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

[March 6, 1947.]

MR. CHIEF JUSTICE VINSON delivered the opinion of the Court.

In October, 1946, the United States was in possession of, and operating, 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

[1] The United States had taken possession of the mines pursuant to Executive Order 9728 of May 21, 1946, 11 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 during the transition from war to peace, 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. §§ 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:

"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.

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, the defendant Lewis directed a letter to Secretary Krug and presented issues which led directly to the present controversy. According to the defendant 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, the defendant 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. 25.

[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 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 the defendant 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 on the part of the Government.

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

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

tion.[10] The President of the United States announced his strong support of the Government's position and requested reconsideration by the union in order to avoid a national crisis. However, the defendant 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 a complaint 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 suit was brought under the Declaratory Judgment Act[11] and sought 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.

[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. Stat. 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 (a) 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.

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[15] 38 Stat. 730, 738, § 20, 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

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

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

not apply, neither does the less comprehensive proscription 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 *Allen Bradley Co.* v. *Union*, 325 U. S. 797, 805 (1945); *United States* v. *Hutcheson*, 312 U. S. 219, 235, 236 (1941).

[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

§ 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

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"(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, 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."

divest pre-existing rights or privileges will not be applied 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] *Lewis, Trustee* v. *United States*, 92 U. S. 618, 622 (1875); *United States* v. *Herron*, 20 Wall. 251, 263 (1873); see *Guarantee Co.* v. *Title Guaranty Co.*, 224 U. S. 152, 155 (1912).

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

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

[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 (1909).

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 pre-existing 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, R. S. § 1, 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.

Representative 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] Mr. 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 Representative 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.

Representative 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] But the first comment made on this amendment, after its introduction, was that of Representative 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. Mr. LaGuardia read the definition of a person "participating or interested in a labor dispute" in § 13 (b), 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 Mr. Blanton thereupon suggested the necessity of allowing the Government to use injunctions to maintain discipline in the army and navy, Mr. LaGuardia pointed out that these services are not "a trade, craft or occupation". Mr. Blanton's only answer to Mr. LaGuardia's opposition was that the latter "does not know what 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

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[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 now. Here 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 Act, we find 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, Representative Michener, a ranking minority member of the Judiciary Committee and 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 immediate consideration. In this survey he clearly stated 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, Representative Michener repeated this view 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."

Representatives Michener and LaGuardia were members of the Judiciary Committee which reported and recommended the bill to the House. They were the 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] Representative 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 intend to withdraw 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 express consistent views concerning the types of situations to which the Act applies.[35] They 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 and directed to persons who are not employees of the United States. None of these cases dealt with the narrow segment of the employer-employee relationship now before us.

But regardless 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

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[33] *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110, 125 (1942); *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 444, 475 (1921).

[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, 4620, 4693, 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 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 individuals in the course of the Norris-LaGuardia de-

[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 insert "but solely upon application by the Attorney General or under his direction" was accepted. 89 Cong. Rec. 3986.

[39] A great number 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.

bates.[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 Press 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 the defendant 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 version, 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. 3811–3812. See also *Id.* at 3809, 3884–3885, 5722.

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 seizure are "employees" of the federal Government for every purpose which might be conceived,[49] but whether, for the purposes of this case, the incidents of the relationship existing between the Government and the workers are those of governmental employer and employee.

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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] *Id.*, § 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. . . ."

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 provisions relate to matters which normally constitute the subject matter of collective bargaining between employer and employee. Many of the provisions incorporated into the

[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.

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 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 reten-

tion 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 none of the earnings or liabilities resulting from the operation of the mines, while under seizure, 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 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

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[51] Revised 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.*

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. We hold that in a case such as this, where the Government has seized actual possession of the mines, or other facilities, and is operating them, and the relationship between the Government and the workers is that of employer and employee, the Norris-LaGuardia Act does not apply.

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 the defendants to terminate the contract by unilateral action. What amounted to a strike call, effective at midnight on November 20, had been issued by the defendant 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. 563 (1906), 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

[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. *Bucks Stove & Range Co.,* 221 U. S. 418, 450 (1911).

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,* a companion case, 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]

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.

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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."

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 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." [59]

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[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); *Schwartz* v. *United States*, 217 F. 866 (1914); *Brougham* v. *Oceanic Steam Navigation Co.*, 205 F. 857 (1913); *Blake* v. *Nesbet*, 144 F. 279 (1905); see *Alemite Mfg. Corp.* v. *Staff*, 42 F. 2d 832, 833 (1930).

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

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.,* 221 U. S. 418 (1911).

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 disobedience of an order later set aside on appeal, that the plaintiff in the action may profit by way of a fine imposed in a simultaneous proceeding for civil contempt based upon a violation of the same order. The right to remedial relief falls with an injunction which events prove was erroneously issued, *Worden* v. *Searls, supra* at 25, 26; *Salvage Process Corp.* v. *Acme Tank Cleaning Process Corp.,* 86 F. 2d 727 (1936); *S. Anargyros* v. *Anargyros & Co.,* 191 F. 208 (1911);[61] and *a fortiori* when the injunc-

[60] See *Salvage Process Corp.* v. *Acme Tank Cleaning Process Corp.,* 86 F. 2d 727 (1936).

[61] 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.

tion 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.

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

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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."

[62] 18 U. S. C. A. following § 687. 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

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 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. The 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

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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 F. 947 (1918); see *National Labor Relations Board* v. *Arcade-Sunshine Co.*, 122 F. 2d 964, 965 (1941).

was the contempt described as criminal as required by the rule.

Nevertheless, the 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 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 fully informed that a criminal contempt was charged, but we think they enjoyed during the trial itself all the enhanced pro-

[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*, 43 Col. L. Rev. 780, 789–90 (1943). 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 in the petition 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.

[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.

tections 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 as provided in § 11 of the Norris-LaGuardia Act. But § 11 is not operative here, for it applies only to cases "arising under this Act",[68] and we have already held that the restriction upon injunctions imposed by the Act do not govern this case.[69] The defendants, we think, were properly tried by the court without a jury.

If the defendants were thus accorded all the 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. The same acts may justify a court in resorting to coercive and to 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 fol-

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

[68] 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 . . ."

[69] We believe, and the Government admits, that the defendants would have been entitled to a jury trial if § 11 applied to the instant contempt proceeding and if this case arose under the Norris-LaGuardia Act.

[70] "It may not be always 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 F. 20, 24 (1912).

lowed 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 before a reversal will be required.[73] That the contempt

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[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 . . ." *Hendryx* v. *Fitzpatrick*, 19 F. 810, 813 (1884). Examples of this procedure appear in *Union Tool Co.* v. *Wilson*, 259 U. S. 107 (1922); *Matter of Christensen Engineering Co.*, 194 U. S. 458 (1904); *Wilson* v. *Byron Jackson Co.*, 93 F. 2d 577 (1937); *Kreplik* v. *Couch Patents Co.*, 190 F. 565 (1911).

[72] *Farmers Nat'l Bank* v. *Wilkinson*, 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 F. 20 (1912). See *Phillips Sheet & Tin Plate Co.* v. *Amalgamated Ass'n. of Iron & Tin Workers*, 208 F. 335, 340 (1913). Instances in the state courts include *Carey* v. *District Court of Jasper County*, 226 Iowa 717, 285 N. W. 236 (1939); *Holloway* v. *Peoples Water Co.*, 100 Kans. 414, 167 P. 265 (1917); *Grand Lodge, K. P. of New Jersey* v. *Jansen*, 62 N. J. Eq. 737, 48 Atl. 526 (1901).

[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 do not negative remedial or coercive 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 the defendants were not instantly aware that a usual remedy in such a situation is to impose coercive sanctions until the

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 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.

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act is performed. This is a function of civil contempt. *Lamb* v. *Cramer*, 285 U. S. 217, 221 (1932); *Michaelson* v. *United States*, 266 U. S. 42, 66 (1924); *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 449 (1911). 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 71, *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. *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, 445 (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); *In re Merchants Stock & Grain Co., Petitioner*, 223 U. S. 639, 642 (1911); *Matter of Christensen Engineering Co.*, 194 U. S. 458, 461 (1904).

[76] In *Federal Trade Commission* v. *A. 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).

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. *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

[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 . . ."

[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 in equity, brought by the United States . . ."

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]

V.

It is urged that, in any event, the amount of the fine of $10,000 imposed on the defendant Lewis and of the fine of $3,500,000 imposed on the defendant Union were arbitrary, excessive, and in no way related to the evidence adduced at the hearing.

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 441. 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. Because of the nature of these standards, great reliance must be placed upon the discretion of the trial judge.

The trial court properly found the defendants guilty of criminal contempt. Such contempt had continued for

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[79] The Court in the *McCrone* case affirmed 100 F. 2d 322 and noted, 307 U. S. 61, 63, note 4, the conflict with *Federal Trade Commission* v. *A. McClean & Son,* 94 F. 2d 802, 804 (1938), upon which defendants now rely.

15 days from the issuance of the restraining order until the finding of guilty. Its willfulness had not been qualified by any concurrent attempt on defendants' part to challenge the order by motion to vacate or other appropriate procedures. Immediately following the finding of guilty, defendant Lewis stated openly in court that defendants would adhere to their policy of defiance. This policy, as the evidence showed, was the germ center of an economic paralysis which was rapidly extending itself from the bituminous coal mines into practically every other major industry of the United States. It was an attempt to repudiate and override the instrument of lawful government in the very situation in which governmental action was indispensable.

The trial court also properly found the defendants guilty of civil contempt. Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. *Gompers* v. *Bucks Stove & Range Co., supra,* at 448, 449. Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant's actual loss,[80] and his right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy.[81]

But where the purpose is to make the defendant comply, the court's discretion is otherwise exercised. It must then consider the character and magnitude of the harm

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[80] *Leman* v. *Krentler-Arnold Co.,* 284 U. S. 448, 455–456 (1932); *Gompers* v. *Bucks Stove & Range Co.,* 221 U. S. 418, 443–444 (1911); *Parker* v. *United States,* 126 F. 2d 370, 380 (1942); *Judelshon* v. *Black,* 64 F. 2d 116 (1933); *Norstrom* v. *Wahl,* 41 F. 2d 910, 914 (1930).

[81] See page 34, *supra.*

pp. 33-

threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired.[82]

It is a corollary of the above principles that a court which has returned a conviction for contempt must, in fixing the amount of a fine to be imposed as a punishment or as a means of securing future compliance, consider the amount of defendant's financial resources and the consequent seriousness of the burden to that particular defendant.

In the light of these principles, we think the record clearly warrants a fine of $10,000 against defendant Lewis for criminal contempt. A majority of the Court, however, does not think that it warrants the unconditional imposition of a fine of $3,500,000 against the defendant union. A majority feels that, if the court below had assessed a fine of $700,000 against the defendant union, this, under the circumstances, would not be excessive as punishment for the criminal contempt theretofore committed; and feels that, in order to coerce the defendant union into a future compliance with the court's order, it would have been effective to make the other $2,800,000 of the fine conditional on the defendant's failure to purge itself within a reasonable time. Accordingly, the judgment against the defendant union is held to be excessive. It will be modified so as to require the defendant union to pay a fine of $700,000, and further, to pay an additional fine of $2,800,000 unless the defendant union, within five days after the issuance of the mandate herein, shows that it has fully complied with the temporary restraining order issued November 18, 1946, and the preliminary injunction issued December 4, 1946. The defendant union can effect full compliance

[82] Cf. *Doyle* v. *London Guarantee Co.*, 204 U. S. 599 (1907). See also *In re Chiles*, 22 Wall. 157, 168 (1874).

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.

We well realize the serious proportions of the fines here imposed upon the defendant union. But a majority feels that the course taken by the union carried with it such a serious threat to orderly constitutional government, and to the economic and social welfare of the nation, that a fine of substantial size is required in order to emphasize the gravity of the offense of which the union was found guilty. The defendant Lewis, it is true, was the aggressive leader in the studied and deliberate non-compliance with the order of the District Court; but, as the record shows, he stated in open court prior to imposition of the fines that "the representatives of the United Mine Workers determined that the so-called Krug-Lewis agreement was breached", and that it was the union's "representatives" who "notified the Secretary of the Interior that the contract was terminated as of November 20th". And certainly it was the members of the defendant union who executed the nationwide strike. Loyalty in responding to the orders of their leader may, in some minds, minimize the gravity of the miners' conduct; but we cannot ignore the effect of their action upon the rights of other citizens,

or the effect of their action upon our system of government. The gains, social and economic, which the miners and other citizens have realized in the past, are ultimately due to the fact that they enjoy the rights of free men under our system of government. Upon the maintenance of that system depends all future progress to which they may justly aspire. In our complex society, there is a great variety of limited loyalties, but the overriding loyalty of all is to our country and to the institutions under which a particular interest may be pursued.

We are aware that the defendants may have sincerely believed that the restraining order was ineffective and would finally be vacated. However, the Government had sought a declaration of its contractual rights under the Krug-Lewis agreement, effective since May 29, 1946, and solemnly subscribed by the Government and the defendant union. The restraining order sought to preserve conditions until the cause could be determined, and obedience by the defendants would have secured this result. They had full opportunity to comply with the order of the District Court, but they deliberately refused obedience and determined for themselves the validity of the order. When the rule to show cause was issued, provision was made for a hearing as to whether or not the alleged contempt was sufficiently purged. At that hearing the defendants stated to the court that their position remained then in the status which existed at the time of the issuance of the restraining order. Their conduct showed a total lack of respect for the judicial process. Punishment in this case is for that which the defendants had done prior to imposition of the judgment in the District Court, coupled with a coercive imposition upon the defendant union to compel obedience with the court's outstanding order.

We have examined the other contentions advanced by the defendants but have found them to be without merit. The temporary restraining order 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 in accordance with this opinion, and, as modified, that judgment is affirmed.

So ordered.

MR. JUSTICE JACKSON joins in this opinion except as to the Norris-LaGuardia Act which he thinks relieved the courts of jurisdiction to issue injunctions in this class of case.

Supreme Court of the United States
Washington, D. C.

CHAMBERS OF
JUSTICE HAROLD H. BURTON

March 5, 1947

MEMORANDUM TO THE CHIEF JUSTICE

In re: No. 759, etc. Lewis case

I agree with your recirculation of March 4.

In the new sentence on page 28, I assume, however, that the words "We held" should read "We hold."

Harold H. Burton

Reading Opinion CJ.

Recirculated 3/4/47- Changes marked on Pages 24, 28, 37, 43 and 45

SUPREME COURT OF THE UNITED STATES

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

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

[March —, 1947.]

MR. CHIEF JUSTICE VINSON delivered the opinion of the Court.

In October, 1946, the United States was in possession of, and operating, 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

[1] The United States had taken possession of the mines pursuant to Executive Order 9728 of May 21, 1946, 11 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 during the transition from war to peace, 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. §§ 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:

"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.

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, the defendant Lewis directed a letter to Secretary Krug and presented issues which led directly to the present controversy. According to the defendant 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, the defendant 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. 25.

[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 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 the defendant 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 on the part of the Government.

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

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

tion.[10] The President of the United States announced his strong support of the Government's position and requested reconsideration by the union in order to avoid a national crisis. However, the defendant 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 a complaint 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 suit was brought under the Declaratory Judgment Act[11] and sought 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.

[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. Stat. 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 (a) 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.

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[15] 38 Stat. 730, 738, § 20, 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

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

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

not apply, neither does the less comprehensive proscription 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 *Allen Bradley Co.* v. *Union*, 325 U. S. 797, 805 (1945); *United States* v. *Hutcheson*, 312 U. S. 219, 235, 236 (1941).

[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

§ 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

"(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, 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."

divest pre-existing rights or privileges will not be applied 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

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

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

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

[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 (1909).

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 pre-existing 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, R. S. § 1, 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.

Representative 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] Mr. 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 Representative 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.

Representative 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] But the first comment made on this amendment, after its introduction, was that of Representative 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. Mr. LaGuardia read the definition of a person "participating or interested in a labor dispute" in § 13 (b), 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 Mr. Blanton thereupon suggested the necessity of allowing the Government to use injunctions to maintain discipline in the army and navy, Mr. LaGuardia pointed out that these services are not "a trade, craft or occupation". Mr. Blanton's only answer to Mr. LaGuardia's opposition was that the latter "does not know what 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

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[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 now. Here 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 Act, we find 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, Representative Michener, a ranking minority member of the Judiciary Committee and 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 immediate consideration. In this survey he clearly stated 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, Representative Michener repeated this view 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."

Representatives Michener and LaGuardia were members of the Judiciary Committee which reported and recommended the bill to the House. They were the 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] Representative 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 intend to withdraw 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 express consistent views concerning the types of situations to which the Act applies.[35] They 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 and directed to persons who are not employees of the United States. None of these cases dealt with the narrow segment of the employer-employee relationship now before us.

But regardless 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

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[33] *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110, 125 (1942); *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 444, 475 (1921).

[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, 4620, 4693, 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 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 individuals in the course of the Norris-LaGuardia de-

[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 insert "but solely upon application by the Attorney General or under his direction" was accepted. 89 Cong. Rec. 3986.

[39] A great number 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.

bates.[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 Press 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 the defendant 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 version, 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. 3811–3812. See also *Id.* at 3809, 3884–3885, 5722.

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 seizure are "employees" of the federal Government for every purpose which might be conceived,[49] but whether, for the purposes of this case, the incidents of the relationship existing between the Government and the workers are those of governmental employer and employee.

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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] *Id.*, § 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. . . ."

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 provisions relate to matters which normally constitute the subject matter of collective bargaining between employer and employee. Many of the provisions incorporated into the

[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.

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 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 reten-

tion 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 none of the earnings or liabilities resulting from the operation of the mines, while under seizure, 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 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

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[51] Revised 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.*

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. We held that in a case such as this, where the Government has seized actual possession of the mines, or other facilities, and is operating them, and the relationship between the Government and the workers is that of employer and employee, the Norris-LaGuardia Act does not apply.

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 the defendants to terminate the contract by unilateral action. What amounted to a strike call, effective at midnight on November 20, had been issued by the defendant 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. 563 (1906), 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

[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. *Bucks Stove & Range Co.*, 221 U. S. 418, 450 (1911).

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,* a companion case, 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]

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.

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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."

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 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." [59]

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[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); *Schwartz* v. *United States,* 217 F. 866 (1914); *Brougham* v. *Oceanic Steam Navigation Co.,* 205 F. 857 (1913); *Blake* v. *Nesbet,* 144 F. 279 (1905); see *Alemite Mfg. Corp.* v. *Staff,* 42 F. 2d 832, 833 (1930).

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

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.,* 221 U. S. 418 (1911).

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 disobedience of an order later set aside on appeal, that the plaintiff in the action may profit by way of a fine imposed in a simultaneous proceeding for civil contempt based upon a violation of the same order. The right to remedial relief falls with an injunction which events prove was erroneously issued, *Worden* v. *Searls, supra* at 25, 26; *Salvage Process Corp.* v. *Acme Tank Cleaning Process Corp.,* 86 F. 2d 727 (1936); *S. Anargyros* v. *Anargyros & Co.,* 191 F. 208 (1911);[61] and *a fortiori* when the injunc-

[60] See *Salvage Process Corp.* v. *Acme Tank Cleaning Process Corp.,* 86 F. 2d 727 (1936).

[61] 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.

tion 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.

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

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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."

[62] 18 U. S. C. A. following § 687. 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

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 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. The 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

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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 F. 947 (1918); see *National Labor Relations Board* v. *Arcade-Sunshine Co.*, 122 F. 2d 964, 965 (1941).

was the contempt described as criminal as required by the rule.

Nevertheless, the 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 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 fully informed that a criminal contempt was charged, but we think they enjoyed during the trial itself all the enhanced pro-

[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*, 43 Col. L. Rev. 780, 789–90 (1943). 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 in the petition 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.

[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.

tections 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 as provided in § 11 of the Norris-LaGuardia Act. But § 11 is not operative here, for it applies only to cases "arising under this Act",[68] and we have already held that the restriction upon injunctions imposed by the Act do not govern this case.[69] The defendants, we think, were properly tried by the Court without a jury.

If the defendants were thus accorded all the 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. The same acts may justify a court in resorting to coercive and to 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 fol-

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

[68] 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 . . ."

[69] We believe, and the Government admits, that the defendants would have been entitled to a jury trial if § 11 applied to the instant contempt proceeding and if this case arose under the Norris-LaGuardia Act.

[70] "It may not be always 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 F. 20, 24 (1912).

lowed 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 before a reversal will be required.[73] That the contempt

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[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 . . ." *Hendryx* v. *Fitzpatrick*, 19 F. 810, 813 (1884). Examples of this procedure appear in *Union Tool Co.* v. *Wilson*, 259 U. S. 107 (1922); *Matter of Christensen Engineering Co.*, 194 U. S. 458 (1904); *Wilson* v. *Byron Jackson Co.*, 93 F. 2d 577 (1937); *Kreplik* v. *Couch Patents Co.*, 190 F. 565 (1911).

[72] *Farmers Nat'l Bank* v. *Wilkinson*, 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 F. 20 (1912). See *Phillips Sheet & Tin Plate Co.* v. *Amalgamated Ass'n. of Iron & Tin Workers*, 208 F. 335, 340 (1913). Instances in the state courts include *Carey* v. *District Court of Jasper County*, 226 Iowa 717, 285 N. W. 236 (1939); *Holloway* v. *Peoples Water Co.*, 100 Kans. 414, 167 P. 265 (1917); *Grand Lodge, K. P. of New Jersey* v. *Jansen*, 62 N. J. Eq. 737, 48 Atl. 526 (1901).

[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 do not negative remedial or coercive 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 the defendants were not instantly aware that a usual remedy in such a situation is to impose coercive sanctions until the

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 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.

act is performed. This is a function of civil contempt. *Lamb* v. *Cramer*, 285 U. S. 217, 221 (1932); *Michaelson* v. *United States*, 266 U. S. 42, 66 (1924); *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 449 (1911). 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 71, *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. *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, 445 (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); *In re Merchants Stock & Grain Co., Petitioner*, 223 U. S. 639, 642 (1911); *Matter of Christensen Engineering Co.*, 194 U. S. 458, 461 (1904).

[76] In *Federal Trade Commission* v. *A. 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).

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. *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

[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 . . ."

[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 in equity, brought by the United States . . ."

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]

V.

It is urged that, in any event, the amount of the fine of $10,000 imposed on the defendant Lewis and of the fine of $3,500,000 imposed on the defendant Union were arbitrary, excessive, and in no way related to the evidence adduced at the hearing.

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 441. 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. Because of the nature of these standards, great reliance must be placed upon the discretion of the trial judge.

The trial court properly found the defendants guilty of criminal contempt. Such contempt had continued for

[79] The Court in the *McCrone* case affirmed 100 F. 2d 322 and noted, 307 U. S. 61, 63, note 4, the conflict with *Federal Trade Commission* v. *A. McClean & Son,* 94 F. 2d 802, 804 (1938), upon which defendants now rely.

15 days from the issuance of the restraining order until the finding of guilty. Its willfulness had not been qualified by any concurrent attempt on defendants' part to challenge the order by motion to vacate or other appropriate procedures. Immediately following the finding of guilty, defendant Lewis stated openly in court that defendants would adhere to their policy of defiance. This policy, as the evidence showed, was the germ center of an economic paralysis which was rapidly extending itself from the bituminous coal mines into practically every other major industry of the United States. It was an attempt to repudiate and override the instrument of lawful government in the very situation in which governmental action was indispensable.

The trial court also properly found the defendants guilty of civil contempt. Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. *Gompers* v. *Bucks Stove & Range Co., supra,* at 448, 449. Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant's actual loss,[80] and his right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy.[81]

But where the purpose is to make the defendant comply, the court's discretion is otherwise exercised. It must then consider the character and magnitude of the harm

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[80] *Leman* v. *Krentler-Arnold Co.*, 284 U. S. 448, 455–456 (1932); *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 443–444 (1911); *Parker* v. *United States*, 126 F. 2d 370, 380 (1942); *Judelshon* v. *Black*, 64 F. 2d 116 (1933); *Norstrom* v. *Wahl*, 41 F. 2d 910, 914 (1930).

[81] See page 34, *supra.*

threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired.[82]

It is a corollary of the above principles that a court which has returned a conviction for contempt must, in fixing the amount of a fine to be imposed as a punishment or as a means of securing future compliance, consider the amount of defendant's financial resources and the consequent seriousness of the burden to that particular defendant.

In the light of these principles, we think the record clearly warrants a fine of $10,000 against defendant Lewis for criminal contempt. A majority of the Court, however, does not think that it warrants the unconditional imposition of a fine of $3,500,000 against the defendant union. A majority feels that, if the court below had assessed a fine of $700,000 against the defendant union, this, under the circumstances, would not be excessive as punishment for the criminal contempt theretofore committed; and feels that, in order to coerce the defendant union into a future compliance with the Court's order, it would have been effective to make the other $2,800,000 of the fine conditional on the defendant's failure to purge itself within a reasonable time. Accordingly, the judgment against the defendant union is held to be excessive. It will be modified so as to require the defendant union to pay a fine of $700,000, and further, to pay an additional fine of $2,800,000 unless the defendant union, within five days after the issuance of the mandate herein, shows that it has fully complied with the temporary restraining order issued November 18, 1946, and the preliminary injunction issued December 4, 1946. The defendant union can effect full compliance

[82] Cf. *Doyle* v. *London Guarantee Co.*, 204 U. S. 599 (1907). See also *In re Chiles*, 22 Wall. 157, 168 (1874).

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.

We well realize the serious proportions of the fines here imposed upon the defendant union. But a majority feels that the course taken by the union carried with it such a serious threat to orderly constitutional government, and to the economic and social welfare of the nation, that a fine of substantial size is required in order to emphasize the gravity of the offense of which the union was found guilty. The defendant Lewis, it is true, was the aggressive leader in the studied and deliberate non-compliance with the order of the District Court; but, as the record shows, he stated in open court prior to imposition of the fines that "the representatives of the United Mine Workers determined that the so-called Krug-Lewis agreement was breached", and that it was the union's "representatives" who "notified the Secretary of the Interior that the contract was terminated as of November 20th". And certainly it was the members of the defendant union who executed the nationwide strike. Loyalty in responding to the orders of their leader may, in some minds, minimize the gravity of the miners' conduct; but we cannot ignore the effect of their action upon the rights of other citizens,

or the effect of their action upon our system of government. The gains, social and economic, which the miners and other citizens have realized in the past, are ultimately due to the fact that they enjoy the rights of free men under our system of government. Upon the maintenance of that system depends all future progress to which they may justly aspire. In our complex society, there is a great variety of limited loyalties, but the overriding loyalty of all is to our country and to the institutions under which a particular interest may be pursued.

We are aware that the defendants may have sincerely believed that the restraining order was ineffective and would finally be vacated. However, the Government had sought a declaration of its contractual rights under the Krug-Lewis agreement, effective since May 29, 1946, and solemnly subscribed by the Government and the defendant union. The restraining order sought to preserve conditions until the cause could be determined, and obedience by the defendants would have secured this result. They had full opportunity to comply with the order of the District Court, but they deliberately refused obedience and determined for themselves the validity of the order. When the rule to show cause was issued, provision was made for a hearing as to whether or not the alleged contempt was sufficiently purged. At that hearing the defendants stated to the court that their position remained then in the status which existed at the time of the issuance of the restraining order. Their conduct showed a total lack of respect for the judicial process. Punishment in this case is for that which the defendants had done prior to imposition of the judgment in the District Court, coupled with a coercive imposition upon the defendant union to compel obedience with the court's outstanding order.

We have examined the other contentions advanced by the defendants but have found them to be without merit. The temporary restraining order 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 in accordance with this opinion, and, as modified, that judgment is affirmed.

So ordered.

Mr. Justice Jackson
joins in this opinion
except as to the Norris-LaGuardia
Act which he thinks relieved the
courts of jurisdiction to issue
injunctions in this class of case

Supreme Court of the United States.

Memorandum.

February 20, 1947

Nos. 759, 760, 781, 782 & 811

U. S. v. UNITED MINE WORKERS

Stylistic changes throughout.

Other changes noted on Pages

2, 24, 32, 37, 39, 40, 43, 45,

46, and 47.

The Chief Justice.

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

[March —, 1947.]

CHIEF JUSTICE VINSON delivered the opinion of the Court.

In October, 1946, the United States was in possession of, and operating, 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

[1] The United States had taken possession of the mines pursuant to Executive Order 9728 of May 21, 1946. 11 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 during the transition from war to peace, 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. §§ 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:

"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.

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, the defendant Lewis directed a letter to Secretary Krug and presented issues which led directly to the present controversy. According to the defendant 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, the defendant 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. 25.

[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 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 the defendant 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 on the part of the Government.

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

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

tion.[10] The President of the United States announced his strong support of the Government's position and requested reconsideration by the union in order to avoid a national crisis. However, the defendant 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 a complaint 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 suit was brought under the Declaratory Judgment Act[11] and sought 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.

[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. Stat. 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 (a) 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.

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[15] 38 Stat. 730, 738, § 20, 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

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

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

not apply, neither does the less comprehensive proscription 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 *Allen Bradley Co.* v. *Union*, 325 U. S. 797, 805 (1945); *United States* v. *Hutcheson*, 312 U. S. 219, 235, 236 (1941).

[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

§ 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

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"(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, 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."

divest pre-existing rights or privileges will not be applied 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] See *Guarantee Co.* v. *Title Guaranty Co.*, 224 U. S. 152, 155 (1912); *Lewis, Trustee* v. *United States*, 92 U. S. 618, 622 (1875); *United States* v. *Herron*, 20 Wall. 251, 263 (1873).

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

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

[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 (1909).

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 pre-existing 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, R. S. § 1, 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. *Fox*, 94 U. S. 315, 321 (1876); *United States* v. *Cooper Corp.*, 312 U. S. 600, 604 (1941).

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.

Representative 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] Mr. 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 Representative 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.

Representative 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] But the first comment made on this amendment, after its introduction, was that of Representative 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. Mr. LaGuardia read the definition of a person "participating or interested in a labor dispute" in § 13 (b), 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 Mr. Blanton thereupon suggested the necessity of allowing the Government to use injunctions to maintain discipline in the army and navy, Mr. LaGuardia pointed out that these services are not "a trade, craft or occupation". Mr. Blanton's only answer to Mr. LaGuardia's opposition was that the latter "does not know what extensions will be made." A vote as 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

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[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 now. Here 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 Act, we find 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, Representative Michener, a ranking minority member of the Judiciary Committee and 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 immediate consideration. In this survey he clearly stated 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, Representative Michener repeated this view 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."

Representatives Michener and LaGuardia were members of the Judiciary Committee which reported and recommended the bill to the House. They were the 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] Representative 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 intend to withdraw 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 express consistent views concerning the types of situations to which the Act applies.[35] They 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 and directed to persons who are not employees of the United States. None of these cases dealt with the narrow segment of the employer-employee relationship now before us.

But regardless 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

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[33] *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110, 125 (1942); *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 444, 475 (1921).

[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, 4620, 4693, 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 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 individuals in the course of the Norris-LaGuardia de-

[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 insert "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.

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

[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 the defendant 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 version, 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-

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[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-

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[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. 3811–3812. See also *Id.* at 3809, 3884–3885, 5722.

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] but 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.

omission

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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] *Id.*, § 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. . . ."

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 provisions relate to matters which normally constitute the subject matter of collective bargaining between employer and employee. Many of the provisions incorporated into the

[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.

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 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 reten-

tion 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 none of the earnings or liabilities resulting from the operation of the mines, while under seizure, 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 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

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[51] Revised 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.*

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 the defendants to terminate the contract by unilateral action. What amounted to a strike call, effective at midnight on November 20, had been issued by the defendant Lewis as an "official notice". Pending a determination of defend-

ants' 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. 563 (1906), 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. *Bucks Stove & Range Co.*, 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,* a companion case, 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]

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.

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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."

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 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." [59]

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[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); *Schwartz* v. *United States*, 217 F. 866 (1914); *Brougham* v. *Oceanic Steam Navigation Co.*, 205 F. 857 (1913); *Blake* v. *Nesbet*, 144 F. 279 (1905); see *Alemite Mfg. Corp.* v. *Staff*, 42 F. 2d 832, 833 (1930).

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

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.*, 221 U. S. 418 (1911).

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 disobedience of an order later set aside on appeal, that the plaintiff in the action may profit by way of a fine imposed in a simultaneous proceeding for civil contempt based upon a violation of the same order. The right to remedial relief falls with an injunction which events prove was erroneously issued, *Worden* v. *Searls, supra* at 25, 26; *Salvage Process Corp.* v. *Acme Tank Cleaning Process Corp.*, 86 F. 2d 727 (1936); *S. Anargyros* v. *Anargyros & Co.*, 191 F. 208 (1911);[61] and *a fortiori* when the injunc-

[60] See *Salvage Process Corp.* v. *Acme Tank Cleaning Process Corp.*, 86 F. 2d 727 (1936).

[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.

tion 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.

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

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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."

[62] 18 U. S. C. A. following § 687. 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

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 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. The 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

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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 F. 947 (1918); see *National Labor Relations Board* v. *Arcade-Sunshine Co.*, 122 F. 2d 964, 965 (1941).

was the contempt described as criminal as required by the rule.

Nevertheless, the 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 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 fully informed that a criminal contempt was charged, but we think they enjoyed during the trial itself all the enhanced pro-

[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*, 43 Col. L. Rev. 780, 789–90 (1943). 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 in the petition 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.

[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.

tections 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

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

[68] Prior to argument on the motion to vacate the rule to show cause why defendants should not be punished for contempt, defendants' counsel stated that he was "not prepared to waive the question of the trial by jury at this time." 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.* v. *Brimson*, 154 U. S. 447, 489 (1894). The same principle is found in *Ex parte Grossman*, 267 U. S. 87, 122 (1925); *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

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

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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 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, § 268, 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. 738, §§ 21, 22, 28 U. S. C. §§ 386, 387; *Michaelson* v. *United States*, *supra*. 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 now prevailing. 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 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

under this Act",[69] 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 the 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. The same acts may justify a court in resorting to coercive and to punitive measures.[70] Disposing of both aspects of the contempt in a single proceeding would seem at least a convenient

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in proceedings to punish violations of court orders as criminal contempt. *Michaelson* v. *United States*, *supra* at 67.

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 the defendants would have been entitled to a jury trial if § 11 applied to the instant contempt proceeding and if this case arose under the Norris-LaGuardia Act.

[70] "It may not be always 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 F. 20, 24 (1912).

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 before a reversal will be required.[73] That the contempt

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[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 . . ." *Hendryx* v. *Fitzpatrick*, 19 F. 810, 813 (1884). Examples of this procedure appear in *Union Tool Co.* v. *Wilson*, 259 U. S. 107 (1922); *Matter of Christensen Engineering Co.*, 194 U. S. 458 (1904); *Kreplik* v. *Couch Patents Co.*, 190 F. 565 (1911); *Wilson* v. *Byron Jackson Co.*, 93 F. 2d 577 (1937).

[72] *Farmers Nat'l Bank* v. *Wilkinson*, 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 F. 20 (1912). See *Phillips Sheet & Tin Plate Co.* v. *Amalgamated Ass'n. of Iron & Tin Workers*, 208 F. 335, 340 (1913). Instances in the state courts include *Holloway* v. *Peoples Water Co.*, 100 Kans. 414, 167 p. 265 (1917); *Carey* v. *District Court of Jasper County*, 226 Iowa 717, 285 N. W. 236 (1939); *Grand Lodge, K. P. of New Jersey* v. *Jansen*, 62 N. J. Eq. 737, 48 Atl. 526 (1901).

[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 do not negative remedial or coercive 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 the defendants were not instantly aware that a usual remedy in such a situation is to impose coercive sanctions until the

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 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.

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act is performed. This is a function of civil contempt. *Lamb* v. *Cramer*, 285 U. S. 217, 221 (1932); *Michaelson* v. *United States*, 266 U. S. 42, 66 (1924); *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 449 (1911). 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 71, *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. *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, 445 (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); *In re Merchants Stock & Grain Co., Petitioner*, 223 U. S. 639, 642 (1911); *Matter of Christensen Engineering Co.*, 194 U. S. 458, 461 (1904).

[76] In *Federal Trade Commission* v. *A. 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).

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. *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

[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 . . ."

[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 in equity, brought by the United States . . .".

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]

V.

It is urged that, in any event, the amount of the fine of $10,000 imposed on the defendant Lewis and of the fine of $3,500,000 imposed on the defendant Union were arbitrary, excessive, and in no way related to the evidence adduced at the hearing.

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 441. 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. Because of the nature of these standards, great reliance must be placed upon the discretion of the trial judge.

The trial court properly found the defendants guilty of criminal contempt. Such contempt had continued for

[79] The Court in the *McCrone* case affirmed 100 F. 2d 322 and noted, 307 U. S. 61, 63, note 4, the conflict with *Federal Trade Commission* v. *A. McClean & Son,* 94 F. 2d 802, 804 (1938), upon which defendants now rely.

15 days from the issuance of the restraining order until the finding of guilty. Its willfulness had not been qualified by any concurrent attempt on defendants' part to challenge the order by motion to vacate or other appropriate procedures. Immediately following the finding of guilty, defendant Lewis stated openly in court that defendants would adhere to their policy of defiance. This policy, as the evidence showed, was the germ center of an economic paralysis which was rapidly extending itself from the bituminous coal mines into practically every other major industry of the United States. It was an attempt to repudiate and override the instrument of lawful government in the very situation in which governmental action was indispensable.

The trial court also properly found the defendants guilty of civil contempt. Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. *Gompers* v. *Bucks Stove & Range Co., supra,* at 448, 449. Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant's actual loss,[80] and his right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy.[81]

But where the purpose is to make the defendant comply, the court's discretion is otherwise exercised. It must then consider the character and magnitude of the harm threatened by continued contumacy, and the probable

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[80] *Leman* v. *Krentler-Arnold Co.,* 284 U. S. 448, 455–456 (1932); *Gompers* v. *Bucks Stove & Range Co.,* 221 U. S. 418, 443–444 (1911); *Norstrom* v. *Wahl,* 41 F. 2d 910, 914 (1930); *Judelshon* v. *Black,* 64 F. 2d 116 (1933); *Parker* v. *United States,* 126 F. 2d 370, 380 (1942).

[81] See page 34, *supra.*

effectiveness of any suggested sanction in bringing about the result desired.[82]

It is a corollary of the above principles that a court which has returned a conviction for contempt must, in fixing the amount of a fine to be imposed as a punishment or as a means of securing future compliance, consider the amount of defendant's financial resources and the consequent seriousness of the burden to that particular defendant.

In the light of these principles, we think the record clearly warrants a fine of $10,000 against defendant Lewis for criminal contempt. A majority of the Court, however, does not thing that it warrants the unconditional imposition of a fine of $3,500,000 against the defendant union. A majority feels that, if the court below had assessed a fine of $1,000,000 against the defendant union, this, under the circumstances, would not be excessive as punishment for the contempt theretofore committed; and feels that, in order to coerce the defendant union into a future compliance with the Court's order, it would have been effective to make the other $2,500,000 of the fine conditional on the defendant's failure to purge itself within a reasonable time. Accordingly, the judgment against the defendant union is held to be excessive. It will be modified so as to require the defendant union to pay a fine of $1,000,000, and further, to pay an additional fine of $2,500,000 unless the defendant union, within five days after the issuance of the mandate herein, shows that it has fully complied with the temporary restraining order issued November 18, 1946, and the preliminary injunction issued December 4, 1946. The defendant union can effect full compliance only by withdrawing unconditionally the notice given by it, signed John L. Lewis, President, on November 15,

[82] Cf. *Doyle* v. *London Guarantee Co.*, 204 U. S. 599 (1907). See also *In re Chiles*, 22 Wall. 157, 168 (1874).

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.

We well realize the serious proportions of the fines here imposed upon the defendant union. But a majority feels that the course taken by the union carried with it such a serious threat to orderly constitutional government, and to the economic and social welfare of the nation, that a fine of substantial size is required in order to emphasize the gravity of the offense of which the union was found guilty. The defendant Lewis, it is true, was the aggressive leader in the studied and deliberate non-compliance with the order of the District Court; but, as the record shows, he stated in open court prior to imposition of the fines that "the representatives of the United Mine Workers determined that the so-called Krug-Lewis agreement was breached", and that it was the union's "representatives" who "notified the Secretary of the Interior that the contract was terminated as of November 20th". And certainly it was the members of the defendant union who executed the nationwide strike. Loyalty in responding to the orders of their leader may, in some minds, minimize the gravity of the miners' conduct; but we cannot ignore the effect of their action upon the rights of other citizens, or the effect of their action upon our system of government. The gains, social and economic, which the miners and other citizens have realized in the past, are ultimately due

to the fact that they enjoy the rights of free men under our system of government. Upon the maintenance of that system depends all future progress to which they may justly aspire. In our complex society, there is a great variety of limited loyalties, but the overriding loyalty of all is to our country and to the institutions under which a particular interest may be pursued.

We are aware that the defendants may have sincerely believed that the restraining order was ineffective and would finally be vacated. However, the Government had sought a declaration of its contractual rights under the Krug-Lewis agreement, effective since May 29, 1946, and solemnly subscribed by the Go ernment and the defendant union. The restraining order sought to preserve conditions until the cause could be determined, and obedience by the defendants would have secured this result. They had full opportunity to comply with the order of the District Court, but it deliberately refused obedience and determined for themselves the validity of the order. Their conduct showed a total lack of respect for the judicial process. Punishment in this case is for that which the defendants had done prior to imposition of the judgment in the District Court, coupled with a coercive imposition upon the defendant union to compel obedience with the Court's outstanding order.

We have examined the other contentions advanced by the defendants but have found them to be without merit. The temporary restraining order 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 in accordance with this opinion, and, as modified, that judgment is affirmed.

So ordered.

Supreme Court of the United States.

Memorandum.

February 26, 1947

Nos. 759, 760, 761, 762, & 811

U.S. v. UNITED MINE WORKERS

This section is to be added to the printed draft of the opinion in the above cases which I circulated on February 20th. It replaces the typewritten draft circulated on February 24. There are no substantial changes from the typewritten copy.

The Chief Justice.

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]

V.

It is urged that, in any event, the amount of the fine of $10,000 imposed on the defendant Lewis and of the fine of $3,500,000 imposed on the defendant Union were arbitrary, excessive, and in no way related to the evidence adduced at the hearing.

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

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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.

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. Because of the nature of these standards, great reliance must be placed upon the discretion of the trial judge.

The trial court properly found the defendants guilty of criminal contempt. Such contempt had continued for 15 days from the issuance of the restraining order until finding of guilty. Its willfulness had not been qualified by any concurrent attempt on defendants' part to challenge the order by motion to vacate or other appropriate procedures. Immediately following the finding of guilty, defendant Lewis stated openly in court that defendants would adhere to their policy of defiance. This policy, as the evidence showed, was the germ center of an economic paralysis which was rapidly extending itself from the bituminous coal mines into practically every other major industry of the United States. It was an attempt to repudiate and override the instrument of lawful government in the very situation in which governmental action was indispensable.

The trial court also properly found the defendants guilty of civil contempt. Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. *Gompers* v. *Bucks Stove & Range Co., supra,* at 448, 449. Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon

evidence of complainant's actual loss,[80] and his right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy.[81]

But where the purpose is to make the defendant comply, the court's discretion is otherwise exercised. It must then consider the character and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired.[82]

It is a corollary of the above principles that a court which has returned a conviction for contempt must, in fixing the amount of a fine to be imposed as a punishment or as a means of securing future compliance, consider the amount of defendant's financial resources and the consequent seriousness of the burden to that particular defendant.

In the light of these principles, we think the record clearly warrants a fine of $10,000 against defendant Lewis, either for criminal or civil contempt. A majority of the Court, however, does not think that it warrants the unconditional imposition of a fine of $3,500,000 against the defendant Union. A majority feels that, if the court below had assessed a fine of $1,000,000 against the defendant Union, this, under the circumstances, would not be excessive as punishment for the contempt theretofore committed; and feels that, in order to coerce the defendant Union into a future compliance with the Court's order, it would have been effective to make the other $2,500,000 of the fine conditional on the defendant's

[80] *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).

[81] See page 34, *supra*.

[82] Cf. *Doyle* v. *London Guarantee Co.*, 204 U. S. 55 (1907). See also *In re Chiles*, 22 Wall. 157, 168 (1874).

failure to purge itself within a reasonable time. Accordingly, the judgment against the defendant Union is held to be excessive. It will be modified so as to require the defendant Union to pay a fine of $1,000,000, and further, to pay an additional fine of $2,500,000 unless the defendant Union, within five days after the issuance of the mandate herein, shows that it has fully complied with the temporary restraining order issued November 18, 1946, and the preliminary injunction issued December 4, 1946. 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.

We have examined the other contentions advanced by the defendants but have found them to be without merit. The temporary restraining order 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 as indicated in the preceding paragraph, and, as modified, that judgment is affirmed.

So ordered.

It is urged that, in any event, the amount of the fine of $10,000 imposed on the defendant Lewis and of the fine of $3,500,000 imposed on the defendant Union were arbitrary, excessive, and in no way related to the evidence adduced at the hearing.

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. Because of the nature of these standards, great reliance must be placed upon the discretion of the trial judge.

The trial court properly found the defendants guilty of criminal contempt. Such contempt had continued for 15 days from the issuance of the

restraining order until finding of guilty. Its willfulness had not been qualified by any concurrent attempt on defendants' part to challenge the order by ~~avail-~~ motion to vacate or other ~~able legal means~~ appropriate procedures. Immediately following the finding of guilty, defendant Lewis stated openly in court that defendants would adhere to their policy of defiance. This policy, as the evidence showed, was the germ center of an economic paralysis which was rapidly extending itself from the bituminous coal mines into practically every other major industry of the United States. It was an attempt to repudiate and override the instrument of lawful government in the very situation in which governmental action was indispensable.

The trial court also properly found the defendants guilty of civil contempt. Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. Gompers v. Bucks Stove & Range Co., supra, at 448, 449. Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant's actual loss,[80/] and his right, as a civil litigant, to the

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compensatory fine is dependent upon the outcome of the basic controversy.[81]

But where the purpose is to make the defendant comply, the court's discretion is otherwise exercised. It must then consider the character and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired.[82]

It is a corollary of the above principles that a court which has returned a conviction for contempt must, in fixing the amount of a fine to be imposed as a punishment or as a means of securing future compliance, consider the amount of defendant's financial resources and the consequent seriousness of the burden to that particular defendant.

In the light of these principles, we think the record clearly warrants a fine of $10,000 against defendant Lewis, either for criminal or civil contempt. A majority of the Court, however, does not think that it warrants the unconditional imposition of a fine of $3,500,000 against the defendant Union. A majority feels that, if the court below had assessed a fine of

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$1,000,000 against the defendant Union, this, under the circumstances, would not be excessive as punishment for the contempt theretofore committed; and feels that, in order to coerce the defendant Union into a future compliance with the Court's order, it would have been effective to make the other $2,500,000 of the fine conditional on the defendant's failure to purge itself within a reasonable time. Accordingly, the judgment against the defendant Union is held to be excessive. It will be modified so as to require the defendant Union to pay a fine of $1,000,000, and further, to pay an additional fine of $2,500,000 unless the defendant Union, within five days after the issuance of the mandate herein, shows that it has fully complied with the temporary restraining order issued November 18, 1946, and the preliminary injunction issued December 4, 1946. The defendant Union can effect full compliance only by withdrawing unconditionally the notice given by ~~the defendant Union,~~ 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 the defendant Union~~ at the same time, all 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.

We have examined the other contentions advanced by the defendants but have found them to be without merit. The temporary restraining order 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 as indicated in the preceding paragraph, and, as modified, that judgment is affirmed.

SO ORDERED.

Nos. 759, 760, 761, 762 & 811

U. S. v. UNITED MINE WORKERS

Memorandum for the Conference:

V.

It is urged that, in any event, the amount of the fine of $10,000 imposed on the defendant Lewis and of the fine of $3,500,000 imposed on the defendant Union were arbitrary, excessive, and in no way related to the evidence adduced at the hearing.

Sentences for criminal contempt are punitive in their nature and are imposed for the purpose of vindicating the authority of the Court. Compare v. Bucks Stove & Range Co., supra, at 100. 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. Because of the nature of these standards, great reliance must be placed upon the discretion of the trial judge.

The trial court properly found the defendants guilty of criminal contempt. Such contempt had continued for 15 days from the issuance of the

restraining order until finding of guilty. Its willfulness had not been qualified by any concurrent attempt on defendants' part to challenge the order by available legal means. Immediately following the finding of guilty, defendant Lewis stated openly in court that defendants would adhere to their policy of defiance. This policy, as the evidence showed, was the germ center of an economic paralysis which was rapidly extending itself from the bituminous coal mines into practically every other major industry of the United States. It was an attempt to repudiate and override the instrument of lawful government in the very situation in which governmental action was indispensable.

The trial court also properly found the defendants guilty of civil contempt. Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. Gompers v. Bucks Stove & Range Co., supra, at 440, 449. Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant's actual loss,[80/] and his right, as a civil litigant, to the

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compensatory fine is dependent upon the outcome of the basic controversy.[81]

But where the purpose is to make the defendant comply, the court's discretion is otherwise exercised. It must then consider the character and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired.[82]

It is a corollary of the above principles that a court which has returned a conviction for contempt must, in fixing the amount of a fine to be imposed as a punishment or as a means of securing future compliance, consider the amount of defendant's financial resources and the consequent seriousness of the burden to that particular defendant.

In the light of these principles, we think the record clearly warrants a fine of $10,000 against defendant Lewis, either for criminal or civil contempt. A majority of the Court, however, does not think that it warrants the unconditional imposition of a fine of $3,500,000 against the defendant Union. A majority feels that, if the court below had assessed a fine of

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$1,000,000 against the defendant Union, this, under the circumstances, would not be excessive as punishment for the contempt theretofore committed; and feels that, in order to coerce the defendant Union into a future compliance with the Court's order, it would have been effective to make the other $2,500,000 of the fine conditional on the defendant's failure to purge itself within a reasonable time. Accordingly, the judgment against the defendant Union is held to be excessive. It will be modified so as to require the defendant Union to pay a fine of $1,000,000, and further, to pay an additional fine of $2,500,000 unless the defendant, within five days after the issuance of the mandate herein, shows that it has fully complied with the temporary restraining order issued November 18, 1946, and the preliminary injunction issued December 4, 1946. The defendant Union can effect full compliance only by withdrawing unconditionally the notice given by the defendant Union, 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, the members of the defendant Union 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.

We have examined the other contentions advanced by the defendants but have found them to be without merit. The temporary restraining order 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 as indicated in the preceding paragraph, and, as modified, that judgment is affirmed.

SO ORDERED.

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order until finding of guilty. Its willfulness had not been qualified by any concurrent attempt on defendants' part to challenge the order by available legal means. Immediately following the finding of guilty, defendant Lewis stated openly in court that defendants would adhere to their policy of defiance. This policy, as the evidence showed, was the germ center of an economic paralysis which was rapidly extending itself from the bituminous coal mines into practically every other major industry of the United States. It was an attempt to repudiate and override the instrument of lawful government in the very situation in which governmental action was indispensable.

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In the light of these principles, we think the record clearly warrants a fine of $10,000 against defendant Lewis, either for criminal or civil contempt. A majority of the Court, however, does not think that it warrants the unconditional imposition of a fine of $3,500,000 against the defendant Union. A majority feels that, if the court below had assessed a fine of

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$1,000,000 against the defendant Union, this, under the circumstances, would [have constituted an adequate] punishment for the contempt theretofore committed; [A majority also] feels that, in order to coerce the defendant Union into a future compliance with the Court's order, it would have been [as] effective to make the other $2,500,000 of the fine conditional on the defendant's failure to purge itself within a reasonable time, [as it was to impose an unconditional fine of $3,500,000 in total amount]. Accordingly, the judgment against the defendant Union is held to be excessive. It will be modified so as to require the defendant Union to pay a fine of $1,000,000, and further, to pay an additional fine of $2,500,000 unless the defendant, [prior to March 8, 1947,] shows that it has fully complied with the temporary restraining order issued November 18, 1946, and the preliminary injunction issued December 4, 1946. Defendant Union can effect full compliance only by unconditionally withdrawing its of November 15, 1946, notice to Secretary Krug, by instructing its members unconditionally in the same manner as the official notice of November 15, 1946, of such withdrawal by withdrawing, and instructing its members of the withdrawal of, any other notice to the effect that the Krug-Lewis agreement has been or will be terminated, [and by refraining from the issuance of any such notice in the future.]

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The defendant Union ~~would have had effective~~ compliance only by withdrawing unconditionally the notice given by the defendant Union, 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, the members of the defendant Union 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

meaning under the said agreement,

final determination of the basic issues ~~herein.~~

We have examined the other contentions advanced by the defendants but have found them to be without merit. The temporary restraining order 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 as indicated in the preceding paragraph, and, as modified, that judgment is affirmed.

SO ORDERED.

Supreme Court of the United States.

Memorandum.

February 20, 1947

Nos. 759, 760, 781, 782 & 811

U. S. v. UNITED MINE WORKERS

Memorandum to the Conference:

I am attaching hereto the first four sections of the third circulation of my opinion in the above case. Section 5 was sent to you yesterday in typewritten form.

The Chief Justice.

Recirculated 2/25/47
Changes on Pages 18, 19, 20, 21, 22, 23, 26, 30, 37, 38 & 39 -
Section V added

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

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[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

[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

[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]

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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."

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-

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[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",[69] 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.

New Page 44 Follows——Old Page 40

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V.

It is urged that, in any event, the amount of the fine of $10,000 imposed on the defendant Lewis and of the fine of $3,500,000 imposed on the defendant Union were arbitrary, excessive, and in no way related to the evidence adduced at the hearing.

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

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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. Because of the nature of these standards, great reliance must be placed upon the discretion of the trial judge.

The trial court properly found the defendants guilty of criminal contempt. Such contempt had continued for 15 days from the issuance of the restraining order until finding of guilty. Its willfulness had not been qualified by any concurrent attempt on defendants' part to challenge the order by motion to vacate or other appropriate procedures. Immediately following the finding of guilty, defendant Lewis stated openly in court that defendants would adhere to their policy of defiance. This policy, as the evidence showed, was the germ center of an economic paralysis which was rapidly extending itself from the bituminous coal mines into practically every other major industry of the United States. It was an attempt to repudiate and override the instrument of lawful government in the very situation in which governmental action was indispensable.

The trial court also properly found the defendants guilty of civil contempt. Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. *Gompers* v. *Bucks Stove & Range Co., supra,* at 448, 449. Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon

evidence of complainant's actual loss,[80] and his right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy.[81]

But where the purpose is to make the defendant comply, the court's discretion is otherwise exercised. It must then consider the character and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired.[82]

It is a corollary of the above principles that a court which has returned a conviction for contempt must, in fixing the amount of a fine to be imposed as a punishment or as a means of securing future compliance, consider the amount of defendant's financial resources and the consequent seriousness of the burden to that particular defendant.

In the light of these principles, we think the record clearly warrants a fine of $10,000 against defendant Lewis, either for criminal or civil contempt. A majority of the Court, however, does not think that it warrants the unconditional imposition of a fine of $3,500,000 against the defendant Union. A majority feels that, if the court below had assessed a fine of $1,000,000 against the defendant Union, this, under the circumstances, would not be excessive as punishment for the contempt theretofore committed; and feels that, in order to coerce the defendant Union into a future compliance with the Court's order, it would have been effective to make the other $2,500,000 of the fine conditional on the defendant's

[80] *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).

[81] See page 34, *supra*.

[82] Cf. *Doyle* v. *London Guarantee Co.*, 204 U. S. 55 (1907). See also *In re Chiles*, 22 Wall. 157, 168 (1874).

failure to purge itself within a reasonable time. Accordingly, the judgment against the defendant Union is held to be excessive. It will be modified so as to require the defendant Union to pay a fine of $1,000,000, and further, to pay an additional fine of $2,500,000 unless the defendant Union, within five days after the issuance of the mandate herein, shows that it has fully complied with the temporary restraining order issued November 18, 1946, and the preliminary injunction issued December 4, 1946. 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.

We have examined the other contentions advanced by the defendants but have found them to be without merit. The temporary restraining order 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 as indicated in the preceding paragraph, and, as modified, that judgment is affirmed.

So ordered.

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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To: Mr. Justice Burton

From: The Chief Justice

Circulated:

Recirculated: Feb. 20, 1947

Changes on Pages 18, 19, 20,
21, 22, 23, 26, 30, 37, 38 & 39

To the Chief Justice.

I agree, (except p 39)

HHB

But see p 39

I believe we should use the
government's own language - from
their brief p 66 - The government
correctly limits its admission of a right
to a jury trial to where the La Guardia Act
applies not merely to the con - but to
the contempt. For example: If this were between private parties - a
temporary injunction could issue under the Shipp case - and a violation of it should
not have a jury trial. The violation of the injunction would not arise under the Act.

HHB

(typographical - p. 18)

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New Page 44 Follows——Old Page 40

To: Mr. Justice Frankfurter

From: The Chief Justice

Circulated:

Recirculated: Feb. 20, 1947

Changes on Pages 18, 19, 20, 21, 22, 23, 26, 30, 37, 38, 39

I agree with all the changes beginning with II, with a small suggestion on p. 39

And see also VI. p. 37