

for an employer to seek to hire labour as cheaply as he can than it is for the employee to seek to sell his labour as dearly as he can. In the absence of legislation, the courts could not, in his opinion, undertake to regulate contracts of employment by finding any terms the parties might agree upon "unfair." The use of this word should therefore be enjoined. Where a man has a right to do an act to the damage of another, the fact that he was actuated by malice or other improper motive cannot convert the lawful act into an unlawful one: *Boyson v. Thorn*, 98 Cal. 578; *Allen v. Flood*, ante. It was contended by plaintiff that the addition of the element of conspiracy raises a different question. That the combination of a number of men to injure plaintiff is an unlawful conspiracy, and acts done in pursuance of that conspiracy are unlawful: *Vegelahn v. Guntner*, 167 Mass. 92, 107. The purpose of the combination, however, was not an unlawful one. The right of traders to combine for the purpose of limiting trade in a given branch to themselves, although rival traders are thereby damaged, is well recognized: *Mogul S. S. Co. v. McGregor* (1892), App. Cas. 25; *Bohn Mfg. Co. v. Hollis*, 54 Minn. 223; *Delt v. Winfree*, Tex. 25 S.W. 50; *Continental Ins. Co. v. Board of Fire Underwriters*, 67 Fed. Rep. 310. How does such case differ from a combination of working men for the purpose of limiting employment in a certain business to themselves? "The struggle going on between plaintiff and defendant is an economic one, which in my view the courts should not undertake to settle unless one side or other resorts to acts which are unlawful. In that event those acts, and those only, should be stopped." Holmes, J., in his dissenting opinion in *Vegelahn v. Guntner*, cited above, says: "One of the eternal conflicts out of which life is made up is that between the effort of every man to get the most he can for his services, and that of society, disguised under the name of capital, to get his services for the least possible return. Combination on the one side is patent and powerful. Combination on the other is the necessary and desirable counterpart if the battle is to be carried on in a fair and equal way."

It is not to be denied that there is a strong line of authorities reaching a different conclusion on the questions here discussed, but in many of these the strike was accompanied by circumstances of violence and intimidation: *Consolidated S. & W. Co. v. Murray*, 80 Fed. Rep. 811; *U. S. v. Sweeney*, 95 Fed. Rep. 434; *In re Debs*,