THE PERIL OF ANTI-INJUNCTION LEGISLATION.

BY HENRY HARRISON LEWIS.

It would be absurd to assert that the entire economic prosperity of the country now depends upon the passage or non-passage of anti-injunction legislation, but there is no doubting the grave peril to our industries and, in fact, to our national welfare which would result from the enactment of any anti-injunction bill based upon the promises of either political party. This peril does not threaten the laboring interests alone. The menace is to the manufacturing classes and to those who employ bodies of men, and the danger reaches almost directly the public at large, the ordinary citizen, the consumer, the housewife and the family.

The history of labor disturbances in this country shows that three distinct classes are always involved or affected. Whether the disturbance is inaugurated by employer or employee, the fact remains that the third party, the general public, comes in for its loss and its share of discomfort and misery. The great railway strikes—interstate, local or street railways—invariably have resulted in serious annoyance, if not positive loss, to the ninety-and-nine citizens who have no direct interest in the controversy.

The loss and annoyance, generally resulting from the disturbance to traffic, are not lasting, but the suffering caused by such strikes to the families of the working-men themselves goes far beyond this. It is estimated that the five great strikes of the past decade practically swept away ninety-six per cent. of the savings of the laboring classes involved.

Beyond this, however, we have the enormous damage to property resulting from strikes, a loss estimated almost in the hundreds of millions, and the incalculable loss due to a retarding of industrial output. It is not necessary to quote statistics; the

general reading public is familiar with the blighting effect of labor disturbances. And it is understood that such losses and damages to capital, labor and to the public resulting from strikes have occurred under existing laws.

The purpose of this article is to show that what is popularly known as anti-injunction legislation as demanded by organized labor will, if enacted, increase a thousandfold the possibility of loss and damage—not only to vested property rights, but in no less degree to labor itself and to the individual citizen.

The average man might readily infer, from the clamorous denunciation of "government by injunction," that the Federal courts do little but issue injunctions in labor disputes. One would imagine their approaches crowded with jostling employers, petition in hand, the judge distributing restraining orders as a bill-boy scatters circulars. But, with the record spread open, before we consider how frequently the writ issues, let us pause to ask ourselves what it is. The writ of injunction is an extraordinary remedy. It does not issue with the frequency of a summons or subpœna. It is an order of a court of competent jurisdiction generally prohibiting the doing of certain things, but sometimes assuming a mandatory form to require the doing of others. It proceeds from an equity tribunal, whose chief function is to prevent the doing of wrong, an office in which it is distinguished from courts of law, whose purpose is to compel compensation after harm has been inflicted; and, since the very essence of equity power exercised through this writ is prevention rather than cure, it acts upon the presentation of allegation of fact, supported by affidavits and such other evidence as it may require, to prevent not merely future irreparable injury, but that which is immediately present and threatening, and might either destroy or impair the subject-matter of controversy before the court could adjudicate upon it, or would work irremediable harm while the plaintiff was proving the danger of his position. As it is in the office of a court of law to hear and give judgment in compensation for injury suffered in the past, so it is in the very nature and purpose of an equity court to interpose its arm to prevent the commission of an injury immediately menacing, and for which law courts can provide neither adequate protection nor adequate compensation.

The injunction law, as it now stands on the statute-books, per-

mits the issuance of an injunction or restraining order by any properly authorized judge, at the request of any one whose rights are in danger. In labor cases, it is generally requested against the exercise of the boycott, or at times when violence is threatened, or damage to property or to life is imminent. The most important effect has been in connection with the boycott. This degree of importance comes from the fact that the boycott is regarded by organized labor as its most potent weapon against the employer, and by the employer as most drastic and damaging to property rights and to business.

During the past year, two important boycott cases—that of the Bucks Stove and Range Company, and that of the Loewe (Danbury) Hat concern—have been fought out in the courts. Permanent injunctions against a continuance of the boycott were secured in both cases, greatly to the dismay and discouragement of organized labor. The loss of these two cases has resulted in a most determined effort, on the part of organized labor, to have legislation enacted which will practically nullify the power of the injunction or at least make the injunction far more difficult to secure.

During the past session of Congress, twenty-two bills were introduced providing for a modifying of existing injunction laws. Several of these bills, notably the Pearre Bill, were strongly urged by labor and strongly combated by the employing interests. Congress adjourned without enacting any of them.

So earnest and emphatic have been the demands of organized labor for anti-injunction legislation that the highest executive official of the nation finally became involved in the controversy, as well as several important industrial and civic bodies.

For more than two years, the President in his messages to Congress has iterated and reiterated his belief that there has been a continuous improper and oppressive use of the writ of injunction in labor disputes by courts of the United States. Summing up these serious statements, he declared in his special message of April 27th, 1908:

"First as to the power of injunction and of punishment for contempt. In contempt cases, save where immediate action is imperative, the trial should be before another judge. As regards injunctions, some such legislation as that I have previously recommended should be enacted. Those in whose judgment we have most right to trust are of the opinion that, while much of the complaint against the use of the injunction is unwar-

ranted, yet that it is unquestionably true that, in a number of cases, this power has been used to the grave injury of the rights of laboring men. I ask that it be limited in some such way as that I have already pointed out in my previous messages, for the very reason that I do not wish to see an embittered effort made to destroy it."

In his message transmitted to Congress at the beginning of the last session, the President made the following serious charge:

"Instances of abuse in the granting of injunctions in labor disputes continue to occur."

There is no mistaking the meaning and gravity of these statements made officially in public documents by the President of the United States. Plainly and frankly, they imply a condition abhorrent to every American citizen. Our laws have been made for the benefit of all alike, irrespective of color, creed or politics.

A foreigner reading this note of warning in a public document, such as the President's Annual Message, could obtain only one impression, that our just laws are being used unjustly, and that our courts are discriminating between classes. Any citizen of the country would receive a similar impression.

Let us inquire upon what facts these grave reflections are predicated. It would seem that the President must possess facts to verify these declarations, but he has not supplied them to Congress, as at other times and in other cases he has offered evidence to substantiate the wisdom of his recommendations. Do those to whose protests he alludes offer proof of the numerous abuses to which they complain they have been subjected? We have heard the indictment, let us examine the evidence.

The accusation implied finally received the attention of a member of the House Committee on the Judiciary, the Hon. Charles E. Littlefield. It was extremely fitting that a representative of that particular legislative Committee should take up the question, because the accusation was directed against the judiciary.

Mr. Littlefield requested Mr. James A. Emery, an attorney for the National Association of Manufacturers, who with James W. Van Cleave, President of the Association, was directly interested in such legislation, to make a careful examination of the "Federal Reporter" since January 1st, 1893, for the purpose of ascertaining how many injunctions of all kinds have been issued by the Federal courts since that date. This investigation disclosed that, in all, there have been 328 injunctions, only twenty of these

involving labor controversies. In five of these twenty, there were notice and hearing before the order was issued, leaving only fifteen since January 1st, 1893, up to date, issued without notice or hearing. The results of the investigation show further that there is absolutely nothing in the records to indicate that any of them were excessive or oppressive in their scope, or that they were not fully justified by the facts presented to the court.

In presenting his report, Mr. Emery makes the following decisive analysis of a number of restraining orders, injunctions and decisions filed with the Judiciary Committee of the House by the President of the American Federation of Labor:

"These acts of the courts cover a period of approximately fifteen years. Your counsel has given them careful examination, finding among them eighteen injunction cases, in fifteen of which *ex parte* restraining orders were issued, seven of which were not contested, and could not therefore be said to be objectionable; two were dissolved on hearing, one has not yet been heard owing to continuances at the request of the defendants; and the remainder, with one exception, were continued in force after hearing and argument, and only one injunction, during fifteen years of judicial action, was modified by a higher court. No other department of litigation can present so remarkable a record of freedom from judicial error. Confirming the injustice and inaccuracy of recent criticism, Mr. Townsend, of Michigan, leading the movement to reform the abuse of the injunction, admits, in a public statement recently made to his local press, that he cannot find 'one case' where the writ has been 'improperly issued.'"

Summing up the results of the entire investigation of official court records, Mr. Littlefield solemnly declared on the floor of the House of Representatives:

"Under these circumstances, I do not hesitate to say that the Committee cannot itself perceive that there have been instances of abuse in the granting of injunctions. I submit, with entire confidence, that it seems to me that when we have called upon the attorney for the American Federation of Labor for instances and specifications, and he fails to furnish them; when we have called upon the head of the organization itself for the same information, and he furnishes information without calling attention to any criticism; when we have made a thorough and exhaustive investigation of the reported decisions of the courts; when we have applied to the Department of Justice and ascertained that they have no information in relation thereto; when the gentleman from Michigan has made his independent and disinterested search and found nothing; when the Supreme Court, though not referring specifically to labor controversies, says that the judges have exercised due care; and when there has never been, from any quarter, prior to the letter of the

President, the slightest intimation upon the part of men representing the labor organizations that any abuse of the writ of injunction amounting to a high crime and a misdemeanor has ever been committed—and I think it is hardly necessary to suggest that the gentlemen who appeared before our Committee for the promotion of legislation of that character have never been backward in their assaults upon the judiciary—it appears that we have, with reasonable diligence at least, exhausted every available source of inquiry. I feel certain that the President has been deliberately misinformed as to the facts as they exist in connection with this question, because, in my judgment, there are no facts that warrant the suggestion or the intimation, at least since 1893, that a single judge, anywhere, at any time, in any place, under any stress, has been guilty of any abuse of the judicial power in issuing either a temporary restraining order or a preliminary injunction."

Not only has the endeavor been made to prevent the issuance of an injunctive writ until the wrong threatened has been inflicted, but it has been suggested and recommended by the Chief Executive of the nation that the judge who issues an injunction shall not try the violator of his order; that the court commanding shall be deprived of the power to enforce obedience; that he who is the last protection of property and personal rights shall leave to another court the vindication and protection of the judicial power reposed in him.

The purpose aimed at in the attempt to restrict the issuance of injunctions has, usually speaking, been expressed in general terms, but in the Beveridge Bill, for example, the requirements of notice and hearing applied only to cases involving controversies between employer and employee. The mere statement of the proposition involved refutes it. Such a measure would declare to the courts of the United States: "We do not question your right or duty to issue an injunction for the protection of property rights against irreparable damage in the absence of an adequate remedy at law; but we do say to you that the same property rights are not to be equally protected by the same court against all forms of attack."

Thus, if property or property rights be threatened in a dispute over a patent, by unfair competition, by the negotiation of securities fraudulently obtained, an injunction must issue. If the stability of your walls is threatened, if one asserting title to a portion of their support undermines them, if a nuisance threatens your health, impairs or obstructs the highways, the writ must issue; but if the manufacture of your patent, the same building, the same business, the same property right elsewhere protected be,

in the course of an industrial dispute, threatened with damage and destruction by men who declare that you may not operate your factory, execute your business or exercise your rights unless first you accept the industrial conditions under which they demand you shall operate, then these identical property rights, protected against every other form of attack by every court of the United States, shall not be protected until the parties menacing, attacking and destroying your property and preventing the exercise of your rights, shall first have notice of your intention to demand the protection of a court.

This, then, seems to be the issue confronting us. Both political parties have approached the subject and, under stress of a great political campaign, have gravely considered a change in the law which now offers to capital and labor, to man and woman and child, the sane protection of a judiciary which never before, in the long and honorable history of our country, has been questioned.

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WOMAN IN THE ITALIAN NOVEL.

BY JOSEPH SPENCER KENNARD, LL.D.

LESS than half a century ago, there were many Italian peoples, but there was no Italian Nation. Out of these petty duchies, kingdoms and states, the ideals of unity and liberty have made the constitutional Kingdom of Italy. Essential differences distinguished the Roman from the Lombard, the Venetian from the Sicilian; and these social, lingual, intellectual and temperamental differences were not obliterated by a stroke of the pen, as the petty political divisions were swept away by a decree. Much, indeed, yet remains to be accomplished; but to-day the whole Italian peninsula is inhabited by one Italian Nation.

Doubtless because of these diversities, the words "Italian woman" do not evoke one clearly outlined figure, though they do suggest a vision of indefinite beauty.

If, indeed, even now, there exists a true "Italian Type" of woman, blossoming from an ancient stock, in a nation new-born, its presentation will be a genuine contribution to "feminism" and a valuable study in social evolution. Especially valuable because the phenomena of Italian feminine development and adaptation epitomizes the story of other slower national evolutions and indicates the direction of certain world-wide currents.

Not only are Italian women everywhere aspiring after better education and seeking for larger personal independence, but, as the pursuit of these aims has established a closer affinity between women's organizations, Italian women have discovered many unsuspected resemblances, which, in the aggregate, make up the "Italian Type"—a type whose psychological and social aspects will be best revealed through the Italian novel, if that novel satisfies Taine's luminous definition, "*Le Roman est la confession d'une société*"; because this "confession," besides avowedly and