of the local unions are not "road men" and have nothing to do directly with the operation of trains, they are engaged in work which directly affects the operation of trains in both intra-state and interstate commerce; that the work of the unions is all done within the state of Kansas and by residents of the state; that the wage of the workers is unreasonably low especially for men with families to support. Touching the legal objections raised by counsel for the railroads, the court said: The tenth amendment reserves the "police powers" to the state and upon this reserve power the Kansas act was passed to protect and defend the comfort, well-being, property, health, morals and safety of the people of the state of Kansas. The court pointed out that section 6 declares that certain industries including railroads must be operated with reasonable continuity to the end that the people may be supplied with the necessaries of life; also, that section 9 declares that workers engaged in certain industries including railroads must be paid a fair wage and have healthful and moral surroundings while engaged in such labor; the court then quoted

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<sup>19</sup> (1920) Kansas industrial court, Docket No. 3293. Printed transcript.

with approval the words used by Justice Hughes in the case of *Simpson v. Shepard*<sup>20</sup> as follows:

"It is competent for a state to govern its internal commerce, to provide legal means to create and regulate local facilities, to adopt protective measures of a reasonable character in the interest of the health, safety, morals and welfare of its people, although interstate commerce may incidentally or indirectly be involved."

The court then added:

"Of course in matters requiring uniform national regulations, when Congress acts, the states would be prevented from enacting legislation which might in any way disturb the national regulations. The national government is paramount but in the absence of federal legislation prohibiting the same, there may be a great variety of state regulations indirectly affecting interstate commerce."

The same point of view is upheld by the Supreme Court in the case of *Hennington v. Georgia*,<sup>21</sup> by Justice Harlan, as follows:

"The legislative enactment of the states passed under the admitted police powers and having a real relation to the domestic peace, order, health and safety of the people, but which, by their necessary operation, affect to some extent, or for a limited time, the conduct of commerce among the states, are yet not invalid by force alone of the grant of power to regulate such commerce; and if not obnoxious to some other constitutional provision or destruction of some right secured by the fundamental law, are to be respected in the courts of the union until they are superseded and displaced by some act of Congress passed in execution of powers granted to it by the constitution."

The following local police power measures have been upheld although they affected interstate commerce: an ordinance of the city of Chicago requiring bridges over the navigable Chicago River to be kept closed during the rush hours of the day except for ten minute intervals;<sup>22</sup> requiring locomotive engineers to be examined and licensed by state authorities<sup>23</sup> and take tests from time to time with respect to their ability to distinguish colors;<sup>24</sup> preventing the running of freight trains on Sunday;<sup>25</sup> forbidding

<sup>20</sup> (1912) 230 U. S. 352, 57 L. Ed. 1511, 33 S. C. R. 729.

<sup>21</sup> (1896) 163 U. S. 299, 41 L. Ed. 166, 16 S. C. R. 1086.

<sup>22</sup> (1882) *Escanaba, etc., Co. v. Chicago*, (1882) 107 U. S. 678, 27 L. Ed. 442, 2 S. C. R. 185.

<sup>23</sup> *Smith v. Alabama*, (1888) 124 U. S. 465, 31 L. Ed. 508, 8 S. C. R. 564.

<sup>24</sup> *Nashville, etc. R. Co. v. Alabama*, (1888) 128 U. S. 96, 32 L. Ed. 352, 9 S. C. R. 28.

<sup>25</sup> *Hennington v. Georgia*, (1896) 163 U. S. 299, 41 L. Ed. 166, 16 S. C. 1086.

the consolidation of parallel or competing railway lines;<sup>26</sup> requiring railroad companies to fix rates annually and post them in printed form at their railway stations;<sup>27</sup> compelling a special system of heating cars;<sup>28</sup> making void an agreement by which a common carrier seeks to relieve himself of common law liability for accidents happening within the state, although the transportation is interstate;<sup>29</sup> specifying a special form of contract to exempt the carrier from liability for shipments beyond the line of the carrier receiving the consignment;<sup>30</sup> requiring telegraph companies to receive dispatches and to transmit and deliver them with due diligence as applied to messages from outside the state.<sup>31</sup> All these regulations affected interstate commerce, but in the opinion of the Supreme Court they did not unreasonably burden interstate commerce. These state regulations may be superseded at any time Congress sees fit to occupy the field with legislation.

The court of industrial relations denied that granting the relief sought by Wendele and the local unions represented by him would directly burden interstate commerce and said:

"If the wages fixed by this court should be unreasonably high the payment of such wages by the respondents might place an unjust burden upon interstate commerce; but if the wages fixed by this court be reasonable, and if the rules and regulations prescribed be fair, then no injury could come to, and no unnecessary burden could be imposed upon interstate commerce, but on the contrary interstate commerce would be benefited by the action of this court in the premises. There is no presumption that this court will fix a wage or establish rules and regulations so unfair as to place an unjust burden upon interstate commerce. The presumption is to the contrary."

The court then pointed out that the transportation act of 1920 gives the federal labor board power and authority to investigate, determine and make findings of fact touching disputes and publish the same, but the board has no authority to enforce any findings of the adjustment boards; therefore, there is no conflict

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<sup>26</sup> *Louisiana & Nashville R. Co. v. Kentucky*, (1896) 161 U. S. 677, 40 L. Ed. 849, 16 S. C. R. 714.

<sup>27</sup> *Railroad Co. v. Fuller*, (1873) 17 Wall. 560, 21 L. Ed. 710, 154 U. S. 595.

<sup>28</sup> *New York Central R. Co. v. New York*, (1897) 165 U. S. 628, 41 L. Ed. 853, 17 S. C. R. 418.

<sup>29</sup> *Chicago, Milwaukee & St. Paul R. Co. v. Solan*, (1898) 169 U. S. 133, 42 L. Ed. 688, 18 S. C. R. 289.

<sup>30</sup> *Richmond & Alleghany R. Co. v. Patterson Tobacco Co.*, (1898) 169 U. S. 311, 42 L. Ed. 759, 18 S. C. R. 335.

<sup>31</sup> *Western Union Telegraph Co. v. James*, (1896) 162 U. S. 650, 40 L. Ed. 1105, 16 S. C. R. 934.

between the federal law and the Kansas law. But, continued the court:

"Let us assume that in this action the court of industrial relations should make findings of fact and issue an order establishing a minimum wage for the complainants in advance of the wage now paid. Now, let us assume that, as contended by the respondents, the matter is already before the federal labor board, and suppose thirty or sixty days after the issuance of an order by the court of industrial relations the federal labor board should hand down an arbitration award fixing a minimum wage either higher or lower than that fixed by the court of industrial relations. The award would be a nullity unless accepted by both parties. There is nothing in the Kansas law to prevent the parties from agreeing to accept the federal labor board's award and coming into this court and asking this court to approve the same."

The court then quoted section 8 of the Kansas law which reads as follows:

"Such terms, conditions, rules, practices, wages or standard of wages so fixed and determined by said court and stated in said orders shall continue for such reasonable time as may be fixed by said court, or until changed by agreement of the parties with the approval of the court."

The court then continued:

"It will be seen, therefore, that no matter by what means or in what way the complainants and respondents agree, whether by the aid of the federal labor board or by private negotiations, whenever they agree, if the agreement provides a wage that is fair to the general public and approved by this court, the order of this court is automatically suspended and set aside and the agreement becomes effective. It will, therefore, be seen that the Kansas law cannot in any way conflict with the federal law, but may be supplementary to it. There can be no conflict, because the order made by the court of industrial relations is temporary in its nature, is intended only to be enforceable until the parties may agree, and is provided for the protection of the general public against the inconvenience, hardships and suffering which so often follow in the wake of industrial warfare. It cannot be presumed in advance that the federal labor board will render an award which will be unfair to the public. It cannot be presumed at this time that there ever will be any conflict between the Kansas law and the federal law."

In reply to the contention that Congress has acted on the matter by creating the interstate commerce commission and that this prohibits state action which even indirectly affects interstate commerce, the court quoted from the Supreme Court in the case of *Mo. Pacific R. Co. v. Larrabee Mills*<sup>32</sup> by Justice Brewer who said:

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<sup>32</sup> (1908) 211 U. S. 612, 53 L. Ed. 352, 29 S. C. R. 214.

"The mere grant by Congress to the commission of certain national powers in respect to interstate commerce does not of itself and in the absence of action by the commission interfere with the authority of the state to make those regulations conducive to the welfare and convenience of its citizens."

It is, therefore, clear that the Kansas act does not directly or unnecessarily burden interstate commerce.

#### VIII. SUMMARY AND CONCLUSION.

The first article of this series<sup>33</sup> gave the steps leading to the passage of the Kansas act for the settlement of industrial disputes; set forth the leading provisions of the law; stated the arguments for and against the bill as it was discussed at the special session of the Kansas legislature; and detailed some of the early activities of the new Kansas court of industrial relations. The second article<sup>34</sup> treated the act in relation to the Kansas constitution, examining the power of the governor to call a special session of the legislature, the sufficiency of the title of the act and the revival of a law by amendment, and commingling the functions of the three great departments of the government. The third article<sup>35</sup> examined the Kansas act as a police power measure and the federal constitutional limitations by which its validity must be tested.

The writer has attempted to discuss the act not from the social or the economic point of view except incidentally, but from the constitutional, applying adjudicated cases to the controverted phases of the law. From the standpoint of expressing the apparent object of the legislature, the law is exceedingly well drawn. For the most part the content is clear and unmistakable; the act is undoubtedly patterned after the Adamson Railroad law of 1916. In the opinion of the writer section 23 is unwise, unworkable and should be repealed or amended; section 12 is capable of at least three different constructions and should be simplified; section 9 seems to fall under the condemnation of the doctrine announced by the Supreme Court in the *Adair* and *Coppage* cases; section 20 authorizes state socialism in certain circumstances and may infringe the fourteenth amendment by taking property without due process of law; but the act is so well drawn as to be reasonably sure of being held constitutional by the Supreme Court of the United States. Part of the act may be

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<sup>33</sup> June, 1920, 4 MINNESOTA LAW REVIEW 493.

<sup>34</sup> December, 1920, 5 MINNESOTA LAW REVIEW 39.

<sup>35</sup> February, 1921, 5 MINNESOTA LAW REVIEW 185.

declared unconstitutional and the other parts remain intact. Section 28 provides:

“If any section or provision of this act shall be found invalid by any court, it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section or provision, and the act as a whole shall not be declared invalid by reason of the fact that one or more sections or provisions may be found to be invalid by any court.”

Kansas has played the role of path-finder in the past. Her prohibition amendment furnished a model for other states and finally for the national eighteenth amendment. Her “blue-sky” law is rapidly spreading to other states. Her latest law for the settlement of industrial disputes may place this state in the lead again by furnishing a method for determining industrial justice and thereby accomplishing a large measure of social justice. The act is predicated on the theory that no group in a strategic economic position shall be allowed to oppress society; that neither organized employers nor organized laborers shall dominate organized society; that neither employers’ lockouts nor laborers’ strikes shall take the place of well-ordered government by the ballot; that adjudication by a permanent impartial court is superior to arbitration by a temporary bi-partisan committee with the addition of a supposedly impartial umpire; that economic waste shall be reduced to the minimum; that the people of the state shall have a steady supply of the necessaries of life.

The act affects with a public interest the operation of three new industries, namely, the manufacture of food, clothing and the mining or production of fuel, together with the transportation of these three, and provides that controversies between employers and employees in these industries which threaten public rights come under the control of the court of industrial relations; legalizes collective bargaining; regulates the lessening or cessation of production in the essential industries; prohibits strikes; provides for the establishment of a minimum wage and good working conditions for all workers; makes unlawful certain activities that interfere with the operation of the essential industries; and finally, provides adequate penalties for the enforcement of the law.

The Kansas court of industrial relations has been in operation one year. In addition to numerous small and two general investigations, the court has heard and rendered decisions in twenty-five cases filed by labor and one filed by capital. In all

these cases except one there was neither law nor precedent to guide the court. The new questions presented had to be reasoned out along untried and original lines. Perhaps this new court of industrial relations with red-tape cut and slow, cumbrous procedure eliminated is formulating in a quiet and unostentatious manner a new phase of industrial common law which later will find enactment in a much-needed industrial code which will make a large contribution to the establishment of industrial peace.