

restraining order has been served on the defendant, or, if it has not been served on him, that he had notice or knowledge of its contents.

Now, in this case, the information, I think, lacks considerable of having the certainty and precision that is essential. It is not alleged that this man was one of the unknown parties that are referred to in the injunction. It is not alleged that the restraining order was a lawful one, in the language of the statute. It does not allege,—and that is the most serious thing, to my mind,—that either by his words or his acts he was engaged in aiding the common object with other members of the American Railway Union. If what this man did was not done to give aid or comfort or encouragement to the object of arresting the mails, if it was an independent crime the man was committing, if he wanted to commit arson or robbery, without having any connection with these men that were engaged in the interruption of commerce, then he would not be within the terms of the restraining order, nor within the law, which has been read here,—the law of July 2, 1890. Now, it is not charged, although it has been assumed all the way through,—I suppose the proof adduced would go to show that,—that he was connected with the railway union, and that his acts were acts that were calculated in their nature to give aid and comfort to the strike that has been carried on. If those facts were proved, why they would be sufficient to satisfy the court that his mind was acting in combination with the minds of Debs and others, or that they were engaged in the common purpose, and hence that they were in the conspiracy that is mentioned in the statute, provided the things that they were trying to do would naturally result in delaying or interrupting the mails, or in delaying or interrupting the carriage of passengers and freight from one state to another. I think that in these particulars the affidavit is insufficient. I think the charge is sufficient, so far as showing that the court has jurisdiction to issue the writ, when it is shown by an affidavit that this man was engaged in the combination or conspiracy with other railroad men in aiding and assisting to arrest the mails and interstate commerce. I think the affidavit would show a cause of action against him, and then it would depend upon the proof whether or not the offense was made out.

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#### In re CHARGE TO GRAND JURY.

(District Court, N. D. Illinois. July 10, 1894.)

##### 1. INSURRECTION—WHAT CONSTITUTES.

The open and active opposition of a number of persons to the execution of the laws of the United States, of so formidable a nature as to defy for the time being the authority of the government, constitutes an insurrection, even though not accompanied by bloodshed, and not of sufficient magnitude to render success probable.

##### 2. CRIMINAL CONSPIRACY—OBSTRUCTING MAILS AND INTERSTATE COMMERCE.

A corrupt or wrongful agreement between two or more persons that the employes of railroads carrying the mails and conducting interstate commerce should quit, and that all others should, by threats or violence, be prevented from taking their places, constitutes a criminal conspiracy to hinder or obstruct the mails and interstate commerce.

**8. SAME—LABOR ORGANIZATION.**

Where two or more leaders of a labor association, for the purpose of advancing personal ambition or satisfying private malice, by concert, insist or demand, under effective penalties and threats, upon the members of the association quitting their employment, to the obstruction of the mails or of interstate commerce, they are guilty of criminal conspiracy.

A grand jury, having been called to consider the offenses alleged to have been committed during the strike of the American Railway Union against the railroads hauling Pullman cars, was instructed by the court as follows:

GROSSCUP, District Judge. Gentlemen of the Grand Jury: You have been summoned here to inquire whether any of the laws of the United States within this judicial district have been violated. You have come in an atmosphere and amid occurrences that may well cause reasonable men to question whether the government and laws of the United States are yet supreme. Thanks to resolute manhood, and to that enlightened intelligence which perceives the necessity of a vindication of law before any other adjustments are possible, the government of the United States is still supreme.

You doubtless feel, as I do, that the opportunities of life, under present conditions, are not entirely equal, and that changes are needed to forestall some of the dangerous tendencies of current industrial tendencies. But neither the torch of the incendiary, nor the weapon of the insurrectionist, nor the inflamed tongue of him who incites to fire and sword is the instrument to bring about reforms. To the mind of the American people; to the calm, dispassionate sympathetic judgment of a race that is not afraid to face deep changes and responsibilities, there has, as yet, been no appeal. Men who appear as the champions of great changes must first submit them to discussion, discussion that reaches, not simply the parties interested, but the outer circles of society, and must be patient as well as persevering until the public intelligence has been reached, and a public judgment made up. An appeal to force before that hour is a crime, not only against government of existing laws, but against the cause itself; for what man of any intelligence supposes that any settlement will abide which is induced under the light of the torch or the shadow of an overpowering threat?

With the questions behind present occurrences, therefore, we have, as ministers of the law and citizens of the republic, nothing now to do. The law as it is must first be vindicated before we turn aside to inquire how law or practice, as it ought to be, can be effectually brought about. Government by law is imperiled, and that issue is paramount.

The government of the United States has enacted laws designed, first, to protect itself and its authority as a government, and, secondly, its control over those agencies to which, under the constitution and laws, it extends governmental regulation. For the former purpose,—namely, to protect itself and its authority as a government,—it has enacted that every person who incites, sets on foot, assists, or engages in, any rebellion or insurrection against the

authority of the United States or the laws thereof, or gives aid or comfort thereto, "and any two or more persons in any state or territory who conspire to overthrow, put down, or destroy by force the government of the United States, or to levy war against them, or to oppose by force the authority thereof; or by force to prevent, hinder or delay the execution of any law of the United States contrary to the authority thereof," shall be visited with certain penalties therein named.

Insurrection is a rising against civil or political authority,—the open and active opposition of a number of persons to the execution of law in a city or state. Now, the laws of the United States forbid, under penalty, any person from obstructing or retarding the passage of the mail, and make it the duty of the officers to arrest such offenders, and bring them before the court. If, therefore, it shall appear to you that any person or persons have willfully obstructed or retarded the mails, and that their attempted arrest for such offense has been opposed by such a number of persons as would constitute a general uprising in that particular locality, and as threatens for the time being the civil and political authority, then the fact of an insurrection, within the meaning of the law, has been established; and he who by speech, writing, or other inducement assists in setting it on foot, or carrying it along, or gives it aid or comfort, is guilty of a violation of law. It is not necessary that there should be bloodshed; it is not necessary that its dimensions should be so portentous as to insure probable success, to constitute an insurrection. It is necessary, however, that the rising should be in opposition to the execution of the laws of the United States, and should be so formidable as for the time being to defy the authority of the United States. When men gather to resist the civil or political power of the United States, or to oppose the execution of its laws, and are in such force that the civil authorities are inadequate to put them down, and a considerable military force is needed to accomplish that result, they become insurgents; and every person who knowingly incites, aids, or abets them, no matter what his motives may be, is likewise an insurgent. The penalty for the offense is severe, and, as I have said, is designed to protect the government and its authority against direct attack. There are other provisions of law designed to protect those particular agencies which come within governmental control. To these I will now call your attention.

The mails are in the special keeping of the government and laws of the United States. To insure their unhindered transmission, it is made an offense to knowingly and willfully obstruct or retard the passage of the mail, or any carriage, horse, driver, or carrier carrying the same. It is also provided that "if two or more persons conspire together to commit any offense against the United States and one or more of such parties do any act to effect the object of the conspiracy," all the parties thereto shall be subject to a penalty. Any person knowingly and willfully doing any act which contributes, or is calculated to contribute, to obstructing or hindering the mails, or who knowingly and willfully takes a part in such

acts, no matter how trivial, if intentional, is guilty of violating the first of these provisions; and any person who conspires with one or more persons, one of whom subsequently commits the offense, is likewise guilty of an offense against the United States. What constitutes conspiracy to hinder or obstruct the mails will be touched upon in connection with the subject to which I now call your attention.

The constitution places the regulation of commerce between the several states, and between the states and foreign nations, within the keeping of the United States government. Anything which is designed to be transported for commercial purposes from one state to another, and is actually in transit, and any passenger who is actually engaged in any such interstate commercial transaction, and any car or carriage actually transporting or engaged in transporting such passenger or thing, are the agencies and subject-matter of interstate commerce, and any conspiracy in restraint of such trade or commerce is an offense against the United States. To restrain is to prohibit, limit, confine, or abridge a thing. The restraint may be permanent or temporary. It may be intended to prohibit, limit, or abridge for all time, or for a day only. The law draws no distinction in this respect. Commerce of this character is intended to be free, except subject to regulation by law, at all times, and for all periods. Temporary restraint is therefore as intolerable as permanent, and practical restraint by actual physical interference, as criminal as that which flows from the arrangements of business and organization. Any physical interference, therefore, which has the effect of restraining any passenger, car, or thing constituting an element of interstate commerce, forms the foundation for this offense. But to complete this offense, as also that of conspiracy to obstruct the mails, there must exist, in addition to the overt act and purpose, the element of criminal conspiracy.

What is criminal conspiracy? If it shall appear to you that any two or more persons corruptly or wrongfully agreed with each other that the trains carrying the mails and interstate commerce should be forcibly arrested, obstructed, and restrained, such would clearly constitute a conspiracy. If it shall appear to you that two or more persons corruptly or wrongfully agreed with each other that the employes of the several railroads carrying the mails and interstate commerce should quit, and that successors should, by threats, intimidation, or violence, be prevented from taking their places, such would constitute a conspiracy.

I recognize, however, the right of labor to organize. Each man in America is a freeman, and, so long as he does not interfere with the rights of others, has the right to do with that which is his what he pleases. In the highest sense, a man's arm is his own, and, aside from contract relations, no one but he can direct when it shall be raised to work, or shall be dropped to rest. The individual option to work or to quit is the imperishable right of a freeman. But the raising and dropping of the arm is the result of a will that resides in the brain, and, much as we may desire that such wills

should remain entirely independent, there is no mandate of law which prevents their association with others, and response to a higher will. The individual may feel himself, alone, unequal to cope with the conditions that confront him, or unable to comprehend the myriad of considerations that ought to control his conduct. He is entitled to the highest wage that the strategy of work or cessation from work may bring, and the limitations upon his intelligence and opportunities may be such that he does not choose to stand upon his own perception of strategic or other conditions. His right to choose a leader, one who observes, thinks, and wills for him,—a brain skilled to observe his interest,—is no greater pretension than that which is recognized in every other department of industry. So far, and within reasonable limits, associations of this character are not only not unlawful, but are, in my judgment, beneficial, when they do not restrain individual liberty, and are under enlightened and conscientious leadership.

But they are subject to the same laws as other associations. The leaders to whom are given the vast power of judging and acting for the members are simply, in that respect, their trustees. Their conduct must be judged, like that of other trustees, by the extent of their lawful authority, and the good faith with which they have executed it. No man, in his individual right, can lawfully demand and insist upon conduct by others which will lead to an injury to a third person's lawful rights. The railroads carrying the mails and interstate commerce have a right to the service of each of their employes until each lawfully chooses to quit; and any concerted action upon the part of others to demand or insist, under any effective penalty or threat, upon their quitting, to the injury of the mail service or the prompt transportation of interstate commerce, is a conspiracy, unless such demand or insistence is in pursuance of a lawful authority conferred upon them by the employes themselves, and is made in good faith in the execution of such authority. The demand and insistence under effective penalty or threat, and injury to the transportation of the mails or interstate commerce being proven, the burden falls upon those making the demand or insistence to show lawful authority and good faith in its execution.

Let me illustrate: Twelve carpenters are engaged in building a house. Aside from contract regulations, they each can quit at pleasure. A thirteenth and fourteenth man, strangers to them, by concerted threats of holding them up to public odium or private malice, induce them to quit, and leave the house unfinished. The latter in no sense represent the former or their wishes, but are simply interlopers for mischief, and are guilty of conspiracy against the employers of the carpenters. But if, upon a trial for such, it results that, instead of being strangers, they are the trustees, agents, or leaders of the twelve, with full power to determine for them whether their wage is such that they ought to continue or quit, and that they have in good faith determined that question, they are not then, so far as the law goes, conspirators. But if it should further appear that the supposed authority was used, not in the in-

terests of the twelve, but to further a personal ambition or malice of the two, it would no longer justify their conduct. Doing a thing under cloak of authority is not doing it with authority. The injury of the two to the employer, in such an instance, would only be aggravated by their treachery to the associated twelve, and both the employer and employés should, with equal insistence, ask for the visitation of the law.

If it appears to you, therefore,—applying the illustration to the occurrences that will be brought to your attention,—that any two or more persons, by concert, insisted or demanded, under effective penalties and threats, upon men quitting the employment of the railways, to the obstruction of the mails or interstate commerce, you may inquire whether they did these acts as strangers to these men, or whether they did them under the pretension of trustees or leaders of an association to which these men belong. And, if the latter appears, you may inquire whether their acts and conduct in that respect were in faithful and conscientious execution of their supposed authority, or were simply a use of that authority as a guise to advance personal ambition or satisfy private malice. There is honest leadership among these, our laboring fellow citizens, and there is doubtless dishonest leadership. You should not brand any act of leadership as done dishonestly or in bad faith unless it clearly so appears. But if it does so appear,—if any person is shown to have betrayed the trust of these toiling men, and their acts fall within the definition of crime, as I have given it to you,—it is alike the interest, the pleasure, and the duty of every citizen to bring them to swift and heavy punishment.

I wish again, in conclusion, to impress upon you the fact that the present emergency is to vindicate law. If no one has violated the law, under the rules I have laid down, it needs no vindication; but, if there has been such violation, there should be quick, prompt, and adequate indictment. I confess that the problems which are made the occasion or pretext for our present disturbances have not received the consideration they deserve. It is our duty, as citizens, to take them up, and, by candid and courageous discussion, ascertain what wrongs exist, and what remedies can be applied. But neither the existence of such problems, nor the neglect of the public hitherto to adequately consider them, justify the violation of law, or the bringing on of general lawlessness. Let us first restore peace, and punish the offenders of the law, and then the atmosphere will be clear to think over the claims of those who have real grievances. First vindicate the law. Until that is done, no other questions are in order.

## In re GRAND JURY.

(District Court, S. D. California. June 29, 1894.)

**1. CONSPIRACY—OBSTRUCTION OF INTERSTATE COMMERCE.**

A railroad which is a link in a through line of road by which passengers and freight are carried into a state from other states and thence to other states, is engaged in interstate commerce, within the statute declaring every combination or conspiracy in restraint of such commerce to be an offense.

**2. SAME—RUNNING OF TRAINS.**

Though a railroad company engaged in interstate commerce must, unless prevented by circumstances beyond its control, run trains in a reasonable manner, and as often as the ordinary business of commerce requires, yet, where the composition of its trains, as ordinarily made up, is reasonable and appropriate to the service required, it is not obliged, on the refusal of its employes to move the trains so long as certain cars are thereon, to leave off such cars, and run the rest of the train.

**3. MAIL—DUTY OF RAILROAD COMPANY.**

Where the regular passenger trains of a railroad have been designated for the carrying of mail, failure of the railroad to run other trains for that purpose is not in violation of the statute against obstruction and interruption of the mail.

Instructions given to the grand jury by ROSS, District Judge:

(June 29, 1894.)

Gentlemen of the Grand Jury: Under and by virtue of provisions of the statutes of the United States all railroads or parts of railroads which are now in operation are post roads, and every railroad company in the United States whose road is operated by steam is authorized to carry upon and over its road, boats, bridges, and ferries all passengers, troops, government supplies, mails, freight, and property on their way from any state to another state, and to connect with roads of other states so as to form continuous lines for the transportation of the same to the place of destination. A railroad which is a link in a through line of road by which passengers and freight are carried into a state from other states, and from that state to other states, is engaged in the business of interstate commerce, and every combination or conspiracy in restraint of such trade or commerce is by statute declared to be illegal, and the persons so combining or conspiring are by law guilty of the commission of a crime. Congress has passed laws to regulate such commerce, and has provided, among other things, that any common carrier subject to the provisions of the interstate commerce act, or, whenever any such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully omit or fail to do any act, matter, or thing required to be done by the act, or shall cause or willfully suffer or permit any act, matter, or thing so directed or required by the act to be done, not to be done, or shall aid or abet such omission or failure, shall be deemed guilty of a misdemeanor, and punished in a certain prescribed way. It is also declared by a statute of the