criminally, under an indictment therefor, or will support a civil action for damages, and the same is true of all other offenses which cause injury to person or property. In such cases the jurisdiction of the civil court is invoked, not to enforce the criminal law and punish the wrongdoer, but to compensate the injured party for the damages which he or his property has suffered, and it is no defense to the civil action that the same act by the defendant exposes him also to indictment and punishment in a court of criminal jurisdiction. So here the acts of the defendants may or may not have been violations of the criminal law. If they were, that matter is for inquiry in other proceedings. The complaint made against them in this is of disobedience to an order of a civil court made for the protection of property and the security of rights. If any criminal prosecution be brought against them for the criminal offenses alleged in the bill of complaint, of derailing and wrecking engines and trains, assaulting and disabling employés of the railroad companies, it will be no defense to such prosecution that they disobeyed the orders of injunction served upon them, and have been punished for such disobedience."

The case simply calls for an application of the injunctive process to prevent complainants' business from fraud and obstruction, and a business is just as much the subject of suit, with a right to protection, as ordinary forms of tangible real and personal property. Whatever doubt may have been expressed at any time, the cases are now agreed upon this proposition. It needs no extended statement to make it manifest that the right to carry on a business without interference, without fraud, and without obstruction, is one of the most valuable of all rights. Indeed, in the commercial world the right of greatest value is the right to freely carry on a lawful business without unlawful interruption. It is a substantial right, which may be protected by any remedy known to the court as fully as a constitutional or statutory right, and as fully as a right in the ordinary forms of property. In Scott v. Donald, 165 U. S. 108, 17 Sup. Ct. 262, already referred to, it was held by the supreme court of the United States that the constitutional right of the complainant to import for his use, from time to time, ale, wines, and liquors, the products of other states, might be protected by injunction from repeated invasion by seizure of goods under color of an unconstitutional statute of the state of South Carolina. The ruling was based on the ground of avoiding a multiplicity of suits, and the want of adequate remedy at law. In Arthur v. Oakes, 11 C. C. A. 209, 63 Fed. 310, it was held (Mr. Justice Harlan delivering the opinion of the court) that, while a contract for personal services could not be enforced by injunction, nevertheless, when employés quitting the service of their employer combine to obstruct the business of such employer by force, threats, or other unlawful methods, such as inducing other employés to quit, and deterring others from taking the places of those leaving, such an injury might be prevented by injunction, and the right to carry on the business without molestation protected. This, too, would be a novel use of the injunction. In Davis v. Zimmerman, already referred to, it was expressly adjudged that the business of a person, if lawfully conducted, is a property right, and may be protected by injunction from injury or destruction. In a full note to the case of Arthur v. Oakes, as reported in 10 Am. Ry. & Corp. Rep. 443 (s. c., 63 Fed. 310), cases are cited in which the same principle is applied to railroads, carriers by water, manufacturers, producers, and others. All these lines of business

are protected by injunction when the ordinary remedies are inadequate. Other cases are cited at the bar, but I do not deem it necessary to further accumulate authorities upon this point. I may here make reference to the case of Lumley v. Wagner, 6 Eng. Ruling Cas. 652. A contract had been made by a lady, in writing, with the plaintiff, upon proper consideration, to sing and perform at his theater for a specified period, and that during her engagement with the plaintiff she would not sing elsewhere without his license in writing. Afterwards a contract was made to sing at a different theater during the same period specified in her engagement with the plaintiff. Upon bill by the plaintiff praying that the defendant might be restrained from singing and performing elsewhere than at his theater during the period specified, the court granted an injunction accordingly. The court, on motion to dissolve, admitted that a contract for personal services could not be directly executed, but it held that it was entirely within the power of the court to prevent by injunction a violation of the contract by singing at another theater. The court did not doubt its power to prevent her from violating her contract by singing at the other theater. This is known as negative enforcement of contract by injunction. In referring to the ground on which the court allowed the injunction, the lord chancellor said:

"Let us see for a moment what is the principle of the jurisdiction of the court. That principle is to bind men's consciences to a fair and liberal performance of their agreements. I have always thought you may attribute a great deal of the right feeling and fair dealing that exists between Englishmen to the exercise of this jurisdiction. Men are not suffered by the law of this country to depart from their contracts at their pleasure. It does not leave the party with whom the contract has been broken to the mere chance of what a jury may give in the shape of damages, but it enforces, where it can, the literal performance of the contract; and this, I believe, has mainly tended to produce the good faith that exists to a greater extent in this country than in many others. Although the jurisdiction of the court is not to be extended, a judge would desert his duty if he did not act up to the rule which predecessors have laid down as the proper exercise of a most valuable and wholesome jurisdiction. Where is the mischief in this case of exercising that jurisdiction? It is objected that, if I refuse this application, I exclude this lady from performing at Covent Garden, when I cannot compel her to perform at the Queen's Theater. I cannot compel her to perform, of course. That is a jurisdiction that the court does not possess, and it is very proper that it should not possess that jurisdiction; but what cause of complaint is it that I should prevent her from doing an act which may compel her to do what she ought to do?"

There is contained in this statement of the lord chancellor a great truth, worthy to become the subject of much thought. The fact that the "right feeling and fair dealing that exists between Englishmen" is in a large measure due to the fact that the English courts vigorously and promptly enforce the law, execute proper contracts, and restrain lawlessness, is a truth of wide application. Just as the courts of any country uphold the law and repress fraud and wrong, just to that extent will there exist "right feeling and fair dealing," confidence in the courts, and respect for lawful authority. In regard to a criminal statute, it is to be remarked that, if it existed, it could furnish no substantial redress for a civil wrong, but only for a public wrong, except such protection as might ultimately result from a total suppression of the business. It may be that in respect of a given prac-

tice a criminal enactment is desirable as a remedy for the public wrong, and to protect the public interest. This is within the legislative province. But when by the same practice a private civil injury is being done this is a subject for the judicial department, by appeal to the courts; and the courts cannot justifiably desert their duty, imposed by constitutional mandate, to administer justice. Whether or not a criminal enactment, if put upon the statute book, would be adequate to suppress the evil, would depend upon whether a criminal court should promptly and fairly avail itself of the new legislative remedy thus placed in its hands. Ours is a government of co-ordinate departments, each department exercising power constitutionally defined and limited. It cannot, compatibly with a government thus constructed, be claimed that the legislature shall be called upon to meet by criminal enactment a question of private wrong, growing out of the new conditions incident to constant changes in business relations and methods. The criminal statute could only operate prospectively, and there would be a complete failure of justice as to all past private injury, however great or shocking. Moreover, as before suggested, what remedy would the criminal law furnish for the private wrong? This question was answered by the court in Shoe Co. v. Saxey, cited above, in these words:

"Equity will not interfere when there is an adequate remedy at law. But what remedy does the law afford that would be adequate to the plaintiffs' injury? How would their damages be estimated? How compensated? The defendants' learned counsel cites us to the criminal statute. But how will that remedy the plaintiffs' injury? A criminal prosecution does not propose to remedy a private wrong. And, even if there was a statute giving a legal remedy to plaintiff, it would not oust the equity jurisdiction. The legal remedy that closes the door of a court of equity is a common-law remedy. Where equity had jurisdiction because the common law affords no adequate remedy, that jurisdiction is not affected by a statute providing a legal remedy. What a humiliating thought it would be if these defendants were really attempting to do what the amended petition charges, and what their demurrer confesses! that is, to destroy the business of these plaintiffs, and to force the eight or nine hundred men, women, boys, and girls who are earning their livings in the plaintiffs' employ to quit their work against their will; and yet there is no law in the land to protect them."

So, aside from other questions in the case, I have no difficulty about the right to employ the writ, so far as the novelty of this application is concerned, which is supposed to be a fundamental objection. Under our system of jurisprudence, the theory is that at any moment of time there is a sufficient remedy, legal or equitable, for every civil, private wrong; and the courts are under a duty, by proper process, to make this theory good in fact.

Another point made is that this special-ticket contract, providing as it does for forfeiture of all rights under the ticket by transfer thereof, has in that way provided a remedy for a breach of such contract, and that this is exclusive of all other forms of relief. It is sufficient to repeat what has already been said, to wit, that these are suits to protect the plaintiffs' business, and in no sense suits upon these ticket contracts, to enforce the same, or to recover damages for breach thereof. These suits are to restrain these defendants from the continued and repeated use of these contracts as instruments and means whereby to commit frauds upon complainants' business. They are

not suits between the parties to these contracts, but against third parties, to restrain the fraudulent use of the contracts as means of committing such wrong. This contention is therefore inapplicable, and this question does not call for judgment by the court. The defendants' counsel, not as a separate point, but in aid of other objections to the relief asked, says that the ticket broker's business is, to an extent, at least, beneficial to the public, and, to an extent, contributes to the success of the Exposition. It was not made entirely clear to the court whether this suggestion related to the general business of the ticket broker, or to that particular business which is now under examination, but the illustration put may speak for itself in this respect. It is said that a person at Chicago, desiring to go East, but not specially intending to come to the Exposition, may be induced to do so if he can buy a low-rate Centennial ticket from Chicago to Nashville and return, and, coming by way of Nashville, sell to the broker the return coupon, and buy at a like cheap rate the return coupon on an Eastern-sold ticket, and in this way go to New York on a low rate, taking in the Exposition on the way. Whether it is best that all of the parties to such a transaction, as a matter of public policy, should be thus permitted to violate a contract and practice an imposition is a question which may be safely left for answer before those who are thoughtful of the deeper consequences involved. It is further evident, in the very nature of the case, that, where one person visits the Exposition in this manner and under such circumstances, hundreds attend for the sole purpose of the Exposition and its benefits; and the number of those who may be induced to come to the Exposition in the way suggested is as one to hundreds, and is relatively wholly insignificant in its importance to the question of much larger importance, of maintaining open to all persons this favorably low-rate ticket designed to promote the success of the Exposition. The use of these tickets in the method hereinbefore pointed out is demoralizing, and subversive of public good and of public morals, and at the same time a private, civil injury; and this, I think, is made sufficiently plain by what has been said. Just before passing away from this point, it may not be inappropriate, in view of the suggestion made, to remark that the question of whether the ticket scalpers' business is one of public good is not a new question, and the view I take of this particular branch which is now under consideration is by no means a new view of the same subject. The highest authorities in the country, both legislative and judicial, have examined this business, and have pronounced judgment upon it. The Interstate Commerce Commission, in its annual report for 1896, after a study of the subject extending over some years, referred to ticket brokerage in terms as follows:

"In our last annual report we took occasion to comment with some severity upon the unlawful practices of a considerable class of persons who engage in the unauthorized sale of interstate passenger tickets, and who are commonly referred to by the expressive name of 'scalpers.' What was then said is, in part, as follows: We deem it a special duty to call your attention to the persistent survival and continued increase of the illegitimate business known as 'ticket brokerage' or 'scalping.' So far from showing any signs of diminution, it appears to be steadily enlarging in scope and volume. It is impossible to give any reliable estimate of the number of persons who take advantage of this means of procuring

unlawful transportation, but it is evident that a considerable percentage of railroad passenger travel is accomplished through the medium of tickets bought at reduced rates of so-called 'brokers.' In every city, and in many of the smaller towns, offices are to be found whose proprietors sell railroad tickets to very many points at much less than the published tariffs. The streets are placarded with alluring advertisements, incoming and outgoing travelers are openly solicited, while in hotels and other public places, and not infrequently in regular railroad stations, the runners and agents of these clandestine dealers invoke participation in transportation bargains, which upon their face, to give them no harsher term, are an obvious evasion of the law. This disregard of law to which we thus referred has apparently continued during the current year, and assumed still greater and more serious proportions. This illegitimate traffic has become a positive scandal, and decisive measures should be taken to put an end to these illegal transactions. The remedy for this evil is easily found. A simple enactment would be sufficient, in our judgment, to prevent these abuses and effectually check this species of misconduct. We therefore recommend that it be made a penal offense for any person to engage in the business of selling interstate passenger tickets unless he is an authorized agent of the carrier, duly constituted such by written appointment, and that every such person be required, under appropriate penalty, to expose in his place of business a certificate of his authority. We also call attention to the fact that extensive frauds upon the public are accomplished by the printing and sale of counterfeit tickets. It has come to our knowledge that hundreds of innocent persons have been victimized by the purchase of spurious tickets from those whose identity could not be clearly established after the fraud was discovered. The actual money loss thus resulting to unsuspecting travelers amounts to a considerable sum, while the distress and annoyance to which innocent persons have been subjected because they have been induced to purchase these sham tickets can be easier imagined than described. It is a defect in the federal statutes that the counterfeiting of railroad tickets is not made a criminal offense, and we earnestly recommend the correction of this defect by an appropriate enactment."

In 1890 the commissioner had said, in part:

"The business is therefore hurtful both to the roads and to the public, in a financial sense, and the extent of the injury it is scarcely possibly to measure. The harm done by an army of unscrupulous depredators upon a legitimate business cannot be computed by any known standard. Lawless greed recognizes no limits, and weak compliance by its victims only stops at exhaustion. But the moral injury both to railroad officials and to the public is even greater. To railroad officials the business serves as an invitation and an excuse for dishonest practices. It is used as a cover—deceitful and transparent, it is true—for evasions of law, and for dishonorable violations of compacts among competing roads to maintain agreed schedules of rates. The public morals are affected by the natural inference that railroad officials are deficient in sense of honor and integrity, and that, if the railroad code of ethics permits one road to cheat another, it is equally permissible for the public to cheat the railroads. The inevitable tendency of the practice, therefore, is to eliminate the moral element, and the rule of action that element inculcates,—business honor,—from the practical field of transportation. In whatever aspect ticket scalping may be viewed, it is fraudulent alike in its conception and in its operation. The competition of roads affords the opportunity for the work of the scalper. Without rival roads competing for business, he could have no field. The prospect of selling more transportation at a discount than at the established rate, and so diverting business dishonestly from a competitor, is the temptation to a road to let a scalper do for it secretly what it does not dare do openly. The weak excuse of every road that transgresses in this manner is that some competitor does it. Fraud, therefore, is the incentive to the business, and in its conduct every step is one of actual fraud. The scalper's vocation, the necessity for his occupation, is to sell transportation at less than published and established rates; in other words, below lawful charges. Every such sale is a fraud upon the law, a fraud upon competing roads, and a fraud upon the stockholders and the creditors of the road for which sale is made."

In addition to this, a number of the states of the Union—among them leading states, like Illinois, Texas, New York, and Pennsylvania

—have enacted legislation suppressing the ticket brokerage business, and this legislation has been upheld by the courts of last resort, as justified by the exercise of the police power of the state. In Minnesota v. Corbett, 57 Minn. 345, 59 N. W. 317, the supreme court of Minnesota held such legislation valid; and in the progress of the opinion, referring to the scalpers' business, the court said:

"With these elementary propositions in mind, we proceed to consider the evils, or supposed evils, which the legislature designed to remedy, and the measures which they have adopted to accomplish that end. It was commonly asserted and believed (to what extent correctly is not important) that spurious and stolen tickets, and tickets which had expired by limitation, or that were not transferable, were often put on the market to such an extent as to work great frauds upon both the public and the carriers; that frequently those selling such tickets were irresponsible, so that the party defrauded had no redress; that the business of trafficking in such tickets often furnished an inducement to railway employés to steal tickets, or issue spurious ones, and put them on the market. It was also commonly believed that, in order to evade statutes designed to secure uniformity of rates and to prevent discriminations, some carriers of passengers were in the habit of placing large blocks of their tickets with 'scalpers,' ostensibly not their agents, for sale at cut rates. To remedy these and similar abuses, real or supposed, this statute was passed. That all its provisions have some relation to, and tendency to accomplish, this end, is quite clear. Do they transcend any constitutional limitation upon legislative power? It seems to us that most of the objections to the act—certainly the first two—are based upon a radical misconception of its provisions, and of the character of transportation tickets as property. Counsel for the defendant seems to assume—First, that such tickets are vendible chattel property, which are the legitimate subject of barter and sale, the same as any other chattels; and, second, that this statute is designed to be a 'license law,' in the ordinary sense of that term. With these two premises assumed, the task of successfully assailing the validity of the act is a very easy one. While a railroad ticket is, in one sense, property, yet it is not merchandise or chattel. It is merely the evidence of the contract of the carrier to transport the holder between the points, and on the condition, therein named. Treating it as a contract itself, it is in the nature of a chose in action. No one with whom a carrier makes such a contract has any inherent constitutional right to insist that it should be assignable. At common law, all choses in action were nonassignable, and if the legislature had deemed it necessary, in order to prevent the supposed evils, to provide that all transportation tickets should be nontransferable, or even to prohibit the issue of tickets altogether, and require carriers of passengers to collect fare in cash, we fail to see why they had not the power to do so."

If the contention that ticket brokerage is beneficial to the public in any sense can be made good, it is necessary to discredit this legislation and the opinions of these great tribunals. That such legislation was enacted, and the judgment of the courts pronounced, only after the most thorough examination and study of the subject, will readily be conceded. Whatever future investigation or study of the subject may disclose as to the ordinary business of the ticket scalper, and whatever may be the final word in any state as to such business, it is certain that methods of the kind which form the subject of the present suit can never be justified from any standpoint of public or private good; and if by such methods the entire business, in all of its branches, is brought into such disrepute as to demand total suppression, it will only make manifest the repetition of history in the end which has come to all such practices.

Another defense urged is that these companies have not themselves adopted proper methods of business whereby to protect themselves against this imposition, and that they are practically not entitled to

relief at the hands of the court of equity. I quite fully agree with counsel that the plaintiffs asking protection of the court of equity must have adopted in good faith, and executed, all proper measures to protect themselves before invoking the power of the court, and I was much impressed with this view when presented at the bar with much power. It is said that the complainant companies have been guilty of discrimination with respect to the public, by issuing an open ticket and an ironclad ticket, without any sufficient reason for the distinction. The ironclad ticket is the one which is required to be signed by the purchaser, and contains stipulations against transfer or use by any other person, while the open ticket is issued in a similar form, and at the same rate, but without the signature, and without provision against transfer. Upon examination it appears that the companies have what they call a "zone" or "radius" of, say, 80 to 100 miles around the city of Nashville, and that within this zone the open Centennial tickets are issued and sold, while beyond the zone limit ironclad tickets only are used. So, too, it does appear that in some instances at the same point both forms of ticket have been sold, and that at particular places, like Jackson, Tenn., and Birmingham, Ala., the ironclad ticket only is sold, while open tickets are put in evidence as having been sold on either side of these places. So far as the zone limit is concerned, I must say that I do not consider the reason offered for establishing such a limit as very satisfactory. Whether this is because the business requires expert knowledge, I do not know, but I fail to see any good reason for this. Be this as it may, the public have made no complaint on this score, and I do not think it is open to these defendants to say, in opposition to the relief, that they should be allowed to continue the injury inflicted on these complainants, and also, it would seem, upon the public, upon the ground that the companies have established this limit arbitrarily. So far as the other irregularities presented are concerned, I find, after an examination of these, that they are extremely few and unimportant, when compared with the whole volume of business transacted in regard to these tickets. By an order in effect June 10, 1897, most of the irregularities were corrected. The Western & Atlantic Railway Company is comparatively free from any irregularity whatever. The Nashville, Chattanooga & St. Louis Railway Company has allowed but few, and the chief of these was due to the fact that an unsuspecting agent was imposed on by the grossest form of misrepresentation by a ticket broker. There are some circumstances in the record to support the belief, and create strong suspicion, that since the institution of these suits a considerable number of the irregularities presented have been brought about at the suggestion of these defendants, by misleading unsuspecting agents, for the purpose of using the irregularities in these suits. The greater number of the failures to have the tickets properly signed and witnessed on the Louisville & Nashville Road may be due to the larger volume of business transacted, and the greater number of employés in its service. In the nature of the case, these large concerns, employing as they do so many persons, cannot at any given time have in their service employés all of whom are sufficiently intelligent and watchful. I am unable to say, even if the objection

were one coming from a proper source, that the defaults on the part of the companies have been such as to deprive them of relief, so far as this ground of objection is concerned.

I have now disposed of all of the grounds of objection urged by the defense. In doing so I have given to the subject that careful study demanded by its importance, and by the earnest ability with which the objections to the bills have been pressed. The use of the writ of injunction is a serious, delicate duty, in any case. It is a striking manifestation of the strong arm of civil authority. My conclusion is that the plaintiffs are entitled to an injunction as prayed for in these bills, upon the execution in each case of bond in the sum of $20,000, to be approved by the clerk of the court, with the usual conditions required by law,—among them, to satisfy and pay all such damages as defendants may sustain by reason of the wrongful suing out of the injunction, in the event the suits shall not be successfully prosecuted. If this amount is not deemed adequate, the defendants are at liberty at any time to ask that the bonds be increased. It may serve to clear up the situation to particularly point out that the injunction now allowed is operative against defendants only in respect to the Centennial low-rate tickets duly signed by the original purchaser in ink, and not in pencil, and not by initial; but, within these limits, it may be well if this injunction is obeyed without indirection. It may further conduce to a clear understanding to say that according to the cases Ex parte Lennon, 12 C. C. A. 134, 64 Fed. 320, and In re Lennon, 166 U. S. 548, 17 Sup. Ct. 658, persons who have knowledge of this injunction are rendered amenable thereto, although not parties to this suit; and it may be well if this fact is kept in mind. It is apparent enough, without being repeated, that the general business of the ticket scalpers is not here in question, and is not interrupted or interfered with by this injunction. It is only the scalpers' practice of dealing in the particular Centennial tickets when duly signed and executed in the manner suggested above.

NOTE BY THE JUDGE.

That tickets with conditions and restrictions like those contained in the Centennial ticket are valid and binding on the purchaser has been often decided. Among many cases, Mosher v. Railway Co., 127 U. S. 390, 8 Sup. Ct. 1324, Boylan v. Railroad Co. 132 U. S. 146, 10 Sup. Ct. 50, Drummond v. Southern Pac. Co., 7 Utah, 118, 25 Pac. 733, and Cody v. Railroad Co., 4 Sawy. 114, Fed. Cas. No. 2,940, may be cited. Knight v. Railroad Co., 56 Me. 234, and Railroad Co. v. Connell, 112 Ill. 295, are cases holding that through tickets in form of coupons constitute a contract with each company over whose line transportation is called for. See, also, Railroad Co. v. Weaver, 9 Lea, 38.

INJUNCTION—IN WHAT CASES A PROPER REMEDY RESTRAINING CRIMINAL ACTS.

Injunction will lie, at the suit of the state, against a corporation, when it is misusing and abusing its corporate franchises and privileges, and is maintaining its property as a nuisance, though its acts also constitute a crime. Columbian Athletic Club v. State, 143 Ind. 98, 40 N. E. 914, and 2 Am. & Eng. Dec. Eq. 340. And wherever an individual can show a distinct and irreparable injury to himself, apart from the public in general, he may maintain a bill for injunction against the acts complained of, although criminal, and although the party complained of is liable to prosecution for such acts. Such injunction will be granted where the element of irreparable injury exists in the case. Columbian Athletic Club v. State, before cited; Shoe Co. v. Saxey (decided by the supreme court of Missouri)

32 S. W. 1106; In re Debs, before referred to,—all reported in 2 Am. & Eng. Dec. Eq. 340, 356, 364. In valuable and extended notes to these cases as reported will be found modern cases illustrating the use of the injunction as a preventive remedy, wherever the facts show that the common law affords no adequate remedy for the acts when once accomplished; and it is no objection to the injunction in such cases that the acts are also criminal, as criminal prosecution furnishes no redress for a private injury sustained. See, also, Stamping Co. v. Fellows, 163 Mass. 191, 40 N. E. 105, and 2 Am. & Eng. Dec. Eq. 599, and note.

PROTECTION OF TRADE OR BUSINESS AGAINST FRAUD.

A lawful business may be protected against fraud by injunction, although not carried on under monopoly of a valid trade-mark. So, if a person is using something to designate his articles, the exclusive right to use which cannot be claimed as a trade-mark, nevertheless, if such person can show to a court of equity that another person is selling an article like his in such way as to induce the public to believe that it is his, and that he is doing this fraudulently, he may have relief by injunction to prevent such piracy. It is a fraud for one person to palm off his manufactures as those of another person, although he commits fraud by the use of names which are not a subject of trade-mark property. California Fig Syrup Co. v. Frederick Stearns & Co., 43 U. S. App. 234, 20 C. C. A. 22, and 73 Fed. 812; Salt Co. v. Burnap, 43 U. S. App. 243, 20 C. C. A. 27, and 73 Fed. 818. Modern cases clearly are to the effect that a lawful business is entitled to protection by injunction against fraud, regardless of any question of trade-mark. Lawrence Manuf'g Co. v. Tennessee Manuf'g Co., 138 U. S. 537, 11 Sup. Ct. 396; Coats v. Thread Co., 149 U. S. 562, 13 Sup. Ct. 966. See, also, Oxley Stave Co. v. Coopers' International Union, 72 Fed. 695; Wire Co. v. Murray, 80 Fed. 811; Central Trust Co. of New York v. Citizens' St. R. Co., Id. 218. In Blindell v. Hagan, 54 Fed. 40 (affirmed in 6 C. C. A. 86, 56 Fed. 696), it was decided that jurisdiction of the circuit court to entertain suit to enjoin a combination of persons from interfering with and preventing shipowners from shipping a crew could be maintained on the ground of preventing a multiplicity of suits at law, and because damages at law for interrupting the business and intercepting the profits of pending enterprises and voyages must, in their nature, be conjectural, and not susceptible of certain proof. It was alleged in that case that complainants could not obtain a crew without a restraining order of the court.

FEDERAL AND STATE COURTS — WHEN INJUNCTION WILL BE GRANTED BY FEDERAL OR STATE COURTS AGAINST THE PROSECUTION OF SUITS IN EACH OTHER'S JURISDICTION.

In regard to this question, although not specially related to the question of the principal case, the following statement is found in 36 Am. Law Reg. & Rev. (July, 1897) p. 462: "As a general rule, the federal courts will not enjoin the prosecution of a suit in a state court, being prohibited by statute. Rev. St. U. S. § 720; Diggs v. Wolcott (1807) 4 Cranch, 179; Dillon v. Railway Co. (1890) 43 Fed. 109; Haines v. Carpenter (1875) 91 U. S. 254; Dial v. Reynolds (1877) 96 U. S. 340; The Mamie (1884) 110 U. S. 742, 4 Sup. Ct. 194. But cases may arise which fall without the statute. Fisk v. Railway Co. (1873) 10 Blatchf. 518, Fed. Cas. No. 4,830; French v. Hay (1874) 22 Wall. 250; Railway Co. v. Kuteman (1892) 4 C. C. A. 503, 54 Fed. 547. So, though a state court generally will not enjoin the prosecution of a suit in a federal court,—Riggs v. Johnson Co. (1867) 6 Wall. 166; U. S. v. Keokuk, Id. 514; Mead v. Merritt (1831) 2 Paige, 402; Schuyler v. Pelissier (1838) 3 Edw. Ch. 191; Town of Thompson v. Norris (1882) 63 How. Prac. 418,—it may do so in a proper case, and punish the offender for contempt if he persists,—Hines v. Rawson (1869) 40 Ga. 356." See, also, Simpson v. Ward, 80 Fed. 561; Holt Co. v. National Life Ins. Co. of Montpelier, Id. 686.

BREACH OF INJUNCTION BY PERSONS NOT ENJOINED OR A PARTY TO THE ACTION —AIDING AND ABETTING—COMMITTAL.

In the late case of Seward v. Patterson [1897] 1 Ch. 545, the English court of appeal affirmed the decision of North, J., and held that the court had jurisdiction to commit for contempt a person not included in an injunction or a party to the action, but who nevertheless, knowing of the injunction, aided and abetted a defendant in committing a breach thereof. It was said there was a clear distinction between a motion to commit a man for breach of an injunction on the ground

that he was bound by the injunction, and a motion to commit a man on the ground that he aided and abetted in the breach of such injunction.

With respect to the use of the injunction and the parties who may be made defendants to the same bill in respect to the same subject-matter, the following cases may be referred to generally: Lembeck v. Nye (decided May 20, 1890) 47 Ohio St. 336, 24 N. E. 686; Morgan Envelope Co. v. Albany Perforated Wrapping-Paper Co., 40 Fed. 577; Supply Co. v. McCready, 4 Ban. & A. 588, Fed. Cas. No. 295; Snyder v. Bunnell, 29 Fed. 47; Wallace v. Holmes, 9 Blatchf. 65, Fed. Cas. No. 17,100; Chemical Works v. Hecker, 2 Ban. & A. 351, Fed. Cas. No. 12,133; Tie Co. v. Simmons, 106 U. S. 89, 1 Sup. Ct. 52; Tilghman v. Proctor, 102 U. S. 707; Travers v. Beyer, 26 Fed. 450; Alabastine Co. v. Payne, 27 Fed. 559; Cuervo v. Jacob Henkell Co., 50 Fed. 471; Von Mumm v. Frash, 56 Fed. 830; Heaton-Peninsular Button-Fastener Co. v. Eureka Specialty Co., 25 C. C. A. 267, 77 Fed. 288. See, also, Id., 65 Fed. 620; Cooley, Torts, p. 153; 1 Jagg. Torts, § 123; Varick v. Smith, 5 Paige, 137; Emigration Co. v. Guinault, 37 Fed. 523; Story, Eq. Pl. § 284.

With special reference to the protection of business from injury by conspiracy or combination, directly or indirectly, the following well-considered cases may be consulted with much advantage: Sherry v. Perkins, 147 Mass. 212, 17 N. E. 307; Curran v. Galen, 152 N. Y. 33, 46 N. E. 297; Murdock v. Walker, 152 Pa. St. 595, 25 Atl. 492; Barr v. Trades Council, 53 N. J. Eq. 101, 30 Atl. 881; Vegelahn v. Guntner (Mass.) 44 N. E. 1077; Spinning Co. v. Riley, L. R. 6 Eq. 551 (decided in 1868); Carleton v. Rugg, 149 Mass. 550, 22 N. E. 55; Littleton v. Fritz, 65 Iowa, 488, 22 N. W. 641; State v. Crawford, 28 Kan. 726; Kansas v. Ziebold, 123 U. S. 626, 8 Sup. Ct. 273.

LONE JACK MIN. CO. et al. v. MEGGINSON.

(Circuit Court of Appeals, Ninth Circuit. June 28, 1897.)

No. 345.

1. APPEAL—OBJECTIONS IN LOWER COURT—EQUITY JURISDICTION.
   In an equity proceeding to quiet title, where the trial court had jurisdiction of the subject-matter, an objection to the jurisdiction, on the ground that the complainant had a plain and adequate remedy at law, comes too late when made for the first time on appeal.
2. EXECUTION—SHERIFF'S DEED—LAWS OF CALIFORNIA.
   The grantee in a sheriff's deed, made by the successor in office of the sheriff who sold mining property on a valid decree of foreclosure against the owner, has title to such property by virtue of Code Civ. Proc. Cal. § 700, which provides that "upon the sale of real property the purchaser is substituted to and acquires all the right, title, interest, and claim of the judgment debtor thereto," and the act of 1858 authorizing sheriffs to make deeds for lands sold by their predecessors (St. Cal. 1858, pp. 95, 96).
3. MORTGAGES—FORECLOSURE SALE—STATUTORY JUDGMENT LIEN.
   The lien enforced upon a foreclosure sale is not a statutory judgment lien, but the contract lien of the mortgage, and the title of the purchaser rests upon such lien. Code Civ. Proc. Cal. § 671, prescribing the period for which a judgment shall live or be a lien, has no application to such sale.
4. SAME—TIME OF SALE.
   A sheriff's sale under foreclosure, made more than five years after entry of the decree, is not void by reason of the provision of Code Civ. Proc. Cal. § 681, that execution may be issued at any time within five years after entry of judgment, if the order of sale was issued within the five years.
5. MINING CLAIMS—LOCATION BY ALIEN—DECLARATION OF INTENTION.
   The subsequent declaration of intention to become a citizen, by an alien who had explored and located a mining claim on public lands, relates back to the date of the location, and, in the absence of adverse rights attaching prior to the declaration, operates to validate the location.

Appeal from the Circuit Court of the United States for the Northern District of California.