Injunctions—A Way Out

By Edward Berman, Ph.D., University of Illinois.

I.
When Congress, in 1914, passed the Clayton Act, Samuel Gompers was apparently so enthusiastic about the measure that he called it labor's "Magna Charta." At last, he said, labor was to be relieved of the burden of injunctions issued by the Federal Courts. When, however, the Supreme Court, in 1921, rendered its famous decision in the case of Duplex v. Deering, and asserted that the Clayton Act had not legalized any labor activities that had been illegal before its passage, the hopes which labor had built on the act vanished overnight.

Indeed, not only did the Clayton Act fail to improve labor's status before the law, but up to now it has greatly increased the burden which the courts have imposed on labor unions. The Sherman Anti-trust Act of 1890, as well known, has been frequently invoked against organized labor. Prior to 1914 only government attorneys could sue for an injunction under that law. The notorious injunction against Gene Debs and the American Railway Union during the Pullman strike of 1894 was issued at the request of government attorneys on the ground that the strike violated the Sherman Act. When the Clayton Act, the so-called "Magna Charta" of labor, was passed, this situation was changed. Section 16 of the act permitted private parties to sue for injunctions under the anti-trust laws. That one unobtrusive section made it possible for employers to secure injunctions against labor on the charge that there existed a conspiracy in restraint of interstate commerce. As a result, since 1914, more than half of all the cases against labor under the Sherman Act have been private injunction suits, made possible by the Clayton Act itself.

II.
In 1908 the Supreme Court decided the Danbury Hatters' case. It upheld a suit for damages against the hatmakers on the ground that their boycott had violated the Anti-trust Act. As a consequence of this decision the unionists had to pay the hat company over $250,000. In 1922 the situation appeared still more serious, for in that year the Supreme Court rendered

*This article is an extract from Prof. Berman's book, "Labor and The Sherman Act," which is to be issued by Harper's in September.

ed the famous Coronado decision, which declared that a labor union might sue or be sued for damages as though it were a business corporation.

Harmful as the Clayton Act and the Coronado decision appear to be, it is possible that they may in the end be of great value to the cause of organized labor. For Section 20 of the Clayton Act provides that no injunction shall be issued in a labor dispute unless necessary to prevent an injury to property "for which injury there is no adequate remedy at law." When the Supreme Court, in 1922, decided that a union might be sued for damages, did it not thereby provide employers with "an adequate remedy at law" in labor disputes? If a damage suit is an "adequate remedy at law," does not Section 20 of the Clayton Act provide the issuance of an injunctive order in labor disputes? In other words, have not the Clayton Act and the Coronado decision, considered together, opened a way which, if followed, will relieve labor of the injunction evil?

III.
In the past courts have frequently refused to issue an injunction in non-labor cases if they thought it possible for the complainants to bring a suit for damages. Such a suit they considered a remedy at law adequate to repair whatever injury might be done to the property rights of the plaintiff. In labor cases, however, the courts argued that the workers were without money, or that it would be necessary to bring many costly suits against them. They therefore concluded that there was "no adequate remedy at law," and granted injunctions to prevent "irreparable injury" to the employers' property rights. The ordinary union has funds, however, and a suit against it would, if successful, result in the receipt of money by the employer. There would be no need to bring a multiplicity of small suits, since a single suit against a union would be enough. Such a suit, therefore, appears to be "an adequate remedy at law." Should not labor's attorneys, in their fight against injunctions, make use of this argument?

The first objection which is likely to be made to this procedure is that it implies the exchange of one evil, the issuance of an injunction, for another, the payment of damages to [Continued on Page Three]
INJUNCTIONS

Employers. At first glance the cure seems at least as undesirable as the disease itself. Labor leaders, however, have only to compare injunctions with damage suits to come to a conclusion in favor of the latter.

IV.

Injunctions are issued quickly. They may result and have resulted in killing a strike as soon as it starts. A suit for damages, however, involves many delays and is very unlikely to be settled while the strike is in progress. An injunction is issued by a single judge, easily influenced by an employer, but an award for damages must be granted by a jury. A preliminary injunction, perhaps fatal to a strike, may be issued without the hearing of testimony from labor witnesses, while a jury trial for damages gives ample opportunity for labor to be heard. If the lower court has erred in making the terms of an injunction too extensive or too narrow the directions of the higher court are easily and quickly put into effect and the injunction continues to do its work. On the other hand, an error in a verdict of damages involves a costly and long delayed retrial during which the defendants are free to act. In short, labor injunctions are deadly to labor, quick, effective, cheap for employers, and easy to get. Damage suits do not stop labor activities, they often stay in the courts for years before being settled, and they are costly to employers.

V.

It may be urged that if labor argued that a damage suit were "an adequate remedy at law" and the courts were to sustain the point, employers would sue for damages more frequently. They probably would. They are fairly certain to find, however, that such suits are weak weapons against unions compared to injunctions. Labor's experience with the Sherman Act is significant in this connection. Between 1890 and 1928 there were five damage suits against it under the act, only one of which was successful. On the other hand there were 49 suits for injunctions (according to the available records), in 40 of which decrees were issued. In the case of the one successful damage suit, that against the hatters, fourteen years elapsed between the time the suit was brought and damages were paid. In the Corcoran case the miners' union, which would have had to pay more than half a million dollars if the suit had been successful, settled with the operators for $27,500 thirteen years after the suit first entered the courts. In the three other suits the complainers did not obtain damages.

VI.

Let any labor leader compare this record with what he knows about the use of injunctions, and he is not likely to object to exchanging the latter for damage suits. Labor should continue its attempts to secure effective relief from the injunction evil by legislation. Until it is successful, however, it may gain much by insisting that since employers can bring damage suits, injunctions should not be issued to them. The courts may be slow to accept the logic of the argument. They may, in fact, ignore it completely. Labor will lose nothing by pressing it however, and it may gain the long-sought-for relief from the injunction evil.

SOCIETY NOTES

Adaptability. Harold Sobel, visiting Wisconsinite, had never come even near a mortar trough before he arrived here. Freda, (Mrs. Sobel) hadn't cooked for large groups before. Harry I. Cohen, student, had never handled a plow, but all have done the new, and other tasks as well as part of the daily routine, with an occasional opportunity at washing dishes to vary the procedure.

Degree for Commoner. Richard Bosch, first Commoner to enroll in the Graduate School at the University of Wisconsin, is to receive his M. A. degree this month. Richard went to Wisconsin after consistently good work here and has made a brilliant record as a graduate student in the school for the past five years. He and Mrs. Bosch and Evan, we hope, as well as the newest youngest, may return to Commonwealth in the fall.

First Effort. "The Hobo's Hornbook," first book of George Milburn, Commoner of 1927, has made its debut and has been quite favorably received by several reviewers. Milburn, at present completing his course at the University of Oklahoma, spent several months here during 1927. A number of his sketches have appeared in the American Mercury. Several of the poems in the Hornbook, which is an anthology of "hobo poetry and ballads," were contributed by David Kaplan, Commoner.

LACK COURSES

[Continued from Page One]

Sociology. Social Origins; Races and Population; Mann's Search for Orientation.

Law. Real and Personal Property; Corporation Law; Labor Law.

Mathematics. Unified Mathematics; Geometry.

Spring Quarter.

March 23 to June 13.

English and Literature. Feature Writing; The Labor Press; Modern Essays; Modern Classics; Modern Poetry; Brief Writing; Public Speaking.

Economics and Labor. Economic History of the United States; Imperialism; Public Finance; Power Economics; Seminar in Contemporary Labor; The Cooperative Movement.

History. Europe Since the Industrial Revolution; International Relations; History and Theory of Governments.

Psychology. Ethical and Philosophical Foundations of Labor Ideologies.

Sociology. Principles of Sociology; Mann's Search for Orientation.

Law. The Law and Labor; Constitutional Law.

Mathematics. Geometry; Statistics.

Classes will be held six forenoons a week. Introductory courses will usually come six periods a week while the advanced courses in most instances will be three-hour courses. Fifteen hours a week will be considered a maximum amount of academic work.

The Sex Upheld. "Feminism and Labor" was the subject of the last talk of the "Isms" seminar, with Rose L. Cohen presenting a review of the contributions of women, from ancient times to the present, when they are actively at work in all progressive movements. The discussion proved to be one of the most interesting of the year.

"Beware, Bachelors!" Commonwealth is still young and its total number of students for the past five years is about 200. Somehow, whether because of the communal living, the superior attractiveness of individuals, or a community of interest, there have been twelve marriages between Commonwealth.

[Continued on Page Four]

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Name

Address

City State

Date
BOOK REVIEW

HOW DARE YOU!

Mountain City, by Upton Sinclair.
Published by the Author, Pasadena, Calif.

Jed Rusher started humbly enough, watched the wonderful folks who stepped from the train when it stopped at the flag station near his home, slaved to help support the family, and always planned to become one of those mighty ones. It became an obsession with him.

Opportunity knocked and the family moved to a beet farm, toiling to build up the new industry—for the benefit of others. Spurred on by Liza, his ambitious sister, and needing no encouragement to learn, he worked hard and earned a scholarship to Mountain City University.

He continued to dream of climbing the heights, always schemed and studied the problem. Liza helped to the best of her ability, with advice most of the time and with cash when she had it.

Then came the first "break." The college needed money and Jed got the bright idea of going out on a personal endorsement drive for the college. But it isn't fair to tell the story; Sinclair has done it well. For one who has spent several years in Mountain City and has observed the workings of the "Mountain City Mail," "Goodson and Gammon," as well as many of the other characters, the picture painted is real, vital and true.

There is no question about the authenticity of most of the individuals who are presented and a visit to Mountain City can bear this out. Jed, I believe, is quite alive today and building an even greater fortune, though now in another city. As a study of "big business" methods from the inside, the book is exceptional.

It is some years since Upton Sinclair entered the arena to fight for the workers. His earlier works certainly did much good. However, I cannot help but feel that what he is doing now, using the same materials as before but presenting them as novels, is by far the most effective method he has used. The perfect simplicity of his style recommends him to the masses and his wealth of information makes the books a treasure trove of labor data. Oil was good, Boston also, and Mountain City seemed to show an improvement over both. I look forward with interest to the next work from the pen of Upton Sinclair.—Harry I. Cohen.

CAMPAIGN RESULTS

PLEDGES TO DATE

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SOCIETY NOTES

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"Bring That Possum." A shipment of 5,000 sweet potato sets "arrove" in the mail. Volunteers were called for and the tubers were set out later in the evening. In describing the trip he said, "Well, I started out at eight o'clock in the morning and got here at six in the evening," thereby covering all essential details.

From Commonwealth Lucien entered the Economics Department of the Graduate School of the University of Wisconsin, where he is now preparing himself to teach economics and labor in the field of workers' education. Lucien, who is twenty-three years old, has the confidence of all Commoners. His present home is in Cincinnati.
ALL IS IN SHAPE
FOR FALL QUARTER

Teachers Selected and Courses Outlined for School Year.

“We never have had such a competent corps of teachers or such an excellent offering of courses in the whole history of Commonwealth as we have for the coming year,” says Dr. Zeuch, our director.

“Richard Bosch,” he continued, “one of our own who has just taken his M. A. at Wisconsin under Commons will return to teach the introductory courses in economics, while David Englestein, also one of our own, who, among other things, has been teaching world history in a workers’ college at Montreal will come back to offer courses in history. Robert Whitcomb, an experienced newspaper man, is on his way from Los Angeles to take over the work in Journalism. These with those already on our staff will make up a strong teaching corps.”

The faculty for the year will consist of the following:

Economics: Richard Bosch
History: David Englestein
Law: Clay Fulks
Mathematics: F. M. Goohue
English: E. C. Hamilton
Literature: David Kaplan
Economic Resources: Josef Rudolf
Psychology: G. Y. Rusk
Journalism: Robert Whitcomb
Labor & Sociology: W. E. Zeuch

The offering of courses for the fall quarter include: Effective Writing; Labor Journalism; The Literature of Revolt; A c e n t 1 Classes; Public Speaking; Labor History; Economic Resources; Economic Principles; Seminar in Contemporary Labor; United States History; The Ancient World; Latin America; Personality and Management; Social Psychology; Introduction to a Study of Society; Man’s Search for Orientation; History and Social Setting of the Law; Contracts; and Unified Mathematics.

(Continued on Page Three)

SUMMER SESSION
IS PAST HISTORY

Summer Tutorial Group Complete Courses on August 8th

Amarintha’s teeth no longer chatter to “The Storming of Mission Ridge,” her pale cheeks no longer flush at the frank discussions in Psychology, nor do her vacant eyes take on a vago look as Dr. Zeuch expounds doctrines of wages, interest, and rent, or develops his power approach to economic theory; folded in her white robe her old bones are now hanging in peace in the corner of the class room.

Emily Brown, however, last heard from was at Grand Canyon on a circuitous route back to her graduate work at Smith College; Lucille Burkhardt is at home with the Columbia Conserve Company, which sent her down for the summer session; Harry Cohen is hitch-hiking somewhere in Colorado; Dorothy Mayer is back in Bloomington, Illinois, seeing coal, (Dorothy with Nell Toble, hitch-hiked home in two days. “I got home on $1.02. Imagine my even considering spending $25,” she writes); Ross Brown, Hugo Fischer, and Bonny Thornburg are stopping over waiting for the fall term. So has the group scattered.

The summer tutorial group was a tryout of the idea of summer sessions at Commonwealth. In spite of the abnormal heat and the drought much work was accomplished. The big swimming pool in Mill creek and the over cool nights mitigated greatly the unusual weather conditions. The experience has made it certain that the Commonwealth academic plant will no longer remain largely unused during the summer months.

Since the last issue of the Fortnightly we have added several hundreds of dollars to our annual pledges for the next three years. We still have only about half the amount

(Continued on Page Four)