

THE GOVERNMENT AND THE TRADES DISPUTES BILL

[By the Rt. Hon. H. O. ARNOLD-FORSTER, M.P.]

MORE LIGHT REQUIRED

The Government, by the aid of its great majority, has forced the Trades Disputes Bill through the House of Commons after a comparatively short discussion. There is some reason to believe that the real character of this Bill is not fully understood by the country. The conduct of the Government with regard to it can only be fully appreciated by those who have closely followed the course of proceedings in Parliament. It is most desirable that the strong light of publicity should be thrown both upon the measure itself and upon the conduct of its promoters, and it is probably true to say that no more dangerous and unjust measure was ever carried into law, and that rarely, if ever, have responsible politicians in this country made a more complete sacrifice of principle and conviction than have the Ministers who have consented to advocate the passage of this Bill in obedience to superior orders.

These are strong statements and require to be justified. It is proposed to supply the justification.

WHAT THE BILL DOES

In the first place it is well to explain quite clearly what the object of the Bill is. Its object is to create a privileged class, the members of which are to enjoy rights and immunities which are denied to the rest of the community. This privileged class is not only to be allowed to exercise its privileges for its own advantage, but is specially permitted by the new law to exercise them to the disadvantage and at the expense of other persons. The new law is to give to a class the right to exercise a tyranny over persons not belonging to that class, protects them by law from the consequences of their acts, and deprives those who suffer from the exercise of this tyrannical power of the ordinary right of redress granted to every citizen since the time of Magna Charta. "To none will we sell, to none will we refuse, to none will we delay right and justice. Such are the words of the great Charter. These words must now be altered, and must read, "To those who are not members of a trades union we will refuse and we will deny right and justice; to those who are members of trades unions, we will sell in exchange for their votes the right which we deny to others."

That the Trades Disputes Bill as approved by the Government does beyond all question create a privileged class outside the law of the land can be proved to demonstration. It can be proved no less certainly that the members of the Government are themselves aware that they are creating this privilege, that they know it is wrong and against the public interest that it should be created; but that under the constraint of fear they have consented to do that which they know to be wrong, and which they believe will be mischievous.

PICKETING AND PERSUASION

Let us see what the Trades Disputes Bill really enacts. We need not dwell at length upon the first two clauses, though a word or two is necessary with respect to some of the provisions contained in these clauses. In the first place, they lay down a statutory declaration that a thing done by a number of people is the same as a thing done by one person. Of course every sane human being knows that this doctrine is false, that, for instance, the presence of one person adopting a threatening attitude outside one's door is a totally different thing from the presence of a thousand persons in the same place, and in the same temper. But the proposition is too plain to require further illustration. No amount of Parliamentary enactment will make that true which is false to the knowledge of all men, in all countries, in all ages.

Again, clause 2 of the Bill lays down the law with regard to picketing, and what is called "peaceable persuasion." In some cases it is to be convenient to the trades unions to put pressure upon individuals to compel them to join the unions, or to conform to the rules which the unions have chosen to make for their own advantage; and they have found that a convenient method of doing this is to hang round the homes of individuals, to follow them in the streets, or, as happened in South Wales, to convey alarming messages to perfectly independent persons whom they desire to coerce. In order to find some justification for this conduct it has been considered necessary to induce in a great deal of make believe, and to pretend that this practice of picketing is necessary for the purpose of "conveying information" to individuals. Nobody believes this. Everybody knows perfectly well that if the sole object were to convey information, there are fifty other ways of conveying it, none of which are open to the same objections as picketing. Picketing is a means of putting pressure upon free men and free women, in order to induce or compel them to do, or to refrain from doing, something which they have a right to do, or to refrain from doing. If picketing did not mean pressure, no one, whether employers or unionists, would trouble their heads about adopting it.

CLAUSE FOUR

But though the first three clauses of the Bill are objectionable because they depend upon the acceptance as true of a number of propositions which everybody knows to be false, these clauses are not as dangerous, or as unjust, as the fourth clause. The fourth clause runs as follows:—

"An action against a trade union, or any branch thereof, whether of workmen or masters, or against any members or officials thereof, on behalf of themselves and all other members of the trade union for the recovery of damages in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court; provided that nothing in this section shall affect the liability of the trustees of any union to be sued in the event provided for by Trades Union Act, 1871, section 9."

It is not always easy to understand the meaning of any clause in an Act of Parliament, but the meaning of this clause is perfectly clear. It is put very shortly by one of the judges in what is known as the "Taff Vale Judgment." The Legislature has authorized the creation of numerous bodies of men capable of owning great wealth, and of acting by agents, with absolutely no responsibility for the wrongs they may do to other persons by the use of that wealth and the employment of those agents.

To put the matter even more shortly, the clause means that certain bodies known as trade unions, or associations of employers, may wilfully and deliberately, for their own purposes and for their own pecuniary advantage, inflict gross injuries upon individuals or classes of persons whom they dislike, or whom they wish to injure, and may do so without any interference on the part of the law. All the persons injured are by this clause deprived of the protection of the law of England and left without a remedy.

A PRIVILEGED CLASS

It is one of the boasts of an Englishman that in our country "all men are equal before the law." This will now cease to be true. By the Trades Disputes Bill a "privileged class" is created. There are many instances in our history of the existence of such privileged classes. At one time the clergy had many privileges, and a person who could read and write could actually escape hanging because his knowledge was supposed to prove that he was "a cleric." This privilege was called "Benefit of clergy." At one time peers possessed many and great privileges; and many other classes and persons at one time or another have been "privileged." For many years past, however, the feeling of the country has been against the creation or retention of privileges, which have come to be regarded, and not without reason, as odious and opposed to the public interest. Now, however, the Government has created a new privileged class, and it would probably be necessary to go back nearly 500 years in our history to find any parallel to what is now being done.

A CLASS LAW

It may perhaps be thought that there is some exaggeration in the expressions which have been used, and that in the view of the Government and of those who give the Government its orders, no privilege has been created. But this is a mistake. In this case there is no room for doubt. The Government know perfectly well that they are creating a privileged class; they do not liberally intend to create it, and what is perhaps even more remarkable, they know that in creating it they are doing a thing which is odious and wrong. Let us see whether this statement is capable of proof. Are we, or are we not, making a special law for the benefit of a special class? The evidence on this subject is perfectly clear. That is exactly what we are doing, speaking in the House of Commons, the Attorney General, who may be supposed to know the

law, explained the nature of the existing law of principal and agent, and having done so, he said:—

"That law is certainly a part of the law of the land, yet in our view it is a principle which ought not to apply in relation to Trades Unions."

Mr. Henry, the member for Wellington, is equally clear. He says:—

"Objections seem to be raised to the Bill on the ground that its provisions are opposed to existing legal doctrine. I venture the opinion that the condition of Trades Unions requires distinct and separate legislation. He says:—

"We are entitled to claim special legislation."

We have already given the view of the Attorney General, but he is so emphatic that he is worth quoting again; for he has no doubt at all about the intention to create a privileged class. He says:—

"BENEFIT OF CLERGY."

"The proposition (that is to say the very clause which he has since voted for) I understand to be that, however great and ruinous the loss that may be suffered by an individual, however unjustifiable the conduct of the union which may occasion that loss, even in the case of that conduct having been carried out by means of the use of the funds which are controlled by the union, yet those funds, the property of the union, are not to be made liable to redress the claim consequent on that loss. You must fairly face that proposition. I invite the House before they put a proposition of that kind into legislative shape, seriously to consider its effect. It will be impossible for me to do these combinations. If you place them in the position you will have to deal with claims on the part of other bodies also entitled to the consideration of Parliament, who may ask that the same privilege—mark the word 'privilege'—shall be extended to them." And he continues: "We are a democratic country, we are a democratic party, we are a democratic Parliament, and probably the members below the gangway opposite are the most democratic members in it. But you are proposing class privileges! In the old days of our law these immunities of class existed. They were the 'privileges' of the aristocracy, and they have been abolished. Do not let us create a privilege for the proletariat, and cry 'equality' and 'democracy' against actions in favour of certain sections of the population."

EXEMPTION FROM THE LAW OF THE LAND

It is so important to show that it is the deliberate intention of the Bill to create a class privilege, that it would be well to quote still further authority upon the subject. This is what Mr. Hudson, member for Newcastle-upon-Tyne, a warm supporter of the Bill, has to say:—

"That law (the law of agency as it exists) was the common law which applied generally to all associations, and they must insist upon their original position that trade unions should be exempted from the law. They claimed, he continued, entire immunity from the law. If Mr. Hudson granted legal authority for his statement that the law which he wishes to set aside in his own favour, applies to every other class in the United Kingdom, Mr. Haldane, who not long ago told his constituents that he knew sometimes as much about the business as Mr. Keir Hardie, will supply it. He is speaking of what was at one time called Mr. Keir Hardie's preposterous propositions, and he says with perfect truth: "It is a rule of the law, both in England and Scotland, that although one has not given authority to do a particular thing, still if one's servant does something acting within the scope of the business handed to him, then the employer is responsible."

PRIVILEGE AND TYRANNY

These quotations are enough to prove to any fair mind that it is a privileged class we are creating. That we are creating a privilege which is in fact a tyranny is certain. All those who possess special privileges are tempted to use them tyrannically and to the injury of those who do not possess them. But it is well to remember that the new privilege is not likely to prove any exception to others of the same kind. This is how the situation is described by the majority of the Royal Commission on trades disputes. A majority composed of an advanced Radical, Mr. Sydney Webb, a well-known Radical lawyer, Mr. Cohen, and Mr. Graham Murray, a well-known Conservative lawyer, formerly Lord Advocate, and now a judge. "There is no rule of law so elementary," say the Commissioners, "none so universal or so indispensable, as the rule that a wrong doer should be made to redress his wrong. If trade unions were exempt from this liability they would be the only exceptions, and it would then be right that that exception should be removed. That vast and powerful institutions should be permanently licensed to apply the funds they possessed to do wrong to others, and by that wrong inflict upon them damage, perhaps to the amount of many thousand pounds, and yet not be liable to make redress out of those funds, would be a state of things opposed to the very idea of law, order and justice."

Let there be no mistake about it, it is this "preposterous proposition," this exception to the law of this and every civilized country in the world; this enactment opposed to the very idea of law, order and justice which is enacted by clause 4 of the Trades Disputes Bill.

MR. HALDANE'S BRAVE WORDS

That the Bill now before Parliament does create a privilege, and that those who support it are aware of the fact, has been proved to demonstration. But that among those who are now foremost in promoting the Bill there are many who believe it to be wrong in itself and contrary to the public interest, is equally capable of demonstration. The House of Commons has not yet forgotten, and it would be a great pity if the country forgot the brave words used by Mr. Haldane, speaking as lately as the last General Election before he was compelled, in his own graceful phrase, to "see the mark" so Mr. Keir Hardie's words:—"I have seen," said the Secretary of State for War, that Mr. Keir Hardie has written to the newspapers threatening Mr. Asquith and myself with all sorts of rebuff if we will not "see the mark" by voting up to the particular proposition which Mr. Keir Hardie wishes should be carried out, about the Trades Disputes Bill. Well, I am sure neither I nor Mr. Asquith will hedge one such because of Mr. Keir Hardie's demands. Mr. Keir Hardie may address himself with success to the electorate when he has studied the Trades Disputes Bill a little more, and when he knows one tenth as much about it as Mr. Asquith and myself are bound to know in order to deal with the subject. To make the kind of preposterous propositions which he puts forward, is only to show how very feeble is the position which he holds in the House of Commons so far as his doctrine and his following are concerned. I have not the slightest objection to Mr. Keir Hardie putting forward his own propaganda; if Mr. Keir Hardie thinks he is going to coerce me or anybody else, he had better come to East Lothian and try it."

MR. HALDANE "TOES THE MARK"

These are brave words. No wonder there were cheers. And yet this fire-eating gentleman is the very same person who has now climbed down, who has "seen the mark" exactly as he was ordered to by Mr. Keir Hardie, and has not once, but twice, swallowed all his fine profession, and has given his assent to the preposterous propositions by denouncing which he won the cheers of the election of Feb. Clearly whatever he does, Mr. Haldane knows perfectly well that the Bill is unjust, and if further proof were needed, his so-called explanations of his conduct, to which reference will be made later, would supply it. Mr. Asquith, too, knows that the Bill is unjust, and before he was "smeared" he said so. "I do not think," said the present Chancellor of the Exchequer, "it would be expedient from the point of view of combinations either of employers or of workmen that those who are in favour of their effective existence should attempt to ask Parliament to lay down a policy of this kind. The trade organizations possessing large funds, and directed by a controlling authority should not be responsible for the misdeeds of acts, if they be unwise, shown to be committed by their agent, within the scope of their authority. I do not think it would be in the interests of trade unions or the employers' combinations that that principle should be affirmed."

MR. HALDANE'S BRAVE WORDS

We have already seen that the Attorney General considers the Bill is a "dangerous one" that it "creates an injustice," that it is "anti-democratic," that it "creates a privilege" and that it "removes from the trade unions the sense of responsibility." The opinions of such good Trade Unionists as Mr. Burt, M.P., and Mr. Bell, M.P., and of many other persons might be quoted to the same effect. But space does not permit, and the argument does not require further demonstration. The injustice is plain to all men, as plain as the fact that being an injustice it is to be made part of our law for the benefit of a class. In another letter it is proposed to discuss some other important aspects of this question, to refer to the history of previous privileges and tyrannies, their rise and fall; to explain the actual nature of the privilege conferred, and the injury which its exercise inflicts upon the community. To explode the fallacy which is based upon the supposed existence of the immunity of trade unions prior to the Taff Vale decision, and to enquire into the value of some of the arguments which have been adduced in support of the Bill and of the explanations which have been given by its supporters to account for their sudden change of opinion.

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